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
April 25, 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, April 25, 2017, and was called to order by Roxanne Morse, Vice Chairman, with the following members present and participating: to-wit: Dennis Bollin, Pete Oppermann, George Lund, Teri Atwell, Jim Neese and Roger Mason. Absent were Jim Neese, Chris Iliff, Marc Huggins and Jason Meier. Also present were Brian Pietig and Karen Miller, Johnson County Planning Department, and County Commissioner Shaffer.

Vice Chairman Morse: I’ll call the April 25th meeting of the Johnson County Planning Commission to order. We do not have a quorum at this time, but we are expecting another member. For those in the audience, make sure you sign in.

B. APPROVAL OF AGENDA

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

C. CONSIDER MINUTES OF PREVIOUS PLANNING COMMISSION MEETING

Vice Chairman Morse: Any additions or corrections to the March 28, 2017, minutes? [None.]

Motion by Mr. Bollin, seconded by Mr. Lund, to approve the minutes of the March 28, 2017, Planning Commission meeting.

Motion passed unanimously.

D. PUBLIC COMMENTS

Brian Pietig, Interim Planning Director, appeared before the Planning Commission and made the following comments:

Mr. Pietig: Good evening. This was a suggestion that was made – and we thought it was a good idea – to allow the public an opportunity to make comments to the Planning Commission. We modeled this after what the Board of County Commissioners do at the beginning of their meetings. They take public comments by opening the floor to address the Board – in this case, it would be the Planning Commission – to comment on items that are typically not on the agenda. You can save those items until they come up on the agenda. Out of respect for time, we typically limit that to five minutes. Typically, the board would not exchange dialog, but just accept those comments. So, we expect to have this on all of our agendas from this moment forward.

Comm. Morse: Thank you. So, the purpose of this is just to listen but not to make comments or enter into a dialog. If there is something you want to discuss, it’s brought up at this point. We can reserve that until “Other Business”.

So, there being this opportunity, is there anyone here this evening who would like to address the Commission? If so, please state your name and address.

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

**Ms. Berggren:** Since I asked that agri-tourism be on tonight’s agenda but it’s not on this evening, I wanted to go ahead and pass out some case law, because I know it will be coming up soon. I do want this entered into the record. It is the Corbet case against the Board of Shawnee County Commissioners.

[Karen Miller passes out packet from Ms. Berggren.]

**Ms. Berggren:** I also wanted to pass out a couple other cases that I want you to have. This case – which I would also like to enter into the record – is the State vs. Sherer. That was one that was heard here in Johnson County. And the final case I’d like you to have, and I’d like to also have entered into the record – and I want to make sure anyone who isn’t present tonight also gets these. This is Miami County vs. Sloboda, a court case that pertained to agri-tourism.

**Comm. Morse:** Are these some of the cases that were mentioned at the last meeting?

**Mr. Berggren:** Yes. I know some folks would prefer to have a paper copy of them. I think some of them were addressed by Josh Roe, the assistant secretary of agriculture. I think someone asked for it, and I think Tucker Stewart from KLA addressed some of these also. Thank you very much.

**Comm. Morse:** Is there anyone who wishes to speak? [None.]. Okay, we will move on to the next item of business.

E. ZONING BOARD CONSOLIDATION

**Mr. Pietig:** Last we talked, I said I would be speaking with the zoning boards to get their comments. I talked to two of them, and I will also be talking with South-Central next week, and I still need to talk with Southwest. After I have talked to all the zoning boards and gotten comments, we will put a summary of that together and come back to the Planning Commission, looking for a recommendation to take to our Board. I’m guessing that’s a month or so out.

**Comm. Morse:** You want to hold discussion until that time?

**Mr. Pietig:** Correct.

**Comm. Morse:** I made a request about the number of meetings and number of applications, how often they were meeting, each of the boards. Do you have a feel on how the two boards you talked with, how they feel?

**Mr. Pietig:** Very similar comments as to what was shared here. Folks feel that they know their areas very well and they feel that a consolidation would lose some of that. We have a history I’ll share with you when we further talk about this.

F. ZONING REGULATION CHANGES

**Ms. Miller:** Last month, we talked about Part 1 of some minor regulation clarifications. This month is Part 2. In the agenda, I noted that one option is to set a public hearing for May. I’ve gotten some comments back from Legal, so I don’t think that Planning is going to be ready for May. We’re going to shoot for June. Their comments are not horrible, so I think we will be ready for a public hearing in June.

In terms of today’s revisions, I can do it like last time, go through and point out the proposec revisions. Or, I can take questions. It’s up to the board.

**Comm. Morse:** Go ahead.
Ms. Miller: So, on page 2 is Article 2, Definitions. We deal with the idea of kitchens, which are an important part of the idea of a dwelling. A dwelling is a kitchen, sanitary facilities, and basically a place to sleep. We've tried to add a reasonable allowance for a wet bar. A lot of people who have garages with guest houses on top, they like to have a place for drinks and snacks because they are far away from their house in their guest houses. That's defined as a dwelling without a kitchen. People would like to have a place to have coffee and things like that for their guests.

At the bottom of page 2, for purposes of determining if a kitchen is located within a guest house or other accessory structures, a wet bar shall not be considered a kitchen when intended for preparing and serving drinks and snacks, but not entire meals. Then, I go on to explain the typical things that are in a wet bar. Basically, I say you can't have a stove and an oven. You can have a microwave. So, that's our way of allowing people to have some means to entertain people in their accessory buildings without actually calling it a kitchen. Any questions?

Comm. Bollin: How did you come up with 145 square inches?

Ms. Miller: It looks a little random, but it's not. I went through catalogs on line and looked at typical wet bar sink dimensions. It was typically 11 by 13, or something like that. I multiplied it, and I rounded up.


Ms. Miller: Pretty much. The wet bar sink is supposed to be a smaller sink, not a kitchen sink.

Comm. Morse: This does not include outdoor kitchens, does it?

Ms. Miller: No. Within the guest house or other accessory structure.

Comm. Morse: You mentioned something about sleeping quarters. An outside place wouldn't have that.

Ms. Miller: Correct. Article 6 is on page 3. We had a request from Legal to add the idea of development plans and things to our list of items that could receive a violation. It says that no person shall violate any of the provisions of these regulations or fail to comply with any of the requirements, including but not limited to conditions or terms established in connection with grants of variances, conditional use permits — the list goes on, and we add development plans, plats, and rezonings to planned districts. It wasn't a big problem because we said including but not limited to, but Legal just wanted to nail it down. Any questions about that? [None.]

Article 9 is on page 4. When you read our requirements for a conditional use permit for a boarding and training stable, it's pretty obvious that boarding and training stables are allowed if you have greater than 10 acres. But we thought we would go ahead and put in the rural district and nail that down, too. Codify that boarding and training stables on tracts of land 10 acres or greater are an allowed use in the rural district. Any questions?

Comm. Atwell: I have a couple, and maybe a comment. On the tract of land 10 acres or greater, is that 10 acres at the discretion of the Planning Commission? So, if they have 9.5 or 9.75, you can say, well, it's close enough to the 10, we're going to go ahead and not make them get a CUP?

Ms. Miller: We have the concept of nominal acreage that we apply to the rural district. This is a good question. I need to go back to my office and sit and think about how that applies, but I'll tell you about the nominal 10. I know for sure that it applies when you're calculating area for accessory buildings. There's a definition for it that says you can basically count the area out to the section line or center line of the road. Do you have any comments on whether or not you're in favor of using nominal acres for this?

Comm. Atwell: Personally, for me, if you're going to say 10 acres or greater, you should not use the word “nominal.” It should be 10 acres or greater.
Ms. Miller: You mean contained within the property lines?

Comm. Atwell: Yes. Because out to the easement and the center line is not useable property.

Ms. Miller: I'd have to go back and think about it, and I'll ask the other planners how we typically do that now. If we do a nominal. I'm not sure. I'll have to get back to you.

Comm. Atwell: That's fine. And then, this is my thought. Just because years ago when we had horses, we were told that if you’re not breeding and birthing and selling, horses are for pleasure, and therefore, not considered agriculture. And this was through Paul Welcome’s office. So, my question would be, if you're going to continue to deregulate boarding and training stables and it's not considered agriculture, but yet, I know from other cases that I've been watching that basically you're regulating agriculture. So, my problem with that is that agriculture is protected by state statute, and we're trying to regulate it. But yet, we're deregulating something that should be regulated. If they're not considered agriculture. I just want to be careful.

Ms. Miller: So, something you're thinking about is that it's protected by state statute. And we're deregulating?

Comm. Atwell: Right. To me, unless Paul Welcome's office has changed it, like with us, our horses, our pasture, was not agriculture. So, I want to make sure we're not regulating agriculture, and then, deregulating something that is not.

Ms. Miller: Got it. Thank you. Any other comments about using “nominal” versus using the calculated acre within the property line? [None.] Okay. Thank you.

Page 5 is Article 18, accessory structures and uses and such. Section 6 talks about solar collectors, for one thing. This comes from experience I have had with building permits for some ground-mounted solar arrays. They come in with a height of exactly 8 feet. I kind of had to sweat it and look at it hard. I went to a conference and there was a guy who did solar stuff. I talked with him, and he said they could work with 8 feet, but if you had 10 feet, a lot of times they could get a more optimal angle to the solar arrays. So, I've suggested adding that two extra feet to give a little bit of leeway for working with that. Any comments? [None.]

Next page. We're still in the article dealing with accessory structures. The next thing we will be dealing with are accessory dwellings. When you are allowed to be administratively approved from accessory dwelling units you have to meet a list of performance standards. Those start with letter a. at the bottom of page 6. The first performance standard you have to meet has to do with occupancy. We're addressing the waiver, which is meant just for emergency situations, where you've met all the requirements for ownership, you come in, you've established your ADU per that idea that you're owner-occupied, and then, there's a life change, something happens, there's an emergency. So, we want to make it clear that coming into the situation, you do have to live on the property. The owner has to live on the property. We just wanted to clarify that. Any questions?

Comm. Morse: The purpose of having the property owner there is to keep up the maintenance, etc. What if the property owner owns two residences? Let's say, a summer home and a renter home. So, they're there six months, and maybe they have a relative, or they hire someone to come and live in the house to maintain it while they're gone. Is that a problem?

Ms. Miller: We worked with Legal on the idea of ownership. I might be able to partly answer your question. We have a definition at the top of page 7, the definition of "domicile," which is 4.b. it means the place where a person resides and has their true fixed permanent home, and whenever they are absent, they have the intention of returning, and they have no present intent of moving. So, we would have to work with them and their situation and assess if it is indeed their permanent home, and they always intend to return there. Now, the idea of a summer home, when you spend exactly half the time in Florida and exactly half the time in Kansas, that's a little bit sticky. I would have to have a conversation with them.
Comm. Morse: But you usually don't stay six months. I just wondered if it came up. As far as the waiver, is that done administratively?

Ms. Miller: Yes.

Comm. Morse: Is there a fee for that?

Ms. Miller: No. Unless you guys request it. You can have whatever changes you would like. But right now, no. Any other comments? [None.]

The second issue with accessory dwellings is at the bottom of page 7. The next section has to do with accessory dwelling unit permits. That's when they don't meet all of the performance standards to be administratively approved, so it rises to the level of needing a public hearing. On D-3 at the bottom of the page, there's a statement that the ADU shall operate in accordance with appropriate performance standards contained in this Article 11. And Legal was confused, questioning which ones those are. So, he had me spell out which ones I really meant. So, the ones I really meant were numbers 1 and 2. D-1 says that you can have an unlimited term, and D-2 says that you have to meet the ownership requirements. That, yes, if you're approved at the public hearing, you also have to live there. That's where the oversight is that the owner would give.

The other standard that I reference is on page 8. That's E-2 and E-3. That's basically wording that I took out of the conditional use permit article, basically reviewing it for things like traffic, fire hazards, etc. This is directly from the conditional use permit findings. Any questions? [None.]

The next article is Article 23. There are two issues here. First is at the top of page 10, section 5. We have accepted wholesale greenhouses in addition to wholesale nurseries. We've had several applications where we've done that. This was a chance to codify that. So, we're recommending that a conditional use permit for a landscape contractor shop be allowed in those listed districts when associated with a wholesale nursery and wholesale greenhouse in the rural district. I will also add that this is just a landscape contractor's yard. If they don't want to have a wholesale nursery or greenhouse, they can come in for a conditional use permit for just a plain contractor's yard. So, there is a way that you can come in, be a contractor, but not have the nursery or greenhouse. Any questions?

Mr. Lund: Yes. Is this for a period of time? One year? What are you talking about?

Ms. Miller: This is under our general listing of conditional use permits, and it's stated that our standard general term is 10 years. Often for a first-time CUP, they'll do something shorter, like five years. But, it's not codified that you have to do that. Any other questions? [None.]

The next conditional use permit issue is on page 11. This is part of the standards for contractor shops and contractor storage yards. On page 10, Section 6-11, it gives some performance standards for contractor shops and storage yards in general. That is in any district. It gives a list of things that you have to think about, like road maintenance agreements, making sure you meet fire code, etc.

And then, on page 11, item B in the middle of the page, we have some additional standards for these shops and storage yards that are in the rural district. You'll notice two highlighted things – 2-A and 2-B – that contradict each other. The first one says, "...to the greatest extent practicable..." you don't do new buildings. Letter C says, that any buildings shall be buildings that existed before the adoption of the regulations. A says you can build it under certain circumstances. So, with one, you can build some buildings, and the other says you can't. We suggest removing both of them and let the zoning boards look at the context and decide what seems appropriate. Any questions? [None.]
That's it. Any general questions or observations? Again, I'll be meeting with Legal to refine these, and hopefully I'll come back in with a refined version of Parts 1 and 2. I'm hoping that a public hearing can then be set in June. Thank you.

Comm. Morse: Thank you, Karen. Before we go to the next agenda item, for those that came in after the meeting started, make sure that you signed in. If you have a copy of the agenda, you will notice that there is a new item concerning public comments. This is something that has been added and will be on the agenda every month. It gives the public the opportunity to bring any concerns to us at that time. However, at that time, we will not comment or discuss and get into a dialog over it. It will just be for you to bring it to our attention, and if we do desire to comment, we will do that under Other Business. Since this is the first time and we do have some time here, if anyone that came in late would like to address the Commission, you may do so at this time. Is there anyone here who would like to do that?

Kirk Berggren 11917 Gillette, Overland Park, appeared before the zoning board and made the following comment:

Mr. Berggren: Are we going to be able to comment on what’s been said later, or do we have to do that as part of the public comments?

Comm. Morse: If the commissioners desire to, we will address it under Other Business. For example, Julie gave us some court cases, and we will have a time to review those.

Mr. Berggren: So, you'll ask us to come up and comment on what they've addressed, if that’s what we wanted to address? Even before they address it? I can't comment on what they're proposing or doing before they propose it.

Comm. Morse: If it’s something that’s on the agenda, that’s not covered under the public comment piece.

Mr. Berggren: Okay, so we'll able to speak a little bit later. That was my question.

G.   UPDATES/OTHER BUSINESS

Vice Chairman Morse: Does anyone wish to bring up anything at this time? Nothing was mentioned at the time we did the agenda.

Comm. Mason: I have a question for staff on the zoning regulation changes. Can we go ahead and set the public hearing?

Ms. Miller: I have received some comments on the first part from Legal, and I need a chance to go through them. I want to let the Planning Commission see the refined version so you can see what we will be presenting at the public hearing.

Vice Chairman Morse: It is on our agenda, but Karen wished to let it go for another month. If there is no other business, we are adjourned.

Mr. Berggren: I guess I misunderstood. I would like to comment.

Vice Chairman Morse: I'm sorry, I thought if you were going to say something, you were going to say it under Other Business. I'm sorry. We're not adjourned.

Mr. Berggren: Thank you. With our definitions and the stuff that we've added in rural districts, when we're clarifying and codifying stuff, could I ask that you also add that a farm winery does not require a conditional use permit, just like what is being proposed for the horses here, that it is governed by state statute and policy. So, making sure that stuff that is already allowed is codified. I would like to have that added in also.
Vice Chairman Morse: Added into the record, you mean?

Mr. Berggren: I would like to add it in as, like, comment number 9, I think is horses. I'd like it as number 10.

Vice Chairman Morse: Yes, we can put that in as No. 10.

Ms. Miller: So, on page 4 of the regulation changes, under Article 9, Rural District, Kirk is requesting that section 2-B has a number 10 added that states that farm winery is an allowed use.

Mr. Berggren: Yeah, that it's allowed use and does not require a conditional use permit.

Comm. Atwell: That kind of goes along with my comment about making sure that we don't regulate something that's covered under state statute as agriculture, like Mr. and Mrs. Geiringer’s U-pick pumpkin patch. But then, deregulate something that isn't agriculture.

Mr. Berggren: I missed Julie’s earlier comments. The state has found that unless you’re raising horses for meat, unless you’re raising horses to work the farm, either as herding other animals or raising them to plow a field, they are a pleasure animal and not agriculture. A lot of people assume a horse is a farm animal and it's not. If you’re raising horses for people to do pleasure riding and give riding lessons, there’s nothing agriculture about that. Julie probably brought up Navarro vs. Seward County, where a guy was basically raising thoroughbreds and training them, and tried to say it was agriculture. The state said that horses can be agriculture, but this is not. So, they did not get an agricultural exemption for raising horses that were not used as a meat or for plowing fields. So, if we’re going to allow that as a use without a conditional use permit, then I would like to codify that a farm winery, the state and county recognizes that those are allowed without a conditional use permit, and put that in those same articles so that I could get that clarified and codified.

Vice Chairman Morse: Karen, will that go under this, or will that go back to agritourism?

Ms. Miller: I was trying to decide. I’ll check with our Legal Department and see if they can give us some guidance on that.

Vice Chairman Morse: Okay. We appreciate you bringing that up. Thank you.

Frank Geiringer, 39675 West 183rd Street, appeared before the Planning Commission and made the following comments:

Mr. Geiringer: I was also a bit baffled when I received this agenda. We have horses being disregarded under the conditional use permit. In the last 8 months, I’ve been dealing with Planning staff over my U-pick fruit operation. The same things that the staff tells me I need conditional use permit for are some of the same things that are involved with a horse training stable. One, you’ve got people paying to use your property and your building, which they tell me is commercial, which means I need a conditional use permit. I’ve also been told the same thing about – and this is an assumption on my part – I assume most of these barns, training facilities, all the horse facilities you see, are probably AG use structures. They were probably not built to commercial codes. That would be my assumption.

I’ve also been told that my barn building that I want to sell my farm product out of is considered commercial, and I need a conditional use permit to sell my own products that I raised on my farm, out of my barn. That makes it commercial. That means that my barn has to meet commercial standards for the public. That’s what Planning staff has told me. I know darn good and well that these horse barns don’t meet those standards. So, I’m really blindsided by the fact that we see this pop up as suddenly carte blanche. And I’m not picking on horses; I have nothing against that. If they want to declassify that, I’m not here for that. I’m just saying it just seems like we’re picking and choosing what we want to try to enforce. That’s all I had to say.
Julie Berggren re-appeared before the Planning Commission and made additional comments:

**Ms. Berggren:** I have more handouts. This was presented by Polsinelli. The first exhibit specifically talks about wineries. This is from the Secretary of Agriculture. I would like this entered into the record. I'm going to read this one because I want to make sure that it does get in:

"Thank you for your request for information regarding the Kansas Department of Agriculture's position on farm wineries as related to an agricultural activity. According to K.S.A. 2-3203a, agricultural activity means the growing and raising of horticultural and agricultural crops, hay, poultry, livestock, dairy products, for commercial purposes, and includes activities related to the handling, storage and transportation of agricultural commodities. Viticulture, the production of grapes, and enology, the production of wine, constitutes agricultural activity as a production of horticultural crops for commercial purposes. Farm wineries obviously fall within this activity." The Kansas Department of Agriculture also considers activities which directly market products produced by farm wineries to be critical to the business operation, and therefore, directly related as a natural extension of operating a farm winery.

In a letter dated December 10, 2014, Secretary of Wildlife, Parks and Tourism, Robin Jennison, showed the definition of agritourism, K.S.A.32-1430 through K.S.A. 32-1438, specifically, agricultural activity means an activity which allows members of the general public for recreational entertainment or educational purposes to view or enjoy rural activities, including but not limited to farming activities, ranching activities, historical, cultural or natural activities. An activity may be an agritourism activity whether or not the participant pays to participate in the activity. An activity is not an agritourism activity if the participant is paid to participate in the activity.

So, there are all kinds of attorney general opinions and what-not that I would like you to have. The attorney general opinion is 9292. There is an article from the chief legal counsel, Robert Large, that talked about the very thing that Mr. Geiringer talked about, that buildings are agricultural. And, of course, again, we go back to Sue Stringer, who talks about the vineyards, wineries and what-not that are allowed as agriculture. So, I want to enter these also so that you will be able to see where the state stands on the issue. Thank you.

**Comm. Atwell:** I've seen this pop up over and over again. To clarify, there is a difference between a winery and a farm winery. Can someone explain that to me?

**Mr. Berggren:** A farm winery is regulated under 41-308(a), which basically is considered an agricultural activity, and it's an extension of your product – growing the grapes, all the way through making wine. A winery, someone who just manufacturers wine, does not have the requirements that we have. We have to have 30 percent Kansas product. We have to do everything from crushing the grapes through bottling and labeling, everything has to take place on the premises. With a manufacturer, you can be anywhere you want to be. You have to follow building codes where they allow that commercial entity to have a winery in residential. You cannot have a winery in the rural district. You can have a farm winery, but not just a winery, because you're just manufacturing wine versus growing the product, using Kansas products to make wine.

**Vice Chairman Morse:** Any further comments from the board? [None.] Karen, do you have any comments on these?

**Ms. Miller:** No, thank you.

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

Kayla Berggren: I have another handout. This is from the Kansas Wildlife, Parks and Tourism policy statement. Basically, what we're giving you right now is all the legal things. These are the tools to know what is right by the law.
Including any buildings or structures used for such agritourism activity qualify use of land and buildings for agricultural purpose under K.S.A 12-758, 19-2921, and 19-2950. Therefore, such agritourism activities and locations should remain exempt from county planning and zoning regulations, as well as city planning and zoning regulations, adopted pursuant to K.S.A 12-715b.

I'll let you read the rest for yourself, but I think it's pretty clear. Thank you.

Vice Chairman Morse: Thank you. I'd like to make a comment at this point. In the public comment section, we were lenient this evening. But, in the future, public comments will be at the beginning of the meeting, so you will have to be here on time. And you will be limited to five minutes. Discussion will not take place at that time. Also, the items that you speak on at that time must be non-agenda items. Are there any further comments? [None.] Okay. I think we've all had our say. So, the meeting is adjourned.

ADJOURNMENT

The next regularly scheduled Planning Commission meeting will be Tuesday, May 23, 2017, at 5:45 p.m.

Roxanne Morse, Vice Chairman

ATTEST:

Secretary to the Board