



MINUTES

Call to Order

The Planning and Zoning Commission meeting was called to order by Kendall Neill

Planning Commissioners Present

Lisa Richard
Michelle Anderson (by phone)
Anthony Royse
Kendall Neill
Mary Jo Meier

Planning Commissioners Absent

Barb Emert
Andy McLenon
Rachel Lyon
Brent Littleton

Staff Present

Kelly Passauer, City Manager
David Cowan, Assistant City Manager
Jeff Chubb, City Attorney
April Nutt, Housing Director
Lydia Collins, Administrative Aide

Visitors Present

Minutes

- a. Consider approving minutes of the September 7, 2021, meeting.

Motion

Mary Jo Meier moved to approve the minutes of the September 7, 2021, meeting. Lisa Richard seconded the motion. Motion carried 5-0.

Kendall Neill authorized Mary Jo Meier to sign the minutes of the September 7, 2021, meeting in lieu of Rachel Lyon who is absent.

Planning Commission

- b. Discussion of Tiny Houses and Container Homes with Housing Director April Nutt.

City staff provided the following report:

Housing Director April Nutt will be available to discuss this topic with the Planning Commission.

Below is an excerpt from the February 2, 2021, meeting when this was last discussed:

April Nutt, Housing Authority Director – Kelly stated that she put together the information that had been gathered before and April was given the notes from before. April stated she was here to answer questions. Rachel asked April if she saw a benefit to having tiny homes. April said after some research that tiny homes are difficult, difficult to get loans on, the county looks at them as a glorified shed. They are technically considered an RV by banks and shouldn't be allowed across the community. April questioned about what kind of requirements will there be as far as foundation, etc. A lot of communities are using them for Vets and underserved people. Long-term will this be like a mobile home? There will be a lot of questions, is this how the community wants to go? Building codes will have to be considered like hooking up to City services or have a compost service. They depreciate in value just like a car. If used to subsidize I would be concerned, rentals would be a different story. Rachel asked if permanent foundations would be considered an RV? April said yes. Lisa asked if the City has a minimum size for homes. Kelly said the code says 120 square feet per habitable room, and the code the City is getting ready to adopt says 75 square feet for a habitable room. Lisa asked if they had the square footage and hooked up to City services they might be accepted and Kelly said yes it could. Most of the tiny homes are not going to have one room that is 120 square feet. There are other things they will have to have to pass code. David said April said one thing in allowing it throughout the community it can devalue the neighborhood. Having them in their own section would be viable. Lisa asked if someone brought in a pre-built tiny home and hooked up to City services would it still be an RV? April said that to my understanding with the bank, yes, currently. It's built on portable trusses. Jeff Chubb said the bank looks at it as securing collateral and these homes brought in and put on property it's considered personal property. If it is permanently affixed it can have an elimination affidavit and be changed to real estate. Mary Jo recommends looking at the place in Bartlesville for the underprivileged. When compared to some of our trailer parks here, it looks nicer. It would meet a need and look nice. April said Bartlesville is a rental community. These type of neighborhoods pop up in larger areas where rent is so high. Kendall asked if they were within City limits and if so we could get with the City of Bartlesville to get some information for them. Kelly said the planning commission could put restrictions in that would fit. Rachel said she would not be able to rebuild on her property because of the size of her lot. Mary Jo asked if anyone had asked about doing a

501(c)3. April said no one had asked her or the housing department and David said that he gets about one call a month asking if they can build a single tiny house. Kendall said the houses in Bartlesville are not tiny, tiny. April said they are 564 sq ft. They won't appreciate in value or appraise out. Mary Jo said it looks good as a well thought-out pre-planned community, it's very aesthetic and they are prefabbed so you just put them together. Kendall asked if he owned the buildings and Mary Jo said it is a cooperation. April said she tried to reach out but they have not called her back. The rent includes all utilities which makes it easy for those who have challenged incomes. Barb asked how they are heated and cooled. April said they are like a regular home, all electric or gas, you just have to be careful about mold issues. Kelly asked April if there was a certain size she would recommend. April said she could research it. Kelly asked if the board would like to have April to do this research. Kendall said we could all do some research and get back together to discuss. April said she could reach out to Lawrence and see why the one there is outside city limits. She can also reach out to the City of Bartlesville. I have not found any communities of our size that have tiny houses. Kelly asked if David can research what size of structures are being built. David said there has been no construction in the past year and the newest construction is a very large house. April said you could have an area where tiny homes could remain on wheels. Kelly said we could put this on the April agenda.

Chair Kendall Neill asked Housing Authority Director April Nutt to review this agenda item. April Nutt said she did some more research and has some questions for the Planning and Zoning Board on what their ultimate goal would be, before we can put together rules and regulations for tiny homes in Independence. Tiny homes are traditionally between 100 and 400 square feet. Tiny homes come in two different categories. THOW's (Tiny Homes on Wheels) are mobile and are considered a Recreational Vehicle (RV) and should be located in an RV area. They are mobile and not on a foundation. In most communities these are mobile park areas. Some communities allow them short-term, 72 hours, in a driveway or yard.

Tony Royse asked if there were any communities with an exception to that if someone came in and wanted to stay longer.

April Nutt said no, I could not find any communities that allow longer than 72 hours. The other tiny home is on a foundation. Most communities require these to be constructed in an approved, designated group development, either a PUD (Planned Unit Development) or a RMU (Redevelopment Mixed Unit) district. The difference is a PUD goes into a raw area and an RMU goes into a blighted area, an area never developed versus redevelopment. Both develop not only housing, but it can be mixed housing and is its own community where they have grocery stores and residential units. This would be beneficial in an older neighborhood where infrastructure is there. Most are clustered with four (4) to sixteen (16) units. The minimum lot area is 1,200 square feet and the maximum is 1,600 square feet. They are built around a green space that is shared. Some areas have a 25 percent area to be used for THOW's. There is a huge increase in

tiny homes being used as accessory dwelling units. April further stated that a tiny home could be placed on a large lot, such as the one she owns, in addition to an existing structure. Kelly Passauer state that the lot would need to be zoned multifamily (R-3) or a lot split would be required. She further noted that every lot has to be accessible from a City street and you can only divide a lot once without replating.

April Nutt said prior to researching this issue she was not aware that she could put a tiny home on her property so this group needs to determine what the goals are so we could look at how we meet those goals. Tiny homes are now being used across the country as Granny flats or Mother-in-law houses and also as Air B & B's. This group needs to decide whether they will allow the tiny homes. Do you want them on a foundation or do you want them to be able to be a THOW with a percentage of the location, allowed in a driveway for a period of time, or only in RV designated areas? Tiny homes are very wide and new. People will look at the current code and will find a way to make it happen. If you want to be restrictive then we need to look at that.

Kelly Passauer said on the Air B & B's, those are short-term rentals and in a residential zone that would require a conditional use permit.

Tony Royse asked if short-term rentals come under the 72 hours.

Kelly Passauer said no, short-term rentals are rented out like a hotel, a day or week.

Tony Royse said short-term is not designated to a number of days, just not be permanent.

Kelly Passauer said there is a definition.

Tony Royse asked on the short-term rental if someone could rent one of those Air B & B's for six weeks.

Kelly Passauer said she would have to pull the definition of a short-term rental.

Jeff Chubb said it's like a motel.

Tony Royse said some motels you could rent for that long if you wanted to pay the price.

Kelly Passauer said that we have the definition of how many days when that code was changed. I want to say it is 30 days but I will have to clarify.

Tony Royse asked how the one on wheels is different than someone coming in with a motorhome or a big travel trailer and hooking it up to the neighbors' house.

Kelly Passauer said you cannot do that with a recreational vehicle now. You could modify the RV definition to include THOW's and make it come under the 72 hours.

April Nutt said, so just to clarify I have a motorhome and I am coming to visit a relative and I pull up, I cannot live in my motorhome for 72 hours?

Kelly Passauer said you can stay in it up to 72 hours.

April Nutt said, so that currently exists.

Tony Royse said the only way to get around that would be unhook everything, drive to Coffeyville and come back for another 72 hours.

April Nutt said most of them had a threshold of between 90 and 180 days before you could repeat that cycle.

Kendall Neill asked if there is anything in there to provide, say if your house is torn apart inside and you're doing a complete renovation of your home and you want to live in your travel trailer for that time.

April Nutt said she does not think the City allows for any differentiation.

Kelly Passauer asked David Cowan how that has been handled.

David Cowan said yes, typically circumstances would dictate it.

April Nutt said I would think that the City, if somebody were to experience a fire or catastrophic event, would work with them on a temporary basis, where there is an end to it.

Tony Royse asked David Cowan if he was still getting requests.

David Cowan said it has slowed down, people are now asking for tiny, tiny homes.

April Nutt said that certain codes allow them to be as small as 170 square feet.

Kelly Passauer said our current building code does not allow them that small.

David Cowan said 400 sq. ft. is about where our code is. City code allows 400 sq. ft.

Kelly Passauer said the definition of short-term rentals is: Short term rentals *not elsewhere listed*: A property or space offered for rent to a transient guest(s) for overnight stays consisting of 30 consecutive days or less that is not located in a hotel, tourist court, or motel.

Tony Royse asked if this could be an opportunity to fill in where houses have been torn down.

April Nutt said it is an opportunity, but you have to be careful to allow a small home to come in between other homes because you are going to reduce home values. Yes, the county will have a value for a house rather than an empty lot, but you have to be careful.

Tony Royse said in a lot of areas the tiny homes will be worth more than some of those houses.

April Nutt said I think this is where some of those communities have taken some of those blighted areas and turned them in to some of those RMU units where maybe they take a full block in between those houses and clustered them. I think we have some areas where tiny homes could be. I have one in mind where Rural Housing Incentive Districts could help with

infrastructure costs for these types of developments. I have one in mind where I can set up an RHID.

Tony Royse asked if the one down in Bartlesville had people in mind or did they build and then look for people to put in them.

April Nutt said they had two different developments. One is a PUD that goes from tiny houses at 430 square feet, to townhomes, to smaller single-family homes to \$450,000 single family homes. They have amenities like a walking trail, exercise facility and possibly a pool. The other development was assisting homeless veterans and low-income families. In Lawrence, through KU Architectural, they are building 12 homes out of containers. They are setting them side by side with a shared covered patio and they are for the homeless. They decided to do this because of Covid where the shelter could not take the number of homeless and the students could work on this in twelve different rooms instead of being all together.

Mary Jo asked what those units cost.

Kendall Neill said anywhere between two and four or five thousand dollars depending on the size of it.

Tony Royse said he has seen some that cost sixty to seventy thousand dollars.

Kendall Neill said he was talking about the container itself.

Tony Royse said we do have one tiny home in town over by Dairy Queen, but I was thinking there was another one I had seen somewhere.

April Nutt asked what direction Planning and Zoning wants on tiny homes so we can look at the building codes and zoning requirements to meet those wishes.

Kendall Neill said he thinks there is a fine line between providing for people that would qualify for these homes and also having them in a place where they do not negatively affect property values. We know we already struggle with property values where we are at now, we do not want to bring them down anymore. I am trying to think of a place where there might be some property or acreage that is already zoned and ready to be developed that would fit that need. I am not sure where that might be. The other thought I had was, you develop the homes, and they are nice to start but if they are not maintained, what does that community become. If they are rented out, how will it be kept up? How do we keep it where the value of these homes does not fall? A home being on a slab would be ideal because it would be a home, not a travel trailer.

April Nutt said normally the tiny homes are clustered and designated a tiny home development that is in a suitable location.

Kendall Neill said planned correctly it has the opportunity to uplift a section of our community, wherever it may be because they look nice. The one in Bartlesville is nice and when you go to a larger community, they look nice.

April Nutt said the one in Bartlesville is nice. They are rentals, not ownership, but it is as diligent as your owners, renters, and City codes.

April said another thing to consider is the ancillary units, the Granny Flats or Mother-in-law quarters. They are permanent residences, built on a foundation and they have to be owned by a relative of the primary resident. This is how it is in other communities.

Kendall Neill asked if it can be owned by the primary resident.

April Nutt said it can be owned by the primary resident or by the relative of the primary resident.

Kelly Passauer said based on our current code if it was on the same lot it would have to be zoned R-3 multi-family, or the lot would have to be split.

April Nutt said what I am saying is in other communities, that is how it is. Those are the questions, how do we want that to look.

Tony Royse said on the Granny Flats and Mother-in-law houses, with the splitting, you could change the code to allow that.

Kelly Passauer said yes, the Planning Commission could recommend that.

Tony Royse said we could recommend the City to change the code that would allow that whatever the zone may be, you could build these tiny homes.

Kelly Passauer said it might be a little difficult to track who is a relative.

Tony Royse asked if they hook up to the same system that the main house is on.

Kelly Passauer said she did not know.

Tony Royse said he was interested in going forward with this, and asked if there was any place closer to Bartlesville?

April Nutt said no, she had checked closer cities like Coffeyville and they are not discussing it at this time.

Kelly Passauer said on the temporary storage for recreational vehicles on the 72 hours it is in a 30-day period. You could potentially add the tiny home on wheels if you are concerned about that popping up on driveways or something.

April Nutt said you could allow that or not, my question would be if I take my RV to my house, then to my mother's house then to my grandmother's house can you do that.

Kelly Passauer said that yes, as long as you move it to a different lot every 72 hours.

Lisa Richard said that she would like to see more of an organized, not a spotty uncontrolled use, more of a unit development or revision development. This is much better than differently shaped types of buildings popping up here and there in various neighborhoods.

April Nutt said the IBC 2012 code allows 400 sq. ft. Later codes allow for less than 400 sq. ft. We need to keep the definition in mind.

Kelly Passauer said it does not specifically say 400 sq. ft. it says you have to have one room that is 120 sq. ft. and another that is 70 sq. ft. and then with all the accesses and doorways it would turn out to be about 400 sq. ft.

April Nutt said habitable space is sleeping, eating, dining, resting. They do not count kitchens, bathrooms or closets. With the City's requirement of 70 sq. ft. for each additional room that is how it comes to 400 sq. ft.

Kendall Neill asked about the container homes.

April Nutt said several of the communities have started down the path of tiny homes, but container homes are not even on their radar. The way they are being used in communities meet their building codes, like in Lawrence, but they are using the 2018 UBC.

Kendall Neill said the container homes he has seen are really nice but he has not seen them in a neighborhood setting. They seem more sturdy to withstand a tornado.

April Nutt said yes, the way they tie them down, they are meeting those restrictions. I have seen where they have set a container down, cut some windows in it and put it five feet from the back door and five feet from the neighbors' chain link fence. Container use is on the east and west coast and in Lawrence. I think there is a use for this, but I think it may be a fad. There needs to be given serious thought process to it.

Kelly Passauer asked if there was any additional information they want from April to move forward or to wait until the next meeting to have further discussion.

Kendall Neill said he would like to know how much they were being built for and how much value would it add to Independence. He asked if we had a development of 25 tiny homes that were 500 sq. ft. what would that do for us.

Tony Royse asked if she could give some zoning recommendations and bring it back to the next meeting.

- c. Public hearing to receive comments to consider text amendments to Appendix B-Zoning of the City code including, but not limited to, Article IX. Processing Procedures for Conditional Uses.

The following staff report was provided:

At the last meeting the Planning Commission requested to review a potential text amendment relating to processing conditional use permits. The concern was that duplicate information was being requested at both the conditional use permit process and the building permit process. There was further concern that the expense of providing some of this information for the conditional use permit process could deter some from starting the process. The benefits of requiring this for the conditional use permit were questioned as the conditional use permit approval is uncertain and the information will be reviewed for compliance during the building permit process. The building permit process has been provided by Assistant City Manager David Cowan, and below is information from the code regarding the conditional use permit process:

Conditional use definition: A use that is permitted, but only by application to the building inspector as designated in each specific instance, and after a determination by the planning commission and city commission that all regulations and standards of this ordinance applying to the specific use in the particular location will be met, along with such additional conditions or safeguards as the city commission may prescribe in the specific case and circumstances, in order to prevent harm or injury to adjacent uses, the neighborhood, and/or in order to improve the public health.

ARTICLE IX. - PROCESSING PROCEDURES FOR CONDITIONAL USES

901.0. - Purpose and authority.

901.1. Purpose: Conditional uses are those types of uses which are considered by the city to be essentially desirable, necessary, or convenient to the community but which by their nature or operation have (1) a tendency to generate excessive traffic, (2) a potential for attracting a large number of persons to the area of the use, thus creating noise or other pollutants, (3) a detrimental effect upon the value of or potential development of other properties in the neighborhood, or (4) an extraordinary potential for accidents or danger to the public health or safety.

Such conditional uses cannot be allowed to locate as a "right" on any parcel of land within certain districts without consideration of existing conditions at the proposed location and of properties neighboring upon the specific site considered, nor without adequate and sufficient safeguards, when necessary, to lessen the impact of adverse factors.

901.2. Authority to grant permits: The governing body shall have the authority to grant conditional use permits, subject to such conditions of design and operation safeguards and time limitations as it may determine for all conditional uses specified in appendix "A" of this ordinance and for all permitted uses for

which the planning and zoning commission has found that by their nature or in their operation have characteristics listed in clauses (1), (2), (3) and (4) of section 901.1 of this article, provided, however, that said conditional use permits for permitted uses shall not establish standards or conditions that are less restrictive than those set out in the district regulations for the district in which said use is located.

(Ord. No. 3863, § 1, 12-20-01)

902.0. - Processing procedure.

902.1. Application of conditional use permit: Application for conditional uses, as designated in appendix "A" of this ordinance shall be on forms obtained from the city clerk's office. The application and five copies of the preliminary development plan shall be filed with the zoning administrator at least 20 days prior to the regular city planning and zoning commission meeting at which the proposed conditional use will be considered. The application shall include, but not be limited to, the below information:

- a. Statement of intended use of the property.
- b. Site plan, drawn at appropriate scale, showing existing and proposed building location, parking areas, interior drives, and location and type of outdoor lighting.
- c. Existing and proposed topography, drawn at appropriate contour intervals as specified by the zoning administrator.
- d. Location of, and proposed connections to, existing water supply and sanitary sewer systems.
- e. Description of architecture and exterior materials to be utilized.
- f. Names of the landowner, developer and firm preparing the plan.
- g. Legal description of the tract.
- h. North point, scale and date.

902.2. Action by the planning commission: Upon receiving the application for conditional use permit from the zoning administrator, the planning commission shall publish notice and hold public hearing on the proposal. Procedures for public hearings shall be handled the same as a zoning amendment as described in section [article] XIV [XVI] of this ordinance. The decision of the planning commission to recommend approval or denial of the proposed conditional use shall be based on the following criteria:

- a. The proposed conditional use complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations and use limitation.
- b. The proposed conditional use at the specified location will contribute to and promote the welfare or convenience of the public.
- c. The proposed conditional use will not cause substantial injury to the value of other property in the neighborhood in which it is to be located.

- d. The location and size of the conditional use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the conditional use will not dominate the immediate use of the neighboring property in accordance with the applicable zoning district regulations. In determining whether the conditional use will so dominate the immediate neighborhood, consideration shall be given to:
 - 1. The location, nature and height of buildings, structures, walls and fences on the site, and
 - 2. The nature and extent of landscaping and screening on the site.
- e. Off-street parking and loading areas will be provided in accordance with the standards set forth in these regulations (article VII).
- f. Adequate utility, drainage, and other such necessary facilities have been or will be provided.
- g. Adequate access roads or entrance and exit drives will be provided and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.

902.3. Additional requirements: In consideration of requests for any conditional use permits the planning commission shall recommend to the governing body such conditions of use as it deems necessary to protect the best interests of the city, and the surrounding property and to achieve the objectives of this ordinance. These additional requirements shall include, but not be limited to, those special provisions applying the miscellaneous conditional uses, specified in article X.

A violation of a requirement, condition, or safeguard shall be considered a violation of this ordinance, and grounds for the zoning administrator to terminate and cancel such conditional use permit.

902.4. Time limit: The planning commission may recommend to the governing body a time limitation on the conditional uses specified in appendix "A" of this ordinance. Said conditional use permit shall be renewable at the discretion of the governing body.

902.5. Action by the governing body: Upon hearing and consideration of the proposed conditional use, the planning commission shall at the earliest date possible, submit its recommendation and endorsed copy of the plans to the governing body for final action. Within 30 days of receipt of the report from the planning commission, the governing body shall adopt, modify or deny the planning commission recommendation. The action of the governing body shall be final.

902.6. [Reserved:]

902.7. Final plan approval: All final plans shall be approved by the city engineer prior to the issuance of a conditional use permit and building permit by the zoning administrator.

(Ord. No. 3613, §§ 1, 2, 5-20-92)

Kendall Neill opened the public hearing.

Kelly Passauer said the question asked at the last meeting was if we are requiring items at the conditional use permit stage that are also required at the building permit stage. I asked David to put together a list of the building permit process and how that works. What is required at the conditional use permit level is all highlighted here and is also required at the building permit process. There were some questions on if we were doing some duplication and what we actually need at the conditional use permit stage which is usually for land use. There was a concern about somebody having a site plan and paying for designs to be done and then being denied at the conditional use process stage without being able to apply for the building permit.

David Cowan said the building process is people should reach out to the building department to get some preliminaries out of the way. When a person comes in with a set of plans, as a property owner you have the right to develop your own plans, it does not require a stamp, but it has to meet building codes and procedures. We had one person do that last year but most people come in with an architect. We review all plans, codes and zoning, utility, fire, street, housing and discuss all aspects of the plans. We look at a code footprint, structural, civil, fire plans. We require people to build to ten-year storm events. We look at off-street parking, ADA requirements, especially related to commercial, and it is a very detailed process that takes 14 days to complete before we can get back to the owner with either questions or their permit process.

Kendall Neill asked if that is the *902.1. Application of conditional use permit*: Application for conditional uses, as designated in appendix "A" of this ordinance shall be on forms obtained from the city clerk's office. The application and five copies of the preliminary development plan shall be filed with the zoning administrator at least 20 days prior to the regular city planning and zoning commission meeting at which the proposed conditional use will be considered. Is the 20 days used to complete this process?

Kelly Passauer said the 20 days is for the public hearing to be publicized 20 days prior to the meeting.

David Cowan said that is where we really need the citizens and the commercial business to visit with us. If we see something we contact Jeff and Kelly and determine if it needs to go to zoning, sometimes that delays them two months because Kelly does not have time to get it to the paper to meet the statutory requirements. There are key times and processes that have to happen and we need to communicate to them.

Lydia Collins said it used to be the Fire Chief and Building Inspector were the same and they ran the meetings and had all the information required. Now it has been divided and there is a Building Inspector for building permits and a Zoning Administrator for zoning permits.

Tony Royse asked if the City sends something out that shows all the steps you need to go through. They go to Planning and Zoning first and get our recommendation, then it has to go to Commission for their recommendation then you go here. It sounds like they are going to the Building Department and they are sending them back to Planning and Zoning, it is backwards.

Kelly Passauer said they do not know until they go to the Building Department first and they review what they are doing to determine whether or not they need setbacks or whether the use is allowed.

Tony Royse asked what they are told. You are going to have a variance, let's say, you need to go back to Planning and Zoning.

Kelly Passauer said they will actually bring it over to me and we reach out and communicate with them.

David Cowan said typically, if they go to their architect, they do all of this work for them.

Kelly Passauer said those are typically larger projects.

David Cowan said yes, most houses do go to the architects. There is a process to building a house and no one will know all this information until they come. That is why we encourage people to come to us with their ideas because you need to look at these different things. We have a group in our community called BEST and that is their goal. We found back in 2017 that we were lacking in the assistance of our citizens and our commercial properties and buildings in providing this guidance. Lisa Wilson from the Chamber is the Chair of BEST and we work with new people that are wanting to bring a new business into the City and that is our goal, to walk them through the process. If you come in and sit down with Kelly and you tell her what you are wanting to do, she can tell you if you do this you do not have to go to Planning and Zoning and if you go here you will have to go through Planning and Zoning. There are different ways to walk the business through the process as well as possible. There are simple things that you are not going to know unless you ask.

Kelly Passauer said you will not generally need a conditional use permit when you build a house. A conditional use will come in when you have a use that is not allowed and it is usually for commercial use. On residential it would be like a children's home or a daycare with four or more kids, although you are not requiring all of this for a daycare because you are using an existing structure.

Lydia Collins said those have their own codes.

Kelly Passauer said yes, they have specific conditions for a daycare in our code, a miscellaneous conditional use. Most of the conditional uses that you process may not even involve new construction and may be reutilizing an existing structure, in which case most of the application requirements will not even apply. If you are building a new structure and require a conditional use permit that is when these come into play, but it is usually not a single-family residential house.

David Cowan said sometimes we have setback issues.

Kelly Passauer said yes but that is handled through the variance process and it does not require this. If you need to go through rezoning, you are not required to provide all of this to rezone a property, you just make a request to rezone. It is just on the conditional use when you are constructing something, and I think some of that was because at one point all of those duties overlapped. Jeff had to go through and separate the Building Inspector duties from the Zoning Administrator duties in the codes because it was all co-mingled because when it was written one person did all of those duties.

Tony Royse said but the duties themselves did not change, just who was going to be in charge of them.

Kelly Passauer said correct, but the concern that was brought up last time is if they could not get the land use approved initially then they have wasted their money having these plans prepared for the conditional use permit stage. Particularly since these plans plus more advanced plans are also required for the building permit. They will still have to get that, but they cannot even get to the building permit stage if they cannot get a conditional use permit if it is required.

Kendall Neill said that is what Andy McLenon had spoken about and I agree that it needs to get to that stage. We can hear and see in our group what they are going to use the land for, how they are going to use the land and give us a general idea of where it is going to be and we can base a conditional use permit off of that. I am not of the stance that they need to come with their drainage ditch and stamped plan and architect, they do not have to do all of that at our stage. They could spend \$25,000 dollars getting those and we say no.

Tony Royse said the City Commission can change that, we can only recommend and they come back and say we do not agree because they have already got all this. My concern is we have a process laid out here and our goal is to take the information that is given to us and on the application there are eight items and we go to 902 and there are more items to consider, plus there is another section of City code 2-101 with another thirteen items we should consider on an issuance of a conditional use permit. The last one at two meetings ago on the storage shelter there was no site plan and my question on that was where they were building it what if there was a sewer line running under there and they built on top of it five years down the road that sewer line has to be

replaced and now you have a building over it. We did not have a site plan showing as required by the code.

Kelly Passauer said they will have to provide that in the building permit process.

Tony Royse said I am not talking about what they are trying to do I am trying to say what the code says. I think the code is great, what it requires, I have no problem with it I just think we should follow it. With drainage, everybody knows you have a flat piece of land and you put a big building on it the water is going somewhere else. There was no topo to show us that, existing water and the like. There are four things that should be considered and should be included in the application 20 days to you and you should have all that, the way I read the code, before you even schedule and publish a public hearing. If they cannot provide it maybe we should not do it. The other things you go through, what you have to consider is all very good I just do not think we do it and there are other cases that we have not done it. It is a process and I will give you an example, on the last one we did not get a site plan or existing drainage and I was watching the Commission meeting and Commissioner Caflisch said now we have a drainage plan and site plan to look at. I wonder why that was not given to us to look at. I would not know what a topo means but I could find someone to explain it to me.

Kelly Passauer said we did not have a drainage plan on that, did we David? What we did provide was the contours because we have that on our Pictometry software and we provided a map showing the contours, which shows the elevations.

Tony Royse said those are my concerns. My other two comments on that would be on the Dollar General meeting. We had a public hearing and many people did not want it plus the developer was not there. If someone is spending a million dollars they could at least be there in person. The motion I made passed and it was decided to decline it. It went to the Commission and was returned because it was not done correctly. I read the code as you suggested, because I visited with you and Jeff about it. I saw what had been done wrong and the next time it went through. Mary Jo made the motion and I was allowed to amend it. It went through and went to the Commission and they denied it. We had all of this and I also visited with other cities. Other cities require this information no matter what size of project for zoning people to look at and if they do not receive it in time they do not get put on the agenda. We need to follow the code and do what it tells us to do.

Kendall Neill said the committees are made up of City staff, they are paid to do that, right?

Kelly Passauer said to do the building permit review.

Kendall Neill said to do all of that beforehand.

Kelly Passauer said yes. Before a building permit is issued they go through an extensive process.

David Cowan said we do not start that process before they come before you because if you guys are not going to approve it that process does not start. They have to go to you guys before they come to us.

Tony Royse said before they come to the building department they have all the things I was talking about that we did not see.

David Cowan asked for clarification.

Tony Royse said site plan.

David Cowan said like with Dollar General, we did not get that.

Tony Royse asked how come.

David Cowan said because it is a zoning issue.

Kelly Passauer said they actually were doing a replat.

Tony Royse said it is still building.

Kelly Passauer said yes but they were doing a replat first.

Tony Royse said so they were building a new structure, so somewhere along the line they would have to come to the building department.

Kendall Neill said but we denied it before it could get to that point.

Tony Royse said we had to redo it again. Hold another public hearing and do it correctly. I am just saying the code says we have to do it. If we are not going to do what the code says we should just change it.

Lisa Richard said the submission of signed architectural plans seem to be a holdup that they are very expensive to obtain and to have to do that before knowing whether you are going to be approved and what your status will be on the building is sinking a lot of money into something. We can soften up that requirement a little bit, still requiring plans, enough of a description of what you are going to do, physical drawings of where the building is and where the parking is, helping us to decide these things whether it will contribute to or promote the welfare and convenience of the public, not cause substantial injury, the value of other property, that the location and size and nature and intensity are such that it will not dominate the immediate area. We have to have some specifics and things to look at diagrams, maps, we do not necessarily have to have signed architectural proportionately drawn plans. I wonder how often it occurs that the Planning Commission has little information and by the time it gets to the Commission you have more. I think there needs to be a consistency between what we get because we are supposed to make a recommendation based on the information we have and that does not mean anything if we do not have the information the Commission has. The information should be identical and if you need to pull in a little more information at



the Planning Commission stage to get it to where we will be seeing the same things that they are seeing to make their decision and I think the process makes a whole lot more sense otherwise we are just rubber stamping a generalized idea.

David Cowan said I do not think the Commission got anything different on that situation than we did.

Kelly Passauer said the only thing we did was run a version that had the contours on it from Pictometry so it was not a drainage plan, it was the same site plan that you had we just turned on a layer for the contours.

Tony Royse said but we did not have it.

Jeff Chubb said you are having a discussion as though everything that comes up before you is a construction issue. A lot of it is not, it is land use. A lot of these factors are irrelevant on a lot that comes up and it is not required.

Kelly Passauer said the code does not say that if it is an existing structure it is not required.

Jeff Chubb said why don't you come up with a list of factors and when somebody has to apply for a conditional use permit your zoning administrator can say what are you doing, why are you here and check mark the ones that apply. Make them all discretionary and when they come to you, like you say a stamped architectural drawing may not be necessary for a daycare center. A lot of it is not construction related.

Tony Royse said it has to come to us first.

Jeff Chubb said you are responsible for land use, not the building code.

Lisa Richard said an example of one that came up which was a little bit in the middle. We had the folks who were given permission to sell products that were unrelated to their business out of an industrial area property. We did not receive a physical plan showing their building and parking area. I asked about the parking and where it would be and if it would affect the other buildings and I got the impression that I was being told that those were improper questions, you are going too far and this is not a new construction building and we do not need to know where the parking is and I am thinking but in order to determine if it is going to have an impact on neighboring buildings this is basic information that we do need. The code does require a drawn plan that shows the location of the things it specifies and this was an instance which is not a new building or renovation of a building. I feel we would have benefitted from a simple map. Every situation is going to be different, some are going to require something really simple, others are complex and I think we can use our common sense.

Kendall Neill said I agree with what Jeff just said about developing the checklist and making it available to the applicant can benefit the person applying. Whatever they are doing we can say you need this, this is a large project and you need this or this is a

simple project and take a Google Earth picture. Everything is different and having a checklist will get us to where we are not black and white and have to follow this to the T every single time.

Tony Royse said that the checklist will still be black and white, I do not think you can make the checklist any less than what the code says.

Jeff Chubb said you are talking about changing the code.

Tony Royse said I did not know we were going to change the code, I thought we were just going to create a checklist. Here is the checklist right here.

Jeff Chubb said you are talking about a text amendment to the code.

Tony Royse said here is the checklist right here so it is already there. It says we are supposed to look at site plan, drainage and then it says we have to consider location, height of structure, building, walls, you do not have a site plan showing that, being able to hook up to sewer. He asked if we make this less restrictive can we get in trouble for that.

Jeff Chubb said you are basing your question on a premise that is not even accurate because it depends on the application. If it is a brand new, like a Dollar General building, compared to somebody wanting to sell peanuts out of a candy store there are different criteria. Let them meet with staff and staff will tell them which of these the Planning Commission is probably going to want to see then they put that application together and they come to you.

Tony Royse asked if we can make that determination, can we say just because you are going to build a Dollar General store but someone is going to build a storage shed we can say we do not need none of that even though it is going to be the same thing but because you are bigger and can afford it you are going to have to provide it all.

Jeff Chubb said I do not know where you are getting that, it is not what I am talking about. It has nothing to do with dollars.

Tony Royse said that was the general assumption that was brought up why make these people spend it up front if we do not know if we are going to approve it or not, that is where the dollars come from.

Jeff Chubb said in some situations that is a factor.

Tony Royse said that is what I am talking about.

Jeff Chubb said a guy is building a little storage shed on a 10-inch slab.

Tony Royse said so we can tell the guy on the little slab building a storage shed you do not need to provide a site plan drawn to scale or a drainage study or this topo thing but we can turn around and tell a bigger yes you do need it. That is all I am asking to be



consistent. If you say it is ok that we do not have to be consistent with what we have now I am ok with that.

Jeff Chubb said I think it is on the agenda to decide whether or not you want to amend it to make it more consistent. I think you are rehashing some cases that came before. We are talking about in the future, nothing that has already happened.

Tony Royse said ok I will ask the question, in the future if somebody is going to come in and build a K-Mart store and somebody is wanting to put a storage shed on the corner of 6th & Main.

Jeff Chubb said ok stop, those are two entirely different applications.

Tony Royse said where does it say that. It is going to require Commission approval. I am just trying to get some clarification.

Mary Jo Meier asked if she may make a motion.

Kendall Neill said hold on before we do that look at the wording, the 'shall includes', the application shall include but not be limited to, and it gives you A through H. We could change the language, those little things. The code I have to follow as an engineer at work when we have shall and we have should that is a completely different thing. Shall is the law, you have to do that, no questions asked.

Lisa Richard said the term is may, shall or may. We could define should.

Kendall Neill asked if that one line right there could be amended, the application shall include but not be limited to the below information. He asked if there was some way we could amend that line.

Lisa Richard suggested the application shall be adequate to allow the Commission to make the determinations it has to make and may include.

Kendall Neill said may include but not be limited to the below information.

Lisa Richard said right, we got one that did not have the statement of the intended use of the property obviously we cannot decide a land use without that so we would say we cannot determine what we need to determine, that is a super simple example. The site plan drawn to scale, I think that is really important, not so much for a daycare center.

Kelly Passauer said then you need to specify that that is for new construction. Because if you are utilizing an existing structure most of these things are not going to apply because you are using an existing structure and you are just requesting to have that land use allowed there.

Lisa Richard said but we still want to know about things like parking areas.

Kelly Passauer said they already have to meet the off-street parking requirements.

Lisa Richard said in ingress and egress to determine the impact on the neighborhood of that use, we do need some detail. It is not going to be really easy in black and white, but you have to give the Commission adequate information so just saying that you do not have to have a site plan, you do not have to include any information about where people are going to park or where they are going to get on and off your lot, all we need to know about is the use.

Lydia Collins said if you change shall to may you can do any of those things.

Tony Royse said I do not want to do that.

Lisa Richard said unless you put down at the discretion of staff, do you think we could do that.

Kendall Neill said I think that is a good point right there because we are saying the application has to come in and it will have to have these points and it is going to go to you guys and it will be in front of your eyes before it comes in front of our eyes so you guys are not going to put something in front of us that is going to waste our time so, there has to be some way that we can amend this text to catch that. Because it has already gone in front of you guys and you have agreed upon all parties where you have come to a majority decision at your meeting that meets what it needs to meet to come in front of us to have a discussion to have a public hearing for a conditional use permit so how can we amend the text of the code to say that, to say that we are not the governing authority on what shall and shall not be brought in front of us.

Kelly Passauer said at your hearings you can require additional information. You can adjourn the hearing until the next month and say we want you to provide this. You can approve a conditional use permit that requires them to include that before they are able to get their building permit, so you have a lot of flexibility to do that. The majority of these do not apply to an existing structure and the majority of the conditional permits you consider are in an existing structure.

Tony Royse said what if the existing structure is on a great big lot and I bought this house and want to double the size of the lot and I want to go out this way and out that way and cover what the lot would allow me to cover.

Kelly Passauer said so you want to add on to it.

Tony Royse said yes, add on to it.

Kelly Passauer said that is new construction and I am talking about an existing structure and not adding to it.

Tony Royse said so what I am saying is it is not important enough for us to know this stuff.

Kelly Passauer said I am not saying that, I am saying if it is an existing structure.

Lisa Richard said Jeff wants to say something.

Jeff Chubb said you guys are just making this way too hard.

Mary Jo Meier asked if she may make a motion.

Jeff Chubb said this is for discussion only.

Kelly Passauer said it is a public hearing.

Jeff Chubb said nobody is saying or suggesting any of these factors should not be considered on any given project but instead of making them all apply to every application, you list everything you might ever need and then some. These are factors but not limited to those. On the application the City staff can say these are all optional. This one applies and this one applies and this one does not. They could get it to you and you can disagree and send it back and say that we do want this. Nobody is saying you do not have to do it or you do have to do it, just do not make it mandatory on every application. That is all we are talking about. I think it is making it a lot more difficult than it really is.

Lisa Richard said I think that makes a lot of sense what he just said and it also includes the idea that there would be a back and forth between staff and the Commission. Because they are all optional if staff says we did not require a site plan in this one well we still would be able to say but we would like to have one. So let's continue this another thirty days.

Kendall Neill said then it would go to a vote.

Lisa Richard said we would not be told you cannot bring that up because that was provided by staff and you have already decided that so not locking anyone in.

Jeff Chubb said staff is going to know if the scenario comes up and you say you do want this, well the next time the scenario comes up they are going to know to have it, you just learn through experience. To say that each and every one of these applies to each application is probably unrealistic.

Lisa Richard said so we could say may, at the discretion of staff, include but not be limited to the below.

Kelly Passauer said I would suggest that you let us work with Jeff on some proposed language and let us bring it back to the next meeting, in which case you would adjourn the public hearing until then.

Kendall Neill said you guys have heard us and have a general idea of what we are going for and we can work together to put those amendments together and the proposals.

Kelly Passauer said our biggest concern is that we do not want to deter somebody from doing a project, we do not want to make the process in this first step so difficult that

somebody does not even try and then we lose the opportunity to get new growth in the City because they perceive the process to be too cumbersome. But we do need to make sure you have the information you need to make a good decision. So, we understand that and we are all on the same page and we will work on getting some language together and we can visit about that at the next meeting if that works for you.

Kendall Neill said ok.

Mary Jo Meier asked if she needed to make a motion now.

Kelly Passauer stated while the Planning Commission has the option of making a specific recommendation if they are prepared to do so, it is recommended that the Planning Commission provide direction to City staff on what changes they would like to consider and City staff can prepare a specific text amendment for further consideration at the December 7, 2021, meeting.

Motion:

Mary Jo Meier moved to adjourn this public hearing until Tuesday, December 7, 2021, at 5:30 p.m. Kendall Neill seconded. Motion carried 5-0.

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

- d. Public hearing to receive comments on a variance request to change the property line setback allowed for a carport in an R-2, single-family dwelling district, at 1328 Irving Street.

Staff recommended that this public hearing be adjourned to the December 7, 2021, meeting. In further review by City staff, it was found that they need an additional variance in addition to the setbacks. The property owners prefer to have the variances considered at one public hearing.

Kelly Passauer said Chair, we recommend you open the public hearing and then we will explain to you why we would like you to adjourn it to the next meeting.

Kendall Neill opened the public hearing.

Kelly Passauer said that with further review we found that because they are doing a carport for a recreational vehicle, there is a part of that code where it says that it cannot extend beyond the front of the residential structure. In this case they had a residential structure on the lot and they had basically a tiny home at the back of the lot. I do not know when that home was constructed but apparently it has been there for a while because I do not remember us working on it. So what happened is that the house was in really bad shape so they tore the house down and they cleaned up the lot and it looks a lot better and they are wanting to put this carport in there. Because this home is so shallow it is going to require it to go beyond the front of that tiny house which was situated at the back of the lot. That is why it needs an additional variance in addition to the setback so we had to republish. That is why we are asking that it be adjourned.

Motion:

Tony Royse moved to adjourn this public hearing until Tuesday, December 7, 2021 at 5:30 p.m.
Lisa Richard seconded. Motion carried 5-0.

e. Other Discussion

Kelly Passauer stated that we have had a situation come up where we have been requested to vacate lot lines or setbacks within a plat in order to facilitate a development. For instance, in the Industrial Park where we are working on the distribution center they are building over two lots. Normally if you own both lots it is not an issue to build over it but because it was shown on the plat, they wanted those taken out for what their development company and financier required. The Commission can vacate those. Because it was time sensitive, that is what they did. I have a recent request from somebody in a residential district who bought several lots which include a platted street that has never been developed and they want to vacate all those lots and the platted street, which is a little bit different than the industrial issue but is in some ways similar. I found with the City of Lawrence what they call a minor subdivision that does not require someone to go through replating, it allows them to take the lots they have purchased and join them into one or more lots and also address if there is a street that needs to be vacated. Going through the replating process is pretty expensive and you have to have all of the property owners that live on the plat sign off on it. It is quite a process. Had the street not been there they could technically build over because if you own the lot next door you can build over that lot line because you own both lots. It would be better to clean that up and this requires that if you already have an area that has already been platted and you are either just joining the lots or subdividing the lots further, you can do a minor subdivision replat. It goes through the zoning staff and then to City Commission for final approval and it does not have to go through the long process of going through a full replat, which is really expensive and takes a lot of time. They can only replat the portion that they own so it is just their lots that they own, it does not affect anybody else's lots. Jeff has reviewed that statute and feels that is something we could do. Kelly asked if the Planning Commission wished to initiate a public hearing to be considered at the next meeting. She further stated that this would make it easier for vacant property in this situation to be developed.

It was pointed out by Tony Royse that the example provided from the City of Lawrence authorizes the Planning Director to approve.

Jeff Chubb said it does not go to the governing body.

Kelly Passauer said she thought she saw where it needs the governing body for final approval because they have to vacate a street.

Jeff Chubb said if there is a vacation but not always.

Kelly Passauer said I would suggest you send it to the governing body.

Tony Royse said it bypasses planning and zoning.

Kelly Passauer said a minor replat does as they are just joining existing lots under one ownership which currently people do that all the time, they buy several lots and they build their house over the whole thing. This would help clean it up on the platting side, especially if we have a street that if they own all the lots around it and they are not going to develop it, it allows it to be vacated. This would require a drawing with a new plat that shows that minor replat. If a street is vacated only by ordinance, to me it is not as clean because you do not have that new drawing.

Tony Royse said do you see any drawbacks on that, doing something like that, omitting a bunch of stuff.

Kelly Passauer said no, not on this because it is lots all under one ownership that they are wanting to join because they want to develop it and build something over it. It still has to be allowed for that zone.

Kendall Neill said I would like to have a public hearing on this.

Kelly Passauer asked if a motion could be made initiating a public hearing for this.

Motion

Tony Royse moved to initiate a public hearing to consider a text amendment to allow minor subdivisions. Mary Jo Meier seconded. Motion carried 5 – 0 .

Kelly Passauer said she did review, from the American Planning Association this week a design based comprehensive plan. It is kind of a different concept on how they are doing comprehensive plans. We did request that the county help us all work together on doing a comprehensive plan but if that does not happen, that is something that we need to start working on again because we need to get our plan updated and it would be good to have a current one. I can send you the information for the design based one.

Tony Royse asked if Kelly recommended that we start working on it on our own and then the county can come in.

Kelly Passauer said she sent an email to Ashley who is working with the County on this today to see where they are on that. We need to determine if that is something we are going to do. We thought if we all went together since we all need new comprehensive plans maybe we could save some funds by doing it together as a group project. I just need to see if that pans out, if it does not we need to work on it.

Lisa Richard said she had read in the paper it looked like the county was appointing a different commission to oversee the development of this plan, a county comprehensive planning commission with people selected. She asked what the involvement would be of the City Planning Commission and if they would have any input, or if they would just get a completed plan and be asked to look at it.



Kelly Passauer said the Planning Commission has to be involved in the development of the City's Comprehensive Plan. There are statutory requirements on it that pertain to the City, but the County has its own Comprehensive Plan and that is probably what they are talking about is when they develop theirs. What we had talked about previously was going together to request proposals to update the County and City Comprehensive Plans. The County would have their plan and then each of the cities would have an addendum added on to that contract for their plan. The thought was that while the company was here and gathering data it would be more economical and efficient to do it for the whole county. With the City, there is a process by statute regarding the City Comprehensive Plan. There is public input, your Planning Commission is heavily involved in it, you usually have sessions, somewhat similar to a strategic plan process. The resulting document helps guide how your City is going to develop over the next 20 years. It also defines your roads, such as your arterials and collectors. One big thing that has happened since the current comprehensive plan was developed is some of the schools have moved which has changed our traffic patterns, so that is something that needs to be looked at. It also looks at housing, and assesses the quality of housing and it can tell you where a good place would be for home development, including tiny homes if you wanted to do that. It is a really good document that helps us as we are reviewing a rezoning request or a conditional use permit on whether that is a good location. The data we have in our current comprehensive plan is from 1982 or older.

Mary Jo Meier asked about sharing the cost, if there was a deadline and what the cost would be?

Kelly Passauer said the deadline can be determined between the Planning Commission and the City Commission and having the funds available in the budget. They are looking at the ARPA funds for any assistance.

Tony Royse asked if there was anything put into the budget to redo the comp plan.

Kelly Passauer said she would have to go back to look because at the time it was discussed we knew we were wanting to work on it with the County and use ARPA funds if possible.

Tony Royse said I remember we sent a letter to them, but regardless of what the County does we still need to do ours

Kelly Passauer agreed that it needs to be done.

Adjournment

Motion

Kendall Neill moved to adjourn. Tony Royse seconded. Motion carried 5-0.

Kendall Neill, Chairperson

~~Rachel Lyon, Secretary~~ Barbara Emert