

BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS

WEDNESDAY, SEPTEMBER 2, 2009

6:35 p.m. – County Commission Meeting

-Convene

CONSENT AGENDA

- (1)(a) Consider approval of Commission Orders; and
- (b) Consider approval of a resolution authorizing the including of Douglas County, Kansas in the Foreign Trade Zone "Service Area" of the Greater Kansas City Foreign Trade Zone, Inc. for the purpose of implementing new procedures for securing Foreign Trade Zone statues within Douglas County and authorizing a letter communicating the same to the grantee. (Al Figuly and Beth Johnson)

REGULAR AGENDA

- (2) Presentation about H1N1 Pandemic preparedness in Douglas County (Dan Partridge and Teri Smith).
- (3) **TA-6-9-09:** Consider a text amendment to the Douglas County Zoning Regulations that would allow the County Commission to approve conditional zoning map amendments (rezoning request). *Initiated by the Board of County Commissioners on 6/24/09. (PC Item 2; approved 8-0 on 8/24/09)*
(Linda Finger)
- (4) Other Business
 - (a) Consider approval of Accounts Payable (if necessary)
 - (b) Appointments
 - (c) Miscellaneous
 - (d) Public Comment
- (5) Adjourn

WEDNESDAY, SEPTEMBER 9, 2009 (Light Agenda)

-Proclamation for "International Literacy Week" September 6-12, 2009 (Betty Parks)

-Consider adopting special rules for special music event at Lone Star Lake (Keith Browning)

WEDNESDAY, SEPTEMBER 16, 2009

-Consider and adopt Resolution relating to the County's issuance of General Obligation Refunding and Improvement Bonds, Series 2009-A. (Evan Ice)

-Consider Mid-States Material's detailed reclamation plans for Phases 1A, 2, 3 and 4 of the Big Springs Quarry; 2 North 1700 Road. Submitted by Professional Engineering Consultants for Mid-States Ventures, L.L.C., property owner of record. (Mary Miller is the Planner)

TUESDAY, SEPTEMBER 22, 2009

-4:00 – 6:00 p.m. - Joint City/School District/County Commission meeting Last night, the City Commission confirmed that Tuesday, September 22, 4 to 6 p.m., at City Hall

- 1) Call to Order
- 2) Discussion of school issues, including:
 - A) Presentation of USD goals
 - B) Presentation and discussion of plans for land being purchased by USD 497 that is located in SE corner of the district
 - C) Discussion of possible reconfiguration of school boundaries

- D) Progress report on new stadium facilities,
- E) Discussion of 2010 budget cuts

3) Presentation of City of Lawrence Goals

4) Discussion of economic development issues, including:

- A) Discussion of development efforts on the 87acre site owned by DCDI located east of East Hills Business park
- B) Bio-Science Incubator plans
- C) Other incubator plans

WEDNESDAY, SEPTEMBER 23, 2009

-Douglas County Community Corrections Year End Quarterly Report for FY2009 (Ron Stegall)

WEDNESDAY, SEPTEMBER 30, 2009

WEDNESDAY, OCTOBER 7, 2009

Swearing in of County Treasurer, Paula Gilchrist for a 2nd term (Judge Robert Fairchild)
Proclamation -October 10, 2009 as "Put the Brakes on Fatalities Day."

WEDNESDAY, NOVEMBER 4, 2009

-Lone Star Weed Discussion

Note: The Douglas County Commission meets regularly on Wednesdays at 4:00 P.M. for administrative items and 6:35 P.M. for public items at the Douglas County Courthouse. Specific regular meeting dates that are not listed above have not been cancelled unless specifically noted on this schedule.

RESOLUTION NO. 09-31

A RESOLUTION SUPPORTING THE INCLUSION OF DOUGLAS COUNTY, KANSAS IN THE FOREIGN TRADE ZONE “SERVICE AREA” OF THE GREATER KANSAS CITY FOREIGN TRADE ZONE, INC. (“GRANTEE”) FOR THE PURPOSE OF IMPLEMENTING NEW ALTERNATIVE SITE DESIGNATION PROCEDURES (“ASF”) FOR SECURING FOREIGN TRADE ZONE STATUS WITHIN THE COUNTY AND AUTHORIZING A LETTER COMMUNICATING COUNTY SUPPORT OF THE SAME.

WHEREAS, Douglas County, Kansas is a County government and the County Commission is the legislative and governing body of said government; and

WHEREAS, the Greater Kansas City Foreign Trade Zone, Inc., a not-for-profit 501 (c) 6 Kansas Corporation established in 1973 serves as Grantee (“Grantee”) under the U.S. Foreign Trade Zone Act of 1934 for the purpose of establishing Foreign Trade Zones (“FTZ”) within the jurisdictional area of the U.S. Department of Homeland Security’s Bureau of Customs and Boarder Protection - Port of Kansas City (“USCBP”) and known as FTZ No. 17; and

WHEREAS, as the Grantee for FTZ status in USCBP area, all applications for said FTZ status must be filed by the Grantee and must be reviewed and approved by the U.S Foreign Trade Zone Board in Washington, DC, the Grantee’s regulating body (“USFTZ”); and

WHEREAS, since 1973, the Grantee has eight (8) established General Purpose FTZ Sites on various properties within FTZ No. 17 containing a total of 55,046,402 square feet (1,263.69 acres) of which 90,000 square feet (2.06 acres) is currently activated and being used under FTZ procedures; and

WHEREAS, the USFTZ has, with the concurrence of Grantees, developed and adopted certain optional procedures (“ASF”) for processing Grantee’s Minor Boundary Modification FTZ applications which will streamline USFTZ processing of said applications and, from the Grantee’s perspective, be more cost-effective for companies desiring to participate in the FTZ program and secure the benefits offered by the program; and

WHEREAS, in order to participate in ASF, Grantee’s must secure a letter of support from counties within their Service Area in the form specified in Exhibit A attached hereto; and

WHEREAS, Douglas County, Kansas lies within the jurisdictional area of USCBP and the Grantee and has determined that the ASF procedures for designating FTZ users in Douglas County will provide streamlined and cost effective access to the FTZ program for companies in the county that desire to operate in FTZ’s and will further advance the competitive advantages of Leavenworth County’s economic development program.

NOW, THEREFORE, BE IT RESOLVED BY THE DOUGLAS COUNTY BOARD OF COMMISSIONERS AS FOLLOWS:

1. The Douglas County Board of Commissioners has determined that applications for Foreign Trade Zone designation under ASF procedures will be beneficial to the County as a whole and companies locating within the county desiring Foreign Trade Zone status.

2. The Douglas County Board of Commissioners supports the inclusion of Douglas County within the Service Area of the Grantee for the purpose of implementing ASF procedures.

3. The Douglas County Board of Commissioners authorizes its Chairman or its designated representative to send a letter of support in the form contained in Exhibit A hereto along with a copy of their Resolution to the Greater Kansas City Foreign Trade Zone, Inc. communicating its support as articulated herein.

RESOLVED THIS 2ND DAY OF SEPTEMBER, 2009.

DOUGLAS COUNTY BOARD OF
COMMISSIONERS

(SEAL)

Nancy Thellman, Chairman

ATTEST:

Jim Flory, Vice Chairman

Jamie Shew, County Clerk

Mike Gaughan, Member



DOUGLAS COUNTY COMMISSIONERS

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Bob Johnson
Charles Jones
Jere McElhaney

September 2, 2009

Alfred J. Figuly, President and CEO
Greater Kansas City Foreign Trade Zone, Inc.
Granter - Foreign Trade Zone No. 17
20 East 5th Street, Suite 200
Kansas City, Missouri 64106

Dear Mr. Figuly:

The purpose of this letter is to document the support of Douglas County, Kansas for inclusion within the Service Area of Foreign-Trade Zone (FTZ) No. 17. We understand that this means that the grantee, the Greater Kansas City Foreign Trade Zone, will be able to apply to the Foreign-Trade Zone Board for the authority to serve sites located within this county based on businesses' trade-related needs. We also note that the zone will be made available on a uniform basis to companies within this county, in a manner consistent with the legal requirement that each FTZ be operated as a public utility.

Nancy Thellman
Douglas County Chair

H1N1 Status Report

8/26/2009

- As expected with the start of school and Universities schedules, the Douglas County community is seeing a number of individuals with influenza-like illness (ILI).
- While media reports indicate that the KU cases are confirmed H1N1 infections, these students are not and have not been tested for H1N1. As of mid-August, testing for H1N1 at the state laboratory has been restricted to hospitalized patients.
- Students are being told they have ILI which is likely to be novel H1N1 because it is unusual for influenza to be circulating at this time of the year.
- The current recommendation for individuals with ILI is to isolate themselves (stay home) until 24 hours after they no longer have a fever, without the use fever-reducing medication. Students who are able to go home to recover are being encouraged to do so; others are staying in their rooms and their well roommates are temporarily relocating.
- Health Department and KU staff have been fielding many calls from healthcare providers and parents throughout Kansas. We have also been responding to a number of rumors.

Local Planning

- CDC Guidance for Response to Influenza for Institutions of Higher Education was issued last Thursday, August 20.
- The Health Department met yesterday with representatives from University of Kansas, Baker University and Haskell Indian Nations University to review the guidance and implementation plans at each of the universities.
- Health Department is doing outreach with the business community to ensure that businesses are aware of what they can do to reduce the spread of the flu virus.
- Businesses are also being asked to allow and encourage sick people to stay home and encourage employees to volunteer to assist in community vaccination efforts.
- In keeping with the strategy to provide multiple points for vaccine distribution, community vaccine providers have been contacted and encouraged to pre-register to administer the H1N1 vaccine when it becomes available.
- Efforts are continuing with public and private schools across the county to participate as vaccination sites.

Guidance Materials

- The CDC and KDHE have issued guidance information for a number of specific populations. Guidance for child care facilities is due out later this week.
- Copies of guidance materials can be found on the Health Department's web site www.ldchealth.org
- KDHE is providing a weekly newsletter to keep local health departments and others up-to-date with H1N1 developments. See the most recent copy http://www.kdheks.gov/olrh/H1N1/H1N1_082409.pdf

PLANNING COMMISSION REPORT
Regular Agenda -- Public Hearing Item

PC Staff Report
08/24/09

ITEM NO. 2: AMENDMENT TO COUNTY ZONING REGULATIONS (LMF)

TA-06-09-09: Consider amendments to Section 12-324 CHANGES AND AMENDMENTS in the County Zoning Regulations, to clarify the County Commission's authority to consider and take action on conditional zoning map amendment (rezoning) applications in the unincorporated areas of the County. Initiated by Board of County Commissioners on June 24, 2009.

RECOMMENDATION: Staff recommends that the Planning Commission forward a recommendation for approval of the proposed amendment [TA-06-09-09] that creates regulatory authority for the County Commission to consider zoning map amendments (rezonings) for conditional zoning.

Reason for Request: The County Commission wants to have clear regulatory authority to consider and take action on conditional zoning map amendments (rezonings).

RELEVANT GOLDEN FACTOR:

- Conformance with the Comprehensive Land use Plan is the relevant factor that applies to this request. Amending regulatory tools, one of which is this amendment to the Subdivision Regulations, is an implementation step in Chapter 13 of *Horizon 2020*, the City/County Comprehensive Land Use Plan.

PUBLIC COMMENT RECEIVED PRIOR TO PRINTING

No public comment was received.

ATTACHMENT

County Commission meeting minutes from June 24, 2009, where the text amendment was initiated.

OVERVIEW OF REVISIONS PROPOSED

Consideration of conditional zoning in the unincorporated area of the County was first raised as a discussion point with Planning Staff by applicants for "The Woods" Retreat & Conference facility. When raised informally with County Commissioners on the previously seated County Commission, this concept was not an action they expressed interest in pursuing. This was also raised at a time when the Planning Commission and Staff were working on a comprehensive update to the county's Zoning Regulations.¹ Individual Commissioners expressed their thoughts that if an amendment to create the regulatory basis for conditional zoning was considered necessary by the Planning Commission or Planning Staff that it could be proposed as part of this Zoning

¹ Work has been delayed on this draft while the Planning Resources Coordinator and other County personnel review the draft and seek input from the new County Commission on changes they would like to see in the update to the Zoning Regulations.

Regulations update. As part of the discussion of Conditional Zoning between Planning Staff, Zoning & Codes Staff and the Planning Resources Coordinator, the County Counselor was asked to provide his thoughts on the legal authority for conditional zoning. In response to this, the County Counselor stated this is an action the County Commission can take but, since considering/approving conditional zoning was a significant departure from the actions of previous Commission, it would be good to create a clear point of departure from previous County Commission actions. He indicated this can be achieved through revision to the Zoning Regulations, adding regulatory language that definitely states the procedure and process to follow in considering Conditional Zoning.

The seated County Commission were presented with an opportunity in June 2009, to consider what zoning "tools" they had available to approve a land use/zoning change. The options of requiring either a Conditional Use Permit or approving the specific Zoning designation (B-2) requested were not sufficient to address concerns of the Commission or meet the applicant's development objectives. The County Commission determined they would like to have clear authority in the Zoning Regulations to consider and act on conditional zoning map amendment applications. Based on their discussion, the County Commission tabled the specific rezoning request that was under consideration and initiated the text amendment to add authority for conditional zoning to the Zoning Regulations.

The County Commission considers Conditional Zoning to be a viable option for them to consider and a zoning tool they need.

HOW TO READ THE AMENDED TEXT

The changes being proposed with this text amendment are shown below. Please note, the entire section 12-324 is shown although the amendments are only for portions of this section.

New text recommended to be added to this section is identified by ***bold, italic typeface***; deleted text is identified by ~~strikethrough~~. For clarity, housekeeping items are noted in **bold blue** print.

** The Zoning Regulations were incorporated into the County Code in March 2009. Only the numbering of the sections in these regulations changed when they were codified into the Code.*

12-324 CHANGES AND AMENDMENTS

12-324-1.

12-324-1.01. The Board of County Commissioners may, from time to time, amend, supplement, or change, by resolution, the boundaries of the districts or the regulations herein established. The resolution shall become effective upon publication thereof in the official county paper.

12-324-1.02. An amendment, supplement, or change to these regulations may be initiated by the Board of County Commissioners, Planning Commission or by an application of one or more owners of property affected by the proposed amendment, supplement or change.

12-324-1.03 The Board of County Commissioners, from time to time, may

supplement, change or generally revise the boundaries or regulations contained in zoning regulations by amendment. A proposal for such amendment may be initiated by the Board of County Commissioners or the Planning Commission. If such proposed amendment is not a general revision of the existing regulations and affects specific property, the amendment may be initiated by application of the owner of property affected. Such application shall be made at least forty-five days prior to a regularly scheduled Planning Commission meeting.

Any such amendment, if in accordance with the land use plan or the land use element of a comprehensive plan, shall be presumed to be reasonable. The criteria for evaluation shall include, but not be limited to, the following when approving or disapproving a rezoning request:

- a. Zoning and Uses of Properties Nearby;
- b. Character of the Area;
- c. Suitability of Subject Property for the Uses to Which It has been Restricted;
- d. Length of Time Subject Property has Remained Vacant as Zoned;
- e. Extent to Which Removal of Restrictions will Detrimentially affect Nearby Property;
- f. Relative Gain to the Public Health, Safety, and Welfare by the Destruction of the Value of the Petitioner's Property as Compared to the Hardship Imposed upon the Individual Landowners;
- g. Conformance with the Comprehensive Plan; and,
- h. Professional Staff Recommendation.

All such proposed amendments first shall be submitted to the Planning Commission for a recommendation. The Planning Commission shall hold a public hearing thereon, and shall give notice of the public hearing by publication at least once in the official newspaper a minimum of 20 days prior to the date of the hearing. Such notice shall fix the time and place for such hearing and contain a statement regarding the proposed changes in regulations or restrictions or in the boundary or classification of any zone or district. If such proposed amendment is not a general revision of the existing regulations and affects specific property, the property shall be designated by legal description or a general description sufficient to identify the property under consideration.

In addition to such publication notice, written notice of such proposed amendment shall be made at least 20 days before the hearing to all owners of record of lands located within at least 1,000 feet of the area proposed to be altered. Notice of the county's action shall extend 200 feet in those areas where the notification area extends within the corporate limits of a city. All notices shall include a statement that a complete legal description is available for public inspection and shall indicate where such information is available. When the notice has been properly addressed and deposited in the mail, failure of a party to receive such notice shall not invalidate any subsequent action taken by the Planning Commission or the Board of County Commissioners.

Such notice is sufficient to permit the Planning Commission to recommend amendments to zoning regulations which affect only a portion of the land described in the notice or which give all or any part of the land described a zoning classification of lesser change than that set forth in the notice. A recommendation of a zoning classification of lesser change than that set forth in the notice shall not be valid without republication and,

where necessary, remaining, unless the Planning Commission has previously established a table or publication available to the public which designates what zoning classifications are lesser changes authorized within the published zoning classifications.

At any public hearing held to consider a proposed rezoning, an opportunity shall be granted to interested parties to be heard.

12-324-2. Action by the Planning Commission. The hearing may be adjourned from time to time and at the conclusion of the same, the Planning Commission shall prepare its recommendations and findings of fact. ~~A majority of the members of the Planning Commission present and voting at the hearing shall be required to recommend approval or denial of the amendment to the Board of County Commissioners. If the Planning Commission fails to make a recommendation on a rezoning request, the Planning Commission shall be deemed to have made a recommendation of disapproval.~~ **After the conclusion of the public hearing on the proposed amendment, the following shall apply:**

- a. ***The Planning Commission may take any action that is consistent with the regulations of this Article, the Douglas County Code, by-laws adopted by the Planning Commission, and the notice given.***
- b. ***The Planning Commission's action may include recommending approval of the proposed amendment, recommending approval with conditions or modifications, or recommending disapproval.***
- c. ***The Planning Commission may recommend conditions or modifications if the effect of the condition or modification is to limit the allowed uses or to allow a lesser change from the rezoning requested in the proposed amendment; provided, however, that any recommendation of a zoning classification of lesser change from the zoning set forth in the published notice shall not be valid without republication and, where necessary, remaining notice to property owners entitled to mailed notice, unless the lesser change is consistent with any lesser change table the Planning Commission has previously established in accordance with Section 12-324-2.01.***
- d. ***The Planning Commission may not recommend greater density of development, intensity of use, or a more intense zoning district classification than was specified in the published notice.***

A majority of the members of the Planning Commission present and voting at the hearing shall be required to make a recommendation to the Board of County Commissioners. If the Planning Commission fails to make a recommendation on a rezoning request, the Planning Commission shall be deemed to have made a recommendation of disapproval.

12-324-2.01 Lesser Change Table. Pursuant to K.S.A. 12-757 the planning commission may adopt a "Lesser Change Table". The Lesser Change Table is for the use of the planning commission in determining when republication of a zoning application is required. The table lists zoning classifications in descending order from the least intense to the most intense zoning district. A copy of the Lesser Change Table ~~is~~ **shall be** available and on file at the Lawrence-Douglas County Metropolitan Planning Office.

12-324-3 Action by the Board of County Commissioners. When the Planning Commission submits a recommendation *and findings of fact for* ~~of~~ approval, *approval with conditions or modifications, or disapproval of a proposed amendment, the following shall apply:* ~~or disapproval of such amendment and the findings of fact therefore, the Board of County Commissioners may:~~

- ~~01. Adopt such recommendation by resolution;~~
- ~~02. Override the Planning Commission's recommendation by a 2/3 majority vote of the membership of the Board of County Commissioners; or~~
- ~~03. Return such recommendation to the Planning Commission with a statement specifying the basis for the Board of County Commissioners' failure to approve or disapprove.~~

~~If the Board of County Commissioners returns the Planning Commission's recommendations, the Planning Commission, after considering the same, may resubmit its original recommendation giving the reasons therefore or submit a new and amended recommendation and findings of fact. Upon the receipt of such recommendation, the Board of County Commissioners, by a simple majority thereof, may adopt or may revise or amend and adopt such recommendation and findings of fact by resolution, or it need take no further action thereon.~~

~~If the Planning Commission fails to deliver its recommendation to the Board of County Commissioners following the Planning Commission's next regular meeting after receipt of the Commission's report, the Board of County Commissioners shall consider such course of inaction on the part of the Planning Commission as a resubmission of the original recommendation and proceed accordingly.~~

- a. The Board of County Commissioners may approve, approve with conditions or modifications, or deny the proposed amendment; or*
- b. The Board of County Commissioners may return the proposed amendment to the Planning Commission for further consideration, together with a written explanation of the reasons for the Board of County Commissioners' failure to approve or disapprove.*
 - 1. The Planning Commission, after considering the explanation by the Board of County Commissioners, may resubmit its original recommendations with its reasons for doing so or may submit a new or amended recommendation.*
 - 2. Upon the receipt of such recommendation, the Board of County Commissioners may, by a simple majority vote, approve the proposed amendment, approve it with conditions or modifications, or deny it.*
 - 3. If the Planning Commission fails to deliver its recommendations to the Board of County Commissioners following the Planning Commission's next regular meeting after receipt of the Board of County Commissioners' report, the Board of County Commissioners will consider such course of inaction on the part of the Planning Commission as a resubmission of the original recommendations and proceed accordingly.*
- c. The Board of County Commissioners may act by a simple majority vote, except in the following cases:*
 - 1. An action that overrides the Planning Commission's*

recommendations, in which case the decision shall be by a 2/3 majority vote of the membership of the Board of County Commissioners; or

- 2. Approval, or approval with conditions or modifications, when a valid protest petition has been submitted in accordance with Section 12-324-4, in which case the voting requirements in Section 12-324-4 shall apply.**

The Board of County Commissioners may allow or impose conditions or modifications on the proposed amendment if the effect of the condition or modification is to limit the allowed uses, to allow a zoning classification of lesser change, or to reduce the amount of land area included in the proposed amendment. The Board of County Commissioners may not approve a greater density of development, intensity of use, or a more intense zoning district classification than was specified in the published notice. The proposed ~~rezoning~~ **amendment** shall become effective upon publication of the adopting Resolution.

12-324-3.01 Conditions of Approval. When the procedures of this Article allow the Planning Commission to recommend or the Board of County Commissioners to approve applications for zoning map amendment with conditions, the conditions shall relate to a situation created or aggravated by the proposed use or development. When conditions are imposed, an application will not be deemed to be approved until the applicant has complied with all of the conditions.

12-324-4 Regardless of whether or not the Planning Commission **recommends approval, approval with conditions or modifications,** or **disapproval** a zoning amendment, if a protest petition against such amendment is filed in the office of the county clerk within 14 days after the date of the conclusion of the public hearing pursuant to the publication notice, signed by the owners of record of 20% or more of any real property proposed to be rezoned or by the owner of record of 20% or more of the total area required to be notified by this act of the proposed rezoning of a specific property, excluding streets and public ways, the resolution adopting such amendment shall not be passed except by at least a $\frac{3}{4}$ vote of all of the members of the Board of County Commissioners. **The foregoing supermajority voting requirement, however, shall not apply if K.S.A. 12-757(g) or other applicable law requires approval by only a majority of the Board of County Commissioners.**

12-324-5

- a. No application for an amendment, supplements, or change to the "Zoning Regulations for Unincorporated Territory of Douglas County, Kansas". Including the zoning map, conditional use permits, and Community Unit Plans, shall be accepted by the Lawrence-Douglas County Planning Commission if an application for the same amendment, supplement, or change has been denied by the Board of County Commissioners within the preceding twelve months. The withdrawal of an original application after it has been advertised for public hearing shall constitute a denial of the application just as if the public hearing had commenced and been concluded.
- b. Irrespective of paragraph a. above, an application for the rehearing may be accepted by the Lawrence-Douglas County Planning Commission within twelve

months after a denial if it is accompanied by an affidavit setting forth facts, which, in the judgment of the Planning Commission, constitute a substantial change from the original application. All requests for rehearing as provided for in this section shall be submitted to the Lawrence-Douglas County Planning Department fifteen days prior to a regularly scheduled meeting of the Lawrence-Douglas County Planning Commission and shall be included on the agenda for that meeting as no-public hearing item. If the Planning Commission determines that the application constitutes a substantial change from the original application, the item shall be advertised and a public hearing shall be held at the next regularly scheduled meeting of the Lawrence-Douglas County Planning Commission.

12-324-6 Within 30 days of the final decision of the Board of County Commissioners, any person aggrieved thereby may maintain an action in the District Court of Douglas County to determine the reasonableness of such final decision.

**ITEM NO. 2 AMENDMENTS TO COUNTY ZONING REGULATIONS; CONDITIONAL ZONING
MAP AMENDMENTS (LF)**

TA-6-9-09: Consider a text amendment to the Douglas County Zoning Regulations that would allow the County Commission to approve conditional zoning map amendments (rezoning request). *Initiated by the Board of County Commissioners on 6/24/09.*

STAFF PRESENTATION

Ms. Linda Finger presented the item.

Commissioner Rasmussen asked if two amendment parts were being considered, one amending the Planning Commission authority and one amending the authority of the County Commission.

Ms. Finger said yes, all under zoning map amendments. It is one type of change but two different authorities.

Commissioner Harris inquired about forgoing the supermajority voting and asked under what circumstances that would take place where a state law would supersede the local law.

Ms. Finger said that would take place with Quarries. That was changed with legislation with last term of the Commission. If there is a rock quarry type of request the supermajority no longer counts in the petition.

Commissioner Hird inquired about the League of Women Voter Letter addressing the legality of this.

Ms. Finger said she has had several conversations with Betty Lichtwardt, League of Women Voters, as well as conversations with Evan Ice, county attorney. She said Mr. Ice puts a different emphasis on the same section. He believes that 'except as provided in the zoning regulations' is what this is in conformance with and does not put the same emphasis that they do on the uniformity shall be uniform. She said if all parties think they can go forward with this then Mr. Ice is comfortable with that.

Commissioner Hird asked if the Conditional Zoning would be considered permanent or temporary.

Ms. Finger said once it is approved it would be permanent as any zoning is.

Commissioner Hird inquired about public notice of conditions placed on a particular parcel.

Ms. Finger said public notice would be through the public hearing procedures.

Mr. McCullough said with City properties we added a layer in GIS to see the ordinance that contains the conditions. Staff could coordinate with the County GIS to do something similar.

Commissioner Rasmussen asked if a timeframe could be one of the conditions.

Ms. Finger said conventional zoning does not come with timeframes and it was not part of the discussion when the County Commission initiated it.

Commissioner Rasmussen asked what type of conditions could be placed on it.

Ms. Finger said the conditions were left flexible. She stated that in section 12-324-2(c) '*The Planning Commission may recommend conditions or modifications if the effect of the condition or modification is to limit the allowed uses or to allow a lesser change*'... She said the conditions that could be placed on a zoning are the same that could be placed today, such as a site plan requirement or platting requirement.

Commissioner Rasmussen asked if the use could be limited but not the time of the use.

Ms. Finger said that was correct, no more so than any other B-2 zoning.

Commissioner Rasmussen asked if people who read this would realize time could not be limited.

Mr. Miller said he has not looked at the County Zoning Regulations because it is a county zoning matter and he is not council to the county. He said the two issues to focus on is it lawful and reasonable.

PUBLIC HEARING

No public comment.

ACTION TAKEN

Motioned by Commissioner Carter, seconded by Commissioner Harris, to approve the proposed amendment [TA-6-9-09] that creates regulatory authority for the County Commission to consider zoning map amendments (rezonings) for conditional zoning.

Unanimously approved 8-0, with Student Commissioner Shelton voting in favor.

6/24/2009 Minutes

Thellman called a special meeting to order at 3:10 p.m. on Wednesday, June 24, 2009 with all members present.

Thellman moved that the Board recess into executive session for 125 minutes returning at 5:15 p.m. on matters for the purpose of discussing personnel matters of nonelected personnel. The justification is to protect the privacy of the personnel involved. Attendees included: Craig Weinaug, County Administrator; and Pam Madl, Assistant County Administrator.

The Board returned to regular session at 5:15 p.m. No action was taken.

Thellman moved to recess until 6:35 p.m. Motion was seconded by Gaughan and carried unanimously.

Thellman called the regular session meeting to order at 6:35 p.m. on Wednesday, June 24, 2009 with all members present.

BENEFIT DISTRICTS 06-24-09

The item to consider and conduct a Public Hearing for Southeast Lawrence Sanitary Sewer Main Benefit District No. 1 – Sanitary Sewer Improvements; Resolution No. 06-30; Southeast Lawrence Sanitary Sewer Main Benefit District No. 2 – Sanitary Sewer Improvements; Resolution No. 06-31; and Southeast Lawrence Sanitary Sewer Main Benefit District No. 3 – Sanitary Sewer Improvements; Resolution No. 06-32 was removed from the meeting agenda.

BENEFIT DISTRICTS 06-24-09

The Chairman opened a public hearing for the purpose of receiving written or oral objections and considering proposed assessments for the costs of certain sewer improvements heretofore authorized by the Board, as follows:

Southeast Lawrence Sanitary Sewer Main Benefit District No. 1 – Sanitary Sewer Improvements Resolution No. 06-30;

Southeast Lawrence Sanitary Sewer Main Benefit District No. 2 – Sanitary Sewer Improvements Resolution No. 06-31; and

Southeast Lawrence Sanitary Sewer Main Benefit District No. 3 – Sanitary Sewer Improvements Resolution No. 06-32

It was determined by the Board that notice of the public hearing was duly published and mailed in accordance with K.S.A. 19-27a01 et seq. Comments were received by the Board. Thereafter, the Chairman adjourned the public hearing.

Thereupon, an Assessment Resolution was presented entitled:

AN ASSESSMENT RESOLUTION LEVYING SPECIAL ASSESSMENTS ON CERTAIN PROPERTY TO PAY THE COSTS OF INTERNAL IMPROVEMENTS IN DOUGLAS COUNTY, KANSAS, AS HERETOFORE AUTHORIZED BY RESOLUTION NOS. 06-30, 06-31 AND 06-32

OF THE COUNTY; AND PROVIDING FOR THE COLLECTION OF SUCH SPECIAL ASSESSMENTS.

The Assessment Resolution was considered and discussed and on motion of Commissioner Flory, seconded by Commissioner Thellman the Assessment Resolution as a whole was adopted by the following roll call vote:

Yes: 3
No: 0

Thereupon, a majority of the members of the Board having voted in favor of the adoption of the Assessment Resolution, it was given No. 09-20, was signed by the Commissioners and attested by the County Clerk; and the County Clerk was ordered to cause the Assessment Resolution to be published one time in the official County newspaper as required by law, and to cause to be mailed a Notice of Assessment to each and all of the known property owners affected thereby on the same date that the Assessment Resolution is published.

PLANNING 06-24-09

The Board considered the approval of SP-5-20-09, a site plan for revisions to the Conditional Use Permit (CUP) for Pine Family Farms operation located at 1785 E 1500 Road, east side of the road, approximately 1/8 mile south of Hwy 24/40. The subject property contains approximately 23 acres. The application was submitted by Paul Werner Architects for Sue Pine Trustee, property owner of record. Linda Finger, Planning Resource Coordinator, presented the item.

A CUP for the Nursery and Landscape Material Sales, CUP-10-08-02, was approved by the County Commission in 2003 for a 10-year period, but with the condition of a review in 2008. Staff finds the proposed request, as conditioned, is consistent with the CUP previously approved for this property [CUP-10-08-03] and the A (Agriculture) Zoning District. Staff recommends approval of Site a Plan 05-20-09 as a revision to the previously approved 2003 site plan for this CUP Retail Nursery use located east of the retail site in the 1700 block of E 1500 Road, subject to the following conditions:

- 1) A stop sign be installed for customer traffic at the west end of the drive, where it intersects with E 1500 Road.
- 2) Retail customers be encouraged to use the drive directly west of the entry drive when multiple trips are required to weigh materials on the scales next to the retail office. There should be printed material at the retail sales office that provides this encouragement to customers.

Thellman opened for public comment. No comment was received.

Thellman moved to approve the SP-05-20-90 site plan revision to Pine Family Farms CUP-10-08-03 with the above-listed conditions. Motion was seconded by Gaughan and carried unanimously.

PLANNING 06-24-09

The Board considered the approval of CPA-3-2-09, a Comprehensive Plan Amendment for revisions to Horizon 2020 Chapter 4– Growth Management and Chapter 6 – Commercial Land Use to expand the possible locations of conference, recreation or tourism facility uses in the rural area. The CPA was requested by Rockwall Farms, LC and initiated by the Planning Commission on April 20, 2009. The applicant provided proposed text changes to Chapter 4 and Chapter 6 with their CPA request. Dan

Warner, Lawrence-Douglas County Metropolitan Planning Staff, presented the item. Staff recommended approval of the CPA and the Joint Ordinance/Resolution.

Thellman opened the item for public comment.

Paul Werner, architect, stated staff felt comfortable with a mile separation from other existing similar facilities. He had also suggested a buffer of 500 ft.

Charlene Winter, 638 N 1800 Road, asked if the buffer area is open ground. Warner replied the intent is to maintain a natural buffer. It could be field area, berms or trees. The buffer could vary along each side of the property. Flory added the buffer would be addressed on the site plan.

Thellman moved to close public comment. Flory seconded and the motion carried unanimously.

It was the consensus of the Board to make the following amendments to the CPA: 1) making the 200 ft buffer to read "a mandatory minimum of 200 ft natural buffer area, or other appropriate distances as determined by the Board of County Commissioners"; 2) "separated from existing conference, recreation, or tourism facilities by at least 3 miles or other appropriate distance as determined by the Board of County Commissioners."

Thellman moved to approve Joint Ordinance No. 8415 of the City of Lawrence, Kansas, and Resolution 08-21 of the Board of County Commissioners of Douglas County, Kansas approving amendments to the Comprehensive Land Use Plan "Horizon 2020" by amending Chapter Four – Growth Management and Chapter Six – Commercial Land Use with the above-listed amendments. Motion was seconded by Flory and carried unanimously.

PLANNING 06-24-09

The Board considered the approval of Z-11-19-08, a request to rezone 58.99 acres located northeast of the intersection of N 1800 Road and E 700 Road, south of Lecompton from A (Agricultural) to B-2 (General Business District). The application was submitted by Paul Werner Architects, for Rockwall Farms L.C., property owner of record. (PC Item 5; approved 8-0 on 5/18/09) Mary Miller, Lawrence-Douglas County Metropolitan Planning Staff, presented the item and provided a list of concerns expressed by area residents which included water supply, sewage, alcohol, gun safety and noise. Miller also addressed concerns regarding notification by displaying notification maps from the County Clerk's office.

Staff recommends, based on the passing of accompanying Comprehensive Plan Amendment request [CPA-3-2-09], approval of the zoning request subject to the following conditions:

- 1) The rezoning resolution shall be published after the Board of County Commissioners have approved and signed the resolution for the Comprehensive Plan Amendment [CPA-3-2-09].
- 2) The rezoning resolution shall be published after the recordation of a final plat which shall include the following items:
 - a) The buffer area shown on the concept plan shall be included on the plat.
 - b) Use restrictions and maintenance responsibility for the buffer area shall be listed.

Thellman opened the item for public comment.

Paul Werner, architect, stated that The Woods is a full service corporate retreat. The owners are not seeking anything from the County other than rezoning approval. The hunting item has been taken off the table. Werner explained that the property was intentionally configured as a flag shaped lot to eliminate the possibility of putting in a gas station or commercial building along the main road. He stated it is hard to judge the amount of water use at this time. If required, a lagoon would be approved through the state. They plan to use water from the pond to sprinkle for fire.

Flory asked if the applicant would accept a CUP that would extend for 30 years, with approval of alcohol consumption on the premises. Warner replies the rezoning is all about security because rural regulations change. Flory agreed but rezoning is also a risk to the County because if the project fails to go through, we would have a bunch of mixed zonings in the area.

Mark Andersen, attorney representing the applicant, stated that a CUP did not provide potential investors with enough security to make the project financially viable. He called the project a multigenerational investment and investors were not willing to take the risk that the political climate had changed in 20 years when the CUP was up for renewal.

Don Fuston, Chair of Water District No. 6., stated that water is his main concern. The retreat would be limited to 1.6 million gallons a year. He feels that is not sufficient. Anything above 1.6 million would force rationing to area residents. Gaughan asked if the water district could still provide water if for example 10 additional families moved to the area, in addition to the retreat. Fuston, stated "yes" the district could supply water to 10 new families in addition to the retreat.

Charlene Winter stated she prefers the County approve a CUP as opposed to the rezoning. Flory asked Winter whether she was against the resort entirely or if she is comfortable offering a CUP with limitations. Winter stated she is concerned that a rezoning will end up allowing something she doesn't want.

Mark Andersen, suggested adding covenant and restrictions to the property and making the County the beneficiary. Anderson also stated the County Counselor had discussions with staff about the issue of conditional zoning and that Evan had indicated this was something that should be possible in the County. Anderson respected Evan and would not say the County Counselor gave an opinion on the issue.

Hank Booth, Lawrence Chamber of Commerce, stated his support of the project. He feels no other retail would want to locate to this area. He looks at the project as an amenity to the community.

Thellman moved to close the public comment; Flory seconded and the motion carried unanimously.

It was the consensus of the Board to table the rezoning request Z-11-19-08. Motion was seconded by Thellman and carried unanimously.

Flory moved to initiate a text amendment to the Douglas County Zoning Regulations that would add language to permit conditional zoning and directed staff to place this amendment on the August Planning Commission agenda for public hearing. Motion was seconded by Gaughan and carried unanimously.

Gaughan moved to initiate the creation of a new zoning district to the County Zoning Regulations for "conference, retreat, recreational, tourism or agri-tourism and heritage sites" and requested Staff work

on the language to include input from the previous applicant and others; and that staff provide the Commission with draft language by August 1, 2009. Motion was seconded by Thellman and carried unanimously.

MISCELLANEOUS 06-24-09

Hubbard Collinsworth, resident, asked the Board to consider addressing future needs of the homeless environment in regards to the temporary shelter being tabled. There are a number of families camping out at Clinton Lake.

Thellman moved to adjourn the meeting; Flory seconded and the motion carried unanimously.

Nancy Thellman, Chair

Jim Flory, Vice-Chair

ATTEST:

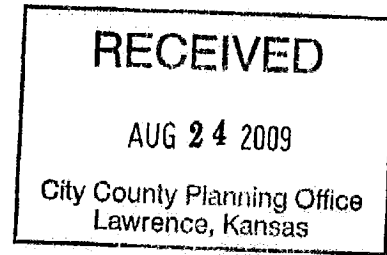
Jamie Shew, County Clerk

Mike Gaughan, Member

League of Women Voters of Lawrence-Douglas County
P.O. Box 1072, Lawrence, Kansas 66044

August 23, 2009

Mr. Greg Moore, Chairman
Members
Lawrence-Douglas County Planning Commission
City Hall
Lawrence, Kansas 66044



RE: ITEM NO. 2: AMENDMENT TO COUNTY ZONING REGULATIONS

Dear Chairman Moore and Planning Commissioners:

The text amendment to the County Zoning Regulations is being reviewed by you at the request of the Board of County Commissioners (BOCC). They are requesting this wording change to allow the Douglas County Zoning Regulations to exclude specific uses from any conventional county zoning district applied to a specific site that are found to be undesirable on that site. The BOCC is choosing the proposed rewording based on the new approach of the City Planning Staff and Planning Commission of conditioning a conventional zoning district map amendment ordinance for a specific site to exclude certain uses on that site that are normally permitted in that district. The approach that the City staff is taking is based on their interpretation of the new Lawrence Land Development Code and not on language that explicitly permits it in the Code. We believe that this is a misinterpretation of the Land Development Code, and we have previously outlined our reasons in several communications to the Planning Commission.

The League of Women Voters of Lawrence-Douglas County has consistently objected to this approach for several reasons. These reasons apply both to the Lawrence Land Development Code and to the wording changes proposed for the Douglas County Zoning Regulations. The reasons are listed below.

- 1) It is against the State law that requires uniform treatment. This is the basic reason.
[Underlining emphasis below has been added]

K.S.A. 12-756(a) states: "...Except as provided in the zoning regulations, all such regulations shall be uniform for each class or kind of building or land uses throughout each district, but the regulations in one district may differ from those in other districts and special uses may be designated within each district with conditions attached."

[Explanation: except for Special Uses and Planned Developments (K.S.A. 12-755(a)(1))&(5)), each zoning district may be different from other zoning districts, but must be uniform within itself.]

- (2) It is both unfair and dangerous.
 - (a) It treats an applicant with favoritism because it allows the use of a conventional district on an individual site which, without the elimination of specific uses, ordinarily would not be appropriate on that site. The two districts that specifically allow this type of conditioning in the Lawrence Land Development Code are the Planned Development Overlay District and Special Use Permits—not conventional districts.
 - (b) If the conditioned district on the site is considered permanent, then no one can tell from the Zoning District Map what uses each such district on the subject site will be permitted unless they research the ordinance that changed the zoning map on that site. The restrictions won't appear on the Zoning District Map or in the general Zoning Text.
 - (c) If the conditioned district on the site is considered temporary which reverts back to the original district when the property ownership or circumstances change, then the use on that location will always be uncertain. This would be unfair and dangerous to the County and to the neighbors.

- (3) The legality of allowing specific uses to be excluded from a specific site in a conventional zoning district map amendment has never been established in a court of law in Kansas. What would clearly seem illegal in State Law (quoted above) is being attempted here. This fact alone makes the selective exclusion of uses on specific sites in conventional zoning districts unstable on these sites and subject to differing future interpretations.

As pointed out above, the approach that the City staff is taking is based on their interpretation of the new Lawrence Land Development Code and not on language that explicitly permits it in this Lawrence Land Development Code. We believe that this is a misinterpretation of this Code, and we have outlined our reasons in several communications previously sent to the Planning Commission on this issue. The interpretation by the staff confuses the distinction between conditioning a use, which is allowed in several sections of the Code, and conditioning a zoning district by excluding a use, which is actually creating a new zoning district that isn't recognized by either the zoning district map or the zoning text. If the BOCC really wants to change its zoning regulations to very specifically and unquestionably allow this, it needs to change the proposed language so that this will be clear and not be strictly an interpretation by staff and subject to change.

The proposed pertinent language in the County Regulations reads as follows:

"...The Planning Commission may recommend conditions or modifications if the effect of the condition or modification is to limit the allowed uses [*emphasis added*] or to allow a lesser change from the rezoning requested in the proposed amendment..."

The meaning of the phrase "to limit the allowed uses" is subject to interpretation. The term "limit" could mean "limit the intensity of the allowed uses" which is what this would mean if it were in the City Code, including such conditions which would limit, meaning regulate, the size of the use or the size of the subject site, or the density (which is allowed in certain specific circumstances in the Land Development Code), for example. The city zoning code does not use the wording "exclude permitted uses from a conventional zoning district on a specific site," which is the actual intention of the BOCC in its current Text Amendment to the County Zoning Regulations.


A zoning district change on a site, in order to be legal and binding, must be written into the map amendment ordinance. Any zoning district map amendment ordinance that excludes uses on a specific site in a conventional district that are normally permitted in that district would become a new zoning district. Such a district should be made distinctive on the Zoning District Map and in the zoning Code text.

We urge the Planning Commission in this case of amending the County Zoning Regulations: (1) not to adopt the language "to limit the allowed uses" if the intention is to use this for excluding specific permitted uses from a zoning district applied to a specific site; and (2) to recognize that the interpretation applied to the Lawrence Land Development Code allowing the conditioning of zoning districts to exclude normally permitted uses in conventional districts is unstable and subject to question, and that the same uncertainty would apply in Douglas County in similar circumstances should the proposed amendment be adopted.

Thank you,

Sincerely yours,

Milton Scott
Vice President



Alan Black, Chairman
Land Use Committee