

## PLANNING COMMISSION MEETING MINUTES

Tuesday, August 23, 2011 AT 7:00 P.M.

**MEMBERS PRESENT:** Tom Gray, Dave Pierce, Robin Neal, Merle Parks, Sherri Neff, Craig Stephan and Jason Krone

**MEMBERS ABSENT:** Dan Carter

**STAFF PRESENT:** Don Slone, AICP, CFM, Planning Director  
Terry Barlow, Departmental Administrative Assistant  
Bill Legge, P.E., City Engineer

Chairman Parks called the meeting to order at 7:00 p.m. and asked for a roll call.

Chairman Parks introduced **Item No. 1: Approval of Minutes** and called for a motion to approve the minutes of the July 26, 2011 Planning Commission meeting. Commissioner Stephan made a motion to approve the minutes as written and Commissioner Neal seconded the motion. Chairman Parks asked if there were any questions or other comments concerning the minutes. Seeing none, he called for the vote. The motion passed 5-0-2. Commissioners Pierce and Krone abstained.

### **NEW BUSINESS**

Chairman Parks introduced **Item No. 2: Election of Officers**: Commissioner Stephan made a motion that Merle Parks remain as Chairman, Dave Pierce remain as Vice-Chairman and Don Slone remain as Secretary. Commissioner Krone seconded. The motion passed unanimously.

Chairman Parks introduced **Item No. 3: Comprehensive Plan Change: BSCP-20: "Little Joe's Asphalt"** A request to amend the Future Land Use Map of the Comprehensive Plan for 4.39 acres from a Vacant/Agricultural designation to an Industrial designation. This request is from Joe and Theresa Buehler, Little Joe's Asphalt Inc., property owners of record. This request is required in order to amend the zoning classification and to allow the current use as an asphalt construction contractor's office, warehouse and equipment storage as permitted under the I-1, Light Industrial District regulations. The properties are located at 610 N. and 530 N. 134<sup>th</sup> Street.

Chairman Parks opened the public hearing at 7:04 p.m. and asked for Staff presentation. Staff presented it's recommendations to the Planning Commission. Staff recommended approval. The Planning Director briefed the Planning Commission on the entire case including the Comprehensive Plan Change, Rezoning and the Lot Splits and then stated that he would answer any questions.

Chairman Parks asked if the applicant would like to address the Planning Commission. **Ryan Denk, Attorney at Law with the law firm of McNany, Van Cleave & Phillips, 10 E. Cambridge Circle Drive, Kansas City, Kansas.** Mr. Denk addressed the Planning Commission on behalf of his clients, Joe and Theresa Buehler. A little bit of history while we are here. As Don mentioned, the applicants requested the property be rezoned to allow the current business on June 28, 1994 to an I-1, Light Industrial District and again on June 27, 1995 to a C-S-P, Highway Service District Planned. Both requests were denied by the City. The applicants brought suit against the City in the District Court that went to trial in June 1997. To date, this case remains without resolution by the District Court as the judge has since retired. Through some discussions with the City's legal counsel, it was suggested to me to talk to my clients in light of the change in circumstances and if we would go through this process and make application to rezone the property to I-1, Light Industrial District. My clients were in agreement to try to rezone again. The Planning Staff recommended that we make application under the I-1, Light Industrial District designation. It has been brought to my attention that the Planning Commission had some concerns relating to a similar application to change the Comprehensive Plan and Rezoning for the KDOT property across the street. KDOT is zoned C-S-P which is a commercial zoning district. Your Comprehensive Plan which talks about commercial zoning in no way envisions or contemplates the types of uses that KDOT has on that property. I guess my client's position is that the use of their property is basically like that of KDOT. If the Planning Commission denies this Comprehensive Plan Change, then his clients will file for a C-S-P rezoning with a special use permit. You need to look at the uses of the property and the use of KDOT and my client's are very similar. One thing I would note is that in the staff report, you have to get approval of the change to the Comprehensive Plan before you can take into consideration the rezoning. I don't agree with that statement. In

Kansas Law, the case of Golden vs. the City of Overland Park, the court found that the Comprehensive Plan is only one of nine factors that to need be considered by the Planning Commission for a rezoning. I object to the condition requiring the approval of the Comprehensive Plan Change in order to hear the request to rezone. My clients and I will be glad to address any questions that the Planning Commission might have.

Chairman Parks stated to Mr. Denk, as far as your last point is concerned it is certainly our intention to proceed through all three of the items regardless of the determination of the first item. I would assume that the issues of consideration would be pretty similar in all items so I would not anticipate a different vote but we are certainly going to proceed with all three no matter the outcome of the first item.

Chairman Parks asked if anyone in the audience would like to address the Planning Commission.

**Marcus Potter, 401 N. 134<sup>th</sup> Street, Bonner Springs, KS** stated that they had no problem with the Comprehensive Plan Change, the Rezoning or the Lot Split. He stated that the Buehler's have been good neighbors the entire time that they have lived in their home. He also stated that there is little or no truck traffic from Little Joe's business as the trucks do not come down 134<sup>th</sup> Street. Mr. Potter stated that he appreciates the condition to restrict the truck and equipment traffic from Little Joe's Asphalt to Elizabeth Avenue.

Chairman Parks asked if there were any further questions or comments from the applicants or the audience. Seeing none, he closed the public hearing at 7:19 p.m. and asked for a motion. Commissioner Stephan made a motion to approve with the conditions listed in the Staff report. Commissioner Pierce seconded.

Chairman Parks asked if the Planning Commission had any questions or concerns.

Commissioner Stephan asked if they changed the Comprehensive Plan and Zoning and twenty years from now we have I-1, Light Industrial District, what type of business can come in that we would not want. The Planning Director stated that all that could come into this area would be a business that fits the I-1, Light Industrial District requirements. We cannot anticipate all users other than the fact that the most undesirable uses are not allowed under the I-1, Light Industrial District zoning.

The Planning Director clarified Mr. Denk's comments regarding the KDOT issues. The Planning Commission unanimously recommended approval of both the Comprehensive Plan Change and Rezoning for KDOT and that it was denied by the Governing Body.

Commissioner Stephan asked who owns the property at the end of 134<sup>th</sup> Street where there is an outside salt storage facility. The Planning Director stated that the property is owned by KDOT.

Chairman Parks asked if 134<sup>th</sup> Street would ever go north again and the Planning Director stated no. Commissioner Stephan asked if the road is going right in the middle of the tract that we are going to split later. The Planning Director stated yes. The applicants plan to build a new drive from the existing business across the 90' area of the South Tract Split which in the future will become Elizabeth Avenue to the west. The Planning Director also stated that the access to K-7 Highway is much better than it was in the past.

Chairman Parks asked if there is any plan for Elizabeth Street to go all the way through. The Planning Director stated that Elizabeth Avenue will go south in the future to the new intersection of 130<sup>th</sup> Street and K-7 Hwy as a frontage or reverse frontage road. Chairman Parks asked if that was 136<sup>th</sup> Street to the west that connects to the current Elizabeth Avenue. The Planning Director stated that 136<sup>th</sup> Street would eventually connect with Minnesota Avenue to the north as depicted on the Future Land Use Map.

Chairman Parks asked if there were any further questions from the Planning Commission. Seeing none he called for a vote. Motion passed unanimously.

Chairman Parks explained his vote in favor of the motion. It was his understanding that the applicant originally applied for the change in zoning in 1995 when it was not operating a business at that location. When the original application was rejected the Buehler's went ahead and operated the business in violation of the zoning restrictions, resulting in the lawsuit that has been pending for years. Chairman Parks did not condone the applicants' actions and stated that the Commission's vote in 1995 was justified based on the conditions at that time. Since then, however, conditions have changed with the highway department property, changes in access to K-7 and Hwy 24-40, and the recommendations of the neighbors. Based on the current conditions, Chairman Parks vote was "yes".

The Planning Director stated that he will forward this item to the Governing Body on September 12, 2011 with a Planning Commission recommendation of approval.

Chairman Parks introduced **Item No. 4: Rezoning: BSZ-126- “Little Joe’s Asphalt”** A request to rezone 4.39 acres from an A-1, Agricultural District classification to an I-1, Light Industrial District classification. This request is from Joe and Theresa Buehler, Little Joe’s Asphalt Inc., property owners of record. This request is to amend the zoning classification to allow the current use as an asphalt construction contractor’s office, warehouse and equipment storage as permitted under the I-1, Light Industrial District regulations. The properties are located at 610 N. and 530 N. 134<sup>th</sup> Street.

Chairman Parks opened the public hearing at 7:28 p.m. and asked for Staff presentation. Staff presented its recommendations to the Planning Commission. Staff recommended approval. The Planning Director stated that he would answer any questions.

Regarding the C-S-P, Chairman Parks asked if that allowed for outside storage but obviously the Highway Department has outside storage. The Planning Director stated that KDOT has outside storage for their special use. They did not write it in for private construction companies as it is not permitted. They wrote the regulations for “public uses” but not “private uses”.

Chairman Parks asked if the applicant would like to address the Planning Commission. **Ryan Denk, Attorney at Law with the law firm of McNany, Van Cleave & Phillips** addressed the Planning Commission on behalf of his clients, Joe and Theresa Buehler. Mr. Denk stated that they agreed with all of the conditions except he first one dealing with the Comprehensive Plan Change. Condition No. 1 seems to state that the Planning Commission needed to approve the Comprehensive Plan before they can go forward with the rezoning. We challenge that condition.

Chairman Parks stated that at this level, Condition No. 1 is moot since we have recommended approval of the Comprehensive Plan Change.

Chairman Parks stated that reference has been made to the pending lawsuit. Mr. Denk stated that there have been some hearings lately. Chairman Parks asked Mr. Denk if all of this gets approved, will this resolve the lawsuit against the City. Mr. Denk stated yes, the lawsuit becomes moot. Through some discussions with the City’s legal counsel it was suggested to me to talk to my clients in light of the change in circumstances and if we would go through this process and make application to rezone the property to I-1, Light Industrial District. My clients were in agreement to try to rezone again.

Chairman Parks asked if there were any further questions or comments from the applicants or the audience. Seeing none, he closed the public hearing at 7:36 p.m. and asked for a motion. Commissioner Stephan made a motion to approve with the conditions listed in the Staff report. Commissioner Krone seconded.

Chairman Parks asked if the Planning Commission had any questions or concerns. Seeing none he called for a vote.

Commissioner Stephan stated he decided to save his explanation for the actual rezoning. Commissioner Stephan stated that he grew up in this city. I drove this area over the weekend and KDOT has a storage area right next to him. There is a great break from the property to the other property owners. I don’t see the property from K-7 Hwy when you drive. We do need to protect the area to the north. I don’t think this will hurt any future development of the K-7 Hwy corridor.

The motion passed unanimously.

The Planning Director stated that he will forward this item to the Governing Body on September 12, 2011 with a Planning Commission recommendation of approval.

Chairman Parks introduced **Item No. 5: Lot Split: LS-114: “Little Joe’s Asphalt Lot Split”** A request to lot split two (2) tracts of land that is equal to 67.4 acres of unplatted property. The property is currently zoned A-1, Agricultural District with a request to rezone 4.39 acres (Tracts A, North/South) to an I-1, Light Industrial District classification under BSZ-126. This request is from Joe and Theresa Buehler, property owners of record. The request is in order to tract split the North Tract (610 N. 134<sup>th</sup> St.) and the South Tract (530 N. 134<sup>th</sup> St.). The combination of both Tract A, North and Tract A, South equals the 4.39 acres that will become the location for Little Joe’s Asphalt Inc. to be assigned a new address of 600 N. 134<sup>th</sup> Street.

Chairman Parks asked for Staff presentation. Staff presented its recommendations to the Planning Commission. Staff recommended approval. The Planning Director stated that he would be glad to answer any questions.

The Planning Director stated that they have two different parcel numbers and two different drawings. A deed will be written against the 4.39 acres for Little Joe's Asphalt. Wyandotte County Health Department has looked at this as well. The septic system is for both properties as well as only one water line for both properties. If the property is ever sold they will have to have separate septic and water services.

Chairman Parks asked if the applicant would like to address the Planning Commission. **Ryan Denk, Attorney at Law with the law firm of McAnany, Van Cleave & Phillips** addressed the Planning Commission on behalf of his clients, Joe and Theresa Buehler. Mr. Denk had no further comment.

Chairman Parks stated that he assumed that Mr. Denk's clients were in agreement with the conditions all but Condition 1 that Mr. Denk had reservations about. Mr. Denk stated that was correct. There was a question of from their surveyor as to whether we could do a lot split as it was recommended by the Planning Director.

The Planning Director stated that he had spoken with the County Surveyor and the county map department. A new parcel number and address would be given after the lot split has been approved. The new address for Little Joe's Asphalt will be 600 N. 134<sup>th</sup> Street.

Chairman Parks asked if there were any further questions or comments from the applicants or the audience. Seeing none, he called for a motion. Commissioner Stephan made a motion to approve with the conditions listed in the Staff report. Commissioner Krone seconded.

Chairman Parks asked if there were any further questions or comments from the Planning Commission. Seeing none he called for a vote. Motion passed unanimously.

Chairman Parks introduced **Item No. 6: Outdoor Lighting Plan: "658 W. Kump Ave."** 1.9 acres platted as Blue Grass Ridge zoned I-1, Light Industrial District. Requested by Herman and Norma McConico, property owners of record. The Outdoor Lighting Plan is being submitted for Planning Commission approval of the outdoor lighting that was installed by Westar Energy. The property is located at 658 W. Kump Avenue.

Chairman Parks asked for Staff presentation. Staff presented its recommendations to the Planning Commission. Staff recommended approval subject to two (2) conditions. The Planning Director stated that this item was added as the property owners had the site lighting installed without first obtaining Planning Commission approval. The Planning Director recommended approval subject to two (2) conditions: (1) Ok the site lighting without a formal site plan submittal due to the nature of the request; and (2) Remove or relocate the semi trailers from the grass onto the existing gravel area.

Chairman Parks asked if there were any further questions or comments from the Planning Commission as there was no one left in the audience. Seeing none, he called for a motion. Commissioner Stephan made a motion to approve with the two (2) conditions discussed with a second from Commissioner Krone.

Chairman Parks asked if there were any further questions or comments from the Planning Commission. Seeing none he called for a vote. Motion passed unanimously.

Chairman Parks asked if there was any further discussion or other items. Seeing none, he adjourned the meeting at 7:54 p.m.

  
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Planning Commission Secretary