



PLANNING COMMISSION MEETING

April 25, 2011

Meeting Minutes

April 25, 2011 – 6:30 p.m.

Commissioners present: Blaser, Burger, Culver, Finkeldei, Harris, Hird, Liese, Rasmussen, Singleton, and Student Commissioner Davis

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

MINUTES

Receive and amend or approve the minutes from the Planning Commission meeting of March 28, 2011.

Motioned by Commissioner Hird, seconded by Commissioner Singleton, to approve the March 28, 2011 Planning Commission minutes.

Motion carried 8-0-1, with Commissioner Harris abstaining.

COMMITTEE REPORTS

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

Commissioner Hird said the Agri-Tourism committee met and started a draft that might be scheduled for the July Planning Commission Mid-Month meeting.

COMMUNICATIONS

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

Receive written action of any waiver requests/determinations made to the City Engineer:

Reporting of City Engineer waiver from access management standards in Section 20-915 of the Development Code, as required in Section 20-915(e)(3)(iv) in association with Site Plan SP-12-62-10 for the redevelopment of Dillon's at 1740 Massachusetts Street.

The City Engineer approved a waiver from the access management standards regarding driveway spacing for the access points on Massachusetts Street being proposed as part of the Dillon's redevelopment project (infill) at 1740 Massachusetts based on the following:

- 1) The proposed spacing is more uniform and an improvement over what currently exists.
- 2) It is very difficult to meet the access management standards with infill development, such as this project.
- 3) The Traffic Impact Analysis which showed that the proposed access spacing would be adequate to maintain a safe level of operation along Massachusetts Street.

EX PARTE / ABSTENTIONS / DEFERRAL REQUEST

- No ex parte.
- Abstentions:

Commissioner Finkeldei said he would abstain from Items 1 and 2.

PC Minutes 4/25/11

**ITEM NO. 1 CONDITIONAL USE PERMIT; KAW VALLEY EUDORA SAND FACILITY;
2102 N 1500 RD (SLD)**

CUP-10-6-10: Consider a Conditional Use Permit for Kaw Valley Eudora Sand Facility, located at 2102 N 1500 Road, NE of SW Cor. SW ¼ S32-T12S-R21E, on approximately 196.58 acres. Submitted by Landplan Engineering, P.A., for Kaw Valley Companies, Inc., contract purchaser, for James and Ronda Bigger and Wellsville Bank, property owners of record. *Joint meeting with Eudora Planning Commission. Deferred by Planning Commission on 2/23/11.*

STAFF PRESENTATION by City of Lawrence

Ms. Sandra Day presented the item.

Commissioner Rasmussen said the property was zoned as Valley Channel. He asked Ms. Day to explain why applying industrial zoning rules was appropriate for that zoning.

Ms. Day said she was not sure that they were attempting to apply industrial zoning rules. As a Conditional Use Permit there was an opportunity to provide a set of recommendations and conditions to make that use more compatible with the surrounding area.

Commissioner Rasmussen said in the staff report it says it is a valley channel and then on page 163 of the packet it says the Eudora Industrial Zoning District should be guiding this. He asked how industrial was applicable to Valley Channel.

Ms. Day said what staff tried to do was to make the comparison that if this application were in the City of Eudora that this would be the type of appropriate zoning.

Commissioner Rasmussen asked how close the dredging activity was.

Ms. Day said the southern property was within a mile of the City of Eudora and that the dredging operation may be a little over that.

Commissioner Rasmussen asked what was too close and how that was determined.

Ms. Day said that was a very difficult question to answer. She said during the review staff gave deference to the City of Eudora's position and to their adopted plan for the area. She stated had this been on the more extreme area of that 3 mile radius staff might have come to a different conclusion.

Commissioner Rasmussen asked what other elements went into that balancing act.

Mr. McCullough said it was more of an exercise in looking at the Comprehensive Plan values. He said Eudora has done some planning and has established a type of growth area that staff believes the Comprehensive Plan wants staff to show deference to.

Commissioner Rasmussen inquired about the planning exercise done for City of Eudora to establish the Urban Growth Area.

Mr. McCullough said it was established in Horizon 2020 and the City of Eudora established it for their own purposes. He said there is deference shown when a city has undertaken an exercise to plan for

a certain area and the statutes appear to give that 3 mile concept, so staff chose to show that deference with the recommendation.

Commissioner Rasmussen asked what area Ms. Day showed on overhead.

Ms. Day said the grey area was designated as floodplain.

Commissioner Rasmussen said in the staff report it states '*...the property is suited for the proposed use...if it can be shown that it is not incompatible with other uses permitted in a district... and is... found to be in the interest of the public health, safety, morals and general welfare...*' and later in the staff report it says '*Approval of the use does not clearly benefit nor harm the public.*' He asked how an industrial activity could clearly benefit the public.

Ms. Day said many times with industrial applications they look at generating tax revenue, employment dollars, employing local community members, construction costs for new buildings and improvements.

Commissioner Rasmussen asked if those things would not be a part of this project.

Ms. Day said the application does not clearly justify that. She said there was nothing in the application that supported it one way or the other.

Commissioner Rasmussen said in the staff report it states '*...relatively low traffic volume has been reviewed and deemed to be acceptable by County staff.*' But above that in staff finding it says '*Affects to nearby properties include increased truck traffic...*' He asked how those two statements could be reconciled.

Ms. Day said traffic studies provide the rationale and justification for a particular land use. This particular use can be accommodated on the County roads. She said from the public perspective there would be more traffic than what was currently associated with an agricultural activity. She said the study does not say there would be not be any increase in traffic; there will be and there will be a perception to the public of that fact.

Commissioner Rasmussen said the staff report states '*If approved the land feature will be permanently altered from "land" to "water".*' He said the impression he got from that sentence was that staff was stating it as a negative impact as justification for recommendation of denial.

Ms. Day said she did not necessarily intend for that statement to be negative. She said it was a statement of fact. She said this was not a land use that once it went away all traces of it could be removed. She said many conditional Use Permits have a time element to them and then they go away and the property could still be used for agricultural use. She stated in this particular use the landscape would be permanently altered.

Commissioner Harris said the County had a certain way of looking at industrial development and the City of Eudora had another way of looking at it. She asked if the City of Eudora had come to a different conclusion, if their Comprehensive Plan said something different, would the staff recommendation be different.

Ms. Day said yes, if there was better support and better justification in the Eudora Plan there could have been a different conclusion.

Commissioner Rasmussen asked if the Eudora Comprehensive Plan or the Eudora staff report swayed staff recommendation.

Ms. Day said the Eudora Comprehensive Plan.

STAFF PRESENTATION by City of Eudora

Mr. Scott Michie, City of Eudora Planner, presented the item. He said his staff memo was virtually unchanged from the February hearing. He said the City documents were very clear on the policies that pertain to this application. He reviewed the staff memo he wrote that was included in the packet. He said if there was a recommendation for approval for this that one of the conditions he would like to see was '*A **surety bond** with provisions to assure that the City would be made whole should a well water problem result from the proposed sand pit operation, provisions to be worked out with input from the City.*' He said regarding the jetties the County Engineer worked with the applicant for some additional changes and he just saw those this afternoon so he was not prepared to speak about it.

Commissioner Rasmussen inquired about Mr. Michie staff memo where it says '*The City of Eudora's long-standing Industrial Development Policies are very clear and very simple. Industrial development in Eudora and its designated planning area must be: 1. Directly accessible to K-10 Highway, and 2. Out of the 100-year floodplain.*'

Mr. Michie displayed the designated planning area on the overhead. He stated it was approximately a 3 mile area outside the corporate limits of the City.

Commissioner Rasmussen asked if based on that no industrial activity would be permissible unless it was directly accessible to K-10.

Mr. Michie said that would be the type of development that would meet the adopted policies, shown on page 5 of his staff memo.

Commissioner Rasmussen asked Mr. Michie to show where industrial sites were located east of the City of Eudora.

Mr. Michie said on the map it was the darker color located within the red circle.

Commissioner Rasmussen said the red circle on the map in his staff memo was colored red commercial. He asked if it was commercial and industrial.

Mr. Michie said within that was the industrial business park (purple) and that it was the adopted policy that the City of Eudora would support a range of non-residential development at the E 10th Street interchange.

Commissioner Rasmussen asked if those were the only two places where industrial development would be appropriate in that 3 mile ring.

Mr. Michie said that was correct.

Commissioner Harris asked if the Eudora plan mentions mineral extraction as an industrial activity.

Mr. Michie said the Zoning Regulations were broadly defined in Eudora and there was one industrial classification and mineral extraction was one of the industrial uses. He stated there was also a

general agricultural district that every city has and mineral extraction would be a permitted use with a Conditional Use Permit.

Eudora Commissioner Johnny Stewart asked if Mr. Michie worked on the Douglas County Comprehensive Plan.

Mr. Michie said he did not work on the Douglas County Comprehensive Plan, only the Eudora Comprehensive Plan.

Eudora Commissioner Stewart asked if the Douglas County Comprehensive Plan was followed when the Eudora Comprehensive Plan was implemented.

Mr. Michie said representatives were invited from the County to the work sessions and public hearings. He stated the Eudora Chamber of Commerce representatives were invited as well.

Eudora Commissioner Stewart said the Douglas County Comprehensive Plan says that valley channel prohibits removal of top soil or reallocating any water sources. He stated the area north and south of the river was considered off limits for development because topsoil should not be taken or dredged. He wondered if Eudora took that into account when they created their Comprehensive Plan.

Mr. Michie said those were background discussions for designating the 100 year floodplain as open space, natural features, active and passive recreation, and for encouraging industrial development in the 500 year floodplain or out of the floodplain entirely. He said one of the things they discussed in the past months was best management practices for out of river dredging, some of which call for that activity not to be in the 100 year floodplain. He said his recollection of the 2002, 2008, and 2009 plan updates for the city did not explicitly explore excavation and dredging and mineral extraction in the floodplain because it was not a topical issue at that time.

Eudora Commissioner Stewart asked what a surety bond was.

Mr. Michie said he did not have the opportunity to go into the specifics with the applicant because in past discussions the applicant indicated they were not willing to consider a surety bond. He said a surety bond would provide provisions to assure that the City of Eudora would be made whole should a well water problem result from the proposed sand pit operation.

Eudora Commissioner Stewart asked if the City of Eudora could show clear harm if the surety bond would kick in.

Mr. Michie said that was correct but he had not had the opportunity to discuss the specifics with the applicant because the applicant chose not to discuss that.

APPLICANT PRESENTATION

Mr. Phil Struble, Landplan Engineering, said the applicant was asking for a Conditional Use Permit because they were not asking for industrial. He stated many mineral extraction activities were called mineral extraction activities and did not normally fall under the industrial categories. He said the use would almost always be in the floodplain because that was where the sand was. He said as the locations where sand could be mined got further and further away the cost was directly impacted. He said they were not asking for Eudora industrial zoning nor asking to be in the City of Eudora. He stated they were typically considered a good open space use because it has a defined limit through a Conditional Use Permit. He introduced Mr. Edward (Woody) Moses, Executive Director of the Kansas Agri-Producers Association, who was present to answer any questions if needed. He stated the

second well study came to the same conclusion that there was no definable potential pollutants. He also stated that he had a brief conversation with Mr. Michie about the surety bond and the applicant was not interested in it. He said Planning Staff had a detailed conversation about how there could be some measureable criteria that might trigger the sand operation stopping until it was resolved. He said they were open to dialogue to work through the issues. He wanted to clarify the traffic issue as presented by Ms. Day. He said the sand pit had only one destination today for the sand and that 100% of the traffic would go north to Kansas City, Kansas. He stated 0% of the traffic would go through Eudora or to Lawrence, although he said he could not say it would never go through Eudora. He said he would like to work through any issues.

Commissioner Harris asked if there was any mention in the transportation information about the bridge.

Mr. Struble said Mr. Keith Browning could answer that. He said he thought they were not even close to any load limits on the bridge.

Eudora Commissioner Ken Adkinson asked if there would still be two employees and if they would be from another area. He wondered what the economic value was for Eudora and Douglas County.

Mr. Struble said the employee based was only a guess. He said they have employees living in the house out there right now who are living in Douglas County. He said he had not done an economic analysis of the project to be able to answer that question. He stated the economic value to the county would be more readily available sands.

Eudora Commissioner Grant Martin inquired about the plant in Kansas City, Kansas where sand from the proposed pit would be going. He asked what the site in Kansas City was zoned.

Mr. Struble said he was not sure.

Commissioner Rasmussen said his recollection from the previous meeting was that part of the reason for the application for this location was because of the type of sand that could be used to make things such as insulation and be dried and sent to the airport. He said he did not recall that it was said this would also be provided locally.

Mr. Struble said dried sand was sold to the airport and a lot of people for sand on the roads. He said dried sand was also shipped to St. Louis to make insulation products and fire retardant products. He stated that was the bulk of their business but that if the opportunity arose where local businesses needed additional sand for a large project they would sell them sand to supplement that need.

Commissioner Rasmussen asked if he stated earlier that all the product would be going north of town. He asked if that was only the dried product. He was concerned about trucks going through town.

Mr. Struble said 100% of the product would not be a dried product. Today their customer was in Kansas City, KS but they would not shut the door on providing sand to a Eudora road project, for example.

Eudora Commissioner Kurt von Achen asked if they would be willing to agree to a condition to keep all trucks out of Eudora.

Mr. Struble said not all their truck drivers were their truck drivers, half of them were under contract and not under Kaw Sand authority. Said if they sold sand to Penny's Concrete on Highway 7 then the answer would be yes.

Commissioner Harris asked how the weight of the sand trucks compared to other types of industrial trucks.

Mr. Struble said they were the same trucks seen all over town, approximately 22 tons.

Eudora Commissioner Stewart asked if they would be willing to stop extraction if there was an impact to the wells. He wondered how and who would monitor that and who would fund the cost of that monitoring.

Mr. Struble said it would not be court ordered and they would agree to simple phone call to the plant operator or to the home office in Kansas City, KS and they would immediately shut down the plant. He stated County Commission meets twice a week and with a Conditional Use Permit County Commission had authority to shut down operations at any time they wanted. He said they were open to discussions on the cost of monitoring.

Eudora Commissioner Stewart inquired about the large number of trees being removed.

Mr. Struble said the previous plan had a 300' minimum and went up to 500' width of the existing trees to stay. He stated the trees themselves in an aerial map range between 400'-800' wide. He said yes, there would still be a row of trees removed and that that part of the plan hadn't changed.

Commissioner Burger inquired about the general timeframe from when sand was extracted from this type of facility to when it would be delivered to places like Penny's Concrete and then be available to put in place in a concrete pour in Douglas County.

Mr. Struble said what people typically think of regarding a sand processing plant was seeing a big pile of sand. He stated that big pile of sand was generally 1-2 weeks worth of sand inventory. He said beyond when it goes someplace to be used he could not venture to guess.

Commissioner Burger said she appreciated the intent and agreement to say they would shut down with a phone call. She was concerned about the domino effect with that kind of agreement where a phone call could be placed to shut down the sand processing plant and how that would impact the rest of the community during a large project.

Mr. Struble said the scenario of a large project would require about 6 weeks worth of sand stockpiled in advance. He said the advantage with this project would be that it's a small sand pit for producing ready mix sand. He stated Penny's Concrete could extract much more sand from the river than Kaw Valley could, so even in that scenario if they were shut down, at best they would be 5% of that project. He said if the Corps of Engineers shut down the sand dredging in Lawrence, KS then there would be a problem. He said with a large project another company might rely on Kaw Valley for just a little extra sand, but that a big project would not be predicated on Kaw Valley.

Commissioner Liese asked what had happened with the community and applicant since the last meeting.

Mr. Struble said that they had not tried to reach out personally to each person in the community. He said he had conversations with a handful of people.

Eudora Commissioner Ken Adkinson said Kaw Valley would be closing down any expansion to wells to the east so as Eudora expands wells would have to go to the west. He felt it would be restricting the water growth for Eudora.

Mr. Struble said he did not do the well study and would defer that to the well expert.

Eudora Commissioner Richard Campbell asked who owned the property. He was concerned about other potential uses.

Mr. Struble said Kaw Sand already owned the property. He stated the purchase of the property was time contingent.

PUBLIC HEARING

Mr. Mark Neis inquired about the buffer of trees. He said they would be 50' of 15th Street and 50' of the property line with a berm. He said with 6" rain that area was flooded. He wondered if there would be a conservation plan. He was concerned about who would pay to fix a broken berm and who would take care of the roads and ditches. He wondered if they had done testing to see how far down to the sand was and how much top soil they would have to take off.

Mr. Melvin Morriss was concerned about the holding pond being located where the old dump was located. He expressed concern about truck traffic going north and the load limit being 10 ton.

Mr. Scott Jackson said he was surprised they were still talking about this issue because nobody had been in favor of it. He stated Commissioner Rasmussen said last time that there was a desperate need for sand but he did not see that. He did not feel there was much of an economic benefit from two employees. He wondered if sand going to Missouri would still receive sales tax for it.

Mr. Bruce Balke was concerned about the potential threat to Eudora's water supply and felt that risking Eudora's municipal water supply was unacceptable, both from an economic standpoint and from a human standpoint. He did not feel the location of the proposed operation conformed with the existing zoning or planning uses. He stated that both the Eudora Planning Commission and the staff of the Douglas County Planning department had recommended denial of the Conditional Use Permit. He stated the operation would bring no or minimal employment to Eudora. He expressed concern about the possible impacts to the Eudora water supply in the event of a major flood on the Kansas River. He also stated there was the potential for a lot of large truck traffic to move through Eudora. He said an independent study could not say with any certainty whether the operation would threaten Eudora's water supply. He believed the proposed location and proposed use did not conform to the US Army Corps of Engineer's river management policies. He wondered about the estimate cost to replace the water supply if it were contaminated. He felt that Kaw Valley should be required to place the full amount estimated to be required to replace the water supply in escrow for a period of not less than ten full years.

Mr. Ron Knaggs said Kaw Valley was looking for a high silicon content sand that would primarily be sold to Kansas City International airport and a customer out of Saint Louis. He stated the bi-product would be the street sand, like the kind that might go into concrete, so the impact of trying to keep down the cost of construction and building products to the City of Lawrence or Douglas County would be negligible. Kaw Valley's main product would be going out of town and in some cases out of state.

Mr. Philip Schonberg said the cost of producing water was less if there was a body of water in close proximity of well heads. He said if Eudora grew and had a body of water in the floodplain they would probably ask Kaw Valley if they could put well points in close proximity to the lake for improved water in Eudora.

Ms. Pam Staab said a Conditional Use Permit was issued only when it was found to be in the interest of the public health, safety, morals, and general welfare of the community. She said the burden was to show that it was in the interest of the community. She found in the documents she read in the packet that those benefits were ill-defined and very vague. She felt there needed to be more specific information about how it would benefit the community.

Ms. Lois Hamilton said she had wells on her property and she tried to buy the proposed land when it was in bankruptcy but the applicant outbid her without her knowledge. She felt the City of Eudora would have to spend a lot of money if there was a problem with the water. She was concerned about how close the sand pit would be to her property. She felt the tax payers would have to replace the bridge. She said Kaw Valley could find a better place and make more money on it. She said they needed to analyze the damage it would do to Eudora. She felt water pits/ponds would be a security issue. She said the roads could not handle the current farmer trucks now, let alone more trucks. She said sand would fill the ditches during the first rain. She expressed concern about trees being removed.

Ms. Martha Skeet read from the Soil and Water news from Douglas County regarding stewardship week. She asked them to think about the bends in the river and how fragile that environment was. She said it was not IF there was a flood, it was WHEN. She said maybe there needed to be a surety bond for rebuilding the road and bridge when there was another flood.

Mr. Pradeep Natarajan said there was nothing mentioned by the applicant about mitigation plans. He said he could not believe this was even being considered.

Mr. Robert Cordry said the next course of the Kaw River would be where the sand facility would be.

Mr. Edward (Woody) Moses, Kansas Aggregate Producers Association, said how do you weigh the needs of the many against the needs of the few. He stated one of the biggest issues that needed to be addressed was the location of this resource. He stated there used to be 14 dredges on the river and there were now only 5. He said they have only been able to replace 14 dredges with 3-4 pits. He said it created an imbalance as far as the access to sand and gravel. He said the sand would benefit everyone and would be valuable to the entire community of Douglas County. He said ponds near wells could provide more water and takes less energy. He stated Douglas County was now importing sand from Topeka and that had a cost with fuel, energy, and environmental costs. He felt the larger community of Douglas County would benefit as a whole.

Ms. Sharon Bearden was concerned about noise, water quality, air quality, traffic cost for street repairs, and the ecological impacts. She said in engineering terms 500 maximeters was the closest dredging was supposed to be to any base settlements, bridges, fishing areas, and any burial reserves.

Commissioner Harris inquired about the source of the information Ms. Bearden provided.

Ms. Bearden said she found the information on the internet.

COMMISSION DISCUSSION

Mr. Keith Browning, Douglas County Public Works Director, said regarding the roads, given the estimated number of trucks, approximately 17 trucks a day, 12 going north, 3 possibly going west, and 2 possibly going south. He said the number of trucks did not justify reconstructing a road. He stated the existing township maintained roads and 1500 Rd were in bad shape and needed some work. He proposed having the applicant provide all the materials for the work and the County would do the heavy maintenance improvements. In addition it was recommended that the approach to Route 1061 be paved with asphalt. He felt that would be enough to address the kind of truck traffic being talked about and also would improve the road for current traffic. He said regarding the trucks going through Eudora, Route 1061 functioned as a rural major collector and the purpose of that was to take truck traffic from local roads to arterial roads. He was not in favor of saying all traffic heading south must head west to E 1800 Rd and then south to old K-10. He said E 1800 Rd was not built to handle that kind of traffic but that Route 1061 was. He said regarding the jetties, the applicant agreed not to disturb the north jetty. He said the engineers at Lochner pointed out that although they would not be disturbing the rock, they would be disturbing the earth behind it. He said he talked to Mr. Phil Struble about revising the reclamation plan to not disturb the existing rock jetty and extend the existing rock jetty back to tie into existing ground or large amount of rock. He said restoring that to a constant elevation should restore all the function of the jetties.

Commissioner Liese inquired about how traffic routes would be enforced.

Mr. Browning said local rural roads were not built for a lot of truck traffic.

Commissioner Harris asked Mr. Browning to speak about the comment made regarding the truck load limit in Leavenworth being 10 tons.

Mr. Browning said he was unaware that it was 10 tons. He said if that was the case that would certainly be a concern for the applicant.

Commissioner Harris inquired about the comment made regarding the holding pond being on top of an old dump site.

Mr. Browning said the old dump was on part of the property where the processing facility would be and that issue came up a few months ago during the Planning Commission meeting. He said Mr. Struble indicated that Kaw Valley was in the business of doing large scale cleanup so it was not seen as a huge problem.

Commissioner Harris inquired about the water supply possibly being damaged.

Mr. Browning said he was not an expert in that area but that he did read the reports and that the one prepared by the applicant seemed to make sense to him. He said the movement of ground water was typically down gradient movement and the sand facility would be down gradient of the wells. He said it made sense to him that it should have no effect on the wells, although he could not say there would be no scenario where the wells would not be effected.

Commissioner Harris asked if he expected additional ditch maintenance.

Mr. Browning said he was proposing that the County do heavy maintenance improvements with the applicant providing the materials. He said once it was in shape where it would handle the truck traffic it would be turned back over to Eudora Township to maintain. He said if they had the cooperation of the applicant, much of the property was lower than the road and should allow for better drainage than what was there now. He said it would not be perfect because it was in the

floodplain, but that they could slope the ditches and have an outlet in a lower area on the applicant's property to drain.

APPLICANT CLOSING COMMENTS

Mr. Price Banks summarized the testimony from this evening. He stated the applicant had experience in cleaning up dump sites and was currently cleaning up Farmland under contract with the City of Lawrence. He said most of the sand out of the operation would go to the applicant's plant in Kansas City, KS. He said there was testimony about the road issues being pretty much taken care of and that the bridge was not a problem. He said the applicant would do work on the jetties that would probably make them better.

Commissioner Hird said the 2008 Eudora Comprehensive Plan update refers to the Wakarusa and Kansas River as the primary natural resources in Eudora. He said the report basically says the maps created and selected by Planning Commission were built on long standing plans for linear parks and passive recreation in the river floodplains left undeveloped and for industrial development and long standing targeted nodes outside of the 100 year floodplains with direct access to K-10 Highway.

Mr. Banks said if they approved this they would be deferring to that. He said this was not an industrial use, it was a temporary use. He said it would be reclaimed and it would become open space. He said this could and should be an amenity rather than a detractor.

Commissioner Rasmussen inquired about Mr. Banks comment about the sand pit improving the stability and functionality of the jetties.

Mr. Banks said the construction work on the jetties was designed to improve the functionality of the jetties. He said it was his understanding that they were not well tied into the soil behind them.

Eudora Commissioner von Achen said he did not disagree with Mr. Browning stating Route 1061 could handle the trucks. He was concerned about the safety of Route 1061 because it was the main street of Eudora with diagonal parking on both sides and hills. He said Eudora police could enforce that safety standard.

Mr. Jack Messer, Lochner & Associates, said he had been the City Engineer in Manhattan during the 1993 flood so he had experience with the power of water. He said there would be a current across the proposed site during a flood and create a funnel with a faster current. He said the bottom of the excavation was 775' and the bottom of the river elevation was 785', 10' lower than the river bottom. He said jetty excavation would range between 10' below the bottom of the jetty to 2' below the bottom of the jetty. He said removing fill around it would likely affect how it would function. He said the City of Eudora was just asking for assurance if something negative happened to the wells.

COMMISSION DISCUSSION

Commissioner Rasmussen felt sand was a needed commodity, not desperately needed (as an earlier public comment attributed to him saying). He said he would like to see sand not taken from inside the river but instead outside in quarries like this. He felt it was important to not over-regulate the county so that there could be opportunities for a sand operation. He was conflicted about the application. He did not think staff did a good job in justifying the denial and the applicant did not do a good job in justifying why they shouldn't accept the staff report. He said the public comment arguments that a company selling a product out of the state was not persuasive to him. He said he looked at the staff report and went through each point. He said the first part of the staff report looked at the zoning and use of the property. He looked at the valley channel district and felt it was an appropriate use. He said he next looked at the character of the area and felt the use fit with the

general character of the area. He said regarding part three of the staff analysis, the suitability of the subject property for the uses to which it had been restricted, he was not convinced industrial zoning should be applied to the site. He said regarding the soils and geology he felt it was appropriate soil characteristics for the activity. He said regarding part four of the staff analysis, the length of time the property remained vacant, he did not feel 2006 was that long ago for a piece of rural property to be vacant. He stated regarding part five of the staff analysis, the extent to which removal of restrictions would detrimentally affect nearby property, he felt there were real concerns about traffic impacts and safety. He stated there was potential concern about the water supply wells in the area. He said he would like to hear from the Corps of Engineers about how the jetties might be impacted. He said it sounded like there would not be very much gain to the community. He felt one of the few benefits would be a lake. He felt it did conform to Horizon 2020. He said because the application did not meet all seven criteria evaluated he would not vote in favor of the application.

Commissioner Hird said there was no credible evidence either way on potential damage to the water wells. He said an agreement to shut down the plant was not enough. He said Planning Commissions obligation was to the entire county. He stated the City of Eudora's staff report was at least in part based upon the fact that historically Eudora has recognized the riverfront as a natural resource. He said he would defer to the findings of the Eudora Planning Commission since it was in their backyard. He said the traffic would be dependent on the customer base.

Commissioner Singleton said her primary concern was the operation being so close to Eudora. She did not feel the applicant provided clear responses/information to Planning Commission or the residents. She did not feel the risks had been addressed. She said she would like to support some sort of operation like this in a different location.

Commissioner Liese responded regarding a public comment about why the issue was being heard again. He said he recommended a deferral last time to get more information.

Commissioner Harris said the crux of the issue for her was what the Eudora Plan says would happen in the floodplain. She felt they needed to support planning efforts. Her main concerns were water quality and not being able to insure that the community would not have problems. Her other concerns were the jetties and truck traffic going through town. She said the draft Environmental Chapter does address mineral extraction but it needed to go further with guidance and tools to locate places where minerals could be extracted.

Commissioner Burger said the finding of facts were not sufficient to not agree with staff report and findings. She said she would vote to agree with the staff report. She encouraged the applicant to look at planning in a bigger picture and see what other opportunities there might be to make this happen.

Commissioner Culver said Eudora Planning Commission took the time and effort to develop a Comprehensive Plan for their city and by going against that could take the meaning out of their efforts. He felt their actions should be consistent with their plans. He had concerns about the proximity of the site to the city and not having direct answers about the uncertainty with the jetties and water wells. He said at this point he could not support the proposal.

Commissioner Blaser said he did not believe this was an industrial site. He said regarding the wells he believed what the water report said about it improving the quality. He said Eudora's Plan had the area as being a natural resource and to be undisturbed. He said it had already been disturbed and in his opinion was a mess. It had not been farmed and someone tried to use it as a golf course. He

said he would vote for approval and that he was voting for the whole county and did not think this was to the detriment of Eudora and/or their water system.

Commissioner Liese made a comment about why the Planning Commissioners typing during public comment. He wanted them to know they were keeping notes on their comments.

ACTION TAKEN by Lawrence Planning Commission

Motioned by Commissioner Liese, seconded by Commissioner Singleton, to support recommendations for denial of this Conditional Use Permit and forward to the Board of County Commissioners based on the findings of fact in the staff report.

Commissioner Blaser said the jetty would tie back to two lakes.

Commissioner Rasmussen said he would vote for the outcome of the motion to deny but not because he found the staff report to be adequate. He felt that the staff report did not provide justification for denial.

Motion carried 7-1-1, with Commissioner Blaser voting in opposition of the motion and Commissioner Finkeldei abstaining. Student Commissioner Davis was in favor of the motion.

ACTION TAKEN by Lawrence Planning Commission

Eudora Commissioner Kurt von Achen said at the last meeting they recommended denial. There was no motion to reconsider so their motion and action stood from the last meeting.

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**ITEM NO. 2 CONDITIONAL USE PERMIT FOR FRATERNAL ORDER OF POLICE
SHOOTING RANGE; 768 E 661 DIAGONAL RD (MKM)**

CUP-12-8-10: Consider Conditional Use Permit for the Fraternal Order of Police shooting range, located at 768 E. 661 Diagonal Road. Submitted by Dan Affalter, for Fraternal Order of Police, property owner of record.

STAFF PRESENTATION

Ms. Mary Miller presented the item.

Commissioner Rasmussen inquired about revised condition 2 that says the training does not involve the firing of weapons.

Ms. Miller said they do have obstacle courses and sometimes they use it for orienteering that doesn't involve weapons.

Commissioner Rasmussen recommended breaking the sentence into two different sentences. He inquired about the National Rifle Association (NRA) guidelines for noise that recommends 65 DBA at the nearest receptor. He said the condition says 65 DBA at the property boundary.

Ms. Miller displayed a graphic on the overhead of the property boundary.

Commissioner Rasmussen asked which property boundary the noise reading would be taken from.

Ms. Miller pointed on the map. She said measuring it at the property boundaries would be better than at each house.

Commissioner Rasmussen said unless it was specified exactly where the reading needed to be taken he was not comfortable with the condition. He said the recommendation from the NRA was at the nearest sensitive receptor. He was concerned about putting it at a property boundary without specifying exactly where the measurement would occur.

Ms. Miller said boundary line could be changed to the nearest receptor.

Commissioner Rasmussen inquired about the recommendation of adding lime to the soil. He asked how the range was being defined.

Ms. Miller said the firing ranges include the pistol range, rifle range, and trap shooting range, where bullets would land. She said lime would be added to the soil, if necessary, to maintain the correct pH levels. If the pH was adequate no lime would need to be added.

Commissioner Liese discussed condition 5 regarding 'no trespassing' signs. He urged staff and the applicant to consider additional signs noting it was a police firing range. He said if he lived in the area he would feel more comfortable knowing it was police firing guns versus just anyone.

Commissioner Harris asked if there had been a history of complaints regarding noise.

Ms. Miller said she did not know about the past. She said staff received a few comments when this item was published. She said maybe members of the public could speak to whether they had made complaints.

Commissioner Harris said regarding measuring the noise, she would support measuring noise at the property line or possibly a certain distance from homes.

Commissioner Rasmussen asked why staff recommended closing at 5:00pm on Friday but 6:00pm closing on Saturday.

Ms. Miller said it was open earlier on Fridays and the closing time could be changed to 6:00pm on Fridays if needed.

APPLICANT PRESENTATION

Mr. Mike Riling, attorney representing Fraternal Order of Police (FOP), said one of the highest uses on the FOP property was by law enforcement from the county and city. He said the property was purchased and maintained for the benefit of the FOP individual use. He said the two uses were being combined when they were really two separate uses. He said they met with neighbors and the neighbors indicated that the FOP individual use was not a problem. The issues they had were with the sheriff and police department coming out and firing. He proposed two separate types of shooting times. He said regarding noise abatement he was still trying to understand it. He said the FOP was aware that some of the neighbors were concerned with the noise. He stated the FOP was looking into alternative means to try and do some noise reduction but that it was not possible to do that in three months. He said the neighbors came to the area after the shooting range was developed. He was not in favor of signs that would indicate it was a firing range. He said all the neighbors know it's there and that signs might encourage trespassing. He said the leg work had started for noise abatement but that it would take funding. He did not agree with condition 9 that states no other outdoor events may occur during training exercises. He said there were often times when training would occur in one area and shooting would occur in another area. He did not feel the part of condition 12 that talks about a list of weapons was necessary and was a duplicate of condition 15 which requires reporting of the type of rounds fired. He asked that condition 14 limit the crushed lime to only the pistol range. He said they would like to research the cost of lead recycling. He proposed different hours of operation for the FOP versus sheriff/police training. He said three night fires was not practical for the sheriff or police. He said the sheriff and police would need at least four nights.

Commissioner Blaser inquired about night firing for the sheriff and police department.

Mr. Riling said the neighbors have indicated that individuals shooting was not the problem, it was five people shooting at one time.

Mr. Riling said neighbors asked for notification of when there would be groups of people shooting at a time.

Commissioner Liese said he was very comfortable with law enforcement having and using guns. He asked if there had been any gun related accidents in the past 40 years.

Mr. Riling said no, none that he knew of.

Commissioner Liese asked if any of the surrounding land was easily accessible to the public.

Mr. Riling said not that he was aware of. He said the closest thing he could think of was a nearby Christmas tree farm.

Commissioner Liese felt pretty strongly about signs being posted indicating it was a police firing range. He asked Mr. Riling to speak more about funding for noise abatement.

Mr. Riling said it would be a partnership with the County and City to help with abatement.

Commissioner Liese wondered what the neighbors did not like about the gunshot noise.

Mr. Riling said the neighbors could express their concerns this evening. He said most of the neighbors moved to the area after the shooting range was developed.

Commissioner Liese suggested possibly deferring the item so the applicant could get further information about noise abatement.

Mr. Riling said he was not opposed to deferral. He said the current lawsuit had been stayed until June by Judge Peggy Kittel but that she may provide them extra time.

Commissioner Singleton asked how quickly the item could get back on the agenda.

Mr. McCullough said May.

Commissioner Hird asked if there had ever been a problem with trespassing in the last 40 years.

Mr. Dan Affalter said some of the neighbors have used ATV's on the trails and that they have also had some vandalism.

Commissioner Hird asked if it was his position that a sign saying it was a police gun range would create an attractive nuisance versus a no trespassing sign that would keep it uninteresting.

Mr. Affalter said advertising the FOP would be a magnet for attention.

Mr. Riling said most of the people who ride ATV's in the area were aware of the shooting range.

Commissioner Rasmussen asked if 10:00pm termination time was an adequate for night training.

Mr. Tarik Khatib, City of Lawrence Chief of Police, said 10:00pm was adequate. He said 70% of all law enforcement encounters generally occurring during low light conditions.

Commissioner Burger asked if he was taking into account any training during the summer.

Mr. Khatib said the police could plot out training ahead of time.

Commissioner Liese asked for his thoughts on signage.

Mr. Khatib said he had not thought much of it before today. He said sometimes these things do attract people.

Commissioner Rasmussen asked if shooting activities were currently documented.

Mr. Riling said no. He stated he thought that was to be sure they were complying with the lead. He would like that to be modified to only apply to the sheriff and police departments, not individual FOP members.

Commissioner Rasmussen inquired about hunter safety activity.

Mr. Riling said he was hoping that would not apply.

PUBLIC HEARING

Ms. Beverly Wilson, lived in the area for 24 years, said she has called the sheriff's department multiple times at midnight and 6:00am to ask that the shooting be stopped. She said those incidents were about six years ago. She mentioned helicopters landing at the FOP property. She agreed that three months may not be enough time for the applicant to do noise abatement. She wondered who would enforce that. She said there was a police officer suicide at the FOP site years ago.

Commissioner Liese asked what her conclusion was about what should be done.

Ms. Wilson said if she was confident that whatever was agreed to would be policed then she could agree to it more. She said the shooting hours should not be midnight and 6:00am. She said when she called to complain about the shooting it stopped within 15 minutes.

Commissioner Liese asked how she felt about the proposed hours of operation.

Ms. Wilson said they were reasonable.

Commissioner Hird asked if the intensity had increased or decreased over the years.

Ms. Wilson said the overall use of the property had increased. She said she knew the range was there when she moved to the area but did not know what it meant because she did not hear gun fire before they bought the house.

Mr. Bill Roth said he did not know the range was there when he moved to the area because there were no signs at all. He played an audio recording taken from his house of the gun fire noise. He felt that 9:30pm was late enough for shooting. He felt the FOP (social organization) conflicted with the uses of the sheriff and police departments (formal training). He said there were not very many neighbors 50 years ago and it wasn't being used by as many law enforcement 50 years ago. He felt the times should be the same for everyone so that the neighbors wouldn't have to figure out if it was the FOP, sheriff, or police department.

Commissioner Singleton asked how close he lived to the range.

Mr. Roth said he lived about 1/2 mile.

Commissioner Hird asked how long he had lived there.

Mr. Roth said about 5 years but he did not realize it was there because there were no signs.

Commissioner Rasmussen asked how he knew the gun shots on his audio recording were from the range.

Mr. Roth said it was at night and nobody else shoots like that.

Commissioner Singleton asked if he would be okay with shooting until 10:00pm if he received advanced notice of it.

Mr. Roth said 10:00pm was too late.

Mr. Ken McGovern, Douglas County Sheriff, said night shooting was typically in the fall when the sun goes down early and they try to be done by 10:00pm. He said it takes four days to complete training.

Commissioner Liese inquired about enforcement.

Mr. McGovern said complaint calls could be made directly to him or dispatch. He said Conditional Use Permits were enforced by Mr. Keith Dabney, Douglas County Zoning & Codes Director.

Commissioner Liese said he was surprised by how loud the gun shots were on the recording.

Mr. Tarik Khatib, City of Lawrence Chief of Police, said the location was very important for law enforcement training. He said during 2009 the police department was out there about 60 times.

COMMISSION DISCUSSION

Commissioner Liese said he'd be in favor of this but would prefer to defer the item to give the FOP more time to talk to neighbors. He said he would still like to see signs up indicating it was a shooting range.

Commissioner Burger said she would support deferring to allow the FOP and staff time to work through conditions. She said regarding the noise, she lives near train tracks and those trains were not bothersome after she got used to them. She said the trains in North Lawrence were the ones that were bothersome because of the way sound travels.

Commissioner Hird said he was leaning toward deferral. He said gun shots were a part of life in the country and noise was a given in the country. He said it was an important facility for Douglas County. He said unless there were some very good reasons for these requirements he was not in favor of a lot of the conditions. He encouraged staff to lighten up on some of the conditions. He said the hours of operation did not sound like such a big deal. He said regarding noise abatement, the firing range was there for 40 years, so it should not be a surprise to new home owners to the area. He felt they should send the item back to staff to lift some of the restrictions.

Commissioner Singleton thought this needed to be sent back to staff to reduce the conditions. She said this was a vital facility for the community. She was comfortable with the hours of operation that Mr. Riling proposed. She understood Mr. Riling's point about condition 9 and other activities going on at the same time. She felt there needed to be clarification on the idea of trying to keep track of every single bullet. She felt the noise level documentation needed to be clarified. She thought it was a good idea for the FOP to look into the lead recycling program.

ACTION TAKEN

Motioned by Commissioner Liese, seconded by Commissioner Hird, to defer the Conditional Use Permit (CUP-12-8-10) for the Fraternal Order of Police shooting range, located at 768 E. 661 Diagonal Road.

Commissioner Rasmussen said he works for Army and Department of Defense and it was difficult to train soldiers with neighbors who have moved in after. He was not comfortable with the proposed noise requirement. He did not think it was worded very well. He wondered when the measurements would occur. He felt a noise ordinance for the county should be sufficient. He felt there should be

conformity with hours of operation. He was also uncomfortable with the lead recycling program and would like the applicant to tell staff how they were going to do that. He was not comfortable with the level of detail in the conditions. He said only experts should be making such technical recommendations. He felt the restrictions were excessive.

Commissioner Burger gave the example of football games on campus that she can hear at her house on certain days depending on the wind direction. She did not think noise readings would be consistent.

Commissioner Harris said she supports a deferral. She supported signs on the property, at least one at the gate, so that prospective property buyers in the area would know what was there. She was comfortable with reasonable provisions for noise abatement and lead recycling, as suggested by the NRA. She also supported predictable hours.

Commissioner Culver supported the deferral. He felt 16 conditions was overwhelming.

Motion carried 8-0-1, with Commissioner Finkeldei abstaining. Student Commissioner Davis voted in favor.

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**ITEM NO. 3 TEXT AMENDMENT TO CITY OF LAWRENCE DEVELOPMENT CODE;
CHP 20, TO ALLOW ACTIVE RECREATION AS A SUP IN IG DISTRICT
(SLD)**

TA-2-2-11: Consider a Text Amendment to the City of Lawrence Land Development Code, Chapter 20, Article 4, Section 20-403 to allow Active Recreation as a Special Use in the IG (General Industrial) District. *Initiated by City Commission on 3/1/11.*

STAFF PRESENTATION

Ms. Sandra Day presented the item.

Commissioner Rasmussen said it seemed backward to make this a Special Use in the IG district, which he considered to be the heaviest industrial zone, but it's a permitted use by right in the lesser industrial zoned areas.

Ms. Day said she wasn't sure it was the only use and that she would have to do a study of the allowed uses. She said the lower industrial districts have a commercial element to them and that was why the use tended to fit in the lower intensity. She gave the examples of a dance studio and tae kwon do that were allowed in the IBP district. She said the advantage of some of the industrial buildings were the high ceilings and open floor plans. She said there were some opportunities in reusing older buildings but that they would want to be very cautious and deliberate instead of making it categorically appropriate.

APPLICANT PRESENTATION

Mr. Matthew Gough, Barber & Emerson, said the nice thing about the Special Use Permit process was that it would come before Planning Commission for evaluation and allowed for flexibility.

PUBLIC HEARING

No public comment.

COMMISSION DISCUSSION

Commissioner Finkeldei said he liked the idea of it being a Special Use because there were a limited number of industrial spaces in the community and this would allow for them to be looked at on a case by case basis.

ACTION TAKEN

Motioned by Commissioner Finkeldei, seconded by Commissioner Singleton, to approve the amendment to Section 20-403 of the Land Development Code to add Active Recreation as a Special Use in the IG (General Industrial) District.

Unanimously approved 9-0. Student Commissioner Davis voted in favor.

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ITEM NO. 4 SPECIAL USE PERMIT FOR ACTIVE RECREATION; 940 E 28TH ST (SLD)

SUP-2-1-11: Consider a Special Use Permit for the use of Active Recreation, located at 940 E 28th Street. Submitted by Barber Emerson, L.C., for JDS Kansas, L.C., property owner of record.

STAFF PRESENTATION

Ms. Sandra Day presented the item.

Commissioner Liese asked if condition d. from the staff report was unusual: *'Provision of a note on the face of the plan to state the date of approval and that approval is granted for a period of three years from the date of the City Commission approval. Any extension of the Special Use would require a new public hearing by the Planning Commission.'*

Ms. Day said Special Use Permits typically have a time frame. She said this was a proposal suggested by the applicant and staff felt it was valuable and allowed a revisit in the future for the appropriateness of a non-industrial use for the property.

APPLICANT PRESENTATION

Mr. Matthew Gough, Barber Emerson, introduced the applicant, Mr. Matthew Downing.

Mr. Matthew Downing said he provides personal basketball training and that finding a facility in Lawrence with high enough ceilings and wide enough floors has been a task.

Commissioner Rasmussen asked if Mr. Downing anticipated renting the facility out for basketball games.

Mr. Downing said it would probably not be suitable for a big basketball game and would be used primarily as a practice facility. He said it was possible to rent it out for a birthday party but not for a large high school game due to the space.

Commissioner Rasmussen asked if there would be a full size court.

Mr. Downing said yes.

Commissioner Liese asked how high the ceiling was.

Mr. Downing said about 25 feet.

PUBLIC HEARING

No public comment.

ACTION TAKEN

Motioned by Commissioner Singleton, seconded by Commissioner Rasmussen, to approve the Special Use Permit for an Active Recreation Use at 940 E. 28th Street and forwarding the request to the City Commission with a recommendation of approval and the ordinance for adoption on first reading, subject to the following conditions:

1. Installation of landscape plantings per the approved landscape plan prior to release of the Special Use Permit for issuance of occupancy permits for the proposed use.

2. Approval and publication of a text amendment TA-2-2-11; An amendment to Chapter 20, Article 4, Section 20-403 to allow Active Recreation as a Special Use in the IG (General Industrial) District.
3. Provision of a revised site plan to show the following changes and notes:
 - a. Provision of a landscape plan per section 20-1001 of the Development Code to include a total of 6 street trees along Haskell Avenue and 5 trees along E. 28th Street.
 - b. Provision of a note on the face of the plan that states all required landscaping shall be installed prior to release of the Special Use Permit for occupancy of the building.
 - c. Provision of a note on the face of the plan that states changes to exterior site lighting shall require submission and approval of a photometric plan per Section 20-1103 of the Development Code.
 - d. Provision of a note on the face of the plan to state the date of approval and that approval is granted for a period of three years from the date of the City Commission approval. Any extension of the Special Use would require a new public hearing by the Planning Commission.
4. Execution of a new Site Plan Performance Agreement.
5. Publication of an ordinance per Section 20-1306(j).

Unanimously approved 9-0. Student Commissioner Davis voted in favor.

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ITEM NO. 5 COMPREHENSIVE PLAN ANNUAL REVIEW (MJL)

Receive the Comprehensive Plan Annual Review and initiate recommended comprehensive plan amendments to be considered at future meetings.

STAFF PRESENTATION

Mr. Scott McCullough recommended deferring the item due to the late hour of the meeting.

ACTION TAKEN

Motioned by Commissioner Singleton, seconded by Commissioner Hird, to defer Item No. 5.

Motion carried 9-0. Student Commissioner Davis voted in favor.

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ITEM NO. 6 COMPREHENSIVE PLAN AMENDMENT TO H2020 - CHP 14 (DDW)

CPA-3-1-11: Consider Comprehensive Plan Amendment to Horizon 2020 – Chapter 14 to include the Inverness Park District Plan.

Item No. 6 was deferred.

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ITEM NO. 7 COMPREHENSIVE PLAN AMENDMENT TO H2020 - CHP 11 (LBZ)

CPA-4-4-10: Consider Comprehensive Plan Amendment to Horizon 2020 – Chapter 11 - Historic Resources. *Initiated by Planning Commission on 4/26/10.*

Item No. 7 was deferred prior to the meeting.

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ITEM NO. 8 CONDITIONAL USE PERMIT FOR CAMPING; 1478 N 1700 RD (MKM)

CUP-2-1-10: Consider a Conditional Use Permit for camping, approximately 11.79 acres, located at and adjacent to 1478 N. 1700 Road. Submitted by Natalya Lowther, property owner of record.
Deferred by Planning Commission on 5/26/10.

Item No. 8 was deferred prior to the meeting.

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MISCELLANEOUS NEW OR OLD BUSINESS

MISC NO. 1 MPO APPOINTMENT

MPO appointment.

Commissioner Liese will replace Commissioner Harris.

Consideration of any other business to come before the Commission.

PUBLIC COMMENT SECTION

ADJOURN 11:30pm