

**EXCERPT MINUTES OF THE JANUARY 22, 2015 WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING COMMISSION HEARING**

Case No.: PUD2014-00003 - Bobby and Kimberly Stroupe (owners/applicants) Abbott Land Survey, c/o Chad Abbott (agent) request a Planned Unit Development on 21 acres of RR Rural Residential property on property described as:

A tract of land lying in the North half of Section 34, Township 28 South, Range 3 West of the Sixth Principal Meridian, Sedgwick County, Kansas, being more particularly described as: Beginning at the North Quarter Corner of said Section 34 and going easterly along the North line of said Section a distance of 333.5 feet; thence turning right 91° 05' and going Southerly a distance of 1320.0 feet; thence turning right 88° 55' and going Westerly a distance of 1162.4 feet; thence turning right 87° 10' and going Northerly a distance of 264.8 feet; thence turning right 26° 03' and going Northeasterly a distance of 571.1 feet; thence turning right 66° 47' and going Easterly on a line parallel to the North line of the section a distance of 300.2 feet; thence turning left 53° 15' and going Northeasterly a distance of 398.3 feet; thence turning left 20° 35' and going northerly a distance of 220.9 feet to the north line of the section; thence turning right 73° 50' and going Easterly a distance of 30.7 feet to the point of beginning,

EXCEPT a tract lying in the North Half of Section 34, Township 28 South, Range 3 West of the 6th P.M., Sedgwick County, Kansas, described as commencing at the North Quarter corner of said Section 34; thence S 89°59'26" E along the North line of said Section 333.5 feet; thence S 1°06'58" W, 854.81 feet for a point of beginning; thence continuing S 1°06'26" W, 465.19 feet; thence S 90°00'00" W, 1162.40 feet; thence N 1°00'58" W, 95.56 feet; thence N 90°00'00" E, 834.34 feet; thence N 0°58'31" E, 274.44 feet; thence N 74°06'17" E, 347.43 feet to the point of beginning.

BACKGROUND: The applicants propose to change the RR Rural Residential (RR) zoned 21-acre tract to Planned Unit Development zoning (PUD #44). The proposed PUD includes the applicants' single-family residence. The proposed PUD zoned site will be used for events such as outdoor weddings, family reunions or similar activities. The applicants' propose a maximum of 150 persons for these events. These events will be scheduled on an as need basis, 30 times a year, and not repeated on a weekly basis. The facility will not be open to the general public. The serving and consumption of alcoholic liquor or cereal malt beverages (drinks) on the site is an option for the events. Live music or DJ music for dances for the events are also options, as is the indoor and outdoor preparation of food for these events. Per the Unified Zoning Code (UZC) the RR zoning district list no defined uses, permitted by right or as a Conditional Use that would allow the site to be used as described. The RR zoning district list no defined uses, permitted by right or as a Conditional Use, that would allow the serving and consumption of drinks on the site as well as the providing live music or DJ music for dances for the events on the site.

The requested PUD would permit the described activities in the county. The PUD zoning district is a special zoning district that is intended to encourage innovative land planning and design. Any use may be permitted within the PUD zoning district, provided that it is consistent with the purposes of the UZC and the approved PUD plan. The PUD is proposed to be developed into two phases, as stated on the PUD

Currently the site is developed with the applicants' single-family residence, an accessory building to the residence, a wood shed and an accessory building (events building) that will be used for the PUD's activities. As noted on the PUD, the approximately 2,706.34-square foot events building will be used for the options of: indoor events, the cooking and serving of food for the all events, and live music or DJ music for dances for the events. The events building also has restrooms per the Sedgwick County Code. A gravel parking lot is shown on the west side of the events building as is paved (asphalt) handicap parking. An enclosed trash receptacle area is shown on the east side of the event building.

Although the applicants propose a maximum of 150 people attending any one event, Sedgwick County Fire has established a maximum occupancy of 299 persons for the events building. Fire's maximum occupancy is critical because it means the events building will not have to be sprinkled for fire prevention. The Fire Code prohibits the serving and consumption of drinks inside the events building, unless less than 100 people attend an event.

The applicants propose that no music shall be heard on the neighboring properties. The applicants propose that outdoor musical groups and outdoor speakers must be placed at least 100 yards from the PUD's north, south and east property lines. The applicants have proposed that security may be provided. The PUD proposes to provide wooded walking paths with soft lighting and music. The PUD shows floodplain, a 50-foot landscape buffer and 25-foot building setbacks. Other provisions of the PUD refer to allowing tents as needed for the events (not for camping) and portable toilets as needed. The second phase of development for the PUD includes a swimming pool and pool house and an outdoor kitchen facility.

The proposed days of availability are seven (7) days a week. Events are proposed to be available: Monday – Thursday, 8 a.m. to 8 p.m. with music off by 7:30 p.m.; Friday – Saturday 8 a.m. to 11 p.m., with music off by 10:30 p.m. and; on Sunday 8 a.m. to 7 p.m. with music off by 6:30 p.m. from the events' building.

This RR zoned unincorporated section of Sedgwick County is rural in character, with one exception. Agricultural fields are the area's dominate feature, with scattered farmsteads and large tract single-family residences. The closest residences/farmsteads were built in 1972 (west of the site), 1934 (north of the site), 1976 (east of the site) and 2004, 2009 and 2011 (south of the site). The most recent developments in the area are the large tract single-family residences located south of the site. The Clearwater Creek runs north to south through and along the PUD and the abutting properties on its way to its joining the Ninnescah River located two-miles south of the subject site. There are runs of timber along both sides of the Clearwater, including that portion of the Clearwater that is located along and through the PUD's west and south sides and north of the site across 63rd Street South. The PUD's east side is mostly open. The exception to the area's RR zoning and its agricultural fields and scattered farmsteads and large tract single-family residences is PUD #36, located one-mile south of the subject site, on the southeast corner of 71st Street South and 263rd Street West. The 119.53-acre multi-event venue PUD #36 permits a campground, a bed and breakfast, a convention center, community assembly, retail, multi-family residential as well as numerous other activities. The requested PUD would not be the first for this general area and has fewer proposed uses than the established PUD #36.

CASE HISTORY: The RR zoned subject site not platted and there is no evidence of past zoning activity. Planning has received numerous calls not in favor of the requested zoning. Their concerns include, but are not limited to: traffic, the number of people allowed per event,

drainage, loud music, unruly behavior, the availability of liquor and beer and disruption to the rural character of the area.

ADJACENT ZONING AND LAND USE:

NORTH: RR 63RD Street South, agricultural fields, Clearwater Creek, a farmstead,
SOUTH: RR Large tract & platted single-family residences, agricultural fields,
farmsteads, Clearwater Creek
EAST: RR Agricultural fields, large tract single-family residences, farmsteads
WEST: RR Clearwater Creek, a large tract single-family residences, agricultural fields

PUBLIC SERVICES: There is no sewer available to the site. The site is located in Rural Water District #4. Access to the site is off of 63rd Street South, a sand and gravel section line road maintained by the Afton Township. A portion of the site is located within a flood plain, which means development within it must be addressed with an approved drainage plan and must meet all standards for construction of buildings/structures on the site, per the County Engineer and Code Enforcement. Both the maintenance and repair of 63rd Street South and the drainage of the proposed PUD will be determined at the time of the platting of the property.

CONFORMANCE TO PLANS/POLICIES: The “2030 Wichita Functional Land Use Guide” of the “Wichita-Sedgwick County Comprehensive Plan” identifies this area as “rural.” The rural classification is outside of any city’s growth area and is intended to accommodate agricultural uses, rural based uses that are no more offensive than those agricultural uses commonly found in Sedgwick County and predominately large lot residential development. The RR zoning district is appropriate for the rural classification. The PUD proposes uses not allowed in the RR zoning district. A PUD is intended to:

- (1) Reducing or eliminating the inflexibility that sometimes results from strict application of zoning standards that were designed primarily for individual lots. The proposed PUD allows one zoning for the entire property whose use, an event venue that permits the consumption of drinks and music for dancing, is commercial. However the PUD proposes a limited number of times the PUD can be active, in recognition of the area’s rural character that in turn enhances the PUD’s location and its intent.
- (2) Allowing greater freedom in selecting the means to provide access, light, open space and design amenities. All of the current development and future development is located within the PUD’s 21-acres, which provides ample open space. The location of the noted feature development is fluid, restricted by the building setbacks and to an extent the flood plain.
3. Promoting quality urban design and environmentally sensitive development by allowing development to take advantage of special site characteristics, locations and land uses. The PUD’s location in this portion of rural Sedgwick County enhances the PUD’s location and its intent to provide a limited number of events that will benefit from the rural character. The proposed PUD event venue may be the most rurally located of its type, with the exception of the previously noted multi-event venue PUD #36 located one-mile south of the subject site.
4. Allowing deviations from certain zoning standards that would otherwise apply if not contrary to the general spirit and intent of this Code. The PUD allows mixed uses without inappropriate LC spot zoning and Conditional Uses. The proposed PUD is not the first in the area, as the multi-event venue PUD #36 located one-mile south of the subject site.

RECOMMENDATION: The ability of an individual property owner to enjoy the use of their property impacts not only that individual property owner but their neighbors and the greater area. The applicants' believe that the proposed PUD's location in rural Sedgwick County enhances the PUD's and its intent to provide a unique events venue. The intent of the proposed provisions of the PUD, including limiting the availability of the PUD, is an attempt to retain the area's rural character and thus minimize the possibility of it degrading the neighboring properties and the area. The approximately 119-acre multi-venue PUD #36 is located a mile south of the proposed PUD, which sets a precedence for uses in the area that are not entirely rural in character. Based upon information available prior to the public hearings, and subsequent conversations between Planning, the applicants and their agent have a resulted in some additional development details planning staff recommends that the proposed PUD be APPROVED, subject to platting within a year and the following revisions to the attached PUD:

- (1) As listed in under General; Allow RR uses permitted by right
- (2) As listed in under General in Commercial; Events shall be a maximum of 30 days a year, available (7) days a week. Events are available for rent: Monday – Thursday, 8 a.m. to 8 p.m. with music off by 7:30 p.m.; Friday – Saturday 8 a.m. to 11 pm., with music off by 10:30 p.m. and; on Sunday 8 a.m. to 7 p.m. with music off by 6:30 p.m.
- (3) Add under General; The site shall be developed per the approved PUD.
- (4) Add under General; Maximum building height for habitable building shall be 35 feet. Maximum building coverage shall be 35%
- (5) General Provision #5, add; all outdoor lighting shall employ cut-off luminaries to minimize light trespass and glare, and will be aimed or shielded such that the light source is not visible from the neighboring Lot. Lighting sources shall be 30 feet in height and limited to 15 feet in height when within 200 feet of residential zoning Districts. No pole lighting within building setbacks.
- (6) General Provision #6 revise to; Parking shall be per Code for a maximum of 150 people and shall have a surface approved by Sedgwick County, including having paved handicap parking stalls.
- (7) General Provision #7 revise to; All drives and access to the PUD shall be 20-foot wide and surfaced with a material approved by Sedgwick County standards including Fire.
- (8) General Provision #10 revise to; Signage shall be a monument type with maximum sign area of 150-square feet of sign and no taller than 15 feet.
- (9) General Provision #14 revise to add; No music shall be heard on the neighboring properties. Monday – Thursday music off by 7:30 p.m.; Friday – Saturday music off by 10:30 p.m. and; Sunday music off by 6:30 p.m.
- (10) General Provision #16, revise to; Food services shall be allowed by Sedgwick County Code
- (11) General Provision #18 revise to add; Tents are available for events as approved by Sedgwick County Code and will not be used for camping.
- (12) General Provision #20 revise to add; Portable toilets are permitted as needed and as permitted and approved by the MABCD, per event.
- (13) General Provision #21 revise to; The facility shall not be affiliated with any Class A or Class B clubs, as defined the Wichita-Sedgwick County Unified Zoning Code
- (14) Take out General Provision #22
- (15) Add to General Provisions; Solid screening of trash receptacles and outdoor mechanical equipment for heating and air and equipment storage shall be per the Wichita-Sedgwick

County Unified Zoning Code. Trash receptacle shall be located as shown on the approved PUD.

This recommendation is based on the following findings:

- 1) The zoning, uses and character of the surrounding area: This RR zoned unincorporated section of Sedgwick County is rural in character, with one exception. Agricultural fields are the areas dominate feature, with scattered farmsteads and large tract single-family residences. The closet residences/farmsteads were built in 1972 (west of the site), 1934 (north of the site), 1976 (east of the site) and 2004, 2009 and 2011 (south of the site). The most recent development in the area are the large tract single-family residences located south of the site. The Clearwater Creek runs north to south through and along the PUD and the abutting properties on its way to its joining the Ninnescah River located two-miles south of the subject site. There are runs of timber along both sides of the Clearwater, including that portion of the Clearwater that is located along and through the PUD's west and south sides and north of the site across 63rd Street South. The PUD's east side is mostly open. The exception to the area's RR zoning and its agricultural fields and scattered farmsteads and large tract single-family residences is PUD #36, located one-mile south of the subject site, on the southeast corner of 71st Street South and 263rd Street West. The multi-venue 119.53-acre PUD #36 permits a campground, a bed and breakfast, a convention center, community assembly, retail, multi-family residential along with numerous other activities. The requested PUD would not be the first for this general area and has fewer proposed uses.
- 2) The suitability of the subject property for the uses to which it has been restricted: The site is zoned RR, which primarily permits agriculture uses and large lot residential uses. The site could be continue to be used for a single-family residence or agriculture. The site could continue to be used as zoned.
- 3) Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed PUD is for events such as outdoor weddings, family reunions or similar activities. The applicants' propose a maximum of 150 persons for these events. These events will be scheduled on an as need basis, 30 times a year, and not repeated on a weekly basis. The facility will not be open to the general public. The serving and consumption of alcoholic liquor or cereal malt beverages (drinks) on the site is an option for the events. Live music or DJ music for dances for the events are also options, as is the indoor and outdoor preparation of food for these events. Any time the serving and consumption of alcoholic liquor or cereal malt beverages is allowed, there is a possible negative impact on an area, which could increase the presence of Law Enforcement. Music that is too loud can degrade a neighborhood. The proposed provisions of the PUD are intended to lessen that possibility of the need for more policing (providing security) in the area as well as the intrusion of loud music (cannot be heard on the neighboring properties) on the neighboring properties.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The "2030 Wichita Functional Land Use Guide" of the "Wichita-Sedgwick County Comprehensive Plan" identifies this area as "rural." The rural classification is outside of any city's growth area and is intended to accommodate agricultural uses, rural based uses that are no more offensive than those agricultural uses commonly found in

Sedgwick County and predominately large lot residential development. The RR zoning district is appropriate for the rural classification.

The PUD zoning district is a special zoning district that is intended to encourage innovative land planning and design. Any use may be permitted within the PUD zoning district, provided that it is consistent with the purposes of the UZC and the approved PUD plan. The PUD proposes uses not allowed in the RR zoning district. The requested PUD would not be the first multi-event venue for this general area. PUD #36 is located a mile south of the site and has more approved uses.

- 5) Impact of the proposed development on community facilities: The impact of traffic generated by the PUD on 63rd Street West could be problematic. The maintenance and repair of 63rd Street South will be determined at the time of platting. Because the serving and consumption of alcoholic liquor or cereal malt beverages is allowed, there is a possible negative impact on an area, which could increase the presence of Law Enforcement. Enforcement could be problematic for the Metropolitan Area Building and Construction Department's (MAPCD) Code Enforcement division in regards to the Fire Code prohibiting the serving and consumption of drinks inside the events building, especially during the weekend when Code Enforcement is not available.

BILL LONGNECKER, Planning Staff presented the Staff Report. He reviewed revisions to the general provisions of the Staff Report as follows: Page 5, Item#8 instead of a monument sign, the applicant's would like an unlit archway sign and; Item #9 has been changed to indicate that all music (either DJ or live) will be indoors at the event venue.

He said he has received numerous telephone calls concerning the venue and its impact on surrounding properties and the rural character of the area.

DENNIS referred to item #9 and asked if there was a stipulation about no outdoor speakers.

LONGNECKER said a provision for no outdoor speakers should be added.

RICHARDSON asked for clarification of the distances to nearby residences.

LONGNECKER said distances from nearby residences to the event venue itself, as provided by the applicant's agent, were 441 feet to the west; 816 feet to the south; and 991 feet to the east.

MILLER STEVENS mentioned limiting attendance at the events to 150 people, but there was a provision for putting up tents that could possibly accommodate up to 300 people. She asked for clarification on that.

LONGNECKER explained that the tents would be used to provide shade or shelter for weather or for people who wanted to eat outside. He said total attendance at events, whether inside or outside is 150 people. He mentioned that everything in the area was zoned Rural Residential except Camp Hyde, which was also a PUD, located one mile away at Southeast 73rd St. and 263rd St. East. He said the Camp Hyde PUD has multiple uses including campground and retail. He also added that Camp Hyde is much larger than the site being discussed.

FOSTER asked about the intent of the 50-foot landscape barrier versus a landscape buffer.

LONGNECKER said a landscape buffer would be a more appropriate term and added that the applicants would like walking paths and a gazebo located within the landscaping buffer.

FOSTER asked about the 25-foot building setback.

LONGNECKER said there was a 25-foot building setback located within the 50-foot landscape buffer.

FOSTER asked staff to explain the existing conditions with regard to setbacks.

LONGNECKER said the idea was to create more space between any outdoor activities and the property line. He said the applicant wanted to take advantage of the timber areas on the property with the installation of walking paths and some gazebos.

FOSTER referred to a letter from a neighbor concerning a Fire Code requirement that only allows 99 people at the venue.

LONGNECKER noted in the Staff Report that the venue building was large enough to have a higher occupancy than 150 people; however, the fact that there will be consumption of alcohol means a different standard is applied that dictates that if more than 100 people are in the building and provided alcohol, then the building needs to have a fire sprinkler system installed. He commented that a report was received from the Sedgwick County Fire Department and a representative was also present to answer any questions.

MITCHELL asked about the floodplain on the PUD drawing.

LONGNECKER commented that the Floodplain was provided by the agent for the applicant. He said he would let the agent address the accuracy of that information.

DENNIS commented that there is a new Floodplain Map for Sedgwick County and asked if staff has looked at it.

LONGNECKER said staff has not seen the new Floodplain Map; however, he added that a building permit had to be pulled to build the event center.

RAMSEY said he had received information that a residential permit had been issued for the building and asked if that was accurate.

LONGNECKER said he didn't think he could answer that question because everything he has received regarding the building permit is second hand. He said he understands the building has been built for commercial use including bathrooms per County Code and a meter hook up for rural water through Water District #4.

FOSTER asked about the reference for 30 events per year and asked if that meant a total of 30 days per year.

LONGNECKER clarified that meant 30 total days total. He said that clarifying language could be added.

CHAD ABBOTT, ABBOTT LAND SURVEY, 520 SOUTH HOLLAND AGENT FOR THE APPLICANT said they are in agreement with the revised language in the Staff Report and verbal revisions made by Planning Staff at this meeting. He said the applicant did a letter map amendment on the Floodplain and is using the same Base Flood Elevation (BFE) as determined by the division of Water Resources. He added that the Federal Emergency Management Agency (FEMA) has approved that. He said there will be no music or bands outside. He said this is an outdoor wedding venue and ceremonies will be held outside. He said the walking paths and gazebos are for ambiance. He said all music will happen inside the event center and there will be no outside speakers.

ABBOTT gave a brief background stating that the applicant was not attempting to circumvent any zoning regulations and thought they were doing what was allowed under the current zoning. He said they were deep into building construction and had made a considerable investment before they started the PUD process. He said they did not intend to get "the cart before the horse" so to speak.

ABBOTT said the property is very well suited for the uses described in the PUD. He said the applicant's knew they wanted a property for an outdoor wedding venue so they were looking for a property that was insulated from the neighbors and also so the neighbors wouldn't disturb the weddings. He said there is about 300 feet of woods by the shortest distance to the neighboring property and there are also topography features that add to the insulation and general privacy of the area. He said they believe this is a good property for the requested purpose.

ABBOTT said the applicants understand the concerns and reservations expressed by surrounding property owners. He said he contacted two nearby event centers with similar uses including Eberly Farms on 21st Street North, which he said is within 900 feet of a residential area. He said Sedgwick County Code had no complaints whatsoever about sound, lighting or trespassing near the location. He said the other property was Prairie Pines on N. Tyler Road which is within 850 feet of residential properties. He also noted there was much less natural insulation or woods between the properties at that location. He said the City of Maize has had zero complaints about sound, lighting or trespassing at the venue. He said they believe there are enough restrictions and protections in the PUD to govern the proposed use of the facility so it won't be a hindrance or nuisance to the neighborhood. He said 273rd Street is a nice paved road located one-half mile from the facility. He concluded by stating that they feel the site was uniquely situated and suited for the requested use and will be a good addition to southwest Sedgwick County.

KIMBERLY STROUPE, 25501 WEST 63rd STREET SOUTH said they pulled a residential construction permit to construct a barn; however, they asked to build to commercial. She mentioned getting the PUD after they had already built. She said they asked the neighbors and there did not appear to be any concerns at that time. She said there is triple insulation in the barn to keep the noise inside. She said this business is a retirement for their family; that her husband is retired military after 30 years. She said she has been in the wedding industry as a photographer for 12 years. She said they are nature oriented, organic people. She said they wanted a venue where a bride and groom could get married in the woods with a canopy for a very fairytale wedding. She said the celebration after the ceremony at the event center is not their priority. She also mentioned that they would be very selective as to who would be on the property.

MITCHELL asked if the building was above the Floodplain.

ABBOTT responded it is.

RICHARDSON asked who determines if water and sewer is adequate. He also asked about the sewage system.

ABBOTT responded Sedgwick County Code determines if water and sewer is adequate. He said there are two restrooms on the interior of the building. He added that there was also a provision for temporary portable toilets. He said sewage was on a septic system appropriately sized for the facility.

STROUPE said they have been in contact with staff as far as sizing of the septic system and have not hidden what they planned to do with the building once it was completed. She also mentioned installation of a new electrical transformer to accommodate heating and air conditioning the building. She said everything was installed according to County Code per the MABCD. She added that Bud Lett had been advising them along the way.

FOSTER confirmed the condition for the venue to be open only 30 days per year.

STROUPE responded yes, that was correct.

FOSTER asked if an architect had been involved with the design or were they working with a builder.

STROUPE said they worked with a builder and provided drawings to MABCD. She said Chad Abbott assisted with everything on the outside.

AARON PAULY, 25717 WEST 63rd STREET SOUTH said he lives adjacent to the west of the site. He said the building permit was pulled as a residential permit and states on it non-commercial use according to Kelly Dixon at MABCD. He said that means the building is meeting residential codes, not commercial codes.

PAULY commented he has lived within three miles of this site his entire life. He said they decided to purchase their property four years ago for the seclusion, abundant wildlife and low traffic in the area. He said the figure of 441 feet from their residence is a guesstimate and is not from the corner of their property line which is more like 50 to 75 feet. He commented that they have hired Baughman and Associates because the property line does not match up with what is on their deed, which would move the property line another 30 foot to the east. He said one document shows 9.1 acres and their deed is showing 10.22 acres. He said if this proposal were happening in the City of Wichita it would be considered a nightclub because of the alcohol and live music, and that requires a 200-foot setback from the closest residential property. He said this is approximately 50 feet from their property line.

PAULY referred to Golden Rule #3 with regard to detrimental affects to nearby property. He said right now approximately 10 vehicles a day travel down 63rd Street. He said this facility will greatly increase the amount of traffic and noted that there were three unmarked intersections nearby, the closest being 1 ½ miles away. He said Camp Hyde has been in existence since 1952 and was there before any residences came into the area. He added that alcohol is not allowed on Camp Hyde property because of insurance requirements. He said Eberly Farms has been in existence since 1962 and it is approximately 600 feet from the closest residence and 400 feet from the closest property line. He said they are fully licensed to serve alcohol.

MOTION: To give the speaker one additional minute.

DENNIS moved, **WARREN** seconded the motion and it carried (9-0).

PAULY commented that on the PUD application it refers to 150 people as the maximum amount of guests at the venue; however, when they looked at the Rustic Timbers WEB site, it states anywhere from 175 to 200 people so the applicant is not even following their own guidelines and are advertising for up to 200 people. He referred to a few pictures of the area including from the center of the creek looking directly east to the event center building, pot holes along 63rd Street and the view out the back window of his residence which is all windows so they can enjoy the wildlife. He referred to a map encompassing approximately 105 square miles (or 25,000 acres) which is a drainage basin to Clear Creek. He concluded by mentioning the reference to beer on the Rustic Timber Facebook Page. He said reference to beer doesn't sound like you are trying to maintain a wholesome, low key type of event.

MOTION: To give the speaker one additional minute.

FOSTER moved, **DENNIS** seconded the motion and it carried (7-2). **MILLER STEVENS** and **MITCHELL** – No.

PAULY mentioned another contradiction on the Rustic Timbers WEB site regarding smoking or non-smoking. He said the entire property is surrounded by native grass on the north and south sides and there is approximately 250 acres of wheat directly across the road from the site. He said Camp Hyde is 120 acres and Eberly Farms used to be an entire ¼ section. He said this site is only 20 acres. He said this is not a good fit for the neighborhood and added that he has 16 Protest Petitions in opposition to this application from the neighborhood to turn in.

HUGH HINE, 6635 SOUTH 254th STREET WEST, VIOLA, KANSAS said he owns the property adjacent to the south of the site. He said his main concern is safety since his two young children and nieces and nephews play in the area. He said what is going to keep people from coming onto his property and how is this going to be policed. He said the arbor and benches where they are proposing to hold the ceremonies is not 40-60 feet from his property line. He commented that the paths are already cut through the area. He said there will be people all over the area, after dark and drinking. He asked how the applicant proposes to secure the whole area. He said the entire area is in the 100-year Floodplain and said the entire floods and although the applicant has not experienced it, everything will be gone when it floods because the creek moves fast and comes up in a hurry. He said if someone comes onto his property and gets hurt, he will be liable for it.

HINE said he is also concerned about how this zone change will affect the value of his property. He asked if the zoning change is allowed what else can go in there, light commercial and other uses. He said if the applicant wants to maintain timberline, he suggested a conservation easement. He mentioned the 30 venues and drinking and asked who was going to enforce that. He concluded by saying that the YMCA Camp Hyde is a non-profit organization for children. He said a for profit business in this area isn't going to benefit any of the neighbors, it is going to benefit the applicant. He said everyone he has approached about this within a 5 mile radius is opposed to it. He said he also had 9 Protest Petitions to turn in opposing the rezoning action. He said this is not a good setting for this venue and mentioned the impact on the environment, wildlife and peace and quiet of the area. He said the arbor is located not even 200 feet from his house and as a comparison, he said he can hear his neighbor 1,500 feet to the south having coffee in the morning.

EVERETT DILLON, 25229 WEST 63rd STREET SOUTH said he lives just east of the proposed area and has several major concerns. He said basically this is a residential area where everyone knows everyone. He said establishing a business in the middle of these residences just doesn't fit in with the surrounding neighborhood. He said this area is not suitable for any kind of development. He said he has lived in the area 38 years and has seen water over the mail box by the entrance to the property off of 63rd Street. He referred to several pictures showing the depth of the water in the area three feet above the surface of the bridge. He commented that he didn't know how this property was removed from the Floodplain. He showed a picture with a view from his property looking to the west and commented that the entire area was covered with water. He said the original property owner had water clear up to the house and had to use sand bags. He said it is not a matter of if the area will flood, but when it will flood. He mentioned the bridge in front of the property and the wash boarding along 263rd Street. He said additional traffic is only going to make that situation worse. He said the WEB page mentioned gravel drives but there is just sand in the area which will get muddy and full of ruts when it rains, and more traffic is just going to make that worse because they don't get regular maintenance on the roads in the area.

DILLON said he also has safety concerns with alcohol consumption at the venue and the drinking and driving issue.

MOTION: To give the speaker one additional minute.

RICHARDSON moved, **FOSTER** seconded the motion and it carried (8-1).

DILLON said this will encourage drinking and driving in the area which could cause problems throughout the community. He asked who is going to control that. He said he and his neighbors moved out there to get away from that sort of thing. He concluded by asking who wants to live next to a business.

FOSTER asked the speaker how he felt about the applicant only operating 30 days out of the year.

DILLON asked who was going to enforce that condition. He said there is no guarantee and no one is going to enforce any of the conditions.

JIM PAULY, 22601 WEST 71st STREET SOUTH said he lives 2 ½ miles of east of the property. He said he wanted to emphasis that he doesn't think the flooding issue in the area can be under estimated. He said the applicants are fairly new to the area but he has lived there 63 years (his entire life). He said the weather is very unpredictable and a flood will occur again. He said unfortunately a lot of improvements and facilities that the applicant has made will go down the creek because it is unpreventable.

JANIS PAULY, 22601 WEST 71st STREET SOUTH provided a hand out referencing the Golden Rules as they apply to the application.

Factor 1 – she said the immediate area is made up of thirteen residential homes, including two farmsteads; agricultural fields; and a waterway, Clearwater Creek. She said ten of those thirteen residences have been in existence for over 30 years.

Factor 2 – she said music and entertainment venues as well as increased traffic flow will disrupt the peaceful and quiet nature of the area. She said the proposal that “no music will be heard by neighboring properties” is wishful thinking. She said they can hear the chimes from the church at Clonmen (2 ½ miles east), music from Camp Hyde (2 ½ miles west) music from events held at Lake Afton (4 ½ miles northwest) and the gun fire from the Law Enforcement shooting Range (adjacent to Lake Afton) from their home. She said sound containment at less than 200 yards seems unobtainable. She said the aesthetic appeal of Clearwater Creek quickly vanishes when Mother Nature unleashes heavy rains causing flooding of the entire creek area. She said dead timber and other debris are forced downstream tearing out fences and anything else blocking the rushing waters. She said citing Camp Hyde as a similar venue already in the area is a stretch and added that comparing a not for profit destination day camp to a for profit special event venue is not a true comparison. She said Camp Hyde is bordered on two sides by paved major thoroughfares. She said its primary use is to provide day camp-style child care on weekdays and host a few other family related activities which are mostly alcohol free events.

Factors 3 and 5 – she said increased traffic flow and people entering the area to attend events trespassing, security and fire safety are major considerations in rural living and the availability of alcohol at the events raises concerns higher. She said the paths in the wooded areas are perfect for photo ops, but can also pose fire hazards and one errant cigarette can quickly ignite dry undergrowth, jumping to adjacent fields or nearby homes. She said drinking and driving on sandy country roads after dark, whether alcohol impaired or not can be unnerving and cell phones and GPS aids are of little help. She said she is concerned about late night trespassers seeking directions or asking for help pulling a vehicle out of a ditch.

PAULY asked if the applicants purchased the property with the intent of using it as a commercial event venue and, if so, at what point was the agricultural shed building permit rescinded and the application for a commercial venue building permit submitted and issued. She asked if the application should be labeled “spot zoning” because the applicant failed to do the proper homework prior to construction.

Factor 7 – heavy traffic on rural roads can make roads impassable and increased traffic will cause added costs and roadway maintenance. She also asked about trash and the smell of leftover food enticing rodents into the area. She asked about sewage disposal and if the facility will be able to contain waste materials during a flood. She asked if the back areas of the property were accessible to fire trucks in case of a fire, or EMT's and what was the response time. She said it says security will be provided; however, law enforcement response time in rural areas varies greatly.

MOTION: To give the speaker one additional minute.

MILLER STEVENS moved, **RICHARDSON** seconded the motion and it carried (6-3). **RAMSEY, J. JOHNSON, WARREN** – No.

Factor 8 – the area residents are opposed to the proposed zone changes. She said Camp Hyde was already an established entity when the area residential home sites were chosen. She asked why new landowners should be allowed to come in and disrupt the peace and quiet of this rural setting.

BRYAN GRIZZELL, 7800 SOUTH 263rd STREET WEST said he resides directly south of Camp Hyde and moved there 10 years ago because it was what they could afford in the area which they very quickly found out why. He said 30 events per year is almost every weekend. He said they deal with events all through the week as well 30 events every year. He said they lose our quality time with family because there is a function almost every weekend of the year. He said he can't calculate how many times they have had to replace fencing, how many times they have found event goers on their property and how many times they have caught children and adults throwing rocks at horses or cattle. He said Camp Hyde expanded the premises in 2012 and they were without water for two weeks. He said when Camp Hyde drained the ponds it burned up both of his wells. He said he takes this application personal although he does not live directly beside the location. He said the zones are in place to protect the community. He said there should be a petition with community support to change the zoning, not a petition not to change the zoning. He said when one person's rights outweigh the entire community, it becomes very dangerous.

ABBOTT explained how this portion of land was taken out of the Floodplain. He said the applicant contacted the Division of Water Resources and provided a topographic survey of the entire property with elevations, which was verified by the Division of Water Resources. He said Division of Water Resources developed base flood elevations based on the new data that would be used to create the new Floodplain Maps. He said the applicant did a letter map amendment and provided information to FEMA and the application was approved. He said there are some old structures located on the property that have not been washed away by flood waters.

RAMSEY clarified that the intent of the applicant when purchasing the property was to have an event venue. He asked why they are just now talking about rezoning to commercial; why wasn't that done prior to construction of the building.

STROUPE responded when they looked at the property they went to a meeting where staff told them they would have to do a PUD and rezoning and that would be part of the process. She said she misunderstood at what place that should be done. She said there was a miscommunication and they did the process out of order, which was their mistake.

RAMSEY said he drove out to the property and commented that it is beautiful land. He asked with all the land located to the east, why did they build so close to the property line.

STROUPE said they built at that location because of the flood zone, the septic system and where it should go according to MABCD staff (Kelly Dixon) and also where the connection for rural water would come in. She said further north the elevation goes down and there might be the possibility of flooding. She said they built where they felt it was a good distance from neighbors to the west, north and south.

RAMSEY commented that there didn't appear to be parking for 150 people unless they were going to park in the middle of a field.

STROUPE said they intend to have as small weddings as possible and added that they could add on to the parking lot.

RAMSEY asked how the 30 events per year and alcohol consumption provisions are enforced.

STROUPE commented that alcohol will not be served at every event. She said they plan on having a security guard on site so they won't have to wait for law enforcement, along with her and her husband. She said a licensed beverage caterer will serve at any events that have alcohol.

J. JOHNSON asked if the applicant lived at the residence on the property.

STROUPE said yes.

J. JOHNSON asked if this was viewed as a rural business ancillary to the residence.

MILLER clarified if Commissioner Johnson meant a home occupation, and said no, that is why the PUD is required.

J. JOHNSON clarified that this would not fall under the home occupation category.

MILLER confirmed no.

FOSTER asked about the structure located in the southwest area within 25 feet of the adjacent property and if that is where people would congregate for wedding ceremonies.

STROUPE said she would have to confirm the distance because she believes it is further than 25 feet, but yes, that is a small ceremony site. She added that smoking will only be allowed in designated areas. She said the total number of people was changed to 150 and commented that their WEB designer will make the appropriate updates regarding these issues on the WEB page.

ABBOTT indicated where the outdoor wedding site was located which was approximately 250 feet from the adjacent property. He said the gazebo was located along the walking trail but that was not where the ceremonies would be performed.

STROUPE commented that there is an electric fence on the property to the south. She said they will be planting trees in front of that because it is very visible because it is white. She commented that safety is their number one issue and added that one of their grandchildren also lives on the property.

WARREN said he was in favor of this request and wanted to give his reasons. In addition, he commented that he had ex parte communication in the way of an e-mail from Brad and Randy Hiner. He said his family has a farm south and east of Derby and built a barn in the 1980's that they have used hundreds of times. He said they don't rent it because it is for use by their family but they allow other organizations to use it free of charge. He said he understands the fears of the surrounding residents but it has been their experience that they have not seen any of the problems or issues brought up at this meeting. He said noise is a minor situation because this is not like standing on the sidelines of a football game with everyone cheering at once but more like a dinner

party with a small din that is not disturbing. He said they have never had any trespassing or problems of that nature. He mentioned that a friend of his had opened a similar venue and experienced the same fears from surrounding neighbors. He said another similarity was that they also had a gazebo along a creek and when you build near a creek there is going to be flooding and that is part and parcel of building in that location. He said 30 events per year, times five hours per event is a total of 150 hours per year out of 8,000 hours per year. He said he does not believe the fears are real or that the surrounding property owners are going to see a loss of value of their property or enjoyment of their properties.

MOTION: To approve subject to staff recommendation, including verbal changes made at today's meeting.

WARREN moved, motion died due to lack of a second.

J. JOHNSON asked what type of fencing or screening is required.

LONGNECKER said the PUD allows using the existing vegetation as a landscape buffer.

RAMSEY commented that the applicant said she met with staff early on and knew that eventually she would have to get the PUD and change the zoning. He said wouldn't staff have told the applicant that they needed to do the zoning first.

MILLER responded that the applicant attended a Development Review Meeting where staff informs individuals what is required if they want to proceed with an idea. He said County MABCD and other staff were present to provide advice and answer questions they asked. He said it is up to the individual to follow-up and move ahead with the project.

RAMSEY clarified so staff never said eventually you will have to do this but now you are fine.

MILLER responded not in the Development Review meeting.

RICHARDSON asked about permits in other zoning districts for portable restrooms and if the applicant would be required to get a permit each time portable restrooms are used.

LONGNECKER said MABCD issues permits for portable restrooms and a new permit would need to be issued each time they are used.

RICHARDSON said using portable restrooms was part of staff's recommendation.

STROUPE said portable restrooms would not be used.

LONGNECKER stated that the request for portable restrooms was on the application; however, that can be removed if that is what the Commissions desires.

FOSTER mentioned using a 50-foot landscape buffer for screening and referred to the photographs that show that during winter time you can see right into the facilities. He requested that a landscape buffer plan be submitted as part of the approved site plan. He said there is not sufficient evergreen to provide the desired screening.

LONGNECKER said the Commission could approve an additional condition as part of any motion to approve the application.

FOSTER suggested that.

MITCHELL commented said the thought of having 150 people one-half mile away from a public road that floods during a flood, is not a good idea and he will not support it.

RAMSEY said after visiting the site, he can see why people moved out there for seclusion, privacy and to enjoy the wildlife. He said he could clearly see buildings to the west from the event venue and thought that could be a problem. He said he also had a problem with the idea of "we'll build it and get permission later." He said he doesn't feel he can support this particular item and said he would be quite upset if he was one of the neighbors. He said someone can move close to Camp Hyde because they know it is there, but to put this facility in after the fact he feels is an egregious violation.

CHAIRMAN GOOLSBY pointed out for the record that Commissioners have had ex parte communication regarding this application.

DENNIS said although he has sympathy for the applicant; he said in reviewing the application and staff's recommendations for approval, those same recommendations could also be reasons to deny the application. Therefore, he moved to deny the application.

MOTION: To deny the application.

DENNIS moved, **MILLER STEVENS** seconded the motion, and it carried (8-1).
WARREN – No.