

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

MINUTES

**April 12, 2012
7:00 p.m.**

**Members
(Present)**

Brandon Dibben
Maureen Gustafson
John Moyer
Mike Ryan
Mike Watson
Mike Steinfort

**Members
(Absent)**

Ken Mortensen

Staff

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 except Commissioner Mortensen.

2. APPROVAL OF MINUTES

Commissioner Moyer moved to approve the minutes of the March 8, 2012, meeting as written. Commissioner Watson seconded the motion and it passed unanimously.

3. OLD BUSINESS - None

4. NEW BUSINESS

Item No. 1 – Case No. Z-04-01-12 - Public Hearing to Rezone from “CSP” Special Commercial District to “RM” Multiple Family Residential District.

Chairman Steinfort opened the public hearing on the application filed by John York, agent, on behalf of Sally Jardine, owner, requesting to rezone from “CSP” Special Commercial District to “RM” Multiple Family Residential District at 701 Allen Drive, Junction City, Kansas, and asked for the staff report.

Mr. Yearout stated this is another situation where a “house” is in a commercial district and is being hindered in a sale because of that. In this instance, the house was converted to a barber shop a number of years ago, however, the shop has not operated for some time and the potential buyer now wishes to re-establish it for residential purposes again. There is a cluster of homes along Allen Street and to the area north and west of this property along 8th Street and Eisenhower that are used residentially but are currently zoned commercial.

Mr. Yearout stated staff is recommending the rezoning as requested because the actual use of the property as a residence is not out of character with the neighborhood, the home is not conducive for a commercial use because of the size of both the home and the lot, and there is a continued demand for housing within the community.

Commissioner Moyer asked why staff was recommending the multi-family zone rather than a single-family zone. Mr. Yearout explained the "RM" zone provides the smallest minimum lot size for a single family home. The platted lots are small and development of a duplex or multi-family structure is not likely to happen unless several lots were acquired and the existing single-family homes were razed. The "RM" zone will at least allow a single family home to be in conformity with the zoning regulations.

There being no further questions of staff, Chairman Steinfert opened the hearing for public comments.

John York stated he was acting on behalf of the property owner. Mr. York said the barber shop was started in 1996 and closed in either 2004 or 2005. Mrs. Jardine has had two contracts to sell the property; however, they backed out because the property was zoned commercial and loans could not be secured. She now has another prospective buyer but the sale is contingent upon the property being rezoned for residential use. No structural changes were made when the home was used as a barber shop; however, Mrs. Jardine has recently had the kitchen and bathroom remodeled. The structure is too small for any significant commercial use and is best suited for residential.

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

A brief discussion between Staff and Commissioners ensued regarding the similarity between this case and the one that instigated the 7th Street rezoning. Also the issue with the remaining residential homes currently zoned commercial. Even though this home is bordered by commercial uses to the south and west; the size of the lot and the general location make the likelihood of this particular building ever having a viable commercial use very slim.

Commissioner Gustafson moved that Case No. Z-04-01-12, concerning the request of John York, agent, on behalf of Sally Jardine, owner, to rezone from "CSP" Special Commercial District to "RM" Multiple Family Residential District the property at 701 Allen Drive, Junction City, Kansas, be recommended for approval by the City Commission based on the reasoning stated in the staff report and as presented at this public hearing. Commissioner Ryan seconded the motion and it passed unanimously.

Item No. 2 – Case No. SUP-04-01-12 – Public hearing for a Special Use Permit for motor vehicle towing, storage and repair business in the "IL" Light Industrial District.

Chairman Steinfert opened the public hearing on the application of David L. Mulvey, agent, for Konza Investments, Inc., owner, requesting a Special Use Permit for towing, storage, repair, and related activities of motor vehicles at 2405 North Jackson, Geary County, Kansas, and asked for the staff report.

Mr. Yearout informed the Commission the notice for the public hearing incorrectly stated this property was zoned "IH" Heavy Industrial. The property in question is zoned "IL" Light Industrial. Mr. Yearout stated the case can go forward without any harm to the process from this "clerical error". There is, however, a serious issue of the legal description provided by the applicant. As explained in the staff report, the property owner, Konza Investments, inadvertently

provided Mr. Mulvey with the wrong legal. The correct legal description for the property will need to be provided before this matter can go to the City Commission for any final action.

Mr. Yearout stated that Mr. Mulvey operates a vehicle towing business. This type of business encompasses the towing of abandoned/wrecked vehicles to a storage location. The aspects involved with Mr. Mulvey's business are permitted in the "IH" Heavy Industrial District and he has sought such a location within Junction City for many months but has been unsuccessful. Last year the regulations were amended to accommodate this type of operation either in the "IH" Heavy Industrial District or through the Special Use Permit process. A specific use can be allowed without resorting to a more intensive zoning which would allow potentially undesirable uses at a location. Staff believes this is the best way to deal with this use.

Mr. Mulvey has indicated he plans to use the existing building to store, repair and auction abandoned vehicles. The applicant has stated all aspects of the business will be inside the building. He has indicated he plans to install privacy fencing along the property line adjoining Mr. Brown's property. No other construction is anticipated. All of the outside area is paved in compliance with City Code requirements. Mr. Yearout stated if this location is approved for this business, it will allow Mr. Mulvey to register with the police and sheriff's departments to handle and dispose of wrecked/abandoned vehicles.

Mr. Yearout stated a major factor in this case is compatibility of the proposed use with surrounding land uses. In staff's opinion, Mr. Mulvey's business will not cause any more of an impact than the sand/gravel and the asphalt/concrete businesses in the vicinity.

Mr. Yearout stated that staff is recommending approval of Mr. Mulvey's request for a Special Use Permit at 2405 North Jackson, subject to no outside storage of towed and inoperable vehicles; a 6-foot privacy fence be installed along the common property line with Mr. Brown's property; and the correct legal description be provided.

Commissioner Watson asked if KDHE has looked at this location for all their requirements. Mr. Yearout stated he had been informed by the applicant that KDHE had approved the location, but Mr. Mulvey can address that better.

There being no other questions of staff, Chairman Steinfert opened the hearing for public comments.

Mr. David Mulvey, 331 West 1st Street, stated he is the owner of D & D Wrecker Service, and has been looking for a location within the City for the past couple of years. This property was previously used as a repair shop by Konza. The building is approximately 18,000 square feet in area with concrete floor, which meets all of KDHE requirements. There is room for approximately 200 cars inside the building. However, the number will vary because he plans to get into a rotation of holding an auction two or three times a year, depending on the demand. Mr. Mulvey stated his plan is to purchase an additional 2 to 3 trucks and to have up to 15 employees within the next couple of years.

Commissioner Gustafson asked about how all the environmental issues were handled regarding contaminant fluids, if he had any issues with the stipulations recommended by staff to be attached to the Special Use Permit, and the concern about outside becoming a storage area for tires. Commissioner Gustafson indicated she had received a personal call regarding potential outside storage. She indicated to the caller that all vehicles would be kept inside the building and wanted to make sure that Mr. Mulvey would not be storing tires or any other vehicle parts outside the building.

Mr. Mulvey explained that KDHE did not consider oil as a contaminant, but anti-freeze and other fluids must be handled in conformance to their standards. For example, at a wreck site they would put a drying compound on any oil/fluid spills. Any fluids drained during repair are stored in big barrels and periodically picked up by a disposal company. He stated there was no objection to installing the required privacy fence. Mr. Mulvey explained that his business does not get into the "salvaging" of vehicles. He reiterated that no vehicles, tires, or parts would be stored outside the building. Mr. Yearout confirmed that Mr. Mulvey's business does not entail tearing vehicles apart for salvage. The term "salvage" should not have been used by staff in earlier reports.

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

Commissioner Moyer moved that Case No. SUP-04-01-12, the application of David Mulvey, agent for Konza Investments, Inc., owner, requesting a Special Use Permit on property zoned "IL" Light Industrial District to allow motor vehicle towing, storage, repair and related activities at 2405 North Jackson, Junction City, Kansas, be recommended for approval by the City Commission of Junction City subject to conditions stated in the staff report and as reported at this hearing, based on the findings outlined in the staff report and as presented at this public hearing. Commissioner Watson seconded the motion and it carried unanimously.

Item No. 3 – Case No. GCCU-04-01-12 – Public hearing requesting a Conditional Use Permit to operate a salvage business in the "AG" District.

Chairman Steinfort opened the public hearing on the application of Bernard Rosey, owner, seeking a Conditional Use Permit to operate a salvage business on property located at 20355 Rosey Loop Road, Alta Vista, Geary County, Kansas, and asked for the staff report.

Mr. Yearout stated Mr. Rosey was notified in January the relocation of approximately a dozen old mobile homes onto his property was a violation of the Geary County Zoning Regulations and he needed to either remove the mobile homes or seek the proper zoning. Mr. Rosey has admitted to doing a "salvage" operation for years unaware of the zoning violation. He was advised that burning or burying the mobile homes would also constitute violations of the Zoning Regulations as well as other requirements from Emergency Management and Health Department. Mr. Rosey opted to seek a Conditional Use Permit to conduct the salvage operation.

Mr. Yearout stated it is staff's opinion this is not a good location for a salvage operation and is not in the best interest of the County to sanction a salvage operation at this location. Further, Mr. Yearout stated it is staff's opinion this operation is contrary to the intent and purpose of the County Zoning Regulations.

Mr. Yearout stated it appears from the length of time that old mobile homes have been allowed to remain on the property that Mr. Rosey is not actually operating a salvage business, even though he may salvage some of the materials. But this appears to be more of a "hobby" operation that Mr. Rosey does when he is in need of some money, rather than an actual business. This is substantiated, in staff's opinion, by the large number of other mobile homes that have been discarded further out in the pasture.

In staff's opinion, Blixt Construction in Chapman, Kansas, should be the manner in which a salvage operation is operated, which includes the disposal of mobile homes and any number of other materials.

In conclusion, it is staff's opinion the accumulation of the mobile homes and other materials on the property is detrimental and has a negative impact on the surrounding properties. As such, this request should be denied.

Mr. Yearout also stated there have been numerous calls from property owners in the area opposed to a salvage operation at this location. They were all encouraged to attend this public hearing, but staff is unaware if they are here.

Mr. Yearout stated he had received an e-mail earlier in the day from Mr. Jim Neill, 20224 Welcome Cemetery Road, stating he would be unable to attend due to another commitment and that he indicated he was not in favor of Mr. Rosey's request for a Conditional Use Permit to operate a salvage business at 20355 Rosey Loop Road. A copy of the e-mail was provided to each Commissioner.

Commissioner Moyer asked what the State and KDHE requirements would be for Mr. Rosey to operate an actual landfill. Mr. Yearout indicated he was not familiar with all the federal or state laws for the establishment of a landfill. Geary County has no actual "landfill," it operates a transfer station in Junction City and the solid waste is transported to a landfill in Jefferson County, Kansas. For a landfill to be established on Mr. Rosey's property many other approvals would have to be obtained, including acceptance by KDHE.

There being no further questions of staff, Chairman Steinfort opened the hearing for public comment.

Bernard Rosey, 20335 Rosey Loop, Alta Vista, Kansas, stated he did not know this law existed and that he has been doing this for 30-45 years. Someone from Manhattan brought out a bunch of old mobile homes just like has been done in the past. He stated he really doesn't want a salvage yard and that he will eventually get everything cleaned up.

Bernard Rosey, Jr., 2880 SE Avenue, Topeka, Kansas, stated that they begun to clean up the yard some and will continue to do that as weather permits. He comes to the property to help his father on weekends.

Ken Kemp, 6465 Rosey Loop, stated he is not happy with the dumping of mobile homes. If he tried to sell his property he believes the old mobile homes probably negatively impact the area enough that people would just turn around and go home. He stated he believes it looks like a crime zone. He stated he understands that all people living in a rural area have junk and other materials to some degree, but this is not the place for a salvage or landfill operation. He stated some of the old mobile homes have been there for a few months and others for several years. He stated he is opposed to the request and wants the area cleaned up.

Mr. Rosey responded that he strips the aluminum and copper from the old mobile home and he also keeps the 2 by 4's and 2 by 6's as good lumber. He just doesn't get completed with the balance of the salvaging as fast as he would like.

Ron Say, 7830 US177 Highway, Alta Vista, stated he lives down stream from Mr. Rosey and after two major rains he has had to clean up the debris that has washed onto his property from the junk on Mr. Rosey's land. The second time he hauled it back to Mr. Rosey. He stated the old mobile homes should be taken to a proper salvage area.

Julie Nelson, 20633 Rosey Loop, said they are the next door neighbors. She knew there was a lot of debris, but when she drove by it really broke her heart because the land is getting

devastated. Ms. Nelson stated she is concerned about possible contamination of their well water and for the kids in the area. She said she agrees with what the staff has put together and there are a lot of reasons a salvage business should not be allowed. The neighbors in the area feel the same way.

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

Commissioner Gustafson asked what the process would be if the Conditional Use Permit is denied.

Mr. Yearout explained that if the County Commission denies Mr. Rosey's request, Mr. Rosey has the right to appeal to District Court within 30 days of that denial. At the expiration of all appeal times, a notice will be sent to Mr. Rosey to abate the violation. The County does have the legal authority to have the area cleaned of debris and bill Mr. Rosey unless the matter is taken to court. Mr. Rosey will be given reasonable time for removing the material. Given past actions on other properties that have similar problems, the County has established a process of monthly inspections to determine that Mr. Rosey is being diligent in cleaning up the property. Provided Mr. Rosey is progressing in an acceptable manner, the County will not invoke a more aggressive action. The condition of this property did not happen over night; therefore, it is in the best interest of all that Mr. Rosey be given the opportunity to remedy the situation in a reasonable manner. The appropriate county agencies involved in this action will be kept apprised of the progress on clean up of the area.

Commissioner Moyer asked what the ultimate decision would be if Mr. Rosey does not get the property cleaned up. Mr. Yearout explained the violation case would be turned over to the County Attorney for prosecution. If a court case is filed, it is up to the judge to determine the next course of action, which could be a fine or jail time. The objective of the County is to remove the violation and not to necessarily collect fines or put people in jail.

There being no further questions or comments from the Commission, Chairman Steinfert called for a motion.

Commissioner Watson moved that Case No. GCCU-04-01-12, the request of Bernard Rosey, owner, seeking a Conditional Use Permit to operate a salvage business on property located at 20355 Rosey Loop Road, Alta Vista, Geary County, Kansas, to establish a mobile home salvage business be recommended for denial by the Board of County Commissioners based for the reasons stated in the staff report and as heard at this public hearing. Commissioner Dibben seconded the motion and it carried unanimously.

Mr. Yearout stated that this case would be considered by the County Commissioners in May, with the actual date to be determined. Mr. Yearout then explained the protest petition process to those in attendance.

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

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

5. OLD BUSINESS - None

6. NEW BUSINESS

Item No. 1 – Case No. BZACU-04-01-12 – Public hearing for a Conditional Use Permit to operate at Day Care Home (max. 10 children) in the “RG” General Residential District.

Chairman Steinfert opened the public hearing on the application of Kimberlee Stewart, owner, requesting a Conditional Use Permit to operate a Day Care Home in the “RG” General Residential District at 1409 West 14th Street, Junction City, Kansas, and asked for the staff report.

Mr. Yearout stated the applicant wishes to establish a Day Care Home, which allows up to 10 children. She has two of her own that count toward the total number of children authorized by her KDHE license. This would allow her to keep up to eight children that are not her own. The property is a pie-shaped lot with a small back yard. A portion of the front yard and all of the back yard is fenced.

Mr. Yearout reviewed the staff report which sets out the standards to be considered for a Conditional Use Permit under the City’s Zoning Regulations. However, as outlined in the staff report and to remain consistent with previous recommendations regarding day care homes, staff is recommending denial of the Conditional Use Permit. Mr. Yearout stated that if the Board chooses to approve the request, staff has recommended it be subject to the conditions approved by the Board for previous day care permits.

Mr. Yearout stated that due to the numerous requests of this type, the Board may wish to consider amending the Zoning Regulations to remove Family Day Care Homes and make Day Care Homes allowed by right in the residential districts. He indicated this could be discussed at the end of the meeting.

There being no questions of staff, Chairman Steinfert opened the hearing for public comment.

Kimberlee Stewart, 1409 West 14th Street, stated she wished to expand her business to the maximum allowed by her KDHE license and would be glad to answer any questions the Board members may have.

Commissioner Gustafson asked if her property was the one with the sign on the fence. Ms. Stewart indicated that it was. Ms. Stewart stated she had no problem with removing it, if that is one of the conditions of the Permit. In response to additional questions, Ms. Stewart indicated she was caring for four children plus her two. She has had several calls and friends who have asked her to care for their children. The children range in age from 6 months to 4 years old. She received her KDHE license in September of 2011. The home does have a basement but the day care is limited to the main level.

Commissioner Ryan asked if the play equipment in the front yard could be moved to the back yard. Ms. Stewart indicated it could, but the back yard is rather small because of the lot configuration. However, the play equipment in the front yard can be removed at the end of the day.

Reggie Stewart, 1409 West 14th Street, stated the only concern he had was the condition that no play equipment could be in the front yard. Because of the odd shape of the back yard, some of the play equipment is located in the front yard. He did explain that none of it is on any permanent foundation and can be removed at the end of the day.

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

Commissioner Watson moved that Case No. BZACU-04-01-12, the request of Kimberlee Steward, owner, requesting a Conditional Use Permit to operate a Day Care Home in the "RG" General Residential District at 1409 West 14th Street, Junction City, Kansas, be approved based on the findings at this public hearing and subject to the conditions outlined in the staff report. Commissioner Dibben 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 the Metropolitan Planning Commission. Commissioner Moyer seconded the motion and it carried unanimously.

7. GENERAL DISCUSSION

Mr. Yearout informed the Commission that the County is going through the five year review of the Solid Waste Master Plan. The main point was to confirm Geary County does not operate a landfill. The population data was updated to accommodate the growth over the past few years. He stated he will write the required letter stating that the Solid Waste Master Plan is consistent with the over all Comprehensive Plan.

Mr. Yearout asked whether there was interest in changing the requirements for Family Day Care Homes in light of the changes made by the State. In 2010, KDHE amended the day care licensing requirements by dropping the Registered Family Day Care Home category and required all providers to be licensed for a Day Care Home. At that time the City opted to maintain the Family Day Care Home category allowed by right in residential districts and require a Conditional Use Permit for everything else. Within the past year, eight Conditional Use cases have been filed with the Board of Zoning Appeals and there are two scheduled for the May meeting. Given the current licensing standards of the State, it is a good assumption the trend to request a Day Care Home will not change. Historically, the Board has allowed the increase from 6 to 10 with three main conditions attached to the Conditional Use Permit. If the Commission chooses to amend the Zoning Regulations by eliminating the Family Day Care Home and allow Day Care Homes by right, a motion to set a public hearing must be made. The regulations can establish performance standards similar to what has become the norm for Conditional Use Permits.

Commissioners discussed the advisability of amending the regulations by eliminating the Family Day Care Home category and allowing the Day Care Home by right subject to meeting performance standards regarding signage, location of permanent playground equipment and the hours of operation.

Commissioner Moyer moved to set a public hearing to consider a text amendment to the City and County Zoning Regulations and direct staff to draft the necessary changes to all appropriate sections with the intent to eliminate the Family Day Care Home category and allow Day Care Homes with performance standards by right at the next meeting. Commissioner Watson seconded the motion and it carried unanimously.

Mr. Yearout questioned whether the Commission wanted to initiate a rezoning for residential properties within the area of Eisenhower and 8th Street. He pointed out this would be consistent with the rezoning action taken along 7th Street earlier this year. If so, a public hearing date needs to be set.

Commissioner Gustafson moved to set a public hearing to consider rezoning the residential properties in the vicinity of Eisenhower and 8th Street from commercial to a residential designation and direct staff to determine the affected properties and publish the required notice of public hearing for the next meeting. Commissioner Moyer seconded the motion and it carried unanimously.

8. ADJOURNMENT

There being no further business, Commissioner Gustafson moved to adjourn. Commissioner Moyer seconded the motion and it carried unanimously. Chairman Steinfort declared the meeting adjourned at 8:12 p.m.

PASSED AND APPROVED this _____ day of May, 2012.

Mike Steinfort, Chairman

ATTEST:

David L. Yearout, Secretary