



PLANNING COMMISSION MEETING
July 25 & 27, 2011
Meeting Minutes

July 25, 2011 – 6:30 p.m.

Commissioners present: Belt, Blaser, Burger, Culver, Finkeldei, Hird, Liese, Singleton, von Achen

Staff present: McCullough, Stogsdill, Day, Larkin, Ewert

MINUTES

Receive and amend or approve the minutes from the Planning Commission meeting of June 20 & 22, 2011.

Motioned by Commissioner Singleton, seconded by Commissioner Blaser, to approve the June 20 & 22, 2011 Planning Commission minutes.

Approved 9-0.

COMMITTEE REPORTS

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

Commissioner Hird apologized that he was not able to attend the Agri-tourism Committee meeting.

COMMUNICATIONS

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

Mr. McCullough noted the Oread Overlay District Update Memo that was included in the packet.

EX PARTE / ABSTENTIONS / DEFERRAL REQUEST

- No ex parte.
- Abstentions:
Commissioner Finkeldei said he would abstain from item 11 Wednesday evening.

Commissioner Hird presented former Planning Commissioner Stan Rasmussen with a plaque and thanked him for his service on the Planning Commission.

Mr. Stan Rasmussen thanked Planning Commission and staff.

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ITEM NO. 1 CONDITIONAL USE PERMIT; 1271 N 222 RD (SLD)

CUP-5-4-11: Consider a Conditional Use Permit for a commercial greenhouse and nursery to permit accessory retail sales, for an ecological restoration business, located at 1271 N 222 Rd, Baldwin City. Submitted by Landplan Engineering, P.A., for Ronald E. Shouse, property owner of record. *Joint meeting with Baldwin City Planning Commission.*

STAFF PRESENTATION

Ms. Sandra Day presented the item. She stated Baldwin City Planning Commission was not present but that they discussed the item at their regular meeting and did not have any comments.

APPLICANT PRESENTATION

Mr. Brian Sturm, Landplan Engineering, was present for questioning.

PUBLIC HEARING

No public comment.

COMMISSION DISCUSSION

Commissioner Finkeldei inquired about a timeline for the item.

Ms. Day said that seemed to be something the County Commission was moving away from a little bit. She stated the uses were allowed by right, it was just the commercial piece, which was a small element of the overall operation. She said staff did not feel a condition on a timeline was required for the proposed use.

Commissioner Finkeldei said he supported that.

ACTION TAKEN

Motioned by Commissioner Finkeldei, seconded by Commissioner Blaser, to approve the Conditional Use Permit for a Retail Nursery located at 1271 N 222 Road.

Unanimously approved 9-0.

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ITEM NO. 2 A TO IG; ~~69~~ 67 ACRES; 933, 939, 943 N 1800 RD (SLD)

Z-3-8-11: Consider a request to rezone approximately ~~69~~ 67 acres from A (Agricultural) to IG (General Industrial), located at 933, 939, & 943 N 1800 Rd. Submitted by Steven Rothwell, Timothy W. and Lani S. Rothwell, for Timothy Rothwell, Wilber C. Rothwell, and Donald Kenna Rothwell, property owners of record. (This is a reconsideration of this request due to an error in notice of the original consideration on May 25, 2011.)

STAFF PRESENTATION

Ms. Sandra Day presented the item.

Commissioner Finkeldei recused himself from the item.

APPLICANT PRESENTATION

Mr. Matt Todd, attorney representing the applicant, thanked staff for the presentation. He said the annexation determination had not been made yet by the County Commission and that the rezoning was contingent upon annexation into the city.

Mr. McCullough said this was an applicant driven request and that the annexation was pending before County Commission. He said in terms of time it appeared everyone was placed on notice for the hearing tonight. He stated Planning Commission would make a recommendation. He said staff's recommendation was to hear the item so as not to waste this time, unless the applicant wanted to defer it.

Commissioner Hird said it was his inclination to proceed with the item since there were people present this evening to speak about it.

Mr. Todd said the primary concern raised by one of the neighboring land owners was the notice requirement. He said there was another individual who was concerned about the IG zoning district. He said in May the Rothwell's sent an informal notice to the neighbors (he displayed it on the overhead). He said the Rothwell's did not hear any direct complaints or objections from the neighbors. He said the basis and justification for the industrial use of the property was to support the amenities the community wants with a strong tax base. He said industrial zoning was consistent with Horizon 2020 and the Sector Plan for the area.

PUBLIC HEARING

Ms. Gwen Klingenberg, Lawrence Association of Neighborhoods, discussed the incompatibility with residential. She said the IL zoning allowed 21 or more uses, which would invite more businesses. She stated IG zoning only had three more uses. She noted that zoning could be conditioned. She said Lawrence had more vacant industrial sites available than when discussing the 155 acres. She said that IL or IBP zoning would be a compromise for the neighbors.

Mr. Ronald Schneider, attorney representing Scenic Riverway Community Association, opposed the IG rezoning. He discussed the issue of jurisdiction and felt they should not accept a rezoning application until the property was annexed. He asked them to delay action on the rezoning until there was a formal annexation. He urged them to look at the Golden Issues and did not believe this met them. He stated the proposed IG use was unreasonable and would cause harm to the neighborhood would be excessive. He said there were alternatives, such as IBP or IL zoning. He said he did not disagree that the master plan calls for industrial use. He expressed concern about property values. He said regarding the letter that Mr. Todd mentioned the Rothwell's mailed to

neighbors, it said there would be no change in use and advises that the property owner was proceeding with annexation. He said the rezoning request was contrary to the letter. He said the probability for such uses that were only permitted in IG, such as heavy industrial and explosive use, was really not a foreseeable use or consequential activity on the land in question. He said it made no sense to proceed with IG zoning. He said it was unreasonable to believe that a high tech industry or science activity would want the type of activity that IG permits. He felt they should consider alternative zonings such as IBP and IL.

Ms. Beth Johnson, Lawrence Chamber of Commerce, said the Chamber receives requests every year for various needs in the industrial categories. She said when they first receive inquiries there is usually not enough information to say what the use will be classified as in the Development Code. She discussed competition and said IG zoning made the most sense because it was the most flexible. She said IL zoning allowed retail and commercial uses and Business Parks typically don't want retail or commercial due to the high volume of traffic it brings into the park. She said she was in favor of IG zoning.

Ms. Marguerite Ermeling said everybody would love to expand the tax base in Lawrence. She said when she hears the greatest flexibility happens in IG, she does not see that when she looks at the chart. She said the greatest flexibility comes with all the potential possibilities working in IL. She said she did not understand the discussion on that if indeed those kinds of industries weren't particularly within the framework of what people thought needed to be there. She said if any of the potential jobs they were looking for could fit into any other level of industrial then she did not understand the claim that the best possible use was IG for the land. She asked that they consider a different industrial zoning other than IG.

Mr. Don Rothwell said the community needed to create jobs and provide more tax base. He stated the I-70 corridor was the only spot left for IG. He said there was a lot of vacant retail space in town. He said a good industrial base would stay forever and that this would help the community more than it would hurt it.

COMMISSION DISCUSSION

Commissioner Liese inquired about jurisdiction.

Mr. Randy Larkin said the Planning Commission did not have the authority to make a final decision but they could make a recommendation to City Commission. He said City Commission could not make a final decision on the rezoning until the land was annexed.

Commissioner Liese asked if Mr. Schneider was the attorney for the neighbors or the Scenic Riverway Association.

Mr. Schneider said he was the attorney for the association and also individuals.

Commissioner Liese inquired about the uses allowed in the IL and IG districts.

Ms. Day said some of the tables were included in the packet. She said flexibility was a matter of perspective. She said staff felt it was very easy to subvert the IL for retail uses and lose the opportunity for industrial land. She stated IG was specific to industrial uses. It had fewer uses allowed but was more direct in its intent for industrial, manufacturing, or warehousing activity.

Commissioner Liese asked what a gateway treatment would be.

Mr. McCullough said it would include some sort of treatment, probably a private/public partnership, as development occurred where some amount of area would be reserved for signs or participation from the private sector in whatever land uses could accommodate tourism in that area.

Commissioner Belt asked if he was referring to a first impression of Lawrence.

Mr. McCullough said the Comprehensive Plan designates certain corridors as primary corridors into the city of Lawrence. He said Farmers Turnpike was an arterial road that was one of those corridors and the interchange off I-70 serves Lawrence and Lecompton. He said the idea was to get recognition that you're entering a place, whether that's historic Lecompton or Lawrence.

Commissioner von Achen inquired about the conditions on the recent rezoning of 155 acres.

Ms. Day said the three conditions were initiated and self restricted by the applicant. She said explosive storage and slaughtering were two of them but she could not remember the third.

Commissioner von Achen asked if there was any appropriateness for the same restrictions on this property.

Ms. Day said staff had not proposed that as a recommendation but that Planning Commission could carry that forward. She said staff would recommend looking at the uses by category instead of individual use.

Commissioner von Achen inquired about the 100+ year old barn on the property and if there was any architectural or historical significance to it.

Ms. Day said that was not known. She said she had a brief conversation with the applicant about taking photographs and documenting it. She said she also spoke with Lynne Braddock Zollner, Historic Resources Administrator, and that it was not a listed structure at this point in time so there were very little details about it. She said they found out how old it was through appraisal records.

Commissioner Liese asked Mr. Schneider why the neighbors were not present tonight.

Mr. Schneider said he did not learn about this until last week and that a number of people did not know about it. He said there was a certain sense of apathy in testifying and that their statements have fallen on deaf ears. He also said he confirmed with some that he would be present on their behalf.

Commissioner Liese asked if IL zoning would be preferred by the Scenic Riverway Association.

Mr. Schneider said the majority of neighbors indicated that IL was acceptable. He said IG was clearly designated as incompatible with residential but that IL and IBP were not incompatible with residential.

Commissioner Singleton said with the Sector Plan it was thoroughly explored where IG would be. She said with the approval of the Sector Plan it was determined to be an appropriate location of IG. She said she would support the rezoning.

ACTION TAKEN

Motioned by Commissioner Singleton, seconded by Commissioner Blaser, to approve the rezoning request for 67 acres from County A (Agricultural) District to City IG (General Industrial) District and

forwarding it to the City Commission with a recommendation for approval based on the findings of fact found in the body of the staff report.

Commissioner Belt felt there was still room for compromise. He said he would not feel comfortable asking the applicant to adhere to conditions but rather have the applicant reconsider IL or IBP.

Commissioner Blaser said he would vote in favor of the motion. He said they needed IG and it gave the city the best chance of landing a larger firm. He thought it was the best place in Lawrence for IG because of its location. He said heavy industry concerns, such as vibrations and toxic fumes, were regulated by federal standards. He also said that heavy industry would not want to be close to neighbors so they would probably choose the 155 acres.

Commissioner Burger said she would vote in favor of the rezoning. She thanked the Scenic Riverway Association for being represented tonight. She said this was within the K-10 & Farmers Turnpike plan. She felt they needed a certain amount of IG with the same kind of credentials to give competition to the marketplace and keep projects moving along.

Commissioner Hird said this was a difficult decision in May and it was still a difficult decision because nobody wants to offend neighbors. He said he did not hear anything different this evening than what was heard in May and he voted for it in May. He said the jurisdiction issue gave him pause but based on what Mr. Larkin indicated it did not trouble him as much. He said IG was called for in Farmers Turnpike Plan so he would support the motion.

Commissioner Liese said it was a more difficult decision now than in May because he was a more experienced Commissioner and it bothers him when neighbors stand up and say it would hurt them. He said the requested rezoning was consistent with Horizon 2020 and the K-10 & Farmers Turnpike Plan. He said the unknowns were difficult because they didn't know if a good business would move there. He said he believed Lecompton would benefit most from jobs that would come with general industrial. He said he would vote in favor of the rezoning.

Commissioner Burger said there were residential properties around Hallmark and Del Monte and they had greenspace, setbacks, and back-to-back treatments. She said transitions were possible with the planning process.

Motion carried 7-1-1, with Commissioner Belt voting in opposition and Commissioner Finkeldei abstaining.

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**ITEM NO. 3 TEXT AMENDMENT TO CITY OF LAWRENCE DEVELOPMENT CODE &
DOUGLAS COUNTY CODE; MINOR & MAJOR SUBDIVISIONS (SMS)**

TA-3-3-10: Consider Text Amendments to the joint city/county subdivision regulations in the City of Lawrence Land Development Code, Chapter 20, Article 8 and the Douglas County Code, Chapter 11, Article 1 to revise process requirements for division of property through Certificates of Survey, Minor Subdivisions and Major Subdivisions. Modifications include reformatting this article/chapter to eliminate duplicative text and to delete terminology not used. *Initiated by City Commission on 2/16/10. Re-initiated by Planning Commission on 5/23/11.*

STAFF PRESENTATION

Ms. Sheila Stogsdill presented the item and provided an overview of the proposed amendments to each of the articles. She indicated several sections were still "under construction" and were highlighted in grey.

Commissioner von Achen asked what they should look at and if there was a certain way to approach all of the information.

Ms. Stogsdill said the memo outlined what the changes were. She suggested looking at the margin notes for specific issues. She also said that any of the Planning Commissioners were welcome to call her and schedule one on one time to go over the document.

PUBLIC HEARING

Mr. Dean Grob, Grob Engineering, said he submitted some ideas for staff to consider specifically related to the Certificate of Survey process.

Commissioner Finkeldei asked how he felt the process was going.

Mr. Grob said it was going well.

COMMISSION DISCUSSION

Commissioner Finkeldei asked staff if there would be lots of changes and wondered if they should wait till the next draft to dig into the details.

Ms. Stogsdill said the majority of changes would be in the sections highlighted in grey. She said there were very good comments from the meeting in June with design consultants and that multiple people said they appreciated the change that permits dedications with the minor subdivisions. She stated they liked the idea of not doing the dedications at the preliminary plat stage. She said she had a positive response on eliminating the parks dedication and fee. She said generally there had been positive comments. She said she was not expecting a lot of changes and that section 20-804 through 20-807 would contain the most changes.

NO ACTION TAKEN

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**ITEM NO. 4 TEXT AMENDMENT TO CITY OF LAWRENCE DEVELOPMENT CODE; CHP
20; DETENTION (SLD)**

TA-6-9-11: Consider a Text Amendment to the City of Lawrence Land Development Code, Chapter 20, Article 4, Section 20-403 to change "Detention" from a use permitted by right in the GPI (General Public Institutional) District to one permitted with Special Use approval and to delete "detention and correction institutions" from the definition of Major Utilities and Services in Article 17.
Initiated by Planning Commission on 3/28/11.

Item 4 was deferred prior to the meeting.

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**ITEM NO. 5 COMPREHENSIVE PLAN AMENDMENT TO CHP14; SOUTHEAST AREA
PLAN (MJL)**

CPA-10-8-10: Consider Comprehensive Plan Amendment to Chapter 14 – Southeast Area Plan, to reference and reflect the accepted Preliminary Alignment Study for 31st Street.

Item 5 was deferred prior to the meeting.

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MISCELLANEOUS NEW OR OLD BUSINESS

MISC NO. 1 AUTHORIZE CHAIR TO SIGN RESOLUTION PCR-6-1-11 (LBZ)

Authorize the Chair to sign PCR-6-1-11, A Resolution adopting amendments to Horizon 2020, The Comprehensive Plan for the City of Lawrence and Unincorporated Douglas County, Kansas pertaining to Chapter 11 – Historic Resources.

Motioned by Commissioner Singleton, seconded by Commissioner Belt, to authorize the Chair to sign PCR-6-1-11, a Resolution adopting amendments to Horizon 2020, the Comprehensive Plan for the City of Lawrence and Unincorporated Douglas County, Kansas pertaining to Chapter 11 – Historic Resources.

Unanimously approved 9-0.

Consideration of any other business to come before the Commission.

Commissioner Liese reminded them about their Mid-Month meeting where they would discuss process further.

Mr. McCullough asked the Commission to think about possible Mid-Month meeting topics for the rest of the year.

Recess at 8:37pm until 6:30pm on July 27, 2011.

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Reconvene July 27, 2011 – 6:30 p.m.

Commissioners present: Belt, Burger, Culver, Finkeldei, Hird, Liese, Singleton, von Achen
Staff present: McCullough, Stogsdill, Day, Larkin, M. Miller, Warner, Ewert

BEGIN PUBLIC HEARING (JULY 27, 2011):

COMMUNICATIONS

Mr. McCullough said Ms. Jamie Hulse sent the Planning Commissioners an email after the communications deadline.

Commissioner Liese said the Commissioners also received emails from Mr. Brad Remington, Mr. Scott Meyers, Ms. LeAnn Cooper, and Mr. William Flores.

EX PARTE / ABSTENTIONS / DEFERRAL REQUEST

- No ex parte.
- No abstentions.

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ITEM NO. 6 LAWRENCE MUNICIPAL AIRPORT MASTER PLAN

Receive presentation on draft Lawrence Municipal Airport - Airport Master Plan and provide comment as appropriate.

STAFF PRESENTATION

Mr. Scott McCullough said Planning Commission was also the Airport Zoning Board.

Mr. Patrick Taylor, Coffman Associates, presented the Airport Master Plan on the overhead.

NO ACTION TAKEN

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**ITEM NO. 7 CONDITIONAL USE PERMIT FOR FRATERNAL ORDER OF POLICE
SHOOTING RANGE; 768 E 661 DIAGONAL RD (MKM)**

CUP-12-8-10: Consider a 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. *Deferred by Planning Commission on 4/25/11.*

Item 7 was deferred prior to the meeting.

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**ITEM NO. 8 COMPREHENSIVE PLAN AMENDMENT TO H2020 - CHP14; INVERNESS
PARK DISTRICT PLAN (DDW)**

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

STAFF PRESENTATION

Mr. Dan Warner presented the item.

PUBLIC HEARING

Mr. Matt Gough, attorney from Barber Emerson representing Remington Square and Hy-Vee, recommended adopting the plan as written. He said the existing apartments were 2-story.

COMMISSION DISCUSSION

Commissioner Finkeldei said he was intrigued by the League of Women Voters letter regarding the Planned Development (PD) overlay.

Mr. McCullough said the PD amendments that the Planning Commission recommended increasing density was now part of the Development Code. He said if PD was mandated it would give the Planning Commission the authority to look at landscaping, open space, quality, and character issues of the development. He said it was not staffs intent to allow PD that would increase density and he did not believe that was what the applicant was looking for. He said the PD would give the governing bodies a little more control over the design layout and aesthetics. He said if they include PD overlay they would want to put language in there about not giving any more density than what the land use designation was in the plan.

Commissioner Finkeldei thanked staff for their work and felt they were able to solve the most difficult issues. He felt the limitations in the plan would help address the density concerns by the neighbors. He said he liked the commercial on the two corners and was excited for what that might do for the area. He said he would support the plan.

Mr. McCullough said incorporating the PD overlay with the land use designation was a tool or method that had been employed in contentious areas of the city. He said the League of Women Voters proposal was something that staff would accept for this plan as well. He said there were two ways to look at it; RM15 with the current PD code language would allow an increase above the RM15 density; or go to RM24 and note in the plan that the density should not be increased with the PD overlay code standards.

Commissioner Finkeldei asked Mr. Gough to comment on that.

Mr. Gough said Remington Square had not had the opportunity to evaluate a PD overlay as an option to RM24 with limitation for 2-story single bedroom units. He said the PD overlay would not result in the same number of units, it would be a lesser number of units than what the RM24 would be building, exactly what was presently built. He said at this time it was not an option that Remington Square wanted to pursue. He said he did not have an objection to including the PD overlay as an option for those who wished to use it, but at this time Remington Square was more in favor of the originally drafted RM24 single bedroom idea. He said Hy-Vee was not requesting a PD overlay.

ACTION TAKEN

Motioned by Commissioner Burger, seconded by Commissioner Singleton, to approve the comprehensive plan amendment (CPA-3-1-11) to *Horizon 2020* by amending Chapter 14 – list of specific plans to add the Inverness Park District Plan description and also approving the plan for the City of Lawrence and unincorporated Douglas County and forwarding the comprehensive plan amendment to the Lawrence City Commission and the Douglas County Board of County Commissioners with a recommendation for approval, revising the staff proposed restriction for Remington Square property that structures be limited to one-story, and instead permit them to be two stories and with the additional requirement that any rezoning requests include a Planned Development (PD) overlay.

Commissioner Finkeldei said he was not sure parcels 4 and 5 should require a PD overlay.

Mr. McCullough said staff would probably agree with that.

Commissioner Burger amended the motion to only include parcels 1, 2, and 3.

Commissioner Singleton seconded the amended motion.

Commissioner Belt wanted to hear a compelling reason to move from RM15 to RM24.

Commissioner Hird asked if switching to RM24, with a limitation noted, would not increase the density, it would simply allow the additional five acres to the east to be built upon.

Mr. McCullough said it would bump up the density from what was there now. He said it maxed out its current density allowed by zoning. He said it had been a sticking point with the neighborhood that they did not want to see that 4-5 acres developed with any more apartments. He said the argument that staff tried to articulate was that the developer chose to develop this portion with a little bit of risk taking that they would gain some other density to get the other portion developed. He said they did not develop to the intensity they could have under RM15. He said staff's recommendation was to allow them to recapture some of that intensity that they did not use when it was originally site planned.

Commissioner Hird said he would probably support the motion. He said the appearance of what fronts onto Clinton Parkway was essential to the community and a PD overlay on those three parcels would be appropriate. He said with regard to Remington Square, since the builder did leave some of the density on the table, he did not have a problem with the land being built out as long as it was consistent with the existing structures.

Commissioner Culver said he would also support the RM24 with PD overlay on the three parcels. He said he supported infill development of that land to match what was currently there.

Commissioner Liese said he would also support the RM24 with PD overlay. He said he wished the neighbors who emailed the Commission had been present this evening because he wanted them to understand what decision was made and how much thought went into trying to address everyone's concerns.

Motion carried 7-1, with Commissioner Belt voting in opposition.

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**ITEM NO. 9 TEXT AMENDMENT TO CITY OF LAWRENCE DEVELOPMENT CODE; CHP
20; SYNTHETIC TURF AS LANDSCAPING MATERIAL (MKM)**

TA-4-6-11: Consider Text Amendments to the City of Lawrence Land Development Code, Chapter 20, Articles 10 and 17, regarding synthetic turf as landscaping material. *Initiated by City Commission on 5/3/11. Deferred by Planning Commission on 6/22/11.*

Item 9 was deferred prior to the meeting.

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ITEM NO. 10 AGRI-TOURISM COMMITTEE RECOMMENDATIONS (MKM)

Receive Agri-Tourism Committee report and recommendations. Initiate code amendments for future public hearing.

STAFF PRESENTATION

Ms. Mary Miller presented the item.

PUBLIC HEARING

No public comment.

COMMISSION DISCUSSION

Commissioner Burger asked if this would open the door for something like the Wakarusa Festival.

Ms. Miller said a Special Event Permit might allow something like the Wakarusa Festival but that it would be so large that it would go to County Commission for approval.

Commissioner von Achen inquired about road dust abatement for smaller venues and felt it was a burden on land owners to pay for that.

Ms. Miller said dust abatement was an ongoing issue. She said the committee asked the Townships if they had received complaints about dust during the yearly Farm Tour that attracts hundreds of people and they had not. She said in the past they approved a dust abatement measure for a reception facility where the farmer was going to spray water on the road.

Commissioner von Achen asked if dust abatement was to protect the tourists or the neighbors.

Ms. Miller said it was typically used to protect land owners who live on the route but a dusty road could also be an issue for vehicles.

Commissioner Hird said one of the recommendations by the committee was that the county governments be involved in funding dust abatement programs because agritourism was an economic stimulus to the economy and region. He said the influx of tourists and commercial activity justifies the county government spending some money on dust abatement.

ACTION TAKEN

Motioned by Commissioner Liese, seconded by Commissioner Culver, to:

- 1) Initiate a text amendment to the Zoning Regulations for the Unincorporated Territory of Douglas County to establish a Special Event Permit and develop application process and standards.
- 2) Initiate a text amendment to the Zoning Regulations for the Unincorporated Territory of Douglas County to establish Agritourism as a use. This would include defining the different levels of agritourism, establishing standards for each level, establishing signage regulations, and establishing a registration and approval processes for each level.

Unanimously approved 9-0.

PUBLIC COMMENT SECTION

ADJOURN 7:40pm