

EXCERPT OF THE DRAFT APRIL 21, 2022 PLANNING COMMISSION MINUTES

Application #2204-1964 (Dan Barrow Trading Co., Inc) to rezone approximately 30.00 acres from a C-2 (Highway Commercial) Zoning District to an I-2 (Heavy Industrial) Zoning District and to consider Application #2204-1965 for the approval of a Special Use Permit to allow operation of a Log Yard including a sawmill, fumigation, offices and auxiliary residential uses. Said property is commonly known as 2520 Eisenhower Road and is located on the South side of Old US-50 Highway and on the West side of Eisenhower Road, in the Southeast Quarter (SE ¼) of the Southeast Quarter (SE ¼) of Section 15, Township 17 South, Range 19 East, in Franklin County, Kansas.

Staff Presentation: The Chair opened Staff Presentation.

K. Cook stated he received a call from Sonny Burch stating that he was supportive of this request. Mr. Burch also stated that he did not see a need for a 200-foot separation distance from his property line.

K. Cook presented the staff report for consideration of an application to rezone approximately 30.00 acres from a C-2 (Highway Commercial) Zoning District to an I-2 (Heavy Industrial) Zoning District and to consider Application #2204-1965 for the approval of a Special Use Permit to allow operation of a Log Yard including a sawmill, fumigation, offices and auxiliary residential uses in accordance with Article 23 of the Franklin County Zoning Regulations. The subject property, addressed as 2520 Eisenhower Road and is located on the South side of Old US-50 Highway and on the West side of Eisenhower Road, in the Southeast Quarter (SE ¼) of the Southeast Quarter (SE ¼) of Section 15, Township 17 South, Range 19 East, that was submitted by Dan Barrow Trading Co., Inc.

K. Cook briefly addressed each of the Golden Criteria enumerated in the staff report for use by the Planning Commission in making the Findings necessary to approve or deny the requested rezoning and special use permit. This included discussion on the proposed rezoning to the I-2 District and consideration of approving a Zoning of Lessor Change, Section 23-5.05 of the Zoning Regulations, with approval of a Planned Development Overlay District, Article 15 of the Zoning Regulations. After weighing the merits of the request, its implications to the surrounding property owners and the benefits to the greater community, Cook stated that he could not recommend approval of rezoning to the I-2 District and recommended the Planning Commission consider a zoning of a lesser change to the Planned Development Overlay District with a basic zoning district of C-2, Highway Commercial District, Staff recommends that the Planning Commission recommend denial of the Special Use Permit Application #2204-1964 as such use would be considered as part of the Planning Development Overlay District to the Franklin County Board of County Commissioners based upon the Findings listed herein. However, if the Planning Commission determines that the proposed Special Use Permit Application is appropriate at the proposed location, should be considered in addition to the PD Overlay District and finds that the request complies with the factors listed in Section 23-5.04 of the Franklin County Zoning Regulations, staff would recommend the Planning Commission consider the approval subject to conditions that adequately mitigate negative impacts that may be associated with this application and which will make sure the use is compatible with and sensitive to the surrounding area and maintain the rural character.

K. Cook had nothing further to add unless the Planning Commission had any questions.

K. Stottlemire asked how is the existing propane tank storage zoned?

K. Cook stated the C-2 District allows for the propane tank storage by approval of a Special Use Permit. That was approved with a Special Use Permit within the last 2 years.

K. Stottlemire stated when he received the packet and read through the Staff Report he started doing some research of other logging operations located in Kansas and some other states. Logging operations are actually considered agricultural.

K. Cook stated he agrees that the general logging operation, going and harvesting of logs, is agriculture. In his opinion, this operation is similar to the COOP or grain elevators that are rezoned and require Special Use Permits. This logging operation is an agriculturally related business. The harvesting of the logs is definitely agricultural however, the harvesting is not being conducted on this property but the logs are actually harvested somewhere else and brought to this facility.

K. Stottlemire stated farmers rent ground and brings the crop to a different site that contains their storage bins. There are a lot of big farms operations that do this. Everything he has seen and heard as part of forestry, fish and game are agriculture. This is why he is confused as to why this particular activity has to be zoned heavy industrial when the logs are a natural product that grows out of the ground just like grains? This activity is also similar to ranchers that buy their cattle from another facility and raise them on their property and then turn around and sell them. His fear is that if they are going to consider this activity as heavy industrial they could possibly start considering farmers and ranchers operations the same way.

K. Cook stated the main type of business he could compare this activity to is the COOPs and the grain elevators. The COOP has property up by East Tennessee Road, that area was rezoned to Industrial as part of their operation to do grain storage. The agricultural side of things is one of the most difficult activities to deal with from a zoning perspective. When you read through the State statutes, there is no real specific definition in the zoning statutes for what is agriculture. When looking through court cases, the court states you have to look at each activity on a case-by-case basis and depends on the facts and how it is being used. There are a lot of different items to look at and he couldn't find anything that gave him a case that stated the proposed activity is absolutely agricultural.

K. Stottlemire asked if the applicant was to discontinue their operation, what other activities could be done on this property under the industrial zoning district?

K. Cook stated according to State statutes, agricultural activities are exempt from zoning, which includes the storage of agricultural equipment on the property. The I-2, heavy industrial, district is the County's most intense use and is generally intended to be for activities that are going to possibly create substantial impacts to neighbors or the road system. Usually you wouldn't want a heavy industrial use in an area that is anticipated to be more residential. Normally you would want a buffer between heavy industrial and residential uses. Any light industrial uses that are permitted would be permitted in the heavy industrial district such as aircraft repairs/sales/storage, building materials, contractors offices and equipment, grain elevators, lumber yards, machine sales, some slaughtering is permitted in the industrial districts and body shops. Usually the industrial districts are for activities that tend to create smells, noise, vibration or large amounts of truck traffic. These are the activities that are listed as permitted uses, there are also activities that are listed that require the approval of special use permits. These activities would be significantly more impactful such as refinery operations.

K. Stottlemire asked if this property was to be rezoned to the I-2 Zoning District, it wouldn't be limited to only this type of activity should they sell the property as long as it is listed as a permitted use?

K. Cook stated if the business that would be interested in moving to this property is listed as a permitted use then they can conduct that activity. However, if it is a permitted use listed in the C-2, highway commercial, district then they would have to rezone to that zoning district.

B. Livingston stated he was a member of the City of Ottawa Planning Commission as one of the positions that must live outside City limits but within 3 miles when the logging operation was approved. As he recalls, the operation approved as a Conditional Use Permit correct?

K. Cook stated that he wasn't able to find anything in the County records or when he contacted the City. However, there has been some staffing changes with the City of Ottawa so he wasn't able to find anything other than the property was zoned commercial.

B. Livingston stated he remembers when the applicant came before the City of Ottawa Planning Commission and presented their application. They stated at that time the logs were locally cut and they would be storing the logs until they could be loaded and transported to northcentral Kansas to a sawmill. Under the C-2 Zoning District, could the County consider issuing a special use permit with the conditions that Staff stated earlier? Is the Planned District an option to consider besides rezoning to the I-2? If changing the zoning to I-2, and the owners decide to sell the property, it would allow I-2 activities that could impact the neighbors. If the Planning Commission thinks the proposed activity is something tolerable to consider, couldn't we look at it from the perspective of the commercial zoning with a defined special use permit with a date for renewal?

K. Cook stated that generally when we consider special use permits we do designate a date to consider renewal. His understanding is that the applicant is wanting to move forward with this project as soon as possible. He couldn't find anything that allowed the proposed activities with an approved special use permit. If a special use permit was approved for the proposed activities by the City of Ottawa, then when it came back under County jurisdiction then whatever was approved would have continued to run with the land. So, unless it expired or there was some other requirement that removed the special use permit, that special use permit may still be valid. His opinion is, with how the County Regulations are worded, the operation of the log yard is not listed anywhere in the regulations. However, when you look through all the types of uses that are listed the proposed activity is most closely associated with lumber yards with outdoor storage or sawmills and storage yards.

B. Livingston stated there was a sawmill that used to, or maybe still does, operated along 24 Highway. The impact that sawmill had to the surrounding properties was significant. In his mind a sawmill is an industrial use when you have the stripping of the bark and the offing materials.

K. Stottlemire stated he doesn't believe they are proposing to operate a sawmill. This would primarily be a logging operation.

K. Cook stated the primary activity would be logging. There would be a small amount of sawing if there is a log that doesn't meet their criteria as far as length or some other reason, they would cut it on-site for local people so there is no waste of logs.

S. Hornbuckle stated that it was mentioned that logging has never been considered agricultural, per case. If the County did consider this particular logging operation as an agricultural activity, what would the applicant have to do to get approval? If the applicant wanted to push the fact that this is an agricultural activity, would the County have no regulations? Farmers haul their grain from different properties that they don't own, just like the applicant is doing. Spencer Farms has one of the biggest grain storage bins for personal use on their property. How is the grain storage bin for crops grown on property that the farmer doesn't own different from what the applicant is proposing?

K. Cook stated that the zoning statutes don't actually define what agricultural activities are. There are some activities that the courts have defined as agriculture and others that are not considered agriculture. Horses are not officially considered agriculture so building a barn for horses would not be exempt. However, raising canaries are considered agriculture. When you look through some of the other definitions of agriculture usually it discusses an operation where the individual is caring for and raising the crops themselves and also includes the harvesting and storage of materials.

S. Hornbuckle asked if the applicant did go the agricultural route, would the County have any control of the activity as all?

K. Cook stated if the activity was determined to be an agricultural operation it would be exempt from all zoning regulations.

Chair asked if there was a traffic study conducted? Would there be any additional traffic on the roads?

K. Cook stated there was no traffic study conducted. The applicant stated there would be no change in operation so there would be no additional traffic.

Chair stated there isn't a sawmill at this location right now and we are considering approving one so now someone could haul a log out there to be cut so now there is one more vehicle.

S. Hornbuckle stated this business isn't open to the public. He contacted them awhile back to saw a log for him and they stated that is not their main business and wouldn't cut it.

K. Singleton asked if they have paused the activity while this application is being considered?

K. Cook stated they have continued operation and have been going a long time. It did pause their plans for constructing the new building.

K. Singleton asked if it was Staff's recommendation to remain in the C-2 Zoning District with a Planned Development overlay with the specification listed on page 14 of the Staff Report?

K. Cook stated yes, that is Staff's recommendation and that it was anticipated that some of those specifications would need to be discussed and potentially changed.

K. Stottlemire stated that this business has been in operation since 2005, it has employees, it hasn't caused any problems in the past and now they are just trying to save some money by doing the fumigation of the logs on-site by licensed personnel. The type of fumigation they are doing is same stuff is used in grain elevators to kill the bugs in the grain bins that are here in the City of Ottawa. He would like to see the applicant to be able to continue operation.

C. Campbell asked if the fumigation process was strictly for the applicant's logs and not for the public's logs?

K. Cook stated that one of the specifications that was listed in the Staff Report was that the fumigation was strictly for the applicant's use but that is one item that the applicant wanted to discuss. The applicant would have spent significant money into building the fumigation facility so would like to continue some type of fumigation activity even if the applicant was no longer operating the log yard. Staff's intent was to look at a way for the existing operation to continue while attempting to protect neighbors and the type of use that would probably be there in the long term.

S. Hornbuckle asked if they are currently fumigating the logs under tarps? Now they are proposing to build a structure so can do the fumigating inside a facility, so basically improving the situation.

The Chair closed Staff Presentation.

Applicant Presentation: The Chair opened Applicant Presentation. Keith Brock, attorney with Anderson & Byrd, LLP, was present to represent the applicant. Sometimes businesses come into a community and set up shop that is non-compliant because they didn't do their research. That is not what happened in this case. Before Mr. Barrow came to Franklin County he met with Larry Walrod, former County Planning Director, and asked if he would be able to conduct the activities that he was proposing and was told yes, he could do what he is proposing to do. One of Mr. Barrow's competitors went to Mr. Walrod in an attempt to shut Mr. Barrow's business down because he didn't want the competition and was told they had the right to do what they were doing. Based on what he was told, Mr. Barrow purchased the property and put a lot of money into the property and have been operating for 20 years. He understands most of this isn't in writing but he wanted to make sure the Planning Commission knew that Mr. Barrow did ask the questions before beginning

operation. Mr. Brock stated that it is his belief that either Mr. Walrod thought the operation was agriculture or there isn't a zoning district that lists logging or fumigation as an activity. In Kansas, forestry of products is an agricultural use. If you were sitting on a jury in Kansas the PIK, which stands for Pattern Instructions in Kansas which are created by the Kansas Judicial Council, for an agricultural purpose it says "a purpose related to the production, harvest, excavation, marketing, transportation, processing or manufacturing of agricultural products". Agricultural products include forest products and any products that include the process or manufacture of the products. Mr. Barrow didn't want to pursue just stating that it is an agricultural activity and therefore doesn't have to do anything because if he fell under that classification there wouldn't be any setback or building permit requirements. Mr. Barrow values being a part of this community because he gives to local charitable events, he employees 12 families, so wants to be a good neighbor. We started to work Kenny Cook, the new Planning Director, and the approach was that this business has been going on for years so lets' figure out a way to get it legally so it can continue to operate. If they would have applied for a generic rezoning that would allow for a future use that the community may not want conducted on the property. So, the first idea was to rezone to the I-2 Zoning District with conditions attached. However, we weren't sure that adding condition to a rezoning was legal so then decided to do a rezoning to the I-2 Zoning District with the approval of a Special Use Permit. We filed the applications for the rezoning and special use permit. Then before Mr. Cook wrote his Staff Report he called and stated he found another way to allow the operation without rezoning to the I-2 District. We are in favor of the Planned Development Overlay District with the basic C-2 Zoning District. Mr. Barrow's main goal is to be able to continue operating the business the same it has always been operated with the addition of the fumigation building. The fumigation building is important because in the summer time they can fumigate outside. In the winter time, the respiratory rate of the bugs drops to a rate that they don't breathe enough gas to kill them. For this reason, the fumigation process has to be conducted in a climate-controlled building in order to work. Right now, this is all done off-site. So now another business is going to rent the facility and bring in additional employees and conduct the fumigation on-site. The product that is being used to fumigate the logs is the exact same product that the COOP uses. Most farmers that fumigate their grain bins use Methyl Bromide, which is what is being used on the logs. Sometimes we get afraid of a product because we don't understand them and that is why we requested Barry Cole with the USDA to come to the meeting. Mr. Cole knows everything there is to know about Methyl Bromide so he can answer any questions the Planning Commission may have. The proposed fumigation building will be constructed in the middle of the property so that it will have as minimal of an impact on the neighbors as possible. It will be specially constructed for the purpose of fumigating logs. It will have separate bays so that the containers can be brought into the facility. There is a patent pending right now for a system that would actually capture and recycle the Methyl Bromide. The plan is to install that system once it is approved. This fumigation facility will be a substantial investment into something that has a single use. It can't really be repurposed for something else. Right now, the plan is to fumigate these logs. However, they would like to have the ability to fumigate other items in that facility. The regulations on fumigation continue to increase. The Japanese Beetle has made it to were pallets have to be fumigated and trees have to be fumigated in order to transport. If the log yard ceases to operate and Mr. Barrow sold the facility, it would need to be sold as a fumigation facility. To spend that kind of money to build a fumigation facility really needs to not be penned down to a single use. We are in favor of the Planned Development Overlay District so that we can continue doing what we have been doing with the addition of fumigation. Mr. Barrow doesn't want to do anything that would impact the neighbors so the Planned Development Overlay District is a good solution that protects the neighbors from any potential activities in the future and also allows Mr. Barrow to do what he is proposing to do. We do have a couple of requested changes to the requirements as Mr. Cook alluded. The first one that Mr. Barrow is requesting is that the fumigation facility to be permitted in general so that fumigation can be done in that facility and not solely for logs. Next is that the general parking requirement specify that it can be graveled. The zoning regulations are not quite clear on the requirements but this is a huge area and to pave would cost a lot of money so we want the protection in the future that someone won't come along and require that the entire log yard be paved. One of the big issues is the setback and screening requirements. Currently the County right-of-way already extends onto the property twenty-five feet off of Eisenhower Road. Mr. Barrow has spent thousands of dollars on gravel to construct the site that is suitable for the operation. There is never any mud or bark on the highway because Mr. Barrow spends the money to keep the site well maintained. Extending the setbacks

even further would waste the investment Mr. Barrow has made into creating the site. The request is a 20-foot setback from the right-of-way which would allow the applicant to leave the site where it currently is.

Chair asked what is the setback requirement from the house that is southwest of the property?

K. Cook stated two different setbacks were recommended from the front property lines. One required no material be stored within 50 feet of the front property line. The second required screening for items stored within 100 feet of the front property line. These setbacks were only from the front property lines, so adjacent roads. Setbacks were also recommended for uses associated for the log yard to be at least 200 feet from any properties that are zoned for residential or agricultural uses. This would require the more industrial uses to be 200 feet from the West or South property lines. There was an additional one that fumigation activities be 300 feet from any property line. This wording was specific to the logging and fumigation operation. If they were ever to do any other commercial operation, that isn't part of the logging or fumigation operation, then they could still build another office or other structure that would be required to meet the normal setbacks of the C-2 Zoning District.

Mr. Brock stated that their request would be that the setbacks from residential be 20 feet with the screening. There is a tree buffer between the properties and they would like to leave and utilize that buffer. They would like the 20-foot setback from all property lines. If you require the 200 foot or 100-foot setbacks you are taking a substantial portion of the property out of use.

Chair asked if the trees are on Mr. Barrow's property or are they splitting the properties on the property line?

Mr. Brock stated by imposing these requirements would be punishing the applicant for attempting to cooperate. If Mr. Barrow had taken the position that this is an agricultural activity then there wouldn't be any requirements. Mr. Barrow is attempting to comply with the regulations by voluntarily submitting the applications and to require the setbacks would be punishing him and would be too burdensome. If the application isn't approved there would be 12 families that aren't supported anymore and a 20-year business that wouldn't be allowed. In order to complete this fumigation facility and use it this winter they need to begin construction this summer in order to be completed this fall. If the commission were to continue this application to next month the project would not be able to be completed in time. There is an urgency to get the application approved in order to get the construction started and completed in time to use this winter. Dan Barrow Trading Co. is operated by Dan and Charlie Barrow and both of them are present this evening and able to answer any questions the Planning Commission may have. Barry Cole with the USDA is present to answer any questions the Planning Commission may have about Methyl Bromide. Also present is Daniel Erickson. He is the licensed fumigator that would be conducting the fumigation on-site and can answer any questions about the mechanics of what they are planning.

C. Campbell asked if there are any issues with vandalism or trespassing on this location?

Mr. Brock stated the reason they are requesting that the two existing mobile homes be allowed to remain on the site is because the groundskeeper lives in one and the other is lived in part time when Mr. Barrow is in town. This helps with security and the vandalism. Under this proposal it would prevent those mobile homes from being rented out because they are an auxiliary to the logging and fumigation operation for groundskeeping and security reasons.

K. Singleton asked with the 20-foot setback requirement, would Mr. Barrow be willing to do the screening?

Mr. Brock stated they would use the existing tree line buffer as the screening on the West side of the property. It would be preferred to not be required to do screening on the other sides of the property.

R. Pearce asked if they have a contract with an architect on the design of the building? It would probably be a 2 to 3-month process to design the building before even being able to apply for a building permit.

Dan Barrow, the applicant, stated there is no contract at this time but they have been in talks with the contractor that is going to construct the building. Our understanding is they have the personnel waiting to build the facility.

The Chair closed Applicant Presentation.

Public Comment: The Chair opened Public Comment.

Pete Clark, 4713 Thomas Road, asked if one of the requirements would be a 150-foot easement on the property?

K. Cook stated that part of the draft requirements was a minimum setback for storage would be 50 feet from the front property lines. If they would be storing anything between 50 and 100 feet they would be required to provide screening. Anything stored beyond 100 feet would not require screening. This is just a draft recommendation as a starting point for discussion.

Mr. Clark stated that he didn't have any information on this application. However, he did see that the Planning Commission had aerial photos attached as part of the Staff Report. He stated that he owns all the property that is directly across the road and has no objections to what is being done on the property now. He is confused as to why it is being rezoned to the heavy industrial just to build a building? Maybe rename it from fumigation to cleaning up or purifying the logs and would sound a lot better.

B. Livingston asked Mr. Clark if he would object to the facility being allowed to do on-going fumigation for other activities outside of the logging operation? They could sell the property with the fumigation facility to someone else and they could bring semi-trucks full of pallets from the intermodal or wherever and routinely going into the fumigation facility.

Mr. Clark stated that it is his understanding that the building would be in the middle of the property far back from the road. They would probably be accessing Eisenhower Road to get to the facility. He had no problems with anything being proposed and they have been good neighbors to him. He just doesn't understand why they have to rezone from commercial to heavy industrial just to build a building.

Joe Savage, 2424 Old US-50 Hwy, stated he had the listings for the activities that are allowed in the heavy and light industrial zones.

K. Singleton stated that the Planning Commission is all in agreement that they would not be rezoning the property to the industrial zoning district. They haven't voted on it yet and are being opened minded but I think we are accepting Mr. Cook's proposal to remain in the commercial zone with the Planned Development Overlay District.

Mr. Savage stated the Kennicott's own the property that abuts up to the proposed property on the West side, had called in and spoke with Staff, couldn't be here this evening. We live next door to the Kennicott's and we are very concerned with some of the activities that are listed in the light and heavy industrial zones.

K. Singleton stated that rezoning to an industrial zone is not going to be recommended or approved.

B. Livingston asked Mr. Savage if he had any complaints on the activity that is being conducted on the property now?

Mr. Savage stated that noise pollution is something that you can't get away from whether it is aerial or highway or train noise. We can hear them over there working, loading logs onto the truck beds and dragging gravel around. As long as they don't conduct these activities at 9 or 10 at night because they have an order

they need to get out then that might be an issue because they have the yard lit up. Fortunately, our bedroom is on the west side of the house not on the east side so it hasn't been an issue. The Kennicott's and the Savage's respectfully request the County review alternative zoning districts available, like light industrial, that may be compatible with special use permits to allow Mr. Barrow's to operate as he has been. Is there environmental release of the fumigation if the wind is out of the East? Are they going to smell the Methyl Bromide if the wind is out of the East?

Barry Cole, the USDA Office located at 1131 SW Winding Road Topeka KS, stated you will not smell any of the Methyl Bromide because it rapidly disperses into the environment and the buffer zone around the container is 30 to 40 feet. Beyond 30 to 40 feet there are no impacts and you can't even detect Methyl Bromide. So, no you will not smell the fumigation if it is released.

K. Singleton asked when the fumigation is done on an industrial level where it is contained in a building, are there any requirements for how it is stored and kept that we may not have in place with our requirements?

Mr. Cole stated there are storage requirements but there is nothing specified. The Methyl Bromide is contained in cylinders similar to welding tanks for welding gases. The storage concern is to keep the containers away from where the fumigation activities are being conducted. In discussions with Mr. Barrow, they have a building that used to be for an old generator for the truck stop that was there years ago that would be converted for storing the gas.

K. Singleton asked traditionally, a company that has a large amount of this gas on the property would they have to have a bond or insurance? Are there federal regulations requiring a certain amount of insurance or bond amount?

Mr. Cole stated yes, he believes that a company would want to have a bond or at least insurance but that would be something that the County would need to address. The only federal regulations would be with the EPA and OSHA. Most of the concerns people have questioned over the years is if this is going to give them cancer. It has never been proven or disproven to cause cancer in anyway. It is a lethal insecticide and you have to have a special permit to utilize it and it is a restricted use insecticide that has to be applied or conducted by a licensed pesticide applicator. The USDA monitors their inspections.

K. Singleton asked if the amount that the applicant would have and keep access to on this property would be equivalent to what the COOP has or would they have a lot more because they are using so frequently?

Mr. Cole stated that the amount they have on-site would be dependent on the amount of business they conduct.

K. Harris asked if the fumigation stays inside of the building? None of the product gets dispersed outside the building?

Mr. Cole stated once the fumigation is finished, they aerate before people can enter the building again. It is released into the environment.

K. Stottlemire stated it is the same process as the COOP does, it is ventilated from the top of the building.

Mr. Cole stated that 30 feet away from the building you will not be able to detect the chemical.

Mr. Cole stated he started doing fumigations 30 years ago in Seattle. They conducted fumigations within the city limits of Seattle, in downtown Seattle. They did lots of fresh fruits & vegetables from South America. His office was ½ mile away from where the fumigations were conducted 7 days a week. Methyl Bromide is a very safe product if used properly. His only concern is for emergency personnel who may have to access the building and that they know what is going on in the building so they can be prepared. If you have to enter the building before it has been aerated you have to use self-contained breathing apparatus.

Chair stated that it was mentioned earlier that this chemical and building would be OSHA regulated. Should there be warning signs on the doors? Will this also be subject to inspections by OSHA?

Mr. Cole stated yes there should be warning signs on the doors and that it would be subject to inspections by OSHA.

K. Cook stated that after he spoke with Mr. Cole he felt a lot more comfortable about the Methyl Bromide. Mr. Cole did express the same concerns about the emergency personnel. Staff plans to get with the emergency personnel after this process is completed in order to coordinate emergency personnel getting in touch with the individuals that will actually be doing the fumigation so they can understand what the facility is and what concerns there are so when they do have to respond to this site they are prepared.

C. Campbell asked beside the COOP are there any other places around the area that do this type of fumigation?

K. Stottlemire stated that Spencer Farms and some of the other big farmers probably does this type of fumigation.

K. Singleton asked when the COOP uses this Methyl Bromide do they keep it on-site all the time or once a year?

Mr. Cole stated he has nothing do with the COOP. He assumes they have a regular pesticide schedule that they have to keep.

K. Singleton stated she owns apartment buildings and sprays for bugs regularly but she doesn't keep massive amounts of the chemical on-site to use every single day. She feels there is a substantial difference at this location with the amount of chemical they may store on-site.

K. Stottlemire stated a good example of storing large amount of chemical would be Praxair Welding Gas and Supply here in Ottawa. They store several highly pressurized bottles of gas there all the time. It's not pesticide but it is explosive gas.

K. Singleton asked what happens if there is an emergency within the storage container. Would the entire corner of Old US-50 and Eisenhower Road be destroyed?

Mr. Cole stated that Methyl Bromide is non-flammable. Historically it has been used in fire extinguishers so that is not a concern. The only concern would be inhaling the chemical.

K. Cook stated on page 7 of the Staff Report he did include a picture that the Emergency Management Director provided that depicts the impact if there was a 1-pound spill of the Methyl Bromide. With where the structure would be located, it would barely impact the road to the North. There was a secondary area depicted depending on the wind speed that could impact a larger area but it would generally stay away from most of the other buildings. If a larger spill occurred there could be some concerns for the properties right next door. With everything he has read and spoke with Mr. Cole about, it does disperse quickly. The EPA also noted this in their documents.

S. Hornbuckle asked what are the storage requirements for this Methyl Bromide? They stated that they are converting an existing building. Will someone ensure that the appropriate safety precautions are in place in that building so it can contain itself if there was some sort of accident or spill? Is it stored in the building and you only remove a small portion of the chemical to take over to the fumigation building to actually use?

Mr. Brock stated the original plan was to store the chemical in a modified building. Another inspector came to the site and recommended that the Methyl Bromide be stored in a steel container, locked, with no windows so that is the new plan. To be licensed you have to have insurance. The liability is \$1 million for single occurrence and \$2 million liability.

Butch Riddle, 2387 Old US-50 Highway, stated he has lived at this location 34 years. When he built his house the only thing at this location was the house on the West side of this property and the house across the street and a 10-room motel. He has been by Mr. Barrow's property when they were spraying the logs and he never smelled the spray. Since Mr. Barrow purchased the property the place has been cleaned up and they put up barricades out along Old US-50 Highway so you can't get onto his property. Mr. Barrow tore down the old restaurant that had broken windows and has improved the property so much since he purchased it. He has no complaint with him continuing to do what he has been doing. He also believes that the setback should be only 20 feet, not the 100 or 200 feet that has been discussed. If going to make Mr. Barrow meet the 100- or 200-foot setback then should probably make everyone else that builds a garage because they could be storing chemicals also. Mr. Barrow keeps the property neat and trim and keeps it mowed and stacks the log up nice. The only reason there are so many logs on the property right now is because there haven't been any containers coming to the site. He feels the request should be granted and forget the 200-foot setback.

Daniel Erickson, owner of Rapid Fumigation, stated he is the owner of the company that would be doing the fumigation and he is a licensed fumigator. The facility that the fumigation will be done in is a building that fits 6 to 8 forty (40) foot containers in at one time that are under fumigation. There are only so many containers they can do at one time because the fumigation process takes 16 hours. In that amount of time there would be 8 containers being fumigated at one time. The amount of traffic will not increase because they do that many already. The regulations for this building states that it has to be exhausted and warning signs have to be posted. They store one pallet with 12 cylinders of Methyl Bromide at a time, which is enough for 1 month. There will be one exhaust fan at the end of the building to keep the concentration down.

R. Pearce asked what the ambient temperature needs to be for the building?

Mr. Erickson stated the temperature is 41 degrees but the ambient temperature would be higher because its inside the container with the logs. The temperature is monitored by the USDA and the Kansas Department of Agriculture checks daily to certify what is being done. Everything they do is checked by someone with the government.

Dan Barrow, the applicant, stated they appreciate the opportunity to be part of the community for over 20 years. Before he spent the money to purchase the property 18 years ago they visited with the former Planning Director and an environmental study was done a few years prior to purchasing the property. He stated he is very particular about his property and it will always look as good as it does now. He stated he was told he could use the property for what he planned to do or he wouldn't have purchased the property. Another gentleman asked the former Planning Director why he had to get a special use permit for his sawmill and log yard and was told because he didn't have the correct Zoning and Mr. Barrow does. He stated they are stewards of the land and of their neighbors.

C. Campbell stated the property is very clean and well kept and arranged nicely.

C. Campbell asked Mr. Barrow if he would prefer to not have to worry about screening the property?

Mr. Barrow stated he spent thousands of dollars at their ranch in Dennison to pay people to remove cedar trees a few months ago. He stated they mow the ditches, push the snow off the County right-of-way, we do everything we can to make the property and community better. He knows they can't store logs on the County right-of-way. The storage on this property is not permanent storage. The faster they come in and the faster they go out is how they like to conduct business. Regardless of what setback is required, they will not

abuse that setback. If we knew there would be a setback issue we could have arranged the landscaping on the south end of the property, where the entrance is to the mobile homes, and could have done some things a little differently. There is a lot of setbacks on the Northeast corner and the least amount of setback in the South end would be best. On the West side of the property we intentionally left a tremendous barrier and let it grow up for a site and sound barrier between them and the neighbors. The only place there isn't a barrier is the property owners that live in the house next Old US-50 Highway. Without his permission, they took a few feet of the barrier out and it was on our property. As far as along Eisenhower Road they try to mow along the road ditches, to be required to mow with a push mower and weed eat around trees up and down the road would cause a lot of maintenance. He doesn't feel they are creating that much of an eye sore to have to do much screening. When the propane tank went in there was an old ugly chain-link fence from when the State highway department owned that right-of-way, which the County now owns, they were always having to spraying for brush in the fence and people were hanging their political signs on it and would block the view of traffic. He contacted the County about removing that old fence and was told to remove it at the County's request. They will try to keep the logs as far from the road as they possibly can. If we could get away from the screening and get by with the 20-foot setback past the road right-of-way that would prefer.

The Chair closed Public Comment.

Board Discussion. The Chair opened Board Discussion. K. Singleton stated the plan is to keep the C-2 Zoning with the Planned District Overlay with twelve (12) general requirements that Staff has recommended. The three that the applicant is requesting to be changed is the ability to use the fumigation building for things other than just logs; they want to make sure the gravel parking is allowed and the issue of the setback requirements. She stated she assumes that everyone is ok with approving to allow the gravel parking area.

Chair stated there is also the requirement for screening. He would be ok with an overgrown hedge row.

S. Hornbuckle stated logs are just dead trees so what is the big difference if they are live trees or piled up dead ones. The other issue was the 20-foot setback that the applicant requested.

B. Livingston stated the only hesitation he has is with having the fumigation building as a dedicated use for fumigating only logs. His only concern is when Mr. Barrow sells the property, is this being approved as a special use permit?

K. Cook stated that it is being approved under the Planned Development District. If the use is approved under this district then the use goes with the land forever. Even if the property is sold, the next owner would still be able to run the same operation.

K. Harris asked if a time limit could be imposed on the use?

K. Singleton stated that you can't impose a time limit in the Planned Development District.

B. Livingston stated that we have heard that Mr. Barrow is a great neighbor and a good steward of the land and everyone likes the way he conducts his business. He has no concerns with Mr. Barrow at all, his concern is the decision we make today, what recourse would we have if Mr. Barrow found a good buyer for the property and that new owner is not as good a steward of the land. Now we have the 20-foot setback past the road right-of-way and now have containers lined up everywhere and coming in and out of the property at all hours of the night. Now we have this large fumigation building running 24 hours a day 7 days a week. Is there any way we can restrict this from potentially happening?

K. Cook stated the Planned Development Overlay District isn't setup to have an expiration date like a special use permit could. The activity that is approved stays with the land. In looking through some of the ones that I have found there is a wide variety, some of which are similar to what Staff has proposed to where we aren't showing where buildings are located but giving general requirements in an attempt to keep it open as much

as we can. There are others that are more detailed in that they show parking spaces on the PUD and if you make modifications to that PUD you have to go back through the process. There are probably ways that you could go about imposing a time limit but Staff isn't sure that, especially if going down to a 20-foot setback and not worrying about screening.

B. Livingston asked if we could do all of that with a modified special use permit assuming they are approved by a conditional use permit now?

K. Cook stated the C-2 District in the County Zoning Regulations doesn't allow this type of activity as a special use, in general this would be in the industrial zoning districts before you would see this type of activity listed.

K. Stottlemire stated any business or manufacturer can sell their building or property to another business or manufacturer and you don't restrict what goes into that building next.

B. Livingston asked if it would be possible to restrict the property for a logging, sawmill that produces this many logs per year that would limit the amount of storage and fumigation that occurs on the property and in that building?

K. Cook stated the applicant is requesting to not limit the activities that could potentially occur on the property. As it is worded now, the fumigation operation is only allowed as part of the logging operation. His focus was to ensure that the applicant's operation was allowed to continue but I also had concerns as to what can occur once the property is sold. Does the County want to allow this building to be used for other types of fumigation activities?

B. Livingston stated that the applicant is requesting for the property to be used for whatever any other type of operation.

K. Cook stated if we remove it from accessory and incidental and have as just permitted, then there isn't a lot the County can do to restrict that activity. If we wanted to go into a lot more detail on the development plan, then maybe we could come up with something.

B. Livingston stated under the Planned Development Overlay you could do the development plan within the C-2 District?

K. Cook stated that under the Planned Development Overlay it allows the Planning Commission to consider other uses that may not normally be listed in that district and then allows for the Planning Commission to set separate requirements to mitigate any potential impacts on neighbors.

K. Stottlemire stated there really aren't a lot of products out there that you have to take to a facility to get fumigated. He doesn't see a concern in allowing the fumigation building to be used for other uses besides logs.

B. Livingston stated he was thinking about intermodal containers. When these containers are brought in do they need to fumigate the empty containers before they are used again?

K. Stottlemire stated he doesn't believe they fumigate the trailers at the Walmart Distribution Center before they are loaded again. He used to work there and they bring the trailers in and load them up and send them anywhere that can pick up anything. The containers are never fumigated. There aren't a lot of products out there that need to be taken to a facility to get fumigated. Maybe pallets or something like that. It takes 16 hours to get through the fumigation process and they can only fit 6 to 8 containers in at a time.

Charlie Barrow, son of the applicant, stated they are wanting to fumigate their own product. To spend the amount of money they are having to spend to build this fumigation building, we don't want to fumigate other people's stuff. However, when it cools off and then freezes, there may be times when they would want to fumigate other things in order to keep Daniel and his employees working. We are just asking for a little flexibility in order to keep employees working so they can make money. We don't want to restrict it to only logs and for the County to know exactly what we are doing and our intentions.

K. Stottlemire stated that you can only fumigate so much in a 24-hour period.

B. Livingston stated the applicant started their business 20 years ago, they have been great neighbors, kept the property nice, have established a good track record and reputation. If they came in and this was raw land and they said there is 32 acres and proposed the activities that they are conducting now, the Planning Commission would be a lot more concerned. He stated he isn't concerned with Mr. Barrow, he is concerned with what could potentially happen in the future.

K. Cook stated if the property was rezoned to industrial, any of those uses would be permitted to future property owners.

Chair stated he believes, through all the conversation, that the property would remain in the C-2 Zoning District. In reading Staff recommendation regarding the special use permit, how are we going to deal with that?

K. Cook stated there wouldn't be a special use permit granted. It would be approved as C-2 Zoning with a Planned Development Overlay District. Right now, what he has is that letter (a) under #9, would be changed to 20 feet.

S. Hornbuckle stated the only way Mr. Barrow would get in trouble would be if one of the neighbors turned him in for being too close to the property lines. If we kept the setbacks further back then, as long as Mr. Barrow still has good neighbors there shouldn't be any problems. If he sold the property to someone who isn't as cordial then there are repercussions to change things.

K. Cook stated he would rather set the setbacks to what will be enforced.

K. Singleton stated that under the Planned Overlay District there are 6 subpoints that all have different requirements.

K. Singleton asked the applicant's representative if they are requesting the 20-foot setback around the entire perimeter or just on the West side.

Mr. Brock stated they would like the 20-foot setback around the entire perimeter of the property.

K. Singleton asked does the applicant not want to be able to have any storage or equipment within 50 feet of the property line? The condition states that any storage or materials and equipment will be at least 50 feet back from the front property line. Is that ok with applicant?

K. Cook stated that condition would be changed from 50 feet to 20 feet back from the front property line. Basically, condition 9b would be removed and 9a would be changed to 20 feet and no screening.

S. Hornbuckle stated that it would be 20-foot setback. It is 50-foot setback from property line because there is already a 45-foot right-of-way and the property line is from centerline of the road.

K. Cook stated that the front property line is from the edge of the right-of-way. They do technically own to the section line but we measured from the edge of the right-of-way for setbacks.

K. Stottlemire asked from the side property line, adjacent to the neighbors, you are only talking 20 feet from their property line?

K. Cook stated that is what the applicant is requesting, 20 foot from all property lines.

K. Singleton stated that 9d is all fumigation activities associated with the operation of the log yard must be a minimum of 300 feet from the property line.

Mr. Barrow stated the fumigation building is going to be built approximately 500 feet from all property lines.

K. Cook asked Mr. Barrow when they do outside fumigation, how close will you be to the property lines?

Mr. Barrow stated when they do outside fumigation they would be further than 500 feet away from the property lines. There is a 20-foot wide buffer of trees and brush that was intentionally left on the West side of the property for the last 20 years. There is also a buffer between our property and Mr. Burch's property to the South.

K. Singleton asked Mr. Barrow if he is ok with the 50-foot setback from the front property line or are you requesting 20 feet from the front property line also?

Mr. Barrow stated they would like to have a 20-foot setback from the front property line also because the 20-foot setback would be from the County road right-of-way and that right-of-way from Old US-50 Highway is not the same as the right-of-way from Eisenhower Road. Eisenhower Road has a 50-foot right-of-way, so they have 25 feet from the center line of the road and then they would like an additional 20 feet from there. On Old US-50 Highway there are places that the County road right-of-way is already close to 100 or more from the center of the highway. So, there are some places that the County has over 100 feet from the center line of Old US-50 Highway to the edge of the right-of-way. We are willing to give another 20 feet of setback besides the road right-of-way. The reason they don't want a 50-foot setback on the West end is because there is a State approved entrance providing access next to the houses that is very wide. We need that entrance in case we ever need to use it. We can't store anything close to the trees or we would block that entrance.

K. Singleton asked if 9f could be amended to state that all landscape screening currently in place be maintained and replaced next planting season? Would this increase the buffer to what we are thinking? Instead of making them install new landscaping this would make sure they keep the landscaping that is currently there.

Mr. Barrow stated there will always be screening on the West side of the property with the exception of the area that is next to the highway. I wouldn't think you would want screening right up next to the entrance of the property because of line-of-site issues.

Mr. Savage asked how far from the West property line would the fumigation building built?

Mr. Barrow stated that the fumigation building would be constructed right in the middle of the property. So at least 450 feet from the West property line.

K. Cook stated the changes he has so far are 9a would be changed to 20 feet; 9b would be deleted; 9c would be changed to 20 feet from all other property lines; 9d is ok; 9e is ok and 9f would be changed to state all landscaping and screening currently located shall be maintained and if any portion of the landscaping dies it shall be replaced by the next planting season. Item 3 shall be a fumigation facility shall be permitted on the property.

K. Singleton asked if there are other types of fumigation facilities? Do we want to state this type of fumigation facility is permitted on this property?

Mr. Cole stated yes there are other types of fumigation facilities.

Mr. Barrow stated right now they are using only Methyl Bromide, however if something better and safer comes along in the future then there is the possibility we could change chemicals. We would never start using something that is worse than Methyl Bromide.

Chair stated the County can't limit them to using only Methyl Bromide because something new, better and cheaper could be created in the future.

Mr. Barrow stated the log yard and fumigation building is heavily regulated and inspected regularly so if they are doing anything incorrectly they would be immediately shut down.

K. Singleton asked how long they have been using Methyl Bromide?

Mr. Erickson stated there aren't really any other types of facilities that do fumigation besides the grain elevators and stuff that was mentioned earlier. As far as facilitating the exporting of goods, there are only facilities like the one being proposed. None of the other facilities are going to be as well put together as the one Mr. Barrow is proposing. Most of the other facilities just have concrete barricades with tarps over them. The one proposed will be a very safe building for fumigation. Because of the zoning and permitting there aren't any other types of fumigation applications that could be done at this facility.

S. Hornbuckle asked if that means any types of fumigation such as fruits, vegetables and other types of crops? Could those types of fumigation be done in the proposed building?

Mr. Erickson stated if someone needs their grain fumigated they would have it done in bulk inside their own building so we would go to their location to do the fumigation. If they are fumigating an export container that can be brought to the site but other than that there aren't a lot of other applications out there for this.

K. Singleton stated one of the reasons for the meeting this evening is to narrowly tailor this application to what is currently being conducted on the property. Right now, the requirement is that it is for a fumigation facility, is there something more specific that we could describe your facility so that it has to stay within the parameters of the safety concerns that have been expressed?

Mr. Erickson stated so you are wanting something more specific such as an export fumigation facility or something similar so that someone else can't come into the property and do a different type of business?

Mr. Barrow stated that a grain storage facility is called a grain storage facility. We would have a fumigation facility so it should be called a fumigation facility.

B. Livingston asked if there was anyway we could define it as a Methyl Bromide fumigation facility?

K. Stottlemire stated if better and safer products become available in a year then they wouldn't be able to use them because it has been limited to Methyl Bromide.

S. Hornbuckle stated what if limit it to pallets and logs? The chemicals could always change but not the logs or pallets.

Chair stated they are wanting it worded to that the activity could possibly change and grow in the future if they should ever sell the property.

Mr. Erickson stated there isn't a good way to eliminate your concern by naming the facility something else because what the Methyl Bromide is used for already limits what can be done in that building.

K. Singleton asked based on the limited uses of Methyl Bromide do you think it would be appropriate to state that only Methyl Bromide can be used in this facility?

K. Stottlemire stated no it wouldn't be an appropriate to limit it to only Methyl Bromide because they could come up with a better and safer product in the future and then they wouldn't be able to use that product in the future.

Chair asked the Department of Agriculture comes to your property to do inspections every day. What happens if they notice you are using a different product than Methyl Bromide?

Mr. Erickson stated that the Kansas Department of Agriculture is verifying that we are meeting the stipulations the USDA has for our business. The chemicals that are used and the stipulations are determined by the country of origin that the items are being shipped to. It is not our government that is telling us that we have to use Methyl Bromide, it is whatever country the items are being shipped to. If we have a different kind of situation that is going on we would first have to contact the USDA and alert them that these items are being shipped to this country and these are their requirements. Then it would have to go through another entire approval process.

Chair stated he understands that the business is going to grow and change and with all the rules and stipulations of KDHE and USDA there can't be any mistakes made.

K. Cook stated that the uses listed for Methyl Bromide by EPA are for quarantine pre-shipment. If you are trying to make this facility a little more specific it would be that it is a fumigation facility for quarantine and pre-shipment. That would still leave it really open because you are talking logs, nuts, vegetables, fruits or whatever could still fall under that wording.

R. Pearce stated that any fumigation activity that is being done at this facility is going to be scrutinized by several government agencies. If that building is not built sufficiently to handle the chemicals they are wanting to use then the government won't let them use them.

K. Cook stated that item #3 would be change to state it is allowed to be a fumigation facility in accordance with State and Federal regulations. Item #11 that gravel is permitted for the parking areas.

The Chair closed Board Discussion.

The Chair asked for a motion. K. Singleton made a motion to recommend approval of a Zoning of Lessor Change, as allowed by Section 23-5.05 of the Franklin County Zoning Regulations, for Rezoning Application #2204-1964 from the C-2, Highway Commercial District to Planned Development Overlay District with a basic zoning district of C-2, Highway Commercial District plus Log Yard with subordinate and incidental uses including indoor and outdoor storage; scale; small scale sawmill; wood product manufacturing, processing or sale; fumigation; offices; and auxiliary residential uses and approval of the Special Use Permit Application #2204-1965 based on Staff recommendations, the findings in the Staff Report and subject to the twelve (12) conditions as amended. The motion was seconded by K. Stottlemire. The Chair called for roll call vote.

Wilkins	Yes	Livingston	Yes	Pearce	Yes
Campbell	Yes	Harris	Yes	Stottlemire	Yes
Singleton	Yes	Hornbuckle	Yes		

Motion carried 8-0.