



# Pottawatomie County Planning Commission

Andrew Klein – Chair  
Doug Kern – Member  
Lynn Schwandt – Member

Armon Bosse Jr. – Vice-Chair  
Norm Stutzman - Member  
Steve Minton – Member  
Travis Ross - Member

Marcie Wood - Secretary  
Robert Busby - Member  
Nathan Henry - Member

## Meeting Minutes for March 23, 2023

Participation in the meeting by Planning Commission members and the public, was available via Zoom meeting as well.

In Attendance:	Andrew Klein (In Person) Doug Kern (In Person) Robert Busby (In Person) Marcie Wood (In Person) Lynn Schwandt (In Person) Armon Bosse Jr. (In Person) Norm Stutzman (In Person) Steve Minton (In Person) Nathan Henry (In Person) *Arrived late Travis Ross (In Person)	Location: Sunflower Room Public Works Bldg. 612 E. Campbell St. Westmoreland, KS
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Absent: None

County Staff:	Gregg Webster – Zoning Administrator Stephan Metzger – County Planner Nathan Bergman – County Engineer Pat Weixelman - County Commissioner John Watt – County Counselor
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### Others In Attendance:

In person –	From Sign-In Sheet Alvin Matzke Cole Anderson Ireta Schwant Bill Borth Chris Sass Ginger Biesenthal Tim Murray Wanda Magnett Matt Ubel John Childs Carrie Ross	Rich Eckert Dean Bosse Dennis Schwant Eugene & Wendy Pierson Della Sass Douglas Phelps Lawrence Ubel Vicki Matzke Ian Reekie Rodney Biesenthal
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Zoom –	Names as they appeared on the screen Ben Burton 1-816-569-4261
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### Call to order

Andrew Klein – Chair, called the meeting to order at 7:00.

Wood called the roll, with members present as shown.

Wood made a motion to adjourn the meeting no later than 9:30 PM

Ross seconded the motion and it was approved unanimously.

### **Public Comment – Non-Agenda Items**

The Chair reviewed the items on the agenda.

There were no comments presented.

### **Approval of January 19, and February 16, 2023 Meeting Minutes**

Bosse made a motion to approve the minutes as shown.

Kern noted a typographical error in the February minutes.

Wood seconded the motion and it was approved unanimously.

### **Consent Agenda**

Final Plat – Hidden Lakes Subdivision Unit Two

Metzger provided a brief report, explaining the location and purpose of the plat.

He explained the access to the lots and stated it conforms to the already approved preliminary plat.

Busby made a motion to approve the Consent Agenda as shown.

Wood seconded the motion and it was approved by a unanimous vote.

### **Regular Agenda**

Busby made a motion to adopt the Regular Agenda as written.

Wood seconded the motion and it was approved by a unanimous vote.

Discussion – County Sanitarian, Scott Schwinn

Scott briefly his job duties and asked if the Planning Commission had specific questions.

Metzger pulled up the USDA soils map online.

Schwinn explained the procedure he goes through when reviewing a preliminary plat.

He noted he reviews the soils map and typically requires soil profiles be done on the tract proposed for development.

He explained “good soils” would allow smaller lots, whereas poorer soils would require larger lots.

He stated a minimum of 3 acres is required in order to have a lagoon.

He stated the minimum tract size in order to build a house is 3 acres if served by rural water or 5 acres if a private well is utilized.

He explained the process for determining lot sizes for subdivision development.

He stated the County Sanitary Code will allow smaller lot sizes if a more detailed study of the soil is done.

He explained "lots of record" and non-conforming lots.

He explained the required setbacks from a public water supply line, property lines, and water courses.

The Chair asked if the plot plan show 2 locations for the wastewater system.

Metzger explained the plot plan submitted with the building permit does not, as the permit for the wastewater system comes from the Sanitarian.

Bosse asked if soil types can vary within the proposed development tract.

Schwinn stated that they can, and that is why he uses soil profiles. Sometimes on each proposed lot.

**Public Hearing – Willow Glen Planned Unit Development (PUD) Amendment (continued from February meeting)**

Busby made a motion to bring the request from the table.

Bosse seconded the motion and it was approved by a unanimous vote.

Metzger reviewed the staff report.

He explained the action options and what can be done with approval or denial of the request.

The Chair clarified the permitted dwelling units per acre.

Metzger explained it is the overall density for the remainder of the un-platted area of the development.

He explained the Preliminary Plat does not show the individual lots, but would there would be plat notes stating what is permitted.

He noted the final plat would not be a Consent Agenda item, they would be on the Regular Agenda.

Minton had questions about the 4-plexes and felt that is too much density on a cul-de-sac.

He had concerns with structures being too close to the gas line easement.

Metzger explained uses proposed in the gas line easement would have to first be approved by the gas company.

Minton the aerial photo of the Timbercreek 3 Subdivision be shown.

Metzger pulled up the photo and the gas line was noted.

The Chair asked how many lots can be platted before Harvest Road is paved.

Metzger explained if a phase is proposed with an entrance onto a County road, then the County Road must be paved. He explained the subdivision regulations for the number of required entrances.

Minton stated he still had questions about the Preliminary Plat.

Stutzman the request is to have the ability to increase the density.

He made a motion to amend the current motion, to make the Board of County Commissioners aware that the increase in density may have an undue impact on County infrastructure.

John Childs – co-developer of Willow Glen Subdivision – explained they are asking for the ability to increase the density, if the housing market dictates it.

He noted that would give them the flexibility to adjust to what the market is calling for.

He stated they may only end up doing single-family.

He felt it is not unusual to have a mixed used residential types in a subdivision, noting the Grand Mere development in Manhattan having a mixture of single-family, duplexes, and apartment buildings.

Kern stated County Commissioner Weixelman is in attendance, so he is aware of the concerns about potential impacts on infrastructure.

Metzger reviewed Stutzman's motion, with Stutzman agreeing to the wording.

Busby seconded Stutzman's motion.

Minton stated Jared Barnes (Fire Supervisor) should be consulted about Manhattan City Fire Dept. signing the plat.

Vote on the amendment was 6 in favor and 2 against.

The Chair reviewed the main motion with the approved amendment.

The Chair had concerns with a proposed increased density, but no changes to the traffic study.

Nathan Bergman – Stated increase density changes the traffic study, but it still does not warrant improvements to Lake Elbo Road. It is still capable in handling the increase in traffic.

He noted the traffic study assumes Harvest Road is paved at full build out of the subdivision.

Ian Reekie – from Schwab-Eaton – Confirmed Bergman's comments.

Busby asked who does the future planning for the Lake Elbo Road / Hwy 24 intersection.

Bergman stated it is KDOT.

Reekie added the Highway 24 Corridor Plan addresses those concerns.

The Chair asked for additional discussion.

As there was none, he called for the vote on the main motion.

The motion included making the Board of County Commissioners aware that the increase in density may have an undue impact on County infrastructure.

Vote was 5 – 3 in favor of approval of the PUD Amendment request.

**Public Hearing – Conditional Use Permit (CUP) Request by Mid-State Materials for Quarry**

Metzger presented the staff's report.

He discussed the applicants, landowners, the current zoning and the reason for the request.

He noted the tract is adjacent to the site where a CUP has already been approved for a quarry, and this would be an expansion of that site.

He stated this is a new request, not an amendment to that already approved CUP.

He discussed the characteristics of the tract, the drainage areas, the flood plain and the location of nearby dwellings.

He explained CUP regulations and the hearing process.

He discussed:

- The character of the neighborhood.

- The zoning and uses of nearby properties.

- The extent to which the proposed conditional use would detrimentally affect nearby properties.

- The length of time the property has remained vacant as zoned.

- The relative gain to the public health, safety and welfare as a result of denying the request as compared to the hardship imposed upon the individual landowner.

He discussed the five factors that applicants for rock quarries are required to address:

- Dust mitigation

- Noise mitigation

- Stormwater runoff

- Light mitigation

- Blasting mitigation

He stated that staff would not recommend approval of the CUP request without the following conditions:

1. The operator shall follow all items of the submitted Development Plan, Application Addendum 1, and Mid-State Standard Blasting Procedures including hours of operation, proposed dust mitigation, proposed noise mitigation, proposed stormwater runoff mitigation (including an approved Stormwater Pollution Prevention Plan), proposed blasting procedures, and proposed light mitigation.
2. As part of the Development Plan, the Applicant shall provide a dust control plan which describes the precautions and maintenance activities the Operator will undertake to prevent fugitive dust contamination from the site and on the designated haul route to the site, including spray bars and other dust control best management practices. The Operator will implement the dust control plan. The dust control plan may be modified by County if the existing dust control plan does not adequately address issues of dust control.

3. A pre-excavation seismology study shall be conducted at the property boundaries and at any residence within 1,000 feet that requests it prior to the commencement of quarrying operations. Notice of this study shall be mailed to all property owners within 1,000 feet of the proposed quarry. Further a copy of the study shall be provided to the Office of Planning and Zoning to be maintained in the file and a copy shall also be maintained on site.
4. The operator shall adhere to the following blasting requirements:
  - a. Blasting shall only be set in sequential delays
  - b. No blasting shall occur before 8.00AM or after 4.00PM
  - c. No fly rock shall leave the property
  - d. A signaling system shall be used to alert people in the neighboring vicinity
  - e. No explosives will be set in the ground overnight unguarded
  - f. The Operator shall obtain the timing and locations of bus routes on Wheaton Rd and Reves Rd adjacent to the quarry site. Blasting shall not occur fifteen minutes prior to or following the presence of a school bus adjacent to the quarry site
5. The operator shall adhere to the development and reclamation proposals submitted as part of this application and that no more than 40 acres shall be open, mined, and extracted at any one time on the quarry site, exclusive of the proposed staging area in Figure 2 of Mid-State Materials' application. Additionally, no more than ten acres shall be open, mined, and extracted in any subsequent phase until an equal acreage in the previous phase has been reclaimed.
6. The mining area shall be fenced or bermed, and the operator shall maintain the fencing or berms
7. The operator will work with utility companies to ensure the safety and integrity of utility infrastructure located within operator's proposed mining area(s), and any mining operations, including, but not limited to, blasting and driving vehicles over utility infrastructure, will remain outside of 500 feet from any utility easements and/or infrastructure until written agreement from the utility company(ies) to do so, which shall not be unreasonably withheld, is obtained by the operator.
8. All loads shall be covered when leaving the site, and Operator is responsible for spillage and cleanup of aggregate within one mile of the plant site
9. The following setbacks shall be adhered to: a. 100 feet from non-applicant property lines b. 100 feet from Wheaton Rd right-of-way c. 50 feet from all other public rights-of-way d. 1,000 feet from all non-participating dwellings, unless written agreement is obtained by the operator
10. The County and operator enter into a road maintenance agreement that addresses the following:
  - a. Designation of an entrance located on Reves Rd
  - b. Designation of haul routes
  - c. Improvements to Reves Rd that allow for safe access to the quarry entrance, and proposed improvements shall be approved by the County Engineer
  - d. Dust control measures
  - e. The operator repair any fences damaged by the road project
  - f. Future maintenance of Reves Rd and other County roads designated as haul routes. Operator's obligations to the future maintenance of County roads shall be commensurate with their impact.
11. A reclamation bond, letter of credit, surety bond, or other approved financial assurance, shall be provided. The amount of which shall be established based on engineering or contractor estimates for

reclamation of the mined area, or area proposed to be mined, as shown on the submitted reclamation proposals as part of this application.

12. Design of all stormwater ponds shall be reviewed and approved by County Engineer prior to construction, and operator shall provide documentation of all sediment removal from said ponds, if necessary. The design of the stormwater detention ponds shall address, at minimum, a 25-year storm event, however, if the County Engineer believes an additional protection from heavier storm events is necessary, Operator shall comply with the County Engineer's requirements

13. Copies of all KDHE inspection reports shall be submitted to the County by the operator upon receipt.

14. The site shall not be utilized, temporarily or permanently, by the Operator as a landfill or for the disposal of commercial, household, or hazardous waste materials.

15. The conditional use permit shall be subject to review by Planning Commission every five (5) years following the initial issuance of the Conditional Use Permit. The review shall not be considered a new application. The Planning Commission may consider compliance by the Operator with the provisions of the CUP and compliance by the Operator with any local, state, or federal regulations, including KDHE regulations during their review. Planning Commission may recommend to County Commission that a formal hearing be conducted to rescind the CUP if found to be deficient in any of the areas above.

16. County Staff may enter the site and inspect the premises, as needed. However, an inspection shall occur not less than once every three months. Inspections shall evaluate compliance with the conditions imposed with the permit. If the operation is found to be in violation, the permit may be rescinded according the provisions of Article 10.4 of the Unified Development Regulations. Written notice detailing violations and corrective measures to the Operator shall be provided 60 days in advance of a public hearing.

17. The Operator will comply with all KDHE requirements and recommendations for the operation of a rock quarry. Where CUP conditions are more restrictive than KDHE regulations or requirements, the more restrictive CUP conditions will control

18. Inoperable motor vehicles or construction equipment shall not be openly stored on site, nor shall they be allowed to stand within the mining areas or stockpile areas.

19. Quarrying operations shall not take place within the 100-year Floodplain

He reviewed Planning Commission action options.

He noted that a CUP for a rock quarry is not subject to a Protest Petition.

Rich Eckert – spokesperson for the applicant – explained why they have submitted a request for an additional tract right next to what has already been approved.

He noted that the property owner requested a discussion for their property after the CUP for the original request had already been approved.

He discussed the proposal and a slide presentation was viewed by all.

He explained the requested change to the entrance to the site and the location of the rock stockpile and crushing operation.

Stutzman asked if this is two separate quarries.

Mr. Eckert stated that “on paper” it is two separate quarries in the permitting process, but it would be operated as one quarry, with one stockpile area and crushing operation and one scale.

He reviewed the quarrying phases shown on a map.

Busby asked if they could have 40 acres open in each quarry.

Mr. Eckert stated it is not efficient to have more than one area open at a time, and was fine with language stipulating that.

Metzger noted that it can be addressed in a developer agreement with the Board of County Commissioners, which would also address a road maintenance agreement.

Bosse asked who does the required stormwater inspections after rainfall events.

Mr. Eckert stated the County does not do it, so it is self-reported.

Metzger stated a proposed condition for approval is that a sample is to be sent to County when they are taken.

He noted that a County representative could be on-site when they are taken as well.

Kern had concerns with the time period that the samples can be taken. He felt they should be taken soon after the rain event.

Ross asked about contaminants in the on-site stormwater detention ponds.

Mr. Eckert stated that past testing has shown the water is as clean, or cleaner, than before there were ponds present.

Minton asked if the original CUP request was under litigation.

John Watt stated there was an appeal of the decision in District Court.

Minton asked if the Planning Commission should be addressing this request because of the appeal.

Watt stated it is a separate tract and request.

The Chair asked if District Court would view action taken on the current request, having an impact on the appeal on the previous request.

Watt stated it would likely not have any effect.

The Chair asked for public comments and explained the comment procedure.

There were no comments by those attending by Zoom.

In-person comments:

Bill Borth – gave a history of ownership of his property, opposed to the request, had concerns with the effects from blasting, who is going to fix any damage if it occurs. He had concerns with dust and air



pollution. He asked why Clear Creek Road couldn't be used for access instead of Wheaton Road. He also had concerns with the reclamation process.

Eugene Pierson – had concerns with the effect on surface and ground water, and on water wells and springs in the area. He asked what affect a breach of a detention pond would have on downstream areas. He had had concerns with blasting and asked how deep the quarrying operations would go.

Ginger Biesenthal – handed out copies of a United States Department of Labor, Mine Safety and Health Administration Report of Investigation, regarding a blasting incident resulting in a fatality.

She discussed the report and strongly suggested adopting more stringent regulations regarding blasting and setbacks for quarrying operations.

She expressed concerns with blasting and fly rock and suggesting reviewing the CUP conditions for quarries.

*\*\*Nathan Henry arrived at the meeting.\*\**

Matt Ubel – had concerns with quarrying operations, and dust.

He gave a slide presentation showing aerial photos of a number of other quarries operated by Mid-State Materials in Kansas and questioned whether they were active or inactive quarries.

He suggested the County impose a moratorium on quarry requests in order to formulate adequate regulations regarding them.

Lawrence Ubel – Had concerns with the number of quarries / quarry requests in Sherman Township.

He felt the County should formulate regulations that are more stringent than what the State of Kansas has.

He proposed the County impose a moratorium on open mining operations until adequate regulations can be formed.

Jim Pierson – felt the State of Kansas needed more stringent regulations on reclamation.

The Chair stated the Board will take additional public comment at the next meeting.

Stutzman made a motion to extend the meeting to 9:45 P.M.

Busby seconded the motion and it was approved by a unanimous vote.

Public Comment Continued

Dean Bosse – stated he currently lives adjacent to the CUP trac.

He stated he had lived in the area of the existing Hamm Quarry on Fremont Road and had never had an issue with that quarry.

He stated he had never had issues with water quality or had animals sick because of it.

He felt the blasting effects were tolerable.

Rodney Biesenthal – had concerns with water quality. He suggested that it be a requirement that Mid-State Material test for TDS in their water samples.

The Chair asked for any additional public comment.

There were no other comments / questions presented.

Metzger reviewed the questions asked during public comment.

“How deep will the quarry go?”

Mr. Eckert stated there was approximately 7’ – 15’ of overburden and then about a 7’ rock ledge.

“Can the entrance be moved closer to Clear Creek Road?”

Mr. Eckert stated that was probably not an option for them. He stated they would be moving the entrance closer to Wheaton in order to not have the impact on Reves Road.

“Are all the quarries noted in Matt Ubel’s presentation active or inactive.”

Mr. Eckert stated that all the quarries mention were active quarries. He noted that regulations / requirements vary from County to County.

He explained that some quarries may have more activity than others, depending on the KDOT projects in that area.

Schwandt asked if the quarrying operations were year round.

Mr. Eckert explained that not all operations are year round. He noted they utilize mobile rock crushers that are moved from quarry to quarry.

Bosse asked if the crushing activity was for a short time.

Mr. Eckert stated they quarry the rock and stockpile it. They then bring in a rock crusher and crush it, making stockpiles of the crushed rock.

As there was no further public comments, the Chair stated that the public comment portion of the hearing was now closed.

There was discussion on the next Planning Commission meeting date – April 20.

The Chair stated it will be Planning Commission discussion and rebuttal only.

Meeting was adjourned.

