



PLANNING COMMISSION MEETING
September 22, 2014
Meeting Minutes

September 22, 2014 – 6:30 p.m.

Commissioners present: Britton, Culver, Denney, Graham, Josserand, Kelly, Liese, Rasmussen, Struckhoff, von Achen

Staff present: McCullough, Day, Larkin, M. Miller, Ewert

PLANNING COMMISSION MINUTES

Receive and amend or approve the minutes from the Planning Commission meeting of July 21, 2014.

Motioned by Commissioner Kelly, seconded by Commissioner Struckhoff, to approve the July 21, 2014 Planning Commission minutes.

Approved 7-0-3, with Commissioners Britton, Graham, and Kelly abstaining.

Receive and amend or approve the minutes from the Planning Commission meeting of August 25, 2014.

Motioned by Commissioner Britton, seconded by Commissioner Kelly, to approve the August 25, 2014 Planning Commission minutes.

Unanimously approved 10-0.

COMMITTEE REPORTS

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

Commissioner Britton said the Horizon 2020 heard a presentation on demographics. He said they were still in the information gathering phase.

EX PARTE / ABSTENTIONS / DEFERRAL REQUEST

- No ex parte.
- Abstentions:
 - Commissioner Kelly said he would abstain from item 4.
 - Commissioner Rasmussen said he would abstain from item 2.

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**ITEM NO. 1 CONDITIONAL USE PERMIT FOR CREEKWOOD LAWN; 1753 N 700 RD
(SLD)**

CUP-14-00295: Consider a Conditional Use Permit to allow a Truck Storage Facility for Creekwood Lawn, located at 1753 N 700 Rd. Submitted by Shelby Franklin, property owner of record. *Joint meeting with Baldwin Planning Commission.*

STAFF PRESENTATION

Ms. Sandra Day presented the item.

No members from Baldwin Planning Commission were present.

APPLICANT PRESENTATION

Mr. Shelby Franklin was present for questioning.

PUBLIC HEARING

No public comment.

COMMISSION DISCUSSION

Commissioner Josserand asked why the original Conditional Use Permit was not complied with.

Ms. Day said there were some conditions of approval that the applicant failed to meet. She said there were some communication gaps for the applicant. She said there was a requirement that that the applicant obtain a permit from the County after this process and the applicant had some confusion and failed to get the permit.

Commissioner von Achen asked about the building improvements.

Ms. Day said Mr. Jim Sherman, Director of County Zoning & Codes, could answer that.

Mr. Jim Sherman, Director of County Zoning & Codes, said previous staff processed it as an ag-exempt and they were not required to meet set standards. He said with the Conditional Use Permit process they needed to confirm design standards.

Commissioner von Achen asked if trucks would be parked inside and outside the building.

Ms. Day said the building would be used for the storage of rucks and related equipment.

Commissioner Denney asked if the current building on the site met the County Code.

Mr. Sherman said yes but it needed to have a final walk through after the Conditional Use Permit was issued.

Commissioner Culver asked if the applicant resided on the property the Conditional Use Permit would not be required.

Ms. Day said that was correct, there was potential that the applicant could qualify as a Home Occupation.

Commissioner Liese asked what would happen when the Conditional Use Permit expires on December 31st in five years.

Ms. Day said the applicant would need to have constructed a residence by that time and pursue the continued use as a home occupation, renew the Conditional Use Permit, or rezone the property for some other kind of district that would allow the use by right.

Commissioner Liese asked how five years was determined.

Ms. Day said that was a number that had come through previous County Commission items. She said it allowed businesses to establish and also allowed staff time to evaluate the uses.

Commissioner Denney asked what would happen if Planning Commission did not approve the Conditional Use Permit.

Ms. Day said Planning Commission was a recommending body to County Commission and that County Commission would have the ultimate decision on the use. She said if the request was denied the applicant would need to relocate the business activity from the site and work with the County to resolve having a building on the property without a primary use.

ACTION TAKEN

Motioned by Commissioner Struckhoff, seconded by Commissioner Graham, to approve a Conditional Use Permit, CUP-14-00295, for a Truck Storage Facility and forwarding of it to the County Commission with a recommendation for approval, based upon the findings of fact presented in the body of the staff report, and subject to the following conditions:

1. Provision of a note on the face of the site plan stating, "The Conditional Use Permit shall expire on December 31, 2019."
2. The applicant shall obtain from Douglas County a building permit as a condition of continued operation.
3. The applicant shall work with the Douglas County Public Works Office to widen the driveway per County specifications.
4. The applicant shall obtain from Douglas County a local floodplain development permit.

Unanimously approved 10-0.

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ITEM NO. 2 SPECIAL USE PERMIT FOR WWTP; 2300 W 41ST ST (MKM)

SUP-14-00262: Consider a Special Use Permit for the Wakarusa Wastewater Treatment Plant, a Major Utility, located on approximately 531 acres at 2300 E 41st St. Submitted by City of Lawrence, property owner of record.

STAFF PRESENTATION

Ms. Mary Miller presented the item.

APPLICANT PRESENTATION

Mr. Dave Wagner, Utility Director, showed slides on the overhead and gave a history of the site and overview of the project.

PUBLIC HEARING

Ms. Rebecca Manley expressed concern about increased biowaste and distribution of it. She inquired about the timeline for improvements along 41st Street. She also wondered how the plant would be powered.

Mr. Wagner said there was a beneficial reuse program for biosolids since 1993. He said they would continue to have a successful program with biosolids. He said the application of biosolids was significantly more regulated from an environmental perspective than chemical fertilizers. He said the amount of sludge would not change until Lawrence grows. He said they expected to have the facility in operation by the end of 2017. He said there would be road improvements along 41st Street and O'Connell Road. He said the main access to the site would be off O'Connell Road. He said they were working with Westar Energy to improve the power delivery to the site. He said the Kansas Department on Health and Environment required two sources of power. He said there was no expectation that the area would develop soon so sidewalks would not be installed until future development of the area.

Ms. Manley inquired about public access to the site and security.

Mr. Wagner said there would be a 7' sturdy chain link fence around it.

Mr. Mike Manley inquired about chemicals and blue green algae. He expressed concern about controlled access and security.

Mr. Wagner said the biosolids program was highly regulated. He said blue green algae was a natural occurring condition and highly influenced by agricultural conditions. He said the facility would have gates and cameras.

ACTION TAKEN

Motioned by Commissioner von Achen, seconded by Commissioner Denney, to approve the Special Use Permit, SUP-14-00262, for a wastewater treatment plant located at 2300 E 41st Street, a *Major Utility*, based upon the findings presented in the body of the staff report and subject to the following conditions:

1. Applicant shall provide a photometric plan to the Planning Office for review and approval prior to the release of the SUP plan for building permits.
2. Applicant shall provide a revised site plan with the following changes:
 - a) Location and height of all exterior lighting shown on the plan.
 - b) Revision of landscaping sheet per City Horticulture Manager's approval.

- c) Dimensions of the solar array pad noted on Sheet 3.
- d) Provision of the 75 ft Type 3 Bufferyard along the perimeter of the site that is not within the protected riparian area, with the exception of 41st Street interior to the site.
- e) Addition of the following note: *"The Bufferyard Landscaping and Perimeter Parking Lot Landscaping requirement along 41st Street interior to the site has been waived due to the fact that the subject property is located on both sides of the street."*

Approved 9-0-1, with Commissioner Rasmussen abstaining.

Commissioner von Achen said she was excited about the solar power aspect of the project.

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ITEM NO. 3 CONDITIONAL USE PERMIT FOR CENTRAL SOYFOODS LLC; 1168 E 1500 RD (MKM)

CUP-14-00304: Consider a Conditional Use Permit for Central Soyfoods LLC, a Value Added Agriculture use, at 1168 E 1500 Rd. Submitted by David Millstein, property owner of record.

STAFF PRESENTATION

Ms. Mary Miller presented the item.

APPLICANT PRESENTATION

Mr. David Millstein said Central Soyfoods had been around since 1978 producing tofu for the Lawrence and Kansas City area and had never had any complaints from the neighbors or employees regarding the operation. He said the operation had very little waste. He said there would be no odor since it was essentially tap water that would go into the lagoon. He said the neighbor's concern about employees being transient was not based on fact. He said the FDA inspection letter was a warning and that the business complied with the problems.

PUBLIC HEARING

Mr. Terry Liebold, attorney representing Willis and Linda Long, showed where the Long's property was in proximity to the site. He said the primary reason for their opposition was included in the letter that he sent, which included the location. He said the site was only being a 5 acre lot and surrounded by a lot of residences. He did not feel the application complied with the requirements of a value added business. He expressed concern about the commercial building codes being met.

Mr. Mike Manley expressed concern about the property not being maintained.

Mr. Quinn Miller expressed concern about the size of business being on less than 5 acres. He felt there were other sites that would be more suitable. He also expressed concern about water runoff.

Ms. Rebecca Manley wondered why the applicant chose this particular location and felt there were other sites better suited.

Mr. Roy Chaney said he could not see how this was an agricultural use since nothing was grown on site. He felt it was food manufacturing. He expressed concern about potential odor from the business. He said the area was more like a subdivision with other houses.

Mr. Manley asked Ms. Violet Walker about her opinion on the condition of the property.

Ms. Violet Walker said the property was not well taken care of.

APPLICANT CLOSING COMMENTS

Mr. Millstein said the property had been mowed numerous times but that they chose to mow a yard size area around the house. He said the property had been hayed on a yearly basis. He said he moved to this location because it was reasonably priced. He said his current location was between two other businesses and he could not control pests. He said the scale of the business was a micro business. He stated the house would be completely rehabbed and that he would probably only use the basement of the house. He said he had looked in Lawrence for over a year for a suitable location that was affordable. He said it was an agriculturally based business. He said they use local beans grown on his farm and other Douglas County farms. He said they use 700 bushels a year, which was hardly two grain trucks a year. He said it was a micro business with no odor. He said he had never

had any problems with neighbors. He said the lagoon would be designed by an engineer and would follow Kansas health guidelines. He said the greywater lagoon would only contain tap water and a little bit of dishwashing detergent. He said the blackwater would be separated from the greywater so there would be no possibility of contamination.

COMMISSION DISCUSSION

Commissioner Liese asked staff to remind Planning Commissioners what they should focus on.

Mr. McCullough said staff had not received any complaints and that there was no record or history of compliance issues. He said Planning Commission should look at land use elements, traffic, business operations and Code compliance. He said they could also discuss the typical impacts, such as lights, noise, traffic, and odors.

Commissioner Liese asked staff if they felt like they had adequate time to review the letter from Mr. Liebold.

Mr. McCullough said staff reviewed it and responded appropriately.

Commissioner Josserand said he was still struggling with questions that Mr. Liebold brought up in his letter. He asked staff to discuss altering the use of a building and why the objection made by Mr. Liebold was not legitimate with this application.

Mr. McCullough said staff had not consulted County council on the issues. He said it was staff's perspective on how they understood the Code to be interpreted. He said the lot was non-conforming but was not a use issue.

Commissioner Josserand asked if it would be a change of use for the building.

Mr. McCullough said yes.

Commissioner Josserand asked if staff's interpretation was that there was no need to make the building, as a new use, comply with commercial County Codes.

Ms. Miller said it was required to comply with County Codes. She said it was listed as an additional step in the staff report. She said when the applicant goes to Zoning & Codes for the Conditional Use Permit they would also have to get building permits.

Mr. Jim Sherman, Director of County Zoning & Codes, said the structure would be designed and reviewed under the 2012 International Commercial Building Code.

Commissioner Denney asked if the owner of the business was also the property owner.

Ms. Miller said yes.

Mr. Millstein said the company was an LLC and he was the managing partner. He said the property was owned by himself and his wife.

Commissioner Rasmussen said he would vote in favor of the Conditional Use Permit. He said the community, City, and County have indicated they want to support value added agricultural activities. He said they want to maintain the rural and agricultural character surrounding Lawrence with these

types of uses. He did not feel this was any different than the example used in the County Code; making strawberries into jam. He said he could not see a reason for not approving it.

ACTION TAKEN

Motioned by Commissioner Rasmussen, seconded by Commissioner Culver, to approve Conditional Use Permit, CUP-14-00304, for *Value Added Agriculture* subject to the following conditions:

1. The following standards shall apply to the use:
 - a. A maximum of 4 full-time equivalent employees are permitted.
 - b. The structure in which the use is conducted may be up to 3,600 sq ft.
 - c. No equipment that creates noise, vibration, electrical interference, smoke or particulate matter emission perceptible beyond the property lines or in excess of EPA standards is allowed.
 - d. All equipment and materials used in the business must be stored indoors.
 - e. No retail sales of products shall occur on the site.
 - f. Deliveries from trucks with a GVWR (Gross Vehicle Weight Rating) of more than 5 tons are limited to no more than 2 per week. This does not apply to incidental deliveries such as Fed Ex and UPS.

2. Provision of a revised CUP plan with the following changes:
 - a. General CUP notes added per Planning approval.
 - b. Parking area expanded to 5 parking spaces, with one being ADA accessible, and dimensions of the parking area noted on the plan.
 - c. Evergreen trees added to screen the south side of the parking area.
 - d. Location of holding pond/lagoon shown on the plan.
 - e. Standards listed in Condition No. 1 noted on the plan.
 - f. Addition of the following note: *"The Conditional Use Permit will be administratively reviewed by the Zoning and Codes Office in 5 years and will expire in 10 years from the approval date noted on the plan unless an extension is approved by the County Commission prior to that date."*

Commissioner Culver said he agreed with Commissioner Rasmussen about value added agricultural business. He felt it fit the description and criteria set forth in the standards. He said it also had regulations and conditions in which the applicant must comply, which was part of the structure in which it could proceed. He said it was a micro-business and an acceptable use under the Conditional Use Permit.

Commissioner Kelly said he appreciated the concern shared by the neighbors about it becoming a factory. He said when he read the Code regarding value added agricultural businesses it specifically said a commodity not grown onsite. He said he looked for other food processing in Douglas County and the County Food Policy Council had a list that they created a few years ago. He said it included quite a few businesses that were rural and small in nature that bring in products from elsewhere. He felt it did seem to be an appropriate land use.

Commissioner Josserand said this kind use was exactly what was anticipated by the value added agricultural section of the Code. He did not feel it would be a noxious industrial use. He said his principal issue was the nature of the structure but that Mr. Jim Sherman had made that issue disappear from his mind with his earlier response. He said he would support the request.

Commissioner Britton said he initially had concerns about legal requirements for a change in use being met but that it sounded like it would meet the Commercial Building Code. He stated that any

time a neighborhood came out to weigh in on something like this he put a lot of stock in that. He did not feel the concerns rose to the level of overriding the staff report. He said he would support the motion.

Commissioner Struckhoff said he would support the motion. He said his concern was the scale and scope of the operation, the stewardship of the waste product, and traffic generate. He felt that most of those have or would be mitigated and that the Code requirements would be complied with. He believed this value added agricultural use was exactly what was envisioned.

Commissioner von Achen said she was sensitive to the concerns of county residents but that she would hate to deny the use based on fears that she did not think would materialize. She said she would support the motion.

Commissioner Denney said the concerns raised by the neighbors should be dealt with through the Code and building permit process.

Commissioner Graham echoed the comments from other Planning Commission members.

Ms. Manley spoke from the audience about the FDA violations.

Commissioner Liese said that Planning Commission was a land use committee and that the County Commission could listen to their additional concerns.

Unanimously approved 10-0.

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**ITEM NO. 4 PRELIMINARY PLAT FOR SCHWEGLER ADDITION; 2201 OUSDAHL RD
(SLD)**

PP-14-00303: Consider a Preliminary Plat for Schwegler Addition located at 2201 Ousdahl Rd. Consider variance request from section 20-810 (e)(5)(i) regarding minimum right-of-way for a collector street. Submitted by Grob Engineering Services LLC on behalf of USD #497, property owner of record.

STAFF PRESENTATION

Ms. Sandra Day presented the item.

APPLICANT PRESENTATION

Mr. Dean Grob, Grob Engineering Services, agreed with the staff report.

PUBLIC HEARING on Variance Only

No public comment.

ACTION TAKEN

Motioned by Commissioner Struckhoff, seconded by Commissioner Britton, to approve the Preliminary Plat, PP-14-00303, for Schwegler Addition, located at 2201 Ousdahl Rd.

Approved 9-0-1, with Commissioner Kelly abstaining.

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ITEM NO. 5A RM12 TO RMO; .269 ACRES; 1106 RHODE ISLAND ST (LBZ)

Z-14-00314: Consider a request to rezone approximately .269 acres from RM12 (Multi-Dwelling Residential) District to RMO (Multi-Dwelling Residential-Office) District located at 1106 Rhode Island St. Submitted by Hernly Associates on behalf of the City of Lawrence, property owner of record.

ITEM NO. 5B SPECIAL USE PERMIT FOR RHODY DELAHUNTY COMPLEX; 1106 RHODE ISLAND ST (LBZ)

SUP-14-00326: Consider a Special Use Permit for Rhody Delahunty Complex for the development of two detached dwelling structures on a single lot in an RM District as required by Section 20-402 of the Land Development Code. The property is located at 1106 Rhode Island. Submitted by Hernly Associates on behalf of the City of Lawrence, property owner of record.

STAFF PRESENTATION

Ms. Lynne Braddock Zollner presented items 5A and 5B together.

APPLICANT PRESENTATION

Mr. Mike Myers, Hernly Associates, agreed with the staff report.

PUBLIC HEARING

Ms. Cille King, League of Women Voters, expressed concern about access to both dwellings. She said if the dwellings were on a single lot they should stay with a single owner. She was concerned about access and maintenance of two driveways on one lot.

Mr. Myers said they had not discussed the property having more than one owner. He said there could be separate parking for each.

Mr. McCullough said it would take a replat to divide the property and it would be a challenge for the site. He said the Code did not prohibit the multi-building nature of an RM District.

COMMISSION DISCUSSION

Commissioner Jossierand thanked the applicant for their work on the project.

Commissioner Rasmussen asked why there were three parking places needed off of Rhode Island Street.

Mr. Myers said the parking requirement was met for the uses on the lot. He said it was the most efficient way to do it and approached the historic access points on the lot.

Commissioner Denney thanked the applicant for their work.

ACTION TAKEN on Item 5A

Motioned by Commissioner Struckhoff, seconded by Commissioner von Achen, to approve the request to rezone approximately .269 acres, from RM12 (Multi-Dwelling Residential) District to RMO (Multi-Dwelling Residential Office) District based on the findings presented in the staff report and forwarding it to the City Commission with a recommendation for approval.

Commissioner Josserand said he would support the motion but thought the issue raised by the League of Women Voters relative to partitioning lots for multiple attached dwelling units should be examined in the future.

Unanimously approved 10-0.

ACTION TAKEN on Item 5B

Motioned by Commissioner Struckhoff, seconded by Commissioner von Achen, to approve Special Use Permit, SUP-14-00326, for two detached dwelling structures on a single lot in an RM District as required by Section 20-402 of the Land Development Code based upon the findings presented in the body of the staff report and subject to the following condition:

1. Execution of a Site Plan Performance Agreement.

Unanimously approved 10-0.

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ITEM NO. 6 RSO TO CN2; 0.8 ACRES; 4101 W 6th ST (MKM)

Z-14-00300: Consider a request to rezone approximately 0.8 acres from RSO (Single-Dwelling Residential-Office) District to CN2 (Neighborhood Commercial Center) District, located at 4101 W 6th St. Submitted by Doug and Berniece Garber, property owners of record.

Item 6 was deferred prior to the meeting.

MISCELLANEOUS NEW OR OLD BUSINESS

Consideration of any other business to come before the Commission.

ADJOURN 8:50pm