



Agenda
Harper County
Board Of County Commissioners
Harper County Courthouse

TUESDAY, September 7, 2021 - 8:00 a.m.

- A. Call To Order
- B. Pledge Of Allegiance
- C. Ami DeLacerda - HR - 8:00 A.m.
 - o Executive Session - Non-Elected Personnel
- D. Public Comment
Citizens are encouraged to speak to items on the agenda when recognized by the Chairman. Citizens desiring to speak to matters not on the agenda may do so at this time. Comments are limited to five (5) minutes and the Commission will take no action on items not on the agenda. Items introduced under Public Comment may become agenda items at a later date.
- E. Approval Of Minutes
- F. Payment Of Vouchers
- G. Items Of Business
 - 1. Janice Perry And Chris Jones - Road And Bridge - 9:15 A.m.
 - o Department Update
 - 2. Damien Fowler - Special Bridge - 9:30 A.m.
 - o Department Update
 - 3. Sheena Thomas And Darrin Struble - 9:45 A.m.
 - o Department Update
 - 4. Jan Harding - EMS - 10:00 A.m.
 - o Department Update
 - 5. Matt Booker - Appraiser - 10:15 A.m.
 - o Public Hearing - Case Z-02-2021

Documents:

8-17-2021 DRAFT PC MINUTES.PDF
BOCC REZONINGREPORT (2).PDF
BOCC CHECKLIST REZONING.PDF
RESOLUTION.PDF

H. Correspondence

I. Adjourn

Harper County Planning Board

And Board of Zoning Appeals

Minutes of Meeting August 17, 2021

Agenda #1 Larry Olivier called the meeting to order at 7:00 p.m. at the Harper Senior Center, Harper, Kansas.

Agenda #2 Roll call of the Planning Board was taken. Larry Olivier, Kevin Alexander and Steve Bellesine were present. Debra Blanchat was absent. Recording Secretary, Jackie Keim and Zoning Administrator, Matt Booker were in attendance. (Attendance list on file.)

Agenda #3 Bellesine made a motion to approve the agenda. Alexander seconded it. Passed 3-0.

Agenda #4 Alexander made a motion to approve the minutes. Bellesine seconded it. Passed 3-0.

Agenda #5 At 7:03, Chairman Olivier called for the public hearing for Case No. Z-02-2021 for zoning change from A-2 Agricultural District to I-1 Light Industrial District. The Applicant accepted the ground rules as presented. The Zoning Administrator gave a brief history of the case. No disqualifications were made. A quorum of 3 was present. Notification was made in The Harper Advocate on July 26, 2021 and notices were mailed to the Applicant and 3 real property owners. No ex parte communications were received. The Applicant, Darrin Eck, gave a synopsis of his business, detailing the chemical fertilizer sales, hay storage/sales, and meat truck storage. He currently has two other similar businesses at different locations. He is wanting to expand to be closer to his customers here in Harper County. He will be able to provide better service. Eck will apply to the State of Kansas for a permit for regulating the selling of the fertilizer. It will only be prepackaged. There will be no bulk or filling tanks of fertilizer. Road access was mentioned as a concern, along with security and lighting issues. Cameras and security lighting will be at the doors and perimeter. Busy times will be in May – June for traffic. Public comment was made in favor of the change in zoning to allow the business. The 17 factors and finding report was reviewed. Alexander made a motion to recommend to the Governing Body that Case No. Z-02-2021 be modified and approved to change the zoning district from the A-2 Agricultural District to the I-1 Light Industrial District, along with two conditions. Bellesine seconded it. Passed 3-0.

Agenda #6 Matt Booker, Zoning Administrator, gave a report of the permits submitted. The Comprehensive Plan update is being reviewed.

Agenda #7 Bellesine made a motion to adjourn the meeting. Alexander seconded it. Passed 3-0.

Respectfully submitted:

Approved by the Planning Board:

_____ Date _____

_____ Date _____

Jackie M. Keim
Recording Secretary

Larry Olivier
Chairperson

CC: County Commissioners, Planning Board Members, Zoning Administrator, County Clerk, Planning Consultant, County Sanitarian, City Clerk Liaison Representatives, County Attorney, Economic Development Coordinator

REVISED REZONING REPORT *

CASE NUMBER: Z-02 - 21

APPLICANT: Darrin Eck

REQUEST: Proposed change of zoning district classification from the A-2 Agricultural District to the I-1 Light Industrial District.

CASE HISTORY: Agricultural ground used for cultivation and grazing.

LOCATION: A tract of land, containing 5.7 acres more or less, at the corner of the NW4 W2 of Section 19 Township 32 Range 07, along NW 70 Rd. The address is 449 NW 70 Rd., Harper, KS 67058

SITE SIZE: 500 ft. X 500 ft. Approximately 5.7 acres, more or less.

PROPOSED USE: To be used for chemical and fertilizer sales, along with meat and hay sales.

ADJACENT ZONING AND EXISTING LAND USE:

North: A-2 Agricultural District – Agricultural land and 1 residence

South: A-2 Agricultural District - Agricultural land and US Hwy 160

East: A-2 Agricultural District - Agricultural land

West: A-2 Agricultural District - Agricultural land

* **NOTE:** This report is to assist the Planning Board to determine their findings from the evidence presented at the hearing so as to base their rezoning recommendation on the required 17 factors found in Section 11-100 H of the Zoning Regulations. The responses initially provided need to be evaluated with the evidence and reworded as necessary to reflect the Board’s considered opinion. Conditions attached to the motion, if any, should be carefully worded to provide instructions to the applicant and facilitate enforcement by the Zoning Administrator. A copy of the report should be provided to the applicant before the hearing. The completed report can be included within the minutes following the statutory required summary of the hearing or attached thereto. The minutes and report should be forwarded to the Governing Body within 14 days to serve as a basis for their decision.

BACKGROUND INFORMATION:

Subject property has been agricultural land.

FACTORS AND FINDINGS: **

1. What are the existing uses of property and their character and condition on the subject property and in the surrounding neighborhood? ***(See existing land use on page 1 of 4.)***

> ***Agricultural use.***

2. What is the current zoning of the subject property and that of the surrounding neighborhood in relationship to the requested change in zoning classification? ***(See existing zoning on page 1 of 4.)***

> ***The subject property is in the A-2 Agricultural District.***

3. Is the length of time that the subject property has remained undeveloped or vacant as zoned a factor in the consideration for a change in zoning?

> ***No.***

4. Would the requested change in zoning correct an error in the application of these regulations as applied to the subject property?

> ***No.***

5. Is the change in zoning requested because of changed or changing conditions in the area of the subject property and, if so, what is the nature and significance of such changed or changing conditions?

> ***The practices of agriculture are continually changing and evolving resulting in a need for increased chemical/fertilizer storage, sales, and application. The inherent nature of chemical and fertilizer storage makes the rural location of this site desirable.***

**** NOTE:** Of those factors considered as relevant to the requested change in zoning district classification or boundary, not all factors need to be given equal consideration by the Board in deciding upon its recommendation.

6. Do adequate sewage disposal and water supply and all other necessary public facilities including road or street access exist or can they be provided to serve the uses that would be permitted on the subject property if the change in zoning was approved?

> ***The facility's water supply will be from a private well. Septic system will need to be permitted through Harper County Environmental Services.***

7. Would the subject property need to be platted or replatted or in lieu of dedications made for rights-of-way, easements, access control or building setback lines if the change in zoning was approved?

> ***The subject property is not platted and is not being divided, therefore, no need to plat.***

8. Would a screening plan be necessary for existing and/or potential uses of the subject property if the change in zoning was approved?

> ***Security lighting will be added for the perimeter and doors of the building.***

9. Is the general amount of suitable vacant land or buildings available or not available for development that currently has the same zoning district classification as is requested for the subject property?

> ***Land for the Applicant's purpose is available but this location is viable for the Applicant and not far from the Highway.***

10. In the event that the subject property is requested for business or industrial uses, are such uses needed to provide more services or employment opportunities?

> ***Yes. Agricultural related business opportunities are welcome and needed to expand jobs and services.***

11. Is the subject property suitable for the current zoning to which it has been restricted?

> ***Yes, it could remain as agricultural land.***

12. To what extent would the removal of the restrictions, i.e., the approval of the zoning request detrimentally affect other property in the neighborhood?

> ***The location consists of sparsely located rural residences. The Intended use will be serving an ag community with ag services. Conditions could be stipulated that zoning would revert back to A-2 if the business ceases to exist.***

13. Would the change in zoning as requested be consistent with the purpose of the zoning district classification and the intent and purpose of these regulations?

> ***Yes. Light Industrial zoning includes fertilizer mixing, sales and storage facilities. It also includes meat and agricultural distribution and sales.***

14. Is the request for the zoning change in conformance with the Comprehensive Plan and does it further enhance the implementation of the Plan?

> ***The Comprehensive Development Plan for the Unincorporated Area of Harper County, Kansas: 2003-2020 encourages industrial land uses to be in or near cities. However; the nature of the intended use would be better suited in a rural area locating it in the area of intended service.***

15. What is the nature of the support or opposition to the requested change in zoning?

> ***Public comments were voiced in favor of the change in zoning for the business.***

16. Are there any informational materials or recommendations available from professional persons knowledgeable on this request which would be helpful in its evaluation?

> ***The surrounding land use makes it possible to accommodate this type of zoning district in this location.***

17. Does the relative gain to the public health, safety and general welfare outweigh the loss in value or the hardship imposed upon the applicant by not approving the requested change in zoning?

> ***There does not appear to be any gain to the public health, safety and general welfare by not approving the zoning request, but a hardship on the Applicant to locate another site for the intended purpose.***

CONDITIONS:

1. Environmental permit will need to be obtained before either a well or septic system is installed.
2. The Zoning District of I-1 Industrial will revert to A-2 Agricultural District if the facility suspends operation as purposed in this case for 12 months or sold for any other purposes.

cc: Applicant
Anthony Zoning Administrator

HARPER COUNTY BOARD OF COUNTY COMMISSIONERS

**CHECK LIST FOR CONSIDERATION
OF A REZONING CASE**

PURPOSE:

This check list is to assist: (1) the Chairman in conducting the discussion and decision on a rezoning case; (2) the County Clerk in an orderly process of minute taking; (3) the Applicant in presenting any new information; and (4) any persons who have new information or wish to know their rights in the matter. Although the order of the outline should be followed, the material will need to be modified to relate to the particular case. This check list is in keeping with the procedures in K.S.A. 12-757(c), (d) and (e) and the decision in Houston v. Board of (Wichita) City Commissioners, 218 Kan. 323 (1975). The latter determined that:

"Where the statutory requirements are fully met (Ed: Notice and public hearing) and a full and complete record of the substance of the planning commission proceedings is before the governing body, due process does not require the governing body to conduct a second public hearing on the advisability of the proposed change." (Syllabus)

CALL AGENDA ITEM:

I call Agenda item # ___ which is on Case No. Z-02-21. This is for a rezoning amendment requesting a change from the present A-2 Agricultural District to the I-1 Light Industrial District.

DISQUALIFICATION DECLARED AND QUORUM DETERMINED:

Before we proceed, I'll ask the Commission if any of them intend to disqualify themselves from participating in this case because they have conflict of interest. (Please let the minutes show that _____ has disqualified himself/herself because _____ and has temporarily disassociated himself/herself from our Commission.) We have a quorum of ___ present for the consideration of the case.

PROTEST PETITIONS:

Has the County Clerk received any protest petitions on the case? (If **no**, proceed to next item.) (If **yes**) Do they constitute the statutory required 20% necessitating a 3/4 vote of the Commission to approve the case? (If **yes**) Having determined that a valid protest petition has been submitted to the Clerk, I would remind the Commission that a unanimous vote is necessary to approve the case.

COMMUNICATIONS:

Did the Commission receive any comments from a city on this case? (If **no**, proceed to next item.) (If **yes**, discuss as deemed desirable.) Are there any other communications to consider on this matter other than from our Planning Board? (Read and discuss as deemed desirable.)

SUMMARY OF HEARING:

I ask the Commission members if they have all received copies of the unapproved Minutes of the Planning Board for August 17, 2021 which summarizes their hearing on this case. (If **no**, consider a motion to continue the agenda item until the minutes will be available.) (If **yes**) Having determined that the members have received the required information, I am going to call on the Zoning Administrator for a report and then ask the Applicant and any members of the public who wish to speak on this case to confine their presentation to new information not otherwise presented at the hearing. The Commission may also want to direct questions to the Applicant, the staff or other persons present.

ZONING ADMINISTRATOR'S REPORT:

I call on our Zoning Administrator, Matthew Booker to provide us with a report on the case and recommendation of the Planning Board. (See Rezoning Report.)

Thank you for your presentation. Are there any questions for the Zoning Administrator from the Commission members?

APPLICANT'S PRESENTATION:

Does the Applicant wish to present any new information?

Thank you for your information. Are there any questions to the Applicant from Commission members?

PUBLIC COMMENTS:

Does anyone from the public wish to respond to the Applicant's information or provide any new information? Please stand and give your name and address.

Do any of the Commission members have a question for the public presenter?

APPLICANT'S RESPONSE:

Does the Applicant have any further responses to the public comments?
Are there any Commission questions?

BOARD DELIBERATION:

Assuming the Commission has received all the information they need on this case, you have received an outline of choices provided under the state statutes for Commission action: (K.S.A. 12-757[c]) How do you wish to act?

(Recommendation to approve.)

- (1) Move to adopt the findings and factors and recommendation of the Planning Board on Case No. Z-02-21 and to **approve** Resolution No. 2021-_____ (Majority vote needed.) *

(Recommendation to disapprove.)

- (2) Move to adopt the findings and factors and recommendation of the Planning Board to **disapprove** Case No. Z-02-21. (Majority vote needed.)

(Recommendation to approve.)

- (3) Move to **override** the Planning Board's recommendation, **approve** Case No. Z-02-21., **amend** in detail the findings and factors supporting the motion in the Rezoning Report, **attach appropriate conditions**, if any, and approve Resolution No. 2021-_____. (2/3 Majority vote needed.)*

(Recommendation to disapprove.)

- (4) Move to **override** the Planning Board's recommendation, **disapprove** Case No. Z-02-21 and amend in detail the findings and factors supporting the motion in the Rezoning Report. (2/3 Majority vote needed.) *

- (5) Move to **return the recommendation** to the Planning Board on Case No. Z-02-21 **for further consideration** at its next regular meeting with a statement specifying the basis for the Board's concerns whether to approve or disapprove the recommendation. **

- (6) Move to **table** Case No. Z-02-21 until _____, 20____ at ____: (a.m., p.m.) in this same meeting room for more (information) (and) (study) in regard to (Majority vote needed.)

* **(Note:** If a valid protest petition is determined, a unanimous vote will be needed to approve the case.)

** **(Note:** If the Commission returns the Planning Board's recommendation, the Planning Board, after considering the same, may resubmit its original

recommendation giving the reasons therefore or submit a new and amended recommendation. Upon the receipt of such recommendation, the Commission, by a simple majority thereof, may adopt or may revise or amend and adopt such recommendation by resolution, or it need take no further action thereon. If the Planning Board fails to deliver its recommendation to the Commission following the Planning Board's next regular meeting after receipt of the Commission 's report, the Commission shall consider such course of inaction on the part of the Planning Board as a resubmission of the original recommendation and proceed accordingly. In either circumstance, the Commission may take any action they desire by majority vote unless legal protest petitions are received which would necessitate a 3/4 vote, i.e., a unanimous vote to approve the case.)

CLOSING REMARKS:

(For approval)

Persons aggrieved by the final decision of the Commission on this matter have 30 days after the effectuating resolution is published within which to appeal to District Court.

(For disapproval)

Persons aggrieved by the final decision of the Commission on this matter have 30 days after today's action within which to appeal to District Court.

Thank you for participating in this matter.

I call for Agenda item #_____.

(Published once in The Harper Advocate on September 16, 2021)

RESOLUTION NO. 2021-___

A RESOLUTION CHANGING THE ZONING DISTRICT CLASSIFICATION OF CERTAIN LANDS LOCATED IN THE UNINCORPORATED AREA OF HARPER COUNTY, KANSAS, UNDER THE AUTHORITY GRANTED BY THE ZONING REGULATIONS OF THE COUNTY AS ORIGINALLY APPROVED BY RESOLUTION NO. 2020-16.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF HARPER COUNTY, KANSAS:

SECTION 1. Having received a recommendation from the Harper County Planning Commission on Case No. Z-02-2021, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of the Zoning Regulations of Harper County, Kansas as originally approved by Resolution No. 2020-16, the zoning district classification of the lands legally described herein are changed as follows:

Change of zoning district classification from the A-2 Agricultural District to the I-1 Light Industrial District.

Legal Description: A tract of 5.7 acres, more or less, located at the corner of the NW4 W2 Section 19, Township 32, Range 07 Harper County, Kansas.

General Location: A tract of land along NW 70 Rd., at the address of 449 NW 70 Rd., Harper, KS 67058

Conditions:

1. Environmental permit will need to be obtained before either a well or septic system is installed.
2. The Zoning District of I-1 Industrial will revert to A-2 Agricultural District if the facility suspends operation as purposed in this case for 12 months or sold for any other purposes.

SECTION 2. That upon the taking effect of this Resolution, the above zoning change shall be entered and shown on the Official Zoning Map(s) as previously adopted by reference and said map is hereby reincorporated as a part of the Zoning Regulations as amended.

SECTION 3. That this Resolution shall take effect and be in force from and after its adoption and publication once in the official county newspaper.

ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF HARPER COUNTY, KANSAS ON September 7, 2021.

Brian Waldschmidt, Chairman

ATTEST:

(S E A L)

Darrin Struble, Commissioner

Jeff Vornauf, Commissioner

Kelsie Murphy, County Clerk