

MINUTES OF THE REGULAR PLANNING COMMISSION MEETING

**PLANNING COMMISSION/
BOARD OF ZONING APPEALS**

July 15, 2008

Commissioners Present: Cowman, McLean, Gage, Smith, Bonner, Wrischnik, King
Commissioners Absent: None

Others Present: Justin Givens, Amy Barenklau, Brian McCauley, Megan McFarland, Barry Queen, Carol Gatlin, Brad Baltzell, Elizabeth Reeder, and others

Item 1: Consider minutes from the June 17, 2008, and June 26, 2008 meeting

Chair Cowman called the meeting to order with the first order of business the consideration of the minutes from the June 17, 2008, and the special meeting on June 26, 2008.

Commissioners McLean and Cowman made a motion to approve the June 17th minutes as submitted. All Commissioners voted in favor.

Commissioners Cowman and McLean made a motion to approve the June 26th minutes as submitted. All Commissioners voted in favor.

Item 2: Public Hearing – Consider a Zoning Map Amendment for property located north of 327th Road, west of Hospital Drive, south of Stewart Lane and east of US-169.

Commissioners Gage and McLean made a motion to open the public hearing with all Commissioners voting in favor.

Planner Givens stated presented the staff brief. At the May 2008 meeting, the Planning Commission did consider an application for rezoning from Gerald Barenklau for property located at 24870 W. 327th. At that time, a recommendation was made to the City Council to approve the request for rezoning to Suburban. During the discussion with the City Council, a concern was raised that other property owners might want to rezone their property in the area as well. In addition, the council was concerned that the change from Business Park to Suburban could negatively influence the future commercial development of the property. At the conclusion of the Council's discussion, a decision to remand the rezoning back to the Planning Commission for further consideration was made.

At the June 2008 meeting, the Planning Commission did hear from staff and discussed the issue of rezoning the original property as well as other properties in the area from Business Park to Suburban as well as Thoroughfare Access. After a discussion on the density and use

requirements that would be allowed in the different districts, the Commission recommend to staff that a new zoning map amendment be presented for all of the subject properties and that the proposed amendment be from Business Park to Thoroughfare Access.

Analysis:

Staff is still concerned that the change to Thoroughfare Access while it would allow individuals to build houses on the property and allow for future commercial development the change could have a negative impact on the area. Thoroughfare Access allows for a much higher density of homes than would be undesirable in the area. Developments with lots as small as 8500 sq. ft. could be built in the area. The original designation of Business Park for the area was to reserve land for future job centers with heavier uses and intensities. Especially with the proximity to the city's sewer treatment facility, such high-density residential uses would not be advisable.

At this time, staff would advise the Planning Commission to consider a map amendment from Business Park to Estate. During their March 2008 meetings, the Planning Commission and the City Council did approve a text amendment that would allow for Light Industry, Heavy Industry, Warehousing, Utilities, Recycling or Storage, Extraction and Disposal to be allowed in the Estate District through the issuance of Conditional Use Permits.

The previous text amendment creates a perfect situation and classification for the area. One, it allows for very low density residential development – minimum of 10 acres and preserves the current rural/agriculture use and continued use in the area. Under the current zoning, property owners in the area are not allowed farmsteads or single-family houses. In the Estate District, each of these is an allowed use.

Secondly, with the Conditional Use Permit process, those Industrial Uses that would be best suited and encourage for the area in the future and more likely to develop in the area would be allowed with approval from the Planning Commission and City Council, preserving the commercial viability of the area as a job center.

Issue:

Does the Planning Commission wish to recommend the approval of the Zoning Map Amendment from Business Park to Thoroughfare Access or Estate zoning?

Actions:

Approve a recommendation to the City Council for a Zoning Map Amendment to Estate Zoning

Approve a recommendation to the City Council for a Zoning Map Amendment to Thoroughfare Access

Not Approve a Zoning Map Amendment

Table the matter for further study

Recommendation:

After discussion among staff and with the input of the City Manager and for the reasons stated above it would be staffs recommendation to approve a recommendation to the City Council for a Zoning Map Amendment from Business Park to Estate for the subject properties.

Brad Baltzell, one of the property owners, spoke in favor of the rezoning. He indicated he felt that Estate zoning was a better match for the existing property owners than Thoroughfare Access. He also felt the review process for certain uses was a better fit for the existing property owners.

Elizabeth Sweeney-Reeder who resides at 311th Street and Hedge Lane, wanted to voice their family's support for the rezoning. They are in a similar situation and have a desire to build another residence on their land, but are unable to do so due to the Business Park zoning.

Barry Queen, property owner in affected area, stated he was in support of the proposed rezoning. He stated he felt that the land was more feasible for residential uses than for commercial use.

There were no more comments from those in attendance.

Commissioners Gage and Smith made a motion to close the public hearing with all Commissioners voting in favor.

Commissioners Gage and Bonner made a motion to recommend rezoning the proposed area to Estate zoning. All Commissioners voted in favor.

Item 3: Public Hearing – Consider an application for a variance from the minimum front setback for a residential structure at 505 East Ryan Street.

Commissioners Cowman and Gage made a motion to open the public hearing, with all Commissioners voting in favor.

Planner Givens presented the staff brief. During a routine title inspection survey, it was determined that the structure located at 505 E. Ryan and owned by Cindy Dial was approximately one foot over the minimum 20' building line. To obtain a clean title for the property, Team Bank NA and Ms. Dial are asking the Board of Zoning Appeals to approve a variance to the minimum setback.

Analysis:

To approve a variance, the Board of Zoning Appeals shall apply the following standards:

- A. Under no conditions shall a variance permit a use that is not otherwise permitted in the district. The applicant shall be instructed to submit a zoning change request (Section 21.210) or a beneficial use appeal (Division 21.400), which are the only ways such a change of use may occur.

- B. Special circumstances or conditions exist peculiar to the land or building for which the variance is sought that do not apply generally to lots, land, or buildings in the neighborhood.
- C. The special circumstances and conditions have not resulted from any act of the applicant subsequent to this Ordinance's adoption.
- D. The special circumstances and conditions are such that strict application of this Ordinance's provisions would deprive the applicant of the reasonable use of the land or building.
- E. Granting the variance is necessary to relieve the applicant of an unnecessary hardship imposed by the regulations.
- F. The variance granted is the minimum necessary to relieve the unnecessary hardship and permit a reasonable use of the land.
- G. Granting the variance will not be injurious to the neighborhood surrounding the land where the variance is proposed, and is otherwise not detrimental to the public welfare.
- H. Granting the variance is in harmony with this Ordinance's purposes and intent.
- I. Granting the variance is not inconsistent with the Comprehensive Plan.
- J. Variances on natural resources shall not be permitted; standards for mitigation are contained in Division 05.200. If relief is requested, the applicant shall be required to submit an application for beneficial use determination (Division 21.400).
- K. No variance shall be granted for development in the floodplain or floodway. In the event a landowner in Paola or Paola's Community Growth Area is of the opinion beneficial use of the landowner's property has been denied by applying this Ordinance, a remedy can be sought by following the procedures listed in DIVISION 21.400 BENEFICIAL USE APPEAL AND DETERMINATION.

Issue:

Does the Board of Zoning Appeals wish to approve the variance?

Actions:

Approve / Not Approve the Variance

Recommendation:

Either through a construction staking or builders error, the structure was located one foot beyond the minimum front setback. The applicant was not at fault and did nothing to create this error. In fact, if a survey had not been requested by the lending agency this mistake may have never been discovered. Staff feels that the only alternative to granting this variance would be to have the structure razed and rebuilt in the correct location. Additionally, staff feels that the "golden criteria" have been met as the need for the variance is at no fault of the applicant, it will not cause any injury or harm to the surrounding property owners, it is an allowed use, it is at a minimum necessary to relieve the hardship, and the hardship or alternative as stated previously would impractical.

It is for these reasons that staff would recommend the approval of the variance to the minimum front setback for the structure located at 505 E. Ryan.

There were no comments from those in attendance.

Commissioners Cowman and Gage made a motion to close the public hearing, with all Commissioners voting in favor.

Commissioners Cowman and Gage made a motion to grant the variance for 505 East Ryan Street. Commissioner King abstained from voting. All other Commissioners voted in favor.

Item 4: Public Hearing – Consider a text amendment to the Land Development Ordinance for the purpose of new floodplain regulations.

Commissioners Cowman and Gage made a motion to open the public hearing, with all Commissioners voting in favor.

Planner Givens presented the staff brief. On August 19, 2008, an updated Flood Insurance Study (FIS) and Flood Information Rate Map (FIRM) will become effective for the City of Paola. Prior to this, FEMA and the State NFIP office require new floodplain regulations to be incorporated into a city's either municipal or zoning code. As these regulations are based in the LDO, we are required to approve a text amendment adopting these new regulations.

Within the LDO, floodplain regulations are found in numerous sections. The City of Paola has taken a more restrictive approach to floodplain regulations in many cases requiring higher standards than that required by the NFIP. In these new regulations, the higher standards are still in place.

Analysis:

The Chief Engineer of the Kansas Division of Water Resources is required to review and approve of our regulations prior to the city adopting them. Staff has worked closely with state representatives during this review and it was found that most every section of our LDO as it relates to floodplain regulations would need to be amended in some way. Many of these were slight additions and the state even commends the City on their increased standards and regulations.

After discussing this matter with the City Manager and City Clerk it was determined that, the best way in accomplishing the adoption of the new floodplain regulations was to create a separate section within the LDO that could be adopted by reference. The alternative to this would have been to publish the entire document and each section that changed.

Issue:

Does the Planning Commission wish to approve the text amendment?

Actions:

Approve / Not Approve the text amendment

Recommendation:

Without the text amendment, the City of Paola would be in violation of the NFIP and those citizens with flood insurance would be without coverage until that time when an amendment is passed. Based on the approval of the State, it would be staffs recommendation to approve this text amendment.

There were no comments from those in attendance.

Commissioners Cowman and McLean made a motion to close the public hearing, with all Commissioners voting in favor.

Commissioners Bonner and Smith made a motion to recommend approval of the text amendment. All Commissioners voted in favor.

Item 6: Items from Staff

Planner Givens stated that staff was in the process of issuing two new home permits in the Hidden Meadows subdivision. Staff's understanding is that eight lots are already sold.

Item 7: Items from Commissioners

Commissioner Cowman inquired about updated copies of the LDO for all Commissioners. Staff indicated they would work on getting those to Commissioners in the near future.

Commissioner Gage asked if the City had copyrights to the city logos, colors, etc. as he had seen some articles of cities dealing with this issue.

Item 8: Adjourn

Commissioners Cowman and McLean made a motion to adjourn, with all Commissioners voting in favor.