

February 23, 2011

The Jefferson County Board of Commissioners convened in special session on Wednesday February 23, at 7:00 p.m. at the Oskaloosa Middle School Multipurpose Room for the purpose of continuing the hearing on CU2010/8 heard on February 7, 2011. Present were Commissioners, Richard Malm, Roy Dunnaway, Lynn Luck, Jan & Mike Hayes, County Counselors, and Linda M. Buttron, County Clerk.

Eighty seven (87) members of the public were present as well as the applicant Zachary Snyder and his attorney, John Bullock.

Richard called the meeting to order at 7:00 p.m. The proceedings of the meeting are recorded in the form of a transcript.

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1 BEFORE THE BOARD OF COUNTY COMMISSIONERS
2 JEFFERSON COUNTY, KANSAS
3
4 In the Matter of the Application)
5 For a Conditional Use Permit by)Case No. CU2010/8
6 Highway Four Properties, LLC,)
7 8023 K4 Highway, Meriden, KS, 66512.)
8
9 TRANSCRIPT OF PROCEEDINGS
10 February 23, 2011
11 BEFORE:
12 RICHARD MALM, CHAIRMAN
13 ROY DUNNAWAY
14 LYNN LUCK
15
16 Multipurpose Room
17 Oskaloosa Middle School
18 Oskaloosa, Kansas
19
20 APPEARANCES
21 For the Planning & Zoning Department: Eloise
22 Tichenor.

19 The Applicant, Highway Four Properties, LLC,
20 appears by Mr. John T. Bullock, Attorney at Law,
21 Stevens & Brand, LLP, 900 Massachusetts Street, Suite
22 500, Lawrence, Kansas, 66044.

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I N D E X

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1 CHAIRMAN MALM: Okay, it's 7:00 o'clock.
2 We'll call the meeting of the county commissioners
3 to order. This is a continuation of the hearing
4 we had on February 7th for the conditional use
5 permit for the K-Four Properties, LLC.

6 At this time we'll call upon the
7 commissioners to see if they have had any public
8 input or anything on this case.

9 MS. LUCK: I have had conversations but it
10 won't affect my judgment.

11 MR. DUNNAWAY: Yes, I have had conversations
12 but it doesn't affect my decision.

13 THE SPEAKER: Speak up.

14 MR. DUNNAWAY: Yes, I've had people talk to
15 me and it hasn't made me change my mind.

16 CHAIRMAN MALM: I'm the same way, I've had
17 people contact me but I still, it hasn't affected
18 my decision-making.

19 Member conflict of interest, at a Republican
20 Central Meeting, committee meeting on January 8th,
21 2011, I made a statement regarding the support of
22 House Bill 2144. I made this statement prior to
23 the decision rendering by the Planning and Zoning
24 Commission regarding case CU2010/8. I pledge to
25 maintain an open mind and continue to listen and

1 consider all the evidence before making a final
2 decision. I am open to all testimony, the written
3 record, reports. I do not have a conflict of
4 interest in this case, nor bias, and I have no
5 prejudice against this application. My ability
6 will not be precluded to keep the proceedings fair
7 and open and impartial and allow the applicant its
8 due process.

9 At this time I will call on the county
10 attorney, Robert Fox, to make a statement.

11 MR. FOX: Thank you, Madam and
12 Mr. Commissioners. I appreciate the time.

13 CHAIRMAN MALM: I'm not sure that's on.

14 MR. FOX: I believe my predecessor, Caleb
15 Stegall, made some presentations to the zoning
16 board when it was meeting but I have not had the
17 opportunity to make any comments and so I
18 appreciate the opportunity.

19 I have attempted to locate information that
20 would impact my office in the prosecution of
21 cases. I believe Mr. Stegall cited the same study
22 that I am going to cite. It's the American Center
23 for Law and Justice study on land use. It was
24 published March 31st of 1996, and while that seems
25 a long time ago, it was based on various studies

1 of municipalities and counties and states that
2 went back some 20 years. It appears from the
3 things that I have looked at that the information
4 contained therein is still viable and still valid.

5 That study reviewed the impact of
6 sexually-oriented businesses upon nearby
7 residences and commercial businesses. The study
8 covered 29 cities, six counties, located in 18
9 states. The states ranged from California in the
10 west to Florida in the east, from Texas in the
11 south to Minnesota in the north.

12 Now, the study finds that sexually-oriented
13 businesses, or the acronym is SOBs and so when I
14 refer to that that's what I am referring to, that
15 the SOBs support detrimental activities, such as
16 personal and property crimes, prostitution, drug
17 activities, and all within vicinities that are
18 incompatible with the normal activities occurring
19 within residential areas. The study indicates
20 that when SOBs are located near businesses that
21 serve alcohol the harmful impacts increase. The
22 study notes that these findings are not a
23 revelation of recent problems but are evidenced by
24 municipal studies going back 20 and 30 years.

25 The study indicates that SOBs help create

1 conditions that draw outsiders to the area and
2 provide venues for opportunistic crime. One of
3 the studies, from Bothell County, Tex --
4 Washington showed that of the 321 cars in the
5 parking lot of a local SOB eight were registered
6 in that county.

7 The study finds that a regional customer base
8 as opposed to a neighborhood customer base appears
9 to make SOB owners less responsive to neighborhood
10 problems, decreases the informal social control of
11 behavior and increases the potential for
12 opportunistic crimes. The study further notes
13 that public and semi-private spaces, such as
14 parking lots, parks, and spaces between buildings,
15 have questionable ownership, thereby furthering
16 the opportunity for crimes. When an SOB exists
17 close to such areas these areas become used for
18 illicit activities.

19 The Phoenix, Arizona, study revealed an
20 increase in sex offenses of 506 percent in
21 neighborhoods where SOBs were located and the
22 average number of property crimes was 34 percent
23 greater in neighborhoods where SOBs were located.
24 These types of increases were reported across the
25 board in various city studies. The overall study

1 indicates that the negative effects of an SOB in a
2 small town will likely be more magnified than in a
3 bigger city.

4 Finally, as the underlying studies confirm,
5 the overall study concluded that there is a
6 clearly demonstrable rise in crime and violence
7 and an increase in the attraction to transients in
8 areas as the result of SOBs.

9 And the other piece I want to bring to your
10 attention is that my office follows a policy that
11 my predecessor's office followed that I believe
12 his predecessor's office followed and that is we
13 have a diversion program and we allow certain
14 traffic offenses to be diverted in return for
15 certain payments. Now, there is an area in our
16 county where we have an absolute policy against
17 doing that and that's on K-4 and the Meriden area.
18 That's where that speed limit drops from 65 to 45
19 and the reason for that simply is historically
20 that's an area where we have had high fatality
21 rate accidents and high accident volumes. Where I
22 understand this SOB is proposed to be located is
23 close to where that speed limit drops from 65 to
24 45. If you can imagine folks driving in who are
25 unfamiliar with that area or folks driving in at

1 night and high increase of traffic into and out of
2 the business parking lot I suspect that there is a
3 very real possibility of a large increase in
4 traffic accidents and potential fatalities. We
5 think that's worth noting, too.

6 I appreciate your time, and that's all I
7 have.

8 CHAIRMAN MALM: All right. Does the
9 applicant want to rebut?

10 MR. BULLOCK: Thank you, Commissioner Malm.
11 John Bullock, Stevens & Brand law firm. I am not
12 aware if Mr. Fox attended the other meetings that
13 we have had on this topic but we've obviously
14 spent a lot of time talking about the so-called
15 secondary effects and the crime studies. I
16 would -- I'm not going to purport to summarize
17 everything I've said on the subject over many
18 hours of different meetings but the study he's
19 citing has been discredited. We brought that to
20 your attention.

21 I would also point out there are many
22 differences between the businesses that are
23 studied in those studies and the business that's
24 being proposed here. In those studies the
25 businesses are not private clubs, they are in

1 urban areas or they're off major roadways where
2 they are not subject to the same kind of
3 regulations that a private club in Kansas subject
4 to ABC regulation and subject to the kind of
5 conditions that our applicant here has agreed to
6 be bound by. There are numerous differences, and
7 I won't try to touch on them all, but we have
8 additionally submitted many studies which show
9 that in fact businesses such as this do not have
10 increased crime over comparable businesses that do
11 not have adult entertainment.

12 I would also say that as far as I am aware,
13 and we've certainly been told this and I've not
14 heard anything to the contrary, the sheriff here
15 in Jefferson County has expressed the opinion that
16 he can police this location and that he has no
17 problem with this business at this location.

18 Finally I would say, as I said at the last
19 meeting, whatever is happening in Beaumont, Texas,
20 or wherever that place was he referred to, we have
21 a club very similar to this right over in Douglas
22 County and outside of Lawrence and there are no
23 effects like this happening over there. We have
24 not seen rampant crime sprees, we've not seen
25 plummeting property values or anything of that

1 nature. This is just sort of a scare tactic, if
2 you will, to suggest that suddenly all these
3 things would happen here when in fact that's not
4 the case just a few miles from here.

5 On the subject of traffic, I would say,
6 again, this is a subject that's been covered
7 extensively already. KDOT, of course, has signed
8 off on this project. They have no concerns about
9 the highway or the traffic. As I mentioned last
10 time and as I'm sure the commissioners will
11 recall, if K-4 is a problem K-4 is a problem and
12 this business doesn't exist now and if there is a
13 policy about speeding there and if there are
14 accidents there that's not a reason to deny an
15 otherwise lawful and appropriate business. It may
16 be just a consequence of growth, and if a
17 pro-growth city and a pro-growth county want to
18 attract business they are going to have to modify
19 their infrastructure to support that.

20 I might also just speak briefly, I received a
21 letter today from the county attorney, Mr. Hayes,
22 which I can place into the record, I'll hand a
23 copy of that over here to the reporter, and this
24 letter was received by e-mail today so we've done
25 our best to try to respond to it.

1 Mr. Hayes asked a couple of questions and
2 asked for some additional information that was not
3 specifically requested as such at the last
4 meeting, although there was some discussion of it.
5 In particular Mr. Hayes requested some information
6 about whether there had been a contract with an
7 entity called EZ Entertainment to purchase the
8 property at issue. It's my understanding there
9 was a contract. Mr. Hayes refers to one in his
10 letter purportedly dated May 12, 2010. I have not
11 seen that particular agreement. I would ask if
12 the commission has that or has reviewed that
13 particular agreement, that we be provided with a
14 copy of it. I have not seen it.

15 What I have to present to the commission
16 tonight, however, is a document which refers to
17 the agreement. Let's see, here's what this says.
18 It was date -- I mean, I have to correct myself
19 here. The agreement was dated May 12, 2010, and
20 accepted on May 13, 2010, and what I have here is
21 a Cancellation Agreement and Mutual Release
22 between the seller, which was Ms. Spiess and her
23 company, Comp-U-Sew, and EZ Entertainment, LLP. I
24 believe this specifically was asked for in the
25 letter to prove that that agreement was cancelled.

1 I have that here. I'll approach and hand this to
2 the commissioners. So with any luck that will put
3 to rest the question of whether any entity by the
4 name of EZ Properties claims a right to purchase
5 this property.

6 Mr. Hayes also asked for the members, the
7 names of the members of Highway Four Properties,
8 LLC. I have to confess I'm not sure why he wants
9 to know that. I'm not sure if that's the kind of
10 thing that all applicants are asked to provide
11 when they apply for a permit in this county and
12 was Hamm's Brewing required to provide that kind
13 of information? I don't know. I don't want to
14 make a big issue out of it and we're not going to
15 make a secret of it. It's Mr. Snyder, who we've
16 told you, and Mr. Rutledge, who you met at the
17 last meeting. Those are the two members.
18 Mr. Snyder is the majority member; Mr. Rutledge is
19 the minority member. That's it. Those are the
20 two members, and as Mr. Snyder told you last week,
21 or two weeks ago, he and Mr. Rutledge will be the
22 parties that are responsible for running this
23 establishment themselves.

24 Mr. Hayes also asked for their home addresses
25 or at least asked for addresses of the members.

1 We have provided a couple of different addresses
2 for this business. One, of course, is the
3 location at the 8023 K-4 property. There is an
4 address for the applicant also on the CUP
5 application which you have, and the applicant is
6 also located, as you know, or at least I should
7 say the principal of the applicant does business
8 as the Paradise Saloon over in Douglas County.
9 You could reach him there. You could also reach
10 him through me as his legal counsel, so I think I
11 have now answered the questions that Mr. Hayes
12 wanted answered.

13 We have provided the information you have
14 requested and I don't have anything else to rebut
15 from the county attorney's presentation but I
16 would ask for an opportunity, if there is any
17 additional testimony, to have an opportunity to
18 respond to that as well. Thank you.

19 CHAIRMAN MALM: Want to ask for questions? I
20 think we're just ready to ask, we're just ready to
21 ask him questions, from the commissioners.

22 MR. BULLOCK: Yes.

23 CHAIRMAN MALM: I have one question. Who's
24 the liquor license going to be in? Is it going to
25 be K-Four, F-o-u-r, K-4 letter 4, or Oasis Club?

1 Who's the liquor license going to be in?

2 MR. BULLOCK: Well, the entity is Highway
3 Four, F-o-u-r, and I hope you had an opportunity
4 to see the papers that we submitted which
5 demonstrated that that is the actual name of the
6 applicant and the name of the property.

7 Zach, is the liquor license going to be in
8 the name of Highway Four Properties, LLC?

9 MR. SNYDER: No, it probably won't be. It
10 will be a dba of Oasis Saloon and it will be a
11 different corporation name from that.

12 MR. BULLOCK: And that will be processed
13 through the normal ABC channels. As you are
14 probably aware, there is extensive paperwork that
15 has to be submitted. They conduct an extensive
16 review of that. They're allowed to take up to 30
17 days to do that, I believe, and that paperwork, I
18 don't know if it's been finalized because we need
19 a piece of, we need a signature from this county
20 showing that we've gotten our permit or something
21 to that effect before we can actually submit that
22 paperwork. We'll be happy to provide the name of
23 whatever the actual entity is that has the liquor
24 license.

25 CHAIRMAN MALM: At our last meeting you made

1 an issue or made, several times how all fees have
2 been paid. There is a Freedom of Information
3 request that, almost, little over \$1,100 hasn't
4 been paid so what's -- is that considered one of
5 the fees of this application or is that outside of
6 this application?

7 MR. BULLOCK: Well, first of all, I don't
8 know. I mean, with all due respect, I'm not aware
9 of that information prior to your saying that.
10 Mr. Snyder has presented a number of information
11 requests, some of which have been filled, some of
12 which have not been filled. When we've been
13 presented with a bill and the documents the bills
14 have been paid, to my knowledge. Whether or not a
15 Freedom of Information Act request bill was
16 presented or paid will be totally different from
17 this application. In fact, we do have some issues
18 with the way the county has responded to those
19 requests for information but I don't see the
20 productivity of getting into that here. I think
21 that's totally collateral to this.

22 CHAIRMAN MALM: Okay. I just thought, I
23 understand on one of the applications about 800,
24 800 and some dollars, that he refused to pick it
25 up after he found out what the amount was.

1 MR. BULLOCK: Well, the way the law reads,
2 commissioner, is once the request is made the
3 government entity is required to provide a
4 statement, by statute, to the applicant or the
5 requesting party of what it's going to cost to
6 assemble those documents. If at that point the
7 applicant wants to go forward with the request
8 they may and if they don't they don't have to, so
9 if that's what happened, and I'll take your word
10 for it for purposes of this conversation,
11 Mr. Snyder was within his rights to decline to
12 advance this substantial sum once he was advised
13 of what it was going to be.

14 CHAIRMAN MALM: Well, wasn't an advance, it
15 wasn't, he refused to pick it up and pay for it
16 after all the work had been done.

17 MR. BULLOCK: Well, I, honestly, I mean, I
18 could look into it. I don't know what the
19 county's practice is in respect to following the
20 statutory procedures. The statutory procedures
21 provide that when a party asks for information
22 through a Freedom of Information Act request,
23 which is actually a Kansas Open Records Act
24 request here in our state, the county official is
25 supposed to say, "This is how much it will be; do

1 you want it or not?", at which point the
2 requesting party can say, "Yes, I would," or, "No,
3 I wouldn't." Obviously if the person didn't
4 appreciate that the cost was going to be so high
5 they wouldn't be bound to pay it. I don't know
6 what happened here but if that's what happened,
7 then if the work, if what you're saying,
8 commissioner, was that the work was done without
9 following that procedure by the county, then I
10 don't think it would be appropriate for the county
11 then to try to pass on that bill, having not
12 followed that procedure. Again, I don't know what
13 the procedure was or was not followed.

14 CHAIRMAN MALM: Okay. I'd like to call on
15 Eloise to get her input in this one. Okay, was
16 the amount set ahead of time and refused on the
17 first one, that one for about \$800? What was the
18 procedure and what happened?

19 MS. TICHENOR: We did not know what the
20 amount was going to be until the project was
21 completed.

22 CHAIRMAN MALM: All right.

23 MS. TICHENOR: Because we, we had no way of
24 knowing how many hours it was going to take, the
25 number of copies it was going to be until it was

1 done.

2 CHAIRMAN MALM: About how large was that
3 stack that you had to work on, the final product,
4 how big a stack of papers was that?

5 MS. TICHENOR: I don't know, probably about
6 like this (indicating).

7 MS. LUCK: Do you ever give an estimate of
8 how much, you know, the fees were going to be
9 before you --

10 MS. TICHENOR: We didn't give an estimate and
11 I was unaware that that was in statute so if it
12 is, Linda is the Freedom of Information officer
13 for the county so I guess I would defer that to
14 her.

15 CHAIRMAN MALM: Okay.

16 MS. TICHENOR: I mean, is that in statute
17 that someone is required, that we're required to
18 give an estimate of what it's going to cost prior
19 to filling the request?

20 MS. BUTTRON: I don't have that law so I
21 can't say.

22 CHAIRMAN MALM: Okay, thank you. Questions?

23 THE SPEAKER: Can we have more volume on this
24 mic, please.

25 CHAIRMAN MALM: What's that?

1 THE SPEAKER: Can we have more volume on this
2 microphone, please.

3 MS. TICHENOR: The control works up there and
4 I don't know, whoever's speaking will just hold it
5 to their mouth.

6 CHAIRMAN MALM: It's a cordless mic so
7 whoever's speaking maybe ought to just hold it
8 instead of having it in the stand.

9 MS. LUCK: Okay. I, like all three of us,
10 we've been looking at this information and
11 listening to what you people have, have heard your
12 comments and reading your comments from the, from
13 the Planning and Zoning Commission meetings and,
14 and through that I, you know, have, have sat down
15 at home, just like the other two, and of course we
16 haven't discussed it a lot because we can't, you
17 know, we have to discuss it, obviously, in open
18 session, like tonight, and so I have, have written
19 down my thoughts on this and my opinion of this
20 case and I, if you will allow me I will read it so
21 I don't make a mistake.

22 I feel that the Highway Four Properties is a
23 legal business and it has every right to run and
24 open a sexually-oriented business in Jefferson
25 County. The problem I have is not the location --

1 is not the business but the location of the
2 business. Requiring an SOB to be at least
3 1000 feet from schools, churches, day cares or
4 public parks does not violate the First Amendment.
5 These are sensitive land uses and can be protected
6 from the negative secondary effects of a
7 sexually-oriented business. These restrictions
8 have been upheld through the lower courts to the
9 Supreme Court decision in Kenton v. Playtime
10 Theatres in 1986. This is a three-part decision.
11 The Court found the decision did not ban adult
12 entertainment altogether but merely required that
13 it be a certain distance from the so-called
14 sensitive locations.

15 Secondly, the Court held that the restriction
16 was not aimed at the content of the adult
17 entertainment but rather at the secondary effects
18 on the surrounding community, the surrounding
19 community, namely, crime rates, property values,
20 and the quality of the city's neighborhood.

21 Finally, the court stated that a city
22 interested in restricting the operation of adult
23 businesses was not required to show adverse
24 impacts from the operation of entertainment in its
25 own community if no data existed but could rely on

1 findings of impacts from other cities.

2 There is clearly a mountain of evidence
3 showing the negative secondary impacts of
4 sexually-oriented businesses and a responsibility
5 of ours, I believe, to limit the proximity of the
6 business to schools, neighborhoods and churches.

7 The Oasis and U.S.D. 340 share property
8 lines. There is virtually no distance between
9 them. This is my objection to the conditional use
10 permit, and I would move now to adopt the Board of
11 Planning and Zoning Commission's recommendation to
12 deny the issuance of the conditional use permit.

13 CHAIRMAN MALM: There is a motion to deny
14 the, the conditional, to deny the conditional use
15 permit based on the Planning and Zoning's report.

16 MR. DUNNAWAY: I will second that.

17 CHAIRMAN MALM: Been moved and seconded. Is
18 there any further discussion?

19 All in favor say aye.

20 MS. LUCK: Aye.

21 MR. DUNNAWAY: Aye.

22 CHAIRMAN MALM: Aye. Motion carried
23 three-zero.

24 This is the appeal for the district court.
25 Within 30 days of the final decision of the city,

1 or excuse me, the county any person aggrieved
2 thereby may maintain an action in the district
3 court of the county to determine the
4 reasonableness of the final decision. That being
5 said, this meeting is adjourned.

6 (Meeting adjourned at 7:25.)

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1 C E R T I F I C A T E

2 STATE OF KANSAS)

3 COUNTY OF JEFFERSON) SS:

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5 I, Candace K. Braksick, a Certified Shorthand
6 Reporter in and for the State of Kansas, certify that I
7 reported in machine shorthand the foregoing proceedings
8 had on the 23rd day of February, 2011.

9 I further certify that the foregoing transcript is
10 a true, correct and complete copy of all of the
11 proceedings of my shorthand notes as reflected by this
12 transcript.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 and seal this 28th day of February, 2011.

15

Candace K. Braksick
Certified Shorthand Reporter
Kansas Supreme Court No. 0386

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ATTEST:/s/Linda M Buttron, County Clerk /s/Richard Malm, Chairman

