

MINUTES OF THE SHAWNEE COUNTY PLANNING COMMISSION

Monday, September 8, 2014
Shawnee County Annex
6:00 PM

Roll Call and Announcement of Hearing Procedure: Brian Jacques, Chair, called the meeting to order and asked for roll call to be taken.

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

Members Absent: Lynn Marolf.

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

Approval of May 12, 2014, Public Hearing Minutes: Ms. Heidrick stated there were two instances where something she said was incorrect. She said there was a reference to a building permit and it should have reflected a special event permit. She said when they were talking about the motocross event, the minutes made it sound as if there was a Sheriff's incident report. Since there was not, she didn't want any misleading information in the minutes. Mr. Beagle stated the changes would be made. Ms. Johnson moved for approval of the May 12, 2014, public hearing minutes, seconded by Ms. McKenzie and, with a unanimous voice vote, the minutes were approved.

Approval of August 11, 2014, Public Hearing Minutes: Mr. Tryon moved for approval of the August 11, 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. Bauer Subdivision (Preliminary and Final Plat Phase) [P14/01]** by Callahan Construction Inc. for property located on the east side of NW Topeka Boulevard, approximately one-half mile south of NW 82nd Street, in Soldier Township.

Mr. Jacques said the item would be suspended until the end of the meeting due to the applicant not being present.

At the end of the meeting, Mr. Jacques acknowledged the applicant was still not present and suggested tabling the item. If the applicant wanted to be present in October then it would be reviewed. Mr. Beagle said he was surprised that no one was present; however, it was just a one lot replat. Ms. Heidrick said they could act without the applicant being present.

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Ms. McKenzie asked what was on October agenda. Mr. Beagle said there was a variance request to reduce a side yard setback for the Board of Zoning Appeals, a zoning request for a PUD at 62nd and Elmont for a commercial use and a Conditional Use Permit for a medical care facility Type 2 for a use already established on SW 29th Street. Mr. Beagle said they could add the Bauer Subdivision as well.

Mr. Jacques asked for a motion. Mr. Tryon stated he would like to hear something from the applicant and preferred to table the item. Mr. Appelhanz agreed. Ms. Johnson moved to table the item until the October 13, 2014, public hearing, seconded by Ms. McKenzie. With a vote of **6-0-0**, the item was recommended to be tabled until the October 13, 2014, public hearing.

Public Comment on Non-Agenda Planning and Zoning Items:

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

Discussion of Planning Related Issues:

Discussion Regarding Community Survey Proposal. Mr. Jacques requested a brief synopsis of the item that was presented to the County Commission. Mr. Beagle said the RFP request to retain a qualified survey research firm to assist in developing a community survey was deferred twice by the County Commission with requests for additional information. At the last meeting, they asked staff to address the advantages and benefits of a comprehensive plan; indicate the projected cost of preparing a comprehensive plan; and, why prior County Commissions had not approved one. He said he had been working on a response to their request for the September 11th Commission Agenda but received notification that the item would be tabled indefinitely. He said their action put on hold any further consideration of the proposal until the Commission either requests more information or puts the item back on the agenda.

Mr. Jacques questioned whether they would address it. Mr. Beagle said it was up to the County Commission to move forward with the proposal. He said he had no control with regard to the timing and would be relying on one of the Commissioners to bring it back up on the agenda.

Ms. Heidrick asked when Mr. Beagle received notification. Mr. Beagle said he had received a phone call from Ms. Rezac earlier that day.

Ms. Johnson asked if it would be on the agenda for Thursday. Mr. Beagle said it would not.

Mr. Jacques asked if the County Commission had provided any guidance since the Planning Commission had been delegated the additional \$50,000 to take action and complete some planning-related projects. He wondered if the proposed project was not the one they wanted and if there was another project they wanted to consider. Mr. Beagle said he had not received such indication from the County Commission. This was the first attempt to present a project for consideration and was still optimistic. Mr. Jacques asked if it was appropriate to ask them. Mr. Beagle said if he did not hear anything in the next few weeks, he would make some phone calls to get some sense of direction. He assumed that maybe a member or two wanted to review and make sure they fully understood what a community survey was designed to do and how the survey would be used. He said if there was no movement on the project then he would approach them about what the alternative might be.

Mr. Macfee asked Mr. Beagle if he had provided a copy of the Riley County Comprehensive Plan to the Commission. Mr. Beagle said he had put together information about what a comprehensive plan was designed to do, what the community would take from it and how the citizens would play a central role. He said he had planned to attach a copy of the Riley County Plan for the September 11th meeting so the

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County Commission could see a completed product that was used by public officials as well as the citizens in order to make land use decisions.

Mr. Macfee said when you drilled down for information on their website, the whole survey process was shown. He said he thought it was revealing that with each round of public surveying, certain concerns and fears were addressed. He said it was shown how progress was made through their community meetings.

Ms. Johnson asked if Commissioner Cook went to Riley County with the group. Mr. Beagle said he had.

Ms. Heidrick asked Mr. Beagle if he would still be providing a response to the County Commission. Mr. Beagle said he would finish his response to the County Commission on the comprehensive plan after he finished with the three cases scheduled for the October Planning Commission Agenda.

Off-Road Racing Venue. Ms. Heidrick said she had information regarding the topic discussed at the May meeting when Mr. Peck and Mr. Sook addressed the Commission.

Ms. Heidrick said the Planning Commission had asked whether the Sheriff's Office went out to the property. Ms. Heidrick said there was no incident report nor any record of a call being made to the Sheriff's Office.

Ms. Heidrick said she spoke with Mr. Keegan on a couple of different occasions at length. Mr. Keegan indicated that it was a private event that was not open to the general public. He had initially thought it was going to be an event open to the general public and sought guidance from Mr. Beagle on securing a permit. She said there was conflicting stories on how that meeting went.

Ms. Heidrick said Mr. Keegan then sent the following email to Mr. Eckert, County Counselor; "I had a meeting with Barry Beagle a couple of weeks ago to start the process of applying for a special event permit. During the course of the meeting, I mentioned that I was interested in having a private event not open to the general public which would forego the special event process and permit and Barry discussed running this by you. I want to know if I would be violating any County regulations if I have a private, invitation-only event on my private property. The event is not open to the general public regardless of the donations and/or awards."

Ms. Heidrick said the response sent to Mr. Keegan said the resolution did not apply to invite-only private events. She said a copy of the event definitions were attached.

Ms. Heidrick said Mr. Keegan had the private event. She said she spoke with Mr. Keegan and he indicated he had no intention of having an event over Memorial Day weekend and didn't foresee any events in the near future. She didn't know if that was the case and thought Mr. Beagle could comment on whether he had heard from any complainants since that meeting. Mr. Beagle said he had not. Ms. Heidrick said she didn't know if they have had additional events or not.

Mr. Beagle asked Ms. Heidrick if her office had provided Mr. Keegan information about having future events. Ms. Heidrick said she sent a letter to Mr. Keegan, after reviewing all the information, to inform him that she did not find any violation of the special event regulations since the event was not open to the public. She also reminded him that his property was zoned as RA-1 (Rural Agriculture District) and the principal use couldn't be a recreation track for vehicle racing without a Conditional Use Permit. She also reminded him that if he was using the property for that use, he couldn't do it under those regulations. She said she had not received any complaints or had any reason to believe that he was using his property for that use. She said she did tell him on the phone and in the letter that if he did so it would be a violation of the regulations.

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Mr. Jacques asked Ms. Heidrick if a recreational facility needed to be open to the public. Ms. Heidrick said it was in the regulations for the RA-1 District. It listed out the permitted uses and listed the uses that would be allowed with a Conditional Use Permit. One of the uses that was not permitted absent a Conditional Use Permit was a race track. The principal use had to be a race track. She said it was a completely different way to enforce the racing on the property than what was done before when they applied for a Conditional Use Permit to have the events on the property.

Mr. Jacques said he meant if it was used as a racing facility. He asked, if Mr. Keegan or his friends were out there riding their motorcycles, what would determine if it was a racing or non racing event. He said it was a very slippery slope and subject to vast interpretations if it wasn't a public event. He questioned what would make it the principal use. He said it seemed like an attempt to come back with this use and that concerned him. He said the special use permit was the way to deal with those issues.

Ms. Heidrick said it was because Mr. Keegan wanted to have big events. She said Mr. Jacques was right and there was a distinction. The regulations stated there shall not be a recreation track for vehicle racing. From the very beginning, the principal use of the property was not for that purpose. They were having these large events three times a year. There were other things going on at the property that weren't an issue for the complainants. She said Mr. Peck and Mr. Sook complained how there was constant racing on the property at the May meeting. Mr. Keegan said something different. She said she didn't know what enforcement she could do other than sending Mr. Keegan a letter informing him of what he couldn't do under the regulation. Mr. Jacques said he thought people were riding as opposed to racing. Ms. Heidrick said she didn't know if they were having races or what they were doing.

Mr. Beagle said it was made clear at the beginning in working through the draft of the special event regulations that they didn't want to regulate private events. He questioned the other so-called private events which were by invitation only but more or less still organized activities on a site being used as a regular venue. He asked if that would be considered a commercial outdoor recreational facility subject to a Conditional Use Permit. If it was an organized activity of some form, even though private, and doing it on a continuous basis then it would potentially be looked at as a Conditional Use Permit. The question arose as to how to define primary.

Mr. Jacques asked if this would be an issue that would be heard by the Board of Zoning Appeals. Mr. Beagle said if they learned of an event or the applicant contacted them and it would require a Conditional Use Permit and the applicant disagreed. The applicant could challenge or appeal that decision to the Board of Zoning Appeals.

Mr. Jacques said if there was a determination made by the Planning office that it was the primary use of the property then it could be appealed. It was agreed.

Ms. Heidrick said a Conditional Use Permit was applied for when this originally came up and that Conditional Use Permit would have effectively regulated this and all of the problems. Mr. Keegan would have been limited to certain events, certain times of year, limited number and she believed the Planning Commission passed that Conditional Use Permit. When it went before the County Commission, Mr. Peck and Mr. Sook requested the Commission not pass it. So, the County Commission denied the request.

Ms. Heidrick said the Planning Commission tried to address this topic again with the special event regulations. She knew the topic of private versus public and where to draw the line was discussed at those meetings. She guessed it wasn't working to the satisfaction of a couple of property owners so they were back asking again for help. She said at some point it became a private issue and not a public one. It was the Planning Commission's job to protect the health, safety and welfare of the public but they couldn't draft an all encompassing regulation to fix one property owner's issues.

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Mr. Jacques said there wasn't any action requested on that issue but appreciated Ms. Heidrick's research. Mr. Beagle said they had discussed bringing the special event regulations back up for discussion to see how well it was working. He said he received a request for a Type 2 special event for a music festival scheduled for September 13. He said a Type 2 event was subject to a checklist review. If everything was found to be compliant, it would be a rubber stamp approval. He said he as coordinating with the Sheriff's Office, fire, Public Works and the Health Agency to make sure all the issues were addressed. Mr. Jacques said if there was a motion to review, they would do so at that time. If not, then they would proceed forward.

Mr. Jacques said they would go back to the Bauer Subdivision item.

Adjournment:

Ms. McKenzie moved to adjourn, seconded by Ms. Johnson. A unanimous voice vote declared the public hearing be adjourned, which was at 6:30 p.m.