

MINUTES OF THE SHAWNEE COUNTY PLANNING COMMISSION

Monday, July 11, 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, Jerome Desch, Brian Jacques, Dave Macfee and Matt Appelhanz. With five members present, a quorum was established and the meeting was called to order.

Members Absent: Nancy Johnson and Pat Tryon.

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

Approval of May 9, 2016, Public Hearing Minutes: Mr. Appelhanz moved to approve the May 9, 2016, Public Hearing minutes, seconded by Mr. Desch, and with a unanimous voice vote, the minutes were approved.

Communications: Mr. Beagle provided an excerpt from the Shawnee County Planning Commission Bylaws concerning the making of motions. A question was raised during the May meeting about how to best frame motions and how to take the vote. Josh Smith would also provide some additional information. Mr. Beagle then introduced Josh Smith, the newest member of the County Counselor's office.

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. Z16/03 by Tarwater Real Estate, LLC** requesting to amend the District Zoning Classification from "RR-1" Residential Reserve District, "C-2" Commercial District and "C-4" Commercial District to "PUD" Planned Unit Development District on property located at 4019 and 4109 NW Topeka Boulevard in Soldier Township.

Mr. Beagle provided an overview of the Staff Report as submitted. The proposed reclassification is sought to accommodate expansion of the existing Tarwater Farm & Home Supply business. Mr. Beagle said the proposed expansion would provide additional product warehouse space and improve internal traffic circulation by separating truck traffic from customer traffic. To accomplish these objectives, the applicant has chosen to consolidate zoning under the PUD District and include two use group categories. The first area comprises 15.18-acres designated the C-4 Commercial District and would accommodate construction of a new product warehouse building and a new separate truck entrance on NW Topeka Blvd. The second area to the rear comprises 1.78-acres and designated the RR-1 District and reserved as open space. The proposed reclassification results in the isolation of 4.14-acres to the rear that is to be sold to Mark and Deborah Moeder at 4022 NW Rochester Road. The project would be completed in two phases. Phase One included selling the 4.14 acres to the Moeders, demolishing the house at 4019, constructing a new truck entrance, relocating the lawn mower display area and removing the second existing drive entrance. Phase Two included demolishing the original retail store and replacing it with expanded off street parking and the new product warehouse.

The business was located in a low density residential neighborhood. Commercial zoning and development was confined to the southeast corner of 43rd and Topeka Blvd. Other commercial zoning

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existed but was developed as residential. There was no indication the area was transitioning from residential to commercial land use.

Tarwaters originated in the 1950s and had a long established history in the community. It predated the adoption of County zoning. Various zoning actions had expanded it to 5.42 acres with C-2/C-4 zoning. Their mid-block location was not consistent with today's commercial zoning but had not deterred the building of area homes.

Staff was recommending a variance for Buildings 1 and 2. Currently, they met the 10 foot side yard setback required by C-2/C-4 zoning. With the PUD, they would encroach into the new required 30 foot setback.

Staff didn't find the lateral expansion of commercial zoning to result in any greater conflict with the surrounding area. Staff was recommending the proposed reclassification be approved subject to the site's use/development in accordance with the recorded Master PUD Plan and the variance be granted.

Ms. McKenzie asked if the Commissioners had any questions for Mr. Beagle.

Mr. Desch asked if the PUD included a time sensitive requirement for building. Mr. Beagle stated a suggested phasing schedule was included as to the property's future improvement.

Mr. Macfee asked if the variance required a separate motion. Mr. Beagle said a variance note was included on the PUD but they would have to take action to grant it.

Mr. Desch asked about the sign located in the right of way. Mr. Beagle said the sign south of the primary entrance was in the right of way. A PUD Plan note stated the applicant would prefer the sign be retained up until such time that either the roadway was expanded or Public Works asked for it to be removed.

Mr. Macfee asked about the septic systems and the Health Agency's responsibilities. Mr. Beagle stated the Health Agency and other county departments/townships were asked to comment and add any special requirements needed. The existing lateral field to the rear of the property that serves the existing retail store was not proposed to be changed; however the new building's septic system would need review/approval. He wasn't anticipating any issues to come up.

Mr. Desch requested information about the detention pond. Mr. Beagle said a storm water detention pond was proposed but deferred to Mr. Boyd for comment.

Ms. McKenzie asked if the applicant had a presentation.

Mark Boyd, Schmidt, Beck & Boyd Engineering, LLC, 1415 SW Topeka Boulevard, Topeka KS 66612.

- Mr. Beagle had summed up everything well.
- One sign was placed at the southeast corner of the retail building and a pylon sign was placed further north out of the right of way. A subdivision plat was submitted to the City. With additional right of way being dedicated, the larger sign would be entirely within the street right of way. They negotiated with Public Works to allow the sign to remain until Phase 2 construction.
- He spoke with Andy Graham about the lateral fields needed for the new building. They would still need to go through the permitting process and a perc test would be needed.
- A storm water report was submitted to the City as part of the platting process. One was submitted to Shawnee County Public Works. A concrete box underneath Topeka Blvd. had the capacity to take all water coming off the site. From the City's standpoint, the quality component of storm water was what prompted them to show a location for a detention/treatment facility. It would be a dry detention

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pond. In order to meet quality calculations, they planned for an engineered rain garden type swale containment that would handle the low flow.

- There were still a lot of things they needed to review before they could determine how it was all going to fit together.

Richard Tarwater, 4107 NW Topeka Blvd., Topeka, KS 66617.

Ms. McKenzie inquired about the lights, truck entrance and the proposed timeline. Mr. Tarwater said wall pack lighting would be used and possibly located by the mowers. Six or seven trucks came daily and no increase was anticipated. Semis and cars moved in the same path of traffic. A few minor accidents had happened. The intention was to make it easier for everyone to get in and out. He wanted to get things done quickly and hoped to tear the house down first.

Mr. Macfee asked about the proposed display area, the plans for the west area and the new building's use. Mr. Tarwater wouldn't know anything until everything was laid out. 20-25 foot of display area would be lost. He wanted to get product further off the road and keep the grass for mowers to sit on. He wanted a neater and cleaner appearance. The west area would be kept open for the trucks to travel through and for parking (trailers/company-employee vehicles). No retail items would be placed in the back. The new building would be used to store existing product.

Mr. Desch was concerned about the Planning Commission approving the PUD without all the details. Mr. Beagle stated they tried to anticipate all the issues. In this instance, the lighting was not specified. Items could be defined and included as part of the PUD. Site drainage would be reviewed along with the Plat. An onsite drainage report would be required upon application for a building permit. A note was already included regarding the sign in the right of way. Public Works had also requested the product display encroaching in the right of way be moved.

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

Richard and Sonia Tolbert, 4014 NW Topeka Blvd., Topeka, KS 66617.

- When house was purchased 20 years ago, it was a residential area. Their property was across the street from Tarwaters. Have been making improvements to their home/land.
- Concerned with: land erosion from underground drainage; increased truck noise (trucks pulling in closer to house/arriving in early morning); increased customer traffic; property value decreasing; increased taxes due to commercial zoning; not happy about stuff going in.
- Spent approximately \$5,000 cleaning the pond up from the runoff draining off the road.
- Spoke with the neighbors on the south side of the hedge and they were not opposed.
- A surveyor had reviewed the plans and items weren't specific.
- Asked about the swales and wanted to know how it was going to drain.
- With the collection pond, understood there would be some runoff if there was a heavy rain but thought it would be worse if they added more concrete and moved buildings out.
- Had discussed the plans with other neighbors. Some could not attend meeting. Brought a letter for the Commission from one of the property owners.
- Not happy when speed limit was changed. A number of wrecks had occurred since. Had replaced seven mailboxes since 1996.

Ms. McKenzie for rebuttal comments from the applicant.

Mr. Boyd said the retail operation would not expand and didn't anticipate an increase in traffic. They wanted to separate traffic to make it safer for patrons to get in/out easier. Business might increase due

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to those who had been deterred. The surface drainage started north at the crest of the hill and came down and drained into the reinforced concrete box. Drainage patterns would not change. Building the detention was due to the storm water quality aspect of the storm water management plan. The size was based on the new construction. The water would go into the detention and be released at no greater rate than the present. It would be designed to slow the water down. In a lot of cases, it would be an improvement. The parking lot design would include curbing and inlets to trap most of the water. The erosion at the Tolberts was going to happen regardless of what happened at the business.

Commissioners requested information regarding the trucks/truck entrance. Mr. Tarwater said a closed gate system was used so no trucks could enter at night. Business hours were 8 a.m.-6 p.m. Six to eight full-sized semis came in per day. At certain times of the year, there might be ten. The number had been consistent for quite some time. Taking trucks any time after 4:30-5:00 was avoided because they couldn't be unloaded in time. Currently, semis waited on Topeka Blvd. when customers were backing out. With the PUD, cars/semis would have their own entrances/exits. Hopefully, accidents would be eliminated. Truck numbers would not increase. The retail location would remain with no increase in retail space. Only the warehousing was being changed.

Commissioners requested information regarding drainage. Mr. Boyd said the City and Public Works were reviewing the drainage report. A determination from their review was not known. The runoff would increase but the volume of water going to the location would stay the same. Drainage patterns would not change. The runoff from the new parking area by the product warehouse would get there faster so a detention would be put in to slow it down. It couldn't leave the site at a faster release than what was currently happening. A detention structure was included but mostly for water quality. There would be some engineered soils. They were designed to take a one and two year rainfall event and let it percolate through to clean the water before it was released. It would give them opportunities to capture water and direct it into the right place. By spreading some things out, there was a plan to turn some concrete and driveways back to as much green space as possible.

Mr. Macfee asked if hard surface would be installed. Mr. Boyd said anything rock or gravel was considered hard surface. He didn't anticipate it being all concrete. The driveways and parking areas would be hard surfaced.

Mr. Tarwater said there was a place in front of their gates where semis could park at night. He didn't see that changing. There was a lot of water runoff but it wasn't all from their business. The ditch in front of 4019 was very deep and could not be covered like the other ditch. The runoff came from both sides from the south and north all the way from the top of the hill from the convenience store and came down to that area. He didn't think it would be any more and might be less.

Mr. Beagle asked if the location of the proposed truck entrance was to be gated. Mr. Tarwater said yes but wasn't sure about the location. The existing fence would have to be moved approximately 20 foot off the roadway. He didn't want to lose any more space than needed. A decorative fence would be placed in the front. The sign would be moved first since it was too close to Topeka Blvd.

Ms. McKenzie asked if a truck could pull into the driveway with the gate further back on the property. Mr. Tarwater said they couldn't at the new entrance. They could park in front of the north entrance because the ditch was covered in concrete. They might stop when they realize they will have to turn around to get into the south entrance.

Mr. Macfee asked if the fence was noted on the PUD. Mr. Beagle didn't think so but they could request the fence and gate locations be noted. He asked if there would be any problem in amending the site plan to reflect the type of fence and gate at the truck entrance. Mr. Tarwater had no problem.

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The Tolberts delivered a letter from Michael and Karen Monreal, Sr., 4022 NW Topeka Blvd., Topeka, KS 66617. They were unable to attend. The Monreals were completely and fully opposed to the request. It would greatly affect the value of their property, possibly increase the traffic and the unknown affect it would have on any and all underground water streams. They were also unaware of the drainage work that was done and they now have standing water in their front yard. Maybe a full and complete study was needed as to the overall effect of Tarwaters putting in what they are calling a storm water management facility and what the purpose was for them needing it.

Ms. McKenzie closed the public hearing and asked for comments from the Commissioners.

The Commissioners expressed concern about the PUD being incomplete. Questions were raised regarding the possible impacts (fence, gates, lighting, hours of delivery, traffic, truck parking and drainage water issue) on the neighborhood and if they should be included in the PUD. Also, they spoke about possibly continuing the item to wait for results from the drainage review. Some discussion covered the difference between a PUD and a CUP. It was determined that additional information was needed from the applicant in order to incorporate additional items in the PUD.

Ms. McKenzie asked if there was a motion to reopen the public hearing. Mr. Jacques moved to reopen the public hearing; seconded by Mr. Macfee; and with a unanimous voice vote, the public hearing was reopened.

Ms. McKenzie requested Mr. Boyd and Mr. Tarwater to come to the podium.

Mr. Boyd said they had used a standard note on PUDs and site plans that on-site lighting be no more than 3 foot candles as measured at the property line. It kept the amount of light leaving the property at a minimum. There were shielded wall packs and the same would go for parking lot lighting if he chose to put them on a pole reflecting. It didn't seem to be an issue to find fixtures to keep the glares down to a minimum. As Mr. Tarwater said he was not looking to be a bad neighbor. He wanted to keep things as minimal as possible.

Mr. Beagle asked the type and height of the fencing. Mr. Tarwater wanted a 4 foot decorative fence. The gates would be included in the fence to open up. The gates would not be inset so the trucks couldn't pull in there. He didn't want the trucks in there. A sign was already posted to indicate it wasn't a truck entrance. He couldn't police them. They did their own thing when he wasn't there. When he was there, he could request them to move. They wouldn't allow trucks to park there at night because of the ditch. Where the concrete covers the ditch, they could.

Mr. Macfee asked if it was currently fenced along the road the entire length of the property and where the trucks were parking. Mr. Tarwater said the fence was placed along the entire length of 4107 and 4109. There was an opening but really it was the shoulder of the road. If the trucks parked there, sometimes they hung out on the road. It depended on the truck driver and how respectful they were. They tried to squeeze in between Topeka Blvd. and the fence. He couldn't open the gates until they moved. He didn't know the drivers or the trucking company. If the fence was moved back and they did park there, he hoped it would be safer for the traffic on Topeka Blvd. There would be more room in front. Public Works was requiring them to move 15 foot roughly past the existing fence now. He would have to take the existing fence and move it back 15 foot. In doing that he would lose the existing south driveway which was where they parked a lot of times. The gate would no longer be there. They would be further off Topeka Blvd. if they continue to park there.

Mr. Macfee asked if they would be able to park all along the front of 4019. Mr. Tarwater said they couldn't park there because of the ditch. They parked by the north entrance because it was covered with concrete. Hopefully, it would get better. The car traffic would be using the north entrance.

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Mr. Boyd said they were planning to widen the existing north entrance to allow two-way traffic. All the retail traffic would go through the parking lot and circle back out using the same entrance.

Mr. Tarwater has known the Tolberts for a long time. The biggest issue to him was the storm water. He also wanted to know where all the storm water was coming from. It wasn't all coming from him but the whole road. He agreed with the Tolberts. There was a lot of water that went down to that tube. He wished there wasn't. He wanted to be a good neighbor. The Tolberts had helped them out tremendously.

Ms. McKenzie asked if Mr. Tarwater would have issues with them adding the three items to the PUD: the shielded lighting, 4 foot vinyl fence, gates on the entrances. Mr. Tarwater had no issues with the additions.

Mr. Beagle asked Mr. Tarwater to characterize the product display area. Mr. Tarwater wanted to keep it grass. It was hard for him to judge until the fence was gone to see what was there. He was moving the building back because he wanted things further off the road. And by doing that he would be able to spread it out and keep it looking nicer, neater and cleaner. There was stuff presently right up by the road. The gate would be further away off Topeka Blvd.

Ms. McKenzie stated if it was written in the PUD that the area would remain grass, then it would remain grass. Mr. Beagle said the PUD set a 30 foot perimeter setback. They could indicate that in the 30 foot there would be no product display and it shall remain grass. Ms. McKenzie asked if it was okay to include the language in the PUD. Mr. Boyd said there wouldn't be a problem because of the detention facility. Leaving grass was not an issue at all. Mr. Tarwater said it was hard for him to visualize it. There was an aspect to the whole project that was a little different than any place that was in his type of business. It was the look. He wanted to keep some grass. He didn't want everything to be concrete.

Ms. McKenzie asked if that helped. Mr. Beagle said it would address the issue of appearance and Mr. Tarwater's ideal of keeping the area open with grass even though there would be products displayed on it. He suggested if the PUD Plan was approved with the first 30 feet, then it would have to remain open and grassed. Everything else beyond that into the interior of the property could be the product display area.

Ms. McKenzie asked if anyone from the Commission had additional questions on the PUD.

Mr. Macfee wanted to know if it would place a hardship on Mr. Tarwater if they continued the item. Mr. Tarwater said the property was purchased 7-8 months ago and it had been a struggle. He wasn't going to spend money on a house that was empty. He wanted to clean it up because it was a mess.

Mr. Boyd stated Mr. Tarwater's desire was to have the project under construction and completed by March-April 2017 for the 2017 spring season. In order for that to happen, there was a lot of work to do. It was a pretty complex site with the new entrance, new truck entrance, the utilities, the parking lot, etc. As it was, they would be into August working on design plans. If it was delayed a month, it would be in September. With the concerns that were expressed, he trusted Mr. Beagle to put conditions on the PUD that were reasonable. He hadn't heard anything that concerned him besides the drainage report. Some items wouldn't be known until the design was complete.

Mr. Tolbert expressed his concern about not having any recourse if the plan was approved and there was a greater impact with the runoff other than what was stated.

Ms. McKenzie closed the public hearing and asked for questions/comments from the Commissioners.

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Mr. Macfee thought the runoff seemed to be the item in question. There was some question as to the limit on what they were able to know and their authority. The other issues could be worked out. There was a lot of discussion and unknowns about how much grass, etc. He wished there were more details in the PUD. He thought it would make everyone more comfortable. At the same time, he didn't see those as major problems. The business had been there for decades and Mr. Tarwater had demonstrated his sincerity about doing everything he could to be a good neighbor. He wouldn't vote against the item. He would support a continuance to firm up some of the details but he wasn't sure there was a lot. He would hate to see it denied.

Mr. Smith stated it was the Commission's duty to review the seven golden factors and the information that was presented to make a decision on the proposed plan. Obviously, it was a very difficult task. There was a lot of uncertainty.

Mr. Beagle added they had the golden criteria, which is the staff report, to help them make a decision. The principal question was if this lateral expansion was viewed as an acceptable type of proposal under the context to the PUD as it was drafted. If they decided not to expand the extent of commercial zoning, there would be no need to quibble over the details of the PUD. If they thought that under the PUD that this was a reasonable request, it would just be a matter of defining the details.

Mr. Jacques moved to accept the proposal as prepared by Staff with three caveats: Lighting would be shielded and not exceed three foot candles to the edge of the property line; Installation of a four (4) foot vinyl fence that would run the distance of the property line with gating at the entrances; The expanded area would maintain a 30 foot grass buffer, seconded by Mr. Appelhantz, and with a vote of 5-0-0, the item was recommended for Approval.

Mr. Jacques requested information on the next step regarding the request for those who had concerns. Mr. Beagle said the request would continue on to the County Commission for a final decision on Monday, August 1, at 9 a.m. The neighboring property owners had some additional rights and that information was provided in their notification letter.

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

1. Proposed 2017 Planning Budget

Mr. Beagle presented the 2017 Planning Department budget request to the Planning Commission. He stated the 2017 budget request was essentially the same as the 2016 authorized budget except for additional money placed in the retirement fund for two retirement eligible staff members. The proposed budget also includes \$50,000 for planning projects, the same as 2016, and proposed to be set aside in a special account for implementation of the comprehensive plan. It is realized that new zoning and subdivision regulations will need to be drafted to implement the recommendations of the plan. The \$50,000 would go to cover the cost of extending the contract of the consultant to also prepare new zoning and subdivision regulations based on the comprehensive plan. Ms. McKenzie was very pleased to know that money was proposed to be set aside to implement the Plan so the hard work that everyone was completing would be put into place. Mr. Beagle stated the budget requests had not yet been approved by the County Commission.

2. Comprehensive Plan Update

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Ms. McKenzie asked for information on the Comprehensive Plan process. Mr. Beagle stated a public officials' driving tour was held on June 8th with the Directors of Public Works, Parks and Recreation, Audit Finance and County Counselor to look at various sites and issues throughout the county. The consultant was able to hear directly from them what issues and concerns they may have and highlight of what was working well. Separate driving tours were also conducted with each County Commissioner on June 17th. It was well received by each Commissioner and yielded good information for the consultant.

The initial twenty-two member steering committee met on June 28th. The working group will be responsible for: reviewing all drafts, signing off on all public engagement activities, being a sounding board for the drafts prepared by the consultant and ensuring the Plan as drafted was incorporating the publics' comments.

The Planning Commission would be receiving a Community Survey via email from the consultant in order to provide input on certain key issues. It would also be sent to the County Commissioners and steering committee members. It would be a good way to start the process and identify priorities, issues, needs and concerns.

Eventually a kick-off meeting will be held to inform the public about the process. Following that, focus groups will be defined with various stakeholders in order to engage them and solicit their input. The ultimate goal was to gather a good baseline of information from not only the publics' perception but also seeing Shawnee County in reality in terms of demographics, population, economics, etc.

3. Additional Information

The Iona Doty/Ben Kramer zoning proposal was heard by the County Commission on June 20th. A protest petition was filed by the neighbors representing 49% of the required notification area. With that, the County Commission's vote had to be unanimous for approval. With a vote of one for approval and two for disapproval, the item failed.

A Planning Commission meeting will not be held in August since no cases were filed.

Mr. Desch would have understood if they were only considering zoning but it was in conjunction with a PUD. From his knowledge, anything put in a PUD was what the applicant would be held responsible for. He had concerns about the unknown items. If a small note needed to be added, he had no concerns. But in this case, there was no drainage report. He thought that was significant. People had spoke in opposition and had concerns. He didn't know if this topic had been discussed. So, next time he would review the criteria.

Mr. Jacques said the issue had prompted the question. The plan was designed to have a zero impact. If that was the only standard the County was going to approve, there would be no impact. He wasn't sure the determination of the water plan would impact their decision if the amount was zero. Each case had a different issue and it should be questioned. If they had not discussed the water issue, the people in attendance would have been incredibly frustrated. They would have said the Commission didn't care if the water was going to be more or less. If nothing else, they heard the goal was to be a zero impact.

Mr. Smith thought it was important to look at the PUD. He found a subsection that noted information about the lighting and the impact. It was a matter of how specific they wanted to get. It was important to make sure they were holding people accountable and the public knew the Planning Commission would do the right thing and weigh all the factors. They weren't just considering the plan itself. Each circumstance was different.

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Ms. McKenzie thought the items they added were things the applicant was going to do anyway and by putting them in there the next owner would still be required to have a 4 foot fence. She thought their discussion on truck traffic was good. She thought the County Commission would read the questions that were asked and know the Planning Commission had been very thorough.

Mr. Beagle said the questions raised Mr. Desch were valid. The PUD District regulations provided general guidance but performance measures were not included, e.g., lighting, fencing, etc. Any issue could be brought up during public comment. It would have to be addressed and incorporated as part of their discussion. Also, certain standards had to be met by other departments and the Commission would know those would be addressed independent of zoning. In this case, a drainage report was submitted to the City/County. If there was an issue, it would have been reported to him that the expansion was going to create off-site drainage problems and it would have been included in his report and recommendation. He had not received notice of an issue with storm water drainage.

Lastly, Mr. Beagle said it was asked at the last meeting how the Commission should cast motions, take a vote and how it was represented to the County Commission. Mr. Smith had reviewed their Bylaws and found they could cast motions either in the affirmative or the negative. Meetings should be conducted to Robert's Rules of Order in all cases where applicable and not inconsistent with the Bylaws. Mr. Smith thought what they were doing presently was fine; however, Robert's Rules of Order did say that votes should be in the affirmative. The affirmative vote would go to the County Commission whether a motion was passed or not. It would be consistent with how the County Commission voted and would transition a little easier.

Adjournment:

Mr. Desch moved to adjourn, seconded by Mr. Appelhanz. A unanimous voice vote declared the public hearing be adjourned, which was at 8:17 p.m.