

Memorandum

City of Lawrence-Douglas County

Planning & Development Services

TO: Lawrence-Douglas County Planning Commission

FROM: Michelle Leininger, AICP, Area/Neighborhood Planner
John Miller, Staff Attorney

CC: Scott McCullough, Planning and Development Services Director
Sheila Stogsdill, Assistant Planning Director

Date: May 24, 2010

RE: ITEM NO. 7 CITY & COUNTY PUBLIC NOTIFICATION

At the March 24th PC meeting, the Commission directed staff to prepare a memo regarding current notification done for planning related items.

Kansas Statutory and Case Law Requirements

City and county regulation of land use is an exercise of police power delegated to cities and counties by the State of Kansas. The planning and zoning enabling legislation was enacted in 1991 with K.S.A. 12-741 *et seq.* The 1991 act established notice requirements for the adoption of a comprehensive plan, zoning regulations, amendments to zoning regulations and downzoning or rezoning.

Kansas courts and the state statutes make a distinction between adopting zoning regulations and rezoning a particular tract of land. The adoption of a comprehensive plan or amendments thereto and zoning regulations or amendments to the text is a legislative function. With the rezoning of specific property, the Planning and City Commission are acting in a quasi-judicial capacity.

Kansas courts and the state statutes require procedural due process for the adoption of a comprehensive plan, zoning regulations, amendments to zoning regulations and downzoning or rezoning. The people and entities involved, both landowners and opponents to a zoning change, have procedural rights, including the right to notice, a fair and open hearing, and an impartial decision-maker.

The procedural requirements when acting in a legislative capacity are primarily a public hearing held by the planning commission after publication of notice in the newspaper, a recommendation by the planning commission and ultimately adoption by the governing body. The newspaper publication must occur at least 20 days prior to the public hearing.

For the adoption of a comprehensive plan and amendments thereto the process is provided in K.S.A. 12-747. The notice requirement is established in K.S.A. 12-747(b) that states in part:

Before adopting or amending any such plan or part thereof, the planning commission shall hold a public hearing thereon, notice of which shall be published at least once in the official city newspaper in the case of a city or in the official county newspaper in the case of a county. Such notice shall be published at least 20 days prior to the date of the hearing.

In addition to the published notice prior to the planning commission's public hearing, notice is also required to be provided to other units of government affected by the adoption of or amendments to the comprehensive plan. K.S.A. 12-743 requires that written notice be given to other governmental units "at least 20 days prior to the proposed action" of the governing body adopting the comprehensive plan. The city, in K.S.A. 12-743(a), is required to give notice to the board of county commissioners and the township board of the township in which such property is located. The county, in K.S.A. 12-743(b), is required to give written notice to the governing body of any city within three miles of the property affected by the comprehensive plan and the township board of the township in which the affected property is located. The notice to the townships is required because Douglas County does operate under the county unit road system.

For the adoption of subdivision regulations and amendments thereto the process is provided in K.S.A. 12-749. The notice requirement is established in K.S.A. 12-749(d) that states in part:

Before adopting or amending any subdivision regulations, the planning commission shall call and hold a hearing on such regulations or amendments thereto. Notice of such hearing shall be published at least once in the official city newspaper in the case of a city or in the official county newspaper in the case of a county. Such notice shall be published at least 20 days prior to the hearing. Such notice shall fix the time and place for such hearing and shall describe such proposal in general terms. In the case of a joint committee on subdivision regulations, such notice shall be published in the official city and official county newspapers.

Like the adoption of comprehensive plan, the adoption of subdivision regulations must also meet the written notice requirements of K.S.A. 12-743 prior to action by the governing body.

For the adoption of zoning regulations the process is provided in K.S.A. 12-756. The notice requirement is established in K.S.A. 12-756(b) that states in part:

Notice of such public hearing shall be published at least once in the official city newspaper in the case of a city or in the official county newspaper in the case of a county at least 20 days prior to the date of the hearing. In the case of a joint zoning board, notice of such hearing shall be published in the official city and official county newspapers. Such notice shall fix the time and place for such hearing and shall describe such proposal in general terms.

For the adoption of amendments to the zoning regulations, otherwise known as text amendments, the process is provided in K.S.A. 12-757. The notice requirement is established in K.S.A. 12-757(b) that states in part:

The planning commission shall hold a public hearing thereon, shall cause an accurate written summary to be made of the proceedings, and shall give notice in like manner as that required for recommendations on the original proposed zoning regulations provided in K.S.A. 12-756, and amendments thereto. Such notice shall fix the time and place for such hearing and contain a statement regarding the proposed changes in regulations or restrictions or in the boundary or classification of any zone or district.

While the city does not establish zoning regulations affecting property outside of the city, the county must satisfy the written notice requirements of K.S.A. 12-743 for any city within three miles of the property affected by the zoning regulations and the township board of the township in which the affected property is located.

The procedural requirements for a rezoning request require all of the procedures established for zoning regulations or text amendments as well as written notice of the rezoning request to the land owners located within either 200 feet in the city or 1000 feet in the county of the property to be rezoned. A planning commission or governing body is acting in a quasi-judicial capacity when rezoning a particular tract of land. The notice requirement for the planning commission hearing is established in K.S.A. 12-757(b) that states in part:

If such proposed amendment is not a general revision of the existing regulations and affects specific property, the property shall be designated by legal description or a general description sufficient to identify the property under consideration. In addition to such publication notice, written notice of such proposed amendment shall be mailed at least 20 days before the hearing to all owners of record of real property within the area to be altered and to all owners of record of real property located within at least 200 feet of the area proposed to be altered for regulations of a city and to all owners of record of real property located within at least 1,000 feet of the area proposed to be altered for regulations of a county. If a city proposes a zoning amendment to property located adjacent to or outside the city's limits, the area of notification of the city's action shall be extended to at least 1,000 feet in the unincorporated area. Notice of a county's action shall extend 200 feet in those areas where the notification area extends within the corporate limits of a city. All notices shall include a statement that a complete legal description is available for public inspection and shall indicate where such information is available.

With special or conditional use permits the statutory procedural requirements are not as clearly provided as they are for rezoning or text amendments. However, Kansas case law strongly suggests that the procedural requirements for a special use permit should be the same as a zoning amendment.

The Kansas courts have stated that planning commission and governing body consideration of a special or conditional use permit is a quasi-judicial action. See *Zimmerman v. Board of County Commissioners of Wabaunsee County*, 289 Kan. 926,

950, 218 P.3d 400 (2009). The courts also impose the same scope of review for special use permits as they do for zoning cases. See *Manly v. City of Shawnee*, *287 Kan. 63, 75, 194 P.3d 1 (2008)*.

Because the courts apply the same standards for special and conditional use permits as they do for a rezoning request, it is advisable to follow the same notice requirements used for rezoning requests under K.S.A. 12-757(b).

Appropriately, the city and county codes provide the notice requirements for special and conditional use permits as directed by the Kansas courts.

City and County Notification Requirements

The city and the county both are legally required, and required by code, to provide public notification of particular planning related items.

Notification of varying degrees (newspaper, mail, sign) is provided for text amendments, rezonings, preliminary and final development plans, site plans, SUPs, variances, appeals of administrative decisions, preliminary plats, and comp plan amendments. Additional notification is provided in situations staff deems necessary.

Notifications for rezonings, CUPs, commercial or industrial plats, certificates of surveys in the UGA and telecommunication tower applications in the unincorporated area are also provided. The regulations require newspaper notice and mailed notice but do not require notice signs be posted for any public hearing item development requests in the unincorporated parts of the county that are considered by the Planning Commission. Site plans, which are considered by the County Commission, are placed on the Commission's agenda, but do not receive any additional notice.

The following table outlines the notice provided for the different application types. The items shown in bold represent notice that exceeds the statutory minimums. Additionally, the Lawrence Development Code requires mailed notice to registered neighborhood associations whose boundaries include or are contiguous to the subject property, **which is additional notice not required by statute**.

| Procedure | Newspaper Notice | Mailed Notice Distance | Sign Posted |
|---------------------------------------|------------------------------------|---|-------------|
| County Commercial or Industrial Plats | Y | 1000' | N |
| County Certificate of Survey | Y | In UGA: ¼ mile/ Rural: None | N |
| County Rezoning | Y | 1000' | N |
| County Conditional Use Permit | Y | 1000' | N |
| County Towers | Y | 1000' (additional 1 mile by applicant) | N |
| City Text Amendment | Y | None | N |
| City Rezoning | Y | 200' | Y |
| City Prelim. Devel. Plan | Y | 200' | Y |
| City Final Devel. Plan | Y(old code)/ N(new code) | 200'(old code)/ None (new code) | N |
| City Site Plan | N | 200' by applicant | Y |
| City Special Use Permit | Y | 200' | Y |

| | | | |
|----------------------------------|----------|--|---|
| City Variance from BZA | Y | 200' | N |
| City Written Interpretations | N | None | N |
| Type B Home Occupation | N | 200' by applicant | N |
| Minor Subdivision | N | None | N |
| Minor Subdivision w/ a variance | Y | 200' | N |
| Preliminary Plat | Y | 200' | N |
| Final Plat | N | None | N |
| City Appeals of Admin. Decisions | Y | 200' | N |
| Comp Plan Amendments | Y | To affected townships and towns in the county before CC & BCC action | N |

The codes require the extra-ordinary notice as outlined above. Additionally, the city uses several other methods for reaching out to stakeholders and citizens in order to be as transparent as possible in processing land use applications. These include:

- Listserv:
 - Notice of applications received
 - Notice of Planning Commission meeting/agenda
 - Development activity by city quadrant
 - Special project updates
- Web posting of agendas and agenda packets
- City representative to Lawrence Association of Neighborhoods (LAN) meetings every month

Currently the code does not require any mailed notice for text amendments; however, publication of agendas with the items listed is completed monthly. This has been a contentious issue because property owners in and around a district where changes are required may not know of the proposal. In some situations, notice has been provided by City Commission direction if the area is small but potentially staff could be sending out thousands of letters depending on the amendment. Individual notice for general text amendments would require defining thresholds for when notification should be mailed and to whom the notification should be mailed.

Action Requested

Review report and direct staff as appropriate.