

MINUTES OF THE SHAWNEE COUNTY PLANNING COMMISSION

Monday, May 12, 2014
Shawnee County Annex
6:00 PM

Roll Call and Announcement of Hearing Procedure: Dave Macfee, Vice-Chair, called the meeting to order, reviewed the hearing procedure, and asked for roll call to be taken.

Members Present: Dave Macfee, Pat Tryon, Nancy Johnson, Christi McKenzie, Lynn Marolf and Matt Appelhanz. With six members present a quorum was established and the meeting was called to order.

Members Absent: Brian Jacques.

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

Approval of April 14, 2014, Public Hearing Minutes: Mr. Marolf moved for approval of the April 14, 2014, public hearing minutes, seconded by Mr. Appelhanz and, with a unanimous voice vote, the minutes were approved.

Communications: There were no communications by staff.

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.

Zoning and Subdivision Items:

1. **Z14/01 by Randal and Crystal Schiffelbein** requesting to amend the District Zoning Classification from "RR-1" Residential Reserve District to "PUD" Planned Unit Development District (residential/industrial usage) on property located at 2629 SE Shawnee Heights Road in Tecumseh Township.

Mr. Macfee asked for the presentation from staff.

Mr. Beagle summarized the staff report and indicated there are two (2) different in consideration of this proposal from staff's perspective. First, the use of the PUD District to accommodate a business in a non-business setting; and second, the resulting land use impact associated with the proposed reclassification.

In considering the first aspect, Mr. Beagle said the PUD was never intended to be a universal tool to put uses in an area that would not otherwise be accepted or encouraged. By design, the PUD District was intended to encourage flexibility in the use and development of land that could not otherwise be achieved through conventional zoning practices. It was never intended make an illegal use, out of character with the surrounding neighborhood, compatible in any given location.

Mr. Beagle said this issue needed to be considered in the broader context of the interim development guidelines that they operate under. He said the Commission was aware the interim development guidelines do not prescribe a specific land use arrangement in the County but provides guidelines for the establishment of various land uses and their relationship to one another. The guidelines provided a

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rational and consistent basis for evaluating land use proposals by recognizing the distinct characteristics of different land use types. For example, he said that industrial land use given its scale and intensity of development would not be expected to be located next to or in proximity of low density residential land use because of the obvious incompatibility. The guidelines' objective, in the absence of a designated future land use plan, was to provide a predictable land use arrangement as much as possible that accommodated the major land use types within defined areas that maximizes the efficiency of development and minimizes intrusion of higher intensity incompatible land uses into established or developing lower intensity areas. As such, commercial and industrial land use would be expected to locate within strategically planned areas as opposed to being randomly distributed throughout the County.

Mr. Beagle said further complicating the accommodation of different land use types were "home-based" commercial businesses. This is a land use distinction not envisioned by the interim development guidelines nor accommodated under the current Shawnee County Zoning Regulations. He said that "home-based" businesses has been and continues to be a persistent problem in the county. This is because commercial businesses that don't qualify as accessory "home-use occupations", where the activity is confined to the home, are required to locate within appropriately zoned commercial or industrial districts. He could understand why people would be attracted to the idea of setting up shop where they lived since it would be cheaper than locating a business in a properly zoned business district. He said due to the nature of some businesses, sometimes they run undetected. In other situations, their operations became offensive to neighboring properties due to noise, traffic, lighting, appearance, etc. and it pits one neighbor against another.

Mr. Beagle said this was the third request in as many years to reclassify property to the PUD District as a means to accommodate an existing illegal business at the owner's home. He said this issue needed to be addressed. These are businesses, in and of themselves, that require a location within a properly zoned commercial or industrial district. Reclassification to the PUD District, in staff' perspective, is an ad-hoc fix to legitimize a business not otherwise allowed to locate on residentially zoned land. The only advantage to the PUD District is that it allows the applicant to define the standards for the use of the property and hopefully minimizing conflict with neighboring property. It was a means to legitimize a use in a location that would otherwise not be permitted.

With regard to the second aspect, Mr. Beagle said the open storage of trucks, equipment and related items on a one acre portion of the applicant's 48 acre parcel was not anticipated to have a detrimental impact on surrounding properties. From a land use perspective, however, the site's present classification of RR-1 was consistent with surrounding properties and remained suitable for the uses to which presently restricted. There was no evidence to suggest that the surrounding area was in transition to other than agricultural or rural residential land use. There didn't appear to be anything preventing the use of the subject property in a manner consistent with the RR-1 District as presently zoned. Except for the applicant's noncompliant concrete business, Mr. Beagle said there would be no reason to seek reclassification in staff's judgment of the subject property.

Mr. Beagle said there needed to be a serious discussion of commercial land use activity in the County and in what forms it would be accommodated. He said there is no distinction for home-based businesses compared to stand alone businesses. In both cases commercial or industrial zoning would be required under the current regulations. Mr. Beagle said it was difficult for staff to assess which of these two aspects was more legitimate and compelling. He did acknowledge that the applicant was very forthcoming in working with staff in trying to resolve the current zoning violation. The applicant was not breaking new ground but following a path cleared by others in the use of the PUD District in this manner. Even though this is unconventional, he said that on the basis of these two different aspects concerning this proposal, staff was unable to offer a recommendation on this request in this particular case.

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Mr. Macfee asked if anyone had any questions for staff.

Mr. Macfee asked if the applicant's ground was a former quarry. Mr. Beagle said it was and the large pond that was on the property was a remnant of the quarry process. Mr. Macfee asked if the larger area that extended approximately south two miles was more quarry. Mr. Beagle said there was an extension of the quarry to the north and the south.

Mr. Macfee asked if Mr. Beagle, in his analysis, if this was an unusual land use pattern. Mr. Beagle stated he did address the former use of the property as a quarry as well as the resulting pond. When reviewing the 48 acre parcel, there was nothing tremendously uncharacteristic compared to any other neighboring large acreage tract that would prevent it from continuing to be used in a manner consistent with the RR-1 District. He said the staff report did acknowledge the applicant's property was formerly a rock quarry with a large pond and not a deterrent to its continued use consistent with the RR-1 District.

Mr. Macfee asked Mr. Beagle if developing that area would be challenging for rural residential. Mr. Beagle said he didn't have enough data to know what the limitations were for the development of this area as identified by this property and other properties in the area that were formerly quarried and what the implications were with respect to the future development of property. He said they didn't have any natural resource or environmental factors built into their regulations to review in conjunction with a development proposal. He said he didn't know what effect it would have on the future growth and development of this property or the surrounding area that was formerly quarried.

Mr. Appelhanz asked Mr. Beagle when the quarry was last operational and if the driveway was used when the quarry was operational. Mr. Beagle said he didn't know but thought there was a connection to the parcel to the north but said he would allow the applicant to address that as part of their comments.

Mr. Macfee asked Mr. Beagle if the PUD Plan qualified or not, leaving aside an agree/disagree on particular points, and if the applicant addressed each of the criteria. Mr. Beagle said the PUD Plan as submitted was compliant with the PUD regulations.

Mr. Macfee called for a presentation from the applicant.

Mr. Ben Kramer, Kramer Consulting, Inc., 4336 SE 37th Street, Topeka, KS 66605

- On behalf of the Schiffelbeins, thanked the Planning and Public Works departments for their assistance and said Mr. Beagle did a great job with the report.
- The applicant said the road was there as an entrance to the rock quarry as far as they knew.
- Said rock quarry was located north, west, across 29th Street and south of 29th Street from the property. In 2007, the rock quarry south of 29th Street was still operational to some extent.
- In 2005, the applicant purchased the property and constructed a home.
- About two years ago, the applicant moved the construction equipment onto the property and was not aware they were in violation.
- In November 2013, the applicant applied for an accessory building permit and it was then brought to their attention that the construction equipment was a violation.
- The applicant contacted Mr. Kramer and the Planning department to see what could be accomplished to bring them into compliance.
- It was suggested by the Planning staff that they could apply for a PUD and on April 7, 2014, the PUD application was submitted.
- The applicant owned 48 acres. 8.2 acres would be included in the PUD with 7.2 acres remaining residential and one acre designated to I-1.

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- The area where the equipment was parked was completely surrounded by evergreen trees and was not visible to the public.
- Applicant's father started the construction business in 1968 and applicant had worked for him.
- In 2003, he purchased and became the owner of the concrete company.
- The business consisted of the applicant and 1-2 employees getting a truck and equipment to go to a job site where all the work was performed.
- No work was conducted at the property other than the storage of the vehicles.
- Customers do not come to the property and the applicant conducted his business at the job site or met with his customers at an off-site location.
- Said the applicant and his wife were present to answer any questions.
- Mr. Kramer read from the section of the Zoning Report-The Extent and Detrimental Effect Upon Removal Of The Present Restrictions and provided some comments.
- Report said Area B was one acre and there would be no new structures or proposed signage.
- Said they all wanted to protect properties.
- Said the applicant was a responsible land owner, business owner and neighbor.
- Believed they needed to help small businesses in Shawnee County and, at the same time, protect residents of Shawnee County
- Believed that this was a mechanism that had been used in the past as Mr. Beagle had said.
- Believed in working with staff.
- Stated that it would be reviewed on a yearly time frame.
- Said if there was a violation, there was a procedure to handle the violation.
- Said they concurred with the conditions and considerations as outlined in the staff's recommendations.

Ms. Johnson asked what type of consulting company Mr. Kramer had. Mr. Kramer said it was an engineering firm that provided land surveying. Ms. Johnson asked if they were only going to store the vehicles at the location. Mr. Kramer said the PUD listed trucks, equipment and appurtenances to the business. Ms. Johnson asked how many trucks and other equipment that included. Mr. Kramer said he would defer that answer to Mr. Schiffelbein.

Mr. Schiffelbein stated he didn't know they were in violation. It was a financial decision for the company as they thought it was ridiculous to rent a location when he had a secure location to store the vehicles. He said he had other locations that were broken into at least four times a year. He said there were ten vehicles and two bobcats. He said in 2007-2008 business got really slow because of the downfall of home building. He said he basically took one truck and a bobcat in and out a day leaving in the morning and coming back at night.

Ms. Johnson asked why he had ten trucks. Mr. Schiffelbein stated they were form trucks. He had two sets of forms that were different sizes. He said he had only put one basement in this year and didn't expect very many more. He said basements weren't being put in lately. He said he was thinking about selling three of the vehicles which hadn't been moved since he moved them to that location. He said if his business didn't pick up, he would probably sell the ones he wasn't using anyway.

Ms. McKenzie asked if Mr. Schiffelbein if he left early in the morning. Mr. Schiffelbein said they started at 8:00 and left about 8:30 and came back around 4:30-5:00.

Ms. Johnson asked what road they used. Mr. Schiffelbein explained they were using his driveway to go out onto Shawnee Heights Road. He said the driveway wasn't developed when they purchased it so he put it in. He apologized for how this came about because he did not know he was in violation. Ms. Johnson asked if he had any traffic going past his house. Mr. Schiffelbein said he did not because

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his house could not be seen. Ms. Johnson asked if there was only one way to his house using the driveway. Mr. Schiffelbein agreed and said his house could be seen from one spot on 29th Street. Ms. Johnson asked about the parcel at 2641. Mr. Beagle stated it was a large agricultural tract with a home. Mr. Schiffelbein said his neighbor, Steve Gruber, owned the property. Mr. Schiffelbein said he had one rock quarry pond and there were three north of his property and across 29th Street. He said basically it was a hole where they dug the rock out and filled it in with water and then made it a pond.

Mr. Marolf asked Mr. Schiffelbein if his driveway was an easement. Mr. Schiffelbein said it wasn't an easement but part of his property. When they bought the property they made sure that it was part of the property so they could access it. Mr. Marolf asked if they would use the form trucks on an as-needed basis. Mr. Schiffelbein agreed.

Ms. Johnson asked if it was a private driveway. Mr. Schiffelbein said it was and was 2,540 long.

Mr. Macfee asked Mr. Schiffelbein if he had purchased the property from Mr. Gruber. Mr. Schiffelbein said he purchased it from Blaine Davis in 2004 or 2005. Mr. Macfee asked if the drive was included. Mr. Schiffelbein said it was exactly as shown.

Ms. Johnson asked Mr. Beagle how this was any different from the Custom Tree Care request. Mr. Beagle said what was different was that Greg Gathers sought reclassification to the C-4 Commercial District so the entire usage of the property was going to be used for commercial use.

Mrs. Crystal Schiffelbein said when they bought the property in 2005 and sought the building permit for the house they had to go to each of the surrounding houses to see if they were built before or after the tract was created. She said they were built after their tract was platted and had been there for a long time. She said it had to be verified because of the frontage. Mr. Beagle stated there had been a determination made at the time of their building permit application to verify whether their parcel with only 55-60 foot of frontage existed that way prior to 1992 when the current standards went into effect. It was determined that it was its own independent parcel and existed that way prior to 1992 so they were able to get a building permit based upon less than 200 foot of frontage.

Mr. Kramer said he and the applicant would appreciate a vote in favor of the PUD.

With no further questions for the applicant, Mr. Macfee asked for public comment from anyone in favor or in opposition of the item. Since there were none, Mr. Macfee closed the public hearing.

Mr. Macfee asked if there was any discussion from the Board.

Ms. Johnson said she was enamored with the driveway. Also, there were no big trucks flying in and out of there. She said it was a good use for it.

Mr. Tryon stated he would agree that this property had little, if any, detrimental impact with the surrounding area. He said he had some reservations that a PUD was maybe being used as a tool for non conformance so his vote would be as such.

Ms. Heidrick asked the Commissioners if they had a copy of the PUD Development District regulations and what they said including the purpose and intent of what a PUD was. All agreed. She said she just wanted them to be aware of what was contained in that. It did indicate it was intended to promote economical and efficient use of the land while providing for a pleasing and harmonious development and environment putting opportunities to provide for a high level of urban amenities and the preservation of open spaces. She said she thought the PUD did account for, not necessarily bringing a non-conforming

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use into compliance, but it did account for considering the space and the land use and you still had to take into account all the golden factors. She understood what Mr. Tryon was saying. But she wanted to make it clear that it did indicate in the PUD regulations that it seemed to be the intention of the PUD.

Mr. Tryon stated he appreciated Ms. Heidrick's clarification. He said he was going to clarify that he probably used the wrong term in term of non conformance. He said he thought his reservations would be that maybe it was just not appropriate here. He said his vote would be accordingly and thanked Ms. Heidrick.

Mr. Macfee stated that this had been the third one in recent memory. He said he had the same opinion as Ms. Heidrick. On a gut level, this wasn't why they had a PUD District but he felt that an argument could be made that there was enough leeway in the wording that you could find reasoning for it. The County did not have a Comprehensive Plan so they could take into account the larger area where they could look ahead at various factors and try to figure out what else could go in that area. He said they had a very informative visit with the City of Manhattan in Riley County. They had written their Comprehensive Plan to accommodate small business out in the rural areas. He said they struggled with that issue because it was pretty cut and dried that they didn't allow it. He said they knew they had many violations all over the County. He said he would support it and said he hoped they could proceed to make some headway on a Comprehensive Plan to give them some better direction. He didn't see any neighbors or opposition and the applicant was not causing any problems in the area and he would base his vote on that.

Mr. Marolf stated he agreed with Mr. Macfee. He said he definitely had some reservations but a lot of those had to do with the fact that they didn't have a Comprehensive Plan this time to address this. He said he appreciated Ms. Heidrick's comments and clarification on the PUD regulations. In this case with the location, there was very little use of the drive and they were not causing any kind of dust or traffic problems. There wasn't any traffic from people coming in to the business to do business. He said they had considered requests in the last few years on Adams Street and the Commissioners approved those. He thought this would fall better into a PUD situation than what those did and they were approved. He said he would be supporting it.

Ms. Johnson said she thought they had to be very careful about being consistent. She said she found it interesting that the Planning staff did not say yes or no. She found that very telltale. She said it went back to what Mr. Macfee said about if they had a Plan, then they would have a format to go back on. But they didn't. So, each one that comes up, they would have to be extremely careful that prejudice didn't come into it. She said if it was on a heavy street with school buses going down it and lots of people with 15 trucks coming in and out, she wasn't sure she could support it. But was that being consistent across the board. And that was where ethically she was coming from was because they didn't have a Comprehensive Plan. She was going with that gut feeling.

Mr. Macfee said that was all they had to go on. Ms. Johnson agreed. Mr. Macfee said there was a lack of real direction as far as land use.

Ms. Heidrick said she understood their fear of being inconsistent. But there was a case that specifically laid out all the different factors that needed to be taken into consideration. After all those factors were listed, it did say that consideration of professional staff and a Comprehensive Plan could also be looked at. But initially, there was six factors Barry had laid out in his report. But it always, always, always came down to analysis to the character of the neighborhood, the zoning uses and properties nearby; the suitability of the subject property for the uses to which it had been restricted; the extent to which removal of the restrictions would detrimentally affect nearby property; the length of time the subject property had remained vacant as zoned; and the relative gain to public health, safety and welfare. She said she saw

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their fear and the inconsistency that they might be concerned with. But as long as they were going through those factors which she thought they were all doing by taking into consideration the nature of the property, they didn't need to be fearful that they were violating some sort of inconsistency regulation. Because at the end of the day, this was what mattered and she thought they were doing that now.

Ms. Johnson said she didn't think it was so much the fear of violating. It was the fear of not being fair. Ms. Heidrick agreed. Ms. Johnson said hypothetically if Joe Schmoie came up and you knew him real well, the good old boy thing, and you passed it. Then Mary Doe came up that you didn't know. She said she thought they had to be very careful. Ms. Heidrick said as long as they were taking into consideration all of those factors, that they were being fair.

Ms. McKenzie said it was her hope as they looked at a Comprehensive Plan that there would be an awareness in the County and rural area about rules. If they were confused at times, it would be confusing to be a landowner. She said there was an awareness that they could do this business and can't do this business. She said she thought that was confusing and hoped with a Plan they could help that. She said they would have more and more of those.

Mr. Macfee said it was really wonderful for him to come out of that trip with the feeling that it could be done. They had one and to see how it had been successful. He said it had been talked about for as long as he had been on the Commission. It was to the point where the feeling was it was just too hard and too expensive. He said that wasn't true. He said he wanted to direct that to Ms. Heidrick. Ms. Johnson's point was great about trying to be consistent. He said if there wasn't any opposition to a request or one person against the request would be hard enough and was that the basis for their decision making. He asked what would happen 20 years from now when there could be all different owners that might not like the dust the trucks kick up. It just seemed to him that they needed a few more tools to go by. He didn't think it was wrong. Public input was what drove a lot of decisions.

Ms. Johnson moved for Approval of the proposed reclassification subject to staff recommendations; second by Mr. Appelhanz, and with a vote of **5-1-0** the item was recommended for **Approval**.

Public Comment on Non-Agenda Planning and Zoning Items

Mr. Beagle said it was his understanding that there were some individuals who wanted to make comments to the Commission.

Mr. Ken Sook, 3236 SE Shadybrook Lane, Tecumseh, KS 66542

- Said Mr. Peck was present also and he lives close by.
- Expressed concern about the dirt track that they have in their neighborhood.
- Was part of a special committee that had spent quite a bit of time putting together Article XXXII-Special Events which listed various considerations for special events.
- Tried to standardize and put some order in the process of special events in the County.
- The intent was to apply for a permit under certain circumstances when a public race was announced.
- Was brought to his attention by the neighbors in the area that on May 3-4 there was a very large event of racers that came from all over the state and out of state to ride on this racetrack.
- Neighbors called wanting to know what was going on because people had known that he had been involved with the document. Said he told them he didn't know anything. Neighbors thought they had some organization and it wouldn't just happen out of the blue and thought they would be notified.
- Was a very large event with lots of noise and cars parked in the road and a lot of dust was created.
- Called Mr. Peck if he had been informed of any event and Mr. Peck had no knowledge of it.
- Said he spoke with Mr. Beagle to see if there was any permit associated with it and there was none.

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- Events of that size were supposed to be limited to two per year.
- Said they later found out a sign was posted that said private event.
- Said the detriment to them was the same whether or not it was public or private.
- Didn't know what happened and why there was no permit or any negotiation up front for this event.
- Asked if they should revisit the special events article and tighten it up a bit.
- Maybe they needed to tie it down to a point that whether it was private or public, the effect on the surrounding neighborhood residents was still the same.
- Not sure what happened since the Planning people weren't notified.
- Said he knew of some other sources that probably money was being made on this event.
- Said the effect on the neighbors was still the same.
- Said he talked to County Commissioner Cook and explained to him what happened. He expressed concern as well and advised him to come to the meeting to express his concern.
- Had nothing against the dirt bikers.
- Events of this magnitude should be abiding by the rules that were put in place last fall.

Mr. Macfee thanked Mr. Sook for his comments. He said he wanted to state that this issue was not noticed up so the Commission could not discuss it. Ms. Heidrick stated they could discuss it but not take action. Ms. Johnson asked if they could ask questions. Ms. Heidrick said they could but they could not take a vote to amend the regulations.

Ms. Johnson asked if the police were called and if they came out. Mr. Sook said they called them but wasn't sure if they came out. He said his wife called and the officer said they had no knowledge of the event. He said he thought they were reluctant. They asked them to please visit but wasn't sure if they did or not.

Ms. Johnson asked if Mr. Sook spoke with the gentleman who held the race. Mr. Sook said he was a little uneasy with that situation. Ms. Johnson said so he did not know that Mr. Sook was speaking with the Commission. Mr. Sook said that was correct.

Ms. McKenzie asked if there was a Memorial Day race planned. Mr. Beagle said he had no knowledge.

Ms. Johnson asked if there was a permit. Mr. Beagle said no.

Mr. Marolf asked if they had applied for any permits this year. Mr. Beagle said he had a pre-application conference regarding the event but, beyond that, no.

Mr. Macfee asked Mr. Beagle if he had received any applications from anyone for a special event. Mr. Beagle said he had not.

Mr. Macfee asked if there was any contact from the Sheriff's Office to the Planning office about this particular issue. Mr. Sook said the officer they spoke to said they didn't have any knowledge of this permit and it was on a Sunday. They didn't know what they would do. If they had somebody free, maybe they would have somebody go out there.

Ms. McKenzie said when they were trying to write this regulation they were trying to be careful if someone wanted to have a wedding or a private event that would involve a lot of people. They were trying to be very conscious of all the different things that people might have whether it was a charity, fundraiser, etc. She said there was probably a loophole somewhere in the document. But they were trying to be very conscious.

Mr. Tryon asked if anyone knew if the event fell under the category of fee based or any compensation. He

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asked Mr. Beagle if he knew if there was any charge for the event. Mr. Beagle said it was his understanding that there was. He looked at their website after the fact and found out there was a gate fee that was charged as well as for each of the participants.

Mr. Marolf asked Ms. Heidrick what she thought about it. Ms. Heidrick said she didn't know enough about what happened at the event. She said she knew there was a contact made to her office after the pre-application conference that Mr. Beagle had with Mr. Keegan. There was a contact that was made to her office asking if the event would be considered under any of the types of the special event amendment. One of the attorneys in her office reviewed each of those types in connection with what he was being told the event was going to entail and provided an email to the applicant stating that it did not fall under any of the types as they were written. That was what she knew about it.

Ms. Johnson asked if a legal opinion was sought from the Counselor's office. Ms. Heidrick said yes. Ms. Johnson said the legal opinion said that the event did not fall under any of those. Ms. Heidrick said she believed it was the exact page out of the regulations that defined all of the types. She said she thought it was a one sentence. She said she was trying to find it in her email but couldn't. It had been forwarded on to her after the fact. But it was just one sentence: It doesn't appear that it falls under any of these types.

Mr. Marolf asked Mr. Beagle if the language in Article XXXII was specific about charging for any event or just for the public events vs. the private events. Mr. Beagle said they spent a considerable amount of time trying to define that. There had been discussion about a fee not being collected at the gate, but the participants paid in advance and open to the public but there was money that was collected by other means than collecting it at the gate. So then it got involved with all the various nuances associated with that. Again any aspect of a fee was removed from the definition of the three special event types and it said any event which was open to the general public and intended for entertainment or recreational purposes was considered to be an event. He said it no longer addressed fees as a factor and that it was just open to the general public.

Mr. Macfee asked Ms. Heidrick asked if they came to her office. Ms. Heidrick stated they saw Mr. Beagle first. She said she thought at one point it was mentioned to come to the County Counselor's office to ask if it fell under the three different types. And, yes, her boss was contacted and then another attorney in her office (apparently she wasn't there that day). Mr. Macfee asked if the legal opinion was that it didn't fit the criteria. Ms. Heidrick said that was correct. She said based upon the information that was provided by the applicant. Ms. Johnson said that was the key. Mr. Macfee agreed.

Mr. Tryon said he didn't know what event it was or who it was but if they were non profit, they were allowed to hold the event. Ms. Heidrick agreed. She said she thought they still had to complete certain requirements. Mr. Beagle said the non-profit aspect basically defined the three different types for special events should not include not-for-profit groups of an educational, religious or cultural venue. Unless the group fell under one of those categories, it would not necessarily be considered automatically exempt.

Mr. Beagle said during the pre-application conference he had with Mr. Keegan in January, Mr. Keegan said one of his avenues was Forward Motion, an organization he dealt with that promoted the events on the property. He said they were a non-profit organization and questioned if they would automatically be exempt under the special event regulations. Mr. Beagle told Mr. Keegan not necessarily; however, if he wanted to go down that road, he would be more than happy to accept any information he provided with any details associated with the type of event and that information would be forwarded to the County Counselor's office in order to obtain a determination. Otherwise on that day when Mr. Keegan walked out of the Planning office, he received notification that he would need to get a special event permit. Ms. Heidrick asked Mr. Beagle if he had instructed Mr. Keegan that he needed to get a special event permit. Mr. Beagle said yes.

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Mr. Macfee said they were not taking action. He asked if they could get a copy of the communication of that opinion. Ms. Heidrick said she didn't see any reason why not. She said again she thought it was a one line sentence along with a photocopy of the types. It was based on what the applicant was relaying. Mr. Macfee asked they had anything that outlined the applicant's position. She said she thought so. She said she thought she could get it.

Ms. McKenzie asked if it was Ms. Heidrick's opinion that they should review the regulations or if there was any ambiguity that should be addressed. Ms. Heidrick said with this type of situation, there was always ultimately, at the end of the day, someone who was going to be upset about it on one side or the other. You were never going to make everyone happy. Did she think there were areas in that regulation that people would find loopholes to make their event become something that didn't have to be regulated. She said she thought there was. It was just like there was with any law or regulations. Peoples always find a loophole or an exception to get out of it. She thought this body worked extensively on those regulations and there was a special work group and so there was a ton of work that was done. She thought they all even looked at this very issue that people could get around it this way. But at the end of the day, it was her recollection that there was kind of a consensus that they didn't want to cross a line and start regulating every single event that happened in someone's back yard. She said there was always a gray area and the line had to be drawn somewhere and they have drawn it. She said if they wanted to go back and revisit it, it was completely up to the Board. She said she thought they spent a ton of time and you couldn't pick and choose which events you want to have happen and which events you don't. You couldn't say motocross event but not a wedding or vice versa. She said she thought it just became really difficult.

Mr. Tryon said he was going to echo Ms. Heidrick's comments. He said he sat on the committee and he thought what was very important that they wanted to do was that the regulations should speak for a broad base of activities and not one. He said they were very careful not to create a regulation around any specific event. He said they discussed and discussed it. Was it watered down? He said it wasn't watered down. It was broad based. Mr. Tryon said he appreciated Ms. Heidrick's comments. He said they spent a ton of time on it and listened and listened and listened.

Ms. McKenzie said they also worked hard on the penalty. They discussed that a lot. Ms. Heidrick said if ultimately if there was an event that happened and at the end of the day no one was sure whether or not if her office was lied to. They could only give an opinion based upon the information they received. If a violation should be issued, it should be looked into.

Mr. Macfee said he agreed with what Commissioner Tryon said. If it wasn't working, he thought it was worth talking about. He said he wasn't interested in going through the whole process again but he was interested in discussing it and at least if it was working. If it was complete ineffective, he thought they needed to look at that.

Mr. Beagle said it was understood in the review process and the Planning Commission ultimately gave its recommendation that this was a significant document and they could not anticipate everything. He seemed to recall the Planning Commission said that they wanted to revisit the document within one year following the date of adoption just to see how it was working.

Mr. Marolf asked Ms. Heidrick if it was possible for the Counselor's office to contact Mr. Keegan and ask them for information about the event and the criteria they met in order to have the event without a permit. Ms. Heidrick said she wasn't sure they could do that on their own accord.

Ms. Heidrick said she thought if a complaint was filed which has happened now then she thought they could look into that. She said to be quite honest she couldn't remember the exact penalty procedure it stated

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within the regulations. But she would certainly be happy to go through and look into it and see what kind of recourse there was and if they could go back and ask those questions.

Ms. Heidrick said she thought this was going to happen a lot. Obviously, not a lot but there are some entities that were aware of these regulations and there were some that were not. So there were going to be people having these types of events having no idea that there was a special event regulation out there and it would be brought to our attention after the fact. She thought that was what exactly happened here. It was being brought to our attention after the fact.

Ms. Heidrick said they didn't know if they weren't exactly forthcoming with everything the event was going to entail. Mr. Marolf said he was just trying to think of some way and hated to sit back and not take any kind of action because he thought it would just become general knowledge that you could put on your big boy pants and do whatever you want. Anyone could get by with whatever you think you can. He thought they needed to address it as soon as possible. If nothing else, just to get the word out that this document that they spent so much time on that they were serious about it and they want it followed as best as possible. He said they may have to revisit it and make some changes. He said he thought by not doing anything they may think possible that they would never do anything.

Ms. Johnson said she wanted to add to that. She told Ms. Heidrick that she certainly was not telling her how to do her job because she did it well but when someone walked in and told you that they were a 501(c)3 for non profit, she would have demanded to see their 501(c)3. She said they should demand to see their 990 that says they are a 501(c)3 in good standing with the State of Kansas and if it wasn't part of the requirements. Ms. Heidrick said it definitely should be. Ms. Johnson said if he was coming under the radar as a non profit then he should have to prove to us that he was doing it as a non profit. Ms. Heidrick said she didn't see any mention of "We're a non profit." Ms. Johnson asked Mr. Beagle if he said that. Mr. Beagle agreed. Ms. McKenzie said it was Forward Motion was the group. Ms. Johnson said it was mentioned to Mr. Beagle and so obviously that he easily could have gotten through the whole thing. Mr. Beagle said no.

Mr. Macfee asked Mr. Peck if he wanted to speak. Mr. Peck said he did.

Mr. Ed Peck, 3736 SE Stubbs Road, Tecumseh, KS 66542

- An adjacent landowner to the operation.
- Said that he knew everyone had spent a lot of time trying to set it up so events could be held in the County and this type of event could be held and everyone would know about it.
- Said one of his last conversations with this group Mr. Tryon said that they would have to probably revisit this again.
- Said since the weather has been warm they have had to listen to motorbikes on a daily basis.
- Said he suspected not one of them would stand still to have that kind of disruption in their lives.
- Can plan no events in their back yard and do nothing because they don't know when those activities would be taking place.
- Said he thought he understood the wording in the regulations and the only thing the 501(c)3 filing would allow you to do would be exempt from having to pay a fee.
- Mr. Peck asked Ms. Heidrick if that was true. Ms. Heidrick said that was discussed but she was not prepared to answer that question.
- Encouraged the group to go back and tighten the regulations and the definition of private gatherings.
- Said the sign Mr. Keegan posted said private event and he wanted to make sure that whoever went by after seeing all the activity knew that it was a private event.
- Said he couldn't imagine when all the discussions were being held on private events, most generally you would think of a barbecue, wedding reception, etc.

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- Asked how many people thought a private event meaning inviting 60-70 friends over to ride motocross bikes and to have races.
- Asked the group to go back and revisit the definition under private gatherings.
- Thought that was under the guise of how he got around the regulations.
- It was a private event and invited his friends.
- Said he thought money had exchanged hands, but couldn't prove it.
- First, put some teeth into these regulations.
- Second, what was almost as bad, was the daily riding which was an annoyance to have a number of bikes riding because he has given them permission.
- Said the Board has said to the owner that he could give permission and not be there.
- The regulations said to host private gatherings. Said many times the owner was not there.
- Said it wasn't right and not fair and not justice what was happening out there.
- Said he thought the Board had the authority and the power to tighten the regulations up where they could work.
- He thought the way the Board intended it to work.
- Said he would appreciate every consideration that the Board could give them.

Ms. McKenzie thanked Mr. Peck for coming to the meeting and talking to them about the problem. She said it was the best way to handle it by contacting your County Commissioner and speaking to Mr. Beagle. It was the process. She said she appreciated him doing that. Mr. Peck said they wanted to go through the right process and he knew that was what they wanted.

Ms. Johnson suggested to Mr. Beagle to call Sheriff Jones so that he and his staff were aware.

Mr. Beagle said he wanted to response to Ms. Johnson's comment about Sheriff Jones being involved. He said that was fine. He said in the traditional application of the special event regulations if an event rose to a Type 2 or Type 3 event, as part of that evaluation process, the applicant has to submit a public safety plan and that was primarily because of Sheriff Jones saying that they should be building public safety into the design of the events. So, as a result, they would be receiving a copy of the public events plan along with the fire district, Public Works and the Health Agency, etc. They could then review/coordinate and then offering approval or approval subject to certain conditions. If a permit was approved then the Sheriff's Office would receive a copy according to the regulations of the public safety plan so they would be aware of the permit and the public safety plan. Then they would understand what their roles and responsibilities were. He said that would be a normal process associated with a special event permit.

Mr. Macfee said they couldn't take action. Mr. Beagle said he thought that what Ms. Heidrick said was they couldn't take action on amending any sections of the regulations. He said they could take action if they wanted to start the process like forming a committee or carry the discussion forward.

Mr. Macfee asked for a motion. Mr. Marolf asked if they could wait until they got some information back from Ms. Heidrick to find out exactly what took place. He said they may be jumping the gun. He said he may be in clear violation as it was.

Mr. Sook said he expected it to occur again. Probably on Memorial Day weekend. He asked if he could call the Sheriff's office and inform them of the situation. Mr. Macfee said yes. Mr. Sook said so they could have a record of that.

Ms. Johnson asked if he was having another event. Mr. Sook said he didn't know. Ms. Johnson told him she thought it would be his decision whether he called the Sheriff or not. Mr. Sook said since they were not bringing it through the Planning office, Mr. Peck would be informed if it was since he was within the

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1,000 foot radius. Mr. Beagle said the Sheriff's Office was not going to be able to do anything based upon him having a conversation with the Planning Commission. They could respond if there was obvious nuisances or infraction of the law. At this point, if a permit hasn't been issued, there would need to be some other infraction they could respond to. Ms. Heidrick said she thought it would be a violation to hold the event without a permit if it was an event that was supposed to be permitted. Ms. Johnson said they would have to know about that they had not applied for a permit and received one. Ms. Heidrick said she thought it had to be posted. Ms. Johnson said it didn't. Mr. Beagle said if there was a permit issued, the Sheriff's Office would get a copy and they would be involved in the process because they would have been involved with the public safety plan. If there was a sanctioned event and a special event permit was issued, they would have a copy in their records. Ms. Johnson said she thought the Sheriff needed to be pulled in on this whole conversation.

Mr. Tryon asked if it might be more of a violation issue rather than something wrong with the regulations. Mr. Macfee said it was not clear. Ms. Heidrick said it was not clear that they did anything to violate the regulation. Mr. Tryon said he thought they would be ahead of themselves if they tried to set a committee or anything in revising a regulation that they didn't know needed to be revised. Mr. Macfee said he just wanted to start with getting the information on the legal opinion on what the applicant's position or statement to the Counselor's office such as a paper record. Ms. Heidrick said she thought there was an email. She said she wished she could get access to it but it was basically just here's what we're planning on doing and does it fall under the special event regulations. And she thought the answer was from what you told me it does not fall under any of the types.

Ms. Johnson asked Mr. Macfee that if she walked in there and she gave them a false. The regulation can be the best it can be. But if she wasn't being honest with Mr. Beagle or with the County Attorney, she would be the one breaking the law by not being honest about it. She said she thought they needed to figure out was he not honest with he told them about. She said from everything she was hearing, he was not. There was no non profit. It wasn't a private affair. He charged for it. He did this but tried to get underneath it. She thought the regulations were really good and she wanted to hear what the background was that caused the County Attorney to say you're fine.

Ms. Heidrick said she could go back and ask but she couldn't make anyone tell her the truth. She didn't know what happened at the event. She didn't have an incident report from the Sheriff's Office to indicate if they went to the property. She could ask the Sheriff's Office if they were called and if an incident report was filed. Even if they didn't write a ticket and there was an incident report, they could provide her a copy. But she didn't have that.

Mr. Macfee asked if the opinion came down basically to the non profit. Ms. Heidrick said she didn't think there was anything mentioned of a non profit. She thought it was having a private gathering. Ms. Johnson said so the questions were reviewed and it was no, no, no, etc. Ms. Heidrick said she didn't know if it involved asking if they could have this event. She said she thought it was proposed as a hypothetical. If we did this, would this fall under this. It was here's the three types and doesn't appear so. Ms. Johnson said she thought they had a fairly tight regulation. She thought someone may have pulled a fast one on them. Mr. Macfee said they all would probably like to talk with the Sheriff. He said he would hesitate to drag him in to the discussion until they were sure what the basis of what happened. Ms. Johnson asked if they could continue the discussion in June. Mr. Macfee said it could go back under Item I. Ms. Johnson said with the background information from Ms. Heidrick. Ms. Heidrick said she could see what she could find.

Ms. Johnson said as far as Memorial Day. She said there was a very strong regulation if he came in and broke it again.

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Mr. Macfee said he was thinking about what he would do and try to talk to the Sheriff or staff at the Sheriff's Office to explain what happened. He said they probably weren't really knowledgeable about this event amendment. He said just to ask them what they should do. Ms. Johnson asked if the Sheriff was part of the conversations. Mr. Beagle said he was and he would be aware along with the Health Agency and the Public Works department, etc. Also the Sheriff's Office would receive a copy of the approved permit along with the public safety plan. If there was ever a question or call, they would have that in their possession to respond to whatever question. Ms. Heidrick said but only if a permit was required. Mr. Macfee said there probably wasn't any way to make it happen fast. Mr. Peck said he didn't think they were looking for a quick answer but looking for some help. Ms. Heidrick asked Mr. Sook and Mr. Peck if they had looked into any private action with regard to the issue. They responded they wanted to go through the proper channels.

Mr. Macfee said they had direction for the next meeting and take it up again next month. Mr. Beagle said it would be July as there were no cases in June. Ms. Johnson asked how important it was to take it up in June. Ms. Heidrick asked what date that would be. Mr. Beagle said it would be June 9. Ms. Heidrick said she would not be available. Ms. Johnson said that since Ms. Heidrick had been involved it would be important that she would be present.

Mr. Macfee thanked Ms. Heidrick for coming to the meetings. He said he could remember a time when they didn't see anyone from the Counselor's office.

Discussion of Planning Related Issues

Mr. Macfee said he would like to talk about the trip to Manhattan. He said he thought it was a great visit and appreciated Mr. Beagle putting it together. It brought it to reality that there was a real process that can work. He thought it was not out of sight or unaffordable. Commissioner Cook attended as well and seemed to be very receptive and asked a lot of good questions. He said he really like the approach of Riley County. Real down to earth in the way they looked at issues and in a practical way and didn't try to overreach. They formed this huge group and had a lot of meetings over almost a two year period. There was a lot of tough conversation. Ultimately, they were able to get everyone to buy in with what they were doing. They didn't overreach. He just hoped that they could get some movement this way and start the process.

Ms. Johnson asked who they met with there. Mr. Beagle said it was Monty Weidel, Riley County Planning Director. Ms. Johnson asked if there were any commissioners there. Mr. Beagle said he tried to get some Planning Commissioners there so there could be some pure level discussion about how they apply the Comprehensive Plan. He said there had been a follow-up request by one of the County Commissioners for Commissioner Cook to talk to so he could share his experience with the Riley County Comprehensive Plan. He said he passed his name on to Commissioner Cook hoping they would talk. Mr. Macfee said Riley County was really different. Ms. Johnson said that was where she was from. Mr. Macfee said they had a clear ag portion of the county. The lines were pretty distinct. He said he was stunned by the way the Planning Director talked about how the city and the county were working together. He said he knew it was sounding easier than it was. He was sure they had their conflicts. Ms. Johnson said they really didn't. It was a fascinating system. They had a consolidated police department. She said she was on the City Council for four years and there was never any ugliness between them.

Mr. Beagle said Ms. Heidrick had some things she wanted to communicate to the Commission. Ms. Heidrick said that Commissioner Cook had asked her to find out from the Planning Commission if they would be in favor of conducting the survey that Mr. Beagle talked about at the last meeting. She said regardless of whether that ultimately ended up in a Comprehensive Plan but at least getting the ball rolling with a survey. His question to her was he wanted to know if the Planning Commission would be in favor of that. So she wanted to get some feedback from them as to if they were in favor or not. She said that based upon the information that she had gleaned from the meeting through their comments from the PUD

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application, it seemed pretty clear that they would be in favor. If she was wrong, let her know. Ms. Johnson asked if they needed to vote. The Commission was all in favor of a survey. Ms. Heidrick said she would give Commissioner Cook the information. Mr. Macfee said he really thanked Commissioner Cook for attending. He said it meant a lot to see him there. It showed that they were taking it seriously. Ms. Heidrick said he was asking a lot of questions and being very engaged.

Mr. Macfee said he just didn't want it be a giant waste of time for something that sat on a shelf. In seeing the presentation from the Planning Director and what it actually needed and the way they used it. It sort of broke down his defenses a bit. It was a real active document that was used. Ms. Heidrick asked if they put their document together in house. Mr. Beagle said they had and it took four years. Mr. Tryon said they had a huge advantage in a natural separation from the city and rural that we didn't have. Mr. Macfee said that our urban has moved out into the rural so much that it should get real interesting.

Ms. Heidrick said she thought the City had asked for the Planning Commission's feedback on their plan. Mr. Beagle said that it had been a conversation he had with the City Planning Director. There had been no official request made.

Adjournment:

Mr. Marolf moved to adjourn, seconded by Ms. McKenzie. A unanimous voice vote declared the public hearing be adjourned, which was at 8:00 p.m.