

HAYS AREA PLANNING COMMISSION MEETING AGENDA  
CITY COMMISSION CHAMBERS  
1507 MAIN ST, HAYS, KS  
May 20, 2019  
6:30 PM

**1. CALL TO ORDER BY CHAIRMAN.**

**2. CONSENT AGENDA.**

A. Minutes of the meeting of April 15, 2019

*Action: Consider approval of the minutes of the April 15, 2019 meeting.*

B. Citizen Comments

*Action: None.*

**3. PUBLIC HEARING ITEMS.**

A. None.

**4. NON- PUBLIC HEARING ITEMS.**

A. Video "Ten Towns that Changed America"

*Action: General discussion*

**5. AGENDA ITEMS/COMMUNICATIONS.**

A. Planning Commissioner Comments

i. Opportunity for Planning Commissioners to ask questions of staff or initiate topics for discussion.

**6. ADJOURNMENT.**

**DRAFT**  
**HAYS AREA PLANNING COMMISSION**  
**CITY HALL COMMISSION CHAMBERS**  
**April 15, 2019**  
**6:30 P.M.**

**1. CALL TO ORDER BY CHAIRMAN:** The Hays Area Planning Commission met on Monday, April 15, 2019 at 6:30 p.m. in Commission Chambers at City Hall. Chairman Paul Phillips declared that a quorum was present and called the meeting to order.

**Roll Call:**

**Present:** Paul Phillips, Lou Caplan, Robert Readle, Mike Vitztum, Dustin Schlaefli, Jim Schreiber and Joseph Boeckner

**Absent:** Matthew Wheeler

City staff in attendance: Jesse Rohr, Director of Public Works and Linda Bixenman, Administrative Assistant.

**2. CONSENT AGENDA:**

Paul Phillips asked if there were any changes to the agenda. There were none.

**A. Minutes:** Robert Readle moved, Mike Vitztum seconded the motion to approve the minutes from the March 18, 2019 meeting with the correction of Robert Readle's name being misspelled in a couple of places.

**Vote: AYES** Paul Phillips, Lou Caplan, Robert Readle, Mike Vitztum, Dustin Schlaefli, Jim Schreiber and Joseph Boeckner

**B. Citizen Comments:** Paul Phillips asked if there were any comments from the audience not on the agenda. There were none.

**3. PUBLIC HEARING ITEMS - None**

**4. NON-PUBLIC HEARING ITEMS:**

**A. Annual Comprehensive Plan Review:** Paul Phillips asked for a motion to take this item off the table.

Lou Caplan moved, Mike Vitztum seconded the motion to take the Annual Comprehensive Plan Review on the Compatibility Matrix off the table for review.

**Vote: AYES** Paul Phillips, Lou Caplan, Robert Readle, Mike Vitztum, Dustin Schlaefli, Jim Schreiber and Joseph Boeckner

Jesse Rohr presented the agenda item in place of Curtis Deines who is attending the American Planning Association National Conference in San Francisco.

He gave a recap of the previous discussion on the annual comprehensive plan review. They tabled the discussion on the Compatibility Matrix at the February meeting that was talked about more in depth. Staff has worked on some options to simplify it in hopes for a recommendation. The Compatibility Matrix Table that is found in the 2012 Comprehensive Plan is an important tool among others to establish compatibility rating between different zoning districts used to help decide on rezoning cases. A copy of the memo on the "Compatibility Matrix" was passed out to provide more detail.

The overall goal is to keep moving forward to provide developers and property owners increased flexibility that make it easier to develop and provide more options for developers. The new provision of buffer yard found in the Unified Development Code adopted in 2016 made more properties in different zoning districts more compatible; the proposed changes to the Compatibility Matrix would simplify the rezoning changes as they come forward.

He explained the matrix table rates the compatibility of the different zoning districts when there is a buffer yard.

Per the February discussion there were concerns of the rating of the number one (the least compatible) to remain incompatible. Those properties would not be any more compatible with a buffer yard.

The jest of the discussion was the number 2 rating was the most questioned. One of the Planning Commissioners had asked at the last meeting to look at those on a case by case basis.

He explained the proposed Compatibility Matrix:

- The ratings of "**1 and 5**" stayed the same. The 1's are not compatible at all and the 5's are as compatible as you can get.
- The ratings of "3 and 4" increase by one value (3's become 4's and 4's become 5's). This is with the buffer yard in place which is a requirement for development.
- The rating of "2" was the most questionable. The rating of a 2 was considered individually and changed if found warranted. Those marked with asterisk were left unchanged from the current table due to low compatibility even if a buffer yard were to be in place. Most of those would have to do with low density residential

up against commercial or industrial or business park or general industry abutting up against downtown mixed use.

He stated the Planning Commission has the following options:

- Recommend the option as presented
- Provide other options to Staff
- Do nothing - He explained that if they do nothing, the buffer yards would come up on each rezoning.

Staff would recommend amending the Compatibility Matrix Table as presented to allow for a more accurate representation of the table for rezoning cases.

He asked for questions.

Mike Vitztum asked for an example of how the proposed Compatibility Matrix would work. Jesse Rohr answered by using the example of a recent rezoning case at 22<sup>nd</sup> and Wheatland that identified as a 2 on the current matrix table because it is medium density against commercial. The more compatible, the more acceptable the request is for the Planning Commission and City Commission.

Paul Phillips asked for other questions. He read the options again. He entertained a motion.

Robert Readle moved, Mike Vitztum seconded the motion to accept the changes to the Compatibility Matrix Chart as presented for use in the Comprehensive Plan.

**Discussion:** He asked if there was any discussion. There was none.

**Vote: AYES** Paul Phillips, Lou Caplan, Robert Readle, Mike Vitztum, Dustin Schlaefli, Jim Schreiber and Joseph Boeckner

**B. R9 Ranch update by City Manager Toby Dougherty** Jesse Rohr introduced City Manager, Toby Dougherty for the presentation on the update of the R9 Ranch project.

City Manager, Toby Dougherty came before the commission with the presentation on the update on the R9 Ranch development. They have reached a significant milestone in a lengthy process that started five years ago.

He began his presentation to explain why Hays is dealing with water issues.

He showed a Kansas county map with 34 counties shaded that have a population more than 15 thousand; Ellis County being one of them.

He showed the precipitation map for the State of Kansas to point out the discrepancy of the rainfall of 16 inches from the western border ranging to approximately 46 inches to the eastern border.

He showed the map pointing out the major aquifers in Kansas; the Ogallala, Great Bend Prairie and Equus Beds. Ellis County represents the only county in Kansas with a population over 15 thousand that does not set over a major aquifer or have surface water flow on a perennial basis. That is why Hays has always been concerned about water for 50 to 60 years. Ellis County is in an area with intermittent stream flow. With 30 inches of annual rainfall, the streams will continue to flow. Only in a significant drought would a stream dry up.

The City of Hays has 3,675-acre feet of water rights between the Dakota, Big Creek and Smoky Hill wellfield. The City of Hays and Russell use about 3,000-acre feet together annually. This year we could probably produce 3,600-acre feet of water. During drought years of 2011, 2012 and 2013, we were producing 2,000-acre feet of water and mining 1,000-acre feet out of other sources. That is how precarious our sources are when it comes to water. They have a storage capacity but can burn through it quickly in a drought.

This leads to the R9 Ranch in Edwards County that was purchased in 1995 as a water source. In 1996 they sold an 18% interest to Russell. The City spent the next 20 years evaluating every option out there to be sure the R9 was the right option. In 2013, he was given the approval to start the regulatory process.

In 2015, we filed the change application with the Division of Water Resources in the use from irrigation to municipal and change the points of diversion and changing the volume. The R-9 Ranch is about a 7,000-acre farm that formerly had 44 irrigated circles. The ranch has been decommissioned and converted back to native grass. The infrastructure has been removed.

If we were the City of Kinsley and developing water rights for our use, we would be done; the wellfield and water line could be built to utilize the water. However, we are 67 miles away from the Kinsley wellfield to the Schoenchen well field that requires a series of statutes that must be followed to govern the transfer.

In Kansas if the use is more than 1,000-acre feet and excess of 35 miles, a series of statutes called the water transfer act kicks in. We are at the point where the master order has been issued and the water transfer act is about to begin that will be a 12 to 24-month process. We have 7,648-acre feet of water rights. We have proved that we are not impairing the local aquifer.

This calls for a three-person panel to convene. They are the Chief Engineer of the Division of Water Resources, and Secretary of Kansas Department of Health and Environment or the Secretary can designate the Director of the Division of Environment and that person (Leo Henning) has been designated and a hearing officer of the administration to conduct hearings to make a determination that we

are adhering to the terms of the act and the hearing panel either ratifies or denies the recommendation.

Early on the Chief Engineer of the Division of Water Resources asked if we would agree to limit ourselves to sustainable yield. The first answer from the attorneys was "No". We do not have a legal requirement to do it. It was asked why.

The Chief Engineer asked if they had any reason to believe they would use it in an unsustainable manner. We answered that it was a 75-year option and we would not use it unsustainably. He asked then why they would not consider the option to use the sustainable yield. They had Burns and McDonnell do a yield study to look at pumping scenarios over a 50-year period and what would make the aquifer no better or worse off. It showed the usage of 4,800-acre feet a year to be sustainable. The cap is the consumptive use number. On any 10-year rolling average, we cannot exceed 4,800 sustainable acre feet a year. If we go over, we must go under in another year.

When you convert from irrigation to municipal, it is called consumptive use. That means you are consuming the water. There is not a gallon for gallon conversion. On irrigation, some of the water made its way back into the aquifer so there is a formula that the state uses to determine the consumptive use calculation. The consumptive use can be shipped somewhere else. That consumptive use number is a cap of 6,756-acre feet. We have voluntarily agreed to a 30% reduction.

The conversion of the ranch from irrigation to municipal will benefit the aquifer in Edwards County about 225,000-acre feet. It is already benefitted by not pumping it and growing crops. The consumptive use numbers are around 6,000-acre feet by farming; this is how much would be consumed by crops. Hays and Russell utilize 3,000-acre feet annually. They would only be using half of the water that is used for crops. Not only are we not impairing, we are increasing the water in the aquifer.

This would be a long-term source of water for us. Hays and Russel are to show proof of conservation measures and they meet that. Hays has been the leader in the state of Kansas since the nineties when Hays had their first water crises and the city commission, at the time, made a heavy investment in water conservation. The city uses 92 gallons per capita per day.

They are to prove that they looked at alternative sources of which they have done. The R-9 Ranch is found to be the most sustainable water source. We own it and the perfected water rights.

The State of Kansas is to benefit from the transfer. The statutes pose the question if allowing the transfer benefits the state of Kansas more than not allowing the transfer? They are making it an economic argument.

They had the Docking Institute do an economic impact study. We have a 2-billion-dollar regional economy and a 3-billion-dollar tertiary economy is growing and showing no signs of slowing down. If we do not have an adequate available water source, it is going to slow down.

We are stigmatized in Hays because we are the only city in Kansas acting like Tucson, Arizona or Las Vegas etc. The R9 Ranch goes along way addressing this problem. We are not developing new water rights; they are perfected water rights purchased in 1995. We are not impairing or depleting the aquifer and because of our concessions and agreeing to legal limit our water rights, we are the only water right holder that will legally give up 30% of water rights. They have agreed on a sustainable yield.

He asked for any questions:

Paul Phillips asked if the water transfer could be transferred from one water basin to another.

Toby Dougherty answered that the Water Transfer Act governs that. There has never been a prohibition on water basin transfer. The drop of water at the R9 Ranch will end up in the same place either way. A drop of water here will go through Kansas City and St Louis to get to the same spot. With the Water Transfer Act there is an inner basin component to it. There are two diversions; the amount of water and consumptive use before they come back together. Water rights are owned by the people in Kansas. Water rights are a property right. Water must be put to beneficial use mandated by the state.

Paul Phillips asked how senior are these rights. Toby explained about the senior and junior water rights.

Joseph Boeckner asked what the next step after this is approved. Toby Dougherty stated that on the day it is approved, a design contract will be presented. They have pipeline routing plans trying to stay in the right of way as much as possible.

Joseph Boeckner asked what the time line looked like for laying the pipe. Toby Dougherty answered that it will take approximately 3 years because of the scope of it. It would be done in two or three concurrent phases.

The cost would be about \$90 million. They have about 35 million dollars in the bank because of the water sales tax for a down payment and the sales tax to pay the debt service. Water rates would not go up.

Russell would pipe their water from the Pfeifer Wellfield to the Russell Wellfield to bring the water to them.

As a side note, they are talking to the Kansas Department of Wildlife Parks and Tourism for walk-in-hunting. It would be the largest tract of walk in hunting within a 100-mile radius.

## **5. AGENDA ITEMS/COMMUNICATIONS:**

### **A. City Land Acquisition Discussion - Robert Readle:**

Robert Readle wanted to take the opportunity to discuss what he is seeing as a contradiction between some of the policies and philosophies we have been following on governing decisions from some of the actions at the City Commission level regarding the City land acquisition. That disconnect can bring a lot of ill will from some in the community.

It falls into two categories. We have talked a lot about large lot development to the west and south of town that was under a lot of duress having trouble getting approved. Also, there was a proposed development on the north side of I-70 that had logistical barrier challenges.

With the rewrite of the Unified Development Code, there was a concerted effort in drafting this that we are efficient with a long-term view of the kind of liabilities we are taking on doing this. Recent election changed the dynamics when the City invested in property north of I-70 that has the same challenges and characteristics like other projects that have been shot down. Has there been a change or shift in the philosophy or just the thought process of what we are doing and why we are doing it? If so it should be clearly communicated to be managed and better publicized. He asked if they could enlighten them on this within that framework. He asked how this decision was made when others very similar that was not the government's money were shot down.

Toby Dougherty, City Manager, answered that before he answers the last question he explained the Strong Town exercise as an eye opener in understanding naturally, organically and intuitively our City. It was understanding what generates revenues and what generates liabilities. Where the cost was incurred and why. When they did this they found there were a lot of things that they viewed as positive and the public would think is positive; but the City as an organization had to accept and admit it was a liability because it was costing us money. He used the analogy if you are "Red Lobster" and you are giving away "Cheddar Bay Biscuits". It is costing you money by giving them away, so you better make it up on the back end.

They figured what every square inch of infrastructure and streets cost on a depreciated basis. They tried to determine as they grow in acreage what was the costs over the long-term general operations like police, fire fighters, parks etc. Every time there is a new commercial business and housing development, the city is incurring costs.

We are funded predominately with the sales tax. We have an endeavor on one side that creates liabilities that is not paying its way. They grapple on how to marry that up. The biggest eye opener to him understanding the financial situation is ideally is have everyone live outside the city limits and shop within the city limits. Housing development is part of an organic growing city. We do not live in an economist type world.

We must have the understanding where our costs are generated. Strong Towns gave us the ability to look at what we could do to keep costs low; how build streets etc. They put provisions in place of allowances for narrower streets in lieu of green space. There was also some information to help keep costs down for developers.

Toby acknowledged what Robert Readle had pointed out about the challenges on the north side of interstate. In discussion with residential developers, it is hard to make the numbers work. It is difficult right now after acquiring the land with the development costs factored in and sale the lots to maintain a profit.

Land is at a premium here and there are 100 reasons for that. This leads to the answer to the question of the acquisition of land at Exit 161. That land is valued differently by the City than a developer. He used the example of a developer purchasing the 91 acres with the capital outlay and developing it. He has the water and sewer and infrastructure cost and must sell off to recoup that before he returns one dime in profit. The city does not view it that way.

The city's view of the property is how much revenue can be generated per acre in property and sales tax. The investment becomes minimal compared to the return; therefore, the property can be marketed at a lower level than competing with someone that is trying to make a profit from the middle man.

He further explained it by using the example that the City invested 3 million dollars to put in Commerce Parkway. There was 3 ½ million dollars to put in 22<sup>nd</sup> Street. They spent 1 million dollars on infrastructure to serve those two areas; therefore, land prices went up. They stuck their toe in the market and did not like their outcomes. They can regroup and not do anything or be more strategic of what you do to incentivize the outcomes.

He noted that if any of the Planning Commissioners that were not around or did not get the information and the visuals, he would love to share that with them.

Robert Readle acknowledged to Toby Dougherty that he appreciated the comments that they did hit on the different issues. The thing that is hard to justify is someone else was at the table willing to foot that cost and the city would have reaped the benefits of the sales taxes and jobs that are created that would lead to additional sales tax collection. We would not have had to invest anything even if it was less than a breakeven proposition even if neither benefits or harms us. They needed approval from the school board, county and city. If we have different motivations from a government entity; that kind of investment has a

different aim and different goal, then why is a proposed investment by someone else achieving the same thing so discouraged?

Toby Dougherty answered that he cannot speak for individual commissioners but what he can say is that collectively the commission did not approve the incentive package that was asked for at the Exit 157 development consideration because they thought it was too big. There was a very large incentive package being asked for and the developer wanted the city to float the debt to borrow the money on their behalf. The commissioners thought it was too much and that was it. The developer changed his tune in the middle. He came forward with one thing and when the city commission seemed interested, he kept asking for more and finally reached the breaking point. It is a byproduct at Exit 157 because there is no infrastructure out there. It is extremely expensive to do that. If you develop, you must have an economy to scale to justify the incentive request or ask for a very large package of incentives.

Robert Readle answered that he appreciated his comments.

Joe Boeckner asked how the land acquisition would be decided for platting, zoning etc. Toby Dougherty answered that they have not had a strategic type discussion yet. He stated he can say what this commission talked about of the possibility of a master plan. The City Commission had to determine if they wanted to take a chance to purchase the property. He thinks they have an idea what could be the long-term utilization of the property, but we have not had the discussion to hire someone to do a master plan and if they want to have it platted. The Planning Commission would have a voice in that process.

Joe Boeckner stated that this goes back to his original point about wanting ideally sales tax revenue to come in and they don't even know what they are going to put out there. His concern is how do you do the math without any figures as far as sales and property tax versus infrastructure. If there are industrial and commercial uses, there will be different water usage needs than a residential development.

Toby Dougherty stated that he could not bind future commissions, but this commission wrote out industrial; they want to keep this commercial. They did some early math on the cost per acre on the properties up there and cost of investment to have someone ready to come in and build a small-scale commercial property like a travel plaza and commercial properties like you see on the north Vine corridor how much that generates per utilization. The further you get away from the intersection, the less viable it is going to be for commercial. This will be the commission's next step moving forward.

Paul Phillips thanked Toby Dougherty.

**B. Opportunity for Planning Commissioners to ask questions of staff or initiate topics for discussion:** Robert Readle asked if there was a process to request an

exception or approve a use variance within a certain zoned area. Jesse Rohr answered that there is through the Hays Area Board of Zoning Appeals.

Per State Statute a Special Use Permit must be specifically called out for in the regulation. He used the example of a farm implement store in a commercial zoned area. There are tables in the UDC that say if it is a permitted use, limited use or special use. If it is permitted, they can do it outright. No other approval is necessary. If it is special use, there are provisions they can go before the Hays Area Board of Zoning Appeals. If approved, the Hays Area Board of Zoning Appeals can set conditions. If it is limited use, it can be approved administratively by staff. He gave an example.

**6. ADJOURNMENT:** Paul Phillips adjourned the meeting at 7:20 p.m.

Submitted by: Linda K. Bixenman, Administrative Assistant  
Planning, Inspection and Enforcement

DRAFT