

**CITY OF DE SOTO
PLANNING COMMISSION**

City Hall, 32905 W. 84th Street
May 22, 2007 – 7:00 P.M.

MINUTES

1. The meeting was called to order with Roll Call by Vice Chairman Bob Friday.

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

3. **General Business:**

A. Approve Planning Commission agenda.

Motion by Commissioner Templin to approve the agenda; second by Kroeger.

All Commissioners approved by "ayes". Motion carried.

B. Approve minutes of the April 24, 2007 Commission meeting.

Motion by Commissioner Templin to approve the minutes as written; second by Kroeger.

Commissioners approved by "ayes", with Commissioners Krudwig and Hemphill abstaining. Motion carried.

C. Disclosure of conflicts of interest. Commission Templin stated he would recuse himself from agenda item 6A, the final plat for Hilltop Estates. He is engaged as Council for that project. No other conflicts were stated.

D. Disclosure of outside communications regarding Commission business. None.

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. Public hearing to consider zoning map revision from 'RUR' Johnson County Rural district to the 'R-0' Residential Suburban district for property located at 33210 W. 95th Street. City Planner Kim Buttrum stated that the rezoning was for a property zoned Johnson County 'RUR' Rural. The property owner is requesting to pull building permits for an accessory structure and an in-ground pool. In order to do so, he has been advised of the requirement to rezone to a city standard district. In reviewing the matters to be considered for a zoning change, Buttrum noted that the Future Land Use plan called for 'Urban Service Area' at that location, or one residential unit per ten acres. If the rezoning occurs, the property could be the subject of a lot split or further subdivision. Any consideration of a subdivision plat would bring to bear the subdivision's nonconformance with the Future Land Use plan, as the subject property is just twelve acres in size. Staff advised the Commission recommend approval of the zoning change to 'R-0', the least dense residential zoning district.

Commissioner Templin asked if a lot split could occur regardless of conformance with the Future Land Use plan. Buttrum stated that was correct. Commissioner Hemphill noted the nearby creek and topographic issues with the property; it is unlikely to be further subdivided.

The applicant, Michael Olson, stated that he did not have plans to split or subdivide the property. Commissioner Templin stated that he is in favor of a rezoning due to the unlikelihood of future subdivision. The Commission needs to be conscious of the potential of 95th Street as a commercial corridor and wary of proliferating residential development in the area.

Vice Chairman Friday opened the public hearing for comments. None appeared; the public hearing was closed.

Motion by Commissioner Hemphill to recommend approval of the Olson rezoning as per staff's recommendations; second by Templin.

Roll Call:	Friday	Yes	Hemphill	Yes
	Honomichl	Absent	Kroeger	Yes
	Krudwig	Yes	Moberly	Absent
	Templin	Yes		

Motion carried.

- B. Public hearing to consider text amendments to Article 10 of the Zoning Regulations allowing accessory buildings to be placed within an established front yard with a Special Use Permit. Buttrum reviewed the history of the text amendment; the process was begun by a directive from the Council. The amendment would allow for accessory buildings within 'established front yards'. The majority of area communities do not allow this. Staff noted photographs attached to their report of such buildings in Lawrence, Kansas and one on Corliss Road in De Soto. These are examples of excellent design.

Buttrum reviewed the proposed text. There would be four conditions for approval of a Special Use Permit, including that the property must be larger than 5 acres and must be unique due to topography that would make siting of the building elsewhere unfavorable.

Vice Chairman Friday opened the public hearing for comments.

Joe Webb, 34255 W. 84th Ter., stated that there are instances that warrant this permitting process. He himself has a property that lends itself to an accessory building in the front yard. He obtained a variance from the Board of Zoning Appeals to do just this; he could not wait for this text amendment process because of time constraints. He is not in favor of the five acre minimum lot size as this is too restrictive. Three acres is a more reasonable number than five.

The public hearing was closed.

Commissioner Templin stated that the Board of Zoning Appeals granted the variance for Mr. Webb without some of these criteria the Commissioners are considering for this text. He is more inclined to reduce the minimum lot size and have these handled as Special Use Permits not variances. Krudwig noted that there are probably few 5-acre properties that cannot accommodate the building because of topographic issues. Commissioner Kroeger stated he is concerned that property owners will construct a home to the rear of the buildable area and then come in for a permit because there is now nowhere else for the garage to go. He believes that these permits should be for exceptional circumstances. Vice Chairman Friday stated he tends to be opposed to the idea because the regulations are for the benefit of the community as a whole. Property values are enhanced by good aesthetics; neighbors do not want the garage to dominate the appearance of the home. Allowing smaller lot sizes would only create more impact for the neighbors.

Commissioner Templin suggested revisions to Subsection 1C. In order to provide clarity in that paragraph, the deleted sentence should be included.

Motion by Commissioner Templin to recommend approval of the text amendment to Article 10 following changes to Subsection 1C, which should read 'Special Use Permits in residential districts shall not be transferable from the owner/applicant to subsequent owner of such real estate or structure. Provided, however, Special Use Permits for accessory structures may be transferable from the owner/applicant to subsequent owner of such structure', and changing the criteria from 5 acres to 3 acres; second by Hemphill.

Templin stated that he supports sending this to Council to give them an opportunity to discuss the issue.

Roll Call:	Friday	No	Hemphill	Yes
	Honomichl	Absent	Kroeger	No
	Krudwig	Yes	Moberly	Absent
	Templin	Yes		

Motion failed.

Motion by Commissioner Hemphill to table review of Article 10 for further research until the next meeting; second by Templin.

Roll Call:	Friday	Yes	Hemphill	Yes
	Honomichl	Absent	Kroeger	Yes
	Krudwig	Yes	Moberly	Absent
	Templin	Yes		

Motion carried.

6. Old Business:

- A. Consider Final Plat for 'Hilltop Estates', a 4 lot subdivision located south of 83rd Street on Waverly Road (8430, 8450, and 8504 Waverly Road and Parcel AF221227-4016). City Engineer Mike Brungardt stated that this item was tabled because of an apparent boundary dispute associated with the location of the northern property line. At their May meeting, the Commission had tabled the plat and requested legal guidance before taking action. City Attorney Patrick Reavey has determined that the City's obligation regarding this boundary dispute is to determine if there are any dedications or utility easements that would be effected by an adverse possession claim; the City could lose those rights in such case.

Brungardt continued that Reavey also noted that if the boundary dispute were favorable to the neighboring property owners, the newly constructed homes on the applicant's property could be considered nonconforming due to their infringing on the side yard setbacks. He recommended increasing the side yard on the northern property line and asked that the applicant provide a lawyer's title verifying that Waverly Development, L.L.C. is the rightful property owner. The City, with this setback change and proof of ownership, may confidently act upon the final plat. Brungardt concluded by noting several small technical issues with the plat.

The Commissioners discussed their agreement with Reavey's findings and staff's recommended conditions.

A member of the audience, Don Ashlock, 8412 Waverly Road, stated that he is the neighbor that is disputing the northern property line location. He asked for clarification on the changed side yard setback line. Brungardt reiterated that the side yard setback would be the distance from the existing fence line and not the property line location that the applicant is claiming by virtue of their survey. A member of the audience asked about the applicant's ability to remove the fence. Brungardt responded that this issue needed to be addressed with the claim, and could not be addressed with this plat approval.

Motion by Commissioner Kroeger to approve the plat for Hilltop Estates per the four recommendations in staff's report ; second by Hemphill.

Roll Call:	Friday	Yes	Hemphill	Yes
	Honomichl	Absent	Kroeger	Yes
	Krudwig	Yes	Moberly	Absent
	Templin	Recused		

Motion carried.

Commissioner Templin returned to the meeting.

- B. Consider Preliminary Plat for 'Estates of Snowy Acres', a 7 lot subdivision located north of 86th Street off of Corliss Road (8550 and 8580 Corliss Road).
TABLED BY STAFF

7. New Business:

- A. Consider Final Plat for 'Brook West', a 26 lot subdivision located northwest of 83rd Street and Primrose Drive (Parcels AF221229-3002 and 3004). Engineer Brungardt stated that the preliminary plat was previously approved and granted an extension several times. Earlier this year, the applicant was granted approval of a request that a condition of the preliminary plat requiring the construction of Primrose Drive be removed due to an agreement between the City and the owner of Cherokee Woods subdivision. All of the remaining conditions for approval of the preliminary plat, except for the landscaping plan, have been met. This is a minor issue in that only typical street trees are required. Issues regarding the slopes on the site and the need for water line relocation have caused the applicant to request changes to the preliminary plat. Staff finds that these issues have arisen during the engineering of the site, are handled appropriately with the revisions, and are not a substantial deviation from the preliminary plat.

Brungardt continued that the Primrose Drive cul-de-sac bulb has been shifted to the south in order to better accommodate gravity sewer with the elevations in that area. There is one fewer lot due to this change. The applicant has chosen not to construct the second cul-de-sac with this phase and has removed several additional lots from the final plat. Lastly, there is a request to vacate an easement due to a necessary shift in the location of a water line; the City Council will consider that as a public hearing. Staff recommends approval of the plat with two conditions; the separate public hearing for easement vacation and the submittal of a street tree landscaping plan.

Nate Harding, 8285 Primrose, stated that his intention as the applicant was to plat the entire ground as per staff's recommendation. The Commissioners discussed the area to be platted as it relates to the excise tax ordinance. Harding stated that the elevations for sewer were problematic and this was the reason for the cul-de-sac shifting to the south. Templin asked about traffic circulation differences between a bulb with no through street and a 'drive-through' bulb. Brungardt stated that, technically, there is no requirement to have the cul-de-sac bulb there. He fully supports the bulb at this location. Responding to questions from the Commission, Harding said the other four lots

would be platted at a future date.

Motion by Commissioner Kroeger to approve the final plat for Brook West Estates with the staff recommendations and conditions; second by Hemphill.

Roll Call:	Friday	Yes	Hemphill	Yes
	Honomichl	Absent	Kroeger	Yes
	Krudwig	Yes	Moberly	Absent
	Templin	Yes		

Motion carried.

Commissioner Krudwig asked that staff take a look at another text amendment to the cul-de-sac regulations. The new regulations have seemed to create problems instead of addressing them. Brungardt stated that it would be added as a discussion item at the next meeting.

- B. Consider Preliminary Plat for Cedar Hill Estates, a 5 lot subdivision located at the southwest corner of 89th Street and Waverly Road (Parcel AF221234-3017). Engineer Brungardt noted that this is a new preliminary plat application for a portion of the property that was the subject of a failed former plat application. The previous plat was for fourteen lots on 19.5 acres; this plat is for five lots on five acres. The largest issue with the previous plat had to do with the Future Land Use Plan, which calls for one to three units per acre. This application, at exactly one unit per acre, is in conformance with the Plan. On-site septic systems are required. The City Building Inspector has found that with the conditions of this area there is a reasonable assumption that septic systems will function. Staff recommends a note be added regarding providing street trees along Waverly Road.

The adjacent roadways, 89th Street and Waverly, are substandard, rural roads. The five new homes are expected to generate fifty trips per day, and will incrementally increase impacts to these roadways. Staff recommends the applicant enter into an agreement not to protest the future formation of a benefit district for street improvements. Stormwater detention will be handled off-site to the south. This is unique in that the five newly created lots drain to the north and the off-site detention would be in a separate drainage basin. There is no knowledge of flooding in the area to the north of the proposed subdivision. There are reports, however, of property damage due to flooding to the south. Therefore, the placement of the detention to the south of the site will be of greater benefit than detaining water from the properties within the plat.

Brungardt continued that another unique feature of the plan is shared access drives between the homes in order to minimize the number of access points onto Waverly and 89th Street. Staff has recommended approval of the plat with two conditions regarding providing street trees and an agreement to not protest a street benefit district.

Commissioner Templin asked what assurance the City has that the detention area will be constructed since the improvement is off the bounds of the plat.

Brungardt responded that if the detention doesn't go in as per the preliminary plat, building permits would not be issued. The City has adequate assurance that these improvements will be made. Templin said that he would be more comfortable with a plan note regarding the construction of the basin. Commissioners discussed language on the plat regarding restrictions.

The applicant, Rick Hollingsworth, 30426 W 87th Street, indicated that he did not object to adding a plan note to this effect. He added that a pre application meeting was held. Commissioners Honomichl and Moberly attended that meeting and he did not hear any objections to the plan at that meeting.

Glen Robinson, 9065 Waverly, stated that the size of the lots have been reduced in order to meet the Comprehensive Plan requirements; it seems to be flying under the radar. Future development is sure to follow to the south and the west of this site; how is this growth going to be accommodated on Waverly Road? Stormwater and sight line issues on Waverly are already a real problem. Robinson said this seems like leap frog development with the surrounding area, which is far less dense. He discussed the State's regulations regarding septic systems. He would like the City to pay close attention to these requirements; they need to be following them.

Commissioner Krudwig noted the need for transitions between larger and smaller lot sizes. This plat may be seen as providing a transition to more urban development to the west. Commissioner Templin said while he doesn't agree that this is the best use of the property, the applicant has produced a plan that conforms to the regulations. Buttrum discussed agenda items for the June Commission meeting, including a discussion by Building Official Steve Chick on septic systems and the annual review of the Comprehensive Plan.

Commissioner Templin asked why the applicant did not need to agree to a future sewer benefit district as well. After some discussion, Brungardt agreed that this would be a reasonable requirement. The applicant indicated from the audience that he did not have a problem with it.

Motion by Commissioner Templin to approve the preliminary plat subject to the conditions described on page 6 of staffs report, and adding two additional conditions, the first being that the developer sign an agreement not to protest a future benefit district for sewer improvements to serve the platted property, and the second additional condition being that the off-site stormwater detention facility be constructed prior to letting of building permits for any lot described in the preliminary plat; second by Kroeger.

Roll Call:	Friday	Yes	Hemphill	Yes
	Honomichl	Absent	Kroeger	Yes
	Krudwig	Yes	Moberly	Absent
	Templin	Yes		

Motion carried.

- C. Consider Final Plat for Cedar Hill Estates, a 5 lot subdivision located at the southwest corner of 89th Street and Waverly Road (Parcel AF221234-3017).

Engineer Brungardt stated that his only comments are that the side and rear setbacks should be shown on the plat and the developer must produce a title commitment. He has reviewed the real estate contract and it is binding upon this plat approval. Staff recommends approval with the conditions as noted on their report. Commissioner Templin noted that instead of 'title commitment' it should read 'certification of ownership from the title company'.

Motion by Commissioner Templin to recommend approval of the final plat subject to the conditions identified in the staff report, with the addition of the condition of the preliminary plat approval having to do with off-site stormwater detention; second by Kroeger.

Roll Call:	Friday	Yes	Hemphill	Yes
	Honomichl	Absent	Kroeger	Yes
	Krudwig	Yes	Moberly	Absent
	Templin	Yes		

Motion carried.

- D. Discuss request by Lambie-Geer Properties to revise construction phasing for the Arbor Ridge subdivision, located at the southeast corner of 83rd Street and Kill Creek Road. Planner Buttrum stated that Lambie has requested a departure from the phasing in the approved Preliminary Plan for the second final plat of the Arbor Ridge subdivision. They have indicated that the request arises from changes in market conditions. The proposed phasing would introduce a second access point onto 83rd Street earlier than had been anticipated. Staff finds the change in phasing to be an improvement from an access and traffic circulation standpoint. The question before the Commission is whether the change in phasing is a 'substantial' change to the preliminary plat 'significantly altering' the phasing and/or traffic circulation. If so, the property would need to be rezoned from 'P-D' to 'P-D' because the Planned Development zoning is directly tied to the Preliminary Development Plan.

Commissioner Kroeger stated that the applicant or their representative really needed to be present for the discussion. Commissioner Templin stated that he did not recall the reasoning for the approved phasing and he would like staff to research the minutes and reports from that time. He does believe that this was a significant issue before and needs this historic context before any consideration of approval. Commissioner Krudwig noted his concern with these changes occurring without a public hearing. There was a lot of concern and interest from neighboring properties before. Commissioners Hemphill and Kroeger indicated that they were amenable to moving forward without revising the Preliminary Plan.

Vice Chairman Friday noted his concern about setting a precedent with this action. Buttrum responded that it is unusual and somewhat unsuitable for a single-use residential development, such as the Arbor Ridge subdivision, to be zoned Planned Development. The 'P-D' district is intended for unique, mixed-use development.

The Commissioners discussed the applicant's timeline for construction.

Buttrum said the applicant indicated that they wanted to move forward with the second plat now. The Commission discussed needing to hear the applicant's reasoning, having input from Commissioners Honomichl and Moberly, and researching the history of the approved phasing. They will take the matter up again at the June meeting.

- E. Discuss Kansas case law regarding sign regulations restricting content. Planner Buttrum referenced the staff memorandum and associated documents from Attorney Reavey included in the Commission's packets. The City of Prairie Village's sign ordinance was recently challenged due to the regulation of sign content. Reavey asked that the Commission be informed of the outcome of this case and how it may relate to De Soto's sign ordinance in the future. Discussion by the Commissioners.
- F. Discuss Indigo Design's project scope for the Riverfront Park plan. Planner Buttrum discussed the proposed project scope for the Riverfront Park plan. They will be asked to attend an upcoming Council meeting and three workshops relating to the plan.

8. Calendar:

- A. June 7, 2007 - City Council *presentation on the Riverfront Park plan
- B. June 12, 2007 - Site Plan Review Committee
- C. June 21, 2007 - City Council
- D. June 26, 2007 - Planning Commission

9. Adjournment:

Motion by Commissioner Hemphill to adjourn at 10:02 p.m.; second by Kroeger.

All Commissioners approved by "ayes".

Respectfully submitted:

Kim Buttrum, AICP
City Planner