

**MINUTES OF THE
SHAWNEE COUNTY PLANNING COMMISSION**

**Monday, November 10, 2014
Shawnee County Annex
6:00 PM**

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

Members Present: Brian Jacques, Pat Tryon, Lynn Marolf, Nancy Johnson and Matt Appelhanz. With five members present a quorum was established and the meeting was called to order. Ms. Christi McKenzie arrived shortly after roll call was completed.

Members Absent: Dave Macfee.

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

Approval of October 13, 2014, Public Hearing Minutes: Mr. Jacques asked for approval of the October 13, 2014 public hearing meeting minutes. Mr. Beagle indicated the minutes were delayed in being completed and requested they be continued to the next meeting. Ms. Johnson moved to continue the October 13, 2014, public hearing minutes until the next meeting, seconded by Mr. Tryon and, with a unanimous voice vote, the minutes were continued.

Communications: Mr. Beagle indicated he had provided them a copy of the memo that he sent via e-mail regarding the City's Land Use and Growth Management Plan and suggestions of areas of discussion and also a draft transcript from the November 3rd County Commission meeting when the item was presented for their review and consideration. He said he wanted to discuss the item further under "Discussion of Planning Related Issues".

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. Shawnee Heights United Methodist Church Subdivision (Preliminary and Final Plat Phases) [P14/02]** by Cook, Flatt and Strobel Engineers, P.A. for property located at 6020 SE 44th Street in Tecumseh Township.

Mr. Jacques asked for the presentation from staff.

Mr. Beagle stated it was a simple subdivision request. The applicant proposes to split-off a residential dwelling located about the northwest corner of the property to allow for its sale independent from the church. The division of the property into a half acre lot would create a lot that was not compliant with the 3 acre, 200 foot of frontage rule and a plat of subdivision was required in order to accommodate the request. A two-lot subdivision is proposed with the church occupying Lot 1 and the house occupying Lot 2. The plat was reviewed by Public Works and the Health Agency. Public Works indicated they had no concerns or objections to the plat for drainage arrangements. The Health Agency did not have any issues or concerns with the establishment of the new property line between the two lots and the location of the septic tank and lateral fields. Staff recommends the proposed plat be approved as submitted.

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Mr. Jacques asked if the applicant was present.

Mr. Kevin Holland-Cook, Flatt and Strobel Engineers, appeared on behalf of the applicant and provided the following comments:

- He said it was a simple subdivision.
- The applicant had been renting the house for some time and wanted to parcel it back off.
- He said it was a win for everyone as it would remove a tax-exempt piece of property and put it back on the tax roll.

Mr. Jacques asked if anyone had any questions. There were none. Mr. Jacques then asked if anyone else wanted to speak.

Mr. Mike Adams-Cook, Flatt and Strobel Engineers, said he prepared the plat and wanted to reiterate the lot size for the house was put back as it was originally created in 1965 and was not enlarged since the church had some laterals in the way.

Mr. Jacques asked about the laterals that appeared behind the property line. Mr. Adams said they were included with the church and indicated the ones that went with the house.

Mr. Beagle said the Health Agency reviewed the plat and had no objections to the location of the septic tank and lateral fields.

Mr. Marolf asked if it was unusual to have a half acre lot with a septic system. Mr. Beagle said they were rarely created today. He said lots of the same size or less today are usually associated with a sanitary sewer system. He said they were creating larger lots if they required a septic tank and lateral field. Mr. Adams said in 1965 it was a common practice.

With no further public comment, Mr. Jacques closed the public hearing and asked for discussion from the members. There was no discussion so he requested a motion.

Mr. Marolf moved to recommend Approval of the proposed Subdivision; seconded by Mr. Appelhanz. With a vote of **6-0-0**, the item was recommended for **Approval**.

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. Jacques opened discussion on the City's Land Use and Growth Management Plan and requested Mr. Beagle review the memo provided to the Planning Commission outlining some of his concerns and issues and discuss the possibility of offering comments and/or a recommendation to the County Commission.

Mr. Beagle thanked the Commission for the opportunity to discuss this and provided the following comments:

- Mr. Bill Fiander and Mr. Dan Warner, City Planning staff, had presented their plan to update the City of Topeka's Land Use and Growth Management Plan (LUGMP) at the August meeting of the Planning Commission.

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- The Planning Commission primarily took note of the policy change to increase the current plat exemption (3 acres and 200 feet of frontage) to 20 acres which prompted discussion by the Commission.
- The City's Planning Commission approved the plan on October 20th and the City Council is set to take final action on the LUGMP update on November 18th.
- On November 3rd, Mr. Beagle said he appeared before the County Commission to discuss the City's proposed LUGMP update and the impacts it may have on property owners in the three-mile area encompassing the City. He said his main objective was to inform the Commission of the changes proposed by the City and to express concern that residents in the three-mile area may not be fully aware of these changes and how it may affect their property. The meeting concluded with no specific direction provided by the County Commission but they thanked everyone for offering comments.
- Thought the proposal in terms of growth management made sense.
- Mr. Beagle said the City was not doing anything illegal or outside the bounds of state statute, which gave them the ability to adopt a comprehensive plan.
- The City held three open houses for which they issued press releases announcing the meetings but no targeted mailing was sent to residents of the unincorporated area.
- Asked if the Planning Commission wanted to discuss and offer comments, questions and concerns to submit to the County Commission which then could be shared with the City Council.
- Shared the slides he presented to the County Commission which outlined the current state of the three mile area with regard to the breakdown of parcel sizes.
- Identified three potential items they might want to consider to offer to the County Commission and then forward on to the City Council:
 1. A public involvement process whereby the residents would be specifically notified of the policy changes being proposed and given the the opportunity to review the plan and offer comments prior to City Council action.
 2. The County Commission could ask the City Council to form a joint committee on subdivision regulations to collectively set the rules for subdivision development within the three mile area.
 3. The City was proposing to apply the 20 acre lot exemption to the entire three mile area even though their immediate area of interest was the urban growth area. If we planned for the balance of the three mile area and beyond with a comprehensive plan, then possibly the City would limit the 20 acre exemption requirement to just the urban growth area.

Mr. Jacques asked if it was a subdivision issue or a building permit issue. Mr. Beagle said it was a combination of both. Since 2003, following the breakup of the City/County planning program, the City extended their subdivision regulations within the three mile radius giving them exclusive jurisdiction over the division of land. Beyond the three mile limit to the County boundary, Shawnee County retains subdivision plat authority as well as controlling the zoning and building permit authority for everything beyond the city limits. In the three mile area, the City's and County's regulations have been in sync with no conflict and both regulations said you were exempt from platting provided the owner maintained a minimum 3 acre parcel size with 200 foot of frontage. If the City approves the plan, the County's Zoning Regulations would not change. But the City's subdivision regulations would require a land owner to plat unless they maintain a 20 acre minimum. Also there would be the question of how it would be implemented.

Mr. Jacques questioned how the process would work if someone had a 25 acre lot and they wanted to split off 5 acres into a building lot. Mr. Beagle said he was having meetings with the City to discuss those issues.

Mr. Jacques asked what would happen today under the existing regulations. Mr. Beagle said if the property was greater than 3 acres with 200 foot of frontage, a building permit could be secured from the County Planning office after review and approval without involving the City.

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Mr. Jacques asked how it would work under the new proposal. Mr. Beagle said if a land owner wanted to subdivide a tract of land less than 20 acres and less than 300 foot of frontage, it would be subject to a plat of subdivision and go through the City's platting process. If a land owner proposed to subdivide less than 3 acres today, the plat would have to go through the City's Planning Department, Planning Commission and City Council for approval. If a land owner came in after the proposal took effect, there would be a conflict since an owner could get a building permit with 3 acres per the County's regulations but the City's subdivision regulations would say you couldn't divide a lot less than 20 acres without involving a plat of subdivision.

City Planning said the County should direct property owners to their office to deal with the plat issue before the County takes action on any building permits. Mr. Beagle said he had met with Mr. Fiander once and would be meeting again to discuss how they would implement the changes. He said he has requested the City develop a set of guidelines and a checklist that all offices and landowners within the three mile area could understand.

Mr. Jacques asked how it would be handled if it was a subdivision issue. Mr. Beagle said an existing lot of record with less than 20 acres would be grandfathered. Today, he said a parcel with less than 3 acres would be grandfathered if it was created prior to 1992 when our current regulations went into effect. He said it would be the same with implementation of the new 20 acre rule. If it was an existing lot less than 20 acres established prior to the new regulations taking effect, they would be grandfathered and would be able to secure a building permit without going through additional approvals, etc.

Mr. Jacques asked if someone had divided their property and filed the deed but there was no plat of record, they would have to be sent to the City. Mr. Beagle said that was what the City was requesting we do. For example, if there was a +20 acre parcel and they wanted to create smaller lots, we would direct them to the City.

Mr. Jacques asked if the City had requested the Home Builders Association input on this issue. Mr. Beagle said he did not know. He said Mr. Fiander's direct response to the County Commission's question was there would be some notification of property owners when they got to the implementation stage. It was not known if there would be press releases or a targeted mailing to property owners.

Ms. Johnson asked if the landowners in the three mile area were paying city or county taxes. Mr. Beagle said they were paying county taxes.

Mr. Jacques said they were being regulated by an entity that residents had no voting authority. Ms. Johnson agreed. Mr. Beagle said the county residents in the three mile area do not elect the officials that governed the subdivision process in the three mile. They were being regulated without representation.

Ms. Johnson asked if they had any say on this or was the City just notifying them. Mr. Beagle said the City was entitled to adopt the changes. They are abiding by state statute which gives them the ability to adopt a comprehensive plan and provide for planning beyond the corporate limits because it can be implemented through their subdivision regulations.

Ms. Johnson asked who was going to regulate the three mile area. Mr. Beagle said the regulatory framework would be the same as today with the City still controlling the land division process within the three mile area; but, zoning and building permit authority would still be controlled by the County.

Mr. Jacques said if you subdivided out in the three mile area before, you would have to go to the City Planning Department to submit their plat for review/approval. Ms. Johnson asked if they had to do that before. Mr. Jacques said they did. The difference was the County rules outside the three mile area and

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inside the three mile area were the same but now they would be different. He said he thought it was primarily a notice issue.

Mr. Tryon asked if they should review and tell the Commission their response to the plan. He said it would be nice if they had a response to that. He said he didn't want to get into the tier information. He read the report. He didn't disagree with what they came up with. It made a lot of sense. He asked if they could say they agreed not in whole but in principle with the plan but they didn't agree with the 20 acre minimum and they would certainly enter into some sort of discussion on how to implement the plan. He asked if that was what Mr. Beagle was requesting. Mr. Beagle said he didn't have any objections to the policies and recommendations of the plan; however, it was whether or not the residents within the three mile area were fully informed of the proposed changes. Mr. Tryon said he didn't think they had been informed.

Ms. McKenzie stated Commissioner Cook had asked if a notice was going to be sent to the potentially impacted landowners. Mr. Beagle answered that, according to Mr. Fiander, notice would be provided to property owners only after the plan was passed but in advance of a proposed amendment to their subdivision regulations.

Ms. Heidrick commented it was just the plan. Then they would have to implement the regulations.

Ms. McKenzie said the landowners didn't know. She said not everyone read the newspaper or checked online.

Mr. Beagle said that was why he brought it to their attention. There was nothing that said the City couldn't adopt the plan as it was currently drafted; however, once the plan was adopted, then the only thing that was left was to change their subdivision regulations to implement. If people wanted to have the opportunity to potentially influence the plan, it should be done now before the plan was adopted.

Mr. Jacques asked Mr. Beagle when the City would start the process. Mr. Beagle stated Mr. Fiander indicated that this was a policy document. But in the next couple months, they would start the process of amending their subdivision rules. Mr. Jacques asked if there could be a period of time where there could be mass filings. Mr. Beagle agreed.

Ms. Heidrick asked if the 20-acre plat exemption was part of the 2025 plan. Mr. Beagle said there was a small provision within the 2025 plan that suggested changing the lot exemption size from 3 to 20 acres. It was not really stated as a policy.

Ms. Johnson referred to the comments Mr. Fiander made at the October 30th meeting. Mr. Beagle said it was the City's contention that because of this one provision within the 2025 plan and the 2025 plan was a matter of policy including the 20 acre exemption rule, it was never formally implemented through their subdivision regulations.

Ms. Johnson stated she was not in favor of forming another committee to make the decisions regarding this.

Mr. Marolf thought it was a general consensus that the three mile acreage limit was a stumbling block. He asked if there was some type of action they could take that would send a message to the County Commission to state that in general they agreed with the City plan but they were opposed to the 20 acre minimum in the three mile area.

Ms. Johnson said they could go a step further and say they were opposed to the plan being ratified November 18th because it was not adequately announced to the people who it would affect.

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Mr. Tryon said he agreed. He asked if it made sense to do what Mr. Beagle said in having a certain number of members from the City Planning Commission and the County Planning Commission and address this issue. He said this was no man's land and both parties should be weighing in.

Ms. Johnson said she understood from Mr. Beagle's memo that the committee would agree on what the 20 acre subdivision rules would be and bring it back to each of the bodies and what the committee decided would stand.

Mr. Beagle said he was suggesting that possibly the City Council and the County Commission could agree voluntarily to form a joint committee on subdivision regulations in the three-mile area. He said it was a change from the memo. He asked Ms. Heidrick how to proceed. Ms. Heidrick said she thought the Planning Commission was saying they were not sure they agreed with that.

Mr. Beagle said the idea behind it was both governing bodies agreeing to form a joint committee that would be responsible for crafting the subdivision rules and regulations that apply specifically to the three mile area and would agree to cooperatively implement those changes. It would be a way of bringing both governing bodies to the table to have a discussion.

Ms. Johnson asked if there was going to be a separate governing group. Mr. Beagle said it would be a joint committee that would then take over the planning authority from the City. The joint committee would then review all divisions of land within the three mile area. They would act on not only the subdivision rules and regulations but also act on the plat. Based on how the rules and regulations were set up and adopted, it would either go to the City Council or the County Commission or jointly to the two governing bodies to require approval.

Ms. Johnson said she didn't like that idea because she thought it set up another governing body. She thought they could come up with the rules. She didn't want them to make the decisions. She asked if that was what he was saying. Mr. Beagle said absent the formation of a joint committee, he didn't know of another way, if they maintained independent planning programs, to bring the City and the County together to jointly plan for areas extending beyond the city limits.

Mr. Jacques said it would be similar to Riley County's metro planning which dealt with these issues. It was not a foreign approach. The downside was they would create another layer of bureaucracy which may or may not be helpful. He asked who would oversee it. Mr. Beagle said those would be the details they would need to work out. Mr. Jacques said ultimately the city was going to vote on the subdivisions and they would have governing control over the three mile area. Other than asking that the County be allowed to participate in that, he wasn't sure what benefit the County would bring to the table. Mr. Beagle said it was a question of why would the City relinquish controls to a third planning body that jointly has to cooperate between the City and the County when the City had exclusive subdivision authority. It was a way of encouraging both parties to come together and jointly work out development for the three mile area.

Mr. Tryon said if they rejected it, the City would say they knew it would be and they would move forward.

Mr. Jacques thought it would be of particular importance to present the questions. He wanted to make sure the Home Builders Association was informed and offer them the opportunity to discuss it. Also to tell the County Commission that they may be fielding some calls from their constituents in the three mile area on this issue. It might be a big issue for those landowners. He mentioned the landowners who had purchased property as a nest egg for their retirement so they could sell off lots to help pay for their retirement. That might not happen for those people. He said sending a notice earlier would be better. He said they were being regulated by someone with no voting power.

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Mr. Beagle said there was nothing Shawnee County could do to prevent the City from adopting the plan.

Mr. Marolf said in Riley County the 20-acre minimum lot size requirement backfired on them. Their Planning Director said they changed it to a 20 acre minimum and it caused the land to be snatched up even more so. He said they changed it back.

Mr. Beagle said with the City Council set to take action on November 18th and the County Commission not meeting until November 17th, he didn't know how much of an opportunity they had to express something to the County Commission that they in turn may identify with and offer comment to the City Council for their consideration. He said he would make every effort to put it before the County Commission so they could review the Planning Commission's thoughts and decide whether they wanted to offer anything to the City Council.

Mr. Jacques moved to submit the Planning Commission's comments to the County Commission regarding the City of Topeka's policy change on lot exemption size as part of their update to their Land Use and Growth Management Plan as follows:

- The Planning Commission could appreciate why the City thought their policy change made sense.
- The Planning Commission did not necessarily endorse the 20 acre policy but they could understand the City's rationale.
- The Planning Commission felt the change may cause issues to the residents of Shawnee County in the 3 mile area.
- The Planning Commission was concerned there were residents that didn't have notice of the proposal.
- The Planning Commission questioned if the developers and the Home Builders Association were notified and whether they were asked to provide input.
- The Planning Commission felt it might make sense to do those things before a vote was taken so everyone would have an opportunity to be heard on the issue.

Mr. Tryon requested discussion. He asked if their comment should be that they don't agree with it as presented.

Mr. Jacques said it was the motion he felt he could make. In part because he truly believed that there were benefits and drawbacks to the three acre rule. Without enough time, he wasn't sure he wanted to be pinned on that issue. He suspected the County Commission would take a very diplomatic approach. He said he thought it was a notice issue. He was confident that they weren't going to come out and say 3 acres, 20 acres. They want to make sure our residents are heard on this issue because it was going to have a dramatic effect on the residents. It might substantially affect the value of their property.

Mr. Marolf said he heard it was going to be in the news soon. Mr. Jacques said if you owned a piece of property, you would value it as building lots versus having to subdivide it. He wouldn't assume you could get a subdivision unless you had city services. He said the thought behind the 20 acres was you could then go in and do a subdivision as the City got closer. Mr. Beagle said the remaining balance of the 20 acre tract could then be converted into urban development.

Ms. Johnson felt the City, under City Manager Colson, wanted transparency. By not giving notification to the residents directly involved, that was not transparency. It seemed like it was trying to get something through before anyone knew about it. They could have sent out a number of press releases. She didn't read the newspaper. Ms. McKenzie said some who lived in the three mile area could have read it but since it referenced the City, they possibly dismissed it because they assumed it didn't pertain to them.

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Mr. Jacques asked if they knew for sure that notification had not been given to the residents. Mr. Beagle said he had asked and was told it would be after the plan was approved. There were no targeted mailings, only press releases about the three open houses.

Mr. Tryon said he read the plan thoroughly and it was comprehensive. He thought it was well done and it was a big deal as part of that plan.

Ms. Johnson asked how it would fit in when the County put together a plan. Mr. Beagle said it would be an element that would be taken into consideration.

Mr. Jacques said there was still a motion on the table. He asked if there was any further discussion.

Mr. Jacques said the crux of it was saying they didn't disagree or agree with the 20 versus 3 acre approach. They did have some concerns about notice. The County Commission might be fielding calls from their constituents if notice wasn't given. Mr. Marolf said it was going to blindsides a lot of people. Ms. Johnson called for a vote.

The motion was seconded by Ms. Johnson. With a vote of **6-0-0**, the item was recommended for **Approval**.

Mr. Beagle thanked the Commission for their consideration and discussion. He said he would draft up a memo for Mr. Jacques' review and submit it to the County Commission.

Ms. Johnson said one of their major concerns was the people not being notified. Mr. Jacques said that was the crux of it.

Ms. McKenzie stated she remembered the comments she heard from people who had purchased land as a means of retirement income and that really hit home for her because they had heard that so many times. Mr. Jacques said he remembered the discussion regarding the substation. Ms. McKenzie said it was a really important point.

Ms. Heidrick said her and Barry had discussed how the City's proposed grandfather clause would work but it wasn't very clear as of yet. Mr. Jacques said if there was a period of time indicated, he could only imagine what the County's Planning office would look like.

Mr. Beagle said he didn't know if the City was going to have a moratorium. He thought maybe they would rely on the effective date of their regulations being amended. He said he was going to suggest the policies be written into very specific regulatory language so that everyone would understand.

Mr. Jacques asked Mr. Beagle if it would be in their best interest to notify applicants that it was a city issue and give them the general information from the City as to how it would work and then send them to the City. Mr. Beagle said that was why he wanted to draw the County Commission into the discussion so they would know before they started getting phone calls regarding the issue.

Ms. Johnson requested a copy of the draft memo so she could talk to her appointing County Commissioner.

Adjournment:

Ms. Johnson moved to adjourn, seconded by Ms. McKenzie. A unanimous voice vote declared the public hearing be adjourned, which was at 7:04 p.m.