JOHNSON COUNTY PLANNING COMMISSION
Johnson County Administration Building
Board of County Commissioners Hearing Room, Third Floor
111 South Cherry Street
Olathe, Kansas

MINUTES OF REGULAR MEETING
May 23, 2017
5:45 p.m.

A. CALL TO ORDER

A meeting of the Planning Commission of Johnson County, Kansas, was convened at 5:47 p.m. on Tuesday, May 23, 2017, and was called to order by Chris Iliff, Chairman, with the following members present and participating; to-wit: Roxanne Morse, Marc Huggins, Jason Meier, George Lund, Teri Atwell, Randy Hutchins, Jim Neese and Roger Mason. Absent were Dennis Bollin and Pete Opperman. Also present were Paul Greeley and Karen Miller, Johnson County Planning Department; County Commissioner Ron Shaffer; BOCC Chairman Ed Eilert; Don Jarrett, and Rick Lind, Johnson County Legal Department; and Susan Maier, Johnson County Manager’s Office.

Chairman Iliff: I’ll call the May 23rd meeting of the Johnson County Planning Commission to order. I’d like to introduce Randy Hutchins, a new member of the Planning Commission. Welcome.

Comm. Hutchins: Thank you. I’m from the Southwest district, 15 miles north of Edgerton.

B. APPROVAL OF AGENDA

Chairman Iliff: Any changes to the agenda? [None.]

C. CONSIDER MINUTES OF PREVIOUS PLANNING COMMISSION MEETING

Chairman Iliff: Normally, at this point, I simply ask for a motion for approval, or additions or corrections. Let me open that up to members of the Commission. Is there anyone here who was at the meeting last month – I was not – who would like to make any additions or corrections to the April 25, 2017, minutes? Also, there might be someone in the audience who might also have a suggestion.

Comm. Neese: Mr. Chairman, I was getting my knee x-rayed and I didn’t get here in time. The minutes show that I was here. So, I need to be removed from the minutes as being present.

Chairman Iliff: Thank you. Any other corrections or additions to the minutes? [None.] If not, Mr. Berggren, if you have something you’d like to say, we’ll consider adding it.

Kirk Berggren, 11917 Gillette Street, Overland Park, appeared before the Planning Commission and made the following comments:

Mr. Berggren: When I got up to speak, whether it was to address additional business or the points at hand, I was addressing the board and asked that we adjust Article 9 to also include that a farm winery, as defined by state statute and policy, be added as item number 10. So, on the verbal part of the minutes, they couldn’t determine my conversation with Roxanne Morse, that we said, hey, can we add that on as number 10? She said, yeah, we’ll add that on as number 10. And I think her comment was, “Or do we want to look at this as agritourism?” And Karen Miller said, “We’ll look at that; I’ll talk to Legal.” But, I’ve asked for that, and she said, yes, we could put that in as number 10. But I think during the – For some reason, the voice minutes were not accurate or garbled or inaudible. That was part of the --.
Chairman Iliff: Does anyone have an objection to having Mr. Berggren’s comments here added into the minutes from the last meeting?

Ms. Miller: Could you please indicate what page in the minutes that is? I guess the question is, for Roxanne, did you ask for number 10 to be added?

Ms. Morse: I think I assumed it was.

Ms. Miller: I have listened to the minutes and I heard you kind of rustling through papers, kind of trying to find where Mr. Berggren was speaking, and I interrupted and said, you know, if I [inaudible] it. And then, I told you where it was.

Chairman Iliff: Yeah, and let me make it clear here. No policy was made in the minutes last month, no recommendations to the Board of County Commissioners for revised regulations, or anything else. I think it’s important that the minutes be as accurate as they can be, but decision, at this point, I think is impossible. And as long as the members of the commission are satisfied with just adding at the end the comments of Mr. Berggren at this point, I think that would make the minutes a little more accurate, a little more complete. And regardless of who said what, when, or what was recommended, I think we need to move on. So, let me just ask, do I hear a motion to approve, as amended by the comments of Mr. Berggren?

Comm. Mason: So moved.


Motion by Mr. Mason, seconded by Mr. Lund, to approve the minutes of the April 25, 2017, Planning Commission meeting, as amended and corrected.

Motion passed unanimously.

D. PUBLIC COMMENTS

Chairman Iliff: At this point, we have added, as of last month, I think, a public comment section to our meetings. This is a time when any member of the public can get up and address any matter that is pertinent to matters that the Planning Commission is addressing. I would ask that you limit yourself to three minutes. Other than that, feel free to take the podium. [None.] Thank you.

E. COMMENTS FROM THE LEGAL DEPARTMENT

Mr. Jarrett: My name is Don Jarrett. I’m the chief counsel to the Board of County Commissioners. I’m very pleased to be here this evening. I don’t get the opportunity to see you as often as I did in the old days.

I’d like to speak to you this evening about some legal issues or questions that have been presented to you from time to time with respect to the agricultural use properties. I have a written handout that I’m going to pass out, but I do want to make it clear that I’m not here to provide a legal argument, if you will. I’m not here to try to submit to you a brief and a lot of legalese of things. I think it’s important that this commission has an understanding of the legal principles that are involved in the very important work that you do. But, we don’t want to be unfair to you and ask you to make judicial or legal conclusions about things. So, it’s important that members of the public, and I think at times, you’ve had other lawyers up here, telling you that there are legal issues, and we all need to be reminded of what legal issues are applicable to the things that we’re doing. But, I don’t think we need to inundate you with the legal arguments that are better left, either across the courtyard, or somewhere else. So, what I want to do this evening is give you some basic concepts about agricultural uses as it relates to zoning and land use matters, and how we as a County have looked at those issues.

[Distributing handout.]
Mr. Jarrett: To start us off - and you're free to keep this document and use it for what value you find in it. We're going to look at agricultural uses and zoning requirements in four basic pieces.

First, I want to talk about what it is that falls under the heading of an agricultural use. What does that generally encompass? Secondly, I want to talk about what is the scope of the so-called exemption, if you will, from zoning regulations that is applicable to agricultural land uses? The third is to talk about what then are the conditions under which the County can, at least in our legal opinion, regulate agricultural land uses in the unincorporated area? And fourth and finally, we want to talk about how those considerations of agricultural uses actually differ from the term and practice that we'll refer to as agritourism. So, I'm going to talk about it in those four basic terms.

We start with: What are agricultural land uses, and how does that relate? And I want to emphasize that agricultural land uses and property, and any exemption that it may have from the zoning regulations, is a totally separate topic from what is agritourism, and what is permitted under agritourism-type concepts. It's very easy to get the two confused, because while they're separate, they are related to the extent that they have agricultural use applications. But, they are two totally separate legal concepts.

Now, I'll start with this premise of agricultural use of the property. So, what, in Kansas, is that consideration? And by and large, you've heard - and many of us have heard - that counties aren't allowed to define agricultural uses, but we all do. What we have to realize is that the definition, or how we look at or deal with agricultural use, is subject to interpretation and application to a set of practices. Okay? So, we can say agricultural use is the growing and harvesting of crops, and the raising of animals for livestock purposes. That's a pretty easy and common definition. The question comes down to how you interpret and apply that to a certain set of actual circumstances. Now we can all very easily say, okay, when you have a family farm, and you're growing the corn, you're harvesting the corn, that clearly falls within that concept. But, we may not have the same conclusion about some other types of uses that are being made of agricultural properties, whether in this county or in other counties. And the courts have had a lot of commentary, and you've heard about many of these cases. So, I wanted to just briefly look at some of those cases, because you've heard about the case where the court said that a landing strip for an airplane was, in fact, consistent with an agricultural use. You've heard that the selling of rock on a piece of property was consistent with agricultural use. And there are court cases that talk about that. But, what you have to look at is, in each of those cases, the court started with the fact that the property itself, the overall tract of ground, was used for agricultural purposes. The question then was whether or not the landing strip or whether or not the selling of rock took out the land use from being an agricultural use. And what the court concluded in the air strip case, for example, was that the farmer was using it for its plane to do its crop dusting, and that was, in fact, consistent with his agricultural use. No different than a driveway for the truck. The airplane was used under the facts of that case as a farm tool or implement to support the agricultural use of the property. On the so-called rock, or the quarrying case, the court did not say that a quarry is an agricultural use. What the court said was that the property was being used for agricultural purposes, and what the farmer was doing was digging a pond. When digging the pond, he encountered rock, so he had to take out the rock. If he took out the rock, he was entitled to dispose it, and the fact that he sold rock didn't turn that into a quarry. The purpose for which the pond was dug, the purpose for which the property was used, was for agricultural purposes. It was not to be used as a quarry. It was a simple matter that if you dig a hole in your property, you are entitled to dispose of the product that is dug out of the ground, and not change the nature of your property.

So, there are a number of cases, and you've heard about them. But, if you look at all the cases -- and we have -- every one of them start with the fact that there's an underlying agricultural use. And any of the so-called questionable uses are looked at whether or not they are directly supported and connected to the agricultural use. Now, there are cases that I don't believe you've heard about, which say that when you do venture away from a specific agricultural use -- that is, the way the traditional farmer utilizes the property -- then your use may not be an agricultural use.
And there are two very prominent example cases. There is one in which the property was being used for the purpose of raising horses. And I know you've heard that, hey, raising horses is live livestock. That makes it an agricultural use. What the court then said is, what is the purpose for which those horses are, in fact, being kept? The property owner was using those horses, training them for thoroughbred racing purposes. And the court said that's not an agricultural use. Traditional farmers did not raise livestock for the purpose of training them for racing purposes. So, when you took your livestock and changed the purpose from agricultural pursuit — that is, the growing of crops or the husbandry of animals — and turned it into training for the purposes of horse racing, you're now no longer an agricultural use.

So, when we talk about agricultural land uses, we have to start with, what is the primary use of the property? And is it being put to a use that has traditionally been viewed as one of farming? That is, the growing and harvesting of crops and/or the husbandry and raising of animals for livestock. We have to start there. And it's a fairly safe bet that if you're doing that, you're going to start with the presumption that you have an agricultural use.

Now, let's talk about the exemptions from zoning. To start with, I want to make it clear that counties have the ability to impose zoning regulations on all property within the unincorporated area. The question has been raised in courts in Kansas, and all the way to the United States Supreme Court, and they've upheld the right of municipalities, including Kansas, to impose zoning regulations. And that is a legitimate function of government for the public health, safety and welfare.

Now, Kansas, like many other states, prizes the family farm. And we have had a policy and practice here in the state of Kansas for many, many years, which says we want to honor and preserve the farming operations that form the basis of this state, and in many places, this country. And there are many states that have said they're going to put restrictions and limitations on the ability of local government to regulate, through zoning regulations and otherwise, the practice of farming. So, Kansas, just like many other states, adopted provisions that say that you are limited in how you can do zoning regulations for property that is agricultural use. And that is in the statute that authorizes us.

Now, I want to be clear, there are two statutes here. There's one that applies to everyone in Kansas but Johnson County, and there's one that applies to Johnson County. Now, language on the exemption, that is, you cannot regulate agricultural uses, is essentially the same between the two. However, Johnson County has its own statutes and provisions that basically say that a residential use on that property is not an agricultural use. That was a change that we had in the legislation sometime in the 60's, on the basis that here, we have a lot of residential properties that do not have agricultural uses. If it's residential property, if the property is used for residential purposes, we can regulate at least that residential component, and we believe, in many ways, the agricultural component. We'll get to that in a minute. But, we need to understand that if it's strictly an agricultural use regarding animal husbandry and animals as livestock, and we can't find one of these exemptions, then the exemption is there, and we do have restricted limitations on what we can do.

Our third element is that the exemption is not absolute. There are two big exceptions to it. The first is whether or not the use has, in fact, expanded beyond simple agricultural uses, such as the training of horses for racing purposes. The minute it went there, the exemption did not apply. Okay? That's number one.

Number two is the statutory exemption itself is qualified. It says that when you cannot regulate agricultural uses, as long as the property is for agricultural and not otherwise. And that "not otherwise" phrase is very important, because the minute the property is used for something other than agricultural purposes, the exemption does not apply. At least that's our opinion in reading the statute. Our view is, had the legislature intended it to say the exemption applies no matter what, it didn't need "or otherwise" language stuck in the statute. But the minute it stuck the "or otherwise" language in the statute, it said agricultural uses are not exempt when they are
otherwise used for purposes other than agricultural use. So, we have viewed that here in Johnson County for many years, that when someone utilizes their property for purposes other than strictly agricultural, we can then regulate that. What we need to understand though is that the County has not put very many zoning restrictions on agricultural use. No matter what you’ve heard from many of the speaking arrangements up here, our regulations have de minimis effects on agricultural use. In fact, if you're over 10 acres in size, we essentially have no regulations on agricultural uses, even when the "or otherwise" language applies. They just don't regulate them. And the reason for that is we recognize that agricultural properties in our county used for traditional farm purposes are the general land uses. So, even when they put the house on there, when business is there, even when they do things on that property, we don't choose to regulate the agricultural portion. We may regulate the business portion. We may impose some regulations on some of the residential component. But we don't choose to regulate the agricultural component.

Now, if it's 10 acres or under, we have some regulations. They primarily relate to animals and how many of those you can have for agricultural purposes on less than 10 acres. But 10 acres, we don't regulate the growing and harvesting of crops. So, when we say, yes, we can, the County hasn't chosen to do a lot of that. Now, a lot of that, how we approach it in the future is up to a body like yours. What is the proper approach? You have predecessors, you know, a lot of people who set the policies before we were here that said we're not going to put a lot of strict regulations. But, if it's an "or otherwise," we can, in fact do that.

Now, I want to talk a little bit about agritourism, and I want to be clear that if there is a statute that talks about agritourism, that statute does not talk about zoning. That statute does not have an exemption from zoning requirements. That statute does not talk about local regulations. What that statute talks about, and it's entire purpose, the reason it was adopted, was to limit the exposure of liability to persons who chose to operate an agritourism business.

Chairman Illiff: Mr. Jarrett, I'm going to interrupt you here, just as a matter of fairness. You and I talked yesterday, and as you are aware, I was called by the assistant county administrator to talk about the agenda. When she said that you were coming to talk about this topic, I expressed some concern because there was nothing in the agenda that said anything about what the topic of the legal department would be. We kind of have an agreement that our agendas, when agritourism is going to come up or be a topic, that the people who are interested in agritourism in this county are alerted to that ahead of time, so that they can come, listen, and make comments as appropriate. As I mentioned to you yesterday, insofar as discussion of the agriculture statute, which you've done a fine job of explaining the County's position on, I have no objection to that because that really is a separate issue from the issue of agritourism. So, I'm going to suggest that you hold your comments on this until the topic can be fully vetted after the agritourism proposed regulations come back before us, which I understand may be as soon as next month. We do have your comments here, and if they are as thorough as your verbal comments have been, I think they will be very informative. It will also enlighten the people who are interested in the agritourism issue with regard to precisely what the County's position is. As reluctant as I am to cut anybody off, I just think as a matter of fairness — and I get some back-and-forth between both the County and agritourism, interested parties, and I just want to keep this as fair as I can to both sides, so that they can be fully prepared to respond to your comments.

Now, I will admit that we have already heard some of their points of view. I have reviewed two Kansas Supreme Court decisions; 70-plus pages of an appellate case that may have gone to Supreme Court; letters from the Secretary of Agriculture and the head of the Department of Wildlife; numerous emails about inappropriate citations. So, we've been getting information from the other side, and I do think that the County is absolutely within its right, and needs to respond to anything in those materials that they consider to be unbalanced, inappropriate, or improper interpretation. So, I really want to have you come back, if you would, next month, and finish what you're starting here tonight, but at a time when people who may not be in agreement with the
County’s position will be fully advised in the premises and can respond to it an appropriate time, at that time.

I do have these, and they will be read by me, and I think by every other member here with some eagerness. We have kind of an informal agreement with the agritourism people that if it’s going to be on the agenda, we put it on the agenda ahead of time so that they can be advised and everybody be here. We have here at least three people who are interested in this topic, but I know there are a lot more who would be here if they thought this was going to be a central issue.

Mr. Jarrett: Mr. Chairman, I appreciate that. We have no intention of being unfair to those folks. If you want us to come back, we’ll certainly come back. I think if you look at my comments, you will see that I am not attempting to provide any specific information about any type or what-not, the simple matter that is separate from the ag use issues in the cases that you’re talking about and seemingly don’t apply to agritourism, we just want to be sure that you understand that it’s a different issue. If you want more elaboration on it, we’ll be glad to come back and talk to you about it, because I don’t think there is an issue that County doesn’t want agritourism; it’s just a question of what types of events and activities related to that are a part of agricultural use, and what part are subject to some other type of regulation. That’s what we’ve been working on to bring to you. It’s a hard line to draw. But, we will be bringing that to you at some point in time.

Chairman Jiff: And I appreciate that, and I appreciate the citations in your paper as well, because you mentioned some cases tonight that I’m not familiar with, haven’t read, and would like to take a look at. With regard to Article 29, Chapter 19, with regard to agriculture exemption, I think you stated very clearly that there is that little clause there, and on “otherwise,” which I think needs to be highlighted. It is an important qualifier. Thank you.

Comm. Hutchins: I have a question. Mr. Jarrett, based on what you shared tonight, is it your interpretation that if I own a quarter of land, and because I have a home on that quarter of land, that the County has the jurisdiction to tell me what I can and cannot grow, and how many head of livestock I may or may not have on that property?

Mr. Jarrett: Let me be sure I understand. A quarter section? Is that what you said?

[Overlapping comments.]

Mr. Jarrett: You have a home on the property?

Comm. Hutchins: Correct.

Mr. Jarrett: If you have a home on the property, the exemption does not apply. So, the question is whether or not the County chooses to impose those types of regulations.

Comm. Hutchins: But the County has, in your legal opinion, has jurisdiction to tell a farmer what they can and cannot grow and raise on that farm.

Mr. Jarrett: They have the jurisdiction to provide zoning requirements, yes. And whether or not they can or cannot tell you to grow — For example, you have to grow wheat versus corn — I’m not sure that this is a zoning type of issue. So, I don’t want to go so far as to say that we can tell you what you can and cannot grow. What I would say is that if you were choosing to grow wheat and wanted to make bread, we could tell you you can’t make bread.

Comm. Hutchins: I don’t think that seems reasonable, but you gave me the answer I was looking for. Thank you.

Comm. Atwell: I have another question, and it’s probably for Planning. Where and when did this 10-acre thing come into play?

Mr. Greeley: In 1994, after a lot of study and working with the regulations that existed before that, and there was a 10-acre increment of zoning, even before 1994. But, that was made by a watershed time of doing things a little differently. For example, before 1994, the keeping of
animals was regulated at a two-acre increment, which you can see was more restrictive, obviously. And there's also other examples of things that were going on in 1994. Through an involved study, the Planning Commission and the Board of County Commissioners used that 10-acre increment to regulate and not regulate beyond that. Again, it's not just keeping of animals. It's size of buildings, there's regulations about contractor yards at the 10-acre increment. So, there are a number of other things that apply around that number. But 1994 was when that was first established.

Comm. Atwell: Was that something that somebody on the Planning Commission brought up to ask you guys to look into? Or did you bring that to the Planning Commission and ask them to change it?

Chairman Iliff: Let me interrupt here. I may have been on the Planning Commission in 1994. I probably was. And unless Mr. Greeley's memory is better than mine, I don't think that's a question that can be answered very easily. It was a long time ago.

Comm. Neese: I have a request. Would it be possible, because we have been given quite a few cases and studies on agrotourism in the past, kind of written from one side, would it be possible for his presentation to be early on, before we get it the next time? Because it kind of gives us another side to look at as we read it, and maybe have questions about the existing statutes and laws.

Chairman Iliff: I'll just say that as chairman, what I would request of staff is that when we are to take up the issue of agrotourism tourism next time, that those regulations be sent to us well in advance for our perusal. And anything that the Legal staff would like to present regarding the basis for the regulation over and above what was presented tonight, feel free to send that along as well. And members of the public have managed to figure out how to get things to us, as well. So, if you're reading your materials, people are pretty well advised regarding the different sides on this.

Mr. Jarrett: I just want to be clear, while you may believe you have cases that relate to agrotourism, there is not a case you've been given that applies to agrotourism.

Chairman Iliff: All right, that's enough for tonight. Thank you.

F. ZONING BOARD CONSOLIDATION ISSUES

Mr. Greeley: Just a quick update. We talked to you about this in the past, and we're going to talk to you about it again. Just to let you know, we have one more zoning board that we need to talk to about this issue, which is the Southwest Consolidated. They have not met in at least a month, but they meet tomorrow night. We will talk to them about this and then be back next month on your June agenda, to talk to you about recommendations going forward. For those who haven't heard this before, some of the comments we're getting back are both for consolidation and against the consolidation. To keep them as they are maintains the local knowledge of the area, some vested interests, and there were some concerns about workload, that there would be longer agendas. Reasons to consolidate were consistency of the cities, fewer boards and meeting more often, and familiarity with regulations. It would resolve some quorum issues because we would have a wider base of membership within larger areas of consolidation. And then, shrinking area of the county. So, we will be back next month and give you a final tally on that, talk to you about what your options are. We anticipate looking for a recommendation from this commission to go to the Board of County Commissioners, who would ultimately hold a public hearing, consider what the zoning board members have said, what this commission shares, and then, make a decision on the consolidation. And there are a number of options. I can go through those if you like. We will go through those next month.

Chairman Iliff: Does anyone care to hear any more about this from Mr. Greeley at this time, or would you be willing to defer it when the full matter is brought to us next month? [None.] I think
that's good. I think it's also good that you're visiting with all of the zoning boards so you can get their input. I remember going through this before with the consolidation of the Aubry-Oxford Township, and I thought the Planning staff did an excellent job of bringing that together in a way that created the least amount of tension from the parties involved.

Mr. Greeley: Thank you.

G. ZONING REGULATION CHANGES

Ms. Miller: Contained in your packet are Part 1 and Part 2 of some minor regulation changes.

Chairman Iliff: Can I interrupt you for just a second? I wanted to note that Commissioner Eilert is in the audience tonight, so I wanted the record to reflect that. Also, our long-time member, Katie Hoffman, is in the back. We're glad both of you could be here. Thank you.

Ms. Miller: You have Part 1 and Part 2 in your packet for minor regulation changes. If and when this goes to a public hearing, I will combine it into one document. Contained within the two parts are a lot of minor changes and some polishing suggested by Planning and Legal staff. I plan to skip the minor things and move to more major ideas that have been inserted in there. At any time, if I skip something that you would like clarified or discussed, please let me know.

The first thing is on page 3 of Part 1. In the middle of the page, 1.D., Legal suggested adding a way to review the idea of extending the expiration date for a preliminary development plan. The reason this came up is we had a recent case that was reviewed by the Board of County Commissioners. Mr. Effertz from Aubry Township requested to have his preliminary development plan extended, and staff used the idea listed in 1.D. to review that request. So, the board’s review of the time extensions shall consider whether development standards in the surrounding land use patterns have changed since approval of the preliminary development plan. That’s just a nice description of what Planning is looking at to see if a preliminary development plan is still fresh, if things have changed too much.

Also, at the bottom of the page, 3.A., this section is talking about final development plans and when they are in compliance with the preliminary development plan. As it is written, they have a 14-day due date to submit the application before the zoning board meeting. If you think about it, if you subtract a week from that, that leaves seven days, because we mail out a week before the meeting. Let’s say there’s five working days; that gives Planning staff five working days to coordinate with other departments, get our work to the Legal Department to review, to give it to our superiors for review. It’s just not really workable. It’s not enough time. So, Planning is recommending 30 days to submit prior to the zoning board meeting. That’s when a final development plan is in compliance with a preliminary development plan.

On the next page, page 4 of Part 1, at the top of the page is b. This is the case when a final development plan is submitted and it is not consistent or compliant with the preliminary development plan. If that happens, it has to be submitted as if it is a new application. Well, Planning staff recommends that we change the submittal deadline from 30 days to 45 days. We are required to treat it as a new application, so it should have a deadline for a new application. Are there any comments?

Comm. Mason: I have a comment on that. I’m concerned about extending those time periods. Each time you extend them another two weeks, it makes your projects run a lot longer. In the first case where you’re in compliance with your preliminary development plan already, there shouldn’t be any major changes. That should be able to be reviewed rather quickly. I can see on the second case where it might take a little longer to look at that because they’re could be a lot of variance there. I just offer that as a suggestion.

Comm. Hutchins: That was my concern as well, and what the financial ramifications are of extending it an extra two weeks.
Ms. Miller: You're talking about when they're in compliance?

Comm. Hutchins: Yeah. I think what you're suggesting is they need to turn them in 14 days ahead of the hearing today, and you're recommending 30 days in the future. Is that correct?

Ms. Miller: Yes.

Comm. Hutchins: So, there would be financial ramifications to the businesses by requesting that, you know, submitting for that.

Ms. Miller: That would be up to the applicant to determine.

Comm. Hutchins: Well, it certainly costs the business, you know, two extra weeks. You're talking multi-million-dollar projects. That's a lot of interest in a two-week period. So, I'm just curious, what does that mean to the businesses?

Comm. Meier: I would probably concur with what Roger is also saying. It's just 3.a that we're talking about. Because if it is substantially in compliance, I would think that five days for staff to coordinate might be okay since it's pretty straightforward. I have no issues with the second versions. That was just my initial thought.

Ms. Miller: All right. So, we will leave it at 14 days. All right.

Chairman Iliff: Any other comments? [None.] Proceed.

Ms. Miller: On page 10, this is in the middle of the performance standards for conditional use permits. This is in reference to the performance standards for communication towers. Initially, I suggested removing all performance standards related to interference for public safety communications, the reason being that this particular standard was struck down by a court ruling. So, Legal looked at it and said, well, we could save just a little bit. So, we recommend leaving the idea that communication towers and antennas shall operate in compliance with the FCC regulations.

The next, and last, suggested change would be Page 18 which talks about the preliminary plat analysis report. We talked about the content of this and the need to update the requirement regarding septic systems, that the old requirement requires perk tests and that type of thing, which the County doesn't recognize any more. I suggested some wording. There are three different articles of the regulation regarding this issue: preliminary plat analysis reports, in the minimum subdivision standards, and in the minimum infrastructure standards. And I noticed after making these changes that I was a bit inconsistent among those three sections. So, this is my attempt to go back and be consistent within those three different articles. I just simply took the wording that we already reviewed in Article 30 and brought it to Article 26. So, this is already written and reviewed. Any questions about this?

Comm. Hutchins: So, in your opinion, this would have no bearing on the contractors performing the service?

Ms. Miller: No. It's Planning opinion, no. This doesn't particularly change the way we do things. It's just reflecting how the process has gone on for the last several decades.

Comm. Hutchins: Okay. But it wouldn't change any new regulations or what-not in the eyes of the contractors who are putting in septic systems?

Ms. Miller: No.

Comm. Hutchins: Thank you.

Ms. Miller: That is all of the major changes in Part 1. In Part 2, the first change is on page 2, at the bottom of the page. This is part of the definition of "kitchen." We talked about a change earlier. "For purposes of determining..." and I had "if the kitchen is located within a guest house or..."
accessory structure," but really, we're going more towards, "For purposes of determining compliance with the definition of a guest house." It's a refinement of that.

On page 3, the underlined portion, instead of having one definition for a boarding stable and a training stable, Planning has separated those out in case, in the future, we have a need to talk about them separately.

Comm. Neese: I have some questions. Back on 2, why did you come up with the 145? What was the rationale there?

Ms. Miller: For the base of a wet bar sink? I looked through catalogs for typical dimensions. A typical dimension was something like 13 x 9. I found out what the area was and I just added a little bit extra. So, the idea is that you can have a sink, but it's not a huge sink where you could be doing dishes. Like a kitchen.

My next major change is Article 9. I know there is going to be discussion on that, so I can come back. I'm going to move on to page 12, Article 23. Within the last month, we came up with an interesting issue. We had a person who sold solar collectors make an inquiry with our County. He was wanting to know if he could put a solar array in a side yard, in a way that wasn't in conformance with our performance standards. We looked at what he was proposing, and it seemed like it could be okay, but it just wasn't allowed. So, we were thinking that instead of trying to think over those performance standards, to do like what we do with satellite antenna -- if you don't meet those standards, you can come in and get a conditional use permit. The zoning board can look at it and see if it's reasonable. So, at the bottom of page 12, 4.A.1, is the suggestion that we have a CUP for accessory solar collectors that would not comply with Article 18 sections except for these regulations.

Chairman Iliff: And what does Article 18, Section 6 have?

Ms. Miller: Article 18 is the accessory use and structures article, and that particular section says yes, you can have solar collectors if you meet the following standards. So, if you don't meet those standards, you can come here.

At the top of page 13, 16 is part of the list of allowed conditional use permits in a variety of different districts. The suggestion is to use some punctuation to pull the different kinds of stables apart so they are clearer. Riding stables, show arenas, boarding or training stables, except those allowed by Article 9, which is the rural district. This would coordinate with the other suggested change that I'm going to come back to.

One last change before I go back to Article 9. At the bottom of page 14 in gray, 2.b., I suggest striking -- and this relates to contractors' shops and yards. These are the performance standards for contractor shops and yards in the rural district. Right now, the performance standard is that any buildings or structures for the use shall not be of greater construction quality than that which might be commonly found for agritourism accessory buildings and uses. The building shall not be occupied by any activity that would require greater construction quality than typical for agricultural accessory buildings in order to meet the building code requirements. That's really hard to measure and determine, and we're thinking it would be good to pull back and let the zoning board and Board of County Commissioners take a look and see if the buildings are appropriate in a conditional use permit. Any questions? [None.]

All right. I will turn back to Article 9, which is Rural Districts. It starts on page 5. My suggested page starts on page 6, number 9. We've talked about this before. We recommend adding: Boarding and training stables on tracts of land with a nominal lot area of 10 acres or greater, with the idea that this codified Planning staff's practice that we've done since the adoption of the 1994 regulations. If you look in the list of allowed conditional use permits, there is an allowed conditional use permit for boarding stables on less than 10 acres. So, Planning thinks that it follows, that that means that they were allowed by right on greater than or equal to 10 acres. Also, we went ahead
and clarified the addition of the nominal lot area of 10 acres or greater. We are thinking that the nominal lot area is the appropriate way to measure this 10-acre minimum, because the nominal lot area is defined for the purpose of compliance with the minimum lot requirements of the RUR district. Well, this is an example of a minimum lot requirement meeting this 10-acre. There's also minimum lot requirements with respect to keeping of animals. We use nominal lot area for that. Also, determining what size accessory building you can have, we use the nominal lot area for that. For construction contractor yards, we use nominal lot area to determine if you're eligible for a CUP, per that. So, there is a lot of precedence on using nominal lot area, and it's also within the definition of nominal lot area. It's the appropriate thing to use when determining minimum lot area requirements.

Also, last time there was talk about number 10. I thought I would bring that up. The way Planning staff understood it is that we would talk with Legal and see if it is appropriate to look at the concept of a farm winery as a number 10, as a permitted use by right. Or, is that more appropriate to be looked at during the agritourism regulations that are coming up. It's Planning staff's opinion that this is not a minor change, that the idea of farm wineries is what sparked our whole discussion of the agritourism regulations, a bigger concept. We think it would be more appropriate to be discussed when those regulations come up.

I can stop my comments now regarding farm wineries as a permitted use number 10, or I can go on and talk about it more. That's up to the Planning Commission.

Chairman Iliff: I think especially in light of the fact that it wasn't on the agenda, I would rather we defer that. So, we have a number of pages of minor changes to the zoning and subdivision regulations. My sense is that with some small tweaking, these may be ready for public hearing in the near future. And I think especially now that we've had these, we've had a chance to look at them, and we've had a month to digest them – Mr. Greeley, if either one of you has a suggestion with regard to a public hearing date, we can certainly put this on as early as next month.

Ms. Miller: Legal has looked at Part 1 but not Part 2.

Rick Lind, Johnson County Legal Department, appeared before the Planning Commission and made the following comments:

Mr. Lind: I've been out of the office for a couple of weeks with some personal matters, so I did not have an opportunity to look at Part 2. If you go ahead and set your hearing, just understand that I may have given comments that those may be changing. So, I would put it off a month. But, if you want to go ahead and set it, you can. I will just be doing comments, which may cause it to change from what you're seeing tonight.

Chairman Iliff: Do any members of the commission have any thoughts about whether or not we should set it for next month, or the month after? Mr. Neese is whispering to me, "Let's do it right." We'll set it for next month. That will give you time to make your comments, and we can go over them next month.

Comm. Mason: I have a question of staff. On the contractor yard modification on page 14, what are we trying to accomplish by doing that?

Mr. Greeley: The language in there is pretty restrictive. If I'm tracking what your question is here, is that if you read it, it says that the construction quality of an accessory building, and that accessory building that might be built in the rural district on a 10-acre or larger parcel, would have no greater construction quality than typical for agricultural accessory buildings. So, that means it's a barn, it's a pole barn, and no more than that. We found that to be a problem with respect to some actual contractor yard operations that need more than a pole barn, more than just a bare-bones structure, to conduct their operations. The building codes kick in, requiring higher construction standards. This prohibited that from occurring. So, it's simply recognizing that this actually limited, to some degree, what people could do. We felt it was best to just take that out.
And as Karen mentioned earlier, we will look at those uses case-by-case with the zoning board and the BOCC, to see if the uses in that building are appropriate, or not. And then, let that process set the standard of the type of building.

Comm. Mason: As I read it, it looked like you were eliminating the possibility of duplicating a pole barn if someone already had that and they were trying to add another one. That’s what I was really asking for.

Mr. Greeley: That is not our intention.

Mrs. Atwell: Can we go back to Article 9, defining the nominal lot area? I may be the only one who would like this changed; I don’t know. Can we remove the “nominal” so that it is lot/acre of 10-acres of more? Then there is no open interpretation for each plan. If someone had 9.75 acres, one planner is going to give it to them, but then, somebody might have 9.75 and never get it. So, if we remove “nominal” and just use the lot area at 10 acres, you can go by the acreage size of what, you know, is listed on the appraisal.

Chairman Liff: Let me tell you why I think “nominal” might be a good term to have in there. I have 10 acres, more or less. It depends on where the centerline of the road is, and a number of other things that kind of encroach on the edges of my land. Someone might say when I go to sell it to them, “Well, you really only have 9.8 acres here, at least in useable land,” and that sort of thing. So, I think “nominal” gives a little bit of fudge room to a landowner. But, I don’t think “nominal” means 9 acres, but I do think it might mean 9.75 acres. That’s just my thought. Karen, would you care to comment on that?

Mr. Greeley: I’d like to comment. Chris introduced this very well, and in fact, just a little more from the definition of “nominal” lot area. It’s the lot size determined by the sum of the lot area, and the area of the abutting street right-of-way. What this is about is that in almost every case, there is right-of-way. When a parcel adjoins a, at least an arterial street, there’s right-of-way there that’s 20 feet wide. And then, through processes with the County, sometimes property owners dedicate more right-of-way. The County can ask for right-of-way dedication when it’s reasonable, so that often occurs. Well, I think in the wisdom of the policy makers they said, you know, we’re asking a property owner to give us something, but we don’t really want to take rights away because of that gift. So, we’re going to allow them to.

Chairman Liff: “Gift.” I like that.

Mr. Greeley: Yeah, for us, no funds are transferred for that kind of thing. So, when we explained this concept in 1994, the idea was to give people the opportunity to still stay at that increment of 10 or greater, even though the County may have taken some of their land through a process. And the right-of-way is the Board of County Commissioners. They get to decide who gets to use that land or not, and it’s their decision. I think with their knowledge back then, that that’s what they wanted to do for folks. Let’s don’t make somebody be at 9.5 acres and now they’re not a 10 because they dedicated right-of-way that the County asked for.

The other thing about what you mentioned, Teri, is how one planner might interpret what’s 9.5 and another one might see 9.8. There’s all this information out there now through the AIMS system, which will calculate acreage. So, there are numbers in there. There are numbers on the appraiser’s website about acreage. And any type of deed. A deed is really the thing you should go to. That’s where, when we have questions and we’re not sure because AIMS may have a couple different numbers, or may see something different, we’ll go back and look at the deed to see what that person bought, and what was described in that description. So, we want to give the benefit of the doubt to the person, if they can reach that 10-acre increment through what was deeded, through what was dedicated but given back through the “nominal” definition, the idea was to keep people whole with that regard.
Chairman Iliff: Thank you. Any other questions with regard to zoning regulation changes? [None.] If not, we’ll move on to the next item.

H. UPDATES/OTHER BUSINESS

Mr. Greeley: Staff has no items for other business.

Chairman Iliff: Mr. Berggren?

Kirk Berggren, 11917 Gillette Street, Overland Park, appeared before the Planning Commission and made the following comments:

Mr. Berggren: I guess I’m a little confused. I thought on the agenda it says, “Other business not to be discussed later for public comments.” So, it’s kind of difficult for us to discuss what you discussed and add our two cents if we’re not allowed to comment on what’s been brought up during any of these sessions. And I thought you said that the comments section was for business not being brought up later. Just like on the opening of the Board of County Commissioner’s meetings. If you want to get up and saying something that’s not going to be discussed later, you get up at the beginning of the meeting and discuss what you want. But, if you’re going to discuss what’s being discussed later, you’re -- Am I missing --?

Chairman Iliff: This is unusual. Let’s put it that way. I’ve never had this come up. Let me ask you because I want to keep this as fair as possible, but I also stopped, as you saw, the County Counselor from making any further comments on an issue that I know is near and dear to your heart, so that next month, when we do discuss that, my full intention at that point is to open it to the public, so that we can have public comment with regard to that at that time. So, if you want to defer your comments until next month – And I was hoping that by having the County’s brief in front of you and being prepared and everyone knowing it was coming up, that would give you good time to prepare for next month. That was my intention. It wasn’t to open this up for further discussion at this time.

Mr. Berggren: And I agree. I don’t want to bring up agritourism at this point. I could care less about that. For the purposes of this, since we’ve discussed agricultural and changes to Article 9, which was on the agenda, those are the points I’d like to bring up.

Chairman Iliff: Can you do it briefly?

Mr. Berggren: I can. Since the state has already decided that a farm winery is an agricultural activity, and hence exempt from zoning, it does not have to have an agritourism component. It is by right an agricultural activity. Some of the activities like we’re deciding to codify the boarding and training of horses, which is not an agricultural activity, as Mr. Jarrett said. Horses are not an agricultural activity unless you’re raising the horses to eat as a meat; unless you’re raising them to plow a field; or, you using them because you use them to work cattle. They are a pleasure animal, no different than this very first, he notes the Weber case, which the Weber case was about calling dogs and having dog kennels and raising greyhounds. Said it was agricultural. And the state said no, it is not agriculture. Just as the Navarro case said raising thoroughbreds, even though they’re horses, and horses sometimes are used for agricultural; obviously, in this case, they’re not. So, if we’re going to codify it, we’re going to allow a non-agricultural use to happen on the RUR zoning area, I would like to add, as I’ve added last meeting, that we add the farm winery as defined by state statute or policy, be added as article number 10. So, I’ll hand that out.

The other thing, I wanted to correct and comment on a couple comments that Mr. Jarrett said. You are correct. The County’s position is the “and not otherwise” means because they allowed you to have a house on RUR ground, they can, if they want to, restrict your agricultural activity. The argument has been that Johnson County does not have land that allows exclusively agricultural uses. They have changed the word “except” to mean “exclusively,” and since they did not allow, there is no zoned property that allows exclusively agriculture, and even though your
quarter of land does not have a house on it, because you're allowed to have a house on it, you lose your agricultural exemption.

Now, the Corbet case and some of those — and you've got those, I won't go over all of those again — but all of these cases have found you do not lose your agricultural exemption just because you have a non-agricultural use on it, like a house. Johnson County, to the Blauvelt case years and years ago, got a new statute, which instead of 19-2921, you got 1929-60. It's the zoning regulation. The difference was the agricultural exemption remained in there, which says you can't zone agriculture. So, even my property or your property, if it was zoned residential, if you are doing agriculture on it, you didn't build houses on it, it was zoned residential, it was zoned commercial, it was zoned whatever, if you're doing ag on it, you're exempt. That's state law.

The other part is there's the benevolence of the County to allow people over 10 acres to do what they want, while we restrict people under 10 acres, is in no statute. There's no size limit to what is and is not agriculture. So, the County's exceptions, the "and not otherwise," is put in there because in 1929-60, it allowed the County to do a couple things. Number one, you could regulate setback. So, people — Because we understand. We're a larger county. I don't want you right up on the road because we might want to expand those roads and make this a double lane, but we can't because your house is in the way. So, they got a setback. The other thing they got was they could regulate houses. They weren't considered agriculture in those urban counties. So, that meant that building codes could be enforced, permits, those sorts of things, for the house and associated structures like garage or a workshop for the house. Those could all be regulated. The "and not otherwise" is in there, there's the Blauvelt case, and there's another case, where somebody said, "I'm going to grow Christmas trees," and they never quite got around to it, but they went with the ag exemption and built a house. They put in a sewer without a permit; they did a bunch of things without a permit. And that was where the "and not otherwise" portion came in, because the Blauvelt case and this brought up 1929-60, which said a house in an urban county, we're going to be able to regulate the building code of that. So, to say "and not otherwise" loses your agricultural is not correct. The Corbet case, the VanGundy case, the Svoboda case, and in fact, on the Svoboda case, I wonder if you've got that one. He was the guy who had a landing strip.

Chairman Iliff: Let me assure you that all of the cases have been sent numerous times.

Mr. Berggren: Right. Pardon my — By you, maybe they've been read, but I don't know that it's understood by the County. Or they choose to ignore the "and not otherwise." Because a lot of their basis is based on "except" means exclusively, and "and not otherwise" loses your ag exemption. And both of those are not correct.

Chairman Iliff: I'm going to cut you off at this point, Mr. Berggren. I would appreciate it if you would put some of these comments into writing. Feel free to track the pattern that Mr. Jarrett has used and make comments on it, reply to it. I can tell you, I will read the cases that you cite or that you bring to my attention. But we are not here as a law department. We do have to rely to some degree, to a large degree, on the opinions that our legal staff gives here. I don't necessarily agree with everything I've heard tonight, Mr. Jarrett, but that all remains to be seen. And I don't know how it's all going to play out. It may play out in the courts. I'd rather that we not do anything here that provokes that if we can avoid it. But, at any rate, please feel free to show up next month. Mr. Jarrett will either complete his remarks then, or not. But, at that time, we will have an open item on the agenda for people to comment on his comments. We'll take that under advisement, the addition of the number 10 for farm wineries. I don't know that I knew that farm wineries were considered agricultural uses by statute, but thanks very much.

Mr. Berggren: They are considered agriculture by Attorney General Opinion 92-92. We've brought that up. And also by statute 41-308(a), I believe it is.
Comm. Hutchins: Is there someone within the County that is suggesting growing grapes is not a farming activity?

Chairman Iliff: Well, I think there is a difference between growing grapes and selling wine. I'm not going to try to parse that out right now. What Mr. Berggren is saying is that farm wineries are, in the opinion of an attorney general, and in some case is, that they are an agricultural use. I don't know that.

Comm. Hutchins: I've read the previous meeting minutes and, quite frankly, it appears we're kicking the can down the road. I guess my question goes back to the bread example, I think. If we're raising farm products and we turn it into a new product, why are we trying to say it's not an agricultural activity?

Mr. Berggren: Well, there is a statute, I can't remember the first part, but it's like 1706, is the last part –

Chairman Iliff: That's –

[Overlapping comments.]

Chairman Iliff: That's why I want to terminate your testimony right now, and please submit these in writing, and we are going to come back here next month, and we can take this up. I don't think we're ready to vote on anything at this point, but I think your point is well taken. It would be a simple matter of adding a point number 10 for farm wineries if we as a Planning Commission determine that your position is accurate.

Mr. Berggren: If I could make one more comment on that, and this will be the absolute last one, I promise you. If we're going to put in there as number 9 that a non-agriculture use in horses is allowed, we don't have to talk to Legal. You can make that same exemption that you're making for non-agricultural people, more or less, that actually are agricultural.

Chairman Iliff: That's a good point.

Comm. Hutchins: The other question I've got is, why has this turned into a legal matter? Who in the County is suggesting that we need to regulate the farm winery?

Chairman Iliff: Assistant County Counselor Rick Lind has just stepped up to the microphone, and I think he can answer that question.

Mr. Lind: The Legal Department would oppose having farm wineries as a number 10 because what they've said is "as defined by the state state." And the state definition of farm winery encompasses uses that we don't believe are agricultural. For instance, it includes being able to use grapes that are not grown on the property. And if you look at the Department of Revenue booklet on farm wineries, they also call into question whether that's agricultural. Because under farm wineries, for purposes of getting a liquor license, you don't have to grow any grapes on your property at all. So, we don't believe that to be an ag use.

Chairman Iliff: I get that, Mr. Lind, but I think Mr. Hutchins' comment is appropriate, and that is, we don't necessarily have to say it's agriculture. Looking at the previous 9 points, none of them are agricultural. And I think it's just a matter of decision that we make based upon our judgment and experience as to whether it's one of those things that ought to be lumped in with other exceptions. I'm not saying right or wrong. I'm not making an argument for here. I'm just saying that I don't think that it needs to be agricultural in order for us to exempt it. Am I wrong?

Mr. Lind: If you want to say that a farm winery is a non-ag use and you want to have a number 10 like you do number 9, then I'm tracking with you.

Chairman Iliff: Okay. I'm not ready to define anything at this point. Thanks very much. All right. One very short comment, Mrs. Berggren.
Julie Berggren, 11917 Gillette Street, appeared before the Planning Commission and made the following comments:

Mrs. Berggren: So, when we had handed out the number 10, last time it was agreed upon, or was suggested and redefined by the folks here, that that was going to be the number 10. This has gone on for three years. It's affecting our income. It's exactly what they said. You're letting non-agriculture be under this. I would like to suggest that a motion be made tonight that, as it was suggested last time, that that statement is, as a motion, as a number 10, to be allowed. This could go on — I mean, I've owned this property three or four years. I feel like it was addressed last week. It's been addressed this week. I would like to put it to the board to see if someone would make a motion.

Chairman Iliff: Thank you for your comments. If anyone cares to make — Actually, it doesn't require a motion. It's just a matter of making a suggestion to the Planning staff that they add that as a recommended amendment to the current zoning and subdivision regulations. And we do that all the time. We've done it here tonight. If someone cares to make that recommendation to Ms. Miller, I'm happy to entertain that. Again, it's still going to go to Legal, it's still going to be commented on further, and it will come back before us as a public hearing matter at some point in the future.

Comm. Hutchins: Obviously, my business being farming, and understanding the pressures that farmers run into today, every farmer is trying to find a way to supplement their income. When we plant our corns, we plant our beans, they are at a loss with today's prices. So, I am absolutely in favor of anything that a farmer can do in the line of agriculture to help supplement their income and feed their family. So, it sounds like growing grapes and ultimately turning them into wine is absolutely an agriculture activity. From that, I ask that we add that as a number 10.

Chairman Iliff: Why don't you put it in as a draft item and we can discuss it further next month.

Ms. Miller: Okay.

Chairman Iliff: Any further business?

ADJOURNMENT

The next regularly scheduled Planning Commission meeting will be Tuesday, June 27, 2017, at 5:45 p.m.

[Signature]
Chris Iliff, Chairman

ATTEST:

[Signature]
Secretary to the Board