

# MINUTES OF THE SHAWNEE COUNTY PLANNING COMMISSION

Monday, March 10, 2014  
Shawnee County Annex  
6:00 PM

Mr. Marolf introduced and welcomed Mr. Matt Appelhanz as the new Planning Commission member.

**Roll Call and Announcement of Hearing Procedure:** Lynn Marolf, Chair, called the meeting to order, reviewed the hearing procedure, and asked for roll call to be taken.

**Members Present:** Lynn Marolf, Nancy Johnson, Brian Jacques, Dave Macfee and Matt Appelhanz. With five members present a quorum was established and the meeting was called to order.

**Members Absent:** Christi McKenzie, Pat Tryon.

**Staff Present:** Barry T. Beagle, Planning Director; Joelee Charles, Administrative Assistant and Ashley Heidrick, Assistant County Counselor.

**Approval of December 9, 2013, Public Hearing Minutes:** Ms. Johnson moved for approval of the December 9, 2013, public hearing minutes, seconded by Mr. Macfee and, with a unanimous voice vote, the minutes were approved. Ms. Johnson requested the minutes be broken into shorter paragraphs.

**Communications:** Mr. Beagle stated he had provided them a revised site plan and reclamation plan provided by the applicant in reference to CU14/01 on the agenda.

**Ex Parte Communication by Members of the Commission:** There were no Ex Parte communications expressed by members of the Commission.

**Declaration of Conflict of Interest by Members of the Commission or Staff:** There were no declarations of conflict of interest by commission members or staff.

## **Election of Officers:**

- **Election of Chair:** Mr. Marolf called for nominations for chair. Ms. Johnson nominated Mr. Jacques as Chairman. After a unanimous voice vote, Mr. Jacques was elected as Chairman.
- **Election of Vice-Chair:** Mr. Marolf then called for nomination for vice-chair. Mr. Jacques nominated Mr. Macfee as Vice-Chair. After a unanimous voice vote, Mr. Macfee was elected as Vice-Chair.

Ms. Johnson asked if Ms. McKenzie had served as Chair. Mr. Beagle stated Ms. McKenzie had not.

Mr. Jacques then assumed the Chair from Mr. Marolf and presided over the remainder of the public hearing.

## **Zoning and Subdivision Items:**

1. **CU14/01 by Builders Choice Aggregates** to establish a clean rubble landfill on property zoned "RR-1" Residential Reserve District and located generally at the northwest corner of NE Kincaid Road and NE Belmont Avenue in Tecumseh Township.

Mr. Jacques asked for presentation from staff.

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Mr. Beagle said the subject property comprised 28 acres and included a large body of water which was a result of a previous sand and gravel extraction operation. Builders Choice was applying for the Conditional Use Permit on behalf of Schmidtlein Excavating who was purchasing the property to use it as a clean rubble landfill. He said the landfill would be used exclusively by Schmidtlein and not be open to the general public. Clean rubble includes concrete and concrete products including reinforced steel, asphalt pavement, brick, rock and uncontaminated soil. He said they also proposed to separate and recycle the material with a portable crusher in lieu of deposition if the dirt content was less than 15% dirt.

Mr. Beagle said the depth of the existing pond was 20 feet and could accommodate approximately 900,000 cubic yards of material. The materials would be deposited in 5 acre increments extending from west to east with an estimated annual volume of material being deposited of 10,000 cubic yards. He said, the landfill would be open 7 a.m. to 7 p.m., Monday through Saturday. According to the applicant's site plan, Mr. Beagle said the site is surrounded by a combination of 6 foot chain link fence, concrete walls and berms with a gated access at NE Riverview Road.

Mr. Beagle said the subject property is rather isolated located between Philip Billard Airport and the Kansas River and accessible only by NE Kincaid Road. He said much of the area was located within the Floodway of the Kansas River and included underdeveloped agricultural land, active sand and gravel extraction operations, abandoned sand and gravel pits, demolition landfills and various heavy industrial uses. Based on the established pattern of land use, he stated the property remains suitable for the use to which it is zoned. He said the Public Works Department had evaluated the proposal and found the proposed traffic associated with the landfill would not be uncharacteristic of existing heavy truck traffic along NE Kincaid Road and had expressed no opposition. Mr. Beagle stated that from a land use perspective the activity of reclaiming the sand and gravel pit would be comparable to the site's former use and existing extraction operations in the immediate area. He said the operation was not anticipated to have a direct impact on neighboring property given the character of the area and location.

Mr. Beagle said the bulk of landfill activity would consist of the deposition of clean rubble material in the pond with a final elevation not to exceed 872 feet. He said the final contours, cover and vegetation would be approved by the Health Agency by granting a landfill permit. He said the site's restoration would not conflict with the use of neighboring property. He said there were no structural improvements anticipated except for the operation of a portable crusher and it would be required to be removed upon completion of the landfill activity. He said the applicant had not indicated an estimated timeframe to fill in the pit and reclaim the site but considering the capacity and estimated annual volume of materials to be deposited, it would take 90 years to fill in the pit. He said it was recommended the Conditional Use Permit be subject to a term of 10 years. It would then be reevaluated for compliance and continued suitability as a landfill.

Due to the floodplain limitations and limited access, it was not anticipated that it would transition to other non-industrial type of uses in the foreseeable future. He said the area was formerly part of a larger sand and gravel extraction operation and was established prior to the Shawnee County Zoning Regulations. He said Meier's Ready Mix, the previous owner, was granted a Clean Rubble Landfill Permit by the Health Agency in 1996 which included the subject property. In 2005, Meier's sought a Conditional Use Permit to establish a clean rubble landfill in compliance with the Shawnee County Zoning Regulations; however, the applicant did not submit revised materials and the application died for a lack of response. He stated the approval of the Conditional Use Permit was recommended to be contingent upon approval of a landfill permit by the Health Agency. He said the Conditional Use Permit and site development plan was submitted to all applicable reviewing agencies and no significant issues or concerns were expressed by reviewing staff in regard to code compliance or the provision of public services.

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Mr. Beagle said the biggest issue was the potential for illegal dumping on the site. He stated there were some areas surrounding the site that did not have any barriers to prevent illegal dumping or to prevent someone from entering the site. It was recommended that the applicant's site plan be revised to reflect placement of a continuous 6 foot chain link fencing from the end of the concrete wall along NE Belmont Road to the east boundary and extending north along the east boundary of the subject property to the north property line. He stated Planning Staff was recommending approval of the proposal based on 16 conditions that were outlined in the Conditional Use Permit Report.

Mr. Jacques asked Mr. Beagle where the fence would be located. Mr. Beagle identified the location of the existing concrete wall and earthen berm along NE Belmont Ave. and identified where recommended fencing would be located.

Ms. Johnson stated she had questions on items 11 and 12. She asked how many would be working at the site and who would be monitoring the materials. Mr. Beagle stated there would be reviews after the first year and every other year thereafter. A detailed report of the materials would be provided at the time of the reviews.

Mr. Jacques asked if the Health Agency would require a report. Mr. Beagle stated they would be documenting the clean rubble and volume to make sure they were operating in compliance.

Ms. Johnson asked if it was regulated by anyone. Mr. Beagle stated the Health Agency would be responsible for permitting and monitoring the landfill. Ms. Johnson asked if they would be operating on faith and if they had to write down anything. She wanted to know if there was a true checks and balances. Mr. Beagle stated there would be annual reviews to make sure they were operating within the boundaries.

Ms. Heidrick asked if the Kansas Department of Health and Environment would regulate this type of operation. Mr. Beagle said that since this is proposed as a "clean rubble" landfill as opposed to a "construction and demolition" landfill, KDHE would not be directly involved.

Mr. Macfee asked if there were any problems with illegal dumping. Mr. Beagle stated he was not aware of any. Mr. Macfee asked if it happened in any other areas. Mr. Beagle said he drove around the area and a couch was present. Mr. Macfee asked if it wasn't more of a concern. Mr. Beagle stated it was a concern and he was trying to anticipate any issues. He said the applicant stated it would be a clean rubble fill. Mr. Macfee asked what would happen to the water once they started dumping material. Mr. Beagle stated there was a permeable surface in the pit. It was within a water table and the water would not be displaced. Mr. Macfee asked if it could be filled up at once. Mr. Beagle stated the site was located within a floodway. The applicant had filed the paperwork with the State. There was a zero rise in base flood elevation.

Mr. Appelhanz asked if a berm was going to be built as there was an opening between the body of water. Mr. Beagle stated the body of water north would remain.

Mr. Jacques then called for a presentation from the applicant.

Mr. Joe Marney, President of Builders Choice Aggregates, said the pit had been mined for 40-50 years. He said it had been somewhat of a recreational area as it was hard to keep people out who want to fish there. He said rubble had been dumped and it was dangerous. They wanted to fill it in to make it safe. He said they could fill it in within two feet and then put topsoil over it. He said Schmidlein had been in business for 30 years. They would be the only ones using it. He said the pond had sand at the bottom and the water level in the pit moved with the river levels. He said there had been illegal dumping but

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they clean it up. He said the crusher would be noisy. Schreiners were located in the area and they had been running a crusher. He said there had been sand plants in the area for 50-60 years so it would be a good fit to reclean the land. He said that Schmidlein was an excellent operator with a good track record. He said they owned the sand operation across the street from the proposed location. He said that sand had been hauled out of there since the 1950's and was the perfect location.

Ms. Johnson asked about the fluctuating water levels and what would happen if the water level went down. Mr. Marney said you could walk on the river since the level was down. He said it could go down two feet. He said the water percolated out and the sand filtered the water.

Mr. Marolf asked if they owned the property to the north. Mr. Marney said they did and pointed out all the areas on the map that they owned.

Mr. Macfee asked if there was onsite personnel. Mr. Marney stated Schmidlein would have onsite personnel. Their staff would be the ones moving the material, dumping, etc. He said the Health Agency required an annual permit. Mr. Macfee asked if there were any concerns about any other conditions. Mr. Marney said they would be there no matter what. He said illegal dumping was going to happen. He said they could bear the cost to put up the additional fence but dumping would occur next to the fence.

Mr. Marolf asked if there were any other concerns with the recommendations. Mr. Marney said they would be selling it to Schmidlein as soon as it was approved and they did not express concerns with any of the recommended conditions.

Ms. Johnson asked if the Conditional Use Permit went with the land. Mr. Beagle said it would be tied to Schmidlein. If a new owner came in, the County would have to acknowledge the change of ownership, however, on the basis of the new owner acknowledging and agreeing to the terms and conditions of the Conditional Use Permit.

With no further questions for the applicant, Mr. Jacques called for comments from the public. Mr. Lessman was the only person in attendance from the public besides the applicant.

Mr. Ronald Lessman, 4124 NE Brier Road, Topeka, KS 66616

- Lives in the area and has no problem with the request.
- Had concerns about any future flooding and what it would do to the roads.
- Was concerned about how he would be able to access his property from the public roads that run adjacent to the applicant's property.
- Said it was an isolated area.
- Said they would need access to the road to move the rubble.

There were no additional speakers so Mr. Jacques closed the public hearing. He asked if there was any discussion from the Commission.

Mr. Marolf asked if there could be culverts to keep the road open. Mr. Marney said if there was any areas washed out, they would be filled in. He understood Mr. Lessman's concerns. He said there were two ways to get in and out.

Ms. Johnson asked if Schmidlein would fill it in. Mr. Marney said they would put dirt back in.

Mr. Marolf commented if someone was around there would be less dumping.

Mr. Appelhanz stated there was no need for a fence. Dumping would happen.

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Ms. Johnson said there was no reason for the fence.

Mr. Appelhanz asked about connecting the fence to a structure. Mr. Marney said they could possibly continue with the berm to avoid dumping.

Mr. Appelhanz moved to recommend Approval of the proposed Conditional Use Permit subject to staff conditions except condition number 2; seconded by Ms. Johnson. With a vote of **5-0-0**, the item was recommended for **Approval**.

Mr. Beagle mentioned the item would go before the County Commission for consideration on March 31, 2014.

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

There were no comments on Non-Agenda Planning and Zoning items.

**Discussion of Planning Related Issues**

Mr. Beagle stated there was one item for the April meeting. Mr. Macfee thanked Mr. Marolf for serving as Chair of the Planning Commission.

**Adjournment:**

Mr. Macfee moved to adjourn, seconded by Ms. Johnson. A unanimous voice vote declared the public hearing be adjourned, which was at 7:37 p.m.