

# CITY OF DE SOTO PLANNING COMMISSION

City Hall, 32905 W. 84<sup>th</sup> Street  
April 28, 2009 – 7:00 P.M.

## MINUTES

1. The meeting was called to order with Roll Call by Chairman Mike Kroeger.

2. Roll Call:	Crumbaker	Present	Kroeger	Present
	Hemphill	Present	Krudwig	Absent
	Honomichl	Present	Templin	Present

Commissioner Walker is no longer on the Commission as he was elected to the City Council.

### 3. General Business:

A. Approve Planning Commission Agenda.

Motion by Commissioner Hemphill to approve the Agenda; second by Templin.

All Commissioners approved by “ayes”.

Motion carried.

B. Approve minutes of the March 24, 2009 Planning Commission meeting.

Motion by Commissioner Crumbaker to approve the Minutes; second by Honomichl.

All Commissioners approved by “ayes” with Commissioner Templin abstaining.

Motion carried.

C. Disclosure of conflicts of interest. N/A

D. Disclosure of outside communications regarding Commission business.  
Commissioner Crumbaker stated someone asked him when the meeting was and what was going to be discussed. He provided that information to the person.

### 4. Call to Public:

Members of the public who wish to address the Planning Commission regarding items not on the agenda may do so at this time. Any presentation is for information purposes only. No action will be taken. There is a four-minute time limit.

Darrel Zimmerman, 34055 W. 86<sup>th</sup> Terrace, stated “how many times has it been stated that “De Soto does not want to be like Lenexa or Overland Park” and is De Soto considered a business-friendly place. He commented on the things that bring people into De Soto. He commented on the numerous signs that are within De Soto. The City is undertaking a program to place nearly 100 additional signs within the City. What is De Soto’s real intention in preserving agricultural land use? He stated he is in the process of preparing a petition and he is also giving notice tonight he is not going to comply with the temporary sign ordinance and will retain an attorney to defend him when he is cited.

5. **Public Hearing:** N/A

6. **Old Business:**

- A. Consideration of an amendment to the Official Zoning Map for the City of De Soto, Kansas that will change the zoning on 150 parcels from a County zoning classification to an appropriate City Zoning District. Chairman Kroeger stated this item was tabled from the last meeting for more input on this discussion.

Engineer Brungardt stated the public hearing was held and comments were heard. The public hearing was closed at that meeting. Staff has researched conditional use permits that were obtained from the County in the past. Staff has also researched an opt-out option as well as the commercial property zoning concerns. The staff is reviewing a text amendment regarding the commercial properties.

Planner Bohnsack stated this action was discussed extensively at the March Planning Commission meeting. At that time the action was tabled pending further research and discussion. There were several questions about legal issues. Mr. Reavey, the City attorney has provided answers to these questions and they are listed in your staff report. Of greatest importance was the concern that the City's authority to rezone these properties was somehow limited by the annexation documents. This is not the case. The City has the right to rezone the properties as provided by state statutes.

Planner Bohnsack said some Commissioners wanted to know if a property owner has the option to remove his property from the rezoning process. Again, the state statutes provide the protest petition process for affected properties owners as detailed in the staff report. Opting out of the rezoning will defeat the goals of this process. She stated that she is in favor of tabling the issue to re-consider the question of formulating a new zoning district that will allow agricultural type uses. If such a district is adopted, several property owners may wish to be placed in that zoning category.

Planner Bohnsack stated of serious concern to staff are those properties with existing structures that have requested C-2 Business General zoning. Due to a deficiency in the site plan review regulations, such properties could be converted to commercial use without going through the site plan review process. Staff would recommend that the regulations be amended to fill this gap and allow the properties to be rezoned as requested.

She further discussed the previous concerns regarding certain properties, and did go to the Johnson County Courthouse and check their records. No records were found for the Skelgas property, the Penny property, or the Chemical Commodities property. Westar Electric (formerly KPL Gas) does have a non-expiring, special use permit for a transfer station on their property located at K-10 & Waverly. Mr. Ash's property at 9175 Cedar Creek Rd was rezoned in May 1992 to the RLD Low Density Residential District that allows the "occasional and infrequent" retail sale of home-craft and hobby items from the property. The Terra Vista property located west of Lexington Avenue between K-10 and 95<sup>th</sup> Street is requesting 3 different zoning classifications—which have been noticed to the public. Any change will require re-notification.

Engineer Brungardt stated there are specific properties that may need to be pulled from this issue. One is the Thrasher property; the Terra Vista property; the Penney's Concrete site at the northeast corner of Gardner Road and 83<sup>rd</sup> Street;

and Clearview City. Mr. Dave Rhodes, owner of Clearview City, is not able to be present tonight and provided a letter to staff requesting action not be taken tonight on his property.

Commissioner Hemphill asked about the Skelgas. Staff stated no response has been received from the owners and the County did not have any records for this site. Staff has recommended M-1 zoning for this site as the substation is a permitted use in this district.

Commissioner Crumbaker asked Planner Bohnsack if any city had a holding zone for properties in an agricultural use. Commissioner Crumbaker asked City Attorney Reavey about the up-zoning of the properties. When the City considers zoning, planners are directed to consider a range of Golden Criteria. He stated he is concerned about the amount of emphasis put upon a “planned” use and that criterion is only one of the multitudes. Does the City still have an obligation to consider all the criteria?

Attorney Reavey stated the criteria the City has is much broader than the Golden criteria. He stated “yes” the City does have to consider these criteria when rezoning property. The Supreme Court has said the criteria must be considered; however, they are given different weight based on the individual circumstances.

Planner Bohnsack stated the criteria have been reviewed for all properties.

Commissioner Hemphill asked about the Council’s direction to not consider a separate agricultural or rural zoning district at this time.

Commissioner Templin stated the existing ordinances do not have an “agricultural” zone. Three Planning Commissioners attended the workshop with the Council in exploring an “agricultural” zoning district. The outcome of that discussion was that Council did not want to encourage agricultural uses within the City limits and have it used as an instrument to discourage development within the City.

Chairman Kroeger stated he has talked with Mayor Anderson since the Council members have changed. Mayor Anderson stated this question could be brought to the present Council as an agenda item for further discussion to reconsider an agricultural zoning district.

Commissioner Templin stated that if the Commission agrees to send this back to the Council for consideration, then we should discuss that option now.

Commissioner Honomichl stated the earlier discussion centered on whether or not to expand the agricultural uses within the City limits. Nothing was discussed that discouraged agricultural uses; just nothing discussed to expand the agricultural uses within the City boundaries and in maintaining the current agricultural uses with the City limits.

Commissioner Crumbaker said there would be very limited opportunities to come in and ask for an agricultural zoning. He feels there should be a “holding” zone for properties to fall into when they are annexed into the City.

Commissioner Honomichl stated there used to be an “urban services overlay district”. Commissioner Templin asked if the “holding” zone is legal for recently annexed property, as in the City of Leawood. Attorney Reavey stated he is not

aware of a legal way to do it; however, he hasn't studied Leawood's zoning. Continued discussion between Commissioner Crumbaker and Commissioner Templin regarding a "holding" catch-all zoning until there is a need for rezoning that particular piece of annexed property.

Commissioner Templin said there are so many issues involved in the creation of a new zoning district. This is a matter for the Council to discuss and resolve. Discussion between Commissioner Templin and Commissioners Honomichl and Templin regarding annexation and de-annexation of properties.

Attorney Reavey stated that if this discussion could be tabled until the Council decides if they want to create an agricultural zoning, then those properties who want to be rezoned can be rezoned so that all this discussion is not for naught. He stated the Council needs to further discuss the options and make decisions before proceeding.

Commissioner Honomichl stated there have been a large number of property owners who have participated in the public meetings and hearings, and most of those owners have been in agreement with the new zoning. Commissioner Templin stated some people may want to reconsider the rezoning. Discussion ensued among Commissioners regarding a rezoning. Commissioner Honomichl said the Commission is an advisory body, not the decision making body. He stated the Council needs a recommendation from the Commission. Does the Commission want to recommend an agricultural zoning, and why or why not?

A discussion continued by Commissioner Hemphill regarding the property owners' fear of higher taxes in a rezoning. Commissioner Honomichl stated if there is merit in considering a large property for a "holding" zone, then why not talk about de-annexation. Chairman Kroeger discussed the criteria that need to be discussed for a zoning change.

Commissioner Templin said if the creation of an "agricultural" zoning in this town is done, it will be used as a "sword" for annexation. This new agricultural zoning district, whether intended at this point or not, will become a "sword" for annexation.

Commissioner Honomichl and Commissioner Crumbaker stated they wholeheartedly agreed. Commissioner Templin stated the Commissioners have done all they can to preserve the uniqueness of De Soto from Leawood and Lenexa and all the larger cities. Commissioner Crumbaker stated there could be an argument made that the agricultural zoning could be worthwhile. The City has annexed large acreages. The City could create a "holding" zone.

Commissioner Templin said there is an existing land use as long as the property owner doesn't change the use of the land. Chairman Kroeger discussed the number of acres that could be termed "agricultural". There is also the consideration of a special use permit for agricultural uses in an "R-O" zoning.

Commissioner Crumbaker stated there are some areas along 95<sup>th</sup> Street that have been deemed "commercial" in future development plans. He discussed this as an argument for a "holding" zoning. A discussion continued among Commissioners. Commissioner Crumbaker said there are options that can be considered. Commissioner Honomichl asked, "Why create an agricultural zoning?" He stated he would be more interested in a de-annexation discussion than an agricultural zoning district. He said there should be a recommendation made to the Council

with some options. Commissioner Crumbaker said he agreed.

Discussion between Commissioner Templin and Attorney Reavey regarding the tabling of this matter. Commissioner Templin stated that if the need to explore a need for an agricultural zone is there, then take the time to fully explore this and think the matter all the way through.

Commissioner Hemphill asked Commissioner Templin to explain the “cut of the sword”. Commissioner Templin stated that annexation is easier to do with an agricultural zone in place. Expansion of an agricultural zone within the City limits is dangerous and encourages the proliferation of services that cannot be supported.

Commissioner Crumbaker stated he sits on the County zoning board, and a piece of property on 95<sup>th</sup> Street came into discussion. He feels there should be cooperation with the County regarding properties and the uses of those properties bordering County zoning. Commissioners Templin and Honomichl stated the City has worked with the County and planning discussions have been held and plans exchanged with the County. Discussion ensued between Commissioner Honomichl and Commissioner Crumbaker on the Urban Services zoning and accommodating the County where it is reasonable. He stated there should be reasons as to why the City really needs an agricultural zoning district.

Commissioner Hemphill stated there is communication with the County and there are notes on zoning actions written in the reports. Planner Bohnsack stated she receives notices from the County and comments where applicable for the City.

Commissioner Crumbaker discussed the need for the City to be involved and oversee the County’s zoning board matters that are on the City’s adjoining properties. Attorney Reavey and Commissioner Crumbaker discussed the reasons for the Council’s non-renewal of the K-10 Corridor Overlay District. Attorney Reavey stated this takes away the City’s control.

Commissioner Templin discussed whether or not the Commissioners are going to table this matter so that the public is aware no vote will be taken this evening.

Motion by Commissioner Crumbaker to table this matter to the next regularly scheduled meeting; second by Templin. Commissioner Honomichl asked what would be determined by the next meeting. Commissioner Templin said there should be some questions answered regarding the public’s concern for an agricultural zoning district. Discussion with staff.

Roll Call:	Crumbaker	Yes	Kroeger	Yes
	Hemphill	Yes	Krudwig	Absent
	Honomichl	Yes	Templin	Yes

Motion carried.

Darrel Zimmerman stated there is a plan for having open spaces, including agriculture, in subdivisions within cities. He stated “grandfathering” doesn’t guarantee agricultural uses in perpetuity.

Commissioner Templin stated his recommendation on how to proceed is to have a workshop and hash out the ideas of what an agricultural zone would look like. He said this should be open to the public as this would be a much more productive use of everyone’s time. Staff has provided a summary of what other cities do.

Planner Bohnsack asked if the second Tuesday of May would work. Commissioner Hemphill asked if there could be a questionnaire to be considered by everyone. Chairman Kroeger discussed the criteria for the workshop. Commissioner Honomichl said the Commission has been doing the right thing. Engineer Brungardt stated he will send out an email to the Council to ascertain if they will be available on that date. He will then send out the notices.

Commissioner Crumbaker asked how ideas can be communicated. Attorney Reavey stated this annexation happened in 1998, Attorney Reavey stated the new "Open Meetings Act" indicates that if you are talking to other members, a majority of the quorum, on a topic that will be discussed in a future meeting of the members, then it is in violation. Discussion ensued between Commissioners and Attorney Reavey on quasi-judicial matters. Commissioner Crumbaker stated he could send his comments to staff and those comments could be shared with everyone.

Chairman Kroeger recognized Commissioner Roger Templin for his eight (8) years on the Planning Commission. He further stated Commissioners Templin and Walker will be recognized at the May 7<sup>th</sup> Council meeting.

Commissioner Templin stated he has appreciated working with everyone; we have a good Commission, a good Council, and a great town.

**NOTE:** Commissioner Krudwig arrived at 8:20 p.m.

**7. New Business:** N/A

**8. Staff Advisory Reports**

- Renewal of Planning Commissioners Journal (\$139). Commissioners agreed to renew the Journal.
- Rock Port Wind Turbines. Planner Bohnsack said she heard Eric Chamberlain speak today regarding the City of Rock Port's use of wind energy to supply the needs of the City. She asked if the Commissioners would like to group together with other cities and have Mr. Chamberlain come to speak to the group.

Commissioner Hemphill said the City of De Soto doesn't sit well with the air map. Planner Bohnsack said there are some possibility areas and a wind test would have to be done. Discussion that this speaker might be a "community draw" event for the EDC to consider.

Planner Bohnsack said that at 9<sup>th</sup> & Iowa in Lawrence, there is a gas station that has a small wind turbine on the roof. It could be used to generate energy.

Chairman Kroeger discussed that the Mayor will be appointing new Commissioners.

**9. Calendar:**

- A. *May 7<sup>th</sup>* - City Council - Tentative Planning agenda items include:
  - Consideration of CDBG project for 2010
  - Discussion of agricultural or rural zoning district?
- B. *May 21<sup>st</sup>* - City Council - Tentative Planning agenda items include:
  - Selection of CDBG project for 2010

Engineer Brungardt stated RDG will be here on May 19<sup>th</sup> and 20<sup>th</sup>. They will give a concept plan presentation on the downtown streetscape on the evening of the 20<sup>th</sup>. The Council will discuss the concept and funding mechanisms at the May 21<sup>st</sup> or June 4<sup>th</sup> Council meeting.

C. *May 26<sup>th</sup> - Planning Commission – Tentative agenda items include:*

- Discussions and recommendations on RUR rezonings
- Site Plan Review Text Amendment
- Comprehensive Plan re-adoption (distribute updated copies)
- Solar Energy Systems regulations review
- Wind Energy Systems regulations review
- Election of officers

D. *Upcoming Business*

Motion by Commissioner Templin to adjourn at 8:40 p.m.; second by Krudwig.

All Commissioners approved by “ayes”.

Motion carried.

Respectfully submitted:

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Lana R. McPherson, MMC, City Clerk