

# Jefferson County Planning & Zoning Oskaloosa, Kansas

---

## OFFICIAL

### OFFICIAL MINUTES OF THE JEFFERSON COUNTY PLANNING COMMISSION

#### Minutes of Planning Commission Meeting of February 22<sup>nd</sup>, 2016

**Item 1. Call to Order.**

**Item 2. Approval of the Agenda**

*CHAIRMAN SCHERER CALLED FOR THE APPROVAL OF THE AGENDA AS PRESENTED. VICE CHAIR JOHNSON MAKES A MOTION TO APPROVE THE AGENDA AS PRESENTED. COMMISSIONER WHITE SECONDS THE MOTION.*

Votes were taken by Ayes and Nays as follows:

| <b>Matt Scherer</b> | <b>Paul Johnson</b> | <b>Alex Noll</b> | <b>Jerry White</b> | <b>Denise Streeter</b> | <b>Matthew Finley</b> | <b>Brandon Newman</b> |
|---------------------|---------------------|------------------|--------------------|------------------------|-----------------------|-----------------------|
| DNV                 | Aye                 | ---              | Aye                | Aye                    | Aye                   | Aye                   |

The motion carried unanimously, 5-0.

**Item 3. Roll Call**

| <b>Matt Scherer</b> | <b>Paul Johnson</b> | <b>Alex Noll</b> | <b>Jerry White</b> | <b>Denise Streeter</b> | <b>Matthew Finley</b> | <b>Brandon Newman</b> |
|---------------------|---------------------|------------------|--------------------|------------------------|-----------------------|-----------------------|
| Present             | Present             | Present          | Present            | Present                | Present               | Present               |

Staff Member Sam Henderson, Zoning Administrator was also present.

**Item 4. Approval of the November 23rd, 2015 minutes.**

Chair Scherer asked if there were any corrections or additions to the minutes and mentions a few minor corrections.

**Action:** *SECRETARY NOLL MAKES A MOTION TO APPROVE THE JANUARY 25, 2016, MINUTES WITH CORRECTIONS, COMMISSIONER WHITE SECONDS THE MOTION.*

Votes were taken by Ayes and Nays as follows:

| <b>Matt Scherer</b> | <b>Paul Johnson</b> | <b>Alex Noll</b> | <b>Jerry White</b> | <b>Denise Streeter</b> | <b>Matthew Finley</b> | <b>Brandon Newman</b> |
|---------------------|---------------------|------------------|--------------------|------------------------|-----------------------|-----------------------|
| DNV                 | Aye                 | Aye              | Aye                | Aye                    | Aye                   | Aye                   |

The motion carried unanimously, 6-0.

**Item 5. Public Hearing**

*Chairman Scherer opened the public hearing.*

**PR2016-02:** A request to consider the Final Plat of the Schafer's Ridge Subdivision, a two (2) lot subdivision generally located on the north and south sides of 22nd St. between Spillway Rd and Dam Rd, at the request of Patrick and Kerry Schafer.

**Z2016-02:** A request to rezone Lots 2 of the Schafer's Ridge Subdivision from "RR" Rural Residential to "SR" Suburban Residential and property abutting Schafer's Ridge Subdivision from "SR" Suburban Residential and "RR" Rural Residential to the "AG" Agricultural District, on the north and south sides of 22nd St. between Spillway Rd and Dam Rd, at the request of Patrick and Kerry Schafer.

*Chairman Scherer asked the members if there was any ex parte communication or conflicts of interests regarding the requests and seeing none proceeded with the staff report.*

*Mr. Henderson presented the staff report for PR2016-02 and Z2016-02.*

*Chairman Scherer asked for questions of Staff.*

*Vice Chair Johnson asked about the Health Department letter and how a private well could be declared a semi-public well. To which staff replied that it was a process regulated through KDHE. At this point staff realized the recorder had not been started and began to record the proceedings for later transcription.*

### **APPLICANT PRESENTATION**

*Applicant:* I am Pat Schafer, this is my son Matt. First, I want to thank you all for your time and consideration for this. This has been a long time coming; there's been a lot of work involved in this. A little selfish on my wife and my part to have our son, his wife and our grandchildren nearby. Not a bad thing. To maybe allay some questions concerning the well, there is an existing well and it will only serve his residence. I have my well, if you will permit me, my house is about here. Lot of changes happen on a farmstead over 60, 70, 80 years. There used to be a big 2-story house here that I grew up in, that I took down 2 years ago. There's a well down here that serves this house, barn, livestock and everything else. My well, for this house is down here in this field. It is, so it's right here. Totally separate. Two wells, and my lateral field is out in here His will be up here, more than about 100' apart. Different levels. The reason for the L-shape of that is to allow this area, because it's the only level area that will allow a lateral-field. Everything else is rock, the house will be on rock. I mean there's a lot of rock up there on that hill. You get below the road, there's no rock. It's kind of interesting out there. There's no county water lines. There's no water lines available. Everybody down at that end of the county is on well-water. It's kind of a unique situation. It uh, we struggled with different scenarios of how to put it together. The exception came about because of the 8.45 or whatever acres, just made the numbers work better for what he is trying to do as opposed to the 6. It's about a 2 acre addition, maybe a little bit more. Just right in here. It's a pretty simple deal. There is no, to my knowledge, no plans on anytime in the future to put a dwelling on Lot 2. That's not, to my knowledge, ever going to happen. I do have another son, but he is in New Hampshire, so that's unlikely that's going to happen. And someday they're both going to own it all anyway, so whatever. . . But anyway, that describes it. I don't want to take all of your time and I would be more than happy to answer any questions you might have.

*Chairman Scherer:* Do we have questions for the applicant?

*Secretary Noll:* The other part of the rezoning basically, you're wanting to take part of it that's in RR and SR and roll it back into AG? Am I understanding that part? Leave the two parcels that subdivided part into SR, but roll the rest back into AG?

*Applicant:* Yes. It's simply 2 sections because of the county road. South of the road is hay, on the north part, and farm ground on the south and it will remain so. And just because the well is down there and he needs it on the ground where his well is at. Which is how I bought it from my dad, he passed away and I bought the ground south of the road because I needed it. And so yeah, you see the storage buildings here, they're now gone and then I think these are all cut up. This was all part of it. We did that all into one section. I appreciate the comments Sam made, I do need to meet with the appraiser and get that finished up. But I, if I could take this time to Thank Sam for his insight and his assistance. His help has been wonderful. Understanding the regulations and the job that you folks face to work these things through and let people, to get this done. I appreciate that very much.

*Chairman Scherer:* Did you have a question Denise?

*Commissioner Streeter:* My question is was the zoning change.

*Vice Chair Johnson:* I don't know if this is for the Staff or the Applicant, but what was it again that the County Commission, what was the variance? Or was that on Lot 2?

*Mr. Henderson:* Yes, it was on the south lot, it was the depth to width ratio. So, they don't have enough width here. They're basically going down this line all the way down to the section line here. And so to in order to make 3:1 they would probably have to cut it off about right there.

*Applicant:* Yeah, the well is about here. I don't know if you can see that. The 3:1 would it...

*Mr. Henderson:* It's just under 5:1

*Applicant:* Yeah, so we dropped it to here, arbitrarily picked the section line to make the land description that much simpler. And it's a line that's always existed. When I was a kid, there was a windmill right here. So it's always a spot to pick so... that's why we did that and then that worked out numbers-wise for the value of the pre-appraisal that we did on the land to meet his needs to get this drove home.

*Vice Chair Johnson:* So, with the county's ruling on this and while this applicant doesn't have any potential interest in building on Lot 2, it's available. So, it could be sold, it could be?

*Mr. Henderson:* Yeah, it is an Independent lot. It's Lot 2. And so if some point in the future where it's no longer encumbered as collateral by the bank and they wanted to build a house on Lot 2, they could do that. Or any, yeah, it's an independent lot, whatever intentions currently are, it can be an independent property with its own residence or dwelling built on there.

*Secretary Noll:* Technically the variance has already been granted so, I mean, we're.

*Vice Chair Johnson:* I just wanted a clarification. I mean, I understand people's intentions about how they want to use the land today and, you know, what changes in the future.

*Secretary Noll:* Absolutely.

*Mr. Henderson:* Even with the variance there's plenty of room for a building to meet set-backs. There's no kind of conflicts that way. It's not as if was 90' wide or 40' wide. It's still a couple of, or it's like 150 or so feet.

*Applicant:* 210' feet

*Mr. Henderson:* Its 210' wide. So there is plenty of set-back wide side-to-side and it's like 1200' feet deep. There is no problem with the front & back set-backs.

*Vice Chair Johnson:* Great, thank you.

*Chairman Scherer:* Did I understand the well is on this 2<sup>nd</sup> lot?

*Applicant:* Yes.

*Chairman Scherer:* In order for them, practically speaking, to come up with a water source.

*Applicant:* And it is what it is, there's been many attempts over the years by neighbors to drill for wells, water north of that road and it's all been unsuccessful. It's really unusual too, because then you drop down and you know my well is less than 100' below the road. It's 50' good water. It's all part of the Kansas River aquifer.

*Secretary Noll:* You've got the river table south of the road and likely not north.

*Applicant:* We have an irrigation well, right down here that's the exact same depth as my well. And it's a 1,000 gal a minute well. You know, you go north of the road and you won't get anything. That's just how it always been.

*Chairman Scherer:* Other questions for the Applicant at this time?

*Commissioner Newman:* Lot 2 is purely so he owns his well, right?

*Applicant:* That and to have enough total collateral to collateralize and to make it all fit up, absolutely. There is a separate road entrance at this point here from under the county road, off the county road, there's an established entrance there and I put another entrance here. We worked pretty hard to come up with that line to make them fairly autonomous so that they would stand alone if you obviously there's going to be some documentation to put things down and protect him and his wife in the future and me and my wife in the future because like you say, anything can happen, and we will look into that.

*Chairman Scherer:* Other questions, before I get to ask mine? You have an ingress/egress noted on the Lot 2, apparently it's already existing. In 30 seconds or less could you tell me why that's there or is it just a historical thing?

*Applicant:* Yes. It is a historical thing. I'm glad you said that. It, if you could show the overhead photo, yeah, that will work. All the time that I grew up this was all farmed. This down here was cattle pens, hog pens and that used to extend way on down. All the way down here was down here down this road follow the line there was a ditch along the road down here and that's how we got there. As time went on we decided to put a couple grain bins up and then my brother and I put in the storage business so we developed an entrance there an egress right there to this area here. So that now there's the 2 in there.

*Commissioner Finley:* While we're on that I'm wondering what 9455 right there is zoned as.

*Mr. Henderson:* This is SR currently.

*Commissioner Finley:* And you tore down the storage sheds you said?

*Applicant:* Yes, we had the storage business we started in '94, my brother and I, you know in the storage business it's all about location and at that point in time we were the only game in town. It was a very good 15 years and the last 5 years it barely covered the tax bill and it got to the point that it just wasn't that much fun anymore so I took a flier and took a couple pictures and put them on Craigslist to be torn down and moved off and would like a couple people to call and that's exactly what happened. That was all done last year. It's actually the town of Thompsonville, is where we are, if you're you know there's homes here and on the corner. If you follow that's where my grandma was born up there and my grandfather lived here. This was the town of Thompsonville 120 years ago.

*Mr. Henderson brought up Google images of the site stating that they had newer aerials that might show the storage buildings had been removed but the images were not new enough and still showed the buildings.*

*Chairman Scherer:* Again, any other questions for the applicant?

#### **END APPLICANT PRESENTATION**

#### **OPEN PUBLIC COMMENT**

Chairman Scherer asked if there was anyone who would like to speak in favor of the application.

Seeing no one Chairman Scherer asked if there was anyone who wanted to speak in opposition to the application.

Chairman Scherer asked if there was anyone else that wanted to comment on the application and seeing no one closed the public comment portion of the hearing

#### **CLOSE PUBLIC COMMENT**

**ACTION:** SECRETARY NOLL MAKES A MOTION TO RECOMMEND APPROVAL OF PR2016-02 AND Z2016-02 BASED ON STAFF'S FINDINGS AND THE PLANNING COMMISSION DISCUSSION. COMMISSIONER NEWMAN SECONDS THE MOTION.

Votes were taken by Ayes and Nays as follows:

| <b>Matt Scherer</b> | <b>Paul Johnson</b> | <b>Alex Noll</b> | <b>Jerry White</b> | <b>Denise Streeter</b> | <b>Matthew Finley</b> | <b>Brandon Newman</b> |
|---------------------|---------------------|------------------|--------------------|------------------------|-----------------------|-----------------------|
| DNV                 | Aye                 | Aye              | Aye                | Aye                    | Aye                   | Aye                   |

The motion carried unanimously, 6-0.

Staff informed the applicant when the case would be submitted to the County Commission for a final decision and let them know they would receive notice prior to the meeting.

**DP2015-07:** A request to amend CU2014-02 to include a drinking establishment to sell beer, allow limited food service, and expanded parking and new structures and additions to existing buildings at the Crooked Post Winery located at 7397 K-92 Hwy, Ozawkie, KS, generally located on the south side of K-92 Hwy between Ellsworth Rd and Kansa Dr. at the request of Lori Henderson.

*Chairman Scherer asked the members if there was any ex parte communication or conflicts of interests regarding the requests and seeing none proceeded with the staff report.*

*Mr. Henderson reviewed the staff report for DP2015-07 and the public comments offered at the previous meeting.*

*Chairman Scherer asked for questions of Staff.*

*Vice Chair Johnson: What's the best way to balance between Staff and Applicant?*

*Chairman Scherer: Well, if you're not sure it's for Staff why don't we address the applicant?*

*Vice Chair Johnson: Okay, let me start with Staff. Can you show a better picture of the entryway onto the highway?*

*Mr. Henderson: That's about as close as Google is going to get you. That, again, is conditions about May-June of 2015. There's the entrance leading to Crooked Post off of K-92.*

*Vice Chair Johnson: Are we looking, are there curves within ¼ mile of this entrance?*

*Chairman Scherer: There are vertical curves.*

*Secretary Noll: Yeah, the road is straight but there's a pretty good hill.*

*Mr. Henderson: There is a curve here to the east.*

*Secretary Noll: Yeah, the hill rises pretty good as you go west from the entrance.*

*Vice Chair Johnson: Okay, and do you have the hours that the State regulation is for this establishment?*

*Mr. Henderson: I do not. As far as for the alcohol regulations I believe they can't serve Sunday morning, but that's something that the County has to opt into as far as alcohol regulation goes but other than that they can go to like 2 in the morning or something like that.*

*Chairman Scherer: Do you happen to know?*

*Applicant: Yes. Do you want me to speak?*

*Chairman Scherer: If you would, please.*

#### **APPLICANT PRESENTATION**

*Applicant: Whenever you're ready I have answers to all your questions. First of all my name is Lorie Henderson, my husband Kevin and I ventured into this business at far too old in our age. I met you, you came in one day. Build it and they will come? No. You build it, you have events, you do extra stuff, then they come. It costs us \$3600 a month to keep our doors open. We're doing it. No money in our pocket, but we're doing it. So, we got an idea that, you know there's a lot of people that would bring their spouse but their spouse doesn't like wine. So, let's do the beer. Let's have Kansas beer. That's how this all started. There are 2 licenses that we presently have. One is called Farm Winery license, you have to have 30%, used to be 60 since 2012 it changed to 30% of Kansas grown and raised fruit to keep or to have a Farm Winery the cost of a Farm Winery license is \$500 every 2 years the cost of a Licensed Drinking Establishment which is our other license to sell beer is \$2000 every 2 years. Each license required a \$1000 bond and then the Feds have to have a \$1500 bond to be sure that you're paying your taxes on all of the bonded wine that's in the basement. The beer cannot be in the same storage as the wine is but we have found out that the beer can be served on the same counter that the wine is. We weren't sure of that but that's not a problem anymore, but we can never have beer in the basement because that's where the bonded wine is. So, the making of the wine is strictly agricultural because we follow the 30% our goal is to have 100%. I don't know if any of you know we have 5200 vines and they really kick our butts most of the time, it's a lot of work. This is a lot of work. If we could turn back the clock we would not have done this. This is way too much work. We're in it up to here so we're doing whatever we can. It's working, we've been selling beer since December I think I've had 3 shipments, we get about a case-2 cases at a time and it is working. There are people that have come out, we had a Valentine's Dinner there was a couple men that chose to have the beer over the wine and also with the Drinking Establishment license we are able to do spirits if somebody brought in a bottle in a sack, it's called brown bag law, we take the sack, we serve it he leaves with his sack. We had a man that wanted to drink that instead of, it's no big deal. We could have a whiskey tasting which we're kind of planning to do this summer, something fun to do. We're very small. We keep it very small. The 100 people, never in my lifetime do I want 100 people on our property. The parking we're going to expand some, but I don't even know if we're going to get it done this year. It's just my husband and I that's doing it and it's just a lot of work. We know we need a little bit more parking, we're going to just make it about 10 foot wider*

what we see is there's, going to wineries is a big deal. We have increased the amount of people that are coming from other states that are coming from other towns, it's absolutely amazing and I can't help but think that some of the increase of the sales tax has been because we're there. People are coming from everywhere. They're getting gas. They're going to Chunky Dunkers the barn was completely full on Valentine's weekend and Patricia called me and said that half of them were staying with here because they came to our winery for the Valentine's chocolate trail. Her people coming from Kansas City, that's huge. So, we're very unique. We're a boutique. We never want to be big. You will never see us with loud music outside. We're 58, we're not interested in that. So, the hours that the Farm Winery license has, this is the unopene3d bottles of agricultural made wine you are limited on Sunday from 12-6 through the week, I believe the time is like 2 in the morning. You also are not limited as much on your holidays, a liquor drinking establishment license you can be open on Sunday until 10, 11, 12 o'clock at night I can't remember what that is. So, for Sunday when we had our Valentine's dinner we were able to serve after 6 o'clock because we were not selling unopened bottles, we were serving glasses of wine so we were then within the jurisdiction of the liquor drinking establishment license. It's very complicated. I actually understand it and I probably shouldn't. It's kind of scary. We are the first winery in Kansas to have done this. So, we're getting a little bit of attention that way and it is a really big plus in the world of agritourism in Kanas. Is there any other things that I can answer? The food part, I already have taken care of that. I don't know if you guys understand all this, there's a 140 in Kansas back in prohibition days, you know all that happened and we didn't do anything. In the 80's, I think it was, they started increasing, you were able to drink in restaurants. I'm sure we're all the same age, you remember you had to take stuff in with you and you had to pay the cork fee and all that stuff? They still have some of those laws like the brown sack law, that's part of the old law, back in the 80's I think they started voting by county and you could either stay not drinking at all, which there are 10 counties I believe that do not have any drinking and there's about 30 that have totally wiped out the food requirement to 0, Shawnee County is 0, Douglas is 0, a lot of them surrounding us are 0 and they're just Jefferson County is one of the 60 some that kept the 30% food requirement. The food requirement is only based on my beer sales. Right now we only sell maybe \$4-500 worth of beer, I have \$5000 worth of food that I sold last year because all of my catering goes through my books, so the pizza, the pizza is not really necessary for the food requirement. The pizza oven is to get more people to come out. It's just an added attraction. It makes it interesting. Like I said, we're in the middle of nowhere. I mean we are, our place is 25 minutes from the nearest food, the Paradise Burger is not always open the little barbeque joint has closed down, so we've learned that if we want people to come and stay with us and have a good afternoon and do what we intended to be as a destination winery we had to have some food there. So, we're going to do a pizza ovens, very limited hours probably Friday and Saturday evenings, we may in the winter time we may stay open to maybe 10 o'clock shut the pizza down at 8 that type of thing, we think we're going to start attracting a few of the campers we're hoping. You know, that's a whole other problem in Jefferson County is the campers that come from elsewhere, they come intact, they don't buy from this county the come with it already so we're trying to get them to spend their money when they're here. We've already done a little bit of work in that one picture you had we had to build a counter from the back with a hand washing sink we're going to be category 2. Category 2 on the food licensing, we already have our license approved I'm just waiting to pay. Their fiscal year starts in April. I need to save that \$360 and wait until the fiscal year starts, but Shelly, I can't remember her last name, she's already approved us. When you're dealing with already processed meat, so we would be, even though we would make fresh pizzas we would be buying pepperoni, sausage, that's already cooked, that's already cured, all you're doing is just applying. Category 1 is if you are dealing with fresh meats. Meats is the big deal and some cheeses. Those are the ones where they put you in Category 1 and then that's when you would have stoves and we're not going to have any of that, and we're not going to have our little electric pizza oven until I save \$1000 to buy it because I haven't got \$1000 yet, but I think that's probably the only, did I answer all of that? Anything else?

*Chairman Scherer:* Other questions for the applicant at this time?

*Vice Chair Johnson:* When you say Category 2, how does that deal with fresh ingredients on the pizzas?

*Applicant:* Because the other ingredients would be vegetables, cheeses as long as they are kept in a refrigerator the only difference between Category 2 and Category 3 is the meats. Everything else is the same. As long as we have a

handwashing sink and a food prep sink and you can use your dishwashing sink, I have 2 sinks, the sink behind the bar is what we clean the glasses in and it's a triple sink so I have sanitation sink here, rinsing sink and then the dish washing sink. When I'm not using the sink on the left to wash the glasses with my barmaid system, we take the barmaid out and that's the dishwashing sink. So, that could also be used as a food washing sink, I think they call it, I didn't bring my paper. So, you're peppers, your onions, your that kind of stuff that are to be rinsed they can use that sink. Shelly and I went over that if you need her name or number I can get it for you. I can't remember, I didn't bring it with me.

*Vice Chair Johnson:* At the Kansas Department of Agriculture, you're talking about?

*Applicant:* Yeah, we're under the Kansas Department of Ag, yeah.

*Vice Chair Johnson:* And then can you tell me once again what are the weekly hours?

*Applicant:* Our hours right now that we have chosen are Friday, Saturday, Sunday during the winter from November 1, no I changed it, from December 1 through the end of March we back our hours down 12-6 those 3 days. When it gets warm, the first of April we will extend Friday-Saturday 12-8. We're going to try it maybe June and July we may stay open until 10 if we have people that are there that want to stay. Sunday I will never alter even with the liquor drinking establishment license I don't choose to stay there that long. Most wineries are 12-5, 12-6 a couple of the Kansas City ones will open at 10 or 11 in the morning. I'm not married to the place so I really don't, people say aren't you going to increase your days? No, I need to do something else. I don't want to be here 7 days a week.

*Vice Chair Johnson:* So, would you have a problem if some of those hours were listed as part of your conditional use permit?

*Applicant:* What would you change?

*Vice Chair Johnson:* Well, I meant, you said during the winter hours you said Friday, Saturday, and Sunday 12-6?

*Applicant:* That's what we do, yeah, because people don't come after its dark. We limit ourselves, I don't need you to limit them. If you get me. I mean I limit ourselves because we choose not to be there that long. I don't have to have, what are you getting at?

*Vice Chair Johnson:* I don't know if I'm getting at anything. I'm curious about the, you know, plans change.

*Applicant:* Oh, am I going to stay until 2 o'clock in the morning? Oh hell, no.

*Vice Chair Johnson:* Without it in there, you could through your license though, right?

*Applicant:* Right, that is correct, I could.

*Vice Chair Johnson:* I mean, that's what we're trying to get a handle on and there's also this debate about, I don't want to say impaired drivers but people who've imbibed some on to these state highways. Not trying to get callous about this but trying to understand your needs as a business versus how public safety plays into this also.

*Applicant:* I don't know if you know very much about alcohol, but the wine has about 3 times the percentage of alcohol that beer does. You have to drink about 3 beers, that's about 4 or 5 % is what's in a beer.

*Vice Chair Johnson:* Craft beers have a little bit higher.

*Applicant:* A little bit but not a whole lot. We've been dealing with that issue for almost 2 years now. Because we keep our prices high enough and we keep our clientele just kind of knows what they're supposed to do. They come with designated drivers we keep water, we keep tea, people just, they just know that's what they're supposed to do. We have never, ever had a problem, ever. And we don't plan to and I'll tell you what our, we have a really, really good relationship with Jefferson County Sheriff's Department, an awesome relationship. They watch out for us. They make sure nobody's doing anything wrong and we don't have that kind of clientele. We're not a bar, nor do we ever wish to be a bar. We are a winery. We're a destination place where people can come and relax.

*Vice Chair Johnson:* So you would screen bar patrons?

*Applicant:* We screen bar patrons by keeping the price up high. We're charging \$5 per glass of beer. You don't get the local riffraff coming in and drinking a lot of beer at \$5 a glass. I didn't mean to sound callous but Kevin and I went over this in our minds for a long, long period of time because we don't want to be a bar. We don't want to be the local hangout that people come into that's not what we're about.

*Vice Chair Johnson:* So, if patrons come in for the wine sampling and tasting and then move onto beer if they want to?

*Applicant:* I suppose, I wouldn't but, they could. Sure. It is illegal for a Kansas winery at this point to charge for what they call a tasting and a tasting is not limited by any number and you're tasting has to be an ounce or less. We do not charge because it's illegal. There are some wineries that are doing it. They're not supposed to be doing it, but the state has not, Missouri is mandated by they now have to charge, but Kansas is now you don't have to charge. So, we give our people maybe a half an ounce. I tend to be a little stingy and they get about a quarter of an ounce. You were there. I'm not going to lead people do you like sweet or dry let's put you over here. Rarely do people get the whole thing because that's money out of my pocket when I pour it into somebody's glass.

*Vice Chair Johnson:* A couple more questions.

*Chairman Scherer:* Let me interrupt you Paul, this actually has nothing to do with the permitting process or this process but I think it might help people feel more comfortable. Assuming if you ever had a patron who was obviously impaired that your insurance company would be very upset with you if you didn't do everything you could to keep them from driving and so I wonder if you have some sort of plan in mind if that sort of thing happens?

*Applicant:* Yeah, you just, if that ever happened you just keep them there. I mean they just stay there or you ask the person, if they're with somebody, normally they are. You just say, yeah, it's kind of lined out in our insurance in that there's kind of a plan. It's kind of a no brainer. I mean, Kevin and I are the only employees. We don't have anybody, oh once in a while we've got a lady that works part-time, but we pretty much have a pretty good grip on who's had, if they've had, we haven't ever seen that there was one local gal and her friends were with her and they just plain took her keys. So, we didn't really have to get involved in it.

*Chairman Scherer:* I felt sure that you had to have just because your insurance company.

*Applicant:* We pay \$200 a month just in insurance. We have horrible. The liquor liability is just incredible. But, you have to have it because you just don't know.

*Vice Chair Johnson:* I don't know if other people have questions but so you're thinking of at some point expanding parking? And how does that play against what kind of seating you're thinking about for your food service?

*Applicant:* Seating?

*Chairman Scherer:* How many seats will you have?

*Applicant:* Oh, this back room is 900 square feet. I have 36 chairs that go with little tables we don't go over that. We don't crowd them. The Valentine's dinner there were 2 days and I only let 36 in there. These little patios over here I think I have 4 tables on each side. The most we have ever had in there, the most we've ever had on our place at one time was during the grand opening party when Dr. Gary McNight and the True North Band came we counted about 70 people and it was way too much for me. I mean there's just way too many people. So, we don't advertise for that. We're not having big bands and selling tickets like so many of them are and when you don't do that kind of thing you get the people that they want the small. Anybody that comes to our place, they will tell you, "We come here because you keep it quaint." Did I explain that very well? We had a cheese pairing, a sommelier class, which is an expert on how to sniff, swirl, and sip and anyway she's a friend of ours and her husband retired and they came Saturday and I think I had right at 30 people just exactly what we wanted and they all, everybody, I told them thank you for coming and they all said, "We come here because you keep it small." They don't want to go to the big places. The parking is going to be because, we've got a bunch of rock. Have you been by there? No, okay. There's this right here, we had King's Construction do that. It's big boulders because the building didn't go down as much as what we wanted it to, so it kind of sits up on a hill. So, we had horrible washing. So, Kent put these big huge boulders up in there. People are afraid to park real close to the boulders and so they'll let a big old space well then they're clear out into here and then nobody wants to park off into the grass, so all we're going to do is go down into here and Kevin says about 10 or 20 feet there's a septic tank the little top right there so we kind of have to be careful and not go too far but that's all he wants to do is just extend the gravel so people are more comfortable parking. Not to hold any more people.

*Chairman Scherer:* Other questions for the applicant or for staff?

*Vice Chair Johnson:* This may be for staff. Is it a parking space per 3 customers?

*Mr. Henderson:* If they have a set seating arrangement that's how it is. If they don't have set seating it's based on the square footage of the building. It's one space for every 100 square feet and so they exceed both, for 36 seats they need 12 if they had another 12 outside then they'd need another 4 so 40 spaces and they count 50 on their site plan.

*Secretary Noll:* That would be 16 then wouldn't it 12 and 4.

*Mr. Henderson:* Oh, sorry, yeah. I added 4 onto 36.

*Vice Chair Johnson:* How does special events like they got up to 100 how does that play against it, KDOT's assessment of traffic flow and their taking control?

*Mr. Henderson:* Again, the trigger for KDOT I believe was the 30 trips in and out per day and so if it was a one-off event I imagine that KDOT probably wouldn't require them to upgrade but if consistently they were getting to or exceeding that point it would be required but again that is for KDOT to monitor because it's on the state highway there. I can't tell you what their methodology is.

*Applicant:* I think it has something to do with how they built the entrance. They tube size that they put in there as I remember.

*Mr. Henderson:* And what the materials the entrance is made of.

*Applicant:* And the materials and what it would withstand so many trips a day.

*Mr. Henderson:* And right now I believe you guys have a gravel entrance and if you exceed the next step up is to go to a hard surface, I believe.

*Secretary Noll:* Maybe increase the width.

*Mr. Henderson:* So, they have their, KDOT has their calculations and their requirements right now they, Crooked Post, meets their requirements for the entrance they have. If they bump it up to the next level KDOT will require them to upgrade. Again that is something that if you wanted to the County could require them to have a concrete entrance or something like that, but KDOT standards they are currently meeting and I believe that the County has decided to let KDOT kind of reign on the highway there.

*Chairman Scherer:* As far as the count goes, I don't recall what it is, but you don't just take one day. I think you actually have to do a 7 day count and average that out to get 30. You could have a fire one day and you would have so many people coming in and out that you'd have to upgrade the entrance.

*Applicant:* I can tell you that this little portion right here is gravel and then King's laid that asphalt. You can kind of tell where it's black, see that's really asphalt. It's just that little bit up there that is the gravel part KDOT has only been out once in a year and a half to put more gravel on that area. So, I think that's pretty good and that was after it was initially built. Because I was there the day they came and brought it and I told them they did a nice job, I didn't have to do it. So, if that tells you a little bit. To me that told a lot. It's like that's pretty good, somebody did a good job because you would have thought that it would've sunk in or anything but it was just filled up the one time. It was like last summer and then the rest of that is asphalt. We'd like to be able to make the parking lot asphalt, too, because you wouldn't believe the number of people that come in and say, "Well, I have a motorcycle but I don't want to have to drive on gravel," it's just a little tiny bit of gravel, come on.

*Chairman Scherer:* Now you've raised a question I'd like to ask, is there some particular reason you didn't build the exit as asphalt, or was it because KDOT wouldn't let you build on their right-of-way?

*Applicant:* I don't know. I can't remember. I really wasn't involved. Maybe they didn't want that asphalt. I don't know, because that's a good question, why didn't Kent go all the way to the?

*Chairman Scherer:* It would be on the right-of-way.

*Applicant:* That might have been it. I didn't get involved. I know Kent and the highway guy weren't seeing eye-to-eye the day that this all happened so I'm not sure. I don't know if they'd had words from some other project.

*Chairman Scherer:* Other questions at this time?

*Commissioner Finley:* And you were saying earlier that there's no problem coming in and out as far as people coming off the highway or traffic?

*Applicant:* We've never seen anything. I tell you what I do see and I have told this to Robert Papa before because his wife comes in, is the amount of speeders that are coming down that hill heading this way, lord, and I've invited them, "you all can sit in my driveway and run speed traps," but they can't there's a law that says they can't sit on commercial property and do that because I've invited them to come the amount of people that shoot down off that hill to the east because that's the end of, we're the end of 55 and I think the 65 is somewhere in here so they're just going down that hill reaching that 65 but our, I've never seen any of our customers ever have a problem. We don't ever have a problem but there are a lot of people that speed down that hill.

*Mr. Henderson:* If you ever have that conversation with them again you can tell them that you're not a commercial property you're an ag property.

*Applicant:* I will, I will see her next week. I will, that's right.

*Chairman Scherer:* Other questions for the applicant?

### **END APPLICANT PRESENTATION**

Chairman Scherer reiterated that the public comment portion of the hearing had been held at the previous meeting and is closed.

*Vice Chair Johnson:* I guess I had one last question and it might be for the applicant. It says here that the lighting will be minimal and on a timer?

*Applicant:* Where's it say that?

*Vice Chair Johnson:* In your statement of intent, "Lighting will be installed along steps and railings and the retaining wall next to the parking lot, they will be minimal and on a timer."

*Applicant:* Yeah, we don't have, that's something that we're, like I said, my husband and I are doing all of this and so we don't, we've got lighting on the railing that was built, there's little posts and we put solar lighting. When he gets done building the, there's going to be another patio, so on the left side of that right there that's where the new patio is coming, right now we've got a big trench that he dug last fall and we got stopped because of the weather, that's the footings for the little matching wall and then the pizza oven is going to go on one of those walls. He's going to bring out some power from the basement and then bury it down through there so that we can have electric lighting on the steps going down. Because we don't have enough lighting for when people leave like if it's after like we have a shopping deal maybe on a Thursday evening by the time people leave it's dark so we know we need some more lighting but we just, you just don't always plan it, you know when you build as you go you don't all do it, but that's one thing we were going to add.

*Vice Chair Johnson:* So you don't have any lighting to the parking lot?

*Applicant:* No, and what I think he's going to do is I think he's going to mount it up on the roof and then shine it down into the parking lot because we don't want a post. We don't want to put something somebody's going to hit because that parking lot is just open and then it opens up into the side yard and we just don't want to install a whole post so he thinks he's going to put something up on the roof that will shine down into the parking lot for people. We haven't got that far. He does one thing at a time and it's not what I want him to do.

*Chairman Scherer:* Further discussion or is somebody prepared to make a motion?

*Secretary Noll:* Sam refresh me does the conditional use permit transfer with the property?

*Mr. Henderson:* Yes. As long as it doesn't go for a year without the use being active it will run with the property. So, the Hendersons down the road could sell to Joe Schmo and he could operate the winery he could sell beer he could do anything that was authorized under the conditional use.

*Chairman Scherer:* I'm not sure that he holds the license.

*Applicant:* That is correct, the actual license from the state would override what you just said.

*Mr. Henderson:* Well, yeah, he would have to go get the license.

*Secretary Noll:* From a county standpoint with the conditional use permit it would transfer.

*Mr. Henderson:* As far as what we regulate. He would necessarily have to go to the state and get the alcohol license to sell and everything else.

*Applicant:* One thing you have to remember is there is a form called an ABC806 because this county is still a 30% food requirement Sam had to sign the 806 to approve us to get that liquor license. So, if the county doesn't approve, sign the 806, then the state would not have given that person the liquor license. So, just because your CUP for the property may have been what I'm asking for to do, the state's still going to override who gets a liquor license or not.

**ACTION:** SECRETARY NOLL MAKES A MOTION TO RECOMMEND APPROVAL OF DP2015-07 BASED ON PLANNING COMMISSION DISCUSSION AND FINDINGS OF STAFF WITH THE FOLLOWING CONDITION:

1. THAT HOURS OF OPERATION CEASE BY 12:00 AM MIDNIGHT EACH DAY OF OPERATION.

COMMISSIONER WHITE SECONDS THE MOTION.

Chairman Scherer: Does staff have anything to say about the condition?

Mr. Henderson: That's just whenever they are open regardless of the day of the week they close at midnight. They can stay open up until midnight but are not required to stay open until midnight. So, if currently they operate Friday, Saturday, Sunday, maybe Monday they can stay open to midnight if they want to. If they decide to open up some other time of the week they can do that and stay open until midnight if they want to. So, in my understanding it doesn't limit them to what days they can be open it just says whenever you're open you close at midnight.

Chairman Scherer: That's certainly how I understood it.

Secretary Noll: That was my intention.

Chairman Scherer: Further discussion?

Votes were taken by Ayes and Nays and recorded as follows:

| Matt Scherer | Paul Johnson | Alex Noll | Jerry White | Denise Streeter | Matthew Finley | Brandon Newman |
|--------------|--------------|-----------|-------------|-----------------|----------------|----------------|
| DNV          | Aye          | Aye       | Aye         | Aye             | Aye            | Aye            |

The motion carried, 6-0.

Staff informed the applicant when the case would be submitted to the County Commission for a final decision and let them know they would receive notice prior to the meeting.

**CU2015-04:** A request for a conditional use permit to repair and sell outboard motors and boats at 11136 39th St, generally located at the northwest corner of 39th St and Ferguson Rd, at the request of James Ruttenberg.

Chairman Scherer asked the members if there was any ex parte communication or conflicts of interests regarding the requests and seeing none proceeded with the staff report.

Mr. Henderson read the staff report for CU2015-04.

Chairman Scherer asked for questions of Staff.

Vice Chair Johnson: Does Windbreak, LLC have a business or operation on this land?

Mr. Henderson: They are the property owners.

Vice Chair Johnson: They're just the property owner.

Mr. Henderson: Right, so they lease the property. They also own the property immediately to the east with the multi-family housing on it.

Vice Chair Johnson: So, when you say in your staff comments that the applicant has supplied a contractor's affidavit.

Mr. Henderson: That's the affidavit that says that even though he's not the owner of the property, the owner gives him permission to make this request. So, he basically says that he's okay with the use being located on the property.

Vice Chair Johnson: And is there a time limit on that affidavit?

Mr. Henderson: No, there's no expiration date.

Vice Chair Johnson: So it lasts forever? Can the contractor, can Windbreak, LLC change their mind?

Applicant: I think I can address that. Maybe a little bit better. My name is Jim Ruttenberg, the James Ruttenberg in question. I also work upstairs in the County Attorney's Office I know a couple of you guys know me, Mr. White for sure, having care and control through a leasehold on that land and being the owner's agent, by way of that affidavit, no he cannot change his mind. The only mind changing that can take place is if I move. If I move the business will go with me.

Mr. Henderson: There you go from the lawyer's mouth.

Chairman Scherer: Ironically, the CUP would stay.

Applicant: That's true. So, if Rodge wants to open a little boat repair business that would be his prerogative.

*Chairman Scherer:* Thank you for the clarification.

*Applicant:* You're welcome. Anything else?

*Chairman Scherer:* There may be questions for you but I don't know if there's any other questions for staff yet. I would like to point out since I forgot to do so earlier that this is actually a continuation of this hearing it's just that we didn't do anything last time except decide that we were going to continue until today. We learned our lesson and didn't open the public hearing. At this time I will ask Mr. Ruttenberg if he has anything to say as part of the public hearing.

#### **APPLICANT PRESENTATION**

*Applicant:* Well, just briefly, it's a little hobby business basically is what it is. And the way it got started is I was diagnosed with a number of years ago with neuropathy in my hands so my fingers are kind of bent a little bit. I was told by my neurologist to tinker with something, build model airplanes or whatever. I've always been a lake lover. Always had a boat. When I was 16 I was on Lake Michigan. I'm from Chicago. I'm a transplant. So, I have no deference to either KU or K-State. I take a neutral position.

*Chairman Scherer:* Northwestern has the same colors.

*Applicant:* They're purple. As a matter of fact the high school I graduated from the class was so big we had to rent out Dike Stadium which is Northwestern's Stadium. I laugh at my boss, who graduated from Valley Falls and said there was 42 people in his graduating class, I had 1442 people in my graduating class. So, anyway, last year for instance I sold 25 boat motors. Basically, what I do is I buy old possibly blown, sometimes not blown, or whatever and in the garage that is existing and the curtilage to the garage is my work area where I'm basically taking the motors apart and putting them back together. In conjunction with the motors, which is 80% of the business, I have boats okay that belong to customers that the motors are going on and from time to time when I go to buy motors unfortunately I'm stuck with buying the boat and we were talking about scrapping and what happens more often than not is I take it down to the junk yard and pay them \$50 and dump it off there. Apparently what kicked in the conditional use requirement was the fact that I have boats out in the yard, essentially. I just wanted to, you know this is not a full-scale Arnie's Marina what I've got going on there and as far as the hours of operation, I don't work after dark ever so at best it would be 9 o'clock in the summer time and 6 o'clock now. I don't have outdoor lighting. I may rebuild a carburetor or something in my garage but that's within the residence. I never have customers come after dark. The only customers that come back and forth are people that are dropping off boats and/or motors. So, that's pretty limited. Based on last year's sales, 30 people over the course of a season. Hopefully that gives you a little bit better of an idea.

*Chairman Scherer:* Does anyone have any questions for the applicant at this time?

*Vice Chair Johnson:* I probably have a couple. So, you could live with hours at sunset?

*Applicant:* Absolutely.

*Vice Chair Johnson:* As far as that. I guess the other point is.

*Applicant:* What I would, I cut you off, excuse me. Limited to hours of sunset, well it doesn't get dark until a half hour after sunset, so. That notwithstanding, outside the curtilage of the home. Certainly if I'm in my garage, I'm not disturbing any neighbors.

*Vice Chair Johnson:* Right, I'm good with that, too.

*Commissioner Newman:* As long as you're not taking the motors inside and starting them inside.

*Applicant:* Well that would have probably a detrimental health effect on me. I haven't gotten to the point where I'm suicidal yet. It may happen someday, but it's not today.

*Vice Chair Johnson:* I don't know for staff, but I mean it's a hobby for him now and if it turned more successful and he had 2 assistants, that's all permissible, that's all permissible under this request.

*Mr. Henderson:* Yeah, the conditional use doesn't limit him if it was basically a home based occupation and everything was inside he would be limited to one other employee that doesn't live on the property. A conditional use is not subject to that limitation. He hasn't, I don't believe that he stated that he has any other employees in the statement of intent, but the statement of intent as far as I'm aware is limited to he himself working on the motors and so that is what the request would be and so if he wanted to increase the scope of that to have employees and things of that nature it would need to be

noted here or maybe as a limit in the conditions that in the future he might be limited to X number of employees. But, as far as the reading of the statement of intent that is what the conditional use permit would necessarily be restricted to and if they wanted to exceed that they would have to come back through and be changed. Does that make sense?

*Vice Chair Johnson:* So, the statement of intent then sets the parameters for this particular conditional use permit?

*Mr. Henderson:* And each, that's why the statement of intent is required, because if it's not and if somebody were to call in and say somebody is doing something it doesn't meet what's down as the conditional use permit, then unless we listed everything that was in the statement of intent in that resolution that was approved by the County Commission then that would govern it. But, if for example we had a conditional use permit that's granted for motor boat repair and sales and salvage and conditions on the hours of operation, like I say I look at the statement of intent he's saying that he's repairing them himself he doesn't have like a full blown motor boat repair business out there going 24/7 that type of thing so that's what we would use to gage if he's still in line with what was approved by the County at the time it was considered.

*Vice Chair Johnson:* I don't think I understand that.

*Chairman Scherer:* I'm not sure I agree.

*Commissioner Finley:* I guess other than running the motors from a noise perspective it's relatively quiet I assume?

*Applicant:* Oh yeah. The majority of my testing is on Lake Perry. I'll start up a motor in the driveway or in the front of the garage for 30 seconds, yeah it runs okay now I can go to the lake.

*Commissioner Finley:* I mean you have a neighbor right across the street and they don't seem to have

*Applicant:* To address your question, when I do actual installations motors weigh 2-300 pounds, okay, I do have a kid that lives in one of those apartments that comes over and helps. But I don't have any full time employees quote unquote. When I need help on the labor he cleans up around the house he takes stuff to the salvage yard, that kind of thing.

*Vice Chair Johnson:* So, you're not boring out motors?

*Applicant:* No, NAPA does bore them for me if I need them bored. I don't have any machinery or any type of heavy equipment. I have a little cherry-picker. In fact I call Doug Porter when I need a forklift to lift a boat.

#### **END APPLICANT PRESENTATION**

#### **OPEN OF PUBIC COMMENT**

Chairman Scherer asked if there was anyone who would like to speak in favor of the application.

Seeing no one Chairman Scherer asked if there was anyone who wanted to speak in opposition to the application.

Chairman Scherer asked if there was anyone else that wanted to comment on the application and seeing no one closed the public comment portion of the hearing.

#### **END OF PUBLIC COMMENT**

**ACTION:** *VICE CHAIR JOHNSON MAKES A MOTION TO RECOMMEND APPROVAL OF CU2015-04 WITH THE FOLLOWING CONDITION:*

- HOURS OF OUTDOOR OPERATION SHALL CEASE BY A HALF HOUR AFTER SUNSET EACH DAY OF OPERATION.*

*COMMISSIONER NEWMAN SECONDS THE MOTION.*

*Discussion of the motion ensues especially regarding specifying the condition is limited to operating outdoors and what determines the time of sunset. A result of the discussion was instead of using sunset a specific time should be used. The applicant was amenable to 9pm.*

*VICE CHAIR JOHNSON AMENDS HIS MOTION TO RECOMMEND APPROVAL OF CU2015-04 WITH THE FOLLOWING CONDITION:*

- HOURS OF OUTDOOR OPERATION SHALL CEASE BY 9:00PM EACH DAY OF OPERATION.*

*COMMISSIONER WHITE SECONDS THE MOTION.*

Votes were taken by Ayes and Nays and recorded as follows:

| <b>Matt Scherer</b> | <b>Paul Johnson</b> | <b>Alex Noll</b> | <b>Jerry White</b> | <b>Denise Streeter</b> | <b>Matthew Finley</b> | <b>Brandon Newman</b> |
|---------------------|---------------------|------------------|--------------------|------------------------|-----------------------|-----------------------|
| DNV                 | Aye                 | Aye              | Aye                | Aye                    | Aye                   | Aye                   |

The motion carried, 6-0.

Staff informed the applicant when the case would be submitted to the County Commission for a final decision and let them know they would receive notice prior to the meeting.

**Comprehensive Plan Review:** The annual review of the Jefferson County Comprehensive Plan.  
*Mr. Henderson read the staff report for the Comprehensive Plan Review.*  
*Chairman Scherer asked for questions of Staff.*

**ACTION:** VICE CHAIR JOHNSON MAKES A MOTION TO POSTPONE THE REVIEW OF THE COMPREHENSIVE PLAN TO THE MARCH MEETING. COMMISSIONER NEWMAN SECONDS THE MOTION.  
*Discussion ensues. The pending meeting for public input on a Commercial-Recreation Overlay and District is discussed as well as what information the Planning Commission would like to discuss at the March Meeting was discussed including how in sync the subdivision and zoning regulations are synced up with the comprehensive plan. Planning Commissioners were interested in exploring how the Comp Plan could be integrated more into the subdivision and zoning regulations and seeing how much AG land has been rezoned and what has gone from residential back to AG.*

Votes were taken by Ayes and Nays and recorded as follows:

| Matt Scherer | Paul Johnson | Alex Noll | Jerry White | Denise Streeter | Matthew Finley | Brandon Newman |
|--------------|--------------|-----------|-------------|-----------------|----------------|----------------|
| DNV          | Aye          | Aye       | Aye         | Aye             | Aye            | Aye            |

The motion carried, 6-0.

**Item 6. Public Comment**

*Chairman Scherer noted that there were no members of the public present to make comments.*

**Item 7. Old Business and General Staff Report:**

**Old Business:** *Mr. Henderson reviewed the status of the previous month's cases and gave a general update as to upcoming cases. The Planning Commission decided that only 3 members should go to the meeting to avoid any possible type of open meetings conflicts.*

**Item 8. New Business: No new business was discussed.**

**Item 9. Adjournment**

**Action:** Vice Chair Johnson made a motion to adjourn. Secretary Noll seconds the motion. Motion carried unanimously. The meeting was adjourned at approximately 9:17 PM.

Minutes taken by:

  
 \_\_\_\_\_  
 Sam Henderson, Zoning Administrator

Approved:

*March 28, 2016*  
 \_\_\_\_\_  
 Date

Chairman:

  
 \_\_\_\_\_  
 Matt Scherer

Secretary:

  
 \_\_\_\_\_  
 Alex Noll Secretary  
*Brandon Newman*