

MINUTES

RILEY COUNTY PLANNING BOARD/ BOARD OF ZONING APPEALS

Monday, June 14, 2010
7:30 pm

Courthouse Plaza East
Commission Meeting Room
115 North 4th Street

Members Present: Jon Larson, Chair
Lorn Clement
Dr. Tom Taul
Diane Hoobler
Julie Henton

Members Absent: None

Staff Present: Monty Wedel - Director, Bob Isaac – Planner; Steve Higgins – Zoning Enforcement Officer, Brigitte Brecheisen – Planning Intern and Lisa Daily – Administrative Assistant

Others Present: Darrell Wood, Mark Karolevitz, Patricia Boetticher, Kenneth Carroll, Art Robertson, Rick Meisinger, Mark Prellwitz, Vicky Johnson, Tom Halstead, Vincent Kramer, Tamara Killham, Connie Miller, Sharon Rohlman, Russell Rohlman, M. Rodriguez, Jerry Haug, Mona Bass, Donald Banks, Ed Burch, Shane Wright, Wendell Goff, Richard Britt, Vinton Visser, Clancy Holeman, Craig Cox, Tom Paul, Peter Van Kuren, Roger Erickson and Peter Rombold.

OPEN PUBLIC COMMENTS

None.

CONSENT AGENDA

The minutes of the May 10, 2010 meeting were presented and approved. The Report of Fees for the month of May (\$1,125.50) were presented and approved.

Diane Hoobler moved to adjourn as the Riley County Planning Board and convene as the Riley County Board of Zoning Appeals. Lorn Clement seconded. Carried 5-0.

RILEY COUNTY BOARD OF ZONING APPEALS

SOASH – VARIANCE

Jon Larson opened the public hearing at the request of Richard L. Soash, petitioner, and Richard and Laura Soash, owners for a variance authorization to reduce the minimum front yard requirement from 25 feet to 12 feet for Lots 241 and 242 of University Park Subdivision.

Bob Isaac presented the request. Mr. Isaac explained the petitioner owns three (3) contiguous lots (Lot 241, 242 and 243) in University Park Subdivision, originally platted and recorded in September 1959. Mr. Isaac stated the petitioner wishes to replace the dilapidated single family dwelling that occupied Lot 241 with a new home and utilize as much buildable area on his property as possible. Mr. Isaac explained over half of the total area that comprises all three lots consists of a heavily wooded ravine. Mr. Isaac further stated that a University Park Sewer Benefit District sewer line, along with an accompanying 15-foot easement, transects portions of all three lots, further limiting options to locate the new home.

Mr. Isaac explained that in assessing the lots for placement of the home, it was discovered that the rear of Lots 241 and 242 lacked the geologic integrity to support the weight of a house and that the geologic analysis concluded that the condition of the subsurface toward the front of the lots was much more suitable for residential construction. Mr. Isaac stated, to allow the home to be constructed on much more solid ground, the petitioner is requesting a variance, reducing the minimum front yard requirement from 25 feet to 12 feet for Lots 241 and 242. Mr. Isaac reviewed staff's assessment of the variance criteria in relation to the request. Staff recommended that the requested variance be approved.

Jon Larson asked if the applicant was present.

Mark Prellwitz with Prellwitz Construction was present to represent Richard Soash. Mr. Prellwitz stated the lots were excavated and was unable to find solid material where the new house was to be originally located. Mr. Prellwitz stated a geologist came to the site and suggested moving the house closer to the front of the property, hence the reason the variance is being requested.

Jon Larson asked if there were any proponents or opponents. There were none.

Julie Henton moved to close the public hearing. Diane Hoobler seconded. Carried 5-0.

Lorn Clement moved to approve the request of Richard L. Soash, petitioner, and Richard and Laura Soash, owners for a variance authorization to reduce the minimum front yard requirement from 25 feet to 12 feet for Lots 241 and 242 of University Park Subdivision.

Tom Taul seconded. Roll call voting was completed with all Board members affirming. Carried 5-0.

BEMAS CONSTRUCTION INC – CONDITIONAL USE

Jon Larson opened the public hearing at the request of Bemas Construction Inc., petitioner, and Feather Field Farms LLC, owner, for a conditional use authorization to permit a borrow pit for resource extraction.

Monty Wedel presented the request. Mr. Wedel prefaced the presentation of the material by stating that staff took Tom Taul on June 2, 2010 and the remaining Planning Board members on June 3, 2010, on a field trip to observe sample borrow sites visits prior to the hearing. Mr. Wedel stated staff wanted the Board to have some experience with other borrow sites to assist with decision making on the request. Mr. Wedel explained that staff advised the Board to keep an open mind and use the visits as a fact finding mission, not to necessarily form an opinion. Mr. Wedel stated all information would be shared at the public hearing.

Mr. Wedel explained the K-18 realignment project has been a long time coming and is being accelerated by the National Bio and Agro-Defense Facility (NBAF) and growth at Fort Riley. Mr. Wedel said funding has been obtained from the American Recovery and Reinvestment Act (ARRA) and which has a critical time table associated with it.

Mr. Wedel stated the site for the proposed borrow pit is approximately 70 acres and is relatively flat. Mr. Wedel explained the need for borrow material is critical due to the flatness of the area. Mr. Wedel said the project needs two million cubic yards of dirt, which equates to approximately 150,000 truck loads. Mr. Wedel explained one of the advantages of the proposed borrow pit site is the close proximity to the actual construction site. He explained that the trucks would not need to enter onto the existing local street system. Mr. Wedel stated that in order to obtain the volume needed, Bemas Construction is proposed an excavation depth of 15 feet. Mr. Wedel explained that on May 26, 2010, a test hole was dug and the water table (at that time) was estimated to be at a depth of 17 feet. Mr. Wedel stated the proposal is to stay two (2) feet above the water table. Mr. Wedel said the estimated time to complete the excavation project is 2½ years.

Mr. Wedel stated the site is currently cropped with corn and that a portion of the site (northeast corner) is located within the designated 1% annual chance floodplain. Mr. Wedel stated the current zoning of the site is G-1 (General Agricultural) and that the City of Ogden borders the site to the south.

Mr. Wedel stated one of the major concerns is the proximity to the Manhattan Regional Airport. Mr. Wedel explained the proposed site is immediately south and east of the direct flight path for the east-west runway #3-21. Mr. Wedel stated that, at a 15-foot depth with no surface drainage off, there is the potential of water being retained on the site for extended periods, thus creating an attractant to large waterfowl. Mr. Wedel explained this could create a safety hazard for aircraft taking-off and landing at the airport.

Mr. Wedel stated that in order to adequately evaluate the Manhattan Regional Airport concerns and to formulate potential options for mitigating the situation, staff consulted with various experts in a variety of professions.

Mr. Wedel stated that after consulting with the Kansas Department of Transportation (KDOT), the Representative and other experts, staff concluded that the proximity of the site to the actual construction areas is very advantageous, not only from a cost standpoint, but from a safety standpoint as well. In addition, Mr. Wedel concluded that, given the depth of water table, tested at an approximate depth of 17 feet, along with data regarding the elevation of the river, the water table currently is at a higher point than normal. Mr. Wedel explained the probability of experiencing higher than normal flows on the Kansas River, based on 45 years of measurements, is approximately 5-10%. Mr. Wedel stated if the site does not include a food source, such as an agricultural crop, and water is not retained for long periods of time, the likelihood of attracting large waterfowl is low. Mr. Wedel cautioned that if the site does retain water and includes a food source, the risk of attracting waterfowl to the site, thereby creating a potential air traffic hazard, is significant and should be avoided.

Mr. Wedel stated that a letter was received from the City of Ogden expressing their concerns. Mr. Wedel stated one of their concerns was the potential impact on the Seven Mile Creek overflow channel. Mr. Wedel said the County Engineer reviewed this issue and feels there is sufficient distance between the proposed borrow pit and the overflow channel. Mr. Wedel stated the other concern is the loss of developable land. Mr. Wedel said that in reviewing Ogden's future growth plan, this site is not in the plan area.

Mr. Wedel reviewed the proposed conditions, along with the staff submitted reclamation plan in detail.

Mr. Wedel stated staff recommends the requested Conditional Use be approved with the conditions and reclamation plan as listed in the staff report.

Mr. Wedel asked the Board if they had any questions.

Jon Larson asked if there anything stated about controlling trees.

Mr. Wedel stated that, in visiting with legal counsel, long term maintenance or management of the site cannot be guaranteed. Mr. Wedel explained that, although conditions could not be implemented that could force any future owners of the site to maintain the tract over time, conditions can be included that would prevent certain future uses of the land (e.g., an attempt to crop the land). Mr. Wedel explained that violations of the conditions set forth in the conditional use authorization are enforceable. Mr. Wedel said that KDOT and their representative have been exploring the possibility that the Department of Wildlife and Parks could acquire the site, which could control how the site is managed/maintained in the future.

Jon Larson asked the Applicant's representative if he had any comments.

Tom Paul, with Bemas Construction, stated his company is the subcontractor for this project. Mr. Paul explained that KDOT required the contractor to find the site for this particular project. Mr. Paul said that financially, the site needed to be close to the project. Mr. Paul stated there were two property options available. Mr. Paul said that they had visited with the owner of the

proposed site and stated that it is the desire of the current property owner to return the property to cropland. Mr. Paul said if the site cannot be returned to cropland, Bemas Construction would have to buy the land rights. Mr. Paul emphasized that Bemas Construction does not have these funds in the budget. Mr. Paul said the only thing Bemas Construction is not in agreement with, due to the monetary impact, is not allowing the land to be returned to its traditional use. Mr. Paul stated that the property owner does not have any concerns with degrading the soils of the property and realizes it may take 3-5 years to bring the land back to a production level of which he is accustomed. Mr. Paul stated he understands that the major concerns are attracting waterfowl and staying above the water table.

Jon Larson asked if there any proponents within 1,000 feet.

There were none.

Jon Larson asked if there any opponents within 1,000 feet.

Peter Rombold, representing the City of Ogden, referred to the Roser site across the river. Mr. Rombold said that even without the precautions recommended by staff, the site has behaved pretty much as described. Mr. Rombold stated Ogden is concerned that borrow pit is located within a floodplain. Mr. Rombold asked to see a borrow pit from an area where once the material is removed, it could still be subject to its traditional use. Mr. Rombold stated there would be very little incentive to maintain this property if little or no income could be generated from this property. Mr. Rombold said there is no apparent mechanism in place that the property will be maintained in the future and it appears that Ogden is looking at a strong possibility of a site called a nuisance. Mr. Rombold stated the City can always develop around the site, but the site itself is an ideal location of activity along the K-18 corridor; therefore, the site will not benefit Ogden in the long run. Mr. Rombold stated there is no governmental entity more in favor of building this highway than the City of Ogden, including Riley County. Mr. Rombold said the short term benefits of a short haul distance and keeping the contractors cost down are outweighed in the long run, given the fact that the community has to live with this undevelopable site forever by the loss of use and loss of income. Mr. Rombold stated that insufficient weight was given to the long term prospect of what this property is going to be. Mr. Rombold stated they do not see a mechanism in place that the site will be maintained or any prospect of development on this property.

Mr. Rombold said that, as for the potential drainage issues (overflow channel), he concurs with Mr. Hobson's observation that there won't be any issues at the outset, but Ogden does not yet have in place any controls over the three hundred feet that separates the overflow channel and the retention structure that would insure that if something happens, if someone decides to do something there, that the City of Ogden could stop it. Mr. Rombold stated another concern regarding the borrow pit's proximity to the Seven Mile Creek, despite the overflow channel and ancillary retention structure, there will still be water passing through Seven Mile Creek. Mr. Rombold said he does not know if staff has addressed this sufficiently, that in the event of a base flood, where the flows will go; whether or not there will be erosion on that side of the pit causing weakness in the soil separating the overflow channel or Seven Mile Creek from the borrow pit, resulting in an immediate, unintended lake. Mr. Rombold said those are engineering concerns

and thinks they could probably be addressed. Mr. Rombold said the foundation of their concerns is that there is not a lot of incentive for the subject site, after it is put to grass and that possibly, an alternative site can be identified. Mr. Rombold stated he does not know what type of search was done or contract negotiations were entered into or why they can't find a piece of ground higher up. Mr. Rombold said perhaps there is additional borrow available from the other two sites that were identified in the power point presentation or perhaps, the area where borrow was taken the first time (the flat shoulder as you travel into Manhattan). Mr. Rombold said it seems like those would be the first two sites to consider because of the proximity to the river.

Jon Larson asked for any other opponents.

Connie Miller, representing Ogden Township and who also lives within 1,000 feet, concurred with the Mr. Rombold. Ms. Miller said she has lived in the area for about 21 years and that Seven Mile Creek comes out of its banks near the east point of this pit almost annually with the heavy spring rains. Ms. Miller said she understands there will be a new drainage option available but timing is of the essence in whether or not the drainage will be there in time to take care of the water flow.

Jon Larson asked for any other opponents. There were none.

Jon Larson asked the Applicant if he had any rebuttals to these comments.

Tom Paul asked if someone from KDOT could help him with the concerns regarding Seven Mile Creek. He stated that a portion of the site is within the floodplain, but as a part of this project, the floodplain will change substantially. Mr. Paul said the overflow channel is for any "out of the normal" flooding and I don't understand the hydraulics completely but know it is some seven to twelve feet deep and about forty feet wide which is a whole lot wider than the Seven Mile Creek is right now. Mr. Paul stated they do not feel that after the overflow channel is in place, that there will ever be a type of flooding along that channel or at the creek that there has been historically. Mr. Paul said he believes that is the purpose for the construction of the overflow channel so he wanted to address those concerns.

Jon Larson asked for any rebuttable by the opponents within 1,000 feet.

Peter Rombold said he did bring the storm water analysis summary along for the Seven Mile Creek.

Jon Larson asked for any other interested parties presentations.

Peter Van Kuren, the Director of the Manhattan Regional Airport, stated the presentation by Monty Wedel and the staff report were very well done. Mr. Van Kuren said he was not an opponent or proponent of the request. Mr. Van Kuren explained that the Manhattan Regional Airport is a public use airport and governed by the Federal Aviation Administration (FAA). Mr. Van Kuren stated they are bound by the regulations that the FAA has set forth which requires airport officials to oppose any creation of an airport hazard within five miles of the airport. Mr. Van Kuren stated that he was not opposed to the creation of a borrow site, just the creation of a

potential airport hazard. Mr. Van Kuren stated they would be opposed to a borrow pit at this location if uncontrolled excavation would breach the water table, causing the site to retain water on a relatively permanent basis.

Mr. Van Kuren said, after talking with Monty Wedel and other experts, he very much appreciated the Boards' desire to go out and actually visit the aforementioned sites. Mr. Van Kuren stated they turned to the United States Department of Agriculture (USDA) for advice and recommendations. Mr. Van Kuren said they concurred with the staff report and the recommendation of restricting excavation depth to no deeper than two feet above the water table and if water is encountered, to rectify it right away.

Mr. Van Kuren said that although there are similar hazards that exist around the airport, they have been mandated to oppose the creation of new hazards. Mr. Van Kuren said they also have farming operations on the airport and they have a long term resident of the valley but it is his intention to phase out that operation as that tenant leaves the farming business. Mr. Van Kuren stated if it is deemed by the FAA that they have allowed the creation of an airport hazard within five miles of the airport, it could cost the airport money.

Mr. Van Kuren stated the FAA has given the City and the airport millions of dollars over the past ten years in grants to do infrastructure development on the airport. Mr. Van Kuren said that is how the FAA enforces the rules. Mr. Van Kuren said the FAA can not tell Riley County how to do their zoning but the FAA can go to the airport operator and say they are no longer going to support the airport. Mr. Van Kuren said the FAA could ask the airport to refund the millions of dollars provided and will not give any grants in the future. Mr. Van Kuren emphasized that the airport has large aircraft that fly in and out of the airport daily used by the K-State athletic department, Fort Riley's troops and family members. He said the creation of an airport hazard and the chances of whether it is bird activity or anything that could cause a catastrophe and loss of life are more important than money. Mr. Van Kuren stated he could flat out oppose the creation of this borrow site because there is a risk but he thinks it is possible to find a compromise given all the work that has been put into creating a site that can provide the borrow and also can be reclaimed to a point. He said the last contact he had with the USDA returning the property to native grass actually improves the site over farming operations by removing some of the hazards.

Vickie Johnson, Chief Counsel for the Kansas Department of Transportation (KDOT), stated KDOT appreciates all the effort staff has exerted coming up with a resolution for this issue. Ms. Johnson provided the Board with a little information about what KDOT has been doing in the background to make an effort to bring this to a conclusion as well. Vickie Johnson explained that KDOT received the concerns from the City of Ogden and asked their design consultant, HNTB, to review those concerns. Ms. Johnson stated HNTB has provided KDOT with recommendations on how far back the borrow pit needs to be from the channel. Ms. Johnson said with respect for future maintenance, she can not speak for the contractor, as it is up to the contractor how they submit their application to Riley County.

Ms. Johnson said her office has researched the possibility acquiring the subject site and ultimately conveying it to the Department or the Kansas Department of Wildlife and Parks. Ms. Johnson said her office has also explored the possibility of a deed restriction that could be placed

on the title that, along with the conditions listed in the Conditional Use Authorization, would assist with the long term issues.

Ms. Johnson responded to the question of the impacts of this site being located close to the City of Ogden. She stated that it is difficult to predict or guarantee there will never be any problems at this site in the future. Ms. Johnson also refuted claims that the borrow site would restrict future development/growth of Ogden, as there is currently ground that is available in the City that is not yet developed. Ms. Johnson said that it is possible that alternate sites may end up less desirable for the City of Ogden's development purposes than this one. Ms. Johnson stated she is not sure if it is wise to make a decision based solely on the impacts it might have on the development potential.

Ms. Johnson reminded the Board of the safety issues and monetary implications associated acquiring additional or alternate sites. Ms. Johnson stated that the biggest concern for KDOT the potential to lose American Recover & Reinvestment Act (ARRA) funding if the project is not started by a certain date.

Jon Larson asked if there were any other interested parties that have information to present.

There were none.

Jon Larson asked if the Applicant had any rebuttable.

Tom Paul said the major concern is waterfowl, or as the FAA calls it, "hazardous wildlife". Mr. Paul said he had the advisory that Mr. Van Kuren referenced and acknowledged that Mr. Van Kuren was correct about the five miles. He said that, in addition to the airports operation areas, the airport essentially had control over 50,000 acres. Mr. Paul re-emphasized that friends, family and loved ones are going to be wrestling with 150,000 eighteen wheelers full of dirt, which gross out around 80,000 pounds. Mr. Paul said that and a Prius does not tangle too well.

Mr. Paul stated he accessed the FAA's website and researched the history of bird strikes at the Manhattan Regional Airport. Mr. Paul said there have been ten reported bird strikes in the last twenty years and there have been no injuries or fatalities. Mr. Paul said the State of Kansas reported 521 wildlife incidences and this included a deer and a horse. Mr. Paul said there have not been any fatalities in twenty years, there have been three minor injuries and that is a half percent of the reported incidents. Mr. Paul said there have been people that have died recently on our highways. Mr. Paul said, on average, about four citizens have died in Riley County every year. Mr. Paul stated if we have to go to Geary County to get dirt, Geary County's per 100,000 ratio is even higher than Riley County.

Mr. Paul stated we (Bemas) have an interest too and we do not have a budget to go on the road. Mr. Paul said they also do not have a budget to give the property owner what he feels he needs to give up permanent rights to this project. Mr. Paul said he does not think there is a concern that the current owner would not continue to use the property as he has for the last several years.

Jon Larson asked for a motion to close the public hearing.

Julie Henton moved to close the public hearing. Diane Hoobler seconded. Roll call voting was completed with all Board members affirming. Motion carried 5-0.

Lorn Clement questioned if the Board accepted staff recommendations and conditions, but there was no mechanism to enforce the planting of grasses. Mr. Clement said he would like to have some more discussion of what could really happen in the future to the site and what are the options for the contractor to proceed. Mr. Clement asked if there was a chance KDOT could buy the property out-right.

Monty Wedel reminded the Board that both of Riley County's Counselors, Clancy Holeman and Craig Cox, were present to provide any insight if needed. Mr. Wedel stated that, according to the conditions listed in proposed authorization; the site must be reclaimed as per the approved reclamation plan and inspected by staff for compliance before the reclamation bond is released. Mr. Wedel said from that point forward, there will be no mechanism to ensure future maintenance of the site.

Mr. Wedel suggested that if there was a crop planted on the site, with no water retention issues, would the situation be any worse than it exists currently? Mr. Wedel asked what assurance do we have that there will never be a water retention issue and referred to the Counselors for insight. Mr. Wedel said that there may be some advantage to having the maintenance of the site under the management of a farmer, as a farmer knows how to crop and that crops will absorb water. Mr. Wedel cautioned that it's difficult to provide a condition that would remedy the situation of the site eventually began to retain water.

Mr. Wedel stated we do not know what the probability of the water retention will be; all we can go by is our best guess, the elevation of the water table, will it come up and be a problem, etc. Mr. Wedel stated that although eliminating the option to crop the site was the best solution and provided more assurance the site won't become an attractant for water fowl, it presented a potential land management issue. Mr. Wedel stated he liked the idea of allowing the farmer to manage it as it would be managed properly.

Diane Hoobler said she had a concern that if it goes to native grasses that it would basically become a wasteland. Mrs. Hoobler said it really is prime development land with proximity to the highway and how the corridor going into Ogden has developed. Mrs. Hoobler stated that with the 15-foot depth, the site likely will be too expensive to develop, considering there is only two feet of soil before you reach water. Mrs. Hoobler said if we bring in other material to fill it up that is going to cost a lot more. Mrs. Hoobler suggested going to the other side of the road and take down a hill.

Tom Taul said it was his understanding that if KDOT purchased those other two borrow sites as part of the right of way on that phase, why didn't they acquire this site as part of this phase?

Vickie Johnson stated that for this project, KDOT determined that the sub-contractor be responsible for securing a site to furnish the borrow material. She stated however, that once they realized the airport was going to have concerns with this site, they looked into acquiring the

property. Ms. Johnson said that usually in a situation where you are in a time crunch and you are over a barrel, the price of property sky rockets. Ms. Johnson said the only way KDOT could acquire the property in any cost effective way would be through condemnation, which carries the same time delay as finding another site. Ms. Johnson said if they have to wait eight weeks they would be two months behind schedule and lose much of this construction season and that is why KDOT did not go back. Ms. Johnson further added that KDOT is bound by federal requirements in terms of how much can be paid for a piece of property and the appraisals of this property would not support the price.

Tom Taul exclaimed to Ms. Johnson that, although he did not know how the Board would eventually decide, the burden of a “time crunch” should not be placed on the Board. Mr. Taul continued by saying if KDOT would have bought the property initially, we would not be here tonight; thus, the “time crunch” is not necessarily related to our decision or what we are dealing with here tonight.

Ms. Johnson stated she understands it is not the Board’s fault KDOT is in this situation.

Tom Taul said the only other concern he has is the guarantees of maintenance of the property once the reclamation is accomplished and how to control it.

Julie Henton concurred with Mr. Taul.

Jon Larson asked Counsel if there is anything that can be done to guarantee maintenance.

Clancy Holeman, Riley County Counselor, stated he is present to represent the Board of County Commissioners and is not an advocate for either position. Mr. Holeman explained his role in this was to provide legal advice when requested by Planning and Development staff whenever appropriate. Mr. Holeman stated that we can not guarantee anything about the future use of this property and from our perspective we analyze what conditions could be placed on it and we had to focus on what conditions were reasonable and what conditions related to the use of the property. Mr. Holeman stated this was discussed at length with staff and felt the conditions staff is suggesting, from our perspective, are defensible if challenged. Mr. Holeman stated once the reclamation plan and the conditional use are approved and in place, they are enforceable.

Monty Wedel said he wanted to add another perspective on the County’s ability to control the use of the land. He explained that regardless if the tract is agricultural, native grass, cedars or some other use, the County does not regulate the management of land. Mr. Wedel said the County does not regulate how someone manages their agricultural operation. Mr. Wedel said that if the property owner decides to go to a different use, they must get prior approval.

Diane Hoobler asked will Mr. Nelson retain ownership of the land if it is required to put it back to grass.

Monty Wedel responded that he is not certain, but thinks the contractor will return the land back to the current owner, assuming he wants it. Mr. Wedel said if he understood Mr. Paul, if the property can be returned to crops, the current owner would buy the property back from Bemis,

retaining right of first refusal. However, Mr. Wedel continued, if the property cannot be cropped, Bemas may not be able to lease or buy the site at the agreed upon price, he is not sure.

Mr. Wedel stated that it seems it is coming down to a question of management; do you trust a situation where the Board can dictate that the land go back to native grass because of the concern of creating a food source for birds and then not know the long term management of the land or if the Board allows the site to go back to crops, can a farmer be relied on to effectively manage it.

Diane Hoobler asked if the site is allowed to go back to crops, will the airport or FAA say we have a problem.

Monty Wedel reminded the Board of Mr. Van Kuren's statement that whether the site becomes a borrow pit or even stays in cropland is not the concern. Mr. Wedel stated that the concern is if the site starts attracting waterfowl and becomes a hazard to aircraft. Mr. Wedel said in terms of land management, however, is it a better situation or a worse situation?

Jon Larson asked Mr. Van Kuren what happens if the site went back to cropland and suddenly develops a ponding affect drawing waterfowl; what the airport can do.

Mr. Van Kuren responded by stating he was glad he was asked this question because there is nothing that can be done. Mr. Van Kuren said he does not have authority to do anything unless there are zoning laws that would provide a government entity or the airport to do something. Mr. Van Kuren explained the land is owned and controlled by a private owner.

Mr. Van Kuren described that avigation easements are usually put into place to control trees from growing above a certain height, preventing them from protruding into the approach surfaces. He stated that an agreement between the airport and property owner states that the airport can remove the tree(s). Mr. Van Kuren said however, in terms of the airport telling a farmer that there are too many birds on their pond or field and they should be removed, there is nothing available that can enforce that. Mr. Van Kuren stated that if that situation were to occur, the FAA could inquire as to why the airport allowed it to happen.

Jon Larson asked if there would be a problem with trees growing in the borrow pit that could obstruct the runway as they are now.

Mr. Van Kuren said he did not think so. He said this site is not directly on the approach corridor, but that is not to say there couldn't be without looking at the aerospace studies.

Monty Wedel said staff visited with Mr. Van Kuren regarding the scenario of allowing the site to be cropped and it retained water, could there possibly be something put in place to allow the airport to enter onto the property to perform hazing. Mr. Wedel said staff also visited with Kansas Department of Wildlife & Parks, to allow hunting or other things that would detour waterfowl. Mr. Wedel stated that through all the discussions, no solutions were generated.

Clancy Holeman stated that it is a little inaccurate to say we can't do it, but the key is whether it is defensible. Mr. Holeman said Mr. Van Kuren stated correctly, from his point of view, the

circumstances staff was providing him, he or the airport cannot do anything, but there's always the possibility of doctrine of public nuisance; not the airport per say, but the governing body of the city or the county, under the right circumstances. Mr. Holeman explained that it is not true there is not a legal remedy; there simply is no remedy, strictly speaking in the area of zoning.

Tom Taul asked if an easement, similar to an avigation easement, could be purchased by Bemas Construction from the landowner to allow the airport to do the hazing, cut down trees or address some of the issues that might come up.

Peter Van Kuren said Bemas Construction will be the owner.

Tom Taul asked Mr. Paul would he be willing to grant an easement to the airport to address some of their concerns.

Tom Paul said they have a re-sell clause in three years time to sell the land back to an associated party of Feather Field Farms. Mr. Paul said he can not speak for Feather Field Farms because that would have to be in their contract clause.

Tom Taul asked if Bemas Construction has signed the contract with Feather Field Farms.

Tom Paul said not yet.

Tom Taul said you could put that easement in the contract now and put that as a contingency of the purchase.

Tom Paul said he could negotiate that.

Monty Wedel cautioned that the Board would need to discuss that during the meeting and whether it would be legally defensible. Mr. Wedel said he did not know how the easement would be fashioned. Mr. Wedel asked Mr. Van Kuren and counsel if it would be feasible to have an easement that allows the airport to enter onto the subject property and do activities.

Mr. Van Kuren stated he is not aware of anything and reminded the Board that it's a 70-acre tract and he does not have the employee manpower to go onto private property and do what would be necessary to harass birds, even if he had the authority.

Diane Hoobler stated we would be asking a lot of the airport to do this since this was not their problem to begin with.

Tom Taul clarified by explaining that it was not his point to make the airport do anything, but to give the airport an option.

Monty Wedel stated he is intrigued with what Tom Taul is saying and asked Counsel to jump in if they disagreed. Mr. Wedel suggested that it could be possible to make a condition that the Applicant must grant an easement as part of this, an avigation easement for example, allowing

the airport to enter the property to disperse birds and so forth. Mr. Wedel said it is not like an avigation easement.

Tom Taul said he was thinking of the avigation easement when Mr. Wedel mentioned the hazing.

Monty Wedel said that the critical issue is what to do with the birds and how an easement would work. Mr. Wedel said he consulted with a Wildlife and Parks expert who said the area has a lot of feed land and a lot of water choices. He stated that just because you have water retention or a potential food source, doesn't mean the birds will choose that location. He stated that birds are very selective; if there is a lot of hunting activity, if there is a lot of human interaction, or a highway nearby, birds may not choose that site, even if you had some retention of water. Mr. Wedel said there is no absolute guarantee that there will be an airport hazard, even if there was long term retention. Mr. Wedel stated he is not comfortable with taking that risk nor is comfortable with the potential management situation. He asked are we better off hoping we do not have the water table issue and have a management situation or allow the farmer to crop and never becoming a problem. Mr. Wedel said he can not see any way to provide any assurance.

Tom Taul said it struck a chord with him when it was mentioned our job here is not to control the maintenance but the use of the land.

Mr. Taul stated our job is the use of the land, not how it is managed.

Monty Wedel asked are we going to end up with a problem. Mr. Wedel stated it really boils down to what the Board thinks is an acceptable risk.

Tom Taul said the deal is about the retention of water and whether we allow it to go back to farmland or not.

Monty Wedel concurred with Mr. Taul.

Tom Taul said if we feel like excavating to a depth of 15 feet and placing two feet of silty material back, will the site experience any water retention.

Monty Wedel stated whether or not the site could yield a good crop is the question.

Tom Taul asked is that what all it is contingent upon is the crop? Mr. Taul said what he was getting at is there anymore likelihood of water retention that way or does it just go back to the farming.

Monty Wedel said when they met with NRCS at their first meeting, it was strongly advised that to lessen the concern of water retention that the top soil not be re-applied to the bottom of the borrow pit. Mr. Wedel said the top soil probably would be better for the cropland option, but silty/sand material may allow for faster percolation.

Jon Larson stated if you get rid of the clay from this backfill, but kept the silt, then added organic matter from the cornstalks and other crops, it should improve the infiltration. Mr. Larson explained that fields which are not tilled and are allowed to collect residue on top to increase the organic matter, don't experience standing water like fields that have been tilled. Mr. Larson said if the land is properly managed, it can be cropped and actually improve the water infiltration. Mr. Larson said that he thinks that anyone that owned farmland close to the airport would be willing to do whatever they could do to farm so they didn't create a problem. Mr. Larson said this could be worked out and hoped that everyone would be sincere in reclaiming the proposed borrow pit. He said it's going to take four or five years to get production back due to the nutrient deficiencies in the soil. Mr. Larson said he does not see any organic matter in that soil that is going to be put back on top.

Monty Wedel suggested that at least there is a reasonable expectation of how the land will be maintained with a farmer managing it privately then if the site is reclaimed back to native grass and not knowing how the site will be maintained.

Jon Larson stated that managing the property is going to take money and it's going to take personnel to manage it. Mr. Larson said he knows about creek bottom soils, and if it's reclaimed to native grass, it will take management to keep it maintained because the trees are going to take it. Mr. Larson said he is leaning towards letting the farmer crop it.

Lorn Clement suggested that the Board modify the reclamation plan in order to put the proper mix of soils together that would increase infiltration and allow cropping, opposed to native grasses, with the clear intention to further water infiltration to avoid any standing water or flooding. Mr. Clement stated he is very confident with HNTB's design work with the overflow channel. Mr. Clement said the design in all likelihood is going to work quite well in the future and reduce flooding potential by a long shot. Mr. Clement stated he is much more concerned about an alternative site and road hazards. He said the probability of future bird strikes created by this site versus the risk of people being killed from trucks hauling borrow material from another site, is no comparison. Mr. Clement stated his goal is to make this work from the stand point of probable future use of land and management from a farmer's perspective to keep it in some kind of production while maximizing water infiltration. Mr. Clement suggested modifying the language of the reclamation plan and to still keep most of the conditions that are proposed by the staff report to be part of the Board's approval.

Monty Wedel suggested inserting a condition that staff meet with the Riley County Conversation District, Kevin Religa, for example, and the local NRCS, to work out an ideal situation for cropping and infiltration combination.

Lorn Clement said that if we make a decision now that we know is not really going to work in the future, then what are we really accomplishing? He said the legal concerns, the County's interest, perhaps in the future, is stepping in if there is a nuisance or if a problem occurs, to help the airport, which could be anticipated but not counted on, but keeping it in the hands of a farmer that knows what he is doing is clearly one of the best options.

Diane Hoobler stated she would be much more in favor of cropping the site, rather than let it go to grass. Mrs. Hoobler said it could just become wasteland and sit there forever. Mrs. Hoobler said if it is cropland then someone has control of it and could be made to be useful.

Monty Wedel suggested that if this is the route the Board wanted to go, another condition needed to be added because the river is at a high flow right now. He suggested the condition state that before excavation begins; Bemis Construction must dig another test hole and have staff determine the exact depth of the water table, of which excavation operations must stay two feet above.

Jon Larson stated he thought that was a good idea.

Jon Larson asked for any more comments, questions or a motion.

Tom Taul stated under recommendation #5, strike “warm-season grasses”.

Lorn Clement suggested modifying #6: instead of “cultivation of the site shall not be permitted”, we substitute some kind of language that talks about maximizing water infiltration by a proper soil mix. Mr. Clement stated conditions #1 through #4 do not need to be changed. Mr. Clement said #5 should be eliminated.

Mr. Wedel agreed.

Mr. Clement suggested keeping the first part of #6, due to the increase of waterfowl which could present a nearby hazard to the Manhattan Regional Airport and strike the remainder of that sentence and substitute something to the affect of “proper soil mix shall be used for reclamation to maximize water infiltration” and “see the reclamation plan that talks about the mixes used on the slopes and the base, which should describe what soils that would be used on the slopes and the base and getting away from the grass mixes that are in the current reclamation plan.

Jon Larson said the slopes are going to remain the same.

Monty Wedel said the slopes will be created using top soil and will be seeded.

Jon Larson said the slopes will remain the same because you have a 3:1 slope, no one will farm that.

Monty Wedel said it will be just like a ditch. Mr. Wedel verified the Board wanted the slopes to be grass.

Jon Larson said yes.

Monty Wedel said only the bottom is going to be cropped.

Jon Larson said yes.

Monty Wedel asked the Board, depending on their final decision, if they wanted staff to go back to the office and make the modifications or authorize the chairman to sign the conditional use authorization on behalf of the Board. Mr. Wedel stated once staff re-works the document, we could have the chairman come into the office, verify that it is correct and sign it.

Jon Larson asked if the revised conditional use authorization could be sent via email to the other Board members for review before he signs it.

Monty Wedel replied that Jon Larson would read the wording and verify it is correct before signing it.

Tom Taul stated he trusted Jon Larson.

Diane Hoobler said she thinks it is important that someone from the Board review it.

Clancy Holeman cautioned the Board that sharing the document outside an open meeting could potentially create a problem. Mr. Holeman stated he is not preventing the Board from seeing it but you can't have interactive communication from the Board members among a majority of quorum.

Lorn Clement moved to approve for the conditional use authorization with conditions 1, 2, 3, 4, 7 and 8 unchanged, strike 5, modify 6 by keeping "Due to the increased potential of attracting waterfowl, which could present a hazard to the nearby Manhattan Regional Airport", striking "cultivation of the site (following reclamation of the borrow pit) shall not be permitted" and add "optimize the infiltration of water with proper mix of soils for both infiltration and farming by compliance with the accompanying reclamation plan" and add 9 A new test hole site be completed. Mr. Clement moved to authorize the chairman of the Board to review the changes and sign the conditional use authorization on behalf of the Board.

Diane Hoobler seconded. Roll call voting was completed with all Board members affirming. Carried 5-0.

Julie Henton moved to adjourn as the Riley County Board of Zoning Appeals and convene as the Riley County Planning Board. Diane Hoobler seconded. Carried 5-0.

RILEY COUNTY PLANNING BOARD

UPDATE ON VISION 2025 IMPLEMENTATION

Monty Wedel stated Riley County is under contract with Clarion Associates for \$50,000 to start drafting the regulations, which will include all the Vision 2025 changes. Mr. Wedel stated staff would like to start the public meetings to adopt the revisions by the end of year before end of Commissioner Mike Kearns' term. Mr. Wedel stated the County will be losing a lot of knowledge and have to start over it this is not completed.

REPORT ON GATEWAY PLAN UPDATE

Monty Wedel stated the draft plan has been completed and has visited with the Steering Committee. Mr. Wedel said a few modifications need to be made and will probably meet with the Steering Committee one more time before it goes out to public meetings.

The meeting was adjourned at 9:50 P.M.