

**JUNCTION CITY/GEARY COUNTY
METROPOLITAN PLANNING COMMISSION
BOARD OF ZONING APPEALS**

MINUTES

**March 10, 2011
7:00 P.M.**

Members Present

Members Absent

Staff

Rick Ziegler
Ken Mortensen
Brandon Dibben
Mike Steinfort
John Moyer
Mike Ryan
Maureen Gustafson

David Yearout
Shari Lenhart

1. CALL TO ORDER AND ROLL CALL

Chairman Steinfort called the meeting to order at 7:00 p.m. and noted all members present.

2. APPROVAL OF MINUTES

Commissioner Moyer moved to approve the minutes of the January 20th and February 10th meetings. Commissioner Dibben seconded the motion and it passed unanimously.

3. OLD BUSINESS

Item No. 1 – Case No. SUP-01-01-11 – Reconsideration of Special Use Permit at 703 West Ash.

Reconsideration of the application of Mike Douchant, Dolan Realty Advisors, agent for Verizon Wireless, lessee, on behalf of Highland Cemetery, owner, requesting a Special Use Permit to install a communications tower at 703 West Ash Street, Junction City, Kansas. Proposed site is generally in the southeast corner of the cemetery.

Mr. Yearout stated the City Commission voted to return this case to the Planning Commission for reconsideration at the February 15, 2011, meeting. The reason for the return is because the applicant presented new information at the City Commission meeting showing landscaping around the equipment compound. The Planning Commission can re-open this case for further review or take no action. State statute requires the Planning Commission to act on a returned matter at its next regular meeting. If no action is taken, the case will go back to the City Commission with the original recommendation.

Mr. Yearout reported a valid protest petition was presented to the City Clerk within the statutory timeframe, which will require a ¾'s majority of the governing body to approve the request regardless of the action taken by the Planning Commission. Mr. Yearout shared a map showing the notification area and the property owners who signed the petition and stated that 32% of the notification area had signed the protest petition.

Mr. Yearout reported that all additional information presented by the applicant was included in the packets for this meeting. Copies of material received earlier in the day from Verizon's RF engineer were also provided.

Mr. Yearout commented that the graphic submitted today which shows two existing cell towers and their coverage, the proposed Highland Cemetery location, and the original location in the South Park area does not show the latest location discussed in South Park. As such, staff believes the material is somewhat misleading.

Mr. Yearout stated staff is still recommending denial based on the position that a cell tower is not an appropriate land use in a cemetery and that other locations are available in the area to service this section of the community.

Chairman Steinfort asked if any members had questions of staff.

Commissioner Moyer asked if the only reason the City Commission returned the case was because of the photographs and the artist rendering of proposed landscaping. Mr. Yearout indicated the City Commission felt the Planning Commission should also have the opportunity to review the additional information presented by the applicant and include that information in its recommendation.

Mr. Yearout responded to the Commission that there was no obligation to open the meeting up for additional comments from the public since this is a review of the information as returned by the City Commission. It was up to the Commission whether the opportunity for additional comments from the applicant or the public would be taken.

Commissioner Ziegler moved that the Planning Commission not open the review to additional comments and, pursuant to state statute, the case be resubmitted to the City Commission with the original recommendation of denial. Commissioner Moyer seconded the motion and it failed by a vote of 3 yeas and 4 nays. (Commissioners Ziegler, Moyer and Steinfort voted for the motion, and Commissioners Ryan, Mortensen, Gustafson and Dibben voted against the motion.)

Commissioner Gustafson stated she wished to ask some additional questions of the applicant and was open to hearing from the public.

Commissioner Mortensen stated he still believes that installation of the tower will not be detrimental to the cemetery or the surrounding areas.

At this point, Chairman Steinfort opened the meeting for public comment.

Randy Powers, 1013 South Webster, stated he had voiced his opinions in opposition to the tower at the January meeting. He presented the members with a copy of an article, printed in the *Daily Union, February 12, 2011*, relating to wireless advances and how cell towers may become obsolete in the future. He reiterated that he is still opposed to a cell tower at this particular location.

Jim and Phyllis Nelson, 710 Sunshine, expressed concern about no light on top of the tower. Life Watch helicopters frequently use this flight path to and from the hospital, and a tower at this location could be a safety issue. Mr. Nelson stated he is concerned about noise from the generators proposed at the location since their home is immediately south of the proposed site.

Eileen Small, 724 Sunshine, felt the tower would have a negative effect on property values and she also felt this is not an appropriate use in a cemetery.

Mike Douchant, Dolan Realty Advisors, agent for Verizon, spoke on the need for Verizon to install additional towers. He elaborated on the technical aspects of coverage and the continued demand for Verizon to provide service to their customers. He indicated if aesthetics is one of the main concerns, there are numerous options available to make this a "stealth" tower and the applicant is willing to consider such options. He agreed that, even though the FAA does not require lighting, a light can be installed, if required.

Discussion ensued between Mr. Douchant and Commissioners regarding capacity, construction, landscape upkeep responsibilities, additional carriers, tower at 7th & Monroe, future building installations, maintenance issues, noise, cosmetic possibilities, wireless technology advancements, other possible locations, increase of the proposed area for other users, and other potential commercial uses in the cemetery once this first commercial use occurred.

Casey Gorham, manager and Sexton of Highland Cemetery, reiterated the Cemetery Board has agreed that the proposed use will not interfere with the operations of the cemetery and it will provide additional income. Mr. Gorham pointed out that the City installed a siren which requires maintenance and there have been no complaints from the surrounding property owners. Mr. Gorham stated the Cemetery Association supports having the Special Use Permit approved because of the additional revenue and the fact the existing roadway to the proposed tower site would be improved with additional gravel by Verizon.

There being no further public appearances, Chairman Steinfort closed the public hearing.

Mr. Yearout reminded the Commission the Zoning Regulations were amended last year to allow consideration of other locations for proposed cell towers. Prior to the amendment, cell towers were allowed by right on in the Industrial districts. The tower at 7th and Monroe is in an industrial zone. The growth of cell phone usage will require the installation of more cell towers and limiting towers to areas zoned industrial would limit the opportunities to improve service within the community. The amendment provided for the Special Use Permit procedure.

Mr. Yearout stated staff is still of the opinion other alternative locations can provide the needs of Verizon in this portion of the City. Staff is aware those locations may not be as ideal as an RF engineer would wish, but the original propagation maps show the proposed site in South Park is workable. It is still staff's opinion that a cemetery is not the appropriate setting for this type of land use or any other type of commercial uses. In staff's opinion, the South Park location would be workable.

Commissioner Ziegler stated he believed this was not an appropriate land use for the cemetery, and it could open up the cemetery for other commercial endeavors.

Commissioner Mortensen reiterated he did not believe the tower would be detrimental in the cemetery and that the proposed landscaping around the equipment compound would provide adequate screening. In addition, the location is somewhat down over the hill and less visible from surrounding properties.

Commissioner Gustafson reiterated that she did not have a problem with the tower, per se, but was very opposed to the buildings on the ground. She felt it would need a lot of landscaping and that would require more maintenance responsibility on the part of the cemetery. She felt that even with the landscaping, the proposed tower is not appropriate for the cemetery.

Commissioner Mortensen moved to recommend approval of the application of Mike Douchant, Dolan Realty Advisors, agent for Verizon Wireless, lessee, on behalf of Highland Cemetery, owner, requesting a Special Use Permit to install a communications tower at 703 West Ash Street, provided the applicant meets the recommendations suggested in the March 3rd staff report; adding the requirement of a red light at night, and additional installation of the landscaping as presented by the applicant. Commissioner Ryan seconded the motion. The motion failed by a vote of 3 ayes and 4 nays. (Commissioners Mortensen, Ryan and Dibben voted for the motion, and Commissioners Ziegler, Gustafson, Moyer and Steinfort voted against the motion.)

Commissioner Moyer moved to recommend denial of the application of Mike Douchant, Dolan Realty Advisors, agent for Verizon Wireless, lessee, on behalf of Highland Cemetery, owner, requesting a Special Use Permit to install a communications tower at 703 West Ash Street, based on the facts presented in the January 19th staff report and as heard at both public hearings; that the additional information provided by the applicant did not significantly alter the impact the cell tower would have on the area; and because there appears to be a viable alternative site at the northeast corner of South Park. Commissioner Gustafson seconded the motion and it carried by a vote of 5 ayes and 2 nays. (Commissioners Ziegler, Gustafson, Steinfort, Moyer and Dibben voted for the motion and Commissioners Mortensen and Ryan voted against the motion.)

Mr. Yearout informed the audience and Commission this case would be on the April 5th City Commission agenda.

4. NEW BUSINESS

Item No. 1 – Case No. Z-03-01-11 – Public Hearing to Rezone Property at 1120 South Madison

Chairman Steinfert opened the public hearing on the application of Don Boyer, owner, to rezone property at 1120 South Madison Street from “CSR” Service Commercial Restricted District to “IL” Light Industrial District, Junction City, KS.

Mr. Yearout reviewed the staff report explaining this rezoning was intended to be considered at the time of review of the Final Plat of Madison Street Addition heard earlier this year, but the application for the replat was the only one originally submitted. The purpose of this request is to make all the zoning industrial to enable Mr. Boyer to construct storage buildings on the property. The area under consideration is the property purchased by the applicant behind the existing Subway on South Washington. Mr. Yearout stated the proposed rezoning makes all the land of the applicant consistent; that the rezoning does not negatively impact other existing uses in the area; and staff recommends approval.

Mr. Boyer, applicant, confirmed the rezoning was intended to come with the replat, but unfortunately that didn’t happen. Mr. Boyer had no other comments and was supportive of the staff report and recommendation.

There being no further comments from the public, Chairman Steinfert closed the public hearing.

Commissioner Mortensen moved that Case No. Z-03-01-11, request of Don Boyer, owner, to rezone property at 1120 S. Madison Street from “CS” Service Commercial Restricted District to “IL” Light Industrial District, Junction City, Kansas, be recommended for approval by the City Commission based on the reasoning stated in the staff report and as presented at the public hearing. Commissioner Dibben seconded the motion and it carried unanimously.

Mr. Yearout stated this case would also be on the April 5th City Commission agenda.

Item No. 2 – Case No. TA-03-01-11 – Public Hearing on proposed Text Amendment to the Geary County and Junction City Zoning Regulations concerning Special Use Permits.

Chairman Steinfert opened the public hearing on the proposed text amendment to the Geary County and Junction City Zoning Regulations concerning the use of Special Use Permits and asked for the staff report.

Mr. Yearout stated the proposed amendment would allow for greater flexibility in dealing with issues not allowed by right or not listed as a land use in any zoning category, especially in the County. He identified a couple of situations in the rural area that prompted this proposed amendment. The staff report identifies the different sections in the City and county Zoning Regulations that will be amended.

Chairman Steinfert asked how many cases might be generated over a year. Mr. Yearout indicated there is more of a need in the County for this flexibility, but it will also be helpful to have the same procedure in place for the City's regulations. He does not anticipate that many cases would be considered in the City, but it would probably generate about a half dozen cases in the County.

Mr. Yearout reminded the Commissioners that this is under the Special Use Permit procedure, which has the Metropolitan Planning Commission holding a public hearing and the Governing Body making the final determination on each case.

There being no public appearances, Chairman Steinfert closed the public hearing.

Commissioner Gustafson moved that the proposed amendments to the Geary County Zoning Regulations and Junction City Zoning Regulations concerning the use of Special Use Permits be recommended for adoption by the Board of County Commissioners of Geary County and the City Commission of the City of Junction City as outlined in the staff report. Commissioner Moyer seconded the motion and it carried unanimously.

Mr. Yearout stated this case would also be on the April 5th City Commission agenda, but the intention is to take the proposed resolution to complete the amendment to the Board of County Commission on Monday, March 14th.

Item No. 3 – Case No. CP-03-01-11 - Review of the Comprehensive Plan for Junction City and Geary County.

Mr. Yearout reported that a public hearing is not required for the yearly review of the Comprehensive Plan by the Planning Commission. A public hearing is only necessary if the Plan is to be amended. As previously reported, there is a need to update the Plan; however, there are no monies available for the extensive work required. Mr. Yearout reported that the 2010 Census data is now available and Geary County's population increased at a rate that made Geary County the fastest growing County in Kansas, based on percentage increase change. Staff believes this indicates that the City, County, and surrounding area continues to grow and makes the need for a current Comprehensive Plan very important. However, given the current financial situation, the current Plan should be acknowledged as the valid Plan for Junction City and Geary County.

Mr. Yearout recommended the Commission acknowledge this review of the Comprehensive Plan confirms it is still the valid Plan for Junction City and Geary County, but that changing conditions warrant additional studies of the impacts of growth once funds become available.

Commissioner Mortensen moved to acknowledge review of the Comprehensive Plan, as adopted in April of 2007, is the official Plan for Junction City and Geary County and that consideration needs to be given to allocating funds for an update of the Plan when economically feasible. Commissioner Ziegler seconded the motion and it carried unanimously.

RECESS AS METROPOLITAN PLANNING COMMISSION AND CONVENE AS THE BOARD OF ZONING APPEALS

Commissioner Ryan moved to recess as the Metropolitan Planning Commission and convene as the Board of Zoning Appeals. Commissioner Ziegler seconded the motion and it carried unanimously.

- 1. **OLD BUSINESS – None**
- 2. **NEW BUSINESS**

Item No. 1 – Case No. BZACU-03-01-11 - Public hearing on the application for a Conditional Use Permit for a Day Care Home at 1018 Coyote Drive, Junction City, Kansas.

Chairman Steinfort opened the public hearing on the application of Regina Cooper, owner, requesting a Conditional Use Permit to conduct a Day Care Home for not more than ten (10) children at 1018 Coyote Drive.

Mr. Yearout reminded the Board of reasoning behind the amendments to the Zoning Regulations over the past couple of years. Initially, if a provider was approved by Fort Riley under the Homes Off Post (HOP) program they were automatically limited to 6 children even though their State KDHE License was for 10 or more children. The Child Care Code and text amendments to the Zoning Regulations used 6 as the maximum for a Family Day Care Home, which was permitted by right in the residential districts. Any provider wishing to care for more than 6 children would still be required to apply for a Conditional Use Permit.

It has now come to staff's attention the other Post program, ACCYN (Army Child Care in Your Neighborhood), allows a maximum of 8 children. Even though the applicant in this case, Ms. Cooper, is applying for a Conditional Use Permit for a Day Care Home (DCH) allowing a maximum of 10 children, she will be limited to 8 because she participates in the ACCYN program. Staff believes this may mean the City and County day care regulations need revised again. With the influx of military personnel, there will undoubtedly be additional requests for many more day care operations. And the question is whether the rules and regulations should be further revised to accommodate the Army programs and avoid the Conditional Use Permit process.

With respect to the application before the Board, Mr. Yearout stated the staff report addresses each item the Board must take into consideration when making a determination. He explained that staff is recommending denial as outlined in the report; primarily because of the precedent it would set for Day Care Homes in residential areas. Mr. Yearout informed the Board it can disagree with the recommendation and stipulations can be attached to a Conditional Use Permit if granted.

There being no further questions of staff, Chairman Steinfort opened the hearing to comments or questions from the public.

Regina Cooper, 1018 Coyote Drive, stated she has provided childcare for 4 years in the City of Milford and has been a participant with the ACCYN program all this time. As previously explained, even though this application is for maximum of 10 children, she will be limited to 8 so long as she remains in the ACCYN program. Ms. Cooper stated she has 4 children of her own, of which 2 count toward the limit of 8. Two of her families have 2 children each; therefore, traffic and parking will not be a problem.

Ms. Cooper further indicated she has moved to Junction City partly to be closer to her day care families, who wish to stay with her. Her day care hours of operation are from 7 a.m. to 5:30 p.m. In response to the staff concern of the existing fence not being high enough to block the view of toys in the yard, she indicated a willingness to consider additional screening if necessary.

Vicki Sutton, ACCYN Coordinator from Manhattan, verified how stringent the Post programs were. She indicated that Ms. Cooper has been an excellent provider and has attended the extended childcare courses.

Richard Hagerty, 1902 Silver Court, indicated his concerns were type of signage allowed, cars driving upon his lawn and the hours of operation. He stated he was not opposed to the day care operation. Staff confirmed the Zoning Regulations limit any sign to one square foot size and it must be located on the home.

There being no further comments, Chairman Steinfort closed the public hearing.

General discussion ensued between the Board and staff relating to parking, signage, hours of operation, width of streets, and the differences between the density of development in the newer portions of the city versus these operations in the older section of the city where lots are generally smaller and narrower.

Commissioner Gustafson moved that Case No. BZACU-03-01-11, request of Regina Cooper, owner, requesting a Conditional Use Permit to conduct a Day Care Home for not more than ten (10) children at 1018 Coyote Drive, Junction City, Kansas, be approved with the conditions that the hours of operation be limited from 6:30 a.m. to 6:30 p.m., and that the Conditional Use Permit be granted only for this applicant at this location and it will become null and void if the applicant leaves this location. Commissioner Mortensen seconded the motion and it carried unanimously.

ADJOURN AS BOARD OF ZONING APPEALS AND RECONVENE AS METROPOLITAN PLANNING COMMISSION

Commissioner Ryan moved to adjourn as the Board of Zoning Appeals and reconvene as Metropolitan Planning Commission. Commissioner Ziegler seconded the motion and it carried unanimously.

5. GENERAL DISCUSSION

Item No. 1 – Work Session – Review of County Zoning Regulations

Mr. Yearout stated the complete rewrite of the draft for the Zoning and Subdivision Regulations and Sanitation Code is not finished. He asked if the Commission wished to postpone the scheduled work session for the following week. It was the consensus of the Commission to cancel the work session scheduled for Thursday, March 17th.

6. ADJOURNMENT

There being no further business, Commissioner Gustafson moved to adjourn at 9:02 p.m. Commissioner Ryan seconded the motion and it carried unanimously.

PASSED AND APPROVED this _____ day of April, 2011.

Mike Steinfort, Chairman

ATTEST:

David L. Yearout, AICP, Secretary