



PLANNING COMMISSION MEETING

June 28, 2017

Meeting Action Summary

June 28, 2017 – 6:30 p.m.

Commissioners present: Butler, Carpenter, Culver, Kelly, Sands, Struckhoff, Weaver, Willey

Staff present: McCullough, Stogsdill, Day, Larkin, Pepper, Ewert

GENERAL BUSINESS

ELECTION OF OFFICERS FOR 2017-2018

Accept nominations for and elect Chair and Vice-Chair for the coming year.

Commissioner Kelly nominated Eric Struckhoff for Chair. Seconded by Commissioner Sands.

Motion carried 7-0-1, with Commissioner Struckhoff abstaining.

Commissioner Culver nominated Karen Willey for Vice-Chair. Seconded by Commissioner Sands.

Motion carried 7-0-1, with Commissioner Willey abstaining.

PLANNING COMMISSION ACTION SUMMARY MINUTES

Receive and amend or approve the action summary (minutes) from the Planning Commission meeting of May 24, 2017.

Motioned by Commissioner Kelly, seconded by Commissioner Culver, to approve the May 24, 2017 Planning Commission action summary minutes.

Unanimously approved 7-0-1, with Commissioner Butler abstaining.

COMMITTEE REPORTS

Receive reports from any committees that met over the past month.

Commissioner Culver said he was unable to attend the most recent Transportation 2040 Steering Committee meeting. He said the Planning Commission Mid-Month meeting in August would provide an update to the plan.

Mr. McCullough said the committee and staff were working hard on the T2040 plan. He said the committee looked at public input received to date.

Mr. McCullough said the Horizon 2020 committee would meet at the end of July. He urged Planning Commission to look at the draft. He said the committee only had two more meetings so they would

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not fill former Commissioner Britton's position. He said if the committee decided to extend the process then they could revisit the issue.

EX PARTE / ABSTENTIONS / DEFERRAL REQUEST

- No ex parte.
- No abstentions.

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**Adjourn Joint Meeting with Eudora Planning Commission
Convene as the Airport Zoning Commission**

ITEM NO. 2 SITE PLAN FOR WILDLIFE HAZARD FENCE; 1930 AIRPORT RD (SLD)

SP-17-00236: Consider a Site Plan (by the Lawrence Douglas County Metropolitan Planning Commission sitting as the Airport Zoning Commission per Section 20-302) for construction of a wildlife hazard fence at Lawrence Municipal Airport, located at 1930 Airport Rd. Submitted by the City of Lawrence, property owner of record.

STAFF PRESENTATION

Ms. Sandra Day presented the item.

APPLICANT PRESENTATION

Mr. Rick Bryant, Airport Development Group, said the wildlife hazard fence was a result of a Federal Aviation Administration (FAA) study. He said the fence was meant to keep wildlife off the runway, not a security fence. He said they tried to minimize the agricultural impact and that there would be no farming activity within the fenced area. He said the master plan called for a perimeter fence. He said they hoped to be under construction at the end of July or beginning of August. He said this was a high priority project from FAA and that FAA would be paying for 90% of the cost.

PUBLIC HEARING

Mr. Scott Swedlund, 1567 Hwy 40, wondered how this fit into the long-range plan. He expressed concerned about coyotes being funneled onto his property and highway. He said animals would overrun his property and that two households would be impacted by this.

COMMISSION DISCUSSION

Commissioner Carpenter inquired about the fence design and the purpose of the barbed wire.

Mr. Bryant said deer jump over 10' fence.

Commissioner Carpenter said the barbed wire gave the perception that it was a security fence. He inquired about birds.

Mr. Bryant said birds would always be an issue but that airport staff had done a good job at reducing and dispersing bird flocks.

Commissioner Willey asked how many acres would be taken out of agricultural production with the addition of a fence.

Mr. Bryant said the airport was approximately 486 acres and that approximately 349 acres was currently being farmed. He said there would be about 150 acres outside the fence area. He said on the south end of the property the footprint was reduced and the fence was away from the highway. He said it was in flux right now but they had done their best to minimize the reduction of class 1 soils from the area.

Commissioner Struckhoff said the fence would not go south of Highway 24.

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Mr. Bryant said that was correct. He said south of the airport was City owned property but was fenced in because it was part of the instrument landing system and needed to be under security. He said there would be nothing running across the highway. He said he would continue to reach out to citizen who wrote letter regarding that concern.

Commissioner Willey said she would vote in favor because it was a safety issue and funding was available.

ACTION TAKEN

Motioned by Commissioner Willey, seconded by Commissioner Kelly, to find that the application conformed to the Airport Overlay District Regulations and the proposed wildlife fence be approved.

Commissioner Carpenter said he had not thought about where the wildlife would be diverted to and he hoped the airport would work with the property owner on that issue. He hoped the City was not creating a nuisance and hoped any issues were addressed.

Commissioner Struckhoff said he hoped the animals being diverted could be monitored and any issues abated.

Unanimously approved 8-0.

Adjourn Airport Zoning Commission Reconvene LDCMPC

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ITEM NO. 3 RS5 TO RS7; 1.13 ACRES; 309, 321, 325, 331 INDIANA ST (BJP)

Z-17-00217: Consider a request to rezone approximately 1.13 acres from RS5 (Single-Dwelling Residential) District to RS7 (Single-Dwelling Residential) District, located at 309, 321, 325, and 331 Indiana St. Submitted by Summer Wedermyer on behalf of Philip R Jones, Jennifer M Padilla, Nathan R Littlejohn III, Lynette Littlejohn, Emily C H Hensley, Nate Wedermyer, and Summer Wedermyer, property owners of record.

STAFF PRESENTATION

Ms. Becky Pepper presented the item.

APPLICANT PRESENTATION

Ms. Summer Wedermyer was present for questioning.

PUBLIC HEARING

No public comment.

COMMISSION DISCUSSION

Commissioner Kelly said he was excited about this due to the infill development potential.

ACTION TAKEN

Motioned by Commissioner Kelly, seconded by Commissioner Carpenter, to approve the request to rezone approximately 1.13 acres from RS5 (Single-Dwelling Residential) District to RS7 (Single-Dwelling Residential) District based on the findings presented in the staff report and forwarding it to the City Commission with a recommendation for approval.

Unanimously approved 8-0.

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ITEM NO. 4 MINOR SUBDIVISION VARIANCE FOR 2645 HASKELL (SLD)

MS-17-00251: Consider a variance request for the reduction of right-of-way width for Haskell Ave from 150' to 100' associated with a Minor Subdivision for Lawrence Industrial Park No. 2, located at 2645 Haskell Ave. Submitted by CFS Engineers, for Hedge Tree LLC, property owners of record.

STAFF PRESENTATION

Ms. Sandra Day presented the item.

APPLICANT PRESENTATION

Mr. Aaron Gaspers, CFS Engineering, was present for questioning.

PUBLIC HEARING

No public comment.

COMMISSION DISCUSSION

Commissioner Willey asked if the current right-of-way width was 100' or 150'.

Ms. Day said 100'. She stated the Subdivision Regulations required a wider right-of-way then how much of the urban area had developed.

Commissioner Willey asked if other properties in the area would benefit from a variance like this.

Ms. Day said it was a requirement of the Subdivision Regulations. She said there was no expectation that residential properties on the east side would be further subdivided. She said residential properties to the north could potentially be redeveloped.

Commissioner Carpenter inquired about a future need to widen Haskell by taking equal parts on both sides of the road.

Mr. McCullough said it was context based and that the City works to negotiate right-of-way as needed.

Commissioner Willey asked if Planning Commission would see the site plan.

Ms. Day said Planning Commission would not see the site plan.

ACTION TAKEN

Motioned by Commissioner Kelly, seconded by Commissioner Willey, to approve the variance requested for a Minor Subdivision, MS-17-00251, variance request to reduce the right-of-way from Section 20-810(a)(5) for a principal arterial street from 150' to 100' per section 20-813(g) of the Land Development Code for property located at 2465 Haskell Avenue.

Commissioner Sands inquired about the area to the north being redeveloped.

Mr. McCullough said road improvements would be the responsibility of the developer at the time of redevelopment.

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Unanimously approved 8-0.

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ITEM NO. 1 CONDITIONAL USE PERMIT FOR CELL TOWER; 2138 N 1000 RD (SLD)

CUP-17-00215: Consider a Conditional Use Permit for a new 190 ft self-supporting wireless telecommunications facility (tower), located at 2138 N 1000 Rd. Submitted by MW Towers LLC for F. Dwane Richardson & Valerie Richardson, property owners of record. *Joint meeting with Eudora Planning Commission.*

STAFF PRESENTATION

Ms. Sandra Day presented the item.

APPLICANT PRESENTATION

Mr. Vincent O'Flaherty, MW Towers, said the condition to move the tower back 150' was acceptable to the applicant. He said MW Towers had built 25 towers in the Kansas/Missouri area to improve cellular service. He referenced the State Statute established in 2016 that restricted the subject that Planning Commission can consider. He said that towers provide significant economic impact and were encouraged by the State Statute.

PUBLIC HEARING

Mr. Patrick Kelly, representing three property owners, expressed opposition. He expressed concern regarding decrease in property value and aesthetics of an ugly tower. He stated the Oregon Trail crossing was 1/10 mile away. He expressed safety hazard issues with an additional access point to the site. He was concerned about the fall zone and the proximity to the natural gas well nearby. He also expressed concern about low flying aircraft from the unregulated airstrip nearby as well as crop dusters.

Mr. Justin Kelly spoke in opposition on behalf of two property owners. He expressed concern about farmers being restricted with crop dusting. He said the Wakarusa River was nearby and contaminants from the cell tower could end up in the river. He expressed concern regarding the impact to migratory birds passing through the area of the cell tower site.

Ms. Barbara Braa echoed Mr. Justin Kelly's comments regarding migratory birds and the impact to them. She wondered how intrusive fencing would be around the cell tower. She wondered if a monopole would be less intrusive to the area. She expressed concern about the potential harm to the growth of Eudora. She asked for the addresses of other towers that MW Towers had built so she could see what they looked like.

Mr. Michael Braa questioned the need for another tower in the area and that he could already see two towers from his home. He said he was not aware of the lack of cell service in the area.

Mr. Mark Elston echoed Mr. Braa's comments regarding the need for another tower. He wondered who would profit from the cell tower being built.

Ms. Braa said the lease holder of the land moved away.

APPLICANT CLOSING COMMENTS

Mr. O'Flaherty said the fence would be 6' with three strands of barb wire on the top. He said the property was being leased from the land owner and subject to a ground lease. He said regarding questions about the floodplain and birds he referenced the Kansas Statute (KSA 66-2009) that said

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environmental impacts were not a reason to deny an application. He stated other towers being in the area was not grounds for rejecting an application per the Kansas Statute. He said the area needs additional coverage which was why the tower was being placed where it was. He said there were no statistics regarding a decrease in property value. He said Kansas public policy encouraged the development of wireless structures as being an economic benefit. He said regarding safety the electrical would be brought in underground to the site. He said staff had no concerns about access to the site. He said he would be happy to sit down with property owners to address any further concerns.

COMMISSION DISCUSSION

Commissioner Kelly asked staff about the limitations of the State Statute.

Ms. Day said Planning Commission could not consider other towers in the area as a factor for denial. She said they could also not consider the need or justification for the tower. She said regarding evidence of value loss that was a specific burden of property owners to show economic loss. She said one of the environmental factor considered was floodplain and it would still need to meet local standards. She said the proposed location did not encroach in floodplain.

Commissioner Kelly said Planning Commission had dealt with cell towers before and the laws conflict with the charge of Planning Commission. He said sometimes they cannot talk about certain concerns and it was frustrating.

Commissioner Sands said the proposed site drawings show up to four more facilities added to the tower.

Ms. Day said that was correct.

Commissioner Willey inquired about what else could be added within the fencing.

Ms. Day said the pad sites for ground equipment could be added. She said the lease area is initially larger than what they would fence at first. She said the fencing could be expanded if more equipment was added.

Commissioner Carpenter inquired about the tower being expanded by 20' and adding a light without public comment.

Ms. Day said it would probably come back as an administrative modification. She said the lighting was guided by the Federal Aviation Administration (FAA).

Mr. McCullough said the laws had evolved to benefit the cell tower industry. He urged Planning Commission to consider it has the potential to go up 20' and then be lit.

Commissioner Carpenter said the Comprehensive Plan does not specifically address cell towers.

Mr. McCullough said it was a matter of competing values and a necessary evil for everyone to have cell phones. He said the only study he had seen on property values showed that there was no effect on values. He said they were becoming less and less able to prohibit cell towers.

Commissioner Sands wondered if a light study should be required.

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Ms. Day said it was not part of the old or recently approved regulation. She said a photometric plan that other development requires was completely different than a light study for a cell tower.

Commissioner Sands said he was talking about a low blinking red light.

Mr. McCullough said staff could not answer that.

Mr. O'Flaherty said he had no problem adding a condition that the tower would not go higher without public comment.

Mr. Paul Wrablica said lighting on towers over 200' was nighttime lighting was a red pulsing light that beats 30 strobes per minute. He said daytime lights were a medium intensity strobe.

Commissioner Carpenter inquired about how the FAA looks at towers near unregulated airstrips.

Mr. Wrablica said the FAA looks at airstrips that have FAR 75 protection, mostly paved airstrips. He said the landlord for the cell tower site owned an ultralight and was aware of the tower and had no concerns. He said the property owner does not fly at night.

Commissioner Butler appreciated the public comment. She referenced the State Statute and did not see any problem with not supporting the Conditional Use Permit. She felt the issues brought forth by the community were relevant and did not feel they were in specific contrast to what Planning Commission could consider.

Commissioner Sands asked how sites were selected.

Mr. O'Flaherty said it was a combination of a land owner willing to lease their land and coverage maps of who they want covered.

Commissioner Struckhoff inquired about tower camouflage.

Ms. Day said there was discussion about a monopole versus a sub-support. She said the applicant indicated that monopoles were more challenging to co-locate on.

Commissioner Culver wondered about the historical marker nearby and any restrictions in in the Code.

Ms. Day said there were no registered historic properties in the area. She said the applicant would have to coordinate with the State as part of the process. She said she forwarded the application to the State and they said the tower was not in the immediate vicinity. She said there may be historic elements but there was nothing regulatory at the local level that would regulate it.

Mr. O'Flaherty he said he had a letter from the State saying that the tower would have no adverse impact from their perspective.

Commissioner Willey appreciated the public comment. She said cell towers provide a public good by providing service but also becomes a burden in part of the landscape. She said the law does not allow them to regulate where towers are placed. She said she would vote in favor with a heavy

heart. She said they did not have a lot to stand on in opposing it at this level. She encouraged the public to voice their opinions to County Commission.

Commissioner Sands said he was inclined to support it but not because he liked seeing cell towers. He said it was a private and public good. He said the State Statute requires a reasonable reason for denial. He said one of the Golden Factors that Planning Commission looks at is opposition and support from neighbors. He appreciated the public comment.

Commissioner Kelly echoed what Commissioner Willey said. He said there was probably a time when people didn't want telephone poles in their yard and now everyone is just used to them. He said he would support the Conditional Use Permit.

Commissioner Carpenter thanked the public for their comments. He said the Kansas Statute prohibits what Planning Commission can and can't do. He said he did not like cell towers and how they look. He felt like they were boxed into a corner of approving this. He was thankful the applicant was willing to bring it back for public comment if it would become taller.

Commissioner Butler encouraged residents to express their opposition to the County Commission. She was troubled by the applicant using Statute Statutes and regulations in an attempt to force their hands.

ACTION TAKEN

Motioned by Commissioner Carpenter, seconded by Commissioner Sands, to recommend approval the Conditional Use Permit, CUP-17-00215, for a *Communication Tower (Wireless Facility)* use, and forward to the Board of County Commission, subject to the following conditions:

1. Provision of a revised site plan drawing that shows the location of the tower enclosure setback at least 60' north of the right-of-way line and the tower to be setback a minimum of 150' from the future right-of-way line per section 12-310 of the County Zoning Regulations, and
2. Provision of a note on the face of the plan that states any increase in height above 200' or that would require installation of lights for FAA regulations will require a full public hearing process by the Planning Commission and County Commission with notice prior to modifications being permitted.

Commissioner Culver said based on the criteria they had it met the staff findings. He said he would support the motion since they could not consider other factors.

Commissioner Struckhoff said he would support the motion begrudgingly. He echoed Commissioner Culver's statement and said it was in line with the Comprehensive Plan and staff report findings of fact. He thanked the public for their comments.

Motion carried, 6-2 with Commissioners Butler & Carpenter voting in opposition.

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**ITEM NO. 5 TEXT AMENDMENT TO DEVELOPMENT CODE; PARKING & ACCESS
STANDARDS (SMS)**

TA-13-00235: Continue discussion related to proposed Text Amendments to the City of Lawrence Land Development Code, Article 9 and related sections of Chapter 20, for comprehensive revisions to parking and access standards. *Action on this item will not occur until after the commission completes their discussion on several of the elements of the code language and a final draft is available for their review.*

Item No. 5 deferred prior to the meeting.

MISCELLANEOUS NEW OR OLD BUSINESS

Consideration of any other business to come before the Commission.

ADJOURN 8:29pm