

**MINUTES OF THE
SHAWNEE COUNTY PLANNING COMMISSION**

**Monday, February 9, 2015
Shawnee County Annex
6:00 PM**

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

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

Members Absent: Pat Tryon, Nancy Johnson and Christi McKenzie.

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

Approval of January 12, 2015, Public Hearing Minutes: Mr. Macfee asked for approval of the January 12, 2015, Planning Commission public hearing meeting minutes. Mr. Marolf moved to approve the January 12, 2015, minutes, seconded by Mr. Jacques, and with a unanimous voice vote, the minutes were approved.

Communications: Mr. Beagle stated he had provided them with a possible additional condition associated with Item 1 as discussed at the Friday, February 6, 2015, informational meeting.

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. CU14/05 by Hays Investments LLC** seeking a Conditional Use Permit to authorize a Medical Care Facility Type II on property zoned "RR-1" Residential Reserve District and located at 8722 SW 29th Street in Mission Township.

Mr. Beagle said the applicant was requesting a Conditional Use Permit (CUP) to establish a Medical Care Facility Type II. Known as Equi-Venture Farms, LLC, the 3.8 acre property is part of the applicant's 30 acre horse farm.

Equi-Venture Farms is a separate entity owned by Hays Investments, LLC that was specifically formed to provide structured day services, Monday through Friday between the hours of 7:45 a.m. and 5:30 p.m., to adults (ages 17-65) with intellectual and developmental disabilities. It has operated under a Kansas Department on Aging and Disability Services license to provide day services since 2001. The facility could serve over 100 individuals but rarely has more than 75 clients on the property at any time. No residential services are provided such as overnight accommodations.

The facility has been in operation from the current location for the past 14 years. Staff is not aware of any complaints received since its operation from 2001 to present. Clients are transported to the facility for day services. Up to 24 staff members are present while the facility was in operation. Most activities appeared to be confined to one of six buildings on the property but outdoor activities were also provided.

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The services provided require a Conditional Use Permit under the "RR-1" District as presently zoned. It has been operating without a CUP and in violation of the Zoning Regulations. If approved, the proposed CUP would bring the present use of the property into compliance.

The property was on the advancing fringe of low density residential land use extending west of Topeka. This area is comprised largely of undeveloped agricultural lands in addition to developing rural residential neighborhoods. This area was expected to continue to develop for low density residential land use over an extended period of time.

As far as land use compatibility, because of their potential size and range of services provided, a Medical Care Facility Type II could have operating characteristics that may be incompatible with area property in a given location. It is for this reason that a CUP is required on which to evaluate the facility's compatibility in the proposed location. Reasonable conditions could be attached to a CUP to maximize compatibility once it was determined that the use itself was consistent with the general character of the area.

Mr. Beagle said the facility is bounded on three sides (north, east and west) by the balance of the applicant's 30 acre farm. The properties that would be most directly affected by the facilities operation would be the developing Greenridge Estates Subdivision immediately to the south. With no new structures proposed and no residential services or overnight accommodations provided, Mr. Beagle said staff does not anticipate the continued operation of the facility to be a deterrent to the continued use and enjoyment of neighboring residential property. From an external appearance standpoint, the facility still looks like the original farmstead of the 30 acre horse farm.

Based on the rural character of the facility, Mr. Beagle said it does not appear that the height and scale of existing buildings was in conflict with area property. The facility consisted of six structures including the original farmhouse and associated buildings. A gym and open-sided shelter house have been built on the property without obtaining a Shawnee County building permit. Depending upon the outcome of the CUP, the applicant would need to seek the necessary permits to accommodate these two structures.

Staff did not anticipate any problems with the continued operation and thought it had been a compatible neighbor since no neighbors who were notified were present from the surrounding neighborhood.

Public Works he said, requested a Class A drainage report be submitted which was currently being reviewed. They have also required the applicant dedicate additional right-of-way on SW 29th Street and a document has been prepared to accomplish that.

Based on the information, the Planning Department was recommending that the Conditional Use Permit be approved subject to the eight conditions as outlined in the staff report.

Mr. Macfee asked if there were any questions for Mr. Beagle.

Mr. Marolf said they had discussed another possible condition at their Friday morning meeting. Mr. Beagle stated he had drafted condition #9 for their consideration that would tie the CUP to the current owner as follows: "The Conditional Use Permit authorizing the Medical Care Facility Type II shall be restricted to Hays Investments LLC, a Kansas liability corporation owned 100 percent by John and Rozanne Holloway." One of the reasons they thought it would be a suitable condition was based on the specific type of request for a CUP Medical Care Facility Type II and the conditions attached were very specific to this proposal and facility. If the facility was acquired by someone else, they may continue to carry on this function but may not want to abide by the restrictions. Adding the condition would help ensure a new owner operating the Medical Care Facility, Type II would honor the terms and

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conditions of the CUP. It didn't prevent the sale of the property but at least the new owner would have to acknowledge the conditions of the CUP.

Ms. Biegert advised that the Zoning Regulations say a CUP shall be made by Resolution and shall be assignable to the subject property by legal description and not to a person, firm or corporation. She didn't think they could do this based on the way the Regulations were written. It would have to run with the land and couldn't be tied to Hays Investments LLC.

Mr. Jacques asked if it wasn't actually conditioned upon the ownership or based upon the lease of the property by the company operating it. Ms. Biegert asked if this company was leasing the property. Mr. Beagle said Equi-Ventures was also owned by Hays Investments LLC who was the property owner. The corporation, Equi-Venture Farms, was specifically formed in conjunction with the day services operation they provided.

Mr. Jacques said they would need to confirm that there was a lease but assumed there was one. Ms. Biegert said it was owned by the same entity. She asked how that would change tying it directly to Hays Investments. The CUP would be filed as running with the land and would be attached to the Parcel ID. Mr. Jacques added it would be based upon the use of the land being leased to an entity who operated the facility.

Ms. Biegert said she thought the CUP would be tied to the land. Mr. Jacques agreed but they were limiting how they could use it. The owner would only be allowed to lease it to an entity to use for this purpose. Ms. Biegert said they were saying that Hays Investments LLC could only lease the land to Equi-Ventures and use it for this purpose.

Mr. Macfee asked what would be gained. Mr. Jacques said the concern was if there was a different operator and they wanted to make sure they were continuing the same operation and same compliance.

Ms. Biegert said she thought that could be put in there. If the lessee changed, in that circumstance, they would want to review it. But as far as the CUP itself, she didn't think they could put that in the name of one of the entities. It had to be tied to the land. She asked if they wanted to review if there was a new lessee. Mr. Jacques said they would. Ms. Biegert said she thought the Regulations were pretty clear that the CUP couldn't be tied to a person, firm or corporation. She said that was her legal opinion.

Mr. Beagle said he didn't disagree with what Ms. Biegert indicated. But as a matter of practice, they had used this type of stipulation before with other conditional uses.

Ms. Biegert said it had come up before. Mr. Beagle said the ones he remembered in particular were rock quarries. They wanted to make sure if someone else acquired the property and wanted to continue the operation that they were fully cognizant of all the terms and conditions of the current operating CUP. Ms. Biegert said they would be because the CUP ran with the land. So both owners would be subject to the same restrictions. Mr. Beagle agreed. He said the reason why it was so important before was that they wanted to have the acknowledgement up front and the owner agreed with all the terms and conditions. Therefore, a new owner would not assume ownership of the CUP until they consented to all the terms and conditions.

Mr. Macfee asked what action they could take. Mr. Beagle said if a new owner decided the conditions for their operation would not work, then they would need to start over with the CUP process. Ms. Biegert said in the event they didn't comply with the CUP, a revocation process was in place.

Mr. Macfee said he was leaning toward Ms. Biegert's opinion. If a new lessee wanted to come in and some of the conditions didn't work, the CUP conditions were in place so they had to comply. Mr. Beagle

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said it was a way to double check when there was an ownership change since they normally wouldn't have any knowledge of it. When someone else assumed ownership of a CUP, they would be fully aware of the terms and conditions of the CUP.

Mr. Macfee asked when they would reject someone coming in. Mr. Beagle said the only reason an owner would be deemed non compliant would be if they didn't agree with all the conditions. They would go ahead and acquire the property and operate under the CUP but as with all CUPs, there wasn't a system in place to monitor continued compliance. They were not required to submit annual updates which also included the more complex CUPs with 20 to 25 conditions. Some had to provide an update every two years which was mainly rock quarries and sand extraction operations. All other CUPs ran on the honor system. As long as they were dealing with the original property owner or the original applicant, there wasn't a problem. It was only on those occasions where someone else acquired the property and it was assumed they were operating under compliance with the CUP. It might not be known until a complaint was received later. If that happened, they could attempt to amend the CUP to accommodate what they wanted. By recognizing an ownership change, they were just trying to make sure the owner was aware. He said he didn't disagree with Ms. Biegert's language.

Mr. Macfee said they were talking about an ownership change. If Hays Investments decided they wanted to lease it to someone else, the ownership would remain the same. Mr. Beagle said the intent was that the ownership and operation of the CUP was by the original entity.

Mr. Jacques said Ms. Biegert didn't think they could tie this conditional use to a change of ownership. He asked if there could be a requirement that the owner provide a copy of the CUP at the time they sell the property to a new owner. Ms. Biegert said they could put in a provision that they review it after a year and require the owner to provide a notice if they sell the property. But the CUP was still going to run with the land.

Mr. Jacques asked if the CUP was a recorded document in the land records. Mr. Beagle said it wasn't. Mr. Jacques said he didn't think a title search would show that. Mr. Beagle said it was similar to a zoning change and was just a resolution. Mr. Jacques said the only way to verify was to contact the Planning Department to verify the zoning and it would bring up the CUP at the same time. If not, someone may never know. It would be an extreme. Ms. Biegert said in her opinion then it would be an issue between the seller and the buyer.

Mr. Jacques said maybe a better solution would be to make the requirement that if a property was sold that a copy of the CUP was provided to the new buyer. Mr. Beagle said it would accomplish the same purpose.

Mr. Macfee asked the applicant if they wanted to make a presentation.

Mr. Frankie Holloway, Assistant Director, Equi-Venture Farms, 11720 NW 13th Street, Topeka, Kansas 66615.

- Said Ben Swinnen was supposed to be present but was out of town.
- Said he was asked last second to attend.
- Had no formal presentation.
- Used the property for day services for adults in the IDD population.
- Around 65 clients per day and employed 100 employees in Shawnee County.

Mr. Macfee asked Mr. Holloway what company he worked for. Mr. Holloway said he worked for Equi-Venture Farms.

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Mr. Macfee asked if they had a lease with Hays. Mr. Holloway said he thought that was correct but didn't know the exact details. He said Hays Investments owned the property. Equi-Venture Farms ran the business.

Mr. Jacques asked if there were 100 employees. Mr. Holloway said there was. Mr. Jacques asked if there were services offered off site. Mr. Holloway said they provided day and residential support to the adults with IDD and they came to their location Monday through Friday for day service activities from 9 a.m. until 3 or 4 p.m. They were also homes offsite where they provided staffing.

Mr. Beagle asked how many employees were associated with the location. Mr. Holloway said there were no more than 10 employees working in day services and another 10-12 working in the office.

Mr. Macfee asked how long they had been operating as a company. Mr. Holloway said Equi-Ventures had been there since 1995 and thought they became an LLC in 2000 when they started the day and residential services.

Mr. Beagle asked what year they started at this location. Mr. Holloway said Equi-Venture Farms became an LLC in 2000.

Mr. Beagle said he assumed Mr. Swinnen reviewed the staff report and the suggested conditions. He asked Mr. Holloway if Mr. Swinnen had expressed any conflicts or concerns about the conditions. Mr. Holloway said he did not.

Mr. Marolf asked if there were any other commercial activities on the property other than Equi-Venture Farms. Mr. Holloway said Rozanne Holloway ran a horse farm on the property also.

With no one to speak in favor or in opposition, Mr. Macfee closed the public hearing and asked for discussion from the Commissioners.

Mr. Jacques moved to adopt the proposed Conditional Use Permit as recommended by Staff with the additional condition: "In the event the property is sold, a copy of the Conditional Use Permit shall be provided by Hays Investments, LLC to the subsequent owner."; seconded by Mr. Marolf. There was no further discussion so Mr. Macfee asked for a roll call vote. With a vote of **4-0-0**, the item was recommended for **Approval**.

2. **CU15/01 by Russell & Patricia Winsor** seeking a Conditional Use Permit to establish a reception, conference and assembly facility on property zoned "RA-1" Rural Agriculture District and located at 5030 NE Shaffer Road in Soldier Township.

Mr. Beagle stated the applicant had requested a one-month continuance. He said property owners within the required notification area had been notified of the continuance and that there would be no discussion of the item and they would be notified in advance of the item coming back before the Planning Commission on March 9, 2015. Since it had been previously advertised for public hearing, the Commission would need to officially act to continue the item to the March's meeting.

Mr. Macfee asked if there was any discussion or a motion to continue.

Mr. Jacques moved to continue the item to the March meeting; seconded by Mr. Marolf. With a vote of **4-0-0**, the item was **Continued**.

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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

Breakfast Meeting. Mr. Beagle said at the recent breakfast meeting there was discussion about the continued viability of these meetings and under what circumstances such meetings would be held. Mr. Beagle said staff is happy to provide these Friday breakfast meetings prior to the Monday public hearing. He also said staff is happy to provide breakfast food for the Commissioners attending the meeting but they had discussed whether it was necessary. He said staff was happy to please the Commission either way and wanted to verify if they wanted to continue it. Commission members said they would like coffee to be available. He said he thought the Commission saw the benefit of having the breakfast meeting so they could talk more in detail about the proposals without any commitment and to make sure all their questions were answered. He said they had discussed if there were four Commissioners or less attending, the breakfast meeting would be cancelled. The Commission members agreed.

Community Rating System. Mr. Beagle informed the Commissioners the Planning Department was working on the County's 5-year recertification in the Community Rating System (CRS) program. Since 1982, Shawnee County has been a participating community in the National Flood Insurance Program. As a result of the County adopting floodplain regulations that met federal guidelines, federal flood insurance was made available to property owners within Shawnee County in flood-prone areas.

The Planning Department assumed the initiative of applying for admission into the CRS Program in 2010. The program provides incentives for completing activities that go above and beyond the simple administration of our floodplain regulations, i.e., providing educational information such as sending out letters to lenders, realtors, insurance agents, etc. providing information about the floodplains and what the risks and hazards were associated with building and developing within the floodplains. For completing those activities, Shawnee County was given credit points.

In 2010, we applied and received a Class 9 Designation which was the first step in the classification system of CRS. It meant property owners within unincorporated Shawnee County who had a flood insurance policy would get a 5 percent premium reduction for our efforts. For the last five years, the policy holders were able to get a 5 percent premium reduction.

Each year there was an annual recertification process where we documented and showed we were still conducting the activities for which we received the credit points. He said Shawnee County is in the fifth year now of participation in this program. There will be a cycle visit with FEMA and ISO officials in June which means essentially like starting over again. We have to document everything we are doing for credit the same as with the original application.

We are hoping that as a result of going through this documentation process we will hopefully be able to acquire additional points by recognizing work done by other County departments that have a flood protection benefit. For example, floodplain areas retained as "open space" in parks managed by the Shawnee County Parks and Recreation Department can be credited; or, drainage system maintenance and stormwater management practices administered by the Shawnee County Public Works Department may be credited; or, flood warning systems operated by Shawnee County Emergency Management can be credited. As a result of recognizing these extra practices as part of our 5-year recertification, we might be able to acquire additional points that might result in Shawnee County receiving a Class 8 designation.

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The benefit associated with that is that each step increase in our classification results in an additional 5 percent reduction in flood insurance premiums for county flood insurance policy holders. If we achieved a Class 8, then policy holders would benefit from a 10 percent reduction in their flood insurance premiums.

This is purely a voluntary incentive program. The Planning Department does not gain anything as a result of this effort except trying to minimize flood risk of county properties in the floodplain. There are no federal funds or anything else tied to being in the CRS program. The benefactors of this program are those constituents in the County that maintain flood insurance policies and the premium reduction they receive.

There will be a site visit by FEMA and ISO officials on June 18, 2015. At that time, we will submit documentation to confirm the extra work we are doing and they go through the materials and assign a class designation. It is going to be an arduous task to go back through and document everything. Mr. Beagle said he just wanted the Commission to be aware that this was an extra activity that the department was doing for the benefit of property owners in flood prone areas.

Mr. Jacques asked if it included all Shawnee County. Mr. Beagle said it was only for the unincorporated area of Shawnee County. Each jurisdiction could apply for admission into the CRS program and we only applied for the unincorporated area.

Mr. Macfee asked who was working on the project. Mr. Beagle said it was just his department. He said he was coordinating activities with Parks and Recreation, Public Works, Emergency Management and GIS staff to document the information. Mr. Beagle said that when they first applied for admission into CRS, they were just trying to get their foot in the door by acquiring enough points to achieve a Class 9 designation. This was done realizing the manpower limitations of the department and how much additional work we could handle, but doing enough to get into the program so property owners could get the premium reductions. He said they were hoping this time to cast a broader net and take in activities that may be conducted by other county department. Because of the work they do, we could obtain credit points for that work. As a result, we may get more credit points. He said they have been working since January to complete these and will continue to do so until June.

Mr. Macfee asked if they had any idea of how much time it would take. Mr. Beagle said it would probably take at least 100 hours. He and Anna Ortega, the Zoning/Floodplain Administrator would easily spend that much time putting it all together.

Mr. Macfee assumed that the County Commissioners were aware. Mr. Beagle said through administrative communications he had told them that they were going through this five year cycle review and there would be more work associated with it. The majority of their time until June would be spent working on it.

Mr. Macfee said those who had to buy flood insurance would be grateful. Mr. Beagle said if they were successful in achieving a Class rank increase, FEMA officials loved to come to communities and acknowledge that as they did in 2010 with the presentation of a big plaque and a thank you for the diligence on being in the program and working toward raising the public's awareness of flood hazards through these extra activities. He said they were happy to do it because they were providing floodplain management now. As an extension of that they wanted to see if they could complete these extra activities that would benefit property owners in flood prone areas.

Adjournment:

Mr. Marolf moved to adjourn, seconded by Mr. Appelhanz. A unanimous voice vote declared the public hearing be adjourned, which was at 6:51 p.m.