

MINUTES
HARVEY COUNTY REGIONAL PLANNING COMMISSION
HARVEY COUNTY BOARD OF ZONING APPEALS
Harvey County Courthouse
Community Room
March 2, 2010
7:00 PM

- Members Present:** Clifford Kirk, Sam Griffin, Bonnie Wendling, Larry Goering, Carroll Harder, Robert TenEyck, Al Heine, Dorothy Thiessen, Ron Peters, Jack Bender, Harlan Foraker & Alan Beam & William Wilson
- Members Absent:** Chad Fuqua, Larry Emmel,
- Staff Present:** Scott Davies, Planning & Zoning Administrator
- Others Present:** Wayne Alison, Andy Lowe, Tonia Lowe, & Rick Lowe

At 7:00 pm Vice-Chairman Kirk called the meeting to order.

1. Mr. Kirk asked for any corrections to the February 2, 2010 minutes, being none, the Chairman approved the minutes.
2. Staff Report: Eleven building permits were issued during February 2010 for a total construction estimate of \$1,641,400. The largest permit was to Westar Energy for a substation south of Newton. One single family dwelling permit was issued during the month.
3. **Lowe Split Off** – Request from Andrew Lowe to split off approximately 5 acre parcel from a 145 acre tract for a single family residence. Vice-Chairman Kirk reviewed the procedure for the request.

Staff Report: Mr. Andrew J. Lowe is requesting a building permit to construct a single family dwelling under the provision mentioned in Article 9.05 of the Harvey County Unified Development Code. That provision stipulates that the minimum lot size in the A-1 zoning district shall be equivalent to quarter of a quarter section of land; however, smaller lots with a minimum area of five acres shall be permitted provided the following conditions are met:

- a. Newly created lots shall have at least fifty percent (50%) Class IV or lower productivity soils as designated in the soil survey of Harvey County, Soil Conservation Service, November 1974 as amended.
- b. A proposed lot or tract may be designated as low productivity by the Board of Harvey County Commissioners after receiving a recommendation from the HCRPC if at least fifty percent (50%) of the lot or tract to be created can not reasonable by farmed because of steep topography, the separation of the tract from other contiguous agricultural land by significant natural or man made boundaries, such as ravines or highways, or the prevalence of natural features such as waterways or shelter belts.

The site in question is comprised entirely of Class I and II soils; consequently it is not eligible for a building permit on the basis of poor soils (a). The applicant is requesting the building permit be issued based on the second (b); on the contention that the presence of trees and a creek that

separated the property from the cultivated ground on the east and west sides of the proposed tract.

Attached are; an aerial photo showing the site in question, a map showing the location of the site in relation to the rest of Harvey County, Mr. Lowe's application including a diagram of the proposed site of the split, signatures of nearby landowners not opposed to the split off, and a list of adjacent landowners within a 1,000 feet.

As you are aware, your task is to make a judgment as to whether you believe the site meets the criteria outlined previously under b. I would remind you that your decision should be made on the basis of whether you feel the site meets or doesn't meet the criteria established above and those criteria only. If you choose to recommend that this tract of land be eligible for residential building permit, then your recommendation will go to the Board of Harvey county Commissioners for their decision.

Staff presented a power point showing aerials and on ground pictures of the site. Staff also reminded the commission of the signed letter from nearby landowners not objecting to the split off that was in their packet. Staff said there were no calls or letters opposing the split off.

Vice-Chairman Kirk asked the applicant to give a report about the request. Mr. Andrew Lowe explained that he and his wife are planning to construct a house or possibly a metal building with living quarters in them if the split is approved. The metal building would be used for agricultural seed sales, he said. Mr. Lowe believed this ground met the description of letter b because of the creek, trees and steep topography. He also believed that if it was cultivatable, that it would have been done so by now. He thanked the commission for their consideration of the request.

Mr. Rick Lowe, uncle of Andrew, owns the large tract and spoke in favor of the request.

There being no other comments in favor of the request, the Vice-Chair asked for comments in opposition, there were none.

Vice-Chair Kirk closed the public hearing portion and asked for questions or comments from the planning commission.

Mr. Bender asked Andrew Lowe if they planned to just have an agricultural building or a residence. Mr. Lowe said he had not made a decision yet. Staff said that the seed sales building is permitted on any size tract of land since it is an agricultural building and does not require approval from the county, however a residence does. Staff instructed the commission to make the decision in light of a residence and not an agricultural building.

Dr. Wilson asked about the feedlot across the road and if Mr. Lowe had any objections. Mr. Lowe said that his father owned the feed lot and obviously he did not.

Mr. Foraker asked about the floodplain and whether this should have a factor in their decision. Staff said that all the property in the proposed split is in a floodplain and that the applicant will have to comply with the county's floodplain regulations when obtaining a building permit. Staff said that the floodplain could be considered but should not be the basis for making their decision. The criteria under letter b are the basis for making the recommendation staff said.

Mr. Foraker asked for clarification for the criteria. Staff explained that it is based on steep topography, trees, streams or water features, basically things on the surface that make it unfarmable.

At this time, the Chairman called for a motion, Mr. Bender moved and Mr. Griffin seconded to approve the request. The vote was called for and was 12 in favor and 0 opposed with the chairman abstaining. Motion carried to recommend approval of the request.

4. **Election of Officers.** The Acting Chair Kirk asked for nominations. Mr. Harder moved to nominate Mr. Kirk for Chairman, Mr. Foraker seconded. Having no other nominations, Mr. Peters called for nominations to cease, Ms. Wendling seconded. Motion carried. The vote was unanimous to elect Mr. Kirk as Chairman for the 2010 – 2011 term.

Next nomination was for Vice Chair. Mr. TenEyck moved to nominate Mr. Goering, Dr. Wilson seconded. Nominations ceased. The vote was 12 for 0 opposed; Mr. Goering was elected for the 2010 term as Vice Chair.

5. **Old Business.** Staff reported on giving deposition for the gun range application that was denied.
6. **New Business.** Mr. Kirk presented Mr. Griffin with a plaque for his years of service on the planning commission board and thanked him for his service.

The Meeting was adjourned by Chairman Kirk at 7:50 pm.