

**MINUTES OF THE  
SHAWNEE COUNTY PLANNING COMMISSION**

**Monday, September 12, 2016  
Shawnee County Annex  
6:00 PM**

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

**Members Present:** Christi McKenzie, Pat Tryon, Dave Macfee and Matt Appelhanz. With four members present, a quorum was established and the meeting was called to order.

**Members Absent:** Jerome Desch, Brian Jacques, Nancy Johnson

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

**Approval of July 11, 2016, Public Hearing Minutes:** Mr. Tryon moved to approve the July 11, 2016, Public Hearing minutes, seconded by Mr. Macfee, 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.

Ms. McKenzie stated Ms. Johnson had submitted her resignation from the Planning Commission. They have appreciated her service and guidance to the Commission for many years.

**Zoning and Subdivision Items:**

- 1. CU16/02 by Steven W. & Shauna C. Porubsky, Owner—J. B. Pearl Sales & Service, Inc., Purchaser,** seeking a Conditional Use Permit to establish a storage and retail sales facility for seed, crop protection and other related products used for agricultural production on property zoned “RR-1” Residential Reserve District and located at 5523 NW 25<sup>th</sup> Street in Menoken Township.

Mr. Beagle stated the three acre farmstead with a house and two farm utility buildings would be utilized for storage and sale of seed and crop production products. The house would be converted to an office. The larger of the farm utility buildings would be used for product storage. Two, 30,000 gallon anhydrous ammonia tanks would be placed on the west side of the property.

The surrounding area included both agricultural and industrial areas. Menoken Road serves as the boundary between industrial zoning/development to the east and rural agricultural land to the west. The present land use pattern was not anticipated to change in the foreseeable future.

The CUP would not remove present restrictions of the RR-1 District but authorized the additional use of an agronomic service business. The site’s present classification/use was consistent with the area’s rural agricultural character and would remain suitable for the uses presently restricted by the RR-1 District.

Agricultural supporting businesses were accommodated by a CUP in the RR-1 District and encouraged to locate in areas to maximize farm access/coverage. The CUP would authorize the storage/sale of

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seed/crop protection products. No additional improvements were sought with the exception of a small truck scale and the installation of the two tanks.

The business would be open Monday-Friday, 8 a.m.-5 p.m. and during the planting season it would be open Monday-Saturday, 7 a.m.-7 p.m. The property's appearance would not change. No detrimental effect on surrounding property was anticipated since it was in a predominantly rural agricultural area.

The site's conversion to an agronomic service business also required the property be platted. Public Works required additional dedication of right of way on 25<sup>th</sup> Street and submission of a drainage report, both of which would be satisfied with the plat of subdivision.

Staff was recommending approval with four conditions: the site's use/development as an agronomic service business would comply with the 08/16/16 site development plan; the applicant's written statement of use; a permit issued by the Kansas Department of Agriculture for the installation of the anhydrous ammonia tanks; and, approval of the plat of subdivision prior to commencement of use.

Ms. McKenzie asked if there were any questions for Mr. Beagle.

Mr. Macfee asked about flooding concerns and if any neighbors had called. Mr. Beagle said it wasn't in a designated flood plain and was not aware of any localized drainage issues. No calls were received.

Ms. McKenzie asked if the applicant was present and wanted to make a presentation.

Mr. Doyle Pearl, CEO/President, J. B. Pearls Sales & Service, 101 East Lasley Street, St. Mary's, KS 66536.

- In business for 55 years and handled the products for a number of years.
- Original location was in St. Marys. Had expanded about 15 years ago to the east in Perry/Lawrence.
- Outgrew the office space in both locations due to business expansion and growth.
- Being a central location, thought it was a good business decision to add another location to support the eastern/western divisions and was a good site that had easy access from the highway.
- The house's appearance would not be changed and would convert easily to about four offices.
- Four full-time employees would handle the agronomy and sales.
- Customers would visit the office but most business would be conducted at farms or fields.
- Not anticipating a lot of daily activity except during the busy season.
- The anhydrous ammonia business lasted only a few weeks a year. It would be a sizable investment. Customers who currently use the service travel quite a distance and have asked them to expand to the east and fill the gap between Perry and St. Marys.
- It would keep some of the vehicles/trailers off the road and it wouldn't be so far to travel.
- Anticipated some new business along with that because of the site.
- Had a good reputation and took their business quite seriously. Safety was most important.
- Their Safety Director provides training/continuing education to staff and also oversees regulations.
- The Department of Agriculture conducted a yearly visit to verify procedures were being followed and the latest technologies were used.
- Will use the latest and newest technology as far as safety and the speed of fill.
- Had an excellent safety record and handled large volumes on four other sites without incident.
- Had never had a reportable release and had no work-related accidents with the products.

Ms. McKenzie asked if there were any questions for the applicant.

Mr. Macfee asked Mr. Beagle if they had reviewed a request for the facility in Perry. Mr. Beagle stated that they had reviewed a request for an anhydrous ammonia facility north of Rossville in 2012.

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Mr. Macfee asked the applicant if the anhydrous ammonia operations were self service. Mr. Pearl stated the staff assisted the customers. During the busy three week period, 20 to 30 trailers were anticipated. On the inbound, they anticipated 12 to 18 loads per week for three weeks. This location would be a hub to support the other locations and a closer location for the customers.

Mr. Macfee asked if product would be kept at the location when they weren't busy. Mr. Pearl said there would always be some product. Right now they were filling for fall. Prior to that he thought most of the sites were empty. They were always maintained under pressure and never were completely empty.

Mr. Macfee asked if there were any issues with theft. Mr. Pearl stated 10-12 years ago it was a problem but it would be tough now and had no incidences. The valves were locked and the hoses were secured in a box. The Perry location has operated for 15 years next to the railroad tracks in the city limits. The Lawrence location was next to the railroad in an industrial area. Mr. Macfee thought anhydrous ammonia was used to make methamphetamine. Mr. Pearl said it used to be but thought other sources were used now. There had been almost no events in the last four to five years in the state/nation. The Perry location had some issues but not recently. The storage units were all locked.

Mr. Tryon asked if the facility they reviewed in 2012 had any unusual ammonia releases, theft attempts or any complaints. Mr. Pearl stated they had not.

Ms. McKenzie asked if anyone wanted to speak in favor.

Steve Porubsky, 5523 NW 25<sup>th</sup> Street, Topeka, KS 66618.

- Current owner of the subject property.
- Does 90% of his agricultural retail business with J. B. Pearl.
- From his driveway to the St. Mary's anhydrous plant, was 18 miles plus 5 more miles to get to their store.
- The farmers have to travel further to get to the location.
- Travels with anhydrous ammonia tanks up and down County roads and Highway 24 through Silver Lake, Rossville and other little communities.
- Would save time/limit safety issues by driving down Highway 24 at 25-30 mph in rush hour traffic.
- An invaluable convenience for him/farmers in southern Jackson County that go to St. Mary's.

With no one else to speak in favor, Ms. McKenzie asked if anyone wanted to speak in opposition.

Dennis Mohler, 5530 NW 25<sup>th</sup> Street, Topeka, KS 66618.

- Lived across the street from the location and also farms.
- Had no fault with the owner and purchaser.
- Concerned for his ten grandchildren as well as his son who lives at 5601 and has two young daughters.
- Knew the anhydrous ammonia was taken care of safely.
- Had a 2,000 gallon trailer and probably used five trailers a day. Used a different company.
- Knew the competition would be good because the cost of chemicals was getting high.
- Was a quiet neighborhood in 1979. Raised his family there and his parents had owned land there.
- Over the years, the city moved businesses in the area and the state put in the highway.
- With the nearby businesses, there were more lights.
- Concerned about excess traffic and more businesses moving into the farming area.
- His wife also has emphysema and was sensitive to chemicals.

Mr. Appelhanz asked Mr. Mohler about the traffic. Mr. Mohler thought it would come from Menoken Road/Highway 24 and 25<sup>th</sup> Street did run out to Highway 24. He thought it tied in at Landon Road.

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Mr. Appelhanz asked what was operating at 2530. Mr. Mohler thought it was Hamm's. They were running 24 hours with the resurfacing on I-70 and it has been noisy at night.

Darlene Schweppe, 4424 NW Lookout Court, Topeka, KS 66618.

- Was Dennis Mohler's sister.
- Did not live in the area but it was the family farm.
- Concerned about flooding. When Soldier Creek flooded, it came up far into her brother's pasture.

Roger Schweppe, 4424 NW Lookout Court, Topeka, KS 66618.

- Darlene Schweppe's husband.
- Has known Mr. Mohler since 1978 and he was a genuinely kind individual and didn't always state how much he really cared about this situation.
- Concerned about the grand nieces and nephews and the location being so close.
- Concerned about the well water in the area and a natural catastrophe happening.
- Concerned about the effect on house prices. Thought it would depreciate the homes in the area. Everything west of Menoken was a residential area.
- With having minimum acreage, he didn't think they would be able to expand.

Ms. McKenzie asked if there was a rebuttal from the applicant.

Doyle Pearl, CEO/President, J. B. Pearls Sales & Service, 101 East Lasley Street, St. Mary's, KS 66536.

- Their intention was for traffic to come off Menoken with the overpass and the exits off of Highway 24.
- It would be the safest and they would encourage the customers to do the same.
- No plan to expand the footprint in this area. Only office space and a hub to supply the local area.
- Valid concerns on the well water. The Kansas Department of Agriculture required the site plan to be approved by their agency.
- Any liquid product handled would have to be in total containment whether it was in a jug or larger tank. It had to be on a hard surface without risk of contamination.
- Was not putting in a fill station like their other sites. Anticipated sales on a carry out basis and product would be in the original package.
- With well water, there was a setback requirement to indicate how close they can have material.

Ms. McKenzie asked for the hours of operation and the type of lighting that would be used. Mr. Pearl stated the hours would be 8 a.m.-5 p.m. In the busy season, the hours would be 7 a.m.-7 p.m. They do not work on Sundays unless they are asked by customers. A lot of lighting wouldn't be required and they would be flexible if they were requested to keep the lighting to a minimum.

Mr. Appelhanz asked if residences were close to the two locations. Mr. Pearl stated the Perry location was in town. In St. Mary's, residences were right across the highway. The two locations had neighbors closer in proximity than the proposed location.

Mr. Appelhanz asked if there had been any incidents and how were they handled. Mr. Pearl stated there were safety valves on all the inlets of the anhydrous ammonia tanks. If one of those broke, a rapid flow valve would shut internally. A small release of whatever was in that fitting would occur. There were two valves called belly valves in the tanks. A manual valve was opened and shut in the morning and at night. There was an emergency shut off valve that was activated by air. They would hit a button similar to a gas station that has an emergency shutoff which would shut off a valve remotely.

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Mr. Appelhanz asked what would be stored at the location. Mr. Pearl stated seed and crop protection would be stored inside in hard surface containment.

Ms. McKenzie asked if their safety procedures were set by the Kansas Department of Agriculture. Mr. Pearl stated they followed those procedures.

Ms. McKenzie closed the public hearing and asked if anyone from the Commission had any questions for Mr. Beagle and any comments.

Mr. Tryon said something was mentioned about no large transfer of ammonia. He asked if that could be quantified in an amendment in terms of large volume vs. any transfer. Mr. Beagle said the nurse tanks would be filled with anhydrous ammonia from the 30,000 gallon tanks and the farmer would then transport it to be applied on their farm fields. There would be no large wholesale distribution of anhydrous ammonia from the site. Mr. Tryon wanted it to be clear in the Conditional Use Permit.

Mr. Appelhanz thought there was a legitimate concern regarding safety but all protocols seemed to be taken care of. Something could happen but it seemed safe. He didn't know why anyone would want to travel down 25<sup>th</sup> Street and thought traffic would come off Menoken Road. Even with the concern expressed, he was in favor of the request but thought there could possibly be some theft issues. He was also concerned about the lighting, whether it was enough or too bright.

Mr. Macfee stated it was a dangerous material and there were dangerous materials in many industries. They were heavily regulated. Their safety record was immaculate as far as they know. There was no record of thefts. The tanks seemed to have an adequate safety system that couldn't be tampered with. The location was in an agricultural area. Obviously, there was a need for it. It was an accepted use under a Conditional Use Permit. He thought it was a good business for Shawnee County.

Mr. Appelhanz requested wording for a lighting amendment. Mr. Beagle suggested: "Exterior lighting shall have either recessed fixture heads or be shielded with cutoff angles to contain direct lighting onto the property and not spill over onto adjacent property or the public right of way." It would have to be a recessed fixture head with downcast lighting in order to contain the lighting on the property. Mr. Appelhanz assumed there was some existing lighting. He suggested the existing lighting could be grandfathered and any additional lighting would need to be the downward lighting. Mr. Beagle stated that would be a reasonable condition.

Mr. Tryon was concerned that it was a predominantly residential area; however, there was activity to the east and the business had established a track record based on their 2012 submission. There was nothing that prevented him from any activity and that caused any concern. He had weighed both sides. The adjacent property didn't prevent him from voting in favor.

Mr. Tryon moved to recommend Approval of the proposed Conditional Use Permit subject to staff conditions and additional language to define the lighting; seconded by Mr. Macfee. With a vote of **4-0-0**, the item was recommended for **Approval**.

Mr. Beagle stated the Planning Commission's recommendation would continue on to the County Commission for formal determination on October 3, 2016, at 9:00 a.m. at the County Courthouse. Ms. McKenzie recommended the public take their concerns to the Commissioners.

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

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

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**Discussion of Planning Related Issues**

**1. Comprehensive Plan Kickoff Presentation**

Mr. Beagle stated Mr. Thomas Dow, the Project Manager with RDG Planning and Design recently gave the kickoff presentation to the County Commission and an opportunity to inform the public about the process and request their participation.

Mr. Dow was excited about working with the County on the development of their first Comprehensive Plan. He provided the Planning Commission an overview of the Comprehensive Planning process as well as the results of the community survey to date. Community roundtable meetings would be conducted in October. A Comprehensive Plan link had been added to the Planning website.

**Adjournment:**

Mr. Tryon moved to adjourn, seconded by Mr. Appelhanz. A unanimous voice vote declared the public hearing be adjourned, which was at 8:30 p.m.