



AGENDA ITEM 6C

Prepared by

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Prepared For

City Planning Commission
City of De Soto, Kansas
November 17, 2006

I. GENERAL INFORMATION

- A. Agenda Item:** Consider a rezoning from 'R-0' Residential Suburban to 'R-1' Residential Low Density district for property addressed 32799 W 91st Terrace.
- B. City Staff Involved:** Kim Buttrum, City Planner
Mike Brungardt, City Engineer
Patrick Reavey, City Attorney
- C. Applicant:** Jason L. Smith
32799 W. 91st Terrace
De Soto, KS 66018

D. Application Background:

The property is zoned 'R-0' Residential Suburban and was recently developed by the applicant, Jason Smith, as a single-family residential home. Building permit number 5023, dated March 25, 2005, is attached for your review as *Exhibit A*. The house was built into the front yard setback by seventeen (17) feet. The front yard setback in the 'R-0' district is 50 feet from the property line. The error was realized after the home had been constructed, and the applicant appealed to the Council to help remedy the classification of 'nonconforming structure' in order for his mortgage loan to go through.

The City Council, acting on the recommendation of City Attorney Patrick Reavey, passed Ordinance 2130 in July of 2006 in order to offer temporary relief to Mr. Smith. The ordinance vacated 17 feet of the City's right-of-way along 91st Terrace to Mr. Smith's ownership. The ordinance required Mr. Smith to file an easement to the City for this area, and also to apply for a rezoning of his property to the 'R-1' Residential Low-Density district. The 'R-1' district requires a front yard setback of 35 feet. If Mr. Smith is granted the zoning change, he has agreed to deed back to the City the 15-foot strip that would no longer be necessary to make the lot conform to the Zoning Regulations.

The Council meeting minutes, Ordinance 2130, and Easement are attached as *Exhibit B*.



At their October 24th meeting, the Planning Commission tabled the rezoning in order for the City Attorney, Patrick Reavey, to address them on legal aspects of the matter. Reavey's response to the Commission is attached as *Exhibit C*. Following is staff's review of the rezoning, unchanged from last month.

II. REVIEW OF APPLICATION

Following is a review of the application materials with respect to the criteria for zoning change found in the Zoning Regulations, the requirements of the Subdivision Regulations, and the adequacy of public utilities.

A. Golden Factors

Matters to be Considered: In order to recommend approval or disapproval of a proposed zoning district amendment, the Planning Commission and Governing Body shall determine whether the amendment is found to be generally compatible with surrounding development and is in the best interest of the City. In making such determination, the Planning Commission and Governing Body may consider all factors they deem relevant to the questions of compatibility and the best interest of the City, including the following:

1. ***The character of the neighborhood, including but not limited to: zoning, existing and approved land use, platting, density (residential), natural features, and open space.***

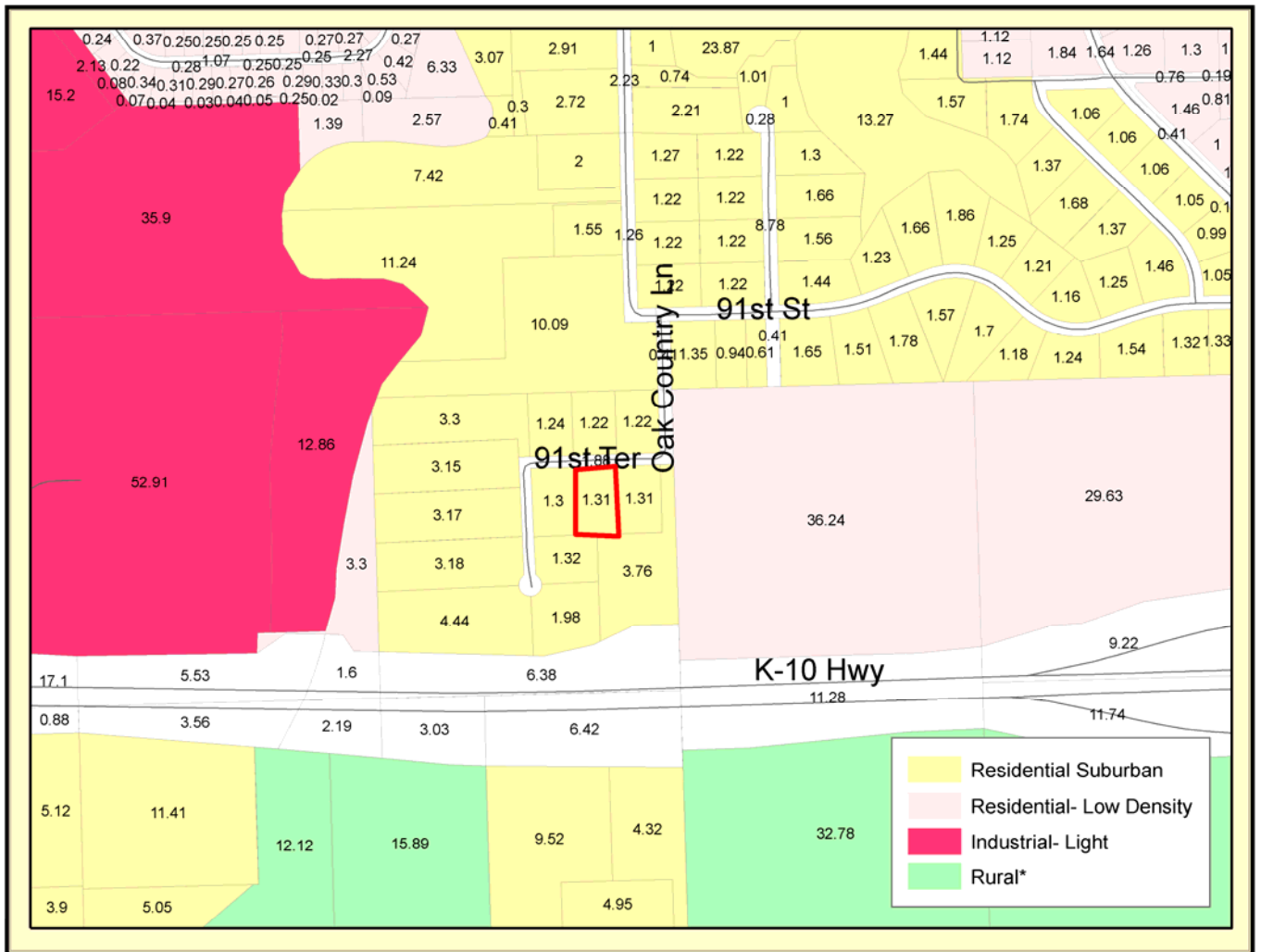
FIGURE I: AERIAL VICINITY MAP





Existing zoning for the subject site is 'R-0' Residential Suburban. The site has been developed as a single-family residence, and is platted as part of the Oak Country subdivision. Since that time, the eighth plat of Oak Country Estates has been approved. That area, located 250 feet to the east of the subject property, is zoned 'R-1' Residential Low-Density. The character of the neighborhood is low density single-family residential in nature. This character of development is appropriate in either the 'R-0' or 'R-1' zoning district. The regulations for both districts are attached as *Exhibit C*.

FIGURE II: ZONING & ACREAGE



The finding relating to whether the use is compatible with the existing neighborhood is therefore positive, in favor of granting the application.



2. Compatibility of the proposed zoning and uses permitted therein with the zoning and uses of nearby properties.

Residential Low Density zoning is proposed for the site. The intent of 'R-1' district is to:

"...provide for low density residential development including those uses which reinforce residential neighborhoods."

'R-1' districts are intended primarily for single-family residences. Areas within close proximity to the east of the site are also zoned 'R-1' and the existing residential use would be permissible in this district.

The finding relating to the compatibility of the proposed district with nearby properties is therefore positive, in favor of granting the application.

3. Suitability of the uses to which the property has been restricted under its existing zoning.

The subject property is well suited to both the 'R-0' and 'R-1' district, whose permitted uses are the same.

The finding relating to the suitability of the uses to which the property is restricted under its existing zoning is therefore neutral, neither in favor of or against granting the application.

4. Length of time property has remained vacant as zoned.

The subject property was one of the last vacant lots remaining in the subdivision when the home was constructed. Reasons for this are obviously the topography of the property; there is a steep outcropping of rock along the back half. Former owners of the property applied for a variance in November of 2003 and were denied by the Board of Zoning Appeals. It would have been very difficult to place a sizeable home on the property without infringing upon the setback.

The finding relating to the length of time the property has remained vacant as zoned is therefore positive, in favor of granting the application.

5. The extent to which there is a need in the community for the uses allowed in the proposed zoning.

The subject site and surrounding area are predominately large lot residential due to the difficulty in providing public sewer service to the area. There is a need in the community for the property tax generated by the area developing to its potential.



The finding relating to the need for the proposed uses is therefore positive, in favor of granting the application.

6. The availability and adequacy of required utilities and services to serve the uses allowed in the proposed zoning. These utilities and services include, but are not limited to, sanitary and storm sewers, water, electrical and gas service, police and fire protection, schools, parks and recreation facilities and services, and other similar public facilities and services.

- a) **Sanitary Sewers:** There is no public sanitary sewer service available to the site. The subject tract is outside of the City's future sewer extension service areas, as outlined in the Sewer Master Plan. Any development of the property will therefore require on-site septic systems. Because the City's septic system requirements stipulate a minimum parcel acreage of 1.0 acres, the subject 1.31-acre tract could not be further subdivided due to the City's current septic system regulations.
- b) **Public Water Supply:** Public water supply service is available to the site via a 6-inch water main within the 91st Street Terrace right-of-way. This main has adequate capacity for the full development of the subject property in under the requested R-1 district.
- c) **Storm Sewer Runoff:** If the property is subdivided, all the City's storm water detention and runoff control criteria will apply. The subject property slopes at about a 12% grade from the northeast corner toward the drainage channel that flows northeastward across the southwest corner of the tract. There are no known flooding problems associated with this channel. The development of the property under the proposed R-1 district will have no impact on this drainage.
- d) **Electric, Gas, Police, & Fire:** The development of the subject tract under the proposed zoning classification would not appear to have a material impact on these public services. Electric and gas services are available to the site along 91st Street Terrace, and have adequate capacity to serve additional residential uses. Police and Fire services to the site will not change.

Currently, the property contains one single-family residential structure. Under the proposed R-1 zoning district, property cannot be further developed because of the City's septic system requirements. For this reason, it is concluded that the proposed zoning district is appropriate from the standpoint of infrastructure impacts.

The finding relating to availability of required utilities is therefore positive, in favor of granting the application.



7. The extent to which the uses allowed in the proposed zoning would adversely affect the capacity or safety of that portion of the road network influenced by the uses, or present parking problems in the vicinity of the property.

The site fronts on 91st Street Terrace, which currently is a 22-foot wide asphalt roadway without curb & gutter. Access to the subdivision is taken mainly from 91st Street east to Kill Creek Road. The rezoning of the property will have no impact on the road network because the further subdivision of the property would not be allowed.

The finding relating to the road network is therefore positive, in favor of granting the application.

8. The environmental impacts that the uses allowed in the proposed zoning would create (if any) including, but not limited to, excessive storm water runoff, water pollution, air pollution, noise pollution, excessive nighttime lighting or other environmental harm.

Since the allowable uses of the proposed zoning district closely correlate to the allowable uses in the existing zoning district, it is not anticipated that granting the rezoning request will result in environmental harm.

The finding relating to environmental impacts is therefore positive, in favor of granting the application.

9. The economic impact on the community from the uses allowed in the proposed zoning.

As stated earlier in this report, the property has already nearly developed to its fullest potential under the proposed 'R-1' zoning district.

The finding relating to economic impact is therefore neutral, neither in favor of or against granting the application.

10. The extent to which the zoning amendment may detrimentally affect nearby property.

The subject site is already developed with one single family home. As a result of the zoning change, the area could not be further developed.

The finding related to the extent to which the zoning amendment may detrimentally affect nearby property is therefore positive, in favor of granting the application.



11. The relative gain (if any) to the public health, safety, and welfare from a denial of the rezoning application as compared to the hardship imposed upon the rezoning applicant from such denial.

It does not appear that there would be any gain to the public in denying the proposed zoning change. There would be a loss of sorts in that the 15 feet of right-of-way could not be fully recovered from the applicant. There would not be a hardship to the applicant if the rezoning were denied.

The finding related to the relative gain to the public health, safety, and welfare from a denial of the rezoning application as compared to the hardship imposed upon the rezoning applicant from such a denial is therefore positive, in favor of granting the application.

12. Consistency with the Comprehensive Plan, Utilities and Facilities Plans, Capital Improvement Plan, Area Plans, ordinances, policies, and applicable City Code of the City of De Soto.

The subject property is currently located in the Low to Moderate Density Residential future land use category. The Low Density Residential area is described in the Plan as follows:

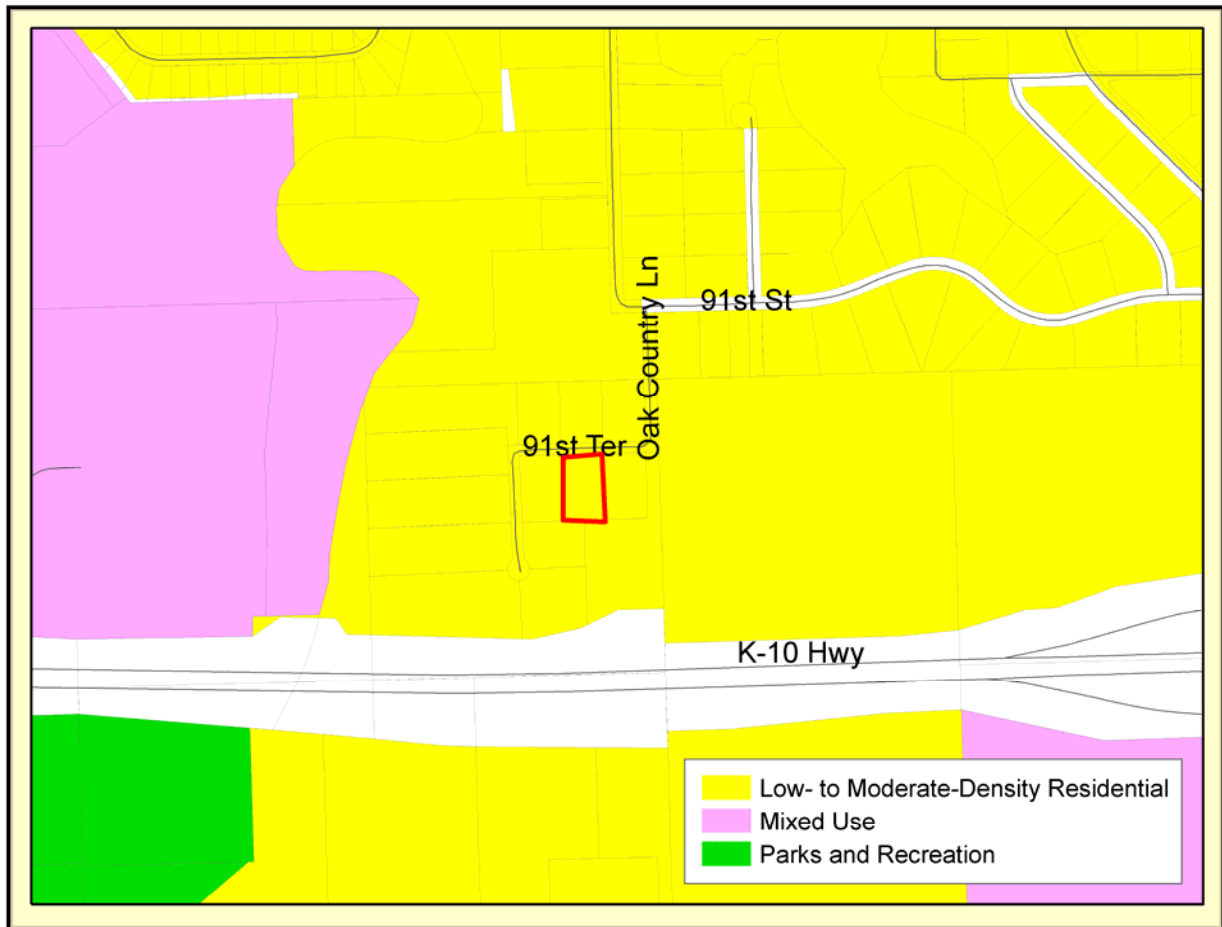
*“ **Low- to Moderate Density Residential:** 1.0 to 3.0 units per acre. Development within this category is characterized by single-family detached dwellings. This category is also appropriate for planned public and semi-public uses which are generally considered compatible with residential uses.*

For smaller parcels and lots in developed areas of the City, the scale and unit count is intended to be generally limited to 2.5 units or less to maintain harmony with the predominance of detached single-family homes in the surrounding area. However, the planned development process and standards of the zoning regulations should be used so that development which proposes higher densities can be permitted with appropriate design and buffering standards that minimizes impacts on the character of the surrounding neighborhood. For large tracts, particularly those containing significant natural features, building forms may vary greatly in order to meet conservation and other objectives through clustering; however, the gross density of these sites should still fall within the maximum 3.0 units per acre standard.

In locations where the land is severely restricted by floodplain, steep slopes, deep ravines, significant vegetative cover and other significant natural features such as along existing creeks and streams net density of less than 2.5 units per acres is anticipated. For smaller parcels and lots where the creation of tracts to create private or public open space is unfeasible, the lots are intended to be generally limited to 1.0 unit per acre with the use of easements and setbacks to preserve the existing natural features. On larger parcels where tracts can be created to preserve natural features, the use of smaller lots may be appropriate. “



FIGURE III: FUTURE LAND USE



There is a single-family residence on the subject property. The 1.3 acre parcel is slightly larger than the '1 unit per acre' minimum called for in the Plan. As the rezoning would not allow for any additional development of the property, the rezoning is consistent with the Comprehensive Plan.

The finding relating to the consistency with the Comprehensive Plan is therefore positive, in favor of granting the application.

13. ***The recommendation of professional staff.***

This staff report represents the recommendations of professional staff. The majority of the matters considered are in favor of granting the requested zoning change.

The finding related to the recommendation of professional staff is therefore positive, in favor of granting the application.



III. CONCLUSIONS AND RECOMMENDATIONS

Conclusions relating to the "Matters to be Considered" for zoning change:

1. The finding relating to whether the use is compatible with the existing neighborhood is **positive**.
2. The finding relating to the compatibility of the proposed district with nearby properties is **positive**.
3. The finding relating to the suitability of the uses to which the property is restricts under its existing zoning is **neutral**.
4. The finding relating to the length of time the property has remained vacant as zoned is **positive**.
5. The finding relating to the need for the proposed uses is **positive**.
6. The finding relating to availability of required utilities is **positive**.
7. The finding relating to the road network is **positive**.
8. The finding relating to environmental impacts is **positive**.
9. The finding relating to economic impacts is **neutral**.
10. The finding related to the extent to which the zoning amendment may detrimentally affect nearby property is **positive**.
11. The finding related to the relative gain to the public health, safety, and welfare from a denial of the rezoning application as compared to the hardship imposed upon the rezoning applicant from such a denial is **positive**.
12. The finding relating to the consistency with the Comprehensive Plan is **positive**.
13. The finding relating to the recommendation of professional staff is **positive**.

Staff advises the Commission recommend approval of the requested zoning change from 'R-0' to 'R-1'. The Commission may also table the matter to their December meeting or recommend denial to the Council.

End of Report

Exhibits to Follow