

MINUTES
HARVEY COUNTY REGIONAL PLANNING COMMISSION
HARVEY COUNTY BOARD OF ZONING APPEALS
Harvey County Courthouse
Community Room
November 3rd, 2009
7:00 PM

Members Present: Clifford Kirk, Dorothy Thiessen, Ron Peters, Larry Emmel, Alan Beam, Carroll Harder, Al Heine, Jack Bender, Sam Griffin, Harlan Foraker, Al Heine & Larry Goering

Members Absent: Robert TenEyck & Chad Fuqua

Staff Present: Scott Davies, Planning & Zoning Administrator,

Others Present: Roger & Kathy Crawford, Lynn Moore, Larry & Marietta Buhler, & Marv & Ruthann Dirks

At 7:00 pm Chairman Emmel called the meeting to order.

1. Mr. Emmel corrected the agenda item number eight; it should read VAR 16-24-2W. The Chairman then asked for a motion to approve the October minutes, Mr. Griffin moved and Mr. Peters seconded to approve the October minutes, motion carried 11-0.
2. Staff Report: Sixteen building permits were issued during October for a total construction estimate of \$2,312,105.
3. **CUP 8-23-1W, Request from Roger Crawford for a conditional use permit for a TV Repair business.** Chairman Emmel reviewed the procedure for hearing a conditional use permit. Staff presented report and slide presentation. Mr. Emmel asked Mr. Crawford to provide information for his request. Mr. Crawford said they plan to move the lagoon that is currently east of the house to area north of the existing house. He said that he is farming this property and running a business in Halstead and would like to move his repair business and build a new business at this location. Mrs. Crawford said that it would be much better to have the business out where they farm so they don't have to run back and forth between the two locations. He said they also plan to build a new house at the location.

Mr. Bender asked Mr. Crawford if he plans to sell cars on the property. Mr. Crawford said that he might occasionally sell a car or two of his children's. Mr. Bender asked him if he would be closing down his business in Halstead, Mr. Crawford said that was correct. Mr. Crawford said that he would have a garage where he could work on his vehicles. Staff said that if he occasionally had a car to sell it probably would not need a conditional use permit but if he sold cars on a regular basis, then he would need a permit to operate that type of business, in addition to the permit he is requesting now.

Not getting any other comments, the Chairman closed the public hearing portion.

The Chairman opened it up for discussion from the commission. There was none, so the Chairman asked for a motion. Mr. Griffin moved to recommend approval of the request based on A-F of the staff report, Mr. Kirk seconded the motion. The Chairman called for a vote, the vote was 11 for and 0 opposed, the Chairman abstained, motion carried.

4. CUP 8-23-2E, Request from Brian J. Chamberlain for a conditional use permit to operate an auto repair business at 6901 NE 24th. Staff presented report.

Mr. Chamberlain said he was trying to find a way to make money; he built the building and then decided he needed to find a way to make money with it. He said he plans to sell cars later but will apply for a new permit at that time.

No one spoke in favor of the application.

First to speak against the application was Carolyn Schwab, nearby landowner. She did not think the road was adequate to handle the increased traffic. Marietta Buller spoke next, she lives south of 24th on Rock Rd. They own property that is adjacent on the south and west of Mr. Chamberlains. She had concerns about oil spills and pollution. She does not think the road is in good enough shape for the business.

Mr. Foraker had questions about locations of those speaking against the request.

Next to speak against was Marvin Dirks. He lives ½ mile north on Webb Rd. Mr. Dirks was concerned about future uses if this is granted. He questioned whether Mr. Chamberlain might try to operate other types of businesses. Ruth Ann Dirks spoke next and expressed concern about car racing on Webb Rd. She also was wondering if a neon sign would be erected on the site.

Not having any other public comment, the Chairman closed the public hearing.

Mr. Emmel read a letter from Cecil Fanning expressing opposition to the proposal. Mr. Fanning lives across the road from Mr. Chamberlain.

Mr. Emmel asked for any final remarks from Mr. Chamberlain. Mr. Chamberlain said that he was just trying to make money. He also said that he would not be putting up a neon sign.

Mr. Foraker asked about disposal of oil and other solvents. Staff said that he would be required to dispose of oils properly, if not, KDHE would be called into enforce regulations.

Mr. Kirk asked whether would there be adequate fire and emergency vehicle access to Mr. Chamberlain's property.

At this time the Chairman asked for a motion. Mr. Kirk moved to deny the request based on letter A of staff report concerning public safety and letter D for inadequate roads to access the property, and because of ambiguity concerning the use of the property, Mr. Goering seconded the motion.

Mr. Bender had a question about the size of the building. Staff said that there was a height restriction but this building complied with the height requirement. Mr. Foraker asked staff about number of cars that could set outside the building. Staff said regulations require that all cars being worked on be kept inside and enclosed building.

Mr. Peters commented that the area is more residential use and not a commercial area. Staff said that there are a number of residences in the area but it is zoned agricultural. At this time Mr. Heine called for a question.

The Chairman reviewed the motion and then called for a vote. The vote was 11 for and 0 opposed, Chairman abstained, motion carried, recommendation is to deny the request.

5. **Case No. CUP 12-23-3W.** Request from the City of Wichita Water Utilities to construct a communications tower approximately 150 feet in height, located at the northeast corner of NW 12th and N. Willow Lake Rd. Staff presented report.

The Chairman asked for the applicant to speak. Lynn Moore with PEC spoke on behalf of the City of Wichita. Mr. Moore said the tower would provide enhanced communication to the wells in the Equus Beds from the City's water treatment plant in Wichita. It was his understanding that the tower is to be a free standing tower and not cable supported. The tower will be 150 feet and will not require a light on top. Mr. Moore said that this was one of three towers being proposed for phase 2 of the Aquifer, Storage, and Recovery project for the City of Wichita. Two of the towers will be in Harvey county and the other in Sedgwick County.

Mr. Bender asked if there were any alternatives to the towers. Mr. Moore said there is, but it involves a cable system and very expensive to install. Mr. Bender asked why there was a need for two towers so close together. Mr. Moore said that it involved a relay system from the City's treatment plant to all their existing and proposed wells in the well field.

Mr. Bender asked if the additional water was going to Wichita. Mr. Moore said that it would go to restore water in the aquifer.

Mr. Bean asked about how many residences in the area. Staff said there was one to the south; a comment from the public said there was one 900 feet west. Mr. Emmel asked what the white dot was on the Bing aerial east and north of the site. No one was able to identify what it was.

Mr. Bender asked how far the towers were spaced. Mr. Moore said there was one tower about 1 ½ miles south of the county line. Mr. Kirk asked why the tower east of Halstead could not be used. Mr. Moore said that all the wells are west of Halstead.

The Chairman opened it up for public comment. There were none to speak for the request. First to speak against the request was Ron Neuway. He said the City had not lived up to their agreements in the past; he cited roads and tree damage from previous construction. He said he objected to the way they were treating the water. He was also concerned about the amount of water they were taking from the aquifer.

Mr. Flickinger spoke next against the proposal. He leased the City the land they are currently on. He said the City did not fully disclose what they were planning to do and acquired 3 two acre leases. He wanted to know why they couldn't use existing utility poles to put cable on instead of building a large tower.

Mr. Bender asked about who owned the property. Mr. Flickinger said he had originally leased it for 100 years to the City but then filed a quick claim last year when he was not being reimbursed for taxes.

The Chairman closed the public hearing and asked for any final comments from Mr. Moore. Mr. Moore said that the City of Wichita was acting under federal, state, and local laws.

Mr. Emmel opened it up for discussion between commission members; there was none, so the Chairman entertained a motion.

Mr. Foraker asked staff if he had evaluated this tower in light of the regulations for a communications tower and believed it met the requirements. Staff said he had and believed it did. Mrs. Thiessen said that she knew there were existing towers in the area and wanted to know why those couldn't be used. Mr. Griffin asked staff he knew where the closest tower was to this site. Staff said he did not.

At this time, Mr. Kirk moved to refer the tower request back to staff to obtain supportive documentation why a tower within five miles could not be co-located as stipulated in Article 16.06.6 and to obtain a map of all existing communication towers in the county. Mr. Goering seconded the motion.

Mr. Heine commented that he understood the objections of the surrounding landowners but having the tower at this site will not change their situation.

Mr. Foraker asked if this line of site tower or like a cellular tower where the signal goes in all directions. Mr. Moore said that he would need to get back to the commission on that.

Mr. Kirk called for a question. The vote was 9 for and 2 opposed, 1 abstention. Motion carried.

The Chairman withdrew Case No. VAR 12-23-3W from the agenda pending the decision of Case No. CUP 12-23-3W.

6. **Case No. CUP 16-24-2W.** Request from the City of Wichita Water Utilities to construct a Communications tower approximately 150 feet in height. Staff report was presented.

Mr. Griffin moved to refer this request back to staff to obtain documentation from the City of Wichita and their engineers why co-location was not feasible as specified in Article 16.06.6 of the county's zoning regulations. Mr. Goering seconded. The Chairman called for a vote, the vote was 10 in favor and 1 opposed, with the Chairman abstaining. Motion carried.

At this time the Chairman removed Case No. VAR 16-24-2W from the agenda pending the decision of Case No. CUP 16-24-2W.

There was no more discussion or items and Mr. Peters moved and Mr. Harder seconded to adjourn the meeting. Motion carried, meeting adjourned at 9:20 pm.