

Jefferson County Planning & Zoning Oskaloosa, Kansas

OFFICIAL

OFFICIAL MINUTES OF THE JEFFERSON COUNTY PLANNING COMMISSION

Minutes of Planning Commission Meeting of May 17, 2011

Present: Matt Scherer, Chair; Paul Johnson, Vice-Chair; Roger Wood, Secretary; Darrell Hammond, Tim Bailey, and Bret Frakes, members; Eloise Tichenor, Zoning Administrator and Duane Buscher, Planner I; Scott Bergthold, Attorney, Outside Counsel to the County via telephone.

Item 1. Call to Order

Item 2. Agenda Approval

Chair Scherer asked for a motion to amend the agenda to move “Item 3: Approval of April 19, 2011 minutes” after Item 4.

Action: Motion made by Commissioner Johnson to approve agenda as amended, seconded by Commissioner Wood. Motion to Approve Amended Agenda carried unanimously.

~~Item 3. Approval of March 15, 2011 minutes.~~ [MOVED TO AFTER ITEM 4]

Item 4.* TA 2011/01 by the Jefferson County Board of County Commissioners, 300 Jefferson, Oskaloosa, KS 66066 requesting text amendment changes to several articles of the Jefferson County Zoning Regulations concerning districts and location standards for sexually oriented businesses.

* “Transcript of Proceedings from May 17, 2011” is attached and will serve as the official record/minutes for Item 4. What follows is a brief written summary of the proceedings.

Chair Scherer asked for staff’s report.

Staff Presentation: Mr. Duane Buscher, Planner I, presented Item 4.

Mr. Buscher made a brief presentation. He began by stating that staff’s recommendation was outlined in the staff memo that the Board received in their Agenda Packet. Mr. Buscher stated that staff’s recommendation was to approve the proposed text amendments along with the resolution before them.

Mr. Buscher concluded the staff presentation by introducing Mr. Scott Bergthold, the outside legal counsel for the County for a special presentation to the Board on behalf of staff. [Mr. Bergthold made his presentation via telephone while Ms. Tichenor operated the slideshow for the accompanying PowerPoint presentation.]

Mr. Bergthold began his presentation by offering a brief description of the text amendments. Mr. Bergthold referred to the recommendations outlined in the staff memo (see right).

Mr. Bergthold then stated that he made a similar presentation to the Jefferson County Board of County Commissioners on April 25, 2011, which most of the Planning Commissioners attended—that was regarding the negative secondary effects of sexually oriented businesses (SOB's). He stated that while Courts have ruled the County cannot ban SOBs, they can impose stringent regulations regarding the time, place, and manner of operation and that the proposed regulations in front of the Board addresses the location and place of SOBs.

Mr. Bergthold then instructed Ms. Tichenor to begin the slideshow.**

**The PowerPoint Presentation, "Negative Secondary Effects of Sexually Oriented Businesses," is attached as an exhibit.

At the conclusion of the slideshow, Mr. Bergthold stated that there was a compact disc (CD) containing a comprehensive judicial record of negative secondary effects and that he requested that the CD be entered into the official record for this case. Mr. Bergthold then stated that he was open for questions from the Board.

END STAFF AND COUNSEL PRESENTATION.

The Chair stated that he forgot to address a couple of things before the staff presentation. First, he stated that there were copies of the proposed text amendments and resolution available at the meeting for anyone who wanted a copy. There were copies on the table out in the hall and then asked if there were any *ex parte* communications and/or conflicts of interest by board members. Commissioner Hammond stated that he had had *ex parte* communications with both sides but it would not affect his vote. Mr. Zach Snyder of Highway Four Properties, LLC, in attendance, interjected and asked Commissioner Hammond about the nature of those communications and when they took place. Chair Scherer interjected that if members of the public wished to speak then they needed to be recognized by the Chair, step up to the podium and state their name and address for the record. Commissioner Hammond stated that he had had various communications since he lived near the area affected by the Highway Four case, including indirect communications with Mr. Snyder as part of his involvement with Rural Water District #1.

Commissioner Johnson asked if there were any secondary effects studies of the Paradise Saloon in Douglas County, Kansas. Mr. Bergthold replied that there were none that he was aware of particular to that establishment or that County. Commissioner Johnson followed up by stating that he felt it could be a comparison for Jefferson County.

Staff Recommendation:

Text Amendments to the Zoning Regulations concerning Sexually Oriented Businesses

TA2011/01:

The professional staff for the Jefferson County Planning and Zoning Department recommends amending the Zoning Regulations for sexually oriented businesses as shown in the attached draft Resolution. The proposed amendments and staff's recommendations are summarized as follows:

1. Remove the requirement for sexually oriented businesses to obtain a conditional use permit;
2. Specify parking and off-street loading requirements for sexually oriented businesses;
3. Allow sexually oriented businesses by right in the CP-1, CP-2, CP-3, IP-1 and IP-2 districts as well as the AG (Agricultural) district, but only within the commercial and industrial corridor.
4. Require sexually oriented business structures to be at least 1,000 feet away from any parcel occupied by enumerated land uses including: other sexually oriented businesses, alcohol-selling establishments, property zoned RR, SR, R-1, LL, or V-1, churches, schools, public parks, and libraries; require 1,000 feet between sexually oriented businesses and residential structures that are not zoned RR, SR, R-1, LL, or V-1;
5. Allow a nonconforming sexually oriented business to operate at a nonconforming site for one year before having to relocate, with potential extension of time due to demonstrated financial hardship.

Commissioner Johnson asked where the alcohol ban referred to in Mr. Bergthold's his presentation was located in the text amendment. Mr. Bergthold responded that the Board was not considering a ban on alcohol and that there was no such language in the text amendment because the alcohol and cereal malt beverage ban was contained in the licensing ordinance (Resolution #2011-010) passed by the County Commission on April 25, 2011.

Commissioner Johnson asked if there were currently any nonconforming SOBs in the County. Mr. Bergthold replied that answer could be determined by the outcome of on-going litigation and this was not the proper forum to address the issue.

Commissioner Johnson asked if a line could be drawn between an adult video store and a store that happens to sell adult videos. Mr. Bergthold stated that the definitions would be tied to Kansas State Statute, which makes such distinctions clear.

Chair Scherer asked if there were any further questions from the Board. There were none.

Chair Scherer then asked if there was anyone present to speak in favor of the request. There were none.

Chair Scherer then asked if there was anyone present to speak in opposition to the request. Mr. Zach Snyder of Highway Four Properties, LLC spoke in opposition.

Mr. Snyder began by reminding the Board that they are in the State of Kansas and that he operates an SOB in Douglas County. He continued that for the past three years the Kansas legislature had considered laws restricting SOBs [similar to the laws in Missouri and Tennessee] but that they failed each year because the legislators decided that it was too much of an infringement on freedom.

Mr. Snyder continued by talking about the freedom of choice for people to have the opportunity to go to a SOB. He stated that senators voted against a SOBs regulations because they were an intrusion of personal property rights. He stated that the senators were also against the alcohol ban in SOBs and that people should be free to choose whether or not to patronize such businesses.

Mr. Snyder noted that Paradise Saloon (an adult cabaret operated by Mr. Snyder in Douglas County) has been open since 1991 and had never had a liquor violation. He said the same was true for SOBs in other Kansas counties. He continued that he was currently gathering information on the SOBs in Douglas County showing that property values were increasing. He then challenged the Board to produce evidence showing negative secondary effects in Kansas.

Mr. Snyder strongly suggested the Board think about what they were doing before amending the regulations. He expressed confusion as to why the Board felt the need to amend the regulations since they were just passed in 2009. He stated that the regulations passed in 2009 required SOBs to obtain a conditional use permit but the amendments would allow SOBs by right. He asked if the County was conceding they were wrong before and he questioned the Board's motive. He stated that there were already Kansas State laws against prostitution and he challenged the Board to find reports on prostitution rings resulting from SOBs. He stated that they wouldn't find anything because it didn't exist.

Mr. Snyder concluded by asking that the Board really think about their decision. He again reminded the Board that they lived in Kansas and that the State had not passed laws restricting SOBs for a reason.

Chair Scherer asked if there was anyone else opposed and there were none.

**Planning Commission
Action:**

**TA2011/01 – Text
Amendments to the Zoning
Regulations Concerning
Sexually Oriented Businesses**

I move that the Jefferson County planning staff be authorized to appear before the Board of County Commissioners of Jefferson County to report the following as the recommendation of the Jefferson County Planning Commission:

With respect to Text Amendment TA2011/01, an application by the Jefferson County Board of County Commissioners of 300 Jefferson, Oskaloosa, KS 66066, requesting text amendment changes to several articles of the Jefferson County Zoning Regulations concerning districts and location standards for sexually oriented businesses; the planning commission recommends approval of the text amendments in the Resolution presented here tonight at the May 17, 2011 meeting.

Chair Scherer then asked if any members of the Board, staff, or the attorney had any further questions or if there was any further comment from the public. Hearing none, Chair Scherer closed the public comment part of the hearing and opened the Board for deliberations or if any Board member would like to make a motion.

No motion was offered and Mr. Bergthold stated he had not heard the Chair's previous statement but that he thought there was a comment that was appropriate to address the issues raised by the speaker in opposition.

Mr. Bergthold began by stating that part of the on-going litigation, which he stated that he would not go into, was a challenge that allowing SOBs only through the conditional use permit process (CUP) was unconstitutional. He said that he was "befuddled" by the opposition to removing SOBs from the CUP. He stated that the text amendments would remove SOBs completely from the CUP process while adopting a more objective standard.

Mr. Bergthold then provided his understanding of the reasons why the Kansas Legislature had not passed a law restricting SOBs. He stated that the legislators were in favor of the 1,000-foot separation distance from sensitive uses but that the law never passed because the majority of the legislators wanted regulations to be made at the local level by the local authorities.

Mr. Bergthold concluded his remarks by citing a court case and secondary effects evidence from Johnson County, Kansas that demonstrated a more localized example of SOB regulations and evidence of negative secondary effects, which also showed that such regulations are generally handled at the local level. He stated that the proposed zoning regulations before the Board have been upheld in Court and he reiterated that removing SOBs from the CUP process would address the issue raised in the lawsuit.

END OF MR. BERGTHOLD'S COMMENTS.

Mr. Snyder spoke up and stated that he wanted to respond to Mr. Bergthold's comments.

Chair Scherer stated that the public comment portion of the public hearing was closed. Mr. Snyder questioned the Chair by asking why Mr. Bergthold was allowed to speak. Chair Scherer responded that Mr. Bergthold was outside counsel assisting the County.

Chair Scherer again asked if the Board had a motion.

Action: Commissioner Johnson moved to approve the Text Amendments and Resolution (see above). Commissioner Wood seconded the motion. The Motion for Approval of the Text Amendments carried unanimously.

END ITEM 4.

Item 3. Approval of April 19, 2011 minutes.

Action: Motion made by Commissioner Hammond to approve the minutes, seconded by Commissioner Wood. Motion to Approve Minutes carried unanimously.

Item 5. CONDITIONAL USE CU2011/02 by Kyle L. and Linda M. Moomau for use as a kennel and training facility for detection dogs on land described as: 90 acres in the Northwest Quarter of Section 21, Township 10 South, Range 17, Jefferson County, Kansas. Record Owner of Property: Kyle L. and Linda M. Moomau, PO Box 8343, Topeka, KS 66608. The address of the property is 6608 Clark Rd., Meriden, Kansas 66512, which is located on the northeast corner of 66th and Clark Road.

Chair Scherer asked for staff report.

Staff Presentation: Mr. Duane Buscher, Planner I, presented Item 5.

Mr. Buscher began by stating his name for the record. He then proceeded to give a slide show presentation that explained the specifics of the application and described the property and surrounding area. Mr. Buscher stated that the kennel was intended to train detection dogs and that the facility would be located on a 20-acre parcel that was split from a 90-acre tract through the agricultural lot-split process, which was approved in December of 2010. Mr. Buscher noted that the applicant owns all 90 acres and intended to use the entire property for training.

Mr. Buscher then showed an aerial map of the property indicating the recent lot-split. He noted that both Clark Road and 66th dead-ended near the property, which limited access, but still met the requirements of the County Road & Bridge Department.

Mr. Buscher then defined the term “detection dogs” by reading from the slide: “Dogs trained to trace wind bourn odors to their source and display a prescribed behavior such as sitting or scratching – **not** barking.” Mr. Buscher emphasized that according to the applicant’s letter of intent, barking is an undesirable trait for detection dogs so noise from the kennel would not create a nuisance.

Next, Mr. Buscher showed a slide with pictures of two of the common breeds of detection dogs – Belgian Malinois and German Shepherds. He then stated that the dogs would be trained to detect “pseudo odors,” which were defined as “[odors] [d]esigned to smell like a controlled substance but do not require licensing since they are not controlled substances.” He noted that the pseudo odors would be designed to smell like drugs or explosives and that the applicant stated in the letter of intent that if controlled substances were ever used for training, then the proper licenses/permits would be obtained.

Mr. Buscher then showed a close-up aerial of the 20-acre parcel where the proposed kennel facility would be located and pointed out that the facility would be at least 200 feet from the property lines.

Mr. Buscher then described the proposed kennel facility, which is a 54' x 40' barn with 18 internal runs. He showed the development plan and noted that it included sites for possible future exercise areas and two future buildings to be used for training. He also noted that the primary kennel facility would contain an office and wastewater systems for a bathroom and the kennel runs. He then stated that the County Health department gave the applicant options for solid waste disposal.

Mr. Buscher then showed an aerial map zoomed out to an extent to show the surrounding properties. He pointed out that there were no residential dwellings within a quarter mile, the property to the north and east was owned by the Army Corp of Engineers, and that there was another kennel facility that was approved in 2003 (CU2003/11) to board 12 dogs located approximately half a mile to the south.

Mr. Buscher continued by showing an aerial map of the zoning districts in the surrounding area. He again noted that the land to the north and east was owned by the Army Corp [and therefore un-zoned] and that the kennel site

was surrounded primarily by Rural Residential and Agricultural zoning districts. He also noted that there was a platted subdivision directly to the south that was zoned Rural Residential but that the two nearest properties were both vacant.

Mr. Buscher then showed an aerial map of the 1,000-foot notification area and stated that notice was mailed to five surrounding property owners on April 25, 2011 and that the County had received no feedback to date regarding the application.

Mr. Buscher then noted that the applicant stated in the letter of intent that he intended to obtain a Boarding & Training license from the Kansas Animal Health Department and that the applicant had also been a licensed “explosives user” permit holder from the State Fire Marshall for 8 years. He also reiterated the applicant’s intent to obtain the proper permits for handling controlled substances if he chose to train the dogs with them.

Mr. Buscher then addressed the kennel regulations concerning screening and noise control. He restated that the kennel runs were indoors and that detection dogs were not supposed to bark, but if they did then the applicant would employ “humane anti-barking devices.” He again pointed out that the kennel facility and the future training buildings would all be at least 200 feet from the property lines as per the requirements listed in Article 23 of the Zoning Regulations. Mr. Buscher then read two of the requirements for kennels listed in the Zoning Regulations:

Article 23, Section 23-105(36):

Kennels, either boarding or breeding, provided:

- a. All kennel buildings, runs and open areas shall be located at least 200 feet from property line.
- b. All kennel runs or open areas shall be screened around such areas or at the property line. Such screening may be densely planted evergreen foliage or a solid wall or fence of masonry, wood or metal, designed so as to reduce noise and prevent the distraction or excitement of the animals.

Mr. Buscher concluded the presentation by noting the relevant factors [from Section 30-105(2) of the Zoning Regulations] that staff used in making their recommendation and then stating that staff recommended approval of the kennel with conditions (see Planning Commission Action table on page 7).

Mr. Buscher asked if the Board had any questions for him and there were none.

END STAFF PRESENTATION.

Mr. Kyle Moomau (the applicant), asked to see a copy of the conditions recommended by staff; he stated that he had no problem with any of the conditions and that he would comply with them.

Chair Scherer asked if the applicant had a presentation or would like to make a statement. The applicant had no further comments.

Chair Scherer then asked if there was anyone present to speak in favor of the request. There were none.

Chair Scherer then asked if there was anyone present to speak in opposition to the request. There were none.

Chair Scherer then asked if there were any questions from the Board.

Commissioner Hammond asked the applicant if the frequent horse riders near the property would distract the dogs or if the dogs would ever run loose and poses a nuisance to the horses or their riders. The applicant responded that the dogs are selected to interact well with other animals so there will be no problem.

**Jefferson County Planning Commission Action
May 17, 2011**

CU2011/02 – Moomau Kennel

I move that the Jefferson County planning staff be authorized to appear before the Board of County Commissioners of Jefferson County to report the following as the recommendation of the Jefferson County Planning Commission: Conditional Use Permit application CU2011/02 and its associated development plan should be approved subject to the following conditions:

- 1) The facility is subject to inspection at any time, with or without notice, by Jefferson County or any department or designee thereof.
- 2) The dogs at the kennel shall not run free unsupervised on the property.
- 3) All runs shall be located within the kennel facility.
- 4) The number of dogs that may be housed at the facility at any time shall be no more than 18 adult dogs.
- 5) The breed of dogs shall be limited to those used as detection dogs, including but not limited to Belgian Malinois and German Shepherds or other hunting breeds.
- 6) The following breeds/types of dogs shall not be housed at the site: American pit bull terriers, bull terriers, Staffordshire terriers, American Staffordshire Terriers, Rottweilers, Siberian Huskies, Malamutes, Chows, Great Danes, wolf-dog hybrids, etc, in accordance with Jefferson County Resolution No. 97-32 and any amendments thereto.
- 7) Mitigate barking through the use of humane anti-barking devices.
- 8) Implementation of one or more of the options for a solid manure disposal system as recommended in the Environmental Consult letter dated March 11, 2011 from the Jefferson County Health Department.
- 9) Comply with all other state and federal agencies regarding licensing for boarding and training of animals.
- 10) Comply with all other state and federal agencies regarding controlled substances (explosives or drugs), including maintenance of applicable permits.

As well as the following conditions for kennels listed in Article 23 of the Zoning Regulations (§23-105(36)):

- 11) All kennel buildings, runs and open areas shall be located at least 200 feet from property line.
- 12) All kennel runs or open areas shall be screened around such areas or at the property line. Such screening may be densely planted evergreen foliage or a solid wall or fence of masonry, wood or metal, designed so as to reduce noise and prevent the distraction or excitement of the animals.

Commissioner Johnson asked if the condition limiting the number of adult dogs to 18 was reasonable. Mr. Moomau said yes, and that he had no desire to expand beyond 18.

Commissioner Johnson asked what other hunting breeds could be used as detection dogs. Mr. Moomau responded that Setters, Labradors, and Retrievers among others are good detection dogs.

Commissioner Johnson asked if the applicant had decided which of the County Health Department recommended options for solid waste disposal to use. Mr. Moomau said that he would use a straining method to separate the solid waste and fur from the liquid waste and keep both out of the septic tank.

Commissioner Johnson noted that the staff report did not list operating hours and asked the applicant about the hours. Mr. Moomau responded that there would not be set operating hours but considering the nature of law enforcement he could operate 24/7 at times.

Commissioner Johnson asked about the lighting for the kennel. Mr. Moomau responded that the barn would have exterior lighting.

Chair Scherer asked if there were any further questions from the Board or comments from the public. There were none so the Chair closed the floor to public comment and asked the Board if there was a motion.

Action: Commissioner Johnson moved to approve the Conditional Use Permit with conditions (see Planning Commission Action table on page 7). He cited Factors 1, 2, 3, 6, 7, 8, and 9 as the reasons for approval. Commissioner Bailey seconded the motion. The Motion for Approval with Conditions carried unanimously.

END ITEM 5.

Item 6. Z2011/01 by Heinen Custom Operations, Dan Heinen, President to change the District Zoning Classification from “AG” Agricultural to “SR” Suburban Residential on land described as: approximately 6 acres of a 10-acre tract in the Southeast Quarter of the Northeast Quarter of Section 22, Township 8 South, Range 17, East of the 6th P.M., Jefferson County, Kansas. Record Owners of Property: Heinen Custom Operations, 13724 K-4 Highway, Valley Falls, Kansas 66088. The property is located between Finney Road and Edwards Road on the North side of 162nd Street.

Commissioner Frakes stated that he worked for the applicant at Heinen Custom Operations and recused himself from the consideration of Item 6 and took a seat in the audience. Chair Scherer then asked for staff report.

Staff Presentation: Ms. Eloise Tichenor, Zoning Administrator, presented Item 6.

Ms. Tichenor began with a brief summary of the rezoning request as well as the property’s history, particularly as a Construction & Demolition (C&D) landfill. She stated that the landfill was approved in 1996 (CU1996/01) on this 10-acre parcel and the request was for the south 6.3 acres to be rezoned and the remaining north 3.7 acres would be conveyed to an adjacent property owner – the brother of the applicant. She noted that the request was made that way a survey indicated that the C&D landfill was limited to the north 3.7 acres. She then showed a slide with an aerial map, which showed the general location of the property to be rezoned. She stated that the property was in the notification area of the City of Valley falls, which was indicated on the map. She mentioned that both the City Council and the Planning Commission of Valley Falls unanimously approved of the rezoning request.

Ms. Tichenor then showed a close up aerial of the property followed by another map, which showed the north 3.7 acres as part of the adjoining property. She noted that the landfill was closed in 2008 and that she had a letter from the Kansas Department of Health and Environment (KDHE) Bureau of Wastewater Management regarding the closure.

Ms. Tichenor then showed an aerial map of the surrounding zoning districts and she stated that they were primarily Rural Residential (RR) and Agricultural (AG) districts.

The last map Ms. Tichenor showed was the notification area for the surrounding property owners. She stated that, to date, only one property owner within the notification area had contacted the Planning & Zoning office and that was just an inquiry about the nature and purpose of the application.

Ms. Tichenor concluded her presentation by listing the relevant factors that she considered when making her recommendation. She also stated that she had had concerns about potential groundwater issues for a landfill or possible KDHE regulations or restrictions but that another more recent letter from KDHE dated May 2011 stated that there were no such concerns or any requirement to monitor the groundwater of a current or former C&D landfill. With that, Ms. Tichenor stated that she recommended approval of the rezoning request.

END STAFF PRESENTATION.

Chair Scherer asked if the Board had any questions for Staff.

Commissioner Bailey asked about what the zoning classification would be for the remaining 3.7-acre parcel to the north if the south 6.3 acres were rezoned from AG to SR. He stated that he did not like leaving a small parcel zoned AG in the middle of RR and SR zoning districts. Ms. Tichenor replied that the 3.7 acres would be absorbed into the adjacent property, which was zoned RR and it would simply become part of the larger parcel to the east through a boundary line shift, therefore its zoning is not relevant. Mr. Dan Heinen (the applicant) interjected that he was only requesting the rezoning for the south 6.3 acres because the potential buyer did not want any of the “liability of the landfill”; he stated that he was giving the 3.7 acres where the landfill had been located to his brother, who is the adjacent property owner to the east, because “he didn’t care” [that it was once a landfill].

Commissioner Johnson asked if the C&D landfill could ever be reopened. Ms. Tichenor responded that it could not just reopen and would not be allowed to do so without going through the CUP process again and any State permitting requirements.

Chair Scherer asked if there were any further questions for staff and there were none. Chair Scherer asked if the applicant had a presentation.

Mr. Heinen stated that the KDHE “pretty much convinced” him to close down the C&D landfill because they applied standards and restrictions that were consistent with the Hamm’s sanitary landfill, which were too stringent for him since the Hamm’s landfill was a more intensive use. Ms. Tichenor added that the landfill was properly closed per KDHE’s letter from 2008.

Commissioner Hammond asked if the KDHE had any problem with the applicant selling the property or if they needed to be able to gain access to the property where the landfill was located (i.e. the north 3.7 acres). The applicant responded that KDHE had “no reservations” about selling the property. Ms. Tichenor noted that the letter from the KDHE also noted a restrictive covenant on all 10 acres and would require a request from the property owner to cover only the north 3.7 acres as well as a need to create an access easement through the south 6.3 acres. She added that in a phone conversation with Ms. Stacey Baalman, the author the KDHE letter, Ms. Baalman indicated that due to staffing issues, as a practical matter follow-up inspections were typically complaint-driven.

Chair Scherer then asked if there was anyone present to speak in favor of the request. There were none.

Chair Scherer then asked if there was anyone present to speak in opposition to the request. There was one member of the public that stepped up to the podium. Mr. Hurst spoke on behalf of the Hurst Trust, which is the owner of the neighboring 80-acre property. Mr. Hurst simply wanted to seek some clarification on behalf of the Trust. He first sought confirmation that the rezoned parcel would serve as one building lot. The applicant and staff both confirmed that the property could only have one house. Mr. Hurst then asked about access to water, specifically if the rezoned property would use the same water line as the Hurst Trust property. Ms. Tichenor confirmed that the rezoned property would have access to water.

Chair Scherer then asked if there were any other members of the public in opposition or any further questions from the Board. There were none so the Chair asked if there was a motion from the Board.

Action: Commissioner Wood moved to approve the rezoning request and cited the same factors for approval as listed during the staff presentation—Factors 1, 2, 4, 6, 8, 10, 11, 12, and 13. Commissioner Bailey seconded the motion. The Motion for Approval carried unanimously 4-0, with Commissioner Frakes not voting having recused himself earlier.

Action: Commissioner Wood then made a request to call a recess. The Chair acknowledged the request and called a recess at approximately 8:50 pm to reconvene at around 9:00 pm. [There was no audience present when recess was called.]

The Jefferson County Regional Planning Commission meeting recessed at approximately 8:50 p.m. and Chair Scherer called the meeting back into session at approximately 9:05 p.m. [There was no audience present when the meeting reconvened.]

Item 7. Public Comment

No public comment.

Item 8. General Business

Ms. Tichenor presented one general business item.

Ms. Tichenor presented once again the plat of “Rynita Gwen” Subdivision. She gave a brief recap of the discussion from the April Planning Commission meeting (please see the April Minutes for a complete summary of the proceedings). She stated that upon listening to the recording of the proceedings, Mr. Buscher determined that no formal motion was actually made during the April meeting, though the closest thing to a motion was to reiterate the motion from October. Ms. Tichenor noted that the County Commission waived the requirements for substantiation of water quantity and quality, (as reflected in the April Minutes) which was the basis for the Board’s original action from the October meeting.

The plat before them had four lots, therefore; a decision should be made on the plat before them - with four lots (as it has been). She continued by stating that upon reviewing the County Subdivision Regulations and State Statutes (12-752) that **final approval of plats rests with the Planning Commission**, however if they chose to deny the plat then they would have to cite a specific article in the Subdivision Regulations as the basis for denial. The platting statutes provide if a plat does not conform to the requirements of the subdivision regulations then the reasons it does not conform need to be specified. If the plat does conform, then the plat should be approved. The County Commissioners role regarding plats is to refuse or accept the dedication of land for public purposes such as easements, etc. They can also grant rule exceptions to standards in the subdivision code such as the water requirement.

Commissioner Bailey asked if the [County] Commissioners understood the ramifications of their actions to waive the water requirements. Ms. Tichenor said she could not presume to know the mindset of the County Commissioners.

Commissioner Frakes asked if staff explained the Board’s concern to the County Commission since the April meeting. Ms. Tichenor said she had not brought up the issue with the County Commissioners since the April Planning Commission meeting because the County Commissioners had already (by consensus to approve four lots after viewing additional information on water quality presented by Ms. Schultz at a March 2011 County Commission meeting – showing no bacteria in the water and a letter from Vic Montgomery (KDHE) stating 3

Planning Commission Action:

**Z2011/01 – Heinen Rezoning
from AG to SR**

I move that the Jefferson County planning staff be authorized to appear before the Board of County Commissioners of Jefferson County to report the following as the recommendation of the Jefferson County Planning Commission: Rezoning Case Zoning Z2011/01 be approved for rezoning from Agricultural District to Suburban Residential.

gallons per minute on a private well was suitable for a single household use, but added he would recommend a large pressure tank or two in series to provide extra convenience) waived the water requirement. Commissioner Frakes followed up by stating that he would have liked staff to express the Planning Commission's continuing concern to the County Commission. Ms. Tichenor replied that she was unaware of the Planning Commission's desire for her to do that but she would have, had she been asked to.

Commissioner Bailey then spoke up and expressed his feeling that he did not like the precedent set by the County Commission of overruling the actions of the Planning Commission and that it needed to be addressed with them. Ms. Tichenor stated that in most cases other than plats and subdivisions, the Planning Commission is a recommending body only. She stated that staff is in the same position of being in a role of making recommendations.

Chair Scherer expressed confusion over the way the waiver was done.

Commissioner Frakes asked if the waiver appeared in the County Commission meeting minutes. Ms. Tichenor said no.

Chair Scherer asked if there was a motion. Commissioner Wood stated that he didn't think the Board had any choice but to approve the plat.

Commissioner Johnson added that he wanted to see the waiver in the minutes. Ms. Tichenor responded that the County Commission minutes were not "verbatim" minutes nor all-inclusive.

Action: Commissioner Wood moved to approve the plat as presented with 4 lots in the "Rynita Gwen" Subdivision. Commissioner Frakes seconded the motion to approve, but added "under protest" to his second. Commissioner Johnson suggested adding a comment about how the Planning Commission will approve the plat but they are still concerned about waiving the water requirements. Commissioner Frakes added that he felt that the Planning Commission decisions concerning water requirements should not be deviated from when plats are reviewed. Chair Scherer asked if there was any further discussion. Mr. Buscher asked for confirmation that Commissioner Frakes had, in fact, seconded the motion. Chair Scherer and Commissioner Frakes answered yes.

Commissioner Johnson asked if Commissioner Hammond had any input. Commissioner Hammond stated that he was "totally opposed" to approval of the plat. Chair Scherer again asked if there was any further discussion and then called for the question.

Motion to approve the final plat of the "Rynita Gwen" subdivision carried 3-2 with Chair Scherer and Commissioners Frakes and Wood in favor and Commissioners Hammond and Johnson opposed. Commissioner Bailey abstained.

Commissioner Hammond then requested that Ms. Tichenor point out to the County Commissioners that the plat was approved by a narrow margin. They asked that Ms. Tichenor state that there was "significant concern" by the Planning Commission and that the vote was tied 2-2 and had to be broken by the Chair.

Commissioners Hammond and Frakes then proceeded to ask Ms. Tichenor to work on a written statement for the County Commissioner's that would convey their concern when the County Commission deviates from a recommendation or decision by the Planning Commission.

Commissioner Frakes then requested of Ms. Tichenor that if the County Commission deviated from the Planning Commission's action to get something informal in writing, such as the minutes that explains the reasons why. He explained that if the Commissioner's want the County to go a different direction that would be good for them to know. It would assist them in their role as the Planning Commission. Ms. Tichenor asked if this was just for plats and Commissioner Frakes replied that it could be for anything but particularly for plats. Commissioner

Hammond added that it should be for everything, even when the County Commission goes against a recommendation. Chair Scherer stated that recommendations should be different from final plat approval and that the Planning Commission should get feedback when it comes to plats.

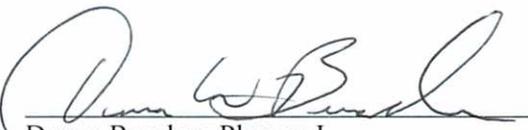
Commissioner Hammond and Johnson noted that such a request would put staff in a difficult situation but agreed that they should get some feedback. Commissioner Frakes added that he did not want to put too much pressure on staff but that he wanted some direction from the County Commissioners.

Chair Scherer asked staff if there were any other General Business items. Ms. Tichenor said no.

Item 9. Adjournment.

Action: Commissioner Frakes moved to adjourn, seconded by Commissioner Wood. Motion passed unanimously.

The Jefferson County Regional Planning Commission meeting adjourned at 9:35 p.m.

Minutes taken by: 
Duane Buscher, Planner I

Approved: 6/21/11
Date

Chairman: 
Matt Scherer

Secretary: 
Roger Wood