

# MINUTES OF THE SHAWNEE COUNTY PLANNING COMMISSION

Monday, October 10, 2011  
Shawnee County Annex  
6:15 PM

**Roll Call and Announcement of Hearing Procedure:** After the Board of Zoning Appeals adjourned, Chris Bortz, Chairman, called the meeting to order stating members would be reconvening as a Planning Commission. Mr. Bortz presented a brief summation of the hearing procedure and asked for roll call to be taken.

**Members Present:** Christi McKenzie, Chris Bortz, Patrick Tryon, Lynn Marolf, Nancy Johnson, Brian Jacques and Dave Macfee. 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, Gloria Obregon, Administrative Assistant, and Aimee Betzen of the County Counselor's office.

**Approval of August 8, 2011, Public Hearing Minutes:** Mr. Marolf moved for Approval, second by Mr. Tryon and with a unanimous voice vote the August 8, 2011 minutes were approved.

**Communications:** Mr. Beagle stated members have been presented with a communication received from Mr. Ben Swinnen regarding the zoning item appearing on tonight's agenda. Mr. Beagle then provided staff's copy of the communication to the applicant's representative to give him time for review.

**Ex Parte Communication by Members of the Commission:** Mr. Brian Jacques stated he would recuse himself regarding the agenda item for professional reasons.

**Declaration of Conflict of Interest by Members of the Commission or Staff:** Mr. Macfee noted he is acquainted with Mr. Vernon Jarboe (representative for the applicant) and has done work for him relating to his furniture repair business, but they have not spoken about the issue tonight.

## **Limit On Speaking Time**

Prior to the start of the public hearing Mr. Beagle announced for purposes of giving everyone the opportunity to speak, staff will be using a timer and that everyone will have 5 minutes to express their viewpoint. At the discretion of the Chair, additional time can be extended.

## **Public Hearing:**

- 1. Z11/01 by Roger and Vicki Crouch** requesting to amend the District Zoning Classification from "RR-1" Residential Reserve District to "PUD" Planned Unit Development District (residential and commercial usage) on property located at 5020 SE Adams Street in Topeka Township,

Mr. Beagle highlighted the staff report, commenting Mr. Crouch's commercial business (automotive body shop) is in violation of the Zoning Regulations as the property is currently zoned and the subject of tonight's zoning request. The applicant is seeking reclassification to the "PUD" District to accommodate a mixed use project combining both residential and commercial usage, which would bring the commercial use into compliance with the Zoning Regulations. Mr. Beagle detailed the two (2) use

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groups noted as Area A and Area B, and discussed the issue of water supply and sanitary sewer service. Mr. Beagle also commented there were a number of PUD Plan technical deficiencies that would have to be addressed should the Planning Commission recommend approval. He continued his staff report speaking to acreage size, other zoning classifications along SE Adams Street, land use patterns, the concern of introducing commercial zoning and other factors in his report. In closing comments Mr. Beagle believes the reclassification is more to legitimize an existing non-conforming use as opposed to being a reflection of existing land use patterns and development realities. Even under the umbrella of a "PUD" staff views the reclassification as "spot zoning" and is recommending Disapproval.

There were no questions of staff by commission members.

Mr. Bortz called for comments from the applicant. Mr. Vernon Jarboe, attorney appearing on behalf of the applicant asked Mr. Kramer to first speak to the technical deficiencies of the PUD Plan.

Mr. Ben Kramer, engineer with Kramer Engineering said the applicant has no issues complying with all the requests, however, questioned the following items:

- Item 3 which requires 22 parking spaces. Mr. Kramer said the type of business the applicant runs does not need that many spaces, but if needed would comply.
- Item 5, there is no proposed signage and that note would be added to the plan.
- Item 7 regarding buffering; on the north property line there are existing trees and a fence so the applicant did not propose any new screening, but would comply adding more trees to the north and trees and fence to the south property line, if required.
- Item 9, the applicant will submit a lighting plan, but the applicant does not plan to have any exterior lights on poles that would be intrusive to properties in the area. There is a small security light on the south side at this time.
- Item 16; a drainage report will be produced and submitted and then submit a survey noting all requested right-of-ways and any easements that are required and all would be recorded with the Register of Deeds office.

Ms. Johnson asked Mr. Kramer when he was brought in on the project and was it usually before or after a building has started its usage as a business. Mr. Kramer said he has been brought in both ways, but normally before the establishment of a business.

Mr. Jarboe said there are some facts in the staff report that need clarification and provided the following comments:

- The business has operated at the property since 1986, working on restoring his own cars and other peoples cars as well as cars that be bought and then sold, which is not a new use.
- Mr. Jarboe noted a larger building was originally built for Mr. Crouch's personal use.
- Mr. Crouch had a business partner who decided to close when the business was located at Forbes, which left Mr. Crouch's with the dilemma as to how to continue his business.
- Mr. Crouch's restoration work consists of basically painting and body work on cars.
- Mr. Jarboe believes the more common use of a "PUD" is to restrict the usage so it is compatible with neighboring properties.
- Mr. Beagle pointed out the property is generally smaller than what is recognized in the use of a "PUD", and if that is a significant objection the applicant could solve that issue. The property to the south is owned by family members of Mr. Crouch who have agreed to join in the "PUD" if they need to exceed five (5) acres.
- Regarding the point Mr. Beagle made about area being mainly for residential usage, Mr. Jarboe

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said there is a subdivision on SE 45<sup>th</sup> Street (Clearwater Crossing Subdivision) that has been platted for approximately 25 years and has never been developed. He believes it is because there are nearby industrial and business uses and Forbes Field is close by. In response, Mr. Beagle said the plat of Clearwater Crossing Subdivision was approved by the City of Topeka and recorded in 2008. According to Mr. Crouch when engines are being tested at Forbes, it sounds like a plane is actually landing on SE Adams Street. Couple that with flights that are near the property, it makes the area less attractive for residential use.

- Mr. Crouch was immediately cooperative with Planning staff when the problem was presented to him and has been very forthcoming.
- The operation is very neat and well maintained, which includes all the property.
- The applicant would agree to an additional note on the “PUD” to provide screening to the north, or if left in its present configuration of three (3) acres screening would be added to the south.
- Mr. Jarboe talked about development in the area and made reference to the proposed MARS plant saying that is the nature of industrial development, one never knows when the opportunity for development may happen. He reiterated the lack of development along SE Adams Street, including the platted subdivision is evidence the property will not seek its natural utility as long as the use is restricted as it has been to residential.
- There are other parcels on SE Adams Street that have buildings as big or nearly as big as the building Mr. Crouch is using, and many of neighbors present tonight are in support of Mr. Crouch’s application, which speaks to the fact they do not think his operation impairs their property values.
- There is no heavy traffic, he has maybe 1 customer a week and has 1 person who works for him sometimes.
- The business has barely a noise level, and it does not create smoke or other air pollutants and it a very low-key business.
- Mr. Jarboe is asking for the support of Mr. Crouch’s application.

Mr. Macfee questioned Mr. Jarboe about his explanation of how a “PUD” makes a situation as the present one compatible. Mr. Jarboe gave the example of Fleming Place shopping center at SW 10<sup>th</sup> and SW Gage Boulevard, which was put in as “PUD” has retail, office, multi-family and commercial all on one tract with the idea being that as one gets out to neighbors, there is less intrusive zoning, which is what they are trying to do in this case. Mr. Jarboe also discussed other zonings versus a “PUD” and what is allowed under each zoning, and the control one has with a “PUD”. Mr. Macfee questioned Mr. Jarboe about the relevancy of Fleming Place shopping center to what is before commission members tonight and discussed other zoning types and a “PUD”.

Mr. Beagle addressed the Chair stating he would like clarification with regard to the actual commencement of activities on Mr. Crouch’s property. Shortly after the issue came to the attention of the Planning Department, Mr. Crouch provided a signed petition that illustrated the history and use of the property as they were going through the violation process and trying to determine the proper course of action. That communication indicated Mr. Crouch had been doing incidental body work on the property since 1986, but the vehicles were in Mr. Crouch’s ownership or his friends and it was not being operated from the property as a commercial business. It was not until the separation of business interest with Aged Body Shop at Forbes Field that it shifted to a commercial operation and there has not been a commercial business license associated with the property since 2006.

Mr. Roger Crouch, applicant, 5020 SE Adams Street, spoke to commission members stating he does do auto restoration work on his property.

Ms. Johnson asked Mr. Crouch if he was doing auto painting, which Mr. Crouch replied he was not as

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that is done at another location. Mr. Crouch explained he does welding and body work prior to the painting and again commented he does no painting on his property at this time.

Mr. Marolf asked how many employees/associates Mr. Crouch has. He replied he has 1 employee who comes in occasionally.

Mr. Macfee asked Mr. Crouch if he had the hope of sometime being able to spray paint there, which Mr. Crouch replied it is his hope, but in a body shop one does not have to do everything from start to finish. Mr. Macfee also asked if there was any painting equipment currently installed, which Mr. Crouch said he did not.

Ms. McKenzie inquired about the traffic, which Mr. Crouch said they only have friends who stop by to visit and only do cars occasionally on a restoration job as they can take as much as 6 months to do one car.

Mr. Macfee asked for the approximate number of customers Mr. Crouch had a week/month, which Mr. Crouch relayed about 2-3 if it's a small job. Mr. Macfee then asked how many projects he completes. Mr. Crouch answered he completes about 3 projects a month outside the restoration work.

Ms. McKenzie asked what that meant, and Mr. Crouch said that could mean someone calling him if they hit a deer and wanted a fender fixed.

Ms. Johnson discussed with Mr. Crouch his building permit to place a modular home on the property in 1987 and the issues and timeline that followed. Mr. Crouch said at that time Mr. Ivan Weichert and Ms. Dana Mercer in the Public Works Department told him all he needed to do was to take out the existing modular and bring in the new one to set in its place and the change was made in the County Appraiser's office. Discussion continued about an accessory structure permit and its uses, with Mr. Crouch stating the accessory structure was started in construction in the fall of 2006 and at that time he was unemployed by Aged Body Shop, and had been doing some things in his small garage while looking for a job. The larger building was for his race car operation, but he kept getting calls from clients requesting work from him. Mr. Crouch said he had only been in the new building for 23 months. Ms. Johnson said documents noted the present use of a metal building as a commercial automotive body shop has been in violation of the zoning regulations for the past five (5) years. Mr. Crouch said he did not know where those facts came from because he did not run a business that long.

Mr. Beagle said the information in his staff report was based upon conversations they had with Mr. Crouch and other background information, which he did not immediately have before him.

Mr. Jarboe held a conversation with Mr. Crouch trying to clear up the confusion relating to the use of the metal buildings on his property and a timeline when the business began, however, Mr. Beagle said there was a signed letter Mr. Crouch provided which painted a completely different picture than what was being presented tonight.

Mr. Bortz opened the public hearing requesting comments in favor of the application.

Ms. Joyce Brown, 4421 SE Oakview Lane, Topeka, KS said she owns property at 4848 SE Adams Street, stating she currently has two (2) large buildings there and has built another large building. She did not even know Mr. Crouch had a business so that was not a problem, and as a neighbor she has no problems with him. Mr. Crouch's property is kept very clean and neat. Ms. Brown said she sees no health, cleanliness or traffic hazards, and there are other businesses on SE Adams Street.

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With no further comments in favor, Mr. Bortz called for comments in opposition.

Mr. Ben Swinnen stated he was an attorney and appearing on behalf of Jennifer Hughes and Dave and Beverly Stowers, who are neighbors of Mr. Crouch and offered the following comments:

- Made reference to the report he had submitted to commission members stating there are factors of the Kansas Supreme Court that members must consider.
- “Spot Zoning” is the wrong way of zoning.
- In essence members are being asked to ignore significant issues associated with Mr. Crouch’s business such the zoning, restrictions, EPA limitations on the amount of dust produced, the large amount of lead-based paint that antique cars have and the absence of a drainage report, which are all a pattern of conduct.
- Mr. Swinnen also spoke about a Nuisance Ordinance of Shawnee County, which is another pattern of conduct.

Ms. Johnson asked Mr. Swinnen when he was brought in, with Mr. Swinnen replying he was not brought in because of this application, but because his friend, Ms. Stowers, was facing notices from the county regarding cars on their property, and Mr. Swinnen had the knowledge since August that Mr. Crouch wanted to change the zoning. Mr. Swinnen said he would have other pictures for members and the area is a rural setting and Mr. Crouch’s business does not belong there.

Ms. Jennifer Hughes, 4950 SE Adams Street, Topeka, KS 66609 stated the following concerns:

- Noise due to Mr. Crouch’s business.
- Traffic concerns about UPS and FEDEX trucks that come and go.
- Does not want fumes around her home.

Mr. Macfee asked Ms. Hughes when she first made a complaint to Planning. Ms. Hughes said Mr. Crouch was originally running his business out of the smaller building, but when the bigger building came in she did not have any animals on her property. Mr. Crouch at that time informed Ms. Hughes he would put a system inside his building for his paint shop, but that has not happened, and there are fumes outside when he paints.

Ms. Johnson asked Ms. Hughes if she specifically smelled paint. Ms. Hughes said she does not know what the smell is, but it is similar to lacquer, but she can smell fumes from her house if she is outside.

In rebuttal, Mr. Jarboe made mention to the thick book Mr. Swinnen handed out to commission members, but said there is nothing in his books as he has glanced through them that are not the rules. He is suggesting there maybe EPA and other violations, but there is no evidence of that, but it is only his speculation. Regarding Ms. Hughes testimony, Mr. Jarboe stated she built her house after she knew Mr. Crouch was running his business and she used to live in the house immediately north of that, so she built her house knowing what Mr. Crouch has always been doing. Referencing the paint smell, Mr. Crouch has stated he does not do painting on his property, and if it is important, “No Painting” with other language could be added as a restriction to the “PUD”.

Ms. Hughes said when she built her house in 2006 the larger building was not there.

Mr. Macfee continued discussion with Ms. Hughes about her various complaints, which she said was mainly that a commercial business was being run next to her property, and she believes the value of her home will go down. Mr. Macfee and Ms. Hughes also discussed what she sees as a nuisance by Mr. Crouch with her referring to various pages and pictures in Mr. Swinnen’s report, and ended with Ms.

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Hughes reiterating that Mr. Crouch does painting on his property.

Mr. Dave Stowers, 5140 SE Adams Street, Topeka, KS 66609 gave the following concerns in opposition:

- Mr. Crouch has a type of drain that is approximately 4-5 feet from a fence Mr. Stowers constructed that is draining some kind of water running in a ditch that runs on his property and down into the creek. He has not been able to find out what that drainage is.
- Mr. Stowers does not want the proposed zoning because if sometime in the future he wanted to place houses in the back of his property, he is not confident he could subdivide it and people wanting to live back there with the noise and fumes from the body shop.

Ms. Johnson asked Mr. Crouch what he was draining onto Mr. Stowers property. Mr. Crouch said his basement has a daylight drain, which is 133 feet from his property and that is what exits along with drainage from his roof gutter's and building, which are in tubes that go underneath the ground, and it has all been inspected from the Shawnee County Health Agency. Ms. Johnson asked where the material from body shop is going, which Mr. Crouch said there is no material, and when he washes his hands, he washes them in his house, which goes into the septic system, which has all been approved by the Health Department. Ms. Johnson and Mr. Crouch then continued discussion about the septic tank system.

Ms. McKenzie inquired about Mr. Crouch's racing which he previously mentioned. Mr. Crouch said he has a drag racing team, but it has nothing to do with the business and noise is not an issue.

Ms. Johnson again asked Mr. Crouch if he had running water inside his building and if he does, where does it drain to? Mr. Crouch said he does have running water inside the building and it drains into a septic system, as he has 2 separate septic systems on his property, however, he does wash his hands inside his house, and the running water in the building is only for a toilet in the building.

Mr. Jarboe pointed out that a lot of the pictures in his report were not of Mr. Crouch's property, but of neighboring properties.

Mr. Bortz closed the public hearing and asked for comments from commission members and staff prior to voting.

Mr. Macfee discussed zoning classifications with Mr. Beagle, who said automotive restoration would require a "C-4" Commercial District zoning.

Mr. Bortz said there are plus's and minus's regarding the neighborhood, and that if the property was larger and not as close to other houses, he might lean one way, but the issue tonight is challenging.

Mr. Tryon said he has 2 problems with the request. First, he does not have a problem with the idea of a "PUD", although the size of the parcel and location are a concern, but the applicant did not provide burden-of-proof that he would comply with the "PUD". Second, the applicant did not satisfy the conditions of the "PUD" would meet the community characteristics, he does not think the operation would be a detriment environmentally or otherwise, but does think the "PUD" is not a good fit for surrounding neighborhood.

Mr. Marolf said his main objection is the fact the area is residential and when is it OK to have a business in a residential area and when is it not OK.

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Ms. McKenzie said the zoning across the street is "I-1" Light Industrial District and there is the possibility one could open a business and no one would have a say on that, meaning Mr. Crouch could go across the street and open up his business.

Mr. Macfee commented if one removes the commercial aspect of what Mr. Crouch is performing in providing services for friends and hobby he does not think his operation would be different than what he is doing now and agrees with Ms. McKenzie who noted someone across the street could open a large body shop, which would be within the zoning regulations. He also understands fumes that are generated by a paint shop and how important the right equipment is to have. He does not believe the request meets the criteria for a "PUD", which essentially results in "spot zoning" so he will not be supporting the item.

With no other comments, Mr. Macfee moved to Disapprove the proposal and was seconded by Ms. Johnson. Prior to voting Mr. Bortz clarified a vote of "yes" would be to Disapprove the proposal, and with a vote of **(6-0-1)** the proposal was recommended for **Disapproval**. (Mr. Brian Jacques Abstaining)

**Public Comment on Non-Agenda Planning and Zoning Items**

None.

**Discussion of Planning Related Issues**

Mr. Beagle briefly spoke about last month's Board of Zoning Appeals meeting relating to fence heights, and at that time it was recognized the fence regulations as currently written achieve inconsistent results from one property to the next. Discussion involved commission members initiating an amendment to come up with a solution that would achieve a more consistent application within Unincorporated Shawnee County.

Mr. Jacques moved to initiate an amendment to the fence regulations and direct staff to prepare an amendment for consideration; second by Ms. Johnson and with a unanimous voice vote the proposal was **Approved**.

**Adjournment:**

Mr. Jacques moved to adjourn, second by Ms. McKenzie and with a unanimous voice vote the Planning Commission public hearing ended at 7:53 p.m.