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
October 24, 2017
5:45 p.m.

A. CALL TO ORDER

A meeting of the Planning Commission of Johnson County, Kansas, was convened at 5:48 p.m. on Tuesday, October 24, 2017, and was called to order by Chris Iliff, Chairman, with the following members present and participating: to-wit: Marc Huggins, George Lund, Teri Atwell, Randy Hutchins, Jim Neese, Henry Deters, Roxanne Morse, Jason Meier, Pete Oppermann and Roger Mason. Dennis Bollin was absent. Also present were Jay Leipzig, Karen Miller and Paul Greeley, Johnson County Planning Department; Rick Lind, Legal Department; and Anoush Fardipour, Building Official. Leslie Davis served as secretary to the Planning Commission.

Chairman Iliff: I'll call the monthly meeting of the Johnson County Planning Commission to order.

B. APPROVAL OF AGENDA

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

C. CONSIDER MINUTES OF PREVIOUS PLANNING COMMISSION MEETING

Motion was made by Comm. Mason, seconded by Comm. Huggins, to approve the minutes from the August 22, 2017, Planning Commission meeting. Motion passed unanimously.

D. PUBLIC COMMENTS

This is an opportunity for members of the public to address the Planning Commission on an item which does not appear on the agenda. Comments are limited to five (5) minutes.

There were no public comments.

E. FARM WINERIES AS A PERMITTED USE AND POSITION STATEMENT FOR THE REVIEW OF AGRICULTURAL USES (in reference to Board of County Commissioners Directive No. 9-28-17)

Mr. Leipzig: Good evening. [Introduced himself to the Planning Commission.] I will have to leave the meeting early because I have a presentation in front of a leadership committee for the Citizens Academy. So, I apologize for the scheduling. It was scheduled before I came on board.

Getting to the item that's before you, in your packet is a memorandum from me regarding Directive No. 9-28-17. In a previous memorandum dated September 29th, Planning staff distributed a summary of events occurring after the Planning Commission's July meeting, and the Board of County Commissioners' Directive No. 9-28-17, which basically has two items before you. Item a) is removing farm wineries as defined by state statute and policy as a permitted use in the RUR District, and removing them from the proposed zoning regulation amendments. And b) is the adoption of a position statement by the BOCC by separate resolution and not as part of the zoning
regulations, to guide County staff in the review and processing of matters pertaining to agricultural use and agritourism. These issues were discussed at a joint Board of County Commissioners meeting and a Planning Commission meeting on September 21, when they discussed those items in detail. There was a PowerPoint that was distributed and has been in your packet a couple different times. So, to save time, we will not be going through the PowerPoint this evening, but it is in your packet. I also want to make sure that that is included as part of the record.

So, going into more detail on the directive, as I just pointed out in the review, the Planning Commission is being asked to reconsider item 10, Farm Wineries as defined by State statute and policy, as a recommended amendment to Article 9, Section 2(B) of the zoning regulations, and removing that item. Also, the Board asks you to consider by a separate resolution, not part of the zoning regulations, a position statement that will guide staff through the review and processing of matters pertaining to agricultural land uses and registered agritourism uses, including farm wineries and related activities.

So, in summary, if you look at the last three pages of the PowerPoint, the First item is: If the use of the property has received registration for agritourism in Kansas, then the County will recognize that the use and its related events and activities are exempt from zoning regulations by the County, with two exceptions – that the County will enforce public safety codes and regulations to protect members of the public attending the events, and the County will object and may seek enforcement against an event which exceeds some defined standard. Second: If the use of the property is agricultural but the use is not registered as an agritourism use, the County will recognize that the use and those events that are directly in support of the agricultural purpose are exempt from zoning regulation. Third: If the property is used as an event center without an agritourism registration or underlying primary agricultural use, then the County will consider that the use is subject to the County’s zoning regulations.

So, that has been discussed in great detail at our work sessions with the Planning Commission and the Board of County Commissioners. And just to point out a couple things, one thing is that staff recommended a slight wording change on Item 1, that the original remanding language that the County will seek to enforce, staff would recommend that we use the words “County will enforce public safety codes and regulations."

With that being said, I will keep my comments fairly brief this evening. We do have additional assistance here. Rick Lind from the Legal Department is here, as well as Anoush Fardipour, our building official, who can talk in more detail on some of the code items and questions that I’m sure will arise. What we are really talking about in terms of public safety is enforcement of the fire code and public safety codes.

Chairman Iliiff: Any questions for Mr. Leipzic? [None.] Mr. Lind, do you have any comments for us?

Mr. Lind: No, but I'm here to answer any questions you may have.

Chairman Iliiff: I have a question. In addition to fire code, we also have the building code. So, I would say both of those things would still be enforceable, regardless of the fact that they have an agritourism certificate.

Mr. Lind: Mr. Chair, the intent is that if there is some component of the building code that deals with life safety, then our inspector, Mr. Fardipour, could look at that. But, the intent is to not go through the building code and look at every requirement and see whether they are meeting it. It is only for those that pertain to life safety.
Chairman Jiliff: So, the real issue is for public safety, for those who are being invited onto the premises.

Mr. Lind: Yes. For example, the plumbing code. The intent is not to go through and see if you have a drain cover that keeps the odor from coming up, but it is to ensure the fact that you do have piping that has water, such that if they need a hook-up for fire protection, they have that.

Chairman Jiliff: Other questions for Mr. Lind or staff?

Comm. Deters: I have one. You mentioned fire codes, and you also talked about the County Fire Marshall. Will he be the one enforcing those fire codes? Or do you rely on the jurisdiction where the property is located. For instance, if we’re talking about, let’s say, a winery out west here, that would be Fire District No. 1. They have an inspector that does all of that, as well. Is he going to be the inspector, or is it going to be the County inspector?

Mr. Lind: I'll let Mr. Fardipour weigh in on that. It was my understanding that it would be Mr. Fardipour.

Mr. Fardipour: As the building official for Johnson County, I enforce the fire code, give the protocol and code requirements for all fire districts, the three districts in the county. Any question they have, any policy, it goes through our office. We enforce the code that was adopted in 2012, the International Fire Code, along with any amendments. All of those are approved by the Board of County Commissioners, and also involved with the fire district, through the adopting of the code. Our office will provide those policies for each district.

Comm. Deters: But, will your office be inspecting, or will you rely on the jurisdictional departments to do the inspecting?

Mr. Fardipour: We do the inspection.

Comm. Deters: Okay, because they have inspectors that do the commercial inspections in their district, and I don't know why you would do it versus them, if you don’t do it for the rest of the district.

Mr. Fardipour: Because on new buildings, the way it works out — let me explain it. On new buildings, we get the drawings, we do a review according to the code to be sure they’re built per the building permit. Now, during the course of construction, our designated inspectors will do, from the start of putting foundation, all the way to the final inspection, do all the tests required for approval to issue a certificate of occupancy.

Comm. Deters: Right.

Mr. Fardipour: The building is issued a certificate of occupancy. But we have a fire inspector, a part-time fire inspector in our department, which he does the annual inspection for all the existing commercial and industrial in the unincorporated part of the county. His work is always with the fire district from that jurisdiction. But he’s the one to follow and enforce those international fire codes, in cooperation with those fire districts. And the report goes from our office to the tenants or the building owners, and the responses come to our offices for any permit required. For example, they put in a paint booth, they have to have a permit. The fire district, they don’t enforce those codes....

Comm. Deters: That was my point, was that, I’ve been retired for years, but I lived in a fire station for 28 years. And the crews go out and do the inspections. And then, if they have a problem, their report goes up. I assume it goes to you, and that’s where the enforcement side of it comes in.
Mr. Faridipour: We do inspections, once a year. That comes from our office, scheduled with one of the residential fire districts.

Comm. Deters: Okay. It may have changed over the years. Thank you.

Chairman Liff: Further questions? [None.] We really have two matters before us, as I see it. One is the remand to the zoning regulations that we recommended to the Board of County Commissioners in August. That basically removed farm wineries from all regulation within the Zoning and Subdivision Regulations. It removes it as a category. That would be the first thing.

The second thing is with regard to the exemption for agricultural uses. So, we have two separate items that we're being asked to make a recommendation on, and to send back to the Board of County Commissioners. Correct?

Mr. Lind: That's correct.

Comm. Mason: I have a question. We seem to be taking the jurisdiction of control of this with the agritourism aspect, except for life safety. The question is, why do we need that here? Are the authorities in the state of Kansas not also responsible for life safety? And if they are responsible for the jurisdiction of this category, why do we want a part of it, instead of all of it? My concern is, as I heard one of the commissioners say in that joint meeting, mission creep. Because I heard you say something about inspecting to see if there's enough piping for water. What I hear is, wow, we have quite a few people, maybe we should have a sprinkler system, so maybe we need to expand Water One's main piping through the area. I can see those things creeping sometimes. My concern is, when you start down that life safety route, what else will you discover that is marginally life safety? So, is there a reason we have to take any control? Or can we just say agritourism is controlled by the State?

Mr. Lind: I don't know that the State is going to look into life safety matters. We're saying that if you're a registered agritourism or you're an agricultural use, we're not going to look to impose our zoning regulations on you. But, we're not willing to forego life safety. The Board of County Commissioners wants to keep a hand in that. For instance, at a wedding event venue, if there is a fire issue and people are killed, they don't want to be in a situation where they abrogated any authority in that area. So, they're wanting to keep regulatory authority over life safety.

Mr. Leipzig: Mr. Mason, just to offer further clarification. I think the other issue is that statewide, municipalities adopt various editions of the building code. For instance, in Johnson County, we're looking at the 2018 IBC, but that is not consistent throughout the state. So, I think they left that component of it to the adoption of each local municipality or governmental unit, to adopt the code that they so choose.

Comm. Hutchins: I have met with the State and the Kansas Livestock Association, Farm Bureau, the fire department, as well as the building engineer. So, starting with the State, their position is that safety is taken into consideration as part of the business of agritourism when they initiate it. I challenged the State that there needs to be more than from a public safety perspective, and they said no. They said, you know, the liability and everything is already covered from a State perspective, and from their standpoint, there should not be any further regulation. I further challenged them, if this were to go to court, if the County wished to impose their own view of safety, what is their opinion of that? And they're like, "We've already been down that path, we've already been to court, and it was made clear by the judge that there is no county jurisdiction over zoning regulations when it comes to agritourism." And I think the County was just that there's an exemption for safety, and they said, "Show me in the court ruling where it said 'safety.'" So, that's the State's stance.
From Farm Bureau and the Kansas Livestock Association, their attorneys have stated that they agree with the State that the agritourism statute was put in place specific to these reasons. It took into consideration the public safety, and they 100 percent agreed with the State’s position on this, that the safety of the public was taken into consideration when they put forth the State statute. So, that is the position of those three agencies.

When I visited with the local fire department and tried to get a feel for where they stood on the issue, they have no issue whatsoever in regulating any farm safety when it comes to agritourism, with the exception of if there is a facility where there are a number of people would be in that facility. So, from that standpoint, they did have concerns that they would like to see something put in place for, to provide some additional public safety.

Also, I met with an engineer from Worldwide Steel Buildings. They have an engineer on staff when they construct their buildings to county codes throughout the United States. Going through and asking, you know, what they see from a safety perspective. There are a lot of codes that exist. The question becomes, you know, how do you differentiate? What’s life safety as compared to nice-to-haves? And the nice-to-haves often incur, it’s kind of like the 80/20 rule. Twenty percent of that safety is going to cost 80 percent of the cost. So, the 20 percent of the rules that are going to save lives, they’re not going to track the money. It’s the incremental codes that they want thought of.

So, I wanted to share everything that I went through to arrive to where we’re at today, to where we can have a discussion and determine how we want to approach this.

Mr. Lind: The agritourism statute has a provision that exempts the landowner from liability if you bring people onto the land. But, I’m not familiar with anything in that act dealing with building codes. And to paraphrase Commissioner Allen on this point, he was concerned — and the Board of County Commissioners were concerned — with, it’s one thing to tell a landowner, a farmer, if you invite people on your property and they get injured, whether it be a horse kicking them, or they fall down, or something like that, that’s one issue. But that’s different than not only saying that they’re not liable, but then, that they don’t have to follow any standard. That’s kind of a double barrel. That they’re not liable for anything that happens, and then, they’re not responsible for ensuring it doesn’t happen. So, this says, hey, you may be exempt from liability if someone is injured, but we’re going to want there to be a standard to ensure, as best we can, that they don’t get injured. So, I’m not familiar with anything in that act, and if you can educate me, I’d appreciate it, if there’s something in that act that does specifically address building code.

Comm. Hutchins: Well, I think the purpose of the farm, as well as agritourism, is to leave it in the realm of ag. And, as you know, ag is not regulated. And it’s intended to remain that way.

Mr. Lind: Well, the only exemption that I’m familiar with are the zoning regulations, and I know there is an AG opinion out there, talking about building codes adopted under zoning regulations. But, I also spoke with the assistant attorney general who wrote that opinion, and I asked her, “Are you familiar with the fact that 98 percent of all building codes are not adopted under zoning regulations?” Our building codes are not a part of our zoning regulations. So, I would disagree with any legal analysis that we don’t have authority to regulate in that area. If we had adopted them under our zoning regulations, I can see that argument, but we haven’t.

Chairman Iliff: The proposal that the County Commission is recommending to us is that any registered agritourism activity in the state of Kansas not be subject to zoning and subdivision regulations. They add on to that that they’re not going to drop building code regulations, that those are separate and apart, and they are not under the purview of this Planning Commission, or
covered under our ability to make recommendations with regard to changes or amendments to the building code. Is that correct.

**Mr. Lind:** That would be correct.

**Chairman Iliff:** I would just say this, as a practical matter. And we had this discussion back before the Board of County Commissioners. And I understand this matter has become politicized, and I think in that regard, it's probably too bad that it has become politicized. But, sometimes that's just the way things fall out. But, as a practical matter, the State of Kansas, it seems to me, is probably not in a position to be making regular checks on the standards of buildings in Johnson County. The State of Kansas has a lot of budgetary difficulties right now. We've lost something like 14 percent of the employees in the state of Kansas over the last 10 years. Some of the problems are well documented in the newspapers, with the Osawatomie mental hospital losing its Medicaid funding because the hospital is not properly staffed. We have riots in our prisons because they're not properly staffed. About 25 percent of our highway patrol has gone away in the last few years. Personally, as a resident of Johnson County, which fortunately has not cut its budget to the point that we are stripping away essential services and making it a less safe place for our community, I would be very reluctant to say to our County building code inspectors that they have no right to enforce building codes simply because something is an agritourism activity.

I think that this matter has been won in the court with regard to zoning and subdivision regulations. I think the court was very clear on that. I don't think the County has chosen to appeal that. And I think we need to abide by that. Nothing was said in that opinion regarding building codes. And I think that the County Commission made it very clear in the meeting last month that they don't intend to abrogate their responsibility to the safety of citizens by omitting the responsibility of our building code inspectors to make sure the buildings we're having people invited into are safe. And we've got at least one member of the public who is chomping at the bit to talk. Mr. Berggren, if you'd like to weigh in, this would be a good time.

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

**Mr. Berggren:** First of all, thank you for all the work you guys have done over the last four years that I've been up here. I appreciate it. I know there's been a lot of back-and-forth, trying to get everything squared around, and come up with something that's best for everyone. I know you all are volunteers, and I appreciate it. I know you're tired of hearing me, but believe it or not, I'm more tired of being up here. So, the sooner we can get all this done, the better.

I've been asked by a couple agencies. I want to be done, because as the saying goes, I got mine. I got my court case. I don't have to be up here. However, I do feel that there are things that need to be said, and that some people have asked me to say, to benefit everyone. There are a lot of people that don't even know they want to get into agritourism yet that might want to, two or three or four years from now, and they're not going to go through all these old minutes and through the court cases that I've gone through, and the attorney general opinions, and the statutes, to arrive at a point to say, "Hey, I know I'm right. I'll sue the County, or go to court, spend $100,000, and then, I'm bankrupt, but I was right." I think we need to do the right thing before it comes to someone having to sue or go to court to have themselves heard.

So, here are some of the –

**Chairman Iliff:** How many slides do you have?

**Mr. Berggren:** It's pretty quick. I'm going to go through them in a hurry because you've seen all these. This is the Home Rule powers. The main thing on there is, you are subject to legislation
that applies uniformly to all counties. Here's the police powers. This was mentioned in my court case, and this is the main thing I'm going to get to today. You can see, right before it's highlighted, these are for the protection of the public health, safety and welfare. Those are known as the police powers. One of the codes that I was in violation was, was the special use permit, what I got a citation for, which is a special use permit is the police powers, correct? That's saying that I'm looking out for the public's safety, health and welfare, my neighbors, and the people that come on the property. That was one of the things that came up. And here's the zoning; we don't care.

Here are the two laws that I brought up that have the AG exemption. We've seen all those. And the Attorney's General role, his primary duty includes representing state governments, and they're also empowered to issue opinions to guide the legal actions of the public agencies. Now, you all got the Attorney General brief that he gave in my court case, that didn't matter, didn't even allow it in the court case, but you still have the opinion of the court there. And I wanted you to know that they do weigh in on it, that they have a certain opinion about what we can and can't do. And I was asked to read the transcript. From my court case, one of the arguments from the County was that there were two violations. One, that I didn't have a conditional use permit, and the other that I was in violation of the police powers.

I want to read this. This was from Lisa Wetzler: Evidence will establish that the winery has two sides to their business. They have the boutique winery and private event space. This is a special situation where Olathe rented out the private events space for their event that night. That was the Olathe Chamber of Commerce. The event was held in violation of two County codes. This is really important to make this distinction. It is in violation of our Planning and Zoning Code for failure to get a CUP for the special third-party event, and it is also in violation of Special Events permitting process Special Event Code. That's the police powers. That is a code that is adopted under the police powers, not Planning and Zoning. They are two separate codes and two separate basis of authority. The defendant has not mentioned anything about an exemption. The agricultural exemption being exempt from police powers. I think that is very important to note throughout this process, that exempting the parcel from the police powers from local authority is a very significant argument to make, and we just don't think that is even a possibility, to be exempt from the police powers here. Which is what you're talking about enacting. Building codes and all of that is police powers.

So, we've had these Attorney General opinions that basically said that County cannot exempt from, nor enact, substitute provisions, which is what you're looking at implementing here, is a substitute provision for those statutes that are uniformly applied. Now, there is nothing in the agritourism that talks about building codes, but there is in 192921 and 2960, that talks about the exemption of both the building and the property. So, that is covered as exempt. And we don't really care about the [inaudible] case. He basically said if you have any preponderance or significant agricultural activity, that is sufficient enough to say that it is agricultural, and hence, it is covered by 19-2960. It doesn't have to be exclusively or 100 percent agricultural, it just has to be sufficient to say you're not hiding a residence and calling it agricultural.

So, there is the Attorney General 1610, which basically says that ag buildings are exempt from building codes. Now, the last sentence of the court decision right here -- and it's very important to read this -- the fact that the County admitted in closing arguments that if a conditional use permit had been granted, there would be no violation of this special event code. That demonstrates that the County cannot punish indirectly what it cannot regulate directly by extending its special events code, which is a planning regulation to prohibit what is permissible under the agricultural exemption use in a rural zone. So, it was dismissed. So, they basically said, if you cannot regulate
it as agriculture, you can’t come in and say we have police powers over it. That was what the court said.

Now, I don’t disagree that the public safety needs to be looked out for. What I would like to see is that we do it right. We’ve got an agritourism law. We’ve got the zoning laws. I think what should happen is that you recommend to the Board of County Commissioners, that the next session of the state legislature, you ask for some sort of change to the statutes that govern it. And you can put in this kind of, something for public safety or fire. Because you are correct; this is going to creep. If the neighbors don’t like what somebody is doing, all of a sudden, my fire code isn’t good enough. My road isn’t strong enough. My wind load isn’t good enough. Anything that we can think of that makes it ours, I can go to court, I’ll win. But now, would it have been cheaper for me to spend $60,000 to do whatever upgrades they said I need to my building? Or spend $100,000, not get the upgrades, and be bankrupt two years later? So, let’s do it right. Go to the legislature, tell them we want to this changed.

I don’t disagree that people need to be looked out for. But, what are you going to do on old construction versus new construction? Because there’s no requirement for somebody who has existing buildings to talk to you. All they have to do is, as we said, they do their agritourism, they register what they’re going to do, and they’re good to go. Are you going to come in and tear the building apart to see if their electrical, because it was an ag building, is my electrical good? Is my plumbing good? Do I have enough water pressure? Are the roads good? Are we going to have that requirement before they get their agritourism permit? Or, are we only going to get new construction? Because that’s what this looks like, that it’s only someone that wants to do something new.

So, this is the last time you’re going to see me. Thank you.

Comm. Hutchins: I want to thank you for providing that information. We’re not experts in this field. We know you’re more well-versed than we are, so, I appreciate you sharing.

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

Ms. Berggren: A couple things I want to clear up on the agritourism statute that we hear, that there is no type of oversight, or any type of protection for the public. From that, that’s simply not true. It literally says if you are negligent, grossly negligent, we are responsible for that. For example, our pumpkin patch. If I have a tractor that I know doesn’t have any brakes and I take a hayrack ride on it, and we wreck that, I’m responsible for that. The same thing with my building. If we are grossly negligent and something happens, we are responsible for it. There is protection for the public.

Back in December 2014, this was a hot topic around here for us and Johnson County. I’m going to read for the record something that came from Jackie McClaskey’s office, the Secretary of Agriculture, written by her legal staff, Robert Large. It was December 1, 2014. This was shared with the County. It says: RE: Farm Wineries. Dear Mr. Holland – that was my attorney at the time – The Kansas Department of Agriculture is committed to the support of farmers, ranchers, and agribusinesses across the entire Kansas agricultural sector. Your clients, Kirk and Julie Berggren, have been in contact with our agency and presented some questions regarding farm wineries and agricultural use. Specifically, we are aware that a question has arisen as to whether buildings used as farm wineries may be considered agricultural buildings for purposes of zoning regulations. We believe that a farm winery does meet the definition of an agricultural building. Under K.S.A. 19-2960(d) - And this talks about zoning regulations, but the part that I want you to hear is the building part of it – zoning regulations in rural areas do not apply to land used for
agricultural purposes. This includes agricultural buildings as long as such buildings are used for agricultural purposes. It is our belief that in the context of farm wineries, buildings that are used as part of the activity of wine production are agricultural buildings for purposes of the statute. As grape-growing for wine production in our view is an agricultural activity, naturally it would follow that the land itself is used for agricultural purposes. It also follows that buildings erected on the land that are used for grape or wine storage, processing, distribution and other related activities can also fall under the statutory exemption. If our staff can provide any technical assistance or support, please do not hesitate to ask.

So, yesterday, I’m following up with all of this. I asked the question again. This is from Josh Roe, who is a deputy secretary with the Kansas Department of Agriculture: Attached is a policy statement from KDA dated December 1, 2014, concerning farm wineries as agricultural operations. This remains our policy. Now, remember, they get to decide. The State gets to decide this. Not the County. The State.

A farm winery – in our community - is the definition of an agricultural entity. Therefore, it would follow that buildings erected on the winery that are used for grape or wine storage, processing, distribution, marketing the product (i.e. tasting rooms) and other production activities would fall under the statutory exemption.

The second part that he addresses is, because you go on to say that you have – and forgive me, I don’t want to misquote this – the second part of what you’re asking is something about a defined definition, that they can come in and cite an event if it’s up to the level of a rock concert. This further goes on to say: Kansas Department of Wildlife Parks and Tourism has authority over agritourism registration and related rules. So, the County does not have jurisdiction. I’d like to enter it into the record, and I do have copies for you all. I’ll stand for any questions, if there are any.

Comm. Neese: I have a question of staff. I’m not sure what agritourism specifically is. I thought agriculture is to raise crops, and so on and so forth. At what point in time does something become a cross between being a piece of property in a rural area, go from being an agricultural deal to a commercial operation? And the reason I’m using a pumpkin patch is because it has a special use permit, and that’s coming up for renewal pretty quick. So, I am assuming from the pumpkin patch part, which – I won’t use that as an example. A piece of ground that has 40, 50 or 60 acres, that raises very little agricultural product, and has a venue on that property far beyond what they raise, does that qualify as agritourism under the State? Will the State grant agritourism to -?

Mr. Lind: You’d have to ask them, but what we’re trying to do here is to say that if you go to the State and you go through their procedure and they certify you as an agritourism use, we’re not going to try to enforce zoning regulations. We will enforce our building code and fire code for life safety purposes, but we won’t try to enforce the zoning regulations if you’re a registered agritourism.

Comm. Neese: The question I have is, if I apply to the State – and maybe someone here can answer this – what criteria do I have to have when filling out an application to be an agritourism operation? What do I have to prove to them? Can I call up tomorrow and say, “Yeah, I’ve got 40 acres out here in Olathe and I’d like to start a business?”

Mrs. Berggren: It goes through a whole vetting process, a whole group of folks that are a board, just like you. The application is sent in. It’s reviewed. They yay or nay it. And Sue has said that many times to you all, that –
Comm. Neese: Yeah, excuse me, but that’s not answering my question. If you go before a board, don’t they have certain criteria? I mean, if I know everybody on the board and I have 40 acres and I want to get in the business that you’re in, and I’m a great guy, and I politick it a little bit, and they give me the permit. Do they have a set of criteria? That’s what bothers me, what it takes to be an agritourism participant and licensed person.

Mrs. Berggren: I assume, since it’s a State-official department, that they have a whole department that does the regulation on that.

Ms. Miller: Two years ago when I first started working with the State, talking with Sue Stringer about registering agritourism uses, I asked her about criteria, what they look at. It might have changed now, but two years ago, there was no set criteria, and it was vague. She basically looked at it and followed her gut. So, like I said, these days, they might have firmed up their process, but at one time, it was on the vague side.

Chair Iliff: Do they have inspectors who come out and look at the property?

Ms. Miller: I don’t know about that. I know Sue has mentioned that on occasion, once or twice, she has looked at properties. But I don’t think they go out and check on a regular basis. At least as of two years ago.

Chair Iliff: Mr. Neese, you might be asking a metaphysical question here, and I think there’s a fairly simple black-or-white response to it. An agritourism activity is something that has been certified by the State as an agritourism activity. Period. That’s it. And you can talk about whether someone should or shouldn’t have gotten a certificate, but that’s not up to us, and it’s not our job. That’s the job of the board that certifies those things.

Comm. Neese: The reason I said this, I called the State after our workshop meeting, and this lady was on vacation, or she wasn’t there. So, I said I had some property in Olathe and I’m thinking about an agritourism business. What do I have to do? And the lady that I talked to said to just make an application; I shouldn’t have any problem getting it. My point is, what worries me about this is the trunk of the tree can have many branches, and I’m not saying we’re going to regulate it. It is what it is. My point is, it’s not defined. I have certain restrictions I have to do. If you build a building, you have certain restrictions. If they’re going to make anybody and everybody agritourism, a licensed person, that’s fine. We should know what that is. And I’m not asking you to answer the question. I’m just stating my concern. Period.

Chair Iliff: Well, the problem is, the train has left that station. Okay? The court has answered that question. We cannot have zoning and subdivision regulations. And as far as I’m concerned, we could even leave out the recommendation that the County maintain its building and fire codes over these buildings because that’s really out of our purview, too. That’s not part of what the Planning Commission does. But, the County Commission has made it very clear that that’s what they want to do, that’s what they intend to do. So, I don’t know, even if we made that recommendation, it’s going to influence the County Commission.

Mr. Lind: I think they’re interested in hearing from you, but I think you do raise an interesting question, which is, if you don’t want them to do it, I mean, you’re just a recommending body. But, we do have a code review board that deals with those issues.

Chair Iliff: Personally, I think the Berggren’s make some good arguments, but I think they are just that. For what it’s worth, I thought they would get the opinion that they ended up getting from the County court. I thought precedence tended to run in their favor. The County read them differently. That’s what makes horses race, and that’s what gets court opinions. And we have that in the court opinions, crystal clear. But that was talking about zoning and subdivision regulations. It was not
talking about safety regulations that are related to building and fire codes. And I do not think I've heard anything here tonight that says counties are prohibited from using the fire codes and the building codes to inspect buildings, even if they are an agrotourism use. Frankly, if anything, I think there may be concurrent jurisdiction, where both the State and the County could regulate. But, in terms of who I think is actually going to get out there and take a look at it, I think it's much more likely it's going to be the County than the State.

Comm. Hutchins: I think there's one key phrase in here and, you know, in my conversations during our meeting, I heard from Mr. Eilert, and I heard this again and I see it was emphasized in here. It was number 2, part A, First - if the use of the property has received registration for agrotourism in Kansas, then the county will recognize that the use and its related events and activities are exempt from zoning regulation by the county, with two exceptions - the county will seek to enforce public safety codes and regulations to protect members of the public attending the events, and the county will object and may seek enforcement against an event which exceeds some defined standard, such as the rock concert mentioned by the court. I think that last sentence is important. I think Mr. Eilert is looking for, where is that line? I think we all agree that a rock concert isn't an approved venue. At the same time, you know, if Finley Farms wants to host a church group out to do a 5K run, that's perfectly fine. There's a line in there somewhere. In my conversation with him, he's looking for us to help define that line. What is that line? To the left of the line is what we'll regulate; to the right of the line is what we're not going to regulate. You heard him say, you know, his granddaughter rides horses, and he doesn't want to see any regulations put forth on the stables where his granddaughter rides. That's not his intent. His intent is to protect the county and the public from the large venues that they're having. That's where my focus was, coming into this tonight. Where do we see that line? And then, what are the regulations that go on the left, and what are the regulations that go on the right? So, I don't know if my peers agree with that assessment. I'd like to hear your thoughts on that.

Comm. Deters: I'll weigh in. I think in reading this, I think any time we use the word "except," it leaves us open for something, like selective reinforcement or mission creep. And I don't like those statements in this, and I don't like the wording as in, "an event which exceeds some defined standard." That's a meaningless statement, "some defined standard." Who defines that standard, and why should I regulate it? So, as a planning board member, I shouldn't be trying to define or regulate that. So, to me, we've just kind of added that whole last "with the exception of," that's the part that isn't in our scope of practice, or jurisdiction. So, I don't understand why it has to be written in there. I'm not the one that's supposed to put it in there. I would put it on the county commissioners to make that decision. Because I can't define where that line is. I don't think I should have to define where that line is. That's my two cents on that.

And then, while I'm going into it, the third statement: "If the property is used as an event center without an agrotourism registration or underlying primary agricultural use, then the county will consider that the use is subject to the county's zoning regulations. I think that's already in place. If somebody has a big building in the unincorporated area and they want to put on a big concert, I believe they have to get a special use permit. So, why are we adding it on to this? We're regulating something that's already been regulated. We don't need that whole "Third" portion of this. So, that's my two cents. I think we've gone over this a lot, and I'm ready to get this completed. I just wanted to weigh in. Thank you.

Mr. Lind: Mr. Chair, if I could add. I don't think this is being sent to you to come up with a defined standard. You're being asked in the directive to consider and discuss whether the board should adopt, by a separate resolution, this policy statement, as is. I think they're wanting to know, are you going to go along with their regulation to adopt it, including this language that says "exceeds
some define standard." I don’t think they’re wanting you to do that heavy lifting. But, it’s a signal to you that our work is not done at the staff level. This position statement is, how do we now deal with agritourism uses and agricultural uses when these folks here get somebody walking in the door and they have to deal with them? And that’s what this is.

Now, we know from the court case — because the judge said it — that there are limits to which a judge would not go along with. And the one example he used was a rock concert. Are there others? Yes. Where do you draw the line? You have all indicated that you don’t know. It’s a tough line to draw. The intent is that it has to be something, as Mr. Jarrett would say, "out there." It has to be something egregious. So, we’re going to go back and try to find that line, come up with a definition, but I don’t think that’s your work tonight. Your work tonight is whether you are okay with this policy statement, as is.

Comm. Deters: Okay. Then, part of that statement would make it to where I don’t agree with the whole -? Is that what you’re saying?

Mr. Lind: Well, if your position is that because it is some undefined standard, you can’t vote for it because you don’t know what the standard is, then that would be your recommendation.

Comm. Deters: Yeah, because I don’t see myself recommending to the board. I’d let them make that recommendation themselves. As far as what we’re working on here, which is removing farm wineries as defined by the state statute, I added that in because I thought it was important. But, I won’t go along with the adoption of a position statement. That’s not my purview, I don’t believe. That’s my take on it.

Comm. Morse: That’s how I was looking at it, that this is just a directive, just a guide. This is what we want the Planning Department to look at. So, that line is yet to be determined. I think the reason that the weddings and that type of thing were mentioned is because we had people come here who were interested in perhaps doing that in the county, and they wanted to know if they could do it under the agricultural and not have the regulations. Was the County going to allow these big venues? So, the work, as Mr. Lind said, is just kind of a guide.

Comm. Hutchins: I hear what you’re saying, and I’m with you, and I’m honestly on the fence. My objective is to protect the true family farm that’s seeking to grow their revenue, trying to provide for their family. So, the example you give is exactly right. I don’t think an investor going out and buying a barn with 20 acres should be able to get a label of agritourism, host weddings there, and not have any regulations. I don’t think that was the spirit of what we’re trying to do with agritourism. I think the agritourism was trying to help the family farm grow their revenue, support agriculture, drive in tourism in the state of Kansas.

Part of me says let’s just cross out the word “farm winery,” put in “agritourism,” send it back up to the Board of County Commissioners. I know they said this was bigger than farm wineries, so I think that’s one option. Option 2 is this: If we already know that the Board of County Commissioners is going to write the languages themselves, do we try to help them? Do we try to be proactive and help define that? Because once it leaves this forum here, there’s no go-backs. So the question I have for myself: Am I helping the family farmer by just sending it on up to the Board of County Commissioners, and we live with whatever they put in there? I’ve kind of lost any influence I’ve got that will protect the family farm. So, that’s what my dilemma is right now. Should we take a stab at trying to define this? If nothing else, help the Board of County Commissioners understand our concerns. I know the example that Mr. Neese used, and it was used again today, which is that we don’t want an investor taking advantage of it, right? So, that’s where my struggle is. Do we take the time and try to craft something ourselves, to where we could define it, or at least take a shot at defining it and having some influence? Or do we just substitute two words and
wash our hands of it, and go home? That's my take. I'd like you guys to weigh in. What do you guys think we should do?

Comm. Mason: I think we've heard it pretty loud and clear, and it's a pretty polarized issue. You said "politicize." I believe that through the court and through other communications we've heard from the State, they firmly feel there is no place for county regulation in this. If that is the case, I think this needs to be challenged and changed at the state legislature level, where they write the rules. Short of that, we're not going to know the definition of, what is a rock concert? Where is that line? If we're not even supposed to be in that regulatory arena, I think we should send it back to the Commission, saying that we don't think we should be in that regulatory arena. Period.

Chair Iff: Mr. Mason, I understand what you're saying, but I think we're abdicating our responsibility to the citizens not to try to at least comply with what the court has said we are permitted to do. And to say that we cannot have any regulations whatsoever because something is listed or registered as an agritourism activity, it just seems it doesn't protect the people in the county who live near that activity. That's why I think, while the language is vague here, I think the county commission is asking for our direction with regard to some kind of attempt to limit what might be truly obnoxious and nuisance behavior on the part of someone who happens to have agritourism license or registration. We do that. We have done that in the past. We have noise regulations, such that gas pumps, for example, gas pumps must be muffled, and the limit is a certain number of decibels at the property line. That's one way that we go about regulating whether or not something is possibly a nuisance to other people. We've done that for a long time, and I think that's a good thing to do. It's a prudent thing to do. And it's objective. In other words, you can say something can't be more than 30 decibels at the property line or it will be considered to be in violation of the regulations. I think that's what the court has left open. It's not saying that we can't under any circumstances have any regulations whatsoever regarding this, but I think it's made it very clear that zoning and subdivision regulations with regard to conditional use permits, special use permits, and that sort of thing, that is not within our purview to give. Including the permit that would allow behavior that would be obnoxious to any objective person, or any neighbor.

So, my sense is, we're not making a rule here. The County is asking for us to give them a certain direction, and in that regard, we are going to remove, I mean, this would remove farm wineries from the Zoning and Subdivision Regulations altogether. But, I tend to also agree that the second and third parts might be unnecessary, because if the use of the property is agriculture and not registered as agritourism, and the County will recognize the use for those events that are directly in support of agriculture – I think that's just a restatement of the law. Therefore, it's not necessary.

The third one, I think that's also true. If it's an unregistered activity and it's not agricultural, then it's subject to the Zoning and Subdivision Regulations. So, I think that's already the case. So, let's try to simplify this. Let's look at the first part, which is, you know, the County is saying that they do like what we did last time, which was to say that farm wineries ought to be defined in the same way that state statute defines them. We were trying to protect farm wineries when we did that, and the County didn't like our approach, as it turns out. That's fine. But, I think we can deal with the first part of it and maybe leave out points b. and c.

Comm. Oppermann: Mr. Chairman, I have a possible wording of that, that simplifies it a lot. For the first one. That would be: If the use of the property has received registration for agritourism in Kansas, then the county will consider that the use and its related events and activities are exempt from zoning regulation by the county, except when the use endangers the public health, safety and welfare. Isn't that basically what they want us to say?
Chair Iliff: All zoning and subdivision regulations are intended to protect the health, safety and welfare of the people. That is why the police power is granted to counties and cities. Once the Supreme Court of the United States has said that zoning and subdivision regulations are lawful, and they are not an abuse of the power of the state. And I don’t think it defines anything if we leave it that loose.

Comm. Oppermann: I thought that’s kind of what we were after, to leave it vague.

Chair Iliff: Yeah. I mean, that --.

Comm. Hutchins: I think you are right, that’s what they’re looking for, but in my personal opinion, I’m not comfortable with that. It’s either exempt as it is today, or we put some more criteria around what that means and what they can regulate. So, what you are suggesting is that staff would have wholesale run over all the regulations of anything that’s considered agritourism, for the health and safety. That means they could regulate anything from, you know, a field day at the farm, to a rock concert. That includes everything.

Chair Iliff: Maybe we could make it simpler still, and say that if the use of the property has received registration for agritourism in Kansas, then the County will recognize that use, and its related events and activities are exempt from zoning regulations by the County. Period. Now, that doesn’t say that the County cannot enforce its building and fire codes. It doesn’t say that it cannot seek to enjoin activities that are outside of the scope and not within the protection of the agritourism act that the court left open. It just says we’re not going to regulate agritourism activities under the Zoning and Subdivision Regulations. Not under the building code, not under the fire code, or anything else. It just leaves that open. Just leave it there. Just put a period on it. Then, we leave the vague and undefined issues out so we don’t have to argue about those at some later date. And we already agree if it’s agricultural use, there’s no regulation to be had on it. And then, event centers that don’t get a special use permit and aren’t registered as agritourism are already regulated under our Zoning and Subdivision Regulations as they are.

Comm. Oppermann: The only question I would have about the way you read it, does that still give the County -? I mean, if it’s obvious that something is going on on this land that is dangerous to the people who are attending whatever it is that they’re doing, does this vagueness give the County the right to go on that land and say, “You can’t do this. You have to do this to rectify that.”

Chairman Iliff: I presume that’s what we have the Sheriff’s Department for, and the Fire Department for. If there’s something dangerous that’s going on, the Sheriff’s Department can come in and stop things that are dangerous to the people who are there.

Comm. Oppermann: That’s why I put the public health, safety and welfare on there, because it’s obvious if that’s being violated without some inspector going out there all the time, trying to find something. That’s not what I’m after. I was just thinking if it was obvious they’re doing something that could be dangerous. That’s the only reason I put that on there. I have no problem with the way you said it, either, if that still gives the County the right to address something that is obviously not right.

Chairman Iliff: I think we can also leave open the issue of the County directing Planning staff to draw up a regulation that would, in fact, be something objective that says, If you do this, if you make this much noise, or if you operate beyond, you know, certain hours of the night, or something like that — whatever. Technical regulations that we put on things. I think that’s still open. But, obviously, it’s going to have to be very, very limited, and very thoughtfully done. I’m just not sure that we’re in the position here today, since we can’t define it, and the County isn’t asking us to define it, I think they can read the minutes here and see we’re not trying to tell the staff that they
shouldn’t try to do something further with regard to drawing up objective regulations prohibiting obnoxious uses.

**Mr. Lind:** Mr. Chairman, there’s one other thing to keep in mind. This is going to be the temporary guide for the Planning Department, and it’s also going to be notice to the public. I mean, this will probably be attached to our website and those type of things, probably be published in the newspaper in some fashion, to give the public notice as to where we’re going. So, the wording in here is important. Before you take language out, keep in mind that some of the purpose of this is to give direction to the public as to what they can expect. And if you take out public safety and just go with zoning regulations, they may not have it as clear as you did, because you had the benefit of hearing the conversation tonight, and they don’t.

**Comm. Huggins:** Mr. Chairman, as I consider this, I keep going back to the idea that, you know, of police powers. Our Sheriff’s Department has the right to enter upon the site if a crime is committed. What I’ve been struggling with is considering these zoning violations in the same sense. We have the authority to enforce violations to our codes, dangerous situations. I’m not convinced I’m correct here, but I believe the best solution at this point would be to eliminate the statement about public safety codes and have that be a presumed condition. Just like the right of the Sheriff’s Department is a presumed condition. Everybody should presume the Sheriff can enter upon that site if laws are broken.

**Comm. Meier:** I would concur with Commissioner Iliff, and add a period right after the first sentence. We’re a recommending body. If the BOCC wants to add the rest of it, they can. And they probably will. So, I figure it’s our recommendation that we do that, and we can do that. My concern about the whole ordeal is, I agree that the spirit of the act was to encourage economic growth for the family farms and tourism for the state of Kansas. And I think we’re all concerned about investors jumping in and figuring out ways to use this act to make money and not support the local farmer. I think that’s what we’re all trying to figure out, is how we can support the local farmer and not open the flood gates, if you will, to a bunch of people who maybe are just coming in and trying to make a lot of money. There’s nothing wrong with making money. But, I think what we do as a board is we try to regulate how that happens, and we’re being told we can’t regulate that through zoning.

My concern about adding in “health, safety and welfare,” to me, that’s a given. We have to do that. That’s required, no matter what we do. My concern is the gray areas. So, what if we have a farmer who – And I only use the winery because, honestly, I think that should be straight-through, and we’re just literally talking about agritourism. It doesn’t matter if it’s a winery or a pumpkin patch. It’s all agritourism. But, when someone has a 40-acre farm that has a really cool 100-year-old barn on it, that doesn’t meet any code. But, they want to have an event in there, and they want to have a wedding. What does it mean if the electrical wires are not up to our standard? Do we shut them down because the wiring isn’t up to standard? That’s my concern, about new versus existing. I don’t have any answers. That’s just one concern of mine. Those are my thoughts.

**Comm. Deters:** I was going to agree with you, as well, Chairman, with putting the period after the County, and then, before we mention the two exceptions. I would be agreeable to that. And then, they also talked about deleting farm wineries as defined by the State. I think the reason we put that in was because farm wineries was defined by the County, and they were looking at it by their rules, and the State has its own set of rules. That’s why I added that in the original motion. So, that’s why that’s in there, that we realize that farm wineries are agritourism – and, yes, agritourism would be the appropriate word. I just wouldn’t want the County to say yes, you’re agritourism, but you’re a farm winery, and try and limit something.
Chairman Iliff: With regard to point #1, all they’re asking us to do is withdraw farm wineries as defined by the State statute and policy as a proposed amendment to Article 9. I think we’re all in agreement on that.

Comm. Deters: Yes.

Chairman Iliff: And then, with regard to point #2 – and Mr. Lind’s comments are well received – I think in this case, fewer words serve us better than more words. That there’s more ambiguity and/or redundancy in the rest of the statement than I had originally thought. I appreciate the discussion here tonight.

Comm. Hutchins: One thing I’ll do, for my own personal self, I did, like, a decision tree, trying to figure out how we could navigate through this. So, I want to go through what I put together and see if it makes sense. Jason, your mind is kind of where my mind is, so I’m trying to figure out how we differentiate these. Because as Mr. Iliff said, he doesn’t want the traditional boarding stable and what-not to be impacted, or the farm tours to be impacted, etc. So, let me go through what I put together and see if it makes sense to where we could try to more clearly define this.

First and foremost, as it already states, is: Did they obtain an agritourism certificate? If they have an agritourism certificate, okay, then, at this point in time, assume they’re non-regulated. Then, the next one: Does it have an event facility/structure of which the public will be within? If it does not, it’s exempt from any regulation. If it does, you go to the next decision. Will the number of participants be less than 400? And I use less than 400 because that’s the capacity of Milldale Farm. If it’s less than 400, it’s not regulated. Then, if it’s greater than 400, it is regulated. It’s regulated from full planning and zoning. If it’s less than 400, it goes to the next decision: Within that facility, is it in the spirit of agritourism, in that it is promoting the sale of products or services for educating the public in regard to Kansas and Johnson County farms? If it meets that criteria, then, from that standpoint, it falls under the non-regulated category. However, if it doesn’t fit in the category that addresses, you know, the investor buying 20 acres and calling it agritourism, it is subject to regulation. So, I put together this decision tree myself, and again, I’m trying to protect the family farm from the average Joe trying to go out and ride on the shirttails of the farmer.

The other thing I was trying to do when I put this together was to segregate out the horse stables, segregate out the 5-K runs, the 4-H meetings, and all that, by going through this decision tree. I don’t know if that’s helpful for you, but that’s an exercise I went through myself, trying to figure out how to look at this.

Chairman Iliff: I think that’s potentially useful. I’m not ready to draw lines or put numbers, or anything else at this point. I think it’s getting too late in the evening to be doing that. But that might be something to consider when this comes back before us, when actual regulations are being proposed by staff. The 400 may make sense for Milldale, but it may be a number that’s ten times what it ought to be for a smaller facility. I don’t think we can look at every possible contingency tonight. But I think that’s a useful decision tree analysis, and something we ought to take up in the future.

Comm. Mason: I am in full support of what you’re talking about, to put a period where you recommended the period. That keeps us square in our arena and not outside of our arena. We’re addressing the zoning regulations, and I think it’s a good, safe spot for us to be, to send something back to the commissioners for consideration.

Chairman Iliff: Consider this motion: That we have considered directive number 9-28-17 from the Board of County Commissioners and signed by Commissioner Eilert, and it is our recommendation to the Board of County Commissioners that they adopt Point 1, which would
delete farm wineries, as defined, from State statute and policy, as an amendment to Article 9. Two, up to--I want to make sure I'm saying this correctly.

**Mr. Lind:** Third sentence after the word "County," put a period?

**Chairman Iliff:** Yes. It's the first sentence under "First," where it says, "...if the use of the property has received registration for agritourism in Kansas, then the County will recognize that the use and its related events and activities are exempt from zoning regulation by the County." And put a period there, omitting the rest of the proposed language in the directive. Do I hear a second?

**Comm. Lund:** Yes, I would second that.

**Chairman Iliff:** All in favor of the motion -?

**Comm. Hutchins:** Before we vote on that, Mr. Chairman, can we go through the process that, if we approve this tonight, what is the process thereafter? I want to make sure we have an opportunity to hear from the public, along with what we're discussing, that we have an opportunity to hear public feedback.

**Chairman Iliff:** All this is, is a conversation between us and the Board of County Commissioners. We made it a statement last time. They have directed something back to us, requesting clarification or direction from us. We're giving them clarification and direction. At that point, that doesn't make a rule. There is nothing that's changing the Zoning and Subdivision Regulations. For that to happen, it would require a public hearing, and we're not there yet. This is just our response to the Board of County Commissioners' recommendation. And, frankly, it's in the spirit of what the Board of County Commissioners has asked us to do, but we simply feel that the language that the Board has proposed for us is a little too vague and covers too much ground.

**Comm. Hutchins:** All right, so, I guess the question I have is, is there going to be another opportunity for the public to weigh in and us to alter any language based on that feedback?

**Chairman Iliff:** Yes. The answer to that is yes. Any changing to the Zoning and Subdivision Regulations, which is what we propose, has to come through us, it has to have a public hearing before us.

**Comm. Hutchins:** All right. Very good.

**Mr. Lind:** And, Mr. Chairman, I think it goes without saying that there was no change to paragraph b) and c) and number 2. You were recommending that be adopted as is.

**Chairman Iliff:** No, actually, we're recommending that that be omitted.

**Mr. Lind:** The entire thing omitted after the word "County?"

**Chairman Iliff:** Yes.

**Comm. Hutchins:** Let me ask you this. What's the harm in leaving it there?

**Chairman Iliff:** I think it's redundant.

**Comm. Hutchins:** It may be redundant, but "for future" does not help clarify?

**Chairman Iliff:** Well, my motion is on the floor. It's been seconded. All those in favor?

*Motion passes unanimously.*

**Chairman Iliff:** That's our recommendation to the Board of County Commissioners.

**Ms. Miller:** Thank you. This directive will be considered by the Board of County Commissioners on November 16th, at 9:30 a.m., in this board room, 111 South Cherry Street.
F. FUTURE PLANNING COMMISSION DISCUSSION TOPICS

Ms. Miller: Planning staff is recommending an introductory conversation regarding future issues or concerns between staff and the Planning Commission. We’re not looking for a decision today. These discussions would provide direction for the new year. Tonight is intended to be a high-level conversation. Staff has not had time to look at all the topics in depth. There’s just too many of them to look at all at once. On the back of Planning staff’s memo is a list of possible issues. The first three listed are of particular interest to Planning staff. Number one is the update to the telecommunication tower regulations in response to the Kansas New Wireless Deployment Act, which was passed by the State of Kansas. It now allows wireless facilities and structures in the public right-of-way. So, that’s something that the Planning Commission and staff need to look at and come up with an approach to how we want to regulate within the confines of this bill. This bill did put restrictions on Planning staff. So, it will be somewhat complicated. The bill has some internal conflicts in it. Some areas have not been written very clearly.

Chairman Iliff: The Kansas Legislature wrote something that was unclear?

Ms. Miller: Yes. So, this is basically a new situation that we will need to review and adapt to. The second issue that we’re interested in looking at is updated sign regulations. That is in response to a Supreme Court case, which is Reed v. Town of Gilbert. There was a 6-3 majority decision that was authored by Justice Clarence Thomas, and the bare-bones of this decision is that sign regulations must regulate signs without any reference to their content. In other words, a real estate sign has to be addressed the same way that a political sign is. It has to be content-neutral, but you can still look at the physical characteristics such as size and location. It’s an important topic. Sign regulations are needed to help protect the rural character that we all love, and to prevent the visual clutter, while allowing businesses to draw attention to their location and advertise. The intent of staff would be to continue the goals of the existing sign regulations, but to put it in the context of the court’s requirements.

The third topic that you started looking at back in August was development patterns and trends. This is important. It is the essence of planning, and this is exactly why the Planning Commission is here. The Planning Commission is here to help the county develop in a very orderly, responsible and efficient way. The Comprehensive Plan has been recommended by the Planning Commission and adopted by the Board of County Commissioners. That is the policy document that guides growth in the county. The zoning regulations implement the policies of the Comprehensive Plan. So, Brian Pietig started talking with you in August, that there have been several developments that have gone through that have been counter to the Comprehensive Plan and the regulations.

One idea that Planning had to start this conversation would be to review what the Comprehensive Plan and the zoning regulations say about growth, and what orderly growth is. That would be a suggestion, is to start out looking at what we’re doing now, and what has been adopted now.

The fourth issue described on your list has been put forth by the Wastewater Department. They have suggested changes to be in keeping with recent policy changes. I recommend that Planning staff take Wastewater’s draft and put it into a form that the Planning Commission can look at and review. And then, when it’s ready, include it in a public hearing, whenever that comes up.

I won’t go over the other ones. I think they’re self-explanatory. I can answer any questions you have. Also, if there are other topics you would like to bring up that would be an addition to this list.

Chairman Iliff: Questions or suggestions?

Comm. Atwell: I have one. Because I live on probably the smallest tract, which is about five acres, for the Planning Commission to revisit the issue of livestock on small parcels. Because, if our
grandson wants to do 4-H project and he wants to have a bucket calf, I don’t want to have to come and get a conditional use permit. So, I would like for you guys to re-look at that and bring something back that would work. Thank you.

**Ms. Miller:** Is that in reference to 4-H projects in particular?

**Comm. Atwell:** No, I mean, I think it needs to be all over. What if I wanted to have a bucket calf, he takes it to 4-H, we fatten it up and take it to a butcher, I mean, I still have to do a conditional use permit.

**Chairman Iliff:** How small of a tract are you talking about?

**Comm. Atwell:** I’m on between 4.75 and 5 acres.

**Comm. Deters:** I don’t understand. If you’re zoned rural, why do you have to get a special use permit to do that? Because if she’s zoned Rural and she’s in agriculture, that’s within the zoning rules. So, that shouldn’t be a concern. Just like if I have 10 acres and if I want to put feed out for 30 cows, I shouldn’t have to get a special use permit. But, I mean, I know that 10 acres is considered automatically rural, and that it’s ag. But, if she’s still zoned Rural, does that limit her from being able to do that, to grow three or four cows?

**Ms. Miller:** The way our regulations are written now, if you have less than 10 acres, there are different requirements and regulations. So, the fact that Teri has less than 10 acres restricts her from having a cow without a conditional use permit.

**Comm. Atwell:** But, I can tell you, by far, if you come look at our area, it doesn’t really matter if you have below 10 acres, because there’s someone who has several hundred who is not a good land manager. And you look at my property, and it’s immaculate. So, just because you have smaller acreage doesn’t mean that you’re not looking after the land and being polite and graceful to your neighbors. Because my neighbor isn’t.

**Chairman Iliff:** Alright. We have another proposed suggestion.

**Ms. Miller:** I have that. This is just beginning the conversation. I had hoped to get more into it tonight, but it’s getting late. We will come back with more discussion. One question is, those first three issues, would you be okay with Planning looking into those, starting to think about those issues? The telecommunications towers, the update to the sign regulations, and starting to look at development patterns. Would that be time well spent, for Planning to start looking at those?

**Comm. Hutchins:** Yeah. We actually updated something very similar about two months ago that we sent to the county commissioners, about telecommunication towers. Is this different than that, Karen?

**Mr. Greeley:** There are minor changes, corrections, yes. This is a re-work of that whole section.

**Ms. Miller:** Also, it appears that there has been a technology change. Before, when we would think about telecommunication towers, it was the big 180-foot tower in the middle of a cornfield. And those regulations that you looked at last month will still stand for those kinds of things, generally. I’m thinking we need to come up with a new set for this new situation, where they’re acting more like a utility in the public right-of-way. Maybe they’re acting more like telephone poles, or something like that. It seems like the technology has gotten shorter and smaller, and less intrusive. So, thank you for that clarification.

### G. UPDATEs/oThER BuSINESS

**Chairman Iliff:** Consider rescheduling the Planning Commission workshop. Is that something we want to take up tonight?
Ms. Miller: I think just the fact that we need to do that. Jay and I both went to the Kansas Planning Association conference in Salina this Thursday and Friday, and they had some planning commissioner training put on by a gentleman named Jim Kaup. He’s a lawyer from Topeka, and he’s been on the planning commission for Shawnee County, Topeka, back when they had the joint planning commission for seven years. So, he has had a lot of experience as a planning commissioner, as a lawyer. I just slipped in for 30 minutes and it was for planning commissioners and not for planners. He was excellent. He covers all kinds of things, such as what planning staffs’ role is, what the planning commission’s role is, what the legal basis is behind planning powers, the comprehensives plan, zoning regulations — He does an excellent job. So, I got his card. We were planning to handle the training in house, but if it works out, we might be able to bring him to you.

Chairman Iliff: If the County can afford it, I think it would be a good idea.

Ms. Miller: Yeah. And he was excellent.

Chairman Iliff: All right. Any other items before we adjourn? [None.]

**ADJOURNMENT**

The next regularly scheduled Planning Commission meeting will be Tuesday, November 28, 2017, at 5:45 p.m.

Chris Iliff, Chairman

**ATTEST:**

[Signature]

Secretary to the Board