

**BOARD OF COUNTY COMMISSIONERS
OF
FRANKLIN COUNTY, KANSAS**

RESOLUTION NO. 13- 38

A RESOLUTION APPROVING SPECIAL USE PERMIT APPLICATION #1211-1177 (POE) TO PERMIT THE OPERATION OF A SHED, METAL (PIPE & IRON), GATES AND FENCE PANELS FABRICATION, CONSTRUCTION, STORAGE AND SALE FACILITY IN A C-2 (HIGHWAY COMMERCIAL) ZONING DISTRICT

WHEREAS, Franklin County, Kansas is a county municipal government, organized pursuant to K.S.A. 19-101; and

WHEREAS, The Franklin County Board of County Commissioners did adopt Resolution # 23-91 creating the Franklin County Planning Commission as provided in K.S.A. 12-744; and

WHEREAS, the Franklin County Planning Commission did publish notice on November 29th, 2012 that public hearing would be held on December 20th, 2012 to consider Special Use Permit application #1211-1177 (Poe) as required by K.S.A. 12-757 and Article 19, Section 19-3.04 of the Franklin County Zoning Regulations; and

WHEREAS, the Planning Commission did on December 20th, 2012 hold a public hearing for the consideration of Special Use Permit application #1211-1177 to permit the operation of a shed, metal (pipe & iron), gates and fence panels fabrication, construction, storage and sale facility and continued said hearing to April 18th, 2013 at the request of the applicant; and

WHEREAS, the Planning Commission did on April 18th, 2013 hold a public hearing for the consideration of Special Use Permit application #1211-1177 to permit the operation of a shed, metal (pipe & iron), gates and fence panels fabrication, construction, storage and sale facility, and after reviewing and considering all reports and testimonies did, by a majority vote of those present, deny said Special Use Permit based on certain findings; and

WHEREAS, the Franklin County Board of County Commissioners at their meeting of May 15, 2013, after reviewing public comments and statements from the applicant, referred their recommendation of April 18, 2013 back to the Planning Commission for further consideration as provided in K.S.A. 12-757(d); and

WHEREAS, the Planning Commission at their meeting of June 20, 2013 elected not to reconsider the Special Use Permit for the operation of a shed, metal (pipe & iron), gates and fence panels fabrication, construction, storage and sale facility on a majority vote of those member present, moved to send the application back as previously submitted; and

WHEREAS, the Franklin County Board of County Commissioners, at their meeting of July 31, 2013, received the Planning Commissioners refusal to reconsider Special Use Permit #1211-1177 in accordance with the provisions of K.S.A. 12-757(d); and

WHEREAS, the Board of County Commissioners has determined the following conclusions of law:

1. Special Use Permits are based upon the zoning power granted by the State empowering governing bodies to adopt zoning laws for the protection of the public health, safety and general welfare.
2. The Board of County Commissioners of Franklin County did adopt Zoning Regulations on August 14, 2002 which included a section (Article 19, Sections 19-1 through 19-5) setting out the procedures and basis for review in considering a Special Use Permit including the following criteria:
 - a. Whether approval of the special use would be consistent with the intent and purpose of these regulations;
 - b. Whether the location of the proposed use is compatible to other land uses in the surrounding neighborhood;
 - c. Whether the proposed use places an undue burden on the existing transportation and service facilities in the area affected and, if so, can such additional facilities be provided;
 - d. Whether the proposed use is made necessary or desirable because of changed or changing conditions in the area affected;
 - e. Whether the applicants' property is suitable for the proposed use;
 - f. Whether the proposed amendment would be in conformance to and further enhance the implementation of the Comprehensive Plan;
 - g. Whether the relative gain to the public health, safety and general welfare outweighs the hardship imposed on the applicant by not approving the proposed special use;
 - h. Whether the proposed use, if in compliance with specified conditions, would be consistent with the character of the neighborhood and surrounding uses; and
3. In addition to the criteria set out in the County Zoning Regulations, the Board of County Commissioners has noted and reviewed the following additional factors regarding Special Use Permits as set out by the Kansas Supreme Court in *Golden vs. City of Overland Park* that were applied in the *K-S Shopping Center vs. City of Kansas City, KS* case:
 - a. Is the proposed use consistent with the character of the neighborhood as an area used for commercial and fabrication activities.
 - b. Is the proposed use consistent with the zoning and uses of properties nearby, as the permit will not change the underlying zoning of the subject property.
 - c. Is the proposed use in conformance with the suitability of the land for the requested uses.
 - d. Will the proposed use detrimentally affect nearby property.
 - e. The length of time the property has remained vacant for use/s as currently zoned.

- f. Does the proposed use create a benefit to the public health, safety, and welfare.
- g. Is the proposed use recommended for approval by the County's professional staff.
- h. Is the proposed use in conformance with the County's Comprehensive Plan.

WHEREAS, the Board of County Commissioners, having reviewed the criteria set forth in Article 19 of the County Zoning Regulations and the factors of the Supreme Court case of Golden vs. City of Overland Park, that were determined applicable to the Special Use Permit application by K-S Shopping Center vs. City of Kansas City, KS case, have concluded that the applicant has met the criteria of the County Zoning Regulations and applicable factors of the Golden vs. City of Overland Park case; and

WHEREAS, the Board of County Commissioners, after reviewing the recommendation of the Planning Commission, all public comments for and against said Special Use Permit together with the Staff recommendations, the criteria of the County Zoning Regulations and factors of the Golden applicable to the K-S Shopping Center Special Use Permit case, have determined the following findings:

- a. That as conditioned, the Special Use Permit is in substantial conformance with, and would further enhance, the County Comprehensive Plan because it does not change the underlying zoning of the property and will not preclude the development of the surrounding area.
- b. That as conditioned, the Special Use Permit will comply with other applicable County standards
- c. That as conditioned, the Special Use Permit will not pose any threat to the public health, safety or welfare as the activities permitted are localized to the property.
- d. That as conditioned, the Special Use Permit is in conformance with the character of the neighborhood as the neighborhood is a rural and is used for agricultural, low-density residential and commercial uses.
- e. That as conditioned, the Special Use Permit is in conformance with the zoning and uses of other nearby property.
- f. That as conditioned, the Special Use Permit is appropriate given the suitability of the land for the proposed use. The land area is adequate for on-site parking, loading, unloading and storage of materials and products.
- g. That as conditioned, the Special Use Permit contains mitigation measures to minimize impacts to surrounding properties or services. The conditions placed on the permitted uses will minimize adverse effects to adjoining properties.
- h. That as conditioned, the Special Use Permit will not unduly impact property values of surrounding properties.
- i. That the approval contains a provision for reconsideration or revocation of the permit if the conditions set forth in Section 2 of this Resolution have not been satisfactorily completed.

NOW, THEREFORE, Be It Resolved, that the Franklin County Board of County Commissioners does hereby approve Special Use Permit Application #1211-1177 (Poe) to permit the operation of a shed, metal (pipe & iron), gates and fence panels fabrication, construction, storage and sale facility in an "C-2" Highway Commercial Zone as follows:

Section 1: Special Use Permit #1211-1177 (Poe) is granted for the following described property:

Beginning at the Northwest Corner of the Northwest Fractional Quarter of Section 18, Township 18 South, Range 18 East of the 6th P.M.; THENCE South 02 degrees 07 minutes 00 seconds East for a distance of 1332.85 feet along the West line of said Quarter Section to the Southwest Corner of the North Half of said Quarter Section; THENCE North 87 degrees 44 minutes 00 seconds East for a distance of 93 feet to a point on the Southeasterly right-of-way line of FAS Route No. 1066, as relocated; THENCE North 31 degrees 16 minutes 00 seconds West for a distance of 119 feet along said right-of-way line; THENCE North 02 degrees 07 minutes 00 seconds West for a distance of 229.20 feet along said right-of-way line; THENCE North 42 degrees 08 minutes 00 seconds East for a distance of 237.96 feet along said right-of-way line to the True Point of Beginning; THENCE North 31 degrees 00 minutes 00 seconds East for a distance of 297.22 feet along said right-of-way line; THENCE South 42 degrees 54 minutes 51 seconds East for a distance of 162.76 feet; THENCE South 33 degrees 18 minutes 05 seconds West for a distance of 255.07 feet; THENCE North 57 degrees 55 minutes 23 seconds West for a distance of 146.16 feet to the True Point of Beginning, Franklin County Kansas.

Section 2: The real property described above shall be authorized for the operation of a shed, metal (pipe & iron), gates and fence panels fabrication, construction, storage and sale facility pursuant to the Franklin County Zoning Regulations and the following conditions:

1. That the applicant shall bring the existing on-site sanitation system into compliance with the Franklin County Sanitation Code and subject to the required sanitation permits.
2. That the applicant shall bring the existing building into compliance with the Franklin County Building Code required by the use and occupancy rating for the activities permitted, subject to the required building permits.
3. That the applicant shall install screening of all outdoor storage of materials and products with a 6-foot high solid fence or wall constructed of new material.
4. That the applicant shall maintain a minimum of three (3) on-site parking spaces for employee and customer parking. Parking spaces shall conform to the standards set forth in Section 21-2.01 of the County Zoning Regulations.
5. Failure to complete and comply with the above conditions within six (6) months will result in this matter being referred to the Franklin County Planning Commission for revocation of the Special Use Permit.

6. That the Special use permit shall be null and void by operation of law if said permit has not been initiated and utilized by commencing the activity or use at the site specified in said permit within one (1) year of the date of approval.

PASSED AND ADOPTED by the Franklin County Board of County Commissioners this 31st day of July, 2013. This action shall become in full force and effect upon publication in the official county newspaper.

/s/Colton M. Waymire
Colton M. Waymire
Vice Chairman

Received and recorded this the 31st day of July, 2013.

/s/Janet Paddock
Janet Paddock
County Clerk