

**CITY OF DE SOTO  
PLANNING COMMISSION**  
City Hall, 32905 W. 84<sup>th</sup> Street  
November 24, 2009 – 7:00 P.M.

**MINUTES**

1. The meeting was called to order by Chairman Mike Kroeger at 7:00 p.m.

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

**3. General Business:**

A. Approve Planning Commission Agenda.

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

All Commissioners approved by “ayes”.

Motion carried.

B. Approve minutes of the October 27, 2009 Planning Commission meeting.

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

All Commissioners approved by “ayes”, with Commissioner Crumbaker abstaining.

Motion carried.

C. Disclosure of conflicts of interest. N/A

D. Disclosure of outside communications regarding Commission business. N/A

**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.

No one appeared.

**5. Public Hearing:**

A. Consider an amendment to the Official Zoning Map for the City of De Soto, Kansas that will change the zoning on approximately 154 parcels from a County zoning classification to an appropriate City Zoning District. Chairman Kroeger requested Planner Bohnsack to review the staff report dated Tuesday, November 24, 2009. She stated on pages 22-28, there are some specific parcels that will need to be pulled from this action as the property owners are requesting a different zoning

category. Discussion ensued between Commissioners and Planner Bohnsack on the Comp Plan recommended zoning districts. Engineer Brungardt discussed the flood plain areas. Commissioner Crumbaker said he has a problem with properties that are not compliant with the Comprehensive Plan being zoned differently than the plan. Chairman Kroeger said he has a similar concern on parcel #25 and the compatible zoning to comply with the Comprehensive Plan. Discussion by Engineer Brungardt and Commissioners.

Planner Bohnsack discussed two properties that want to be zoned "R-A" to preserve the rural agricultural zoning of these properties. Commissioners concurred with staff to grant the request. Commissioners and staff discussed parcel #148 and the owners' request this property be zoned "M-2 Industrial-Heavy" zoning. Staff disagrees with this request and stated this area along the highway should remain consistent with the Comprehensive Plan and Future Land Use Plan. Commissioners agreed the property should conform to the City's plans and be zoned "R-0".

Planner Bohnsack and Commissioners discussed the Hwy 7 LLC property located ¼ mile North of Ravenswood, and the zoning district requested by the property owner. Commissioners continued to discuss the properties that are scheduled for public hearing and the properties that are being pulled from the rezoning at this time in order for the property owners to discuss their rezoning requests in detail. Commissioner Crumbaker asked if there are any other properties in this rezoning that are not compatible with the City's Comprehensive and Future Land Use Plans. Commissioner Honomichl asked if there are any properties that are not consistent with the "R-A" zoning requirements or exceeds the use of the "R-A" zoning. A discussion ensued regarding the zoning request made in Mr. Thrasher's letter.

Chairman Kroeger opened the public hearing for comments. No one appeared. Chairman Kroeger closed the public hearing. Planner Bohnsack commented on the discussion of the considerations that were reviewed.

Commissioner Lane recused herself from the meeting for discussion of this item.

Motion by Commissioner Honomichl to remove certain parcels from consideration of rezoning action tonight; those parcels being #1, 4, 5, 13, 17, 149, 151, 157, 37, 66, 64, 148, 48, 150, and 25, as identified on Exhibit "A" of the property list of the Rezoning Agenda Item; and potential action on these particular properties be considered at a future meeting with proper notice; second by Krudwig.

Discussion by Commissioners on the exceptions to this action.

Roll Call:	Crumbaker	Yes	Kroeger	Yes
	Hemphill	Absent	Krudwig	Yes
	Honomichl	Yes	Lane	Recused
	Winslow	Absent		

Motion carried.

Motion by Commissioner Crumbaker that the proposed amendments to the official zoning map for the City of De Soto meet the requirements as set forth in Article 13 of the Zoning Regulations for the City of De Soto, Kansas; and, we have reviewed the mandatory considerations as

outlined in said Article and find that the proposed changes are found to be compatible with surrounding development and in the best interest of the city. Therefore, I move to recommend approval of the proposed amendments to the zoning map as listed in Exhibit A and detailed in the public notices with the following exceptions and changes to these items in Exhibit A: #56 and #57 to 'R-A' zoning; #58–#59 to 'R-A' Zoning; #147 to 'R-O' zoning, and property #156 to 'R-O' zoning; second by Honomichl.

Roll Call:	Crumbaker	Yes	Kroeger	Yes
	Hemphill	Absent	Krudwig	Yes
	Honomichl	Yes	Lane	Recused
	Winslow	Absent		

Motion carried.

Commissioner Lane was recalled to the Planning Commission meeting.

- B.** Consider a Special Use Permit for an Archery Use at Widow Big Knife Park. Planner Bohnsack and Commissioners discussed the zoning and special use permit request. Planner Bohnsack requested Commissioners consider adding condition #3 stating the applicants provide notice to the Sheriff and Fire Department when hosting large events as well as public events at the Park. Planner Bohnsack reviewed the lease agreement terms between the City and the applicants for the use of this park. Discussion between Staff and Commissioners.

Chairman Kroeger opened the public hearing for comment; no one appeared, and Chairman Kroeger closed the public hearing.

Motion by Commissioner Krudwig that the applicant has met all of the regulatory requirements for this use, that the required considerations are all positive and that the use will not pose a nuisance or have a detrimental effect upon the neighboring properties or the community in general, and recommend that the requested Special Use Permit be approved with the conditions recommended by staff, and including Item #3 that the Lessee notify the Fire Department and the Sheriff's Department of organized events to be held at the site; provided that the zoning for the property is approved prior to the approval of this permit; second by Honomichl.

Commissioner Honomichl requested clarification of the Items #1 and #2 of the staff report and the conclusion of the staff report.

Roll Call:	Crumbaker	Yes	Kroeger	Yes
	Hemphill	Absent	Krudwig	Yes
	Honomichl	Yes	Lane	Yes
	Winslow	Absent		

Motion carried.

- C.** Consider text amendments to the Zoning Regulations to implement alternative energy system regulations. Planner Bohnsack discussed the changes to the draft regulations from the October meeting. Commissioner Honomichl said "architecturally" interesting may go against what is efficient and workable. Discussion ensued between Commissioners and staff regarding height and setback regulations for wind towers. Commissioner Honomichl said he is leaning

more toward being generous on the regulations. Commissioner Krudwig asked about the liability insurance that would be required as a minimum standard. There was a discussion of the amount of liability insurance that should be carried. Planner Bohnsack stated the requirement for liability insurance was discussed with Attorney Reavey. Commissioners agreed this is a point that needs to be considered in future and how liability insurance is handled.

Commissioner Krudwig asked what is wrong with putting up a wind tower on a vacant lot. Discussion on whether or not a wind tower counts toward the number of accessory uses. Commissioner Honomichl said he thinks a tower could be constructed on a vacant lot and it should not count toward accessory structures.

Commissioner Krudwig discussed the guy wires for towers and the setbacks. Public easements can be addressed under the special use permit process. He further discussed language he proposes for Article 10. Design, to read "...and certification by a licensed professional mechanical, structural, or civil engineer registered in the State of Kansas." Commissioner Krudwig asked that this language be changed in any other part of the proposed regulations.

Chairman Kroeger opened the public hearing for comment; no one appeared and he closed the public hearing.

Chairman Kroeger and Commissioners reviewed the recommended changes with staff, and the renumbering of the paragraphs accordingly in Exhibit B.

Motion by Commissioner Krudwig to recommend proposed revisions to Articles 2, 5 and 10 of the Zoning Regulations, per Exhibit B of the staff report with the following modifications: strike Article 5, Section 15, Items B 4 and 5; and renumbering 6, 7, and 8; modify the language in Section 16, item G, to replace the language that states "at least 10 feet inside the property lines; with the language complying with side and rear yard setbacks; and modify the language in Article 10, Section 4, Item L. 10 to replace the first sentence to read: "The application shall include standard signed and sealed drawings and an engineering analysis of the system's tower prepared by a licensed professional mechanical, structural or civil engineer registered in the State of Kansas; second by Honomichl.

Commissioner Crumbaker asked about Exhibit B language clarification. The above Motion was amended and the second was amended.

Roll Call:	Crumbaker	Yes	Kroeger	Yes
	Hemphill	Absent	Krudwig	Yes
	Honomichl	Yes	Lane	Yes
	Winslow	Absent		

Motion carried.

- D.** Consider an application for a Special Use Permit for a Wind Energy System. Planner Bohnsack stated this application will be considered under the City's existing regulations. The applicant would like to construct a wind tower on his property located at 35276 W. 95<sup>th</sup> Street for personal use at his residence. Planner Bohnsack reviewed the staff report dated November 24, 2009, and provided to the Commissioners. Staff findings were positive with two neutral findings. Application approval must be contingent upon approval of property rezoning to a C-2 District.

Commissioner Lane said she has several questions. At this time, the applicant doesn't know what kind or type of tower he is going to purchase so there is no way to determine what noise levels would be. Discussion that the applicant is also requesting a rezoning to a "C-2" zoning for his residential property. The applicant, Kameron Klein, and Commissioners discussed the current regulations as opposed to the newly proposed tower regulations. Commissioners discussed that they can not approve a special use permit without seeing the exact tower that is going to be erected on this site.

Commissioner Crumbaker said that the golden criteria have to be considered for a special use permit, and the Commissioners must review these concerns carefully before granting a special use. Commissioner Crumbaker stated there are no conceptual drawings or anything to be considered for what type of tower the applicant is going to erect. Discussion between staff and Commissioners regarding the type of tower Mr. Klein is going to construct. Further discussion ensued by staff that the subject property will need to be rezoned to C-2. Noise levels were discussed for the adjoining RUR zoned properties.

Mr. Klein said he is concerned about the decibel level at the property line may be over the City Code's regulations for noise. Commissioner Crumbaker said the applicant has to be prepared to address the noise level and present it to the Commissioners. Commissioner Krudwig discussed the noise level decibels.

Planner Bohnsack reviewed the special use permit conditions based on the rezoning request of C-2 zoning being granted. The applicant said he was not doing a guyed tower. Commissioner Lane asked if this tower will interfere with any radio or communications reception to surrounding properties. Noise levels will not exceed City Code requirements. The SUP would be contingent upon the property being rezoned to C-2 zoning. Commissioner Honomichl said for this particular area—adjacent to 10 Highway—he would consider reviewing the decibel levels.

Commissioner Crumbaker said he will not vote to waive the City Code's decibel levels; Commissioner Lane said she agrees and will not vote to waive the City Code and set a precedent with the first wind tower application. Commissioner Krudwig commented on the decibel level. Commissioners discussed that they have not received an exact proposal of what the applicant is proposing to construct. Commissioner Lane said this is the first application and she feels uncomfortable in making exceptions right from the first.

The applicant, Kameron Klein, stated that he is willing to stay within the recommendation parameter for the permit and he also discussed the requirement that wind towers include standard signed and sealed drawings and an engineering analysis of the system's tower prepared by a licensed professional mechanical, structural or civil engineer registered in the state of Kansas. Discussion by Commissioners and applicant on the reason for this requirement.

Chairman Kroeger opened the public hearing for comment.

Mike Fowks, 29200 W. 115<sup>th</sup> Street, said he is a neighbor to the applicant and has no concerns or objections to the wind tower.

Chairman Kroeger closed the public hearing.

Motion by Commissioner Krudwig, to recommend approval of the Special Use Permit with the conditions as recommended by staff with the modifications as follows to the conditions: #2) that total wind system height be limited to 150 feet; condition 4) that the system shall not cause interference to radio or television or communications systems reception on surrounding property; strike condition 7; and replace it with new 7) to read that this Special Use Permit is contingent upon the C-2 rezoning of the property, and add condition 8) that the structure shall be of lattice or monopole structure form and not a guyed-wire structure; and to clarify condition 9) that the noise regulations shall meet current City Code ordinances; second by Crumbaker.

Chairman Kroeger said he is concerned about the wording in the motion that “the use will not pose a nuisance” and he can’t reach that conclusion. Discussion by Commissioners. Commissioner Krudwig modified his motion and Commissioner Crumbaker amended his second. Commissioner Crumbaker stated for the record that the Commissioners did review staff’s listing of key elements to be taken into consideration when reviewing a Special Use Permit and he agrees with staff’s conclusions under the findings.

Roll Call:	Crumbaker	Yes	Kroeger	Yes
	Hemphill	Absent	Krudwig	Yes
	Honomichl	Yes	Lane	Yes
	Winslow	Absent		

Motion carried.

**6. Old Business:**

**7. New Business:**

- A. Discussion of proposed amendment to the Zoning Regulations concerning rezoning of newly annexed land. Staff stated this amendment will provide for the owner of the annexed land to request a rezoning to an official city zoning district within three months after the date of the annexation. Commissioners discussed this language change.

Commissioner Crumbaker asked for clarification on the rezoning and there will be a public hearing for the property owner’s requested new zoning classification.

**8. Staff Advisory Reports**

- Council comments/action on proposed definitions for the R-A District. Planner Bohnsack said there were three definitions that were changed at the Council level prior to approval. The recommendation did not need to be returned to the Commission for consideration of these changes due to the recent Supreme Court Opinion that allows the Council to change the recommendation with a two-third’s majority vote of the governing body.

**9. Calendar:**

Chairman Kroeger asked that Planner Bohnsack send out an email prior to the December 22<sup>nd</sup> meeting to ensure there will be a quorum to conduct business.

- A. *December 3<sup>rd</sup>* - City Council - Tentative Planning agenda items include:
  - None
- B. *December 17<sup>th</sup>* - City Council - Tentative Planning agenda items include:
  - Rezoning of county zoned parcels
  - Text Amendments for Alternative Energy Systems
  - SUP for Archery Use at Widow Big Knife Park
  - SUP for a Wind Energy System
- C. *December 22<sup>nd</sup>* - *Planning Commission – Tentative agenda items include:*
  - Final rezoning of rural zoned properties
  - Rezoning of property at 33160 W. 83<sup>rd</sup> Street
  - Text Amendment concerning rezoning of newly annexed properties
- D. *Upcoming Business*
  - Site Plan Review for Glavin Development
  - Discussion of changes to City Code for implementation of R-A District.

Motion by Commissioner Crumbaker to adjourn at 10:50 p.m.; second by Lane.

All Commissioners approved by “ayes”.

Respectfully submitted:

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Lana R. McPherson, MMC, City Clerk