



PLANNING COMMISSION MEETING
February 23, 2011
Meeting Minutes

February 23, 2011 – 6:30 p.m.

Commissioners present: Blaser, Burger, Culver, Dominguez, Finkeldei, Liese, Rasmussen

Staff present: McCullough, Stogsdill, Day, Leininger, M. Miller, Ewert

MINUTES

Receive and amend or approve the minutes from the Planning Commission meeting of January 24, 2011.

Motioned by Commissioner Finkeldei, seconded by Commissioner Rasmussen, to approve the January 24, 2011 Planning Commission minutes.

Unanimously approved 7-0.

COMMITTEE REPORTS

No Committee Reports.

COMMUNICATIONS

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

No written action of any waiver requests/determinations made to the City Engineer.

EX PARTE / ABSTENTIONS / DEFERRAL REQUEST

- Ex parte:
Commissioner Burger said she received two emails, one from Loretta Backus and the other from Laura Green, regarding the Lawrence Community Shelter SUP. She also said that when she took her children to the barber shop today that she had an interesting conversation about how long the meeting would last tonight.
- No abstentions.

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ITEM NO. 1 INITIATE REZONING; IG & IL TO RMO; 800 BLK LYNN ST (MJL)

Consider initiation of a rezoning of the 800 block of Lynn Street (bounded by Lynn St, Homewood St, Haskell Ave, and Bullene Ave), approximately 3.9 acres, from the IG (General Industrial) and IL (Limited Industrial) Districts to the RMO (Multi-Dwelling Residential-Office) District to implement recommendations in the adopted Burroughs Creek Corridor Plan.

STAFF PRESENTATION

Ms. Michelle Leininger presented the item.

Commissioner Finkeldei asked staff to respond to the League of Women Voters comments about replatting.

Ms. Leininger said the property owners had no plans at this time to move forward on any type of project and that platting would be discussed when a project was brought forward.

ACTION TAKEN

Motioned by Commissioner Finkeldei, seconded by Commissioner Dominguez, to initiate the rezoning of the 800 block of Lynn Street (bounded by Lynn St, Homewood St, Haskell Ave, and Bullene Ave), approximately 3.9 acres, from the IG (General Industrial) and IL (Limited Industrial) Districts to the RMO (Multi-Dwelling Residential-Office) District to come back before the Planning Commission for a public hearing and action at a later date.

Unanimously approved 7-0.

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**ITEM NO. 2 SPECIAL USE PERMIT FOR LAWRENCE COMMUNITY SHELTER; 214 W
10TH ST (SLD)**

SUP-12-10-10: Consider the renewal of a Special Use Permit and a request to increase the maximum occupancy year round from 57 persons to 82 persons for Lawrence Community Shelter, located at 944 Kentucky Street/214 W. 10th Street. Submitted by Lawrence Community Shelter, tenant, for James Dunn, property owner of record.

STAFF PRESENTATION

Ms. Sandra Day presented the item.

Commissioner Finkeldei asked what City staff would be involved.

Ms. Day said Parks and Recreation, Sanitation, and Development Services have indicated that the property was in compliance. She said she did not hear back from the Police Department about any behavioral changes.

Commissioner Finkeldei asked if there were any comments from the Fire Department.

Ms. Day said there were building modifications made in 2009 to accommodate the increased occupancy.

Mr. McCullough said the Fire Department inspected the property and worked with the Lawrence Community Shelter to meet Fire Code in terms of where patrons slept and making sure there were clear paths. He said there may have been some noted Fire Code infractions that had been, as far as he knew, corrected.

Commissioner Dominguez inquired how the previous conditions of approval would work with this new Special Use Permit. He wondered about the non-compliant fence and carport.

Ms. Day said the carport would be allowed to stay for the Special Use Permit extended period of time. She said staff's recommendation was that if for some reason there was a request 9-10 months from now to again renew they would have a full discussion with Historic Resources about whether or not that structure needed to come down or efforts needed to be made to make it compliant.

Commissioner Dominguez asked if the Lawrence Community Shelter has been in compliance with required reporting.

Ms. Day said yes.

Commissioner Rasmussen asked what the rationale was for limiting the increased 77 occupancy when this was approved by City Commission.

Ms. Day said she did not recall the full details. She said she thought City Commission was expressing a concern about the intensity of the site.

Commissioner Rasmussen asked why Planning staff was comfortable going to 82 occupants year round.

Ms. Day said the limitation was placed by City Commission, not staff.

Commissioner Rasmussen asked again why Planning staff was now comfortable with 82 occupants year round.

Mr. McCullough said the 82 occupancy number included staff members and that was the number set by City Commission for the winter months for the total occupancy of sleeping guests and staff at night. He said that number was the building capacity. He said the request at the time was for the winter months and the request now was for year round. He stated there was no waiver of any Building or Fire Code with this request or what was established by City Commission so any occupancy of the building had to meet all City Codes.

Commissioner Rasmussen asked what changed between this year and last year in the eyes of the Planning Staff to now be comfortable with a year long period

Ms. Day said one of the key changes was the adoption and implementation of the management plan which had resulted in positive changes/results.

Mr. McCullough said the process was a little different the last time. He stated the condition increasing the occupancy to 82 did not go through the annual review of the permit to extend it. It did not go to Planning Commission because it was a violation of the Special Use Permit so it went directly to City Commission as a revocation hearing, and through that process the request was made to increase the occupancy rate to the established number. He said with this annual extension request the Lawrence Community Shelter said there was a need for the 82 occupancy level year round. He stated there had been a years worth of that occupancy being at that level, arguably without city impact, in terms of additional service to the property. He said he did not recall that staff weighed in and gave a recommendation previously.

Commissioner Rasmussen said City Commission considered raising the residency up from 57 persons to a maximum of 82 during winter months. He asked what would have changed between that decision and now to get staff to recommend approval.

Mr. McCullough said it was his recollection that the change was the request itself. He said the request was originally just for the winter months and what drove that number in the first place was the Salvation Army closing

Commissioner Dominguez asked how it was determined that half the year was considered the coldest months of the year instead of just three months.

Mr. McCullough said the time period of October through April was established by City Commission at the time of the revocation hearing.

Commissioner Finkeldei asked if the staff recommendation tonight was to permit the occupancy for the entire year.

Mr. McCullough said yes.

APPLICANT PRESENTATION

Mr. Loring Henderson, Director of Lawrence Community Shelter, said there were two parts to the renewal. The first part was the renewal for one year. He said they were keeping their options open and hoped to be in another building within a year. He said they were working as rapidly as possible to make the relocation happen and that they were working hard to assure the donors that the

money would be used for relocating to a new site. He said occupancy level was the second part he wanted to discuss. He said in the last year they had been living with a two-tiered occupancy level of 82 people for the cold weather months and 57 people for the warm weather months. He said it had been difficult and even harsh on the staff and neighborhood. He said in cold weather months it worked because the shelter had a relationship with the churches giving a place for people to sleep. During warm weather months when there are 53 people sleeping with 4 staff members it forces the lottery system to be implemented so some people have to be turned away and pushed out into the neighborhood. He said it then puts an extra load on staff because rather than having them inside the shelter where they sleep and can be watched, they are outside of the shelter. He stated a lot of the guests do not want to leave the environs of the shelter because they feel safe so staff then has to keep an eye on them.

Commissioner Burger asked how many beds were planned for the new facility.

Mr. Henderson said 125 beds and that number was arrived at because the Lawrence Community Shelter and the Salvation Army (before it closed) were sleeping 120 people combined during the winter months. He said recently they have had as many as 7 families staying at the shelter and Family Promise has 4-5 families as well.

Commissioner Burger inquired about the percentage of residents that were perpetual or seasonally recurring.

Mr. Henderson said that was a hard number. He stated one of the shelter studies show that 1/3 of the guests stay 10 days or less, a 1/3 stay 10-20 days, and a 1/3 stay 20+ days. He said there was a limit of 90 days which was in the management plan approved by the City. He said guests can stay longer if in a program, depending on barriers, and working toward getting out of homelessness or working toward a goal.

Commissioner Rasmussen asked if Mr. Henderson thought during the warmer weather months that the typical guest occupancy would be 82. He wondered if the occupancy was increased to 82 if the need for the lottery system would still be needed.

Mr. Henderson said there was currently a lottery system almost every night during the warm weather. He said they often have 15-20 people on the lottery list, above the 53 occupancy rate. He said that the need for a lottery system would most likely not be needed during the warmer months if the occupancy rate was increased to 82 people, but that it would depend on the number of families.

Commissioner Dominguez asked when the current Special Use Permit would expire.

Mr. Henderson said April 17, 2011.

Commissioner Dominguez was concerned about the occupancy being increased to 82 people this year and attracting more guests to drive the need to up next year.

Mr. Henderson said the current building would not take anymore occupancy. He said the numbers have been fairly consistent the past few years. He said the numbers as a community were higher than they have been able to get a good hard count of but have not grown in a big way because there has been a certain number of in-take every year.

Commissioner Culver inquired about budget and resource limitations (financial or staffing) of having the permanent increase of 82.

Mr. Henderson said it would not have an effect because they were already handling that number of guests. He said they had a big hit on the budget and staffing when the Salvation Army closed its night shelter because the Lawrence Community Shelter had to absorb people that had been previously staying at the Salvation Army.

Commissioner Finkeldei asked Mr. Henderson to discuss how the changes to the management plan had worked this past year and if there were any more changes under consideration.

Mr. Henderson said there were currently no changes under consideration. He said the management plan worked this past year and the changes that were made to the management plan last year were not significant. He stated the management plan for the new site would have a neighborhood committee review it in the future.

Commissioner Liese said guests must check in by 6:30pm and lights out at 10:00pm and then lights back on at 7:00am. He said based on that information he felt it provided a humane service and provided some protection to the community for people who struggle. He wondered if there was any data on the amount of problems when there wasn't a shelter available. He wondered if guests got in trouble in the community when they didn't have a place to sleep.

Mr. Henderson said the night shelter was opened in December 2003 and he didn't know any data prior to that date. He said the Salvation Army had a night shelter but he was unsure how many years it went back. He said the Lawrence Community Shelter recently hired a part-time development director who would help with some data collection.

Commissioner Liese said he found it comforting that this many more people would have a place to stay at night.

PUBLIC HEARING

Mr. Mark DeBarr said guests who can't stay at the shelter can get an illegal camping ticket and that those can cost \$250. He said it was frightening not to have a place to stay at night. He was in favor of the increase in occupancy.

Ms. Audrey Kloppe said a measure of a community's humanity was determined with how they take care of one another. She felt the Lawrence Community Shelter was important for the community. She requested the Special Use Permit be extended and the occupancy be raised. She said the shelter staff was dedicated and provided more than basic needs by trying to lift the spirit of the people. She asked for patience in allowing them to find a new location. She said that denying the extension would do much to impede the process.

Commissioner Liese said he would sleep better at night knowing that those that need this service would have it. He said some believe the shelter might be a magnet for trouble and he asked Ms. Kloppe to speak to that.

Ms. Kloppe said a magnet perhaps but the alternative was troubled people sleeping by the river or freezing to death.

Commissioner Dominguez asked if she had ever stayed at the Lawrence Community Shelter.

Ms. Klopfer said no, but she used to work there teaching art. She said the guests were diverse, such as middle class people who have lost everything, highly educated people, mentally ill, chemically dependent, abused women, veterans, etc.

Ms. Jean Grant, 1308 Jana Dr, said most people fall under middle class, and it was hard to imagine being homeless when you're middle class. She said the only thing she could personally compare it to was when she visited England and all the rooms were booked for a soccer game and she had to spend the night in a bus station. She said it would be a huge embarrassment to not have a community shelter for people to turn to. She said Lawrence has a superior jail and felt they should also have a superior homeless shelter.

Mr. Phil Hemphill, 937 Kentucky Street, said he has lived near the shelter since they started the overnight shelter at 21 occupancy, then the occupancy was increased to 33, then to 57, and now to 82. He said he guaranteed there would be 100 people over there as soon as the 82 occupancy was approved. He said "if you build it they will come." He said he did not know how the building could hold that number of people. He said the shelter was supposed to have had a permanent shelter by now and it seemed every time they find a location that they run into a road block. He said he had no idea an overnight shelter was coming into his neighborhood and was blindsided by it. He said regarding the issue of the permanency of some of the guests, the Topeka Rescue Mission allows guests 5 days to get into a program or they have to leave. He said there were a number of people in the Lawrence Community Shelter that if pressed to get into a program they would leave so then the 82 occupancy would not be needed. He said the business model was ruining their chances of finding a new location. He said the guests of Lawrence Community Shelter cut through his property often and the good neighbor agreement is a farce because the homeless don't even know what it is.

Commissioner Dominguez inquired about how many police visits there were to the neighborhood.

Mr. Hemphill said if he wants to get someone to stop trespassing through his property on a daily basis the police have to be there and see it and it has to happen twice. He said the police don't want to have to put someone up at the jail for \$125 a night. He said the same goes for littering, peeing, crapping, and harassing his tenants. He said the Lawrence Community Shelter takes no responsibility for the guests once they leave the property.

Commissioner Liese asked why he was more comfortable with more people being outside at night instead of in a bed to sleep overnight.

Mr. Hemphill felt that if the occupancy was increased to 82 it would attract more people. He felt the business model needed to be changed and be more responsible for the people outside if they were ever going to find a new neighborhood. He said it was a catch-22, if the number was increased there would be more people who would need a bed, the occupancy rate would never cover it.

Commissioner Liese said he would prefer the homeless to be in bed instead of loitering around his business at night.

Mr. Brad Cook, Lawrence Social Worker placed at Lawrence Community Shelter, believed that the shelter was a vital part of the community and served many people. He favored the increase of occupancy.

Ms. Laura Ruth said she was disturbed by the word 'them' to describe homeless as separate and less human. She said was also uncomfortable with the lifestyle accusation. She said poverty, domestic

violence, addiction, mental illness, and divorce were not lifestyle choices. She asked Planning Commission to use discretion to benefit the most vulnerable people of the community.

Mr. David Hartman supported the shelter and said he would love nothing more than someone who was against the shelter to envision their relative or child being homeless. He said if there was no facility or structure then they would be on the street. He said everyone at the shelter was not perfect and their problems are probably what got them there. It is a necessary facility. He said he was currently homeless and stays at the shelter.

Commissioner Dominguez asked Mr. Hartman if he usually received a bed at the shelter.

Mr. Hartman said he volunteers around the shelter and when guests do work around the shelter they receive a bed to sleep in.

Commissioner Dominguez asked how long he has lived in Lawrence.

Mr. Hartman said he has lived in Lawrence about a year and spent about a month at the shelter. He said he was at the shelter once before.

Commissioner Dominguez asked what percentage of guests were Lawrence residents.

Mr. Hartman said he thought the majority of guests, about 90%, were from the area.

Commissioner Liese asked Mr. Hartman if he was offended by the homeless being referred to as 'they' and 'them.'

Mr. Hartman said yes.

Commissioner Liese asked Mr. Hartman's opinion about what residents of the shelter should do to respect Mr. Hemphill's property.

Mr. Hartman said he and other guests of the Lawrence Community Shelter recently started a group with the purpose of reflecting positive behavior and influence those around them at the shelter. He said they occasionally have to influence people around them to stop cursing or being negative. He said he would try to influence and remind others not to go across Mr. Hemphill's property.

APPLICANT CLOSING COMMENTS

Mr. Loring said for the record that the shelter records show that about 70% of guests were from Douglas County.

COMMISSION DISCUSSION

Commissioner Rasmussen asked if this item would move to City Commission if approved.

Mr. McCullough said yes

Commissioner Rasmussen said the homeless shelter was needed in the community and there was frustration and concern about the large number people in a really small location. He said if this was a house full of college kids it would be way over maxed. He felt that it had been addressed by putting a one year limitation on it to encourage the shelter to find a new location. He said he was disappointing the location by the jail did not work out. He said he would support the extension request for the Special Use Permit. He said he was concerned about the increased year round

occupancy but that Mr. Henderson gave four solid reasons for the increase being justified; 1. the lottery of sleeping space and people being pushed out to the streets to sleep 2. provides more opportunities for case management, 3. allows flexibility to accommodate families, 4. generally the shelter does not anticipate the need for the lottery system during warmer months.

Commissioner Finkeldei said he would also support the renewal of the Special Use Permit. He said not only would a different location be better for various reasons, it would have a whole different setup and different ability to serve. He said no matter where it was located a larger building would accomplish the task better. He said he has been involved at the Methodist church as an overflow facility and he joined the board of directors for Family Promise about a year ago and has worked with many of the families that have come through that program. He has seen people coming through the program and felt this was a worthwhile extension. He said he would support the renewal.

Commissioner Liese said he would support the renewal. He said he would like to see the shelter residents and shelter staff work with people who stay there and make sure they understand the importance of respecting neighboring property.

Commissioner Burger agreed with the positive comments this evening. She felt this was an opportunity to help those in need. She referred to page 35 of the packet that addresses offsite behavior 'further admission to the shelter may be denied for any individual who causes valid concerns for neighbors.' She encouraged Planning Commission to consider amending the Special Use Permit to give it a 4 month approval in the hopes that the shelter and neighbors would be in a better place.

Mr. McCullough said that was within their authority to make that recommendation. He said the annual process for staff, the community, and the Commission takes resources to go through a Special Use Permit process. He said the good neighbor agreement was a living document and that all that effort may not have the most positive results for the behavior of guests of the shelter. He thought the effort that was referred to had been and continues to be put forth. He felt the bulk of that was probably accomplished at this point. He said it was within Planning Commission authority to make that recommendation to City Commission.

Commissioner Dominguez said he would be in favor of a 6 month extension. He said 30% of the guests were not Douglas County residents. He said the shelter has been detrimental to downtown businesses. He felt this organization did not have the budgetary skill sets to run the organization properly with the money given to them by the community. He felt there were better organizations in town already set up to handle this type of situation with the homeless. He said he could not support an extension. He said he would support a 6 month extension.

Commissioner Finkeldei said they have been down this route before in the past few years. He asked when this current application was turned in.

Ms. Day said December.

Commissioner Finkeldei said the applicant applied in December to allow staff to review it in order to get it to Planning Commission and then on to City Commission. He stated that if they give a 6 month extension the applicant would be applying for a new permit about a month after they would get their approval because that's how the process works. He said he would never support any type of 6 month Special Use Permit due to the extensive process. He said there were practical reasons not to vote for a 6 month extension.

Commissioner Dominguez felt more pressure needed to be put on Lawrence Community Shelter to motivate them to find a new location. He said they could not keep coddling them and giving them what they want each time.

Commissioner Blaser said this used to be a 2 year Special Use Permit and it was reduced to 1 year. He agreed if it were changed to 4-6 months all it would accomplish was more paperwork. He inquired about the reports.

Mr. McCullough said there are annual reports for the current location and quarterly reports for the new location fund raising.

Commissioner Blaser said he would support the 1 year Special Use Permit and keep it moving. He did not agree with Commissioner Dominguez's comment about the shelter not trying to find a new location. He felt they were trying to find a new location and more pressure wasn't going to help. He did think the shelter could possibly work on being more neighborly. He said he would support the Special Use Permit extension with the 82 occupancy.

Commissioner Dominguez said he did not say the shelter wasn't trying to find a new location.

ACTION TAKEN

Motioned by Commissioner Liese, seconded by Commissioner Finkeldei, to approve the renewal of the Lawrence Community Shelter Special Use Permit for one year 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. SUP approval granted for period of one year to expire April 30, 2012.
2. Submittal of quarterly reports to the City Commission regarding the status of fundraising and construction progress for a permanent facility.
3. Submittal of an annual report to the Planning Office within the first calendar quarter of the year.
 - a. The report shall include: a listing of law enforcement & emergency response calls, a log of guests who obtain jobs and housing, numbers of guests who utilize the day and nighttime services, and an update on the on-going commitment to communicate with the surrounding neighborhood and to address concerns of neighbors.
4. Revision of the site plan to update notes to state:
 - a. Identification of expiration dates, HRC, PC and CC action dates, as necessary to reflect SUP-12-10-10 approvals.
 - b. Amend existing notes "D and E" to states; "The noncompliant fence and carport will be removed when the SUP expires or when the Shelter moves to a new location. (Condition of DR-10-118-09)"
 - c. Modify plan to indicate improvements shown were completed following the 2009 approval. (Show site conditions as they are now.)
 - d. Modify table summary to provide building summary for total building.
5. Execution of a new Site Plan Performance Agreement.
6. Publication of an ordinance per Section 20-1306(j).

Commissioner Rasmussen said it was important in working aggressively to find a new location.

Commissioner Burger said in light of the fact that the process takes so long she would support the motion. She said she was a little alarmed at how long the process takes but she knows there are reasons for that. She said the Fire Department has been through the shelter and have deemed 82 people to be safe. She said she would like to see the shelter work with the offsite behavior issues.

She said she would vote in favor because if the facility was safe for 82 people then it should be used by 82 people.

Commissioner Culver felt the 12 months seemed to be a balance in allowing enough time with city processes and the Lawrence Community Shelter finding a more permanent location. He said he was generally in favor of the extension.

Motioned carried 6-1, with Commissioner Dominguez voting in opposition.

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ITEM NO. 3 RM24 to CN1; .27 ACRES; 313 E 8TH ST (MKM)

Z-12-16-10: Consider a request to rezone approximately .27 acres from RM24 (Multi-Dwelling Residential) to CN1 (Inner Neighborhood Commercial), located at 313 E. 8th Street. Submitted by John Flanders for R&B Holdings LC, property owner of record.

STAFF PRESENTATION

Ms. Mary Miller presented the item.

APPLICANT PRESENTATION

Mr. John Flanders was present for questioning.

Commissioner Liese asked for his thoughts on the condition of exclusion of financial insurance and real estate endeavors.

Mr. Flanders said he met extensively over the last few years with neighbors and Planning and he was in favor and agreed with that limitation and restriction.

PUBLIC HEARING

No public comment.

ACTION TAKEN

Motioned by Commissioner Finkeldei, seconded by Commissioner Dominguez, to approve the rezoning request for .27 acres from RM24 (Multi-Dwelling Residential) District to the CN1 (Inner Neighborhood Commercial) 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 and with the following conditions:

1. Historic Resource Commission's approval of the rezoning.
2. The use category of Financial, Insurance and Real Estate Office shall be removed from the list of permitted uses.

Unanimously approved 7-0.

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ITEM NO. 4A PCD TO CN2; 3.47 ACRES; 4000 W 6TH ST (MKM)

Z-12-19-10: Consider a request to rezone approximately 3.47 acres from PCD (Planned Commercial Development-Monterey Center) to CN2 (Neighborhood Commercial Center), located at 4000 W. 6th Street. Submitted by Allen Belot, for Monterey Partners, LLC., property owner of record.

ITEM NO. 4B SPECIAL USE PERMIT; 4000 W 6TH ST (MKM)

SUP-12-9-10: Consider a Special Use Permit for a drive through window in a retail center located at 4000 W. 6th Street. Submitted by Allen Belot, for Monterey Partners, LLC., property owner of record.

STAFF PRESENTATION

Ms. Mary Miller presented items 4A and 4B together.

APPLICANT PRESENTATION

Mr. Allen Belot, representative for Monterey Partners LLC, said the zoning change was to allow a few more uses out of this unique infrastructure from the previous PCD. There was a drycleaners previously there. He said the change in the zoning ordinance has made the definition of pick-up drive thru restaurant so tight and this would allow this particular suite a little more flexibility, such as a coffee shop.

Commissioner Rasmussen asked if he was concerned about it becoming a fast order food place with no means to order.

Mr. Belot said there was not enough room for a menu board or speaker box, only a drive up window.

PUBLIC HEARING

No public comment.

COMMISSION DISCUSSION

Commissioner Liese said he liked drive up windows without a speaker box and found them charming. He said he gets his prescriptions and coffee that way.

ACTION TAKEN on Item 4A

Motioned by Commissioner Rasmussen, seconded by Commissioner Liese, to approve the rezoning of approximately 3.5 acres located at 4000 W 6th Street from PCD-[Monterey Center] to CN2, based on the findings presented in the staff report and forwarding it to the City Commission with a recommendation for approval contingent upon the following condition:

1. That the property owner of the remaining portion of the Planned Development provide their written consent to the rezoning.

Unanimously approved 7-0.

ACTION TAKEN on Item 4B

Motioned by Commissioner Rasmussen, seconded by Commissioner Culver, to approve Special Use Permit (SUP-12-9-10) for a fast order food with drive-in, based upon the findings presented in the body of the staff report and subject to the following conditions:

1. Publication of an ordinance per Section 20-1306(j).

2. Applicant shall provide a revised site plan with the following changes:
 - a. Note added which limits this window for 'pick-up' only with no separate order window or speaker box.
 - b. General Note 1 revised to indicate that the current zoning for the development is PCD-[Monterey Center] and that the proposed zoning for Lot 1B is CN2.
 - c. The legal description revised to "Lot 1B, Monterey Addition No 7".
 - d. General Note 2 revised to indicate that the *current* use is *general retail sales*.
 - e. General Note 3 revised to indicate that the proposed use is *general retail sales* with a '*fast order food with drive-in*'.
 - f. Lot 1B shall be bubbled or otherwise delineated from the remainder of the development so it is clear that the SUP applies only to Lot 1B.
 - g. The plan shall be relabeled 'SUP site plan for Lot 1B, 4000 W 6th Street STE 1."
 - h. The property ownership for Lot 1B shall be added to the plan and the developer information changed, if necessary.
 - i. The plan shall show the entire property being rezoned to the CN2 District (all of Lot 1B) and include a parking summary for this lot as well as the parking requirements for the entire commercial development, both the CN2 and the remaining PCD-[Monterey Center] zoned areas.
 - j. The following note shall be added to the plan: "*The parking requirements for the Commercial Development will continue to be evaluated based on the entire commercial development, including the portion that retains the PCD-[Monterey Center] zoning and Lot 1B, which is zoned CN2.*"
3. The applicant shall provide an exhibit for recording with the previously approved Final Development Plans for the Monterey Center with the following:
 - a. Clearly delineates the property being rezoned to the CN2 District, and the area which remains in the Planned Development.
 - b. Notes that uses permitted in the PCD-1 District are permitted on the remaining portion of the Planned Development, but uses permitted in the CN2 District are permitted on Lot 1B.
 - c. Provides a parking summary for the entire development and for Lot 1B Monterey Addition.
 - d. Includes the following Note: "*The parking requirements for the Commercial Development will continue to be evaluated based on the entire commercial development, including the portion that retains the PCD-[Monterey Center] zoning and Lot 1B, which is zoned CN2.*"

Unanimously approved 7-0.

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**ITEM NO. 5 CONDITIONAL USE PERMIT FOR 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.*

STAFF PRESENTATION by City of Lawrence

Ms. Sandra Day presented the item.

Mr. Keith Browning, County Public Works Director, displayed plans and aerial photos on the overhead from 1953 and 1954 when the Corps of Engineering constructed three rock jetties in conjunction with Douglas County and Leavenworth County. He showed plans on the overhead of the same area from 1966 which showed movement of the river. He said the jetties work very well and he would be reluctant to disturb them. He felt it was important to look at the whole series of jetties, not just individual jetties, and leave one but not another.

Commissioner Finkeldei asked if there was an easement.

Mr. Browning said yes, there was a blanket easement over the subject property for maintenance.

Commissioner Rasmussen asked if there was an agreement with the Corps of Engineers to maintain the jetties.

Mr. Browning said they were built in the early 1950's. He said they have searched for the original construction contract and have found the resolution that says Leavenworth County and Douglas County would partner in maintaining the jetties. He said the resolution refers to the Corps of Engineers contract. He said he put a call into the Corps of Engineers today with the specific contract number in order to try and locate the contract. He said his understanding was that the applicant had talked to the Corps of Engineers.

Mr. Kurt von Achen, Eudora Planning Commission Chair, inquired about the Eudora landfill dump area.

Commissioner Dominguez inquired about the jetties.

Mr. Browning said currently the applicant was planning on leaving middle jetty 2 and staying 50' from the jetty. He said the applicant was proposing to not avoid the northern jetty and mine through it.

Ms. Day said jetty 1 was near the bridge. She said with the proposed request the applicant would explore revising the blanket easement.

Commissioner Dominguez inquired about dust control.

Ms. Day said she believed it would be less than ten trucks. She said in staff's opinion that if it was more than that threshold there were certainly some things that needed to be done to the roads,

specifically those 90 degree turns. She said County Commission had expressed concern about dust control with the last several projects.

Commissioner Dominguez inquired about the traffic increase along the main street of Eudora.

Ms. Day said trucks moving straight through Eudora was an enormous concern to the City of Eudora.

Commissioner Rasmussen said when Ms. Day started her presentation it gave him the impression that there was a general consensus that land dredging operations were preferable to water dredging operations. He stated that when he read through the staff report he had a hard time figuring out what the basis was for denial. He asked staff to walk him through the criteria that was used for recommending denial.

Ms. Day said of all the different Golden Factors outlined in the staff report what really kind of tipped the scale for staff was the proximity to the City of Eudora and the policies in place regarding where industrial activities are recommended in the community and what those land use policies were for the City of Eudora. She said it was really a case of proximity and that other issues could be conditioned or addressed to make the use more acceptable.

Commissioner Blaser asked if the airport would come into play at this location.

Ms. Day said no.

Commissioner Dominguez inquired about the proximity to Eudora.

Ms. Day said it was less than one mile from the city limit of Eudora.

Commissioner Dominguez inquired about the projected growth of Eudora based on past growth and how long it would take until the city would reach the sand facility.

Ms. Day said the Eudora community would need to answer that. She said their plan specifically talks about not developing in floodplain and flood fringe.

Mr. McCullough said throughout the process there was continuous dialogue with the City of Eudora and the applicant. He said the proximity of the request was almost adjacent to the City of Eudora and that weighed heavily in staff's recommendation for denial of the request. He stated it was within an identified planning area that Eudora has put forth a great deal of effort in their planning exercises.

Commissioner Rasmussen asked how close was too close.

Mr. McCullough said he did not know he could answer that. He said there was a little bit of overlap between the city growth area and the Eudora identified planning area.

STAFF PRESENTATION by City of Eudora

Mr. Scott Michie, consultant Planner to the City of Eudora, reviewed the memo that he wrote that was included in the packet. He said the three Eudora standards were not met by the application.

Commissioner Finkeldei asked if he reviewed the traffic study.

Mr. Michie said Eudora does not have any questions of the traffic study that was submitted by the applicant. He said they saw the issue as a bigger policy issue which was that development in the north floodplains would inevitably require travel through the local streets of the city to get to the regional highway system.

Commissioner Dominguez asked if Mr. Michie didn't have any problems with the traffic study that was presented.

Mr. Michie said that was correct. He referred to the longstanding plan that showed a map of the future traffic study.

Commissioner Dominguez inquired about the traffic from the I-70 interchange.

Mr. Michie said the traffic was about what KDOT expected in terms of north/south traffic. He stated it was general highway traffic coming through the city.

Commissioner Dominguez inquired about ten more trucks increasing traffic.

Mr. Michie said he was not questioning the traffic study or count and that was not the basis for his finding. He said the basis was a larger public policy issue.

Commissioner Blaser inquired about the definition of industrial. He wondered if mining was considered industrial.

Mr. Michie said the City of Eudora does not use the standard industrial classification as a basis for its zoning district classifications, nor does the County. He said it has only one industrial classification, the I District. He said this type of use was dealt with through Conditional Use Permits.

Mr. Ned Marks, geologist and owner of Terrane Resources Company, said he was hired by the City of Eudora to evaluate Mr. Carl Nuzman's report. He reviewed his findings of this report. He discussed the City of Eudora's well fields. He said the sand pit would encroach upon city wells considerably with surface water. He displayed wells and water table maps on the overhead. He did not recommend approving the Conditional Use Permit until further studies could be provided.

Mr. Ned Marks' letter was added to the Planning Commission packet after the meeting.

Commissioner Liese asked if he felt his studies were inconclusive.

Mr. Marks said they most certainly were because they have not had time and that there was a tremendous amount of information out there and that the information could be better compiled. He felt additional studies were needed.

Commissioner Liese inquired about the discrepancies about what he found and what Mr. Nuzman found.

Mr. Marks said part of that was based on the fact that he did not know what all Mr. Nuzman looked at. He said he made his recommendations based on the information that the city wells operate at the same time.

Commissioner Finkeldei asked if he was saying in his analysis that there was a lot more information out there and more time was needed to do additional studies.

Mr. Marks said that was correct. He said he was confident that there was existing information on the wells. He said as far as his scheduling goes it would be a minimum of six months to gather more information.

Commissioner Liese asked if there was some information that would always be an unknown.

Mr. Marks said there would be some very technical issues that he could counteract and make some generalizations to offset those. He said there would be zones in the aquifer that would yield way more water than other zones.

Commissioner Rasmussen inquired about Mr. Marks' report where it said 'when the pit is dug the water level of the pit will be lower than what is static for the aquifer. This will be a permanent lowering of the water table and will impact the upgrading of aquifer.' He wondered how the pit would permanently lower the aquifer.

Mr. Marks said based on the information he had with the water level in the aquifer, because it is sand and gravel and more remote from the river and drain, retards the flow of the water through the aquifer to the river.

Commissioner Rasmussen asked if the top of the aquifer away from the stream would be higher than the stream elevation.

Mr. Marks said yes.

APPLICANT PRESENTATION

Mr. Phil Struble, Landplan Engineering, introduced his team that he brought with him. He recapped the meetings he has had over the year to work his way through the process. He gave a summary of what Kaw Valley Companies does and produces. He said they were a niche market sand producing company. He said they have two drying plants to dry the sand. He displayed on the overhead a list of products and suppliers. He went over the business plan. He stated an average day would result in 16 truck trips a day. He said for the bulk of the year the trucks will go to the site and go on to Road 1061 which is the extension of Main Street in Eudora and go north on either Hwy 32 or I-70. He said that road today, based on the most recent traffic counts, carries about 2,900 trips a day. He said of that number it carries 11% truck traffic which would be 300 trucks today using that road to go north and south. The sand facility would add an average of 16 more truck trips a day. He felt that was an insignificant traffic increase. He said they have worked with Keith Browning to talk about the traffic because they don't believe there would be no impact whatsoever. He said the extra trucks would cause some problems and inconvenience to some things. He discussed a 200' paved section of road where up to two trucks would be waiting at the stop sign to turn left. When the trucks accelerate on the gravel road it would be on a paved surface instead which should reduce the maintenance concerns that the County may have. He said he intended to hold a neighborhood meeting to discuss possible improvements, such as drainage and a dust palliative if needed. He stated the buffer between the river and the sand pit was proposed to be a 300' setback, which was over the required 50'. He said jetty 3 was completely buried and they weren't exactly sure where it was. He said if Douglas County, who was responsible for maintaining those jetties, says they want a 50' setback and the jetties protected then that would be done. He said he has had a number of conversations with the Corps of Engineers but can't seem to find anyone who knows the history or details so it's still in the investigation phase. He said the pit would mimic the water level of the river. He said there would be some erosion problems but the company had plenty of equipment and experience to deal with any erosion that may occur. He said they were aware of the Eudora dump and that Mr. Browning showed them an aerial photograph with a pile of debris on a ¼ of the property and made sure they

were aware they would need to clean it up. He said Kaw Valley Companies was one of the contractors the City of Lawrence hired to clean up Farmland Industries so cleaning a small abandoned dump would be no problem. He said they would like to start providing the unknown answers over wells that were in Mr. Marks letter received tonight. He said during the sand extraction process the top soil is stripped off and preserved onsite to be part of the reclamation plan. He said he would dispute the definition of industry. He said there was industry with a little 'i' and industry with a capital 'I'. He said the sand facility was an industry with a little 'i'. He said the end product reclamation plan was going to be a great recreational facility for Eudora.

Eudora Commissioner Ken Atkinson inquired about levies to keep the river from coming over during flooding.

Mr. Struble said the sand that's stocked piled on the north side of the bridge, in Leavenworth County and in the Industrial zoned property, was inventory with Penny's Concrete. He said he could not speak on their behalf but that Penny's has a permit to dredge the river through that section.

Eudora Commissioner Ken Atkinson said it was a natural resource and wondered how much of it they wanted to pile up.

Mr. Struble said that was a river permit and every two years that permit was subject to review by the Corps of Engineers. He said there would be a 300' greenbelt between the sand pit and the river.

Eudora Commissioner Johnny Stewart inquired about the timeframe from first dig to reclamation.

Mr. Struble said the business plan was built around 20 years.

Commissioner Liese inquired about who owned the property and for how long.

Mr. Struble said Kaw Valley Companies has owned the property for less than a year.

Commissioner Liese wondered if the company bought the property without really finding out if the community would support the development.

Mr. Price Banks, attorney for applicant, said the property was in two parcels. One parcel came on the market and the applicant had an option on it and attempted to do exploratory work and due diligence and the seller was pressing the point on the options. He stated the process had begun and initial meetings with some of the folks from Eudora and the County began at the time when they were forced to close on that option on the first piece of property. The two pieces of property were involved in a lawsuit because one had been sold and there was a mix-up in the way the mortgages were filed. He said Wellsville Bank was pressuring the applicant to close on that option. He said there was an initial meeting with the neighbors and more conversations with the City of Eudora and County folks at that point.

Commissioner Liese said his impression was that the predominant attitude in the community was this would not be optimal for them. He was curious if the purchase took place knowing the community was against it.

Mr. Banks said he did not think there was an overwhelming belief that the community was predominately against it. He stated there had been some vocal opposition.

Commissioner Liese asked if there were any community members in favor.

Mr. Banks said yes there had been some support expressed.

Commissioner Rasmussen asked Mr. Struble to verify that he said he reached out to Corps of Engineers but that they had not been able to provide any information yet.

Mr. Struble said that was correct.

Commissioner Rasmussen inquired about the reclamation plan and asked if it would be accessible to the public.

Mr. Struble said he did not know at this point. He said it would be a private pond in 20 years. He said he would love to talk to someone who might want to turn it into a business venture or for the City of Eudora take it over and turn it into a great park.

Commissioner Finkeldei wondered how they should handle the conditions if approved.

Mr. Struble said he would like Planning Commission to vote in favor of approving the Conditional Use Permit and forwarding it on to County Commission for action knowing there weren't any conditions and how that throws a hurdle in things. He said he has a set of proposed Conditional Use Permit conditions that he could give staff tonight. He said he would be okay with the item being deferred for a month if needed.

Commissioner Culver asked why this site was so beneficial for a sand pit.

Mr. Struble said the site was not great because it was 19 miles from where the sand would be processed. He said if they could find a site anywhere closer they would move there. He said the problem was that the site had to have sand, a willing seller, and a relatively small overburden.

Commissioner Blaser asked if this type of sand was along the Missouri river.

Mr. Struble said it was a lot lower quality sand.

Commissioner Liese asked if the sandpit would not require the removal of trees along the river.

Mr. Struble said the sand pit would maintain a minimum of 300' wide buffer of trees between the pit and river.

Commissioner Liese inquired about the environmental impact.

Mr. Struble said 300' was a lot larger than what was typically seen along rivers. He said he did not have an immediate answer about the environmental impact.

Commissioner Liese said Mr. Struble suggested there were people in the Eudora community that were in favor. He asked if any of those people who were in favor were present tonight.

Mr. Struble said no, they were not present tonight. He said this was his 23rd rock quarry/sand pit he has worked on in his career. He said the opposition had been reasonable with great questions and ideas. He said their concerns were real and their ideas were good. He said he would characterize the opposition as thoughtful and engaging.

Commissioner Liese asked for a reason to vote in favor of the project when the community present tonight was unanimously against it as well as the Eudora City Council.

Mr. Struble said their attitude would change if they collectively discover that there would be a negative impact on the City of Eudora wells. He said the reason to vote in favor was because it had been incorrectly characterized by the overall Eudora land use plan as to what this location was because it was not part of a comprehensive plan to be anything, it was part of a comprehensive plan to be nothing. He said this was a request for a sand extraction use in a valley channel that was permitted given an approved Conditional Use Permit. He said it had relatively short access to a well maintained paved road that takes a fairly directly route. He said the entire area was industrial. He said sand plants were not ugly, they represented progress.

Commissioner Liese said he was anticipating the entire community attending tonight would be against it. He asked for any good reason to say yes to the plan.

Mr. Struble said there were very few opportunities to locate an industry that was needed.

Commissioner Liese asked if the applicant was right and everyone present tonight from the community was wrong.

Mr. Struble said that was not what he was saying.

Commissioner Dominguez inquired about the tax revenue for the City of Eudora.

Mr. Struble said it would generate three jobs, some level of property tax, a royalty type situation worked out with the city and county which would generate revenue for the City of Eudora and Douglas County.

Commissioner Blaser asked if there were depletion taxes on minerals in Kansas.

Mr. Struble said he was not sure.

PUBLIC HEARING

Mr. Mark Neis said he farms in the area and worked with the Corps of Engineer on the jetties. He was opposed to the project. He asked if there had ever been a sand pit within 300' of an active river. He said the sand pits he had seen were ½ to ¼ mile away. He was surprised the Corps of Engineers had not been more involved. He expressed concern about the sand pit being only 50' from the boundary line. He said a 5' berm would be washed away leaving a ditch. He said the sand pit was proposed in an old river bed. He also expressed concern about how deep the sand pit would be. He said the applicant had meetings with the neighbors but wouldn't allow them to see the site. He said he went to the site for himself and took pictures. He was concerned about wells being affected as well as land value.

Commissioner Rasmussen asked if the land he farms included the land above the water wells.

Mr. Neis said he farms directly across from the site so the water wells are to the west of his land.

Commissioner Dominguez said the water well concerns could be solved with more research. He said he did not consider property value to be an issue. He said they could get additional water well studies, as well as the depth, and knock out two of his concerns. He said the Corps of Engineers did not seem interested in the jetties so it must not be a big issue to them.

Mr. Neis said he would be satisfied if the Corps of Engineers sent him a letter regarding the jetties.

Ms. Lois Hamilton said she owned the land where the wells were located. She said she received her first letter wanting to buy her property in 2009 so it has been going on for a few years and they have had plenty of time to get more well information. She said the road could not stand more trucks because it was in sad shape. She worried about the river bridge too because it could not withstand all of the truck traffic. She was worried about the value of her land. She was also concerned about how many people it would employ and felt it would not be Eudora people. She was worried about swags forming.

Ms. Martha Saunders Skees said she could remember the 1950 flood and that every action in that area has a reaction. She said the levies were there to hold the land and if some of that was taken out there would be a reaction and that it would cost millions to rebuild the bridge. She felt they should learn from history.

Mr. Bob Cordry said they should look at the fact that it was located in the floodplain and an old riverbed. He said it would be a pending ecological disaster if approved. He felt there was inadequate transportation to any of the highways, let alone loaded with 20 tons of sand. He stated the concept of this being a small 'i' compared to a big 'I' was untrue because they would be using lots of equipment at the site.

Mr. John Pendleton pointed on the overhead map where his land was located. He said it was only a matter of days in the 1993 flood that he lost over 20 acres and the neighbor lost 10-15 acres.

Mr. Scott Jackson said he opposed the Conditional Use Permit and that there was no community support. He said the only people in favor were being paid, such as their attorney Price Banks and Landplan Engineering. He felt that bottom ground should be farmed and that when the land is mined it would never be used for farming again. He said when the river comes up it would most likely take more. He said mining operations were ugly.

Mr. Michael Almon displayed a map on the overhead of the area. He was concerned about losing prime farmland. He discussed hydrology. He said that rivers meander and move. They move toward the outside of the meander so the meanders get more severe. He said the river moves and has a lot of hydraulic pressure and the pressure was mostly pronounced during flood stages. He stated that's what the jetties are there for, to redirect the force of the water away from the outside part of the meander to direct the channel in a more benign way. He said the jetties have worked and reclaimed a lot of land since 1951. He said the main concern was not that it was too close to Eudora but rather too close to the river. He expressed concern about the health of the river.

Mr. Jason Grimms said he lives about a mile west of the proposed site and that it would affect him by having to see it, hear it, and smell it. He did not feel the roads would support it. He expressed concern about 20-30 years of contamination. He did not believe the ratio of truck loads in and out. He said he did not want to look at heavy equipment and a big berm.

Ms. Laura Caldwell, Kansas River Keeper for Friends of the Kaw, said dredging the river significantly impacts the Kansas River. She said she applauded what Kaw Valley was trying to do and would love to be able to support the location but she had concerns. She put maps on the overhead of the river from 1991 and 2010 showing the movement of the river. She displayed a map that showed all the trees that would be removed. She said she respected the valid concerns of the local community but that the Friends of the Kaw did not want to be involved in that.

APPLICANT CLOSING COMMENTS

No closing comments.

COMMISSION DISCUSSION by Eudora Planning Commission

Eudora Commissioner Johnny Stewart said he had not heard any positive comments from the Eudora community. He said he had been approached by several citizens regarding their concerns about the wells. He felt the applicant knew about the infrastructure of the wells when they bought the land so it should not be surprise information tonight.

Eudora Commissioner Richard Campbell expressed concerns about the bridge. He said the Corps of Engineer spent a lot of time and money in the 1950's to redirect the river and protect that side. He said the pictures clearly show what they did worked and it would not make sense to remove the work they did. He said access to the highway and whether it's a little 'i' or big 'I' was part of the concern but that the most important concerns were the water wells, boundaries of the river, and access to bridge.

Eudora Commissioner Grant Martin said the applicant was trying to focus on whether it was little 'i' or big 'I', but he hoped both Commissions could focus on the environmental aspect of it because he felt that was where the greatest impact was. He said it would not provide a huge economic gain by employing three people.

Eudora Commissioner Glen Bartlett, agreed with what had been said already.

Eudora Commissioner Chair Kurt von Achen said he agreed with the staff report. He said he firmly believed that zoning ordinances were to protect neighbors. He did not see enough benefit to the community to override the neighbors. He felt the Conditional Use Permit was a flawed vehicle because they do not have enough institutional memory to manage a 20-30 year permit. He said a Conditional Use Permit implies conditions and conditions infer policing powers which aren't available. He said this piece of property could be sold at any time in the future and the future user might not follow the restrictions. He agreed that ten trucks through Eudora was not a big deal but if they sell the property it could have more trucks in the future. He said he would vote in opposition.

Commissioner Blaser asked Mr. McCullough to speak about Conditional Use Permits.

Mr. McCullough said if a Conditional Use Permit does not meet its conditions it could go toward a revocation hearing at any point. He said the enforcement agency in the county was the County Zoning office in coordination with the City Planning office. He said there could be conditions about review and that there was a history of having those sorts of conditions. He said there was a program of inspection of Conditional Use Permits. He said there was a major exercise last year with a quarry in the west part of the county that went to the County Commission that had conditions revised. He said he took a little exception but understood Mr. von Achen's point that it was difficult to get enforcement. He said in his opinion any time there was a Conditional Use Permit that has an exorbitant amount of conditions to make it right was probably not a good use in the first place. He said there was a program and enforcement mechanisms in the county.

ACTION TAKEN by Eudora Planning Commission

Motioned by Eudora Commissioner Ken Atkinson, seconded by Eudora Commissioner Rose House, to deny the Conditional Use Permit.

Eudora Commissioner Campbell said he wanted to also add that the reasoning was based on the staff report, the danger to water wells, the danger to the Kaw River bridge, and the environmental impact.

Motion carried 7-0.

COMMISSION DISCUSSION by Lawrence Planning Commission

Commissioner Rasmussen said part of their responsibility was to represent the citizens but also felt part of their responsibility was to use their judgment and to help insure proper planning and proper implementation of the Zoning Code. He questioned whether it was appropriate to apply city zoning standards to an area that was outside the city boundary. He felt they needed to look at the County Code which allows for this type of use in the Valley Channel zoning district. He did not think it was appropriate to be applying industrial standards to this type of proposed use. He said it was not an industrial activity, it was a mining activity, and was specifically called out in the Zoning Code as a mining and excavation activity. He said he was disappointed by the city staff analysis recommending denial. He said he had a difficult time finding rationale in the staff report to support that judgment for denial. He said just being told that the reason for denial was proximity to Eudora was something to consider but not a strong reason for denial. He said there had been valid concerns of potential effects to water wells and potential stability of the riverbanks. He felt they had heard from a lot of amateur geologists and civil engineers and he would rather hear from Corps of Engineers on that issue. He said he was not comfortable supporting a Conditional Use Permit but also not comfortable denying based on the information given tonight. He felt this was a low impact use and a use permitted in that zoning district. He said if this was within the city limits it would be a different story but it was even outside the area specifically identified on the 2008 Eudora future growth area charette map. He said the area of the proposed project had no designation so the impression he got from that was there was no intended future use based on the 2008 map. He did not see how that conflicted with other Eudora uses and plans. He said if there was a motion to deny the permit he would vote in opposition and if there was a motion to support the Conditional Use Permit he would recommend it be delayed in order to get more information.

Commissioner Liese asked when it was in the Urban Growth Area if it was considered to be in the county or city.

Mr. McCullough said the weight to provide to it was not as clear in policy. He said there had been some weight given to the fact that there was a joint hearing where the County Commission said they wanted to hear from both the County and City Planning Commissioners. They want to understand what the city and county policies are for the area. He said there was no question that it was under the jurisdiction of the County Zoning Code and that city standards are not trying to be applied. He said the Golden Analysis points to one critical element which was the proximity to the city of Eudora. He said staff attempted to articulate clear Golden Analysis in the report but that there was disagreement in the weight given to the City of Eudora's position on the matter. He stated staff showed greater weight in deference to the City of Eudora's position than they would if this were outside of their area of influence.

Commissioner Rasmussen asked where in the staff report it reflected what Mr. McCullough just said that staff gave great deference to the City of Eudora and their decision.

Mr. McCullough read the staff finding from the staff report, 'The proximity to the City of Eudora is a critical element in assessing the proposed project.'

Commissioner Blaser said he was still struggling with the definition of industrial. He said he does not think of mining as industrial. He felt a 20 ton truck today was not a big truck. He said regarding farming there was no class 1 soil and only a small corner of class 2 soil that hasn't been farmed for at least 20 years. He did believe farm land needed to be saved for future use but he did not think farm land came into this issue. He said the river was going to change channels at some point. He said the Corps of Engineer studied and will study it because they would have to approve it and make sure the bridge is protected. He said regarding the wells there have been two different reports. He said he wished there were more facts. He said if the motion was for denial he would vote against that. He said he may be in favor of deferral.

Commissioner Rasmussen said in the staff report provided it shows the Urban Growth Area for the City of Eudora and the proposed site was not within that area.

Mr. McCullough said it was not identified as Urban Growth Area in Horizon 2020 but was within Eudora's planning area and their 3 mile area of influence.

Commissioner Finkeldei asked what happens if there was a motion to defer from Lawrence Planning Commission and a recommendation of denial from Eudora Planning Commission.

Mr. McCullough said it would probably wait for Lawrence Planning Commission to make an action to the County Commission.

Commissioner Finkeldei said he did not think they had enough good solid information to vote in the affirmative. He felt at this point there were more questions that needed to be answered. He said he was concerned about the jetties and wanted to hear from the Corps of Engineer. He agreed that he wouldn't classify the use as industrial but it was valid planning and the plan Eudora developed in 2008 shows that area to be open agricultural land. He felt they needed more sand dredging operations in Douglas County and hoped they could find locations that would work. He said he would not support to approve this tonight.

Commissioner Liese thanked Mr. Struble and Kaw Valley for their work and time. He said he may be wrong about his continued support for rejecting this project but he would continue to be in favor of the decision that Eudora Planning Commission made. He questioned what an Urban Grown Area really was.

Commissioner Dominguez agreed with everything Commissioner Rasmussen said. He also agreed that mining wasn't really industry. He didn't like it being so close to Eudora. He would like more studies to show the road can handle the truck traffic. He said at this point he could not vote for denial. He felt the water issues should be handled before being heard by Planning Commission again.

Commissioner Burger said she appreciated the applicant being willing to do more than required for a Conditional Use Permit. She said she would fall in line with the staff recommendation to deny but that she did not want to discourage the project, she just felt there were more things to be figured out. She said she was predisposed to not give up potential farmland and floodway to this type of use.

Commissioner Blaser asked what would happen if the project was denied.

Mr. McCullough said typically if the item was denied by County Commission the applicant could not come back for 12 months.

Commissioner Culver said he would echo a lot of the discussions the commission has had. He said there were still two areas that had questions and required due diligence; water well impact and the limited information from the Corps of Engineer. He said at this point he could not support the project but he also did not have grounds to deny it.

Commissioner Dominguez asked about clarification from the Corps of Engineers.

Mr. McCullough said he was not sure. He stated the Corps of Engineers does not typically comment on Conditional Use Permits.

Commissioner Dominguez asked about a list of items the applicant would have to go through to operate.

Ms. Day said those would be additional permits they would have to seek. She said typically they could not move forward with State and Federal permits until they pass the local approval first. She stated the Corps of Engineers sometimes provides very generic responses but most times they would not until there was a formal project before them. She said it was not unusual to see a use like this with a series of conditions that say the applicant has to provide proof of those additional approvals from other agencies prior to them moving the first shovel of ground

Commissioner Liese said he would be willing to defer the item.

ACTION TAKEN by Lawrence Planning Commission

Motioned by Commissioner Liese, seconded by Commissioner Finkeldei, to defer Conditional Use Permit (CUP-10-6-10) for Kaw Valley Eudora Sand Facility, located at 2102 N 1500 Road, for a minimum of 60 days.

Mr. von Achen said he would recommend a 60 day deferral.

Mr. Struble said he was fine with a two month deferral.

Commissioner Rasmussen asked what they were hoping to accomplish with the deferral.

Commissioner Finkeldei said more information on the wells, jetties, and the structural stability of the river.

Commissioner Liese said he would like for the applicant to spend more time with the people of Eudora to see if there was any potential movement there.

Commissioner Finkeldei said he would like to see some sort of agreement that the County was okay with the easements.

Commissioner Burger asked if they would be asking some civic entity to spend money to find the answers to these questions.

Mr. McCullough said everyone would go to work at trying to get meetings with the Corps of Engineers. He said there had already been funds expended on the studies in the packet. He said there would likely be more consultant fees involved.

Commissioner Liese said he would like to see Eudora really try to work with the applicant to see if anything would make this feasible for them.

Commissioner Dominguez said he would like to see something to insure that the public roads can hold the 16 proposed trucks.

Motion carried 6-1, with Commissioner Burger voting in opposition.

PC Minutes 2/23/11

**ITEM NO. 6 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 requirements and standards related to the processing of Minor and Major Subdivisions, including minor housekeeping changes. *Initiated by City Commission on 2/16/10.*

No action will be taken on this item. The draft text for this Text Amendment should be posted by 2/23/11 to begin public review for Planning Commission action later this spring.

NO ACTION TAKEN

PC Minutes 2/23/11

**ITEM NO. 7 CONDITIONAL USE PERMIT FOR FRATERNAL ORDER OF POLICE; 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.

Item No. 7 was deferred prior to the meeting.

PC Minutes 2/23/11

**ITEM NO. 8 PRELIMINARY DEVELOPMENT PLAN FOR BAUER FARM; 4671 BAUER
FARM DR (SLD)**

PDP-12-4-10: Consider modifying Lot 1 and Lot 2, Block 9 of the Preliminary Development Plan for restaurant uses, at Bauer Farm, located at located at 4671 Bauer Farm Drive, approximately 43.88 acres. Submitted by Landplan Engineering for Free State Holdings, Inc. and Sachi Real Estate, LLC, property owners of record.

Item No. 8 was removed from the agenda prior to the meeting.

The revisions to the PDP for Bauer Farm have been determined to be minor and are being reviewed administratively. The Final Development Plan for each of these lots will be placed on a future Planning Commission agenda for action.

PC Minutes 2/23/11

MISCELLANEOUS NEW OR OLD BUSINESS

MISC NO. 1 Initiate Text Amendment to Section 20-814 of the Joint City/County Subdivision Regulations of the Code of the City of Lawrence, Kansas and Chapter 11, Section 814 of the Douglas County Code, which concerns extraordinary building setbacks along US Highway 40, west of K-10 Highway **(DDW)**

STAFF PRESENTATION

Mr. Scott McCullough presented the item.

ACTION TAKEN

Motioned by Commissioner Finkeldei, seconded by Commissioner Dominguez, to initiate Text Amendment to Section 20-814 of the Joint City/County Subdivision Regulations of the Code of the City of Lawrence, Kansas and Chapter 11, Section 814 of the Douglas County Code, to establish a 50' extraordinary setback along US Highway 40 west of K-10 Highway.

Motion carried 7-0.

Consideration of any other business to come before the Commission.

PUBLIC COMMENT SECTION

ADJOURN 12:05am