

MINUTES OF THE SHAWNEE COUNTY PLANNING COMMISSION

Monday, January 14, 2008
Shawnee County Annex
6:00 PM

Roll Call and Announcement of Hearing Procedure: Kurt Young, Chairman, called the meeting to order, reviewed the hearing procedure, asked that roll call be taken and a quorum was announced.

Members Present: Michael Murray, Dave Ireland, Dave Macfee, Bruce Henriksen, Chad Taylor, Kurt Young, and Rachelle Vega-Retana. With seven members present a quorum was established and the meeting was called to order.

Members Absent: None.

Staff Present: Barry T. Beagle, Planning Director

Approval of November 13, 2007 Minutes, Public Meeting: Minutes of the November 13, 2007 meeting were approved with a motion from Mr. Ireland, second by Mr. Henriksen and a unanimous voice vote.

Communications: There were no Communications.

Ex Parte Communication by Members of the Commission: Dave Ireland relayed he had received calls on items 2, 3, 4 and expressed no comments or opinions to the callers.

Declaration of Conflict of Interest by Members of the Commission or Staff: There were no Declarations of Conflicts of Interest by members of the Commission or staff.

Election of Officers

- **Election of Chairman**
Mr. Ireland nominated Michael Murray as Chairman; second by Mr. Macfee and with a unanimous voice vote Mr. Murray was elected as Chairman.
- **Election of Vice Chairman**
Dave Ireland nominated Doug Liff as Vice Chairman; second by Chad Taylor and with a unanimous voice vote Mr. Macfee was elected as Vice Chairman.

Public Hearing:

1. **Z07/02 by United Methodist Homes for Aged** requesting to amend the District Zoning Classification from "RR-1" Residential Reserve District to "PUD" Planned Unit Development District (office and commercial usage) on property generally located on the south side of SW 29th Street between SW Stutley Road and SW Cannock Chase Road in Mission Township.

Mr. Beagle stated he had received a request from Aldersgate Methodist Homes requesting an indefinite continuance to explore further options regarding the "PUD". Staff is supportive of the request, but proposes a continuance for a period not to exceed six (6) months. Should the applicant not return with an amended application or request to proceed with the original request within the six (6) month timeframe, the application would then be consider as being withdrawn and become null and void.

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Mr. Ireland asked Mr. Beagle if the applicant was in agreement with his proposal. Mr. Beagle said Angela Sharp, representative for the applicant was present to address that question. Ms. Sharp, Bartlett & West Engineers, stated the applicant is in agreement with the six (6) month continuance. Members of the public offered the following comments as well:

Jason Bahr, 7115 SW Cannock Chase Rd. Topeka, KS 66614 – Stated he was in opposition to the proposal and expressed concern that SW 29th Street has not been widened to a four-lane road and he did not want additional business locations in his neighborhood.

Mr. Ireland motioned for the continuance of the proposal with the applicant agreeing to staff's recommendations, was second by Ms. Vega-Retana and was **Approved** by a vote of **7-0-0**.

2. **CU07/02 by Metropolitan Topeka Airport Authority** requesting a Conditional Use Permit on behalf of the Shawnee County Sheriff's Office to establish a firing range and training facility on property currently zoned "RR-1" Residential Reserve District and located on the west side of SE California Street, approximately one-quarter mile south of SE 61st Street, in Williamsport Township.

Mr. Beagle presented the staff report stating the request was initiated by the MTAA (Metropolitan Topeka Airport Authority) on behalf of the Shawnee County Sheriff's Office to establish an outdoor shooting range on a 6.29-acre parcel located immediately south of the City of Topeka's shooting range on the west side of SE California Ave, approximately one-quarter mile south of SE 61st Street.

Mr. Beagle said the range is intended to replace the range located at SW 21st & Hodges Road and would be in use for the days and times proposed in the application. The Sheriff's Office will notify property owners anytime a shooting event is proposed on Saturday, and there are no range operations are proposed on Sunday.

The range will be restricted to use by the Shawnee County Sheriff's Office and law enforcement agencies authorized by the Sheriff's Office for firing arms training and qualifications, and will not be open to the general public. Mr. Beagle provided dimensions of the proposed range and stated safety features built into the design of the range include a 10-foot tall concrete wall, 1-foot thick that runs along either side of the proposed range. The target area would be backed by a 20-foot impact berm topped by a 10-foot ballistic wall. The facility would also include a 40'x60' range building to be used for classroom training and storage, and will be contained within the Forbes Field perimeter fence with access provided through the City of Topeka's range and their point of access on California Avenue. The area east of California Avenue is predominately rural in character with scattered rural residential home sites. Due to the lack of urban scale services and presence of Forbes Field, it not anticipated that the area east of California Avenue will experience appreciable growth and development for the foreseeable future.

Staff offered the comments as to why the Sheriff's Office would have limited use to the City of Topeka's range. The location of the shooting range appears to be compatible with the predominate rural character of the area and location on the back side of Forbes Field as well as it's placement adjacent to an existing law enforcement shooting range. The range will be designed and constructed by a contractor that specializes in this type of facility, and given the existence of the existing range and the take-off's and landing's associated with Forbes Field it is questionable if the proposed range will contribute to any appreciable increase in noise perceptible by area properties.

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Staff is recommending approval subject to the following six (6) conditions:

1. The use and development of the site as an outdoor shooting range and training facility in accordance with the site plan prepared by TRS Range Services dated September 2007. The range shall be designed and built by a contractor that specializes in law enforcement shooting ranges. It shall be certified at the time of construction that the range has been designed to conform to the National Rifle Association's range standards or better.
2. The operation and use of the range shall be limited to the Shawnee County Sheriff's Office and those law enforcement agencies authorized by the Sheriff's Office to use the range.
3. The use and operation of the range will be limited to Monday-Friday between the hours of 9:00 am to 10:00 pm and no more than eight (8) Saturday's within a calendar year also between the hours of 9:00 am to 10:00 pm. The Sheriff's Office will notify neighbors within the prescribed notification area of any activity on the range on any Saturday. Notice shall be in writing and mailed no less than five (5) days prior a Saturday range activity. The range will not be in use on Sunday.
4. The facility shall be aged on SE California Avenue whenever it is not in operation.
5. A lighting plan shall be submitted to the Planning Department for review and approval prior to installation of outdoor lighting. The Planning Department shall determine whether the proposed lighting conforms to the criteria that light fixtures be shielded or consist of recessed lamps with cut-off angles to eliminate lighting beyond the property lines.
6. The range facility will not include an outdoor sound amplification system.

There were no questions for Mr. Beagle from commission members. Mr. Murray asked for a presentation from the applicant.

Sheriff Dick Barta spoke to commission members offering the following comments:

- The present range has been at its present location for approximately 50 years.
- The proposed range will be a 100-yard range with 25 and 50 yard shooting positions, a 10-foot concrete wall on both sides of the range for the 100 yards, a 20-foot earthen impact berm with a 10-foot ballistic wall on top of the berm.
- The range will be designed to contain fired bullets within the confines of the shooting range.
- The range will also be equipped with an environmental run-off waste filtration system.
- Will only be used by law enforcement personnel and will not be open to the public.
- A Shawnee County Sheriff's deputy certified as a firearms instructor and range master will be present at all times when the range is operational.
- The metal building will be used for training, classrooms and storage.
- Sheriff Barta relayed the days and hours of operation and said neighbors will be notified of the ranges schedule.
- Sheriff Barta stated the range will be lighted and the lighting plan would be submitted to the Planning Department for review and approval prior to installation.
- Sheriff Barta stated the range will be built with asset forfeiture monies and may exceed \$1,000,000.00.

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Mr. Ireland asked Sheriff Barta if he was in agreement with the conditions set forth by staff, and the Sheriff stated he was. Mr. Ireland also asked how the proposed range compared to the City's range and did the City notify the neighbors. Sheriff Barta said he did not know what the City's policy was regarding their range and he felt that his office was going above and beyond, but it is necessary for this day and age.

Ms. Noreen Powers with TRS Range Services, Charleston, SC spoke to commission members providing background about her company stating they solely work on law enforcement small arms ranges and work with various government levels of law enforcement. She stated her company has been working with the Shawnee County Sheriff's Office to design a firing range and said in the design process safety is at the forefront of any design of any firing range, which includes safety for surrounding properties as well as safety for the end users. Ms. Powers relayed the conceptual plan offers a safe infrastructure for the training and provided slides to show the safety features of the range such as an earthen berm and a ballistic rubber backstop, etc. She further explained the rubber material will come approximately 10-feet above the ground elevation, an additional 10-feet will consist of the earthen berm, and then above that will be an additional safety wall providing almost 30-feet of elevation from the ground surface. As each slide was presented she gave detailed information about the safety features and explained how a hepa-filtration system will also be used. In summation Ms. Powers said the design includes a number of safety features and criteria for a safe infrastructure combined and with operational controls it should allow for a safe use of the facility.

Ms. Vega-Retana asked if the rubber would ever have to be replaced, and Ms. Powers said it would not, however, there are maintenance requirements with any bullet containment and after 100,000 rounds per lane they recommend a take-a-look and see if the bullets need to be pulled back out.

Mr. Murray then open the hearing for public comment.

Mr. Wallace L. Mechler, 6440 SE California, Berryton, KS, offered the following comments:

1. Object to the establishment of the facility in a rural residential area because of safety concerns.
2. Proposed site of range sets atop a landfill that is leaking carcinogens into the drinking water and the construction of the facility will prevent the Corp of Engineers from cleaning up the site. Drinking water from his father's well is contaminated today and has testing results from the Corp of Engineers, which was completed in November, 2007. He has been reassured by the Corp of Engineers the problem would be resolved, but to date the water is still contaminated and therefore Mr. Mechler has no confidence in them.
3. Proposed hours of operation are unacceptable and Sheriff's Office will not be only agency using the facility.
4. Lives on a township road that is not maintained, and it has been over 4 years since the township has placed gravel on the road. A Conditional Use Permit for a landfill at the 6500 block of SE California Avenue was sought and denied over a year ago when residents then presented testimony and photos showing activity of large equipment such as tractor-trailer dump trucks and construction machinery traveling the roads. To date the activity continues, and traffic is often negotiated with tractor-trailer dump trucks when leaving and coming home, which creates dust, noise and danger and presents a severe nuisance.
5. He has complained about the large equipment/truck activities, suspected zoning violations and the condition of the road, all of which have gone unanswered.

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6. The City's firing range was present prior to Mr. Mechler building his home and the use of the facility has increased over the years and creates a nuisance. If the permit is allowed it will lead to an increased threat to resident's safety and an increased nuisance in their lives.

Mr. Mechler then presented a rebuttle to several statements staff and Ms. Powers had made regarding safety issues, the lack of growth in his area, the number of agencies that would be using the facility and stated the Sheriff's Office has already asked the Board of County Commissioners for funds to build a building for which there is presently no permit.

Mr. Beagle replied to Mr. Mechler's comments stating a Conditional Use Permit request by Mr. Tony Emerson was sought to allow him to reclaim a small 2-5 acre portion of his property that was formerly quarried and left abandoned without being fully reclaimed. His request was to reclaim the property and restore it to a more natural grade, but by the time the issue reached the County Commission it was determined that an individual should be entitled to reclaim their own property without obtaining a Conditional Use Permit, therefore, no further action was taken on the Conditional Use Permit with the understanding that Mr. Emerson could, provided it is himself, using his own materials that he would be entitled to reclaim his own site. Therefore, he is entitled to bring in truck loads of material as long as it qualifies as clean rubble for site reclamation and as soon as the 2-5 acre site is completed then the activity should cease.

Mr. Murray asked Mr. Beagle who made the determination and Mr. Beagle said it was by the County Counselor in conversation with the County Commission. Mr. Beagle said that other companies and users would not be permitted to bring in material, only Mr. Emerson and his crew. Mr. Beagle stated at this time there are not any outstanding zoning violations in regard to Mr. Emerson's property under the guidelines set out by the County Counselor and acknowledged by the County Commission.

Mr. Ireland asked Mr. Beagle about Mr. Mechler's referral to the Corp of Engineers and asked if any type of permit was needed by the Corp of Engineers. Mr. Beagle stated non was needed and said he thought Mr. Mechler was referring to an outstanding environmental issue associated with the property and the request before commission members would have no affect to any federal determination by the Corp of Engineers or others with regard to a site reclamation clean up.

Jim Hastings, 2221 SE 61st St., Berryton, KS, offered the following comments:

1. Tired of listening to the noise from the present facility and have found bullets in some neighbors driveway.
2. Will sounds echo from the rubber backing?
3. Road needs to be given to Williamsport Township so they can maintain it.
4. Can hear the shootings from the present facility and the explosions shake the ground.
5. Worried about qualified contractor hiring cheap labor so he can make more money.
6. The dump site has barrels of toxic material that have dumped into it in the past.

Mercedes Duran, 6230 SE California Ave., Berryton, KS, offered the following comments:

1. There is a lot of traffic from the construction company all day long, as well as the City's Police Department's traffic, and does not feel the road is inadequate.

Esther Lane, 6250 SE California Ave, Berryton, KS, offered the following comments:

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1. Concerned about the shooting and the people that will be building and using the range as well as people around the range.
2. Considers the site a hazardous dump site and believes there were barrels of oil and gas taken off planes and buried at the site and the wells that were built have shown hazardous materials where the range will be built. Neighbors are still waiting for action to clean up site.
3. Believes commission members bear responsibility for any harm that may come from the range being built on the proposed site.
4. Large ammo shakes the house and ground and worried it could change the direction of the underground wells, which has contaminated water; it could flow to her house or others.
5. Traffic is destroying the roads and the township cannot keep up the road.
6. Finds bullets in her front yard and asks commission members to keep everyone's health in mind if this is to be the site of the range.

Dan Kinder, 6250 SE California Ave, Berryton, KS, offered the following comments:

1. Lives directly across from existing range and the noise is a problem.
2. Same concerns about wells and water problems as previously reported.
3. Bomb detonation is a problem.
4. While outside, Mr. Kinder has been told before to go his house as they were brining in a bomb that had been found, and he does not feel the area is right for that type of activity.

George Cummings, 2049 SE 61st St., Berryton, KS, offered the following comments:

1. Concerned about the noise level.
2. Concerned about hours when shooting will take place, especially the night-time hours and doesn't understand the length of day of shootings.
3. Concerned about who will be allowed to shoot at the facility.
4. Hours of operation seems too long a time.
5. The range would affect more people than just those across the street.
6. There is probably a more suitable place within Shawnee County.

Sheriff Barta responded to several concerns that were expressed stating those using the range would be law enforcement officers from Shawnee County, Silver Lake, Rossville, Auburn and a few from the Department of Corrections, reserve officers and retired officers who maintain their certification. An approximate total would be 200-300 officers.

Mr. Ireland asked Sheriff Barta how often officers have to qualify. Sheriff Barta said officers qualify twice a year to maintain shooting proficiency and said the hours of 9:00 am to night is not that they will be shooting all day long, but it accommodates shift workers who come out to maintain their proficiency and certification.

Sheriff Barta said he could not address the environmental issues nor the issues with the Topeka Police Department, but there is a representative present from MTAA who his office worked with regarding the lease and obtained MTAA's approval.

Mr. Henriksen asked Sheriff Barta if bombs would be detonated at the site. The Sheriff responded they do not have a bomb team, but when there is a bomb threat his office calls the Topeka Bomb Squad and they take the device for disposal, and the proposed range would not detonating bombs.

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Mr. Macfee asked the Sheriff if he could offer an opinion in comparing the design of the City's range versus the proposed range relating to noise levels, and did he expect the proposed range to lower noise levels. Sheriff Barta said the noise will be present, and the reason they looked at the site was because of the existing presence of the airport, racetrack and the City's firing range and said there would probably be more noise, but it will not be any louder than what is already there. Mr. Macfee also asked if the 10:00 pm time frame was the same as the range already present. Sheriff Barta said he does not know the City's range hours. Mr. Beagle said he had asked Undersheriff Holladay that question and the times were the same, which is 9:00 am to 10:00 pm.

Mr. Murray questioned Sheriff Barta if the City's range was lighted. Sheriff Barta said his office would have night shoots with very dim lighting and the City's range has limited lighting.

Eric Johnson, MTAA Interim Director, said regarding environmental issues he is not positive of the location in reference to the proposed range. He knows there are wells out there, but is not sure of the exact location of the landfill itself.

In speaking to Mr. Beagle Mr. Murray said he was unclear as to the landfill and its pollution and asked if the proposed range would be built on top of an old landfill. Mr. Beagle said that is what is being suggested but he could not confirm the location of the dump. Mr. Murray also asked if there was another landfill south of the proposed site that belongs to Mr. Emerson. Mr. Beagle identified the location of the Emerson site on the east side of SE California Avenue and said the principle distinction is that there are apparently hazardous materials associated with the dump site on the MTAA site that dates back to when Forbes Field was an active military base vs. clean rubble from the Emerson site.

With no further public comments, Mr. Murray closed the public hearing. Mr. Young said the issue before them was very perplexing, but he was looking at the fact the airport has been present for many years which creates a lot of noise and the City range has been there for awhile, and he believes the proposed site is the right place for the range as there are already noise levels already generated in the area.

Mr. Ireland said he agrees with Mr. Young's statements and added he is convinced the state of the art design for the range and the updated technology is good and he would like to see the noise concentrated in this area and the safety technology is up to date. He does not feel the Sheriff's Office needs to be blamed for what is happening on the present shooting range that is detonating bombs and believes the neighbors need to voice their concerns at a city hall meeting. Mr. Ireland told Mr. Beagle he believes whether the proposal is approved or disapproved tonight a message should be sent to the County Commission that it is their responsibility to take a very strong look at that road, and he does not know how much money it would cost to update the one-half mile road to make it favorable, but it is county taxpayer's cars that drive on the road, and if the township does not have the money for the road, they've got means of funding the township to get the road up to date. Mr. Ireland said he was involved with the issues that were brought up with the firing range on SW 21st Street, and they are not the same for the proposed site and he is in favor of the range.

Mr. Young also said the proposal before commissioners tonight was leaps and bounds better in terms of safety concerns than what was presented in the SW 21st Street proposal and the Sheriff is to be commended for all the effort he has put forth in preparation for the range.

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Mr. Henriksen said that no matter where the range was proposed, someone is going to be upset and a site needs to be chosen.

Mr. Taylor said he feels it is disingenuous that commission members went through the Emerson situation in making a determination it was not in the best interest, only to find out 2 years later there is a clean rubble landfill operating through a construction company in Shawnee County, and feels the term "slight of hand" relates to that situation. The Sheriff has completed tasks that were previously requested by commission members and feels the safety issues, with the increased traffic as well as the environmental issues that are potentially present would cause him to pause on the situation.

Mr. Murray agrees with Mr. Ireland's admonition about the road is appropriate and the road needs to be improved to a better standard and is concerned about the Emerson issue and said if approved tonight and goes before the County Commission the above concerns need to be included. Mr. Murray believes the safety issues have been addressed and the Sheriff's Office has to have a facility to keep their firearm skills up and there is not a place where anyone would want to have the range next to them.

Mr. Young asked Mr. Beagle if the item is approved could staff add a requirement that members obtain something in writing from the Corp of Engineers relative to anything that may exist at the site and be built on top of, which would address some of the concerns expressed tonight. Mr. Beagle said yes, that was possible. Mr. Young also stated that if it is determined remediation is needed it should be the responsibility of the Army Corp of Engineers as opposed to the taxpayers or the Sheriff's budget. Mr. Beagle said it is a federal determination that goes beyond the province of Shawnee County and still needs to be addressed, and stated that Mr. Young's requirement is appropriate and could be stated that before the County Commission takes action there be some official determination about the status of on-site contamination.

Mr. Ireland said the County should be "Hold Harmless", the federal government stating in the future the area is contaminated and needs to be cleaned up, and the county should be held harmless from that. Before the county disburses any expenditures the suggestions/notes should be expressed to the County and the Sheriff's Office should not have to incur any expenses and the funds should be available to fix the road in a due process time.

Mr. Macfee asked Mr. Beagle if the site was being built on county property. Mr. Beagle said it was being built on MTAA property. Mr. Macfee asked if MTAA would own the structure and Mr. Beagle said it would be through a lease agreement with MTAA, with MTAA owning the property and the county owning the facility.

Mr. Murray asked that the commissioners comments and concerns be officially added to the terms of condition or the item will not be approved. Mr. Ireland said he was not requesting their comments be added to the conditions of the Sheriff's Office as outlined by staff, but addressed to the County Commissioners directly and does not feel the Sheriff's Office needs to be held responsible for the road.

Mr. Beagle said a Planning Commission Zoning Report will accompanied the packet of information transferred to the County Commission which outlines the vote and recommendation of the Planning Commission. He said he will make sure the report summarizes all the issues regarding the condition of SE California Avenue as well as the environmental issues.

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Mr. Ireland said he was in agreement with Mr. Beagle's statement and did not want Planning Commission members concerns added as part of the six (6) conditions outlined in staff's report for the Sheriff's Office.

Without further discussion Mr. Ireland motioned for approval with the six conditions set forth by the Planning Department and that a report be sent to the County Commission stating the road and environmental issues as discussed. The motion was second by Vega-Retana and was recommended for **Approval** by a vote of **6-1-0** with Mr. Taylor dissenting.

3. **CU08/01 by Union Pacific Railroad** requesting a Conditional Use Permit on behalf of White Cloud Grain Company for the storage and retail sales of agricultural products on property currently zoned "RR-1" Residential Reserve District and located on the west side of Huxman Road, approximately 1/4 mile north of US 24 Highway in Menoken Township.

Mr. Beagle said the item is a little unusual in that a private commercial use is being proposed on railroad right-of-way and permission has been granted by Union Pacific Railroad for White Cloud Grain Company to construct the facility on their property. Union Pacific Railroad initiated the application on behalf of White Cloud Grain Company to establish a facility for storage and retail sale of agricultural products on the north side of the railroad tracks and within railroad right-of-way. White Cloud proposes to construct a 5,280 square foot metal building to be used for storage and transfer of agricultural products in conjunction with their present facility, Advanced Agronomics, located across the street at 2620 NW Huxman Road. The office and restrooms will remain within the existing facility and the proposed building will only be used for storage. The proposed Conditional Use Permit does not result in a loss of restrictions of the "RR-1" district, but would specifically authorize an additional use of ancillary agricultural product storage on the subject property. The existing operation, Advanced Agronomics has been an established part of the community for some time and the addition of the proposed building is not anticipated to have any additional affect on surrounding properties than that of the existing operation. The Public Works Department has recommended that additional dedication of right-of-way be provided on NW Huxman Road and the access into the site be located as far north as possible.

Staff is recommending approval based upon the following conditions:

1. Use and development of the site for the storage and trans of agricultural products only in conjunction with the agricultural products supplier, Advanced Agronomics, located across the street at 2620 NW Huxman Road. Should the building no longer be used for ancillary storage and transfer of agricultural products in conjunction with the agricultural business at 2620 NW Huxman Road, the Conditional Use Permit shall be come null and void.
2. Use and development of the site in accordance with the accompanying site plan.
3. Submission of a revised site plan including the following revisions: A) identify the dedication of additional 15-feet of right-of-way on NW Huxman Road for a minimum of 45 feet of right-of-way from centerline; B) identify controlled access along NW Huxman Road with one (1) access point allowed near the north line of the property to maximize the distance between the entrance and the railroad crossing.

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4. The additional right-of-way shall be dedicated by written instrument, which shall be secured before a building permit is issued for construction of the storage building.
5. The exterior storage of equipment, materials and products on the site shall be prohibited.
6. Should White Cloud Grain Co., lose its lease with Union Pacific Railroad, the Conditional Use Permit shall become null and void and no other use shall be established except that consistent with the site's zoning.

There were no questions of commission members for Mr. Beagle.

Mr. Murray then opened the public hearing and called for comments from the applicant.

Mr. Warren Beavers, President of White Cloud Grain Co., 203 Pawnee, Hiawatha, KS 66434, spoke to commission members stating he has been at the present location for over 20 years and they have out-grown the facility. The Union Pacific Railroad has agreed to lease White Cloud Grain Co., part of their right-of-way and he is looking to construct a 60X88 building to store seed.

Mr. Ireland asked if any herbicides or pesticides would be stored in the building. Mr. Beavers said he would be storing seed and there would not be any ammonia or dry fertilizers, however, pesticides could be stored. Mr. Ireland asked if he would mark such items on the building and Mr. Beavers said by State law they are required to do so, and he has an emergency action plan in place.

Mr. Murray then opened the hearing for public comments. With no one appearing in support of the proposal, Mr. Murray called for comments of those wishing to speak in opposition.

Michael R. Deiter, 4327 NW Hoch Rd, Silver Lake, KS, said he farms north of the proposed site and has farmed it over 30 years and is speaking on behalf of himself as a farmer and Virginia Barney who has the leased property to the west of the proposed site and was unaware that land for the proposed structure was not leased to her. Mr. Deiter had water drainage issues and the water from NW Huxman Road drains up to the drainage ditch and he expressed concern the proposed structure would produce more water run-off. He would like to know who is responsible for keeping the ditch cleaned out. Mr. Deiter is concerned he will not be able to enter the property where he has previously entered and would the county be providing him an entrance so he will not be trespassing on the site's right-of-way.

Mr. Deiter pointed out in an aerial for commission members the land Virginia Barney owned reiterating she did not know the proposed site was a separate lease issue and asked why Ms. Barney was not approached by the railroad about leasing the site after having owned the surrounding property to the west for 30 years or more.

Lee Kensing, 7450 NW Kiro Ct, Topeka, KS, said he does not understand why the agricultural products cannot be stored in the existing building and said phosphate nitrogen pollutes and 2 tanks are present with the chemical. Trucks come in anytime of day or night and would like a guarantee that only seeds will be stored and there are no inspections to the building.

Mr. Beavers rebutted concerns stating the present building contains bulk fertilizer and bulk pesticides/herbicides and is completely full. There is a building that is temporarily leased that holds seed, but it requires running a fork lift down NW Huxman Road, and requires both places be

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manned, and access across the street would be more convenient for the company as well as its customers. Mr. Beavers relayed to Mr. Deiter they would work out something regarding access into his field and it would not be a problem.

Regarding drainage, Mr. Beagle relayed to Mr. Murray that any commercial building permit requires a drainage report that needs to be submitted at the time of application and is reviewed by the Public Works Department. Mr. Beavers said he believes the drainage issue is being addressed through CP Engineering.

With no further public comments, Mr. Murray closed the hearing. Ms. Vega-Retana motioned for approval, second by Mr. Young and was recommended for approval subject to staff conditions and was **Approved** by a vote of **7-0-0** with Mr. Murray stating Mr. Beavers will provide something in writing to Mr. Deiter regarding access.

A short break was taken and the meeting then reconvened.

4. **Z08/01 by Consolidated Rural Water District No. 4** requesting to amend the District Zoning Classification from "RR-1" Residential Reserve District to "PUD" Planned Unit Development District (public utility usage) on property located about the southwest corner of NW 33rd Street and NW Menoken Road in Menoken Township.

Mr. Beagle presented the staff report stating Consolidated Rural Water District No. 4 desires to reclassify forty-four (44) acres generally located at the southwest corner of NW 33rd Street and NW Menoken Road to the "PUD", Planned Unit Development District to establish a water treatment plant. The existing treatment plant at 3333 NW Button Road is nearing capacity, which requires them to construct a new facility and well fields. The existing plant has a treatment capacity of 1 million gallons per day, and the subject property was chosen based upon available water rights and the location of the district's 12-inch water main that traverses the property.

The proposed plant will have an initial capacity of 4.5 millions gallons per day and will ultimately accommodate 6 millions gallons per day. Proposed improvements will be confined to the north half of the property and include a 10,088 foot treatment plant, three (3) residual lagoons, bulk chemical storage tanks as well as a 1 million gallon water storage tank. The balance of the property to the south will be retained in agricultural use. Based upon the predominant rural/agricultural character of this area, the subject property remains suitable for the uses to which presently restricted by the "RR-1" district.

The Master PUD plan as proposed will restrict the use of property to a public use facility. Public use facilities are not uncommon to the incorporated area and afford access to water, sewer, telephone, gas and other utilities and services. The proposed facility will be located no less than 105-feet south of NW 33rd Street, with the existing stands of timber located east and west of the treatment plant to be retained and the exterior face of the building will have architectural finishes considered to be compatible with the rural character of area. The applicant notes there should be no noise or odor that is perceptible at the property line. The facility will be un-manned and traffic generated once operational should be minimal.

The State of Kansas has granted water rights to establish three (3) batteries of water wells consisting of three (3) wells each. One battery will be located on the property and the two (2) other batteries are located on adjacent property to the west and east of the site.

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Staff is recommending approval subject to the following conditions:

1. Use and development of the site in accordance with the recorded Master PUD Plan of Consolidated Rural Water District No. 4.
2. The applicant maintain local, state and federal permits for the operation of the water treatment plant.
3. The applicant executing a Permanent Public Right-Of-Way Easement instrument providing for dedication of additional right-of-way on NW 33rd Street and NW Menoken Road as required by the Shawnee County Public Works Department.

Mr. Ireland said he received a question about this proposal and offered no opinion and advised the person to address his concerns at the public hearing, but he was asked if this facility was solely being built because of the proposed Ethanol Plant. Mr. Beagle said the water district was already in the process of planning for a new water treatment plant because of capacity issues two (2) years before Shawnee County was identified as a possible location for an ethanol plant. At this point in time, even though Consolidated Rural Water District No. 4 was identified as a potential water source for the ethanol plant, there is no contract with the water district nor have there been any active contact with the water district. Mr. Ireland said he drove out to the proposed site and believes the applicant can complete some more planting of pines or other landscaping to provide more green space.

Mr. Murray then called for a presentation from the applicant. Ms. Angela Sharp, Bartlett & West Engineers, appeared on behalf of the and stated Mr. Beagle did a good job of summarizing their proposal, but wanted to offer further comment. She said the need for additional well and plant capacity was identified by the rural water district approximately 5 years ago and actual engineering studies were started about 3 years ago, which both pre-date any discussions of the ethanol plant. The subject property was the applicant's first choice due to various factors.

She is aware of residents concerns regarding additional traffic at the site during construction and operation of the facility, but the site can be accessed off the NW Menoken Road entrance point and the vast majority of construction and delivery traffic to the site will be from US 24 Highway from the south. The plant will be an automated plant and one operator will check on the plant and would be present from 1-4 hours per day and the balance of traffic will come from incidental deliveries to the site. The deliveries would come from NW Menoken Road because of the terrain on NW 33rd Street, which she detailed.

Ms. Sharp stated the plan today, which is not shown on the submitted PUD Plan provides for additional landscaping for the site and detailed the additional landscaping that would be added. In addition Ms. Sharp explained additional screening that would be added to the project, which included setback dimension, which exceeds the requirement.

Ms. Sharp summarized by stating the applicant is in agreement with staff's conditions and has already submitted the dedication of additional right-of-way, the drainage report has been completed and has been approved by the Public Works Department, and permits required through the Corp of Engineers need to be approved. Ms. Sharp said she believes the applicant has submitted a plan

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that incorporates them into the neighborhood as best as they possibly can and they are requesting a recommendation of approval.

Mr. Murray then opened the public hearing and called for public comments. The following individuals spoke in opposition to the proposal:

Myrlen James, 5345 NW 33rd St., Topeka, KS, said he was neither an opponent or proponent, but had several concerns which included the possibility that his water well may become dry because of the construction and what provisions would they make for him. He also asked if Consolidated Rural Water District No. 4 would be providing water for the ethanol plant.

Mr. Beagle said at this point in time there is no official connection between the water district and the proposed ethanol plant, and no one knows at this time if there will be an ethanol plant proposal. Mr. Beagle also provided information about the air quality permit that is being processed by the Kansas Department of Health and Environment and said at this time there is no official ethanol plant proposal for Shawnee County.

Mr. Ireland asked Mr. Beagle if the location of the proposed plant was in Rural Water No. 4's district? Mr. Beagle said the site of the proposed water treatment plant is actually located in Jackson County RWD No. 1. The applicant has stated they could not directly serve customers Jackson County's district but they could supply water to their district which they could distribute to their customers.

Richard L. Skinner, 5450 NW 33rd St., Topeka, KS, said he lives directly across the street from the proposed plant and asked if there would be any change to the road on NW 33rd Street.

Mr. Beagle said the only issue regarding NW 33rd Street was for the additional dedication of right-of-way, and there is no recommendation of upgrade or change to the road itself.

Mr. Skinner said he is concerned about the dust problem on NW 33rd Street and has visited with Bartlett & West Engineers about the proposed road from the plant to NW 33rd Street, which they have relayed is minimal, however, current traffic on the road is minimal, and given he is only 40-feet from the road is very concerned about the dust. Mr. Skinner is requesting a dust control condition be added to the proposal for NW 33rd Street, at least past his house to NW Menoken Road.

Chad Wendlant, 3247 NW Menoken Rd., Topeka, KS, stated there is an abundance of wildlife surrounding his property and does not want an urban surrounding, which he feels the proposed plant will bring. He wonders why the plant is close to resident's homes as it is across his property line from his back yard, and the plant will lower his property value.

Ms. Sharp addressed the above concerns stating the water district did have water rights through the Division of Water Resources that would have provided the additional batteries of wells for water for the ethanol plant, but they have voluntarily withdrawn those approvals from the Division of Water Resources. Regarding NW 33rd Street, it will only be a secondary access point so if the main access point through NW Menoken Road is blocked it will provide for another access to the site. The driveway on NW 33rd is steep, with a 12% grade and will not be used, except in rare occasions. Addressing the wildlife concern, there is an abundance of wildlife around the existing NW Button Road plant. The access point on NW Menoken road has been relocated so it will be 210-feet south of Mr. Wendlant's driveway, which places it 140-feet south of his south property line.

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Mr. Ireland questioned the need for the second access point on NW 33rd Street and Ms. Sharp explained the reasoning for the second entrance that would be used in rare occasions.

Mr. Skinner asked who would be checking/servicing the wells that would be accessed through NW 33rd Street, which would generate more traffic on the street.

Mr. Jeff Shamburg of Bartlett & West Engineers, addressed this question with staff of RWD No. 4, and said there is another battery of wells located through a lease on property west of the proposed site. The water district intends to check those wells on a monthly basis, and it is possible they would choose to use NW 33rd Street to do that.

Further discussion between Mr. Ireland and Ms. Sharp, determined that if NW Menoken Road were closed due to an emergency than the NW 33rd Street entrance would be used as a secondary access, which would be a rare occasion.

Mr. Murray asked if Mr. James question about his well drying up had been addressed. Mr. Shamburg said the State of Kansas Division of Water Resources would provide an avenue for resolution should that happen, and if that happened Mr. James could file a complaint with the Division of Water Resources, which would start a resolution process.

Bill Knox, 3535 NW Menoken Rd., Topeka, KS, said that at a meeting he attended, Mr. Shamburg said that all that needed to be done was to determine how far down the water was and document it, and if the water level drops, the State would have to back off since their well was there first.

Mr. Murray said Mr. Skinner said the water district had indicated they would work with him regarding the dust issue, and what did that mean. A member of the audience relayed they had met with a member of the water district at a board meeting and there was discussion, but no action was taken by the board. Mr. Skinner said he spoke with an individual of the water district (Lewis) who told him the water district was willing to work with him on the dust control issue, but they were concerned about Menoken Township, if the road is chip and seal, who would maintain it? It was determined the road is a township road, not a county road.

Mr. Beagle said when it comes to already established county and township roadways, there is no minimum standard that must be maintained in order to convert land to residential housing. There is development that has taken place on county and township roads, and after development the complaint arises that there is too much dust, however, that is an acceptable condition as it is a side effect when development occurs on a gravel road. In summation, there is nothing in writing that states a gravel road is inadequate for residential development, and between the township and Shawnee County and neither has indicated that NW 33rd Street cannot handle the intermittent traffic associated with the operation of the proposed plant. Mr. Beagle also stated that if the site was being viewed as possible residential development, that would generate a more substantial amount of traffic than what will be generated by the treatment plan.

Loreen Maxwell, 3315 MW Pipkin Rd., Topeka, KS, stated she feels that NW Pipkin Road and NW 33rd Street should be financed by the water district.

With no further public comment, Mr. Murray closed the public hearing. Mr. Ireland stated he understands the concerns of the public, but does not have a problem with the item before the

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commission, and is recommending a note be sent to the County Commissioners relaying there is concern about dust control on the roads. Mr. Ireland also commented there might be a way to work out a benefit district to address the issues presented tonight.

Mr. Young motioned for approval with the conditions outlined in the staff report and a note to County Commissioners about dust control, second by Mr. Ireland and was recommended for **Approval** by a vote of **7-0-0**.

- 5. Sewer Petition** for Creation of Shawnee County Main Sewer District No. 15, Lateral District No. 6 in Urban Hills Subdivision No. 18.

Barry Beagle presented the staff report noting pursuant to state law a proposed sewer benefit district must be confirmed it is compliant with local comprehensive plans. The proposed sewer petition is consistent with the interim development guidelines and the established pattern of land use and is recommended for approval.

No public comment offered in favor or opposition to the petition.

Mr. Taylor motioned for approval, second by Mr. Ireland and was recommended for **Approval** by a unanimous voice vote.

Public Comment on Non-Agenda Planning and Zoning Items

There were no comments offered.

Discussion of Planning Related Issues

Mr. Beagle gave a brief report to Planning Commission members regarding consolidation of City and County Planning Departments, detailing the two (2) options that had been recommended by Mr. Bonaparte, City Manager to the County Commission. Mr. Beagle said there would be considerable discussion on the County's Thursday agenda regarding the merger to determine what the City wants and what they are expecting of the County. Mr. Ireland stated the City only wants County funds to fund their department. Discussion ended with the consensus that Planning Commission members did not favor a merger with the City.

Adjournment:

Mr. Ireland motioned for adjournment and with a unanimous voice vote the meeting was adjourned at 9:05 pm.