

**CITY OF DE SOTO  
PLANNING COMMISSION**

City Hall, 32905 W. 84<sup>th</sup> Street  
March 24, 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	Absent
	Walker	Present		

3. **General Business:**

A. Approve Planning Commission Agenda.

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

All Commissioners approved by “ayes”

Motion carried.

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

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

All Commissioners approved by “ayes”.

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 and Call to Public was closed.

5. **Public Hearing:**

A. Public hearing to consider 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 requested City Planner Linda Bohnsack provide information regarding the discussions that begun in August, 2008, and have led up to this point. She provided comments as set forth in a 19-page staff report to the Commission dated March 24, 2009.

In October, 2008, the City staff contacted all property owners with county zoning

classifications, and invited them to an informational workshop meeting. Follow-up letters and workshops were held; and overall 61 owners controlling 87 parcels, or 58% of the properties, met or contacted staff during the six-month process.

Due to the length of the staff report and the importance of the criteria for the subject rezoning, a copy of the report is available in the City Clerk's office.

City Engineer Mike Brungardt discussed the background and general intent of the proposed rezoning that are currently defined under the previous county rezoning. The County has since updated their zoning regulations and the regulations that were established in 1998 when these properties were annexed by the City are the ones the City has to follow at the present time. The intent is to bring these properties current within a current City zoning classification.

Chairman Kroeger opened discussion among the Commissioners. Commissioner Hemphill asked if the Council will also hold a public hearing. Engineer Brungardt stated this is the public hearing; however, Council does allow someone to speak. There is also a 14-day protest period wherein a property owner can file a protest.

Commissioner Crumbaker asked if there was a time frame on the City and County's 1998 annexation agreement or an expiration date regarding the zoning. Planner Bohnsack stated that no time limitation was stated in the agreement. Commissioner Crumbaker also discussed the Golden criteria that were addressed on the properties. He stated Planner Bohnsack has done a thorough job on that.

Planner Bohnsack stated the Thrasher property, #7 in the Northwest Quadrant, has a trucking operation that was not a legal use in the County, and it does not qualify for the non-conforming protection of the City regulations. There are also cattle on the property and the owner is requesting the zoning continue as rural. Staff recommends an M-1 zoning may be more appropriate for the trucking operation, while the cattle use is covered by state statutes on agricultural uses and as a non-conforming use under city regulations. Discussion ensued between Commissioners and Planner Bohnsack on the current uses by Mr. Thrasher on the subject property.

Commissioners requested Mr. Thrasher come and address the zoning request. Pat Thrasher, 35560 W. 87<sup>th</sup> Street, De Soto, stated he wanted to stay the same as he was. Discussion ensued between Mr. Thrasher and Commissioners regarding rezoning. Mr. Thrasher said he built a shop for his trucking business in 1990 and moved his trucking business out there. He also runs some cattle on the property in the winter. Commissioners discussed with Mr. Thrasher that the M-1 zoning classification would be a good zoning classification for his property. Discussion. Mr. Thrasher said he would agree to the M-1 zoning classification. Planner Bohnsack commented on the State statutes regarding the abandonment of agricultural uses. This property will be pulled from the overall rezoning.

Chairman Kroeger continued with the discussion items on page 19 of the staff report. Commissioners discussed the request of the Johnson County Parks and Recreation to be zoned "R-O" Residential-Suburban District for the 460 acre park.

Engineer Brungardt provided a power point presentation of the zoning maps for each quadrant of the rezoning.

Chairman Kroeger opened the public hearing for comment.

Darrel Zimmerman, 34055 W. 86<sup>th</sup> Terrace, said the City should have an agricultural zone. He read a statement to Commissioners that agricultural use of land is necessary to sustaining life. He asked the reason for the City not having an agricultural zone.

Commissioners discussed the City Council comments and directive regarding the zoning recommendations. Commissioner Honomichl said the agricultural zoning was discussed at length and the different approaches that could be taken. Council recommended pursuing the zoning direction based on current City zoning classifications. Planner Bohnsack stated the State statutes protect the agricultural uses already in use within the City. Commissioner Crumbaker asked if the Council wanted to discourage agricultural uses within the City. Discussion ensued between Planner Bohnsack and Commissioner Crumbaker regarding the concerns of small lot agricultural uses and large acreage agricultural uses. Commissioners and staff discussed restrictions that could be imposed if an agricultural zoning is requested.

Commissioner Crumbaker continued a lengthy discussion with Commissioners regarding the lack of an agricultural zoning classification for some of these County-zoned properties. Planner Bohnsack explained the difficulty of City Staff in trying to keep up with the 150 properties currently zoned under the County regulations. A discussion continued between Commissioner Crumbaker and Staff regarding the 1998 annexation of the agricultural properties. Commissioner Crumbaker discussed his lawsuit against the City of De Soto regarding the City's annexation of the Hunt Midwest Quarry. He again asked staff if the City Attorney has reviewed the 1998 annexation for a time restriction on the zoning of the property as it was in 1998. City Engineer Brungardt stated the City Attorney has not reviewed the 1998 agreement with the County Attorney regarding a "forever" zoning clause on the parcels that were in the 1998 Annexation.

Comments were made by Commissioner Honomichl that maybe this process should stop now until the matter is revisited by City Council regarding their intent for rezoning of the annexed properties in 1998. Discussion ensued among Commissioners and staff.

Darrel Zimmerman said the problem with regulations is the perception the public views them with. Some people see land as a commodity and others see it as more than that.

Commissioner Crumbaker said he wants to ensure there is a legal right to force this rezoning; he doesn't want to move forward. Commissioner Honomichl said this has not been the intent to force any rezoning; that's why this process has taken six months. Commissioner Crumbaker said he wants a firm legal ground established that the City has the right to bring about this new rezoning classification. Commissioner Crumbaker stated he would like the Council to revisit the decision not to create an agricultural zoning classification.

Chairman Kroeger requested the public hearing continue.

Bob Zindler, 33180 W. 95<sup>th</sup> Street, property #31, stated staff has done an excellent job of trying to inform the property owners. He said there is a political influence on the quasi-judicial body. He is an advocate for an agricultural zoning district. He stated he would voluntarily rezone his property if the City had an "ag" district. Mr. Zindler stated other cities view farming or agriculture as a positive as it preserves agriculture and the land. Mr. Zindler said he has 16 acres that he could come in after the City's rezones his property and plat 16 lots on this property and that's not a good thing because the

infrastructure is not there to support 16 additional lots. Mr. Zindler stated his neighbors had to rezone in order to put up an out building. He would like to see an agricultural district of some sort so that he can voluntarily come to the City and rezone and everyone will be happy.

Linda Zindler, 33180 W. 95<sup>th</sup> Street, stated she is a proponent of an agricultural district and said she has looked at Eudora's "R-A" zoning district, which is Residential Agriculture. She noted the kinds of amenities that make De Soto attractive and unique and requested those be considered.

Xxxx XXXXXXXXX, 9160 Cedar Creek Road, stated not everyone on Cedar Creek Road is represented this evening. She said Cedar Creek Road is a very rural pocket of De Soto, and even though it is within the City, it is very rural with farming and livestock. The "R-0" proposed zoning would change the nature of this area. More building in this area would also cause more flooding in the area due to drainage and rainwater retention.

Dave Rhodes, 36000 W. 103<sup>rd</sup> Street, Clearview City, stated he would like to hear the Commissioners comments regarding his property before the public hearing is closed.

Michael Ash, 9175 Cedar Creek Road, said his property is unique inasmuch as it is zoned residential retail business. He is concerned as to how the rezoning will affect his standing if he is reclassified to "R-O". Chairman Kroeger said his property will be discussed more fully at the end of the public hearing.

Chairman Kroeger closed the public hearing.

Chairman Kroeger asked Planner Bohnsack to comment on the Clearview City and two residential properties that will change from the County zoning to a commercial classification. There are existing residential structures on the property and a business could go into the residential structure without having the structures reviewed for compliance to the City Zoning Regulations or Building Code. Staff recommends an amendment to the Site Plan Review Regulations, especially when a residential structure is changed to a commercial use, to meet building codes and zoning regulations.

Engineer Brungardt stated with regard to Clearview City, many of these structures are residential structures. Staff has been working with Mr. Rhodes regarding the existing uses of the structures on the site to establish a legal non-conforming use at this time and document those uses at the time of the zoning district change. A discussion ensued between Commissioners and Engineer Brungardt regarding the commercial zoning for certain properties with existing structures. Staff is recommending a text amendment to the Site Plan Review regulations to require a site plan when a commercial use is proposed to move into a structure that was constructed and historically used for residential purposes.

Dave Rhodes, Clearview City, stated this is a new twist to what he thought he was here to discuss. He said Clearview City has been privatized since 1950 and he doesn't want to see any of that changed. He said to rezone his property to commercial for virtually "free", why would he not take advantage of that. A discussion ensued between Engineer Brungardt and Mr. Rhodes regarding the Site Plan review and the uses of the existing structures. Mr. Rhodes said he wants to preserve and protect the existing uses there. A discussion continued between Commissioners, Staff and Mr. Rhodes regarding the uses of the current structures. Mr. Rhodes said he wants to take advantage of the free pass. Mr. Rhodes said he would like the City to de-annex his City as De Soto provides no

benefits to Clearview City. Mr. Rhodes would like to see the text amendment to the Site Plan Review prior to his consent to the C-2 rezoning. Mr. Rhodes said he feels City should consider an agricultural zoning district.

Commissioner Crumbaker stated he doesn't want to grant the C-2 because doing so has numerous potential problems. Zoning prematurely would allow development before utilities/services available. Mr. Honomichl pointed out that changing to residential zoning could allow the construction of inappropriate structures in a future commercial area.

Discussion ensued between Staff and Commissioners regarding the properties that will need to be pulled for a rezoning classification.

The owner for the Terra Vista property is requesting that the property be divided into three different types of zoning classifications. The zoning classes are workable, but not all district classifications requested are supported by the Future Land use map. He is requesting a higher density use than the "R-O" designation.

Ken Kollor, Overland Park, stated that because of the highway this property is suited for higher uses. The strategy is to make the property as attractive to a developer as possible. He explained the reason for the request of the three zoning districts. Planner Bohnsack stated the new flood plain map affects a large portion of the property. Discussion between Commissioners and Engineer Brungardt regarding the new flood plain map update proposed to take effect in August 2009.

Planner Bohnsack and Engineer Brungardt discussed the other properties and the proposed zoning as addressed in Item 5 on page 19 of the Staff Report.

#147-Penney is proposed an M-1 which could allow inappropriate uses on the site.

#35- Westar's electric transfer station is proposed M-1. Commissioner Crumbaker said he does not approve of the M-1 zoning. He thinks there should be a conditional use permit on this site under county zoning. Staff will investigate and report back to the commission

#150- Skelgas – a gas transfer station is proposed M-1. Staff will look for a CUP on this site also.

#23, #19-21 – Residential and continued agricultural uses are proposed by property owners in an area designated as commercial on the FLU map and surrounded by industrial and commercial zoning. Chairman Kroeger stated that as a property owner, they do have the right to request the "R-O" zoning classification.

#148 – Ownership question may prevent rezoning of this property.

Commissioners discussed #153, the property owned by Mr. Ash at 9175 Cedar Creek Road. The County's zoning was Residential/Business as Mr. Ash is an artist and he has an art studio, which is an allowable home-based business. Staff stated that everything Mr. Ash is currently doing is legal and allowable in the "R-O" zoning classification. Mr. Ash stated he would like to remain as he is now in the rural status. He stated he has had horses in his pasture in the past, and occasionally his daughter brings her horses over to his pasture. Staff commented that he can continue his current residential business under the "R-O" zoning. He can also keep up to 2 horses within the city regulations and the R-0 zoning. Commissioners questioned whether the County zoning regulations allowed horses in their "Residential/Business" zoning classification at that time.

Motion by Commissioner Honomichl to table this item to the next meeting with the intent to allow time to research the annexation agreement with respect to conditions for time conditions on any

other zoning, research conditional use permits which may or may not be applicable to parcels in question, to further consider an “opt out” option, to consider some potential text amendment language as it may apply to Site Plan Review for potential properties; second by Crumbaker.

Discussion ensued between Commissioners Hemphill, Honomichl and Crumbaker regarding the concerns raised in the public hearing tonight by property owners for alternative districts for certain parcels of property. Commissioner Honomichl stated he feels the Commissioners need to review the “opt-out” criteria in more depth before proceeding further. A lengthy discussion ensued regarding the classification concerns.

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

Motion carried.

Chairman Kroeger thanked the public for attending the meeting this evening.

**6. Old Business: None**

**7. New Business: None**

**8. Staff Advisory Reports**

- K-State Student Visit – 10:15 a.m. Friday, March 27

**9. Calendar:**

- A. *April 2<sup>nd</sup>* - City Council - Tentative Planning agenda items include:
  - Temporary Special Use Permit requests from the EDC for the Spring Fling and the Annual Developer’s Reception
- B. *April 16<sup>th</sup>* - City Council - Tentative Planning agenda items include:
  - Consideration of the Rural Rezoning Map Amendment
- C. *April 28<sup>th</sup>* - *Planning Commission – Tentative agenda items include:*
  - Discussion of Wind and Solar Energy System Regulations
  - Discussion of Comprehensive Plan Review Items
- D. *Upcoming Business*
  - Revisions to the Site Plan Review regulations

Motion by Commissioner Honomichl to adjourn at 10:22 p.m.; second by Crumbaker.

All Commissioners approved by “ayes”.

Respectfully submitted:

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Lana R. McPherson, MMC, City Clerk