

**MINUTES OF THE  
SHAWNEE COUNTY PLANNING COMMISSION**

**Monday, August 13, 2018 – 6:00 PM  
Shawnee County Annex**

**Roll Call and Announcement of Hearing Procedure:** Judy Moler, Chair, called the meeting to order at 6:14 p.m., reviewed the hearing procedure and asked for roll call to be taken.

**Members Present:** Judy Moler, Matthew McCurry, Chad Depperschmidt, Jerry Desch, Jake Fisher and Christi McKenzie. With six members present, a quorum was established.

**Members Absent:** Brian Aubert.

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

**Approval of April 16; April 30; May 8; May 14; May 22; June 4; June 11; and, June 20, 2018, Public Hearing Minutes:** Mr. Fisher moved to approve the April 16; April 30; May 8; May 14; May 22; June 4; June 11; and June 20, 2018, Public Hearing minutes, seconded by Mr. Depperschmidt, and with a unanimous voice vote, the minutes were approved.

**Communications:** None were indicated.

**Ex Parte Communication by Members of the Commission:** None were indicated.

**Declaration of Conflict of Interest by Members of the Commission or Staff:** None were indicated.

**Zoning and Subdivision Items:**

1. **CU18/05 by Robert J. & Suzanne M. Sachs** seeking a Conditional Use Permit to establish a fishing preserve for commercial recreational purposes on property zoned “RR-1” Residential Reserve District and located at 118 NW Hodges Road in Silver Lake Township.

Mr. Beagle stated the preserve would be located on the applicants’ 6.19 acre property which is narrow, ½-mile long tract of land extending east of Hodges Road along the north bank of the Kansas River. Commencing their small scale operation in 2017, KAW River Adventures provides for recreational and camping opportunities. In 2017, they received certification through the Kansas Department of Wildlife, Parks and Tourism as an agritourism business.

The proposed CUP would specifically authorize the additional use of a fishing preserve for commercial recreational purposes but would also bring the present use of the property in compliance with the zoning regulations. KAW River Adventures provides their guests recreational experiences on the Kansas River from April to September. Canoeing or kayaking is available, either individually or through guided float trips. Guests may fish on the site, either from the river bank or in the river. A cabin is available for overnight stays for up to six individuals. Also, a small camping site allows for up to four tents to be erected and could accommodate up to eight individuals. Onsite activities would be limited to one booking per day in order to enhance the recreational experience. It is anticipated there would be no more than 15 to 20 guest vehicles per month. It is not the applicant’s intent for the facility to be open 365 days per year, 24/7. It is intended to be a relatively small activity as proposed.

The property is located in a rural, sparsely populated area extending north of the Kansas River to Highway 24 and west from Topeka to Silver Lake. The predominant land use in this area is agriculture. Access would be through Hodges Road. The majority of this area extending north of the Kansas River is part of the Kansas River floodplain. As a result, no major changes are anticipated in this area in the foreseeable future. Given the isolated nature of the property bounded by agricultural land to the north and the Kansas River to the south, it is not anticipated the proposed fishing preserve would be incompatible with area property.

A principal issue encountered in the review regarding the legal access or the legal status of Hodges Road as a public roadway is now resolved. It was determined that Hodges Road is still a public roadway. For a number of years, a gate on 13<sup>th</sup> Street barricaded Hodges Road because it was

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believed that it was a private access easement and not a public roadway. Recently, the gate was removed across Hodges Road allowing for unobstructed access to the properties to the south.

Also, the Shawnee County Health Department questioned whether the existing 500 gallon holding tank connected to the cabin would be sufficient to accommodate the proposed use. Subsequent to the staff report coming out, the Health Department made a determination. Prior to this meeting, the Planning Commission was notified that because of the projected wastewater increase on the property, the applicant would need to meet three requirements. First, a minimum 400 gallon holding tank needs to be installed to collect all water from the shower in the cabin and the current plumbing connecting the shower to the existing holding tank be disconnected. Secondly, port a potties need to be used during an event with more than 20 guests. Third, records must be kept of the holding tank being pumped at a minimum of once every two months during the months of March through November. Lastly, the Health Department must be given access to the property to ensure the conditions are met.

The Planning Department believes the subject property would be an appropriate location for a fishing preserve due to its remote location. As a result, staff is recommending the request be approved subject to six conditions being met. It was noted that two of the conditions were revised as new information became available.

With no questions for Mr. Beagle, Ms. Moler called the applicant to make a presentation.

Robert Sachs, 5242 SE 69<sup>th</sup> Street, Berryton, KS 66409.

- They are trying to activate the Kansas River.
- Involved in the Momentum 2022 “Activate the River” Initiative for the City of Topeka.
- Through Heartland Visioning, there are several terms that have been identified to help the city grow.
- Have held float trips on the river including one in June called Capital Paddle. It was very successful with over 100 people participating.
- It has been something very beneficial to the city.
- Looks forward to introducing people to the Kansas River.
- His family has fished, hunted, trapped, etc. over 100 years on the Kansas River.
- Wants to pass that on to the general public.

Ms. Moler asked if anyone had any questions for Mr. Sachs. Mr. Desch asked if Capital Paddle was held from their location, if they planned on having any other big events and how it would work with a large number of people given the restrictions. Mr. Sachs said they did it on their own as a family and would not be something they would do annually. No other large events have been held. They have had several family events. They have donated a couple of overnight stays to various organizations.

Ms. McKenzie asked if Mr. Sachs agreed with the Health Department’s conditions. Mr. Sachs stated his father had spoke with Andy Graham and was informed what they needed to do.

Ms. Moler asked if they were agreeable with the six conditions required by the Planning Department. Mr. Sachs said they fully understood the conditions would need to be met prior to operating their business.

With no further questions for Mr. Sachs and no one to speak in favor, Ms. Moler asked if anyone wanted to speak in opposition.

Terry Keller, 3750 NW U.S. 24 Highway, Silver Lake, KS 66539.

- Not opposed or in favor.
- Because he has crop land north of the applicant’s property, he wanted to know if ATVs, UTVs or bikes would be allowed to operate on the property.
- Was concerned about his land being affected.

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Robert Sachs, 5242 SE 69<sup>th</sup> Street, Berryton, KS 66409.

- Activity would be isolated to their property which is between the levy and the Kansas River bank which was considered to be the high water mark and where the public property begins and the private property ends.
- Wildlife and Parks has identified the high water mark as being a continually changing location so it is very important to determine where the high water mark is in reference to their property lines.
- Their northern property line is the field edge on the north side of the levee system.
- There would be no degradation by any ATVs, motorcycles, etc. to the levee system which protects everyone and an important system. They understand how important it is as well as private property.
- Not going to allow anyone to trespass or do anything that would cause damage to personal property.

Mr. Desch asked Mr. Sachs if there would be a strong restriction against ATVs, UTVs, motorcycles, etc. Mr. Sachs stated their insurance company does not allow the use of unauthorized ATVs or anything similar on their property.

Ms. Moler closed the hearing. With no discussion from the members, Ms. Moler asked for a motion.

Mr. Depperschmidt moved to approve the Conditional Use Permit subject to the staff conditions and the Health Department's requirements, seconded by Mr. Fisher. There were no additional questions or discussion. With a vote of **6-0-0**, the Conditional Use Permit was recommended for **approval**.

2. **Z18/01 by David A. & Christine R. Smith Trust** requesting to amend the District Zoning Classification from "RR-1" Residential Reserve District to "M-1" Two Family Dwelling District on property located at 8229 SE California Avenue in Williamsport Township.

Mr. Beagle stated the zoning change is being requested by the applicants to build a second dwelling as an addition to their home to provide care for their aging parents. Two dwellings would be attached by a garage resulting in the creation of a duplex. With the new dwelling, it would provide privacy and independence but would be close enough to provide assistance to their parents when needed.

Based on the rural character of this area and the lack of urban scale services to support a more intensive development, the property as presently zoned remains suitable for the uses to which it is presently restricted. Water service is currently provided by Douglas County RWD #3. Sewage disposal is currently provided by an onsite septic system. If the request is approved, the Health Department would require the construction of additional laterals to accommodate the second dwelling.

The proposed addition would result in the creation of a two family dwelling which is not permitted in the RR-1 district. Although the Planning Department does not have any concerns with regard to the zoning request, there is some concern about the potential in the future of having five acres of M-1 District zoning which could create at least the possibility of the property being subdivided to create additional two family dwelling development even though it is not the applicants' intention to do so.

It should be noted that this request to rezone property to the M-1 District is the only option available to the applicants to accomplish what they want to do. There is no other mechanism currently within the zoning regulations that would allow for the creation of an accessory dwelling unit within an existing home and could operate independently as a home for purposes of taking care of an aging parent or someone with a disability or health condition. The Planning Commission could amend the zoning regulations to make accommodation for what is commonly called an "accessory dwelling unit" within a primary structure or with an addition to the primary structure. The Planning Commission would first need to act and direct the Planning Department to complete research and develop a proposal for them to consider in order to consider an amendment to the zoning regulations.

The Public Works Department reviewed this request and is requesting the applicant dedicate 40 feet of right of way along California Avenue. The general land use characteristics of single family and two family developments are compatible in terms of traffic, building scale and size. Generally the two can co-exist with one another with minimal conflict; however, two family residential development generally

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makes sense when used as a transitional buffer between single family and slightly more intensive uses such as a moderate density multi-family residential or office uses. In this isolated case, it is not anticipated the proposed reclassification would have a negative impact on neighboring property. As a result, staff is recommending the request be approved.

Ms. Moler asked if anyone had any questions for Mr. Beagle. Mr. Desch stated an addition with a bedroom, bathroom, utility room, etc. could be added to a house without a kitchen. The applicant would be applying for a residential addition building permit. Mr. Beagle agreed. But, if the intent was to create another housekeeping unit, it would be done with a single family dwelling whether independently or attached to an existing home. A kitchen is a primary aspect of a dwelling unit that makes it a dwelling unit. Mr. Desch expressed concern about the duplex remaining once the occupants left. He felt the applicants' home could be modified to do exactly what they want and leave out the kitchen. Mr. Beagle said the applicant wanted to provide a private living space for the parents so they could keep their sense of independence but they would be near for the children to provide assistance when it is needed.

With no additional questions for Mr. Beagle, Ms. Moler called Mr. and Mrs. Smiths to make a presentation.

David and Christine Smith, 8229 SE California Avenue, Berryton, KS 66409.

- Want to set something up for their parents and it would also be a place for them in the future.
- They have three sons and have talked about one of them moving into their home and they would then move to the second residence.
- The garage idea is basically a way to get to their parents easier and to protect them during inclement weather.
- They also foresee having other family members utilize it.

With no further questions for Mr. and Mrs. Smith and no one to speak in favor or in opposition, Ms. Moler closed the hearing and asked for discussion. There was no discussion. Ms. Moler asked if for two motions: one to advise staff to present an amendment to them covering this topic in the future and one to consider the request.

Ms. McKenzie moved to approve the rezoning, Mr. Depperschmidt seconded the motion. There were no additional questions or discussion. With a vote of **5-1-0 (Mr. Desch dissenting)**, the rezoning was **approved**.

Ms. McKenzie asked the Planning Department to compile information on how other communities deal with accessory dwelling units and provide it to the Planning Commission for review. Mr. Beagle stated he would put together some information for them to review.

**Public Comment on Non-Agenda Planning and Zoning Items:** None were indicated.

**Discussion of Planning Related Issues:**

Ms. Moler stated the Comprehensive Plan would be considered by the County Commission on August 20<sup>th</sup> at 9 a.m. in the County Commission office. The public would receive notice through the website and the newspaper.

**Adjournment:**

Ms. McKenzie moved to adjourn, seconded by Mr. McCurry, a unanimous voice vote declared the public hearing be adjourned, which was at 6:50 p.m.