

**MINUTES**  
**Independence Planning**  
**Commission Independence**  
**Board of Zoning Appeals**  
**Tuesday, March 2, 2021**  
**Veterans Room    Memorial Hall    5:30 p.m.**

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**Call to Order**

The Planning Commission meeting was called to order by Kendall Neill.

**Planning Commissioners Present**

Lisa Richard (in person), Kendall Neill (in person), Anthony Royse (in person), Rachel Lyon (in person), Barb Emert (in person), Brent Littleton (in person), Andy McLenon (in person), Michelle Anderson (by phone), Mary Jo Meier (in person)

**Planning Commissioners Absent**

None

**Staff Present**

Kelly Passauer, City Manager (in person); David Cowan, Assistant City Manager (in person); Jeff Chubb, City Attorney (in person), Lydia Collins, Administrative Aide (in person).

**Visitors**

Stacy Boyer  
Brad Boyer  
John Heckman  
Kurt Seiler  
Nancy Clubine  
Mark Gilbert  
Mike Mantle  
Alan Betchan  
Karen Ferrell  
Toni Jabben  
Sam Carnes  
David Shatney  
Kathleen Reynolds  
Jamie Clubine  
Vivian Cottrell  
Gayle Wallingford  
Tim Raglin

Gary Hare  
Joanne Rinne  
Rhonda Clark  
Linda Hernandez  
Loretta McDiarmid  
Glenna Lawrence  
Ron Lawrence  
Anita (Not Legible)

#### **Minutes**

- a. Consider approving minutes of the February 2, 2021 meeting.

***Barb Emert made a motion to approve the minutes of the February 2, 2021, meeting, as amended, Brent Littleton seconded the motion. The motion carried 9 - 0.***

#### **Board of Zoning Appeals (Does not include outside City appointments)**

#### **Planning Commission**

- b. Reconsider a request to rezone a tract of land from R-1, Large Lot Single-Family Dwelling District to C-1, Neighborhood Business District at 2313 North Pennsylvania Avenue.

The following staff report was provided:

On January 5, 2021 the Planning Commission held a public hearing regarding a rezoning 2313 North Pennsylvania Avenue from R-1 to C-1. The applicant requested that the hearing be adjourned as they wished to also apply for a PUD overlay because the building they proposed to construct exceeded the size allowed in a C-1 district. However, several residents were in attendance, and a motion to adjourn the hearing as requested died due to a lack of a second and the public hearing commenced. Once the public comments were completed the following motion was made:

***Tony Royse moved to deny a request to rezone a tract of land located at 2313 North Pennsylvania Avenue from R-1, Large Lot Single-Family Dwelling District to C-1, Neighborhood Business District. Kendall Neill seconded. Lisa Richard and Michelle Anderson dissented. Motion carried 5-2.***

This recommendation was forwarded to the City Commission for consideration at their January 28, 2021 meeting. At that meeting, the applicant advised the Commission that they were denied the opportunity to present their requests at the same time for the Planning Commission to consider. The City Commission returned the recommendation to the Planning Commission so that they could consider the rezoning and PUD at the same meeting. Since there was not enough time to meet the publication and notice deadline for the February meeting, this was rescheduled for the March 2, 2021 meeting. Notices were sent out to property owners within 200' and the notice of the PUD hearing was published in the newspaper by the deadline. The following staff report was originally

prepared for the January 5, 2021 public hearing:

**Summary:**

The Planning and Zoning Commission received a request from AAB Engineering, LLC, to rezone a tract of land from R-1, Large Lot Single-Family Dwelling District to C-1, Neighborhood Business District at 2313 N. Pennsylvania Avenue.

The legal description is: The North Half of Lot 7, Block 1, Highland Park Addition to the City of Independence, Montgomery County, Kansas, Except Beginning 100 feet East of the Southwest Corner of the North Half of Lot 7, Thence North 165 feet, Thence West 100 feet to the Place of Beginning; and Except the West 100 feet of the North Half of Lot 7.

***Description of the Tract:***

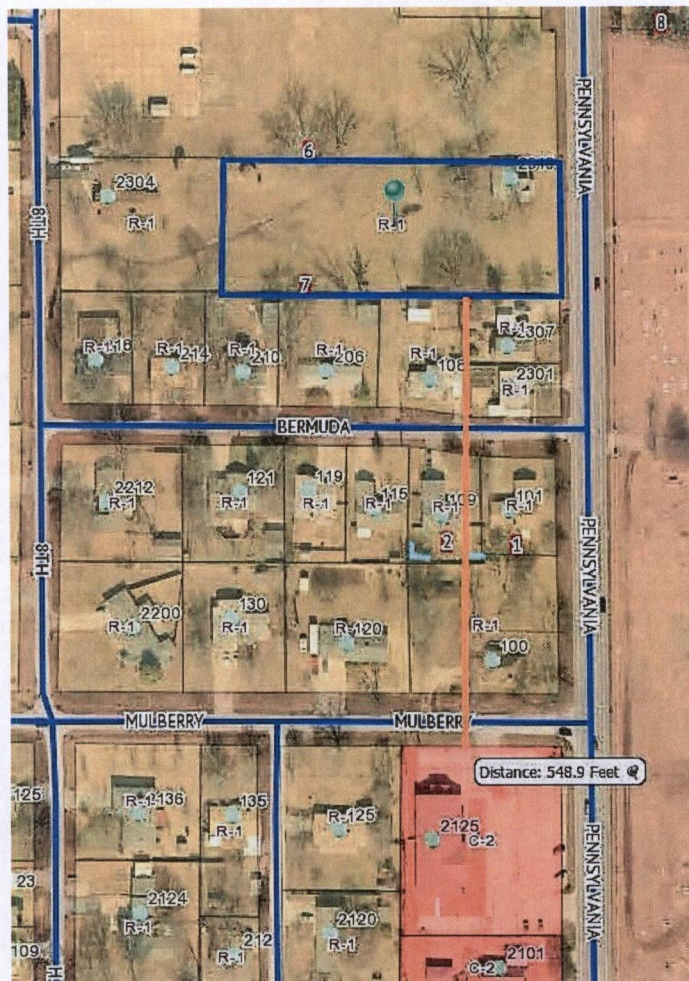
The area requested to be rezoned is 165 feet wide and 400 feet deep. The lot lies in the northern portion of the City. There is a detached one and a half story, finished, single-family residence on the east side of the property. The property is located on



a major street, which is also a highway.

**Zoning and Uses of Property Nearby:**

The property directly north, south and west is zoned R-1, Large Lot Single-Family Dwelling District and is utilized primarily for residential purposes with a church property directly north. The property to the east is Mount Hope Cemetery, Catholic Cemetery and Lutheran Cemetery. Approximately 550 feet south there are C-2 zoned properties starting at Mulberry Street.



### *Character of the Neighborhood:*

This area is in the northern part of the City and is primarily residential. There are C-2 commercial businesses along North Pennsylvania Avenue 1 ½ block south of



the location.

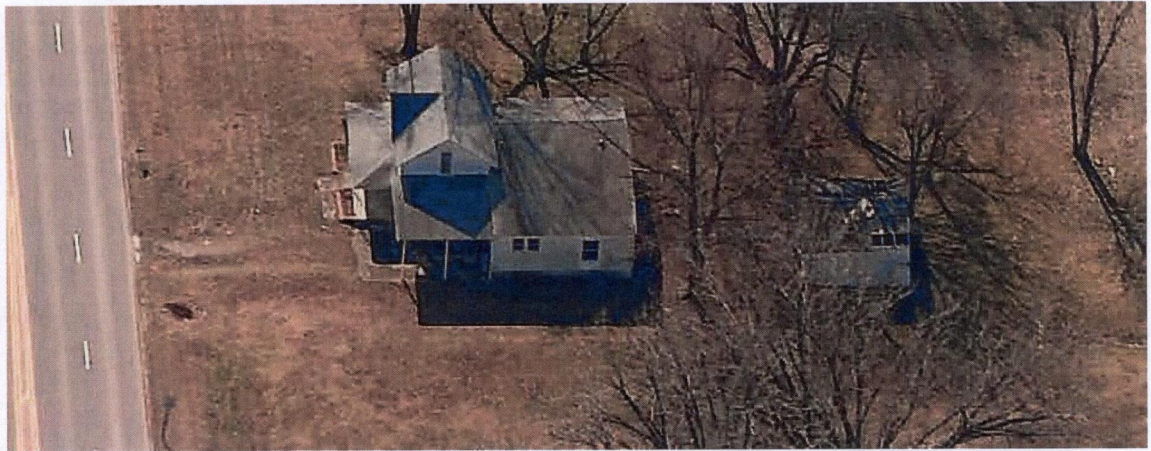
***Suitability of the Subject Property for the Uses to which it has been Restricted:***

The property under consideration is currently zoned R-1, Large Lot Single-Family Dwelling District. The property is suitable for the present residential use classification.

***Length of Time the Property has Remained vacant as Zoned:***

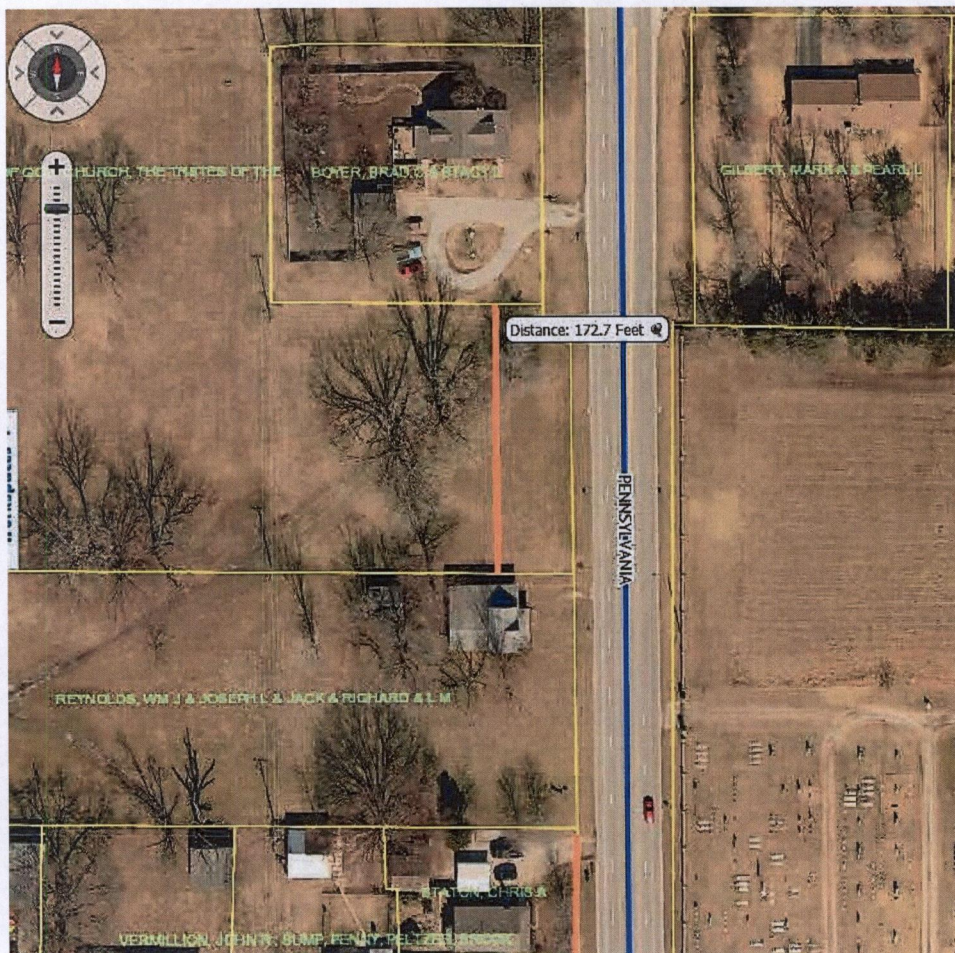
The property is not vacant as it currently contains a residential structure. However, we believe the structure has not been occupied since approximately 2014.





***Extent to which Removal of Restrictions will Detrimentially affect Nearby Property:***

Since North Penn is also a highway this area is already a high traffic area. Although the proposed store will generate additional traffic, it is not anticipated to significantly increase the daily traffic counts on North Penn Avenue. It is anticipated the neighbors to the south would be most affected, as the church



property directly to the north is primarily undeveloped which serves as a buffer to the residential structure that is approximately 170 feet north.

Relative Gain to the Public Health, Safety and Welfare by the Destruction of the Petitioner's Property as Compared to the Hardship Imposed upon the Individual Landowners:

The property is presently zoned for residential use; therefore, it is not likely that the value of the petitioner's property will be reduced. It is also anticipated that permitting the rezoning as requested would have minimal impact on the public health, safety and welfare. Denial of the proposed rezoning will impact the proposed owner's use of the property as they would like to enhance their facilities without restrictions included in the R- 1 zone, which would not allow a Commercial Retail Store. Development of such a store in this location would be a gain to the welfare of those in the residential neighborhoods in the north portion of the City, as it would provide the availability of daily necessities closer to their residences. This was a concern previously voiced by residents residing in the northern portion of the City after Braum's moved from North Penn to West Main.

Also, since there is already an established Dollar General Store located on East Main that serves the central and southern portions of the City, this will ensure the local traffic generated by the proposed new location will be primarily those that live in the northern portions of the City.

Conformance with the Comprehensive Plan:

*Commercial Goal – To provide sufficient neighborhood and community- wide shopping facilities efficiently distributed throughout the community and adequate opportunity for commercial expansion.*

*Objective C1 – Encourage the development of business downtown.*

*Policy C11 – The Central Business District (CBD) shall be the primary regional retail center in the City.*

*Policy C12 – The enhancement of the CBD to attract both shoppers and prospective businesses through development and redevelopment efforts of the private and public sectors shall be encouraged.*

*Objective C2 – Provide areas away from downtown for clustered and coordinated commercial development to serve businesses with acreage requirements that cannot be accommodated in downtown.*

*Policy C21 – Planned commercial areas shall be provided for large lot users (i.e., lumber yards, auto and farm implement dealers). These uses shall be clustered along U.S. 75 west of the Missouri-Pacific right-of- way but no further than 1/2 mile west of Peter Pan Road to minimize their impact on surrounding uses and traffic patterns rather than being allowed to form a long commercial strip and be limited to properties having direct vehicular access to the highway.*

*Objective C3 – Provide neighborhood convenience shopping adjacent to residential areas but discourage "spot commercial" zoning.*

*Policy C31 -- Coordinated neighborhood shopping centers or groups*

*of stores which primarily provide goods and services to local residents only, such as grocery stores, pharmacies and laundromats, shall be allowed in residential areas, but no individual store may exceed 5,000 S.F. in total floor area. Such shopping facilities should be encouraged in the southeast, southwest and Fruitland areas of the community.*

*Policy C32 -- Neighborhood shopping centers should not be larger than 12 acres in area.*

*Policy C33 -- The enhancement of neighborhood shopping centers shall be encouraged to attract both shoppers and prospective businesses through the development and redevelopment efforts of the private and public sectors.*

*Objective C4 -- Limit strip commercial development along the major streets to business directly serving the motoring public.*

*Policy C41 -- Strip commercial development, single commercial uses stringing out along a street, shall be limited to those uses directly serving the motoring public such as motels, service stations and fast-food restaurants.*

*Policy C42 -- Strip commercial development shall be limited to major highway entrances to the City and shall be permitted only limited access to Major streets via frontage roads. Generally, commercial use shall be confined to the west side of Pennsylvania between Oak and Mulberry, west on U. S. 75 as far as 1/2 mile west of Peter Pan Road.*

*Policy C43 -- The Zoning Ordinance should be updated to limit the types of businesses located on the highways outside of the Central Business District.*

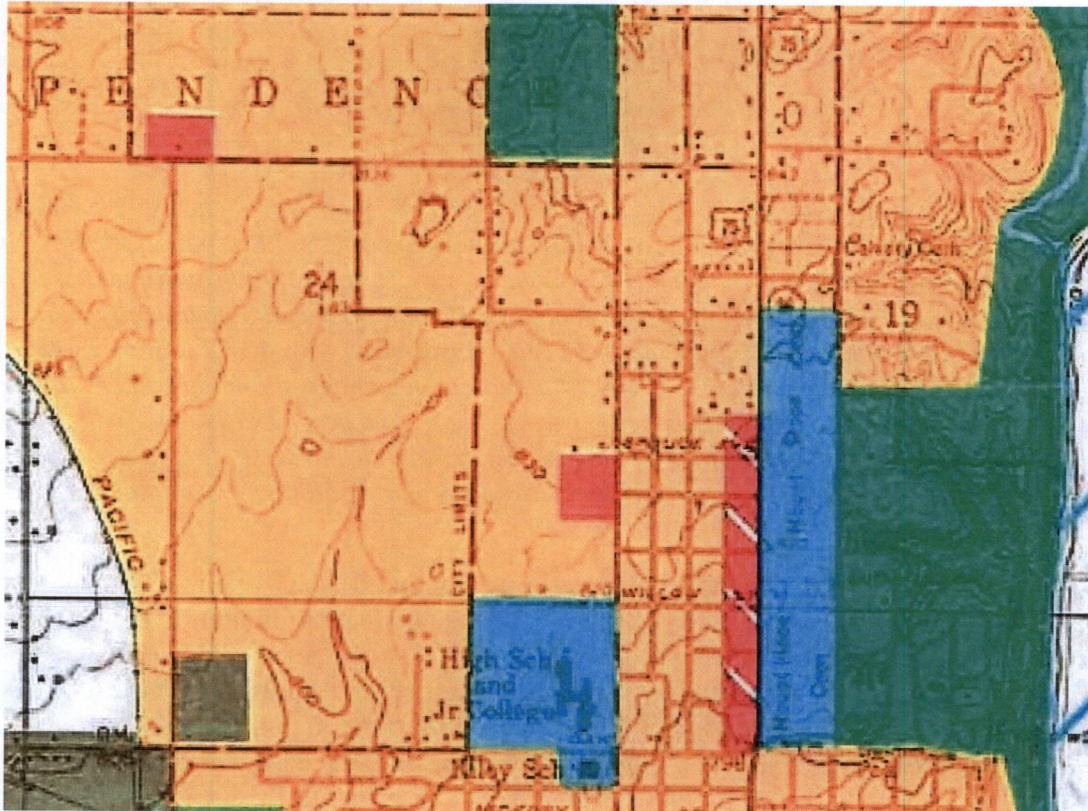
The uses in the C-1 district provide commercial locations for small areas of convenience shopping facilities in and near residential neighborhoods. Such convenience shopping facilities will often occupy a small area, frequently at an intersection or on a major street, in an area that is otherwise wholly residential.

The City's Comprehensive Plan indicates that residential areas are compatible with neighborhood commercial developments, and commercial developments on North Penn are addressed to infill the commercial strip opposite the cemetery (pages 66 and 83, of the 1982 Comprehensive Plan):

*"The convenience shopping facilities consist of a small commercial center. It should contain adequate parking areas and is usually patronized by two or more neighborhoods no further than one mile from the furthest home. These small commercial centers would not draw any substantial business from downtown, but rather only provide daily necessities. Their uses could include a grocery store, a dry-cleaners, a pharmacy, and a service station."*

*"Commercial development along Pennsylvania is shown as being limited to infilling of the commercial strip opposite the cemetery. A small neighborhood shopping center site is shown at 10th and Spruce and Taylor and 21st Streets."*

While the 1982 General Development Plan map shows the specific area for this development as residential, the majority of the area on North Penn opposite the cemetery is shown as commercial.



The Comprehensive Plan recognizes the fact that all businesses will not be accommodated by the central business district and indicates that the Commercial Goal is to provide sufficient neighborhood and community wide shopping facilities efficiently distributed throughout the City and adequate opportunity for commercial expansion. (Table 5-1, page 68 of the 1982 Comprehensive Plan).

### ***Staff Analysis***

Rezoning this lot to C-1 would fit the character of the neighborhood as properties on the north, south and west are zoned R-1 where a C-1 Neighborhood Business would be allowed. The intended continued use of the property by the applicant for a retail store does match the intent of the C-1 Neighborhood Business district. The proposed store would retail daily necessities, which would consist of primarily grocery and apparel type merchandise. The permitted and conditional use table permits both of these uses in a C-1 zone:

|                   |      | Permitted Zoning District |     |     |     |     |     |     |     |     |     |     |     |     |
|-------------------|------|---------------------------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| Land Use Category | Code | A-1                       | R-1 | R-2 | R-3 | R-4 | R-5 | O/P | C-1 | C-2 | C-3 | C-4 | M-1 | M-2 |
| Groceries—retail  | 5410 |                           |     |     |     |     |     |     | P   | P   | P   | P   |     |     |

|                                |      | Permitted Zoning District |     |     |     |     |     |     |     |     |     |     |     |     |
|--------------------------------|------|---------------------------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| Land Use Category              | Code | A-1                       | R-1 | R-2 | R-3 | R-4 | R-5 | O/P | C-1 | C-2 | C-3 | C-4 | M-1 | M-2 |
| Apparel and accessories—retail | 5610 |                           |     |     |     |     |     |     | P   | P   | P   | P   |     |     |

However, the size of the store proposed is 130' X 70, or 9,100 square feet which exceeds the use limitations for the C-1 zone in Section 509.8.a. which states; *"No separate business establishment shall occupy more than 5,000 square feet of floor space. Each separate business establishment shall operate independently from adjacent business establishments."* This is consistent with the Comprehensive Plan which states in Policy C31, *"Coordinated neighborhood shopping centers or groups of stores which primarily provide goods and services to local residents only, such as grocery stores, pharmacies and laundromats, shall be allowed in residential areas, but no individual store may exceed 5,000 S.F. in total floor area."*

In speaking with the applicant, I advised them that if the C-1 zoning was approved it would require a variance from the 5,000 square feet use limitation in Section 509.8.a. The applicant advised that they may wish to pursue a P.U.D. designation along with the C-1 zoning, which would include the requirements of the C-1 district, with the exception of the square footage limitation. The P.U.D. process requires a preliminary and final plat, which could be reviewed and approved at the same meeting. If this option is taken, then the hearing for the P.U.D. could not be held sooner than the February 2, 2021 Planning Commission meeting, if the information is received in time to meet the publication requirements for that meeting.

Another option would be for the applicant to request rezoning to C-2, commercial services district. This zone is already located on North Penn approximately 1 ½ blocks or 550 feet south of the tract requested for rezoning. Section 510.1 describes the intent as; *"District C- 2 is intended primarily for general trades and commercial services located at specific points on major thoroughfares outside of central or neighborhood business districts. This district is particularly appropriate adjoining a major highway. Such an area draws highway trade uses such as restaurants, service stations, and motels which are not totally compatible with shopping center developments but which may be grouped together quite advantageously as highway service centers."* Staff's concern with this option is since it is not directly adjoining an existing C-2 district, it would be a spot zone within an area primarily zoned residential with less restrictions than a C-1 district. Staff is further concerned this could open the door for additional uses in the future that may not be compatible with the nearby residential properties.

The Planning Commission has the following options:

1. Approve the rezoning to C-1 and include restrictions that require meeting

the C-1 district regulations, which would require complying with the C-1 district regulations, unless variances are granted or a P.U.D. is approved modifying such district regulations.

2. Adjourn the public hearing to allow the applicant time to apply for a variance or P.U.D. so that all matters could be considered at the same meeting.
3. Deny the request. If the Commission accepted this recommendation and the applicant wished to proceed with this project, this would require the applicant to restart the zoning process over.

**Suggested Motion to approve with restrictions:**

***I move to recommend approving a request to rezone a tract of land located at 2313 North. Pennsylvania Avenue from R-1, Large Lot Single-Family Dwelling District to C-1, Neighborhood Business District with the following restrictions which shall be binding on all future owners, assigns or heirs:***

1. The applicant will obtain all necessary City of Independence and State of Kansas licenses and/or permits to operate the uses proposed.
2. All parking, entrance and exit drives must be designed to minimize traffic congestion on public streets.
3. Any additional exterior lighting on site will be designed in such a way that it will not be directed toward or create a nuisance to any adjoining properties. Such lighting will need to be approved by the Zoning Administrator.
4. To limit noise that could affect adjoining areas there shall be no outside audio or paging equipment that exceeds a volume level that can be heard at any of the adjoining residential dwellings under separate ownership other than the auto dealership and service center properties.
5. The location of solid waste equipment shall be designed by the company and will need to be approved by City staff. All solid waste shall be kept in containers which shall be screened from adjoining properties.
6. Any off-street parking areas will meet the minimum off street parking requirements; shall be maintained in appearance and shall be used solely for parking of the customers and employees of the business. Such parking area may not be used for storage of vehicles, equipment or merchandise.
7. A drainage plan designed to adequately handle a 10 year or greater storm event must be submitted by an engineer licensed in the State of Kansas to ensure that any increased runoff will be dealt with in such a way so as not to negatively impact nearby or downstream properties.
8. All property lines must be established by a surveyor licensed in the State of Kansas.
9. A detailed site plan shall be submitted to and approved by City staff prior to any such work commencing.

10. All improvements will be maintained and kept in serviceable condition; and the property must be kept free of debris and trash.
11. The applicant will comply with the C-1 district regulations, unless variances are granted or a P.U.D. is approved modifying such district regulations.

***This motion is based on the following findings: [Choose only those that the Planning Commission determines as applicable]***

- ***Conformance with the Comprehensive Plan***
- ***Character of the Neighborhood***
- ***Zoning and uses of properties nearby***
- ***Availability and adequacy of required utilities and services to serve the proposed use***
- ***Staff recommendation***

***Suggested Motion to deny:***

***I move to recommend denying a request to rezone a tract of land located at 2313 North. Pennsylvania Avenue from R-1, Large Lot Single-Family Dwelling District to C-1, Neighborhood Business District. This motion is based on the following findings: [Choose only those that the Planning Commission determines as applicable]***

- ***Nonconformance with the Comprehensive Plan***
- ***Character of the Neighborhood***
- ***Zoning and uses of properties nearby***
- ***Availability and adequacy of required utilities and services to serve the proposed use***
- ***Staff recommendation***

In asking whether any Planning Commissioners had any outside contacts regarding this case, Lisa Richard stated that she had received a text from Sue Scovel, wanting to know what was happening with this application and Lisa gave her the facts and Sue asked why Lisa had voted the way she had and Lisa would not discuss that with her.

Kendall Neill opened the public hearing.

Mike Mantle – Developer for Dollar General in Kansas and Oklahoma. Dollar General has an existing store but feel there is an opportunity to place an additional store where people are underserved up north. The owner has had conversations with the neighbors. The economic impact is 6 to 10 new jobs with a pay range between 9 and 16 an hour and sales tax generation. The traffic counts are between 6500 and 7000 per day. We felt the PUD application was the best way for Dollar General, addressing the issues that were brought up at the previous meeting.

Civil Engineer, Alan Betchan– In the PUD is an effort to address many concerns brought up in the last meeting, drainage, lighting, traffic. There are ways to mitigate the concerns. The PUD standards require full masonry on the north, east and south sides. We are proposing conceptual elevations and more extensive landscaping along the south side. The

lighting is more restricted in a PUD than what you normally see, all shielded and downcast. The traffic safety aspects, of acceleration and deceleration that concern KDOT are mitigated by the four-lane highway. If the PUD is approved, we still need to go through KDOT to be approved. The drainage is a valid concern. There is a good-sized swell, and we propose onsite detention to mitigate all our increase in runoff and go all the way through the 100-year storm plan and they will be reduced back to existing rates prior to our development. Water runs off of pavement, so we detain the water, so it doesn't leave at a faster rate, so the downstream properties only receive the peak discharge rates that are equal to what they are pre-development.

Lisa Richard asked what the peak discharge is now, you said that you would control the runoff so that it would not exceed the peak discharge equivalent to what existed before your project.

Alan Betchan – That is a pretty extensive hydrology study, but I'd say around 10 CFS, that's roughly 70 gallons per minute. There is more water than that that's traversing the site from the highway.

Lisa Richard– you would determine that in your drainage study and design something that would not exceed that. How would you deal with the existing that's already coming across the property because that would be coming into the swell and instead of hitting soil and vegetation that would be impervious?

Alan Betchan - The swell would be maintained because it would still be greenspace where the swell is. This isn't front to back pavement. We are looking at creating a detention in the area of greenspace to help the drainage as a whole. We would possibly be able to mitigate the peak discharges running through the site to make the problem better. We could do our discharge in the parking lot and meet all the requirements.

Lisa Richard asked if the swell would be displaced.

Alan Betchan stated that no, it will remain where it is.

Lisa Richard asked if they had looked at the property and knew there is a culvert going into a City road that it ran into an area that absorbs the water.

Alan Betchan said they will not increase the runoff rates downstream and will do everything they can to provide additional effort to make it better.

Andy McLendon asked why this is the preferred site.

Mike Mantle said it was the depth that came with the lot. South of the site is a very narrow lot. This lot has significant depth and will help keep down the cost of relocating utilities. Further south and we would have to tear buildings down.

Rachel Lyon asked if they only looked at Highway 75.

Mike Mantle said that Dollar General says where they want to be with a STA trade area and that is where they look.

Alan Betchan said they look at the whole wherever Dollar General wants a store and this location fits what they are looking for. The existing site gets the run-off now and we can make it better.

Lisa Richard said it looks like the swell comes from off property and would be right next to the parking lot.

Alan Betchan stated that they are definitively conveying that swell without pushing it off property.

Lisa Richard asked what definitively conveying meant.

Alan Betchan said that the water is not being picked up and piped and discharged, they have to convey the waters across the site.

Lisa Richard asked if it would remain the natural swell that it is.

Alan Betchan said yes.

Lisa Richard asked if they would impound any water that comes off the parking lot.

Alan Betchan said that's one option, or we could go down the stream which has a higher decrease in the peak.

Lisa Richard said she understood she was just envisioning water coming down and backing up and flooding the church property.

Alan Betchan said they will not put more water into the swell.

Lisa Richard asked if they would agree to language presented to the Planning Commission that if there were new issues with the drainage the company would come back and fix the problem.

Alan Betchan stated that through all the engineering methods he will certify everything they do.

Lisa Richard asked if their hydrology study would document all the current issues? She feels that they could have an impact all along the property and the historical creek is where the water has gone and they provided a culvert on one side, it is already a problem. She requested that language be used that the issues will be identified, and no new issues will be created and that you will be held accountable under your permit.

Alan Betchan stated that if the metric is defined then he can do that.

Lisa Richard stated that the neighbors are worried about there being worse problems.

Alan Betchan stated that as long as he can quantify it, he will be glad to go over the language.

Kendall Neill stated that the engineer must sign his name to any project. From an engineering standpoint, if a PE stamps it, it comes back on the company. He also stated that Dollar General usually does not own the building but leases it out.

Alan Betchan stated that it is a 15-year lease, with 5, 5-year extensions.

Mike Mantle stated that Dollar General wants to be a convenience to Walmart.

Kendall Neill asked about repurposing the building if Dollar General leaves.

Mike Mantle said that Dollar General is expanding into more groceries which would fit with this area. He explained how sites are chosen.

Alan Betchan said a PUD would keep the exterior in better shape which would give the building a good resale value.

Brent Littleton asked if they were leaving the east store open.

Alan Betchan said yes.

Brent Littleton also asked if they had considered where the old Sonic was at the triangle.

Mike Mantle said that once Dollar General finds a site, they want they had rather move forward than look back.

Kurt Seiler, 300 Crestview Dr, It's been commented that no one wants it there and the city has existed without it just fine. I do not believe the pros outweigh the cons. The employees won't care about the trash because they're overworked. The square footage is almost twice the size for a C-1 and the resale value of our houses will drop. I think this is a bad idea. We chose to live in a residential neighborhood, not be next to a store.

Stacy Boyer, 2501 N Penn, Dollar General forces small businesses out of business. Allowing stores like Dollar General is not consistent with our own town Comprehensive Plan. Introducing large slabs of concrete into the area, with the existing drainage issues, will cause problems for all the residents of the area.

Tim Raglin -- I work at home and look out at the traffic every day where the traffic is intense and every 16 months someone drives into the ditch in front of my house. I think the Dollar General stores are an abomination. The request to rezone this tract is ridiculous because you will have to rezone it again. You stated at the last meeting that on places that sell marijuana you would not want to put anything where it would disrupt a neighborhood. First do no harm. Would you want one of these stores on your block.

John Heckman, this group has not worked on a PUD before. You must look at the underlying

zoning. PUD's are usually used for larger buildings. The Comprehensive Plan clearly states that commercial use be confined to the west side of Penn between Oak and Mulberry. The 9,100 sq. ft. size is too large for the C-1 district and a variety store, which is how Dollar General should be classified, is not permitted in the C-1 district. The building is pre-engineered metal with a low-pitch metal roof that does not blend in with the neighborhood. The south fence line will create a gap that will fill with weeds and trash. Vehicles entering and exiting will increase confusion to the thru-traffic vehicles. Development of the property will greatly impact the single-family residences to the west and require an extensive drainage plan because the site will produce additional runoff, impacting everyone downstream. The exterior lighting level will create a nuisance.

Linda Hernandez, we were one of the first houses built in this area and we don't want Dollar General there in our neighborhood.

Kathleen Reynolds read her letter from the first meeting, encouraging putting in a Dollar General store.

When asked if the applicant wished to rebut any statement made, Alan stated that the board should be specifically looking at the zoning and application in front of them, and they were specifically looking at the fit for Dollar General in the neighborhood. We try to mitigate the impacts to area neighborhoods. We can help with the drainage, the lighting and other issues.

Brad Boyer, I manage the G & W here in town and one of my big concerns running a business in this town is crime. Since I've started managing this store, I've been subpoenaed more than 10 times. When I walk into a business, I look at how many staff are there and Dollar General usually has only two.

Lisa Richard had some questions for staff, there is a list of condition specifications and how is that enforced.

Kelly Passauer – If it is a part of a rezoning it's in the rezoning ordinance and the rezoning is contingent on following the restrictions and being in compliance.

Lisa Richard – So if they weren't in compliance then does it revert to the prior zoning and doesn't that complicate it?

Kelly Passauer – It would have to come back to the Planning and Zoning Commission to review.

Lisa Richard – But if they have already built the store, it would come down to staff enforcing citations?

Jeff Chubb, City Attorney – I've never been asked to enforce a violation but if it's bad enough we could site them into court where the judge issues a per diem fine until it is in compliance.

Lisa Richard – The plan specifies trees on the south border, could staff ask for more trees around the property?

Kelly Passauer – The Planning Commission can make more recommendations as they see fit.

*Mary Jo moved to recommend denying a request to rezone a tract of land located at 2313 North Pennsylvania Avenue from R-1, Large Lot Single-Family Dwelling District to C-1, Neighborhood Business District. This motion is based on the following findings: Number one, it is out of the Comprehensive Plan which states that all commercial businesses will begin starting at Mulberry on the west side of Penn Avenue, for the second and most prominent reason that I would like to recommend denying this is it's clear that patriarchs of our neighborhood and our community do not want this in their neighborhood. They've spoken twice, from their heart, and that it's out of character for the neighborhood, that's the second point it's just simply out of character for this neighborhood for substantial reasons and if I need to document that in this motion I can do that and the third point that I'd like to recommend is that we have discussed intricate details of drainage problems, the outlay of the lighting possibilities and there's been a lot of work done and I respect Dollar General, I am a patron of Dollar General, I just want to say that for this particular neighborhood, with the comments that have been made by people who have lived here a long time and with our comprehensive plan I would recommend that the commission deny this.*

Kendall Neill asked if the Planning Commission had anything they wanted to discuss on the matter.

Lisa Richard – Well, it seems like we should discuss it and see how each other feels about it. I was going to propose an amendment to add condition #12 building site shall be restricted to 5,000 sq. ft. so that when you move into the PUD you already have that limitation and I might as well say my feelings on the matter, I do believe that it is not consistent with the comprehensive plan to double the size of the building through a mechanism so that it really it is quite different from what was originally envisioned as a small commercial store in a neighborhood. Now, that said it is on a major highway which seems like a square peg in a round hole situation. It is different from some neighborhoods that are not on a major highway. It is going to attract commercial interest and it is appropriate that it would, that's where they tend to want to focus. We haven't updated our Comprehensive Plan since 1984 and this is almost the same type of zone we have on West Main. With areas like this, we are going to see pressure for, and West Main as well. for commercial developments and I think it really needs to be addressed, top down through a revision of the Comprehensive Plan to say how do we want to handle commercial development in these residential approaches on these major highways. I have a lot of respect for business entities that want to contribute to a neighborhood by coming in and building a store. It will increase our tax revenue because we will pick up out of town traffic that may have not decided to stop in Independence. There are benefits and in some ways, it is not inappropriate for the location that is being proposed, but based on our Comprehensive Plan and the way it is written it is not consistent so that is why I would say that we would move to at least require that building site would remain under the same limitation as commercial entities in the C1 zones. We are going to see pressure for commercial development and the Comprehensive Plan needs to be revised.

Tony Royse - The first question is can I add more detail to the motion that has been made?

Brent Littleton – That Mary Jo Meier made?

Tony Royse – Yes.

Kendall Neill – I’ve never been asked that, but Kelly Passauer is shaking her head yes so, I’ll say yes.

***Tony Royse recommended amending the motion to include the following additional reasons for denial:***

- 1. Character of the neighborhood is “residential” not “commercial”***
- 2. Current zoning is R-1, Large Lot Single-Family Dwelling District. Properties to the West, North and South are also zoned R-1, Large Lot Single-Family Dwelling District. Property to the East is a Cemetery.***
- 3. Subject property is not suitable for commercial use as all properties surrounding it are zoned R-1, Large Lot Single-Family Dwelling District.***
- 4. Not compliant with Appendix B – Zoning, Section 509.8. Use limitations (a) – No separate business establishment shall occupy more than 5,000 sq. ft. of floor space. Building to be built is over 9,000 sq. ft.***
- 5. Rezoning this property to C-1 would generate additional traffic issues, trash issues, lighting issues and drainage issues.***
- 6. Drainage issues – Drainage issues will be maintained with an onsite detention system. Maintenance will always be needed; if maintenance is not done, or not done frequently enough, or properly, there would be unpleasant odors, trash and litter accumulation, mosquitoes and sediment accumulation.***
- 7. Rezoning this property to C-1 would also allow a park, military command/communication centers, liquor store, police/fire protection and related services, daycare center for more than 4 children, civil defense/related services and cemeteries.***
- 8. Nonconformance the Comprehensive Plan:***
  - a. The central business district functions as the community-wide shopping center for Independence. When community-wide shopping facilities are divided among a number of locations, none of the facilities can offer a wide enough variety to attract shoppers.***
  - b. Strip commercial zones cause traffic congestion and generate noise and visual conflicts with surrounding land uses which in this case is residential.***
  - c. Objective C1 – Encourage the development of businesses downtown.***
  - d. Policy C11 – The central business district shall be the primary retail center of the City.***

Rachel Lyon stated that they have spoken to a number of realtors and yes, we would all agree that it would decrease your property values, I think that’s clearly against the public good as far as that’s concerned. I agree with Alan Betchan it would be really nice if we could just say this is just a rezoning question and not a question of neighborhood use but it absolutely

impacts these people so we have to consider that. I think it is, I agree with Dollar General in general, that they want to create a stop before Walmart but I just do not think that this is the right place for it.

***Andy McLennon seconded the amended motion.***

Lisa Richard added that the additional reasons for the denial, I think it will be important to give the City Commission detailed reasons.

Kelly Passauer asked Lisa Richard if this comment is part of the motion or just discussion.

***Lisa Richard – We need to make sure that we have included the fact that almost doubling the size of the building makes it inconsistent with the Comprehensive Plan of what this type of store is supposed to be. I would also add that something Mr. Heckman said that the variety store is not permitted in a C-1 zone. I think in our code it is just called a variety store. Whether that is a prohibition that would stop this, I do not know that is a legal question, but it would be subject to factually developing whether it was a variety or clothing store. I feel he is right in that it is a variety store and prohibited in a C-1 Zone, I would like that included with the reasons unless anyone objects.***

***Kendall Neill – It has been moved and seconded to deny the request based on all of the conditions that were just laid out as amended twice.***

***Motion carried 9-0.***

- c. Public hearing to receive comments on a request for a Planned Unit Development at 2313 North Pennsylvania Avenue.

The following staff report was provided:

The applicant has submitted a PUD (Planned Unit Development) and Preliminary Plat for consideration by the Planning Commission. The PUD under Development Standards indicates that the PUD shall comply with the C-1 district development regulations except for modifying the maximum building square footage from 5,000 to 9,100 square feet. The process for approving PUD's includes a public hearing before the Planning Commission. After the public hearing, the Planning Commission makes a recommendation to the governing body with any suggested changes to the PUD and/or Preliminary Plat. After that, the final plat and plan are considered by the Planning Commission for final review. The zoning ordinance does not require any public hearings during the final plat and plan stage.

It should be noted that the PUD and Preliminary Plat as presented is dependent on the rezoning to C-1 being approved by the City Commission. Staff recommends if the preliminary plat is approved that it be subject to receipt of a drainage study as part of the final plat.

The Planning Commission has the following options:

1. Recommend the City Commission approve the Preliminary Plat subject to the developer submitting a drainage study prepared by a licensed professional engineer for a ten-year storm event.

2. Recommend the City Commission deny the Preliminary Plat as presented.
3. Table any action for specific recommended changes and additional information relating to the PUD and/or Preliminary Plat.

**Suggested Motion to approve subject to completing a drainage study:**

*I move to recommend approving a preliminary plat as part of a PUD for Dollar General Independence subject to the developer submitting a drainage study prepared by a licensed professional engineer for a ten-year storm event as part of the final plat.*

**Suggested Motion to deny:**

*I move to recommend denying a preliminary plat as part of a PUD for Dollar General Independence due to the required rezoning to C-1 was not recommended by the Planning Commission.*

**Suggested Motion to table:**

*I move to table action regarding a preliminary plat as part of a PUD for Dollar General Independence and request the following changes (list specific requested changes) and/or additional information (list specific additional information requested from the developer) for review at the next meeting.*

Kendall Neill opened the public hearing for the PUD.

Lisa Richard— If we look at what might occur when this goes to the City Commission, they may disagree with us and they may decide to go ahead with the project so it makes me a little nervous not to make any helpful input in the event that it was passed by the Commission. I am sure they would be interested in any suggestions that we have to make it better. I do want to discuss it a little bit for that reason and to make sure that the drainage plan I was discussing earlier is dealt with and anything else anyone here wants to add. I am assuming staff would, if we make comments saying we recommend you handle this thusly so when dealing with the developer staff would make sure the concerns were addressed.

Kelly Passauer— Yes, with any modifications to the preliminary plat.

Lisa Richard— Is this how it is normally done without a preliminary plat in front of us?

Kelly Passauer — There is a preliminary plat in your packet.

Lisa Richard — I guess that if the Commission approves this, a plan might be enforceable and we should add some language saying that the plan will guarantee that their project doesn't exacerbate any existing problems and that their study will do a look back to identify the existing problems. I do not know if every drainage plan does that, like an environmental impact, if they will look at the history of a property, but if all we're going to look at here is right now then we're not going to have any comparison. Maybe you engineer types want to help me out here? How can we reword this in the event that the Commission passes this and then it turns out that it's flooding Highway 75 and it is flooding the road downstream, hence the water won't go through the culvert there and it is flooding adjacent properties, what can we do?

Jeff Chubb – I do not know that we have to solve the wording problem tonight, you can show the Planning Commission recommends that whatever the drainage plan is it needs to be implemented in such a manner that it addresses the concern, and you can let the Commissioners come up with the magic wording. We could spend all night trying to get that done.

Lisa Richard – Kelly, I think the important distinction that I'm trying to make is the look back so that you have gathered data that the City has regarding the conditions that exist there already and in a way it will protect them as well if there have been serious flooding issues there then we would know that and they would be asked to address what they have added and not everything that has happened in the past so the study needs to look back and look for some metrics. You guys, the City employees, and people on the technical end of things know where to find some of that and their study should address that. I have done enforcement in municipality and this seems like a really vague area with some difficulty in this area.

Kendall Neill - Does a PUD consist of more than one store front; would that open the door for that to happen?

Kelly Passauer – Commercial PUD's are not that common, at least not in Independence. It could be one store or a network of neighborhood shopping centers which is the original purpose, and what the Comprehensive Plan talks about. I do not think it would create an issue going forward because everything you look at would be separate hearings and have different elements that need to be reviewed.

Brent Littleton – According to John's statement here a commercial PUD is intended to encourage the innovative grouping of buildings. I would think that would be like Sherwin Williams, the Yoga Shop and the commercial building next to Eggbert's.

Kelly Passauer – It could be that or designed with aesthetics like a walking path between them and not meet all the setbacks. I think that might have been one of the intents of a PUD.

Brent Littleton – Say the Commission passes what we deny, that is why we would need more clarity.

Kelly Passauer – If they do pass it, the final plat for the PUD would be sent back to the Planning Commission for approval and that is when everything would be implemented into the final plat and sent back to the governing body.

Kendall Neill – I would like to know the intent behind the PUD even if we do not do the C-1.

Alan Betchan – The PUD is put in code restriction that we talked about. The PUD cannot be put into place without the underlining zoning. It is an overlay of the C-1 zoning. The PUD codifies the requirements of the things we talked about. The intent of a PUD generally is to allow flexibility of the code for modifications. It is built into the code.

Tony Royse – With the PUD you could modify the building to be 9,100 sq. ft.

Jeff Chubb – The state statute that John Heckman had in his notes has been repealed, but being repealed does not invalidate our City ordinance.

***Mary Jo moved to recommend denying a preliminary plat as part of a PUD for Dollar General Independence due to the required rezoning to C-1 was not recommended by the Planning***

***Commission. Barb seconded.***

John Heckman stated that all the comments made earlier is why you should deny this other than it does not go along with C-1.

***Motion passed 9-0.***

- d. Consider recommending the City Commission adopt an ordinance establishing a temporary moratorium on commercial cannabis activity, including but not limited to medical marijuana and recreational marijuana.

The following staff report was provided:

At the previous meeting, the topic of developing zoning regulations in the event that marijuana is legalized was on the agenda and it was suggested to delay further discussion on this topic until July. However, staff is aware that there is some interest in the community to establish these types of businesses. At a previous meeting Lisa Richard suggested a moratorium be considered. City staff has discussed this further with the City Attorney and this is something that could be done until regulations are established. This would eliminate the potential of grandfathering existing or new businesses that may sell marijuana if it is legalized in the State before the City has an opportunity to develop regulations.

Kelly Passauer -- Jeff Chubb prepared a moratorium to present to the City Commission.

Barb Emert – I think it is wise, there is so much interest and so little information available.

Kelly Passauer -- Staff wants to be proactive so that a business cannot come in and be grandfathered in before this board or the City staff is prepared.

Andy McLenon asked if businesses selling CBD oil or hemp lotions would be affected by this Ordinance.

Jeff Chubb said he would check into that to make sure it would not prohibit selling CBD that is currently legal.

Kelly Passauer stated that the moratorium could be modified to not affect anything that is currently legal.

***Barb Emert moved to take the Ordinance before the Commission as amended by the City Attorney.***

***Rachel Lyon seconded. Motion passed 9-0.***

- e. Report on County Gravel Parking Lot Status -- Conditional Use Permit for

Supplementary Parking at the Southwest Corner of Wald Avenue & Myrtle Street

Kelly Passauer– The Conditional Use Permit expired, and it was suggested that the County start over. The Planning Commission cannot approve anything with less restrictions. The other option would be to go through Board of Zoning Appeals. The County believed that because the item was tabled that it was still an open issue. In 2017 the City extended the CUP another year. The County wants to go directly to the Commission to ask for an extension. If the Commission agrees to the extension the Commission could then consider any modifications, or request they start over.

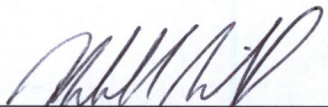
Mary Jo Meier asked what the Board's choices were.

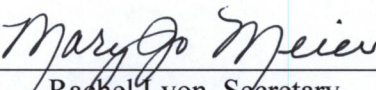
Kelly Passauer – I wanted to let everyone know what was going on, and if they request the Commission modify the conditional use permit without restarting the process, she suggested that we should notify the property owners within 200'.

f. Other

#### Adjournment

*Andy McLenon moved to adjourn the meeting, with Brent Littleton seconding the motion, which passed 9 - 0.*

  
Kendall Neill, Chair

  
Rachel Lyon, Secretary

