

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

January 26, 2016

5:50 p.m.

I. CALL TO ORDER

A meeting of the Planning Commission of Johnson County, Kansas, was convened at 5:50 p.m. on Tuesday, January 26, 2016, and was called to order by Chris Iliff, Chairman, with the following members present and participating; to-wit: Katherine Hoffman, Glenn Bonar, Dennis Bollin, Mark Huggins, Jason Meier, George Lund, Pete Opperman, Roxanne Morse and Roger Mason. Also present were Dean Palos and Karen Miller, Johnson County Planning Department. Leslie Davis served as Secretary to the Planning Commission.

II. APPROVAL OF AGENDA

Chairman Iliff: Is there anyone who wants to make any changes to the agenda? [*None.*] Hearing none, it is approved as presented.

III. CONSIDER MINUTES OF PREVIOUS PLANNING COMMISSION MEETING

Chairman Iliff: Is there anyone who wishes to make any amendments or changes to the minutes of the November 24, 2015, meeting?

Motion by Mr. Mason, seconded by Ms. Morse, to approve the minutes of the November 24, 2015, meeting.

IV. AGRITOURISM REGULATIONS

Mr. Palos: We've been busy, and you'll see the fruits of our labor here after we get to talking about agritourism. It's what we spent most of our time on. We wanted to summarize our understanding of the last discussion we had regarding agritourism. We wanted to make sure we were all on the same page.

We had explained to you that staff felt that we think our current regulations – the conditional use permit requirements, as well as the RUR – rural regulations, are sufficient now to regulate agritourist-type activities, and we didn't think we needed to make any special changes to our current regulations. But, we felt that there was probably a need to address some of the things related to agritourism, but think we could do that through some minor changes to the regulations regarding what's allowed by right in terms of sales of produce or farm products on the site. Clarifying that in our regulations and offering up suggestions for other kinds of activities might specifically be made clear as far as are they or are they not allowed to get a conditional use permit.

The one that is the conspicuous is the question about weddings. But, we don't feel like that's necessarily an agritourist-type activity. It's an activity that ought to be discussed as to whether or not it will be allowed in the unincorporated separately from farming. I think that should be a separate discussion, and we feel it will be more clarifying. We'll bring those discussions back to you at a later date. For now we wanted to make sure that you agree with us that we're basically saying our current regulations are sufficient, subject to some minor changes in the future that we will bring before you to regulate agritourist-type activities. We're looking for direction and whether or not you are in agreement.

Also, everybody got a copy of "The Progressive Farmer." magazine Glenn distributed it. It reminded me of the tour that we took.

[Side conversation between Iliff and Bonar.]

Mr. Bonar: I have one thing I would like for you to look at or consider as a point where we can differentiate between true agricultural tourism that we would not be regulating, and an activity that can be used under a conditional use permit that are actually not agritourism. That is, if a farmer files a 1040 form for their taxes, they are agriculture. Less than that, I believe they are considered a hobby farmer and cannot deduct any expenses towards their salaries. That means 40 percent of their income has to come from the farm. That takes care of those with good jobs who – I know one of my neighbors, they were truly baling hay and feeding some cows, but both of them worked outside, and they got classified as hobby farmers, and therefore could not write off any expenses.

Ms. Miller: Rick Miller and I had a brief conversation about just that, as one good way to differentiate between agriculture activities and other things. So, I think Rick would be a good person to talk to further about that.

Mr. Bonar: Yes. No doubt he's familiar with it. It's really pretty simple. I mean, if you don't file a 1040-F form, you're not a farmer, and I don't think it should be agritourism from our jurisdiction. If it's less than that, if they want to give a conditional use permit for whatever purposes, all right. I think you're going to set a precedent of some kind here in Johnson County on this agritourism that's going to end up harming farmers clear across the country that are truly into agritourism. Just like this article here on the Geiringer farm. That's agritourism. I've had people from New Zealand come to our farm, and I've had several church groups or what-have-you who want to come out and ride the combine, etc. But, because of liability, I won't do it until I buy a bigger policy. But, if they don't file a 1040-F form, they are not agriculture.

Ms. Miller: The one tricky part of that is if you get somebody new who just bought some land, who is starting an agriculture operation and wants to do some of this, they have yet to file their 1040-F. That would be the one tricky part of that.

Chairman Iliff: What about using the filing of a 1040-F as evidence? It's not a you-can-do-anything-you-want, but it is evidence that what they are doing is truly running a farm with an agritourism aspect to it.

Mr. Bonar: I think my point there is, Mr. Chairman, it does not need to be regulated from the County or anyplace else. It's truly agriculture. If it's got a state regulation against it, that's one thing, but we don't need to think up things to stop that operation.

Mr. Palos: We'll follow up on that.

Mr. Bonar: Rick Miller can certainly help you, I'm sure. He's very good.

Mr. Palos: I've not personally heard of that before, but that - .

Mr. Bonar: This isn't anything new.

Mr. Bollin: It's not anything new at all. If you have farming interest and want to use your expenses, etc., you have to have a 1040-F. Either that or be in the process of doing that. Like, if it's your first year of farming, the next year you file, you have to have that 1040-F.

Mr. Bonar: It's cut and dry. Unless you want to take it up with the IRS, go ahead.

Ms. Morse: Beyond the agriculture, what if they have an entertainment type activity? Is that going to come under this also?

Mr. Palos: Roxanne, that's it exactly. I'm not sure about this, because what we're trying to do – I'll just be straight up about it – is this whole notion of agritourism and what the state allows, and what the state doesn't allow, we've learned through Karen, and working with Rick Miller, and months and months of this type of discussion, that it's just not clear. We've talked to other counties, we've talked to other cities, we've been to conferences. What I want to do is kind of step away from whether it's an "agriculture" use or not. That's why I'm saying, let's address, do we want to allow, for example, weddings or other similar activities, as an option in the unincorporated area, regardless of whether it's on a farm or not on a farm? And deal with those specific types of activities, separate that from the agriculture.

Mr. Bonar: I have a problem with that, personally. If it's not agriculture, then a conditional use permit with whatever your particular stipulations are under that particular case, and let your local zoning board start with it.

Mr. Palos: I agree. I've been here 27 years and I have great confidence in our zoning boards, that they are reasonable. Not that they don't have some biases. They may. But regardless, it's a good process. I think talking about agritourism has kind of steered us in a direction that has just become more and more difficult to come to grips with, about what it is and what it isn't. It's kind of pitted us in a way that we're, we're trying to get in the business of farmers, and that's not what we want to do.

Chairman Iliff: I think Woodstock in 1969 probably was a farm. [*Laughter.*] And the guy had filed a 1040-F that year. But, some of the neighbors might have wished that there had been a zoning board there, or had a Planning Commission, and had conditional use permits.

[*Laughter.*]

Mr. Palos: We will pursue that.

Chairman Iliff: I think we're still looking to give guidance here. My sense is that the consensus of the group is that we want to encourage agricultural-related uses that can be called "agri-tainment," or whatever you want to call it. I think we really do want to encourage that. Sometimes the fewer regulations, the better. But, the conditional use permit has been typically the best way to deal with situations that are out of the ordinary or unusual. So, speaking just for myself – and I'm certainly opening this up to other members of the commission – that I think we're probably headed down the right track.

Mr. Bonar: I liked the word "agri-tainment." That differentiates. To me, there's a difference between true agriculture tourism – like in the article he handed out – and what could be covered under a conditional use permit. Or maybe a special permit.

Chairman Iliff: I also think that agriculture-related products being sold on site makes a lot of sense. I don't know that I would want to get into refining a definition of what percentage of the product has to have been grown on the site.

Mr. Palos: Right. And that's one of the things we think we can address through the RUR regulations right now that's not clear. Everybody we've talked to in every county that we've met with or talked with, they've all said the same thing. If someone is doing some kind of sale of stuff on their farm, they typically have other stuff that their selling, like tee shirts, or jam that their neighbor made. The question is, is there really a problem with that? We're trying to figure out how to address that and allow, to a limited extent, those kinds of sales. I think Karen has a start on that. And I will say that the conversation that we had

with you all that began over a year ago, I recall telling you that I'm not sure where we're going to end up on this. I particularly compliment Karen on all the work she's done, the research, the meetings she's been to. She's been to Farm Bureau, the farm board, etc. She's done an amazing amount of work. You've seen her photographs. I think she's done a very good job of researching this. We don't come to you with this recommendation lightly. We think we've really explored it. We're going to do a little more digging with the minor changes that we're suggesting, and I'm hopeful we'll resolve this. And it really hasn't been a huge issue in the county. We've got three pumpkin patches. They all have conditional use permits, and they all went through that process, and it's been very successful.

Chairman Iliff: What is the number of years on the conditional use permits related to the pumpkin patches?

Mr. Palos: I think they vary. Paul, do you know? Five to 10? Five to 10 years. Some have been five; some have been 10.

Mr. Bollin: I'd go back to the old adage of, "If it ain't broke, don't fix it."

Mr. Palos: That's kind of where we've landed.

Mr. Bollin: This is starting to drag out unnecessarily. I think we need to travel on with business and let the people who have the pumpkin patches and the farms go ahead and do what they're doing. Because everything that turned this up, to me, was by people who were doing things wrong in the first place. I'm going to stop there.

Ms. Morse: I think the entertainment aspect can go along with the agriculture. Because with that, you have kind of a steady stream of people coming over the extended area. But an event, maybe that needs to be looked at. An event that would bring in, let's say a hundred people at a time, and create noise, traffic, etc. Maybe that type of thing could be a definition where you draw a line on that.

Mr. Palos: The County has regulations separate from the zoning regulations that deal with special events, like fireworks, races, charity events, parades and itinerant sales. They call it special events permit regulations. Susan Meier is here, who works in the County Manager's Office. She and I and a group of other people are going to be working on revising those regulations. Because they were written 30 years ago, I think, and we know they need to be revised. So, we're doing that with this in mind. So, Woodstock wouldn't be a CUP; it would probably be a special event. It would have a lot more rigorous requirements that go along with it.

Mr. Bonar: Mr. Chairman, a question on that. Like the symphony in the Flint Hills. There was one near Topeka this year by the Topeka Orchestra. Are you going to have that other parks and recreation jurisdiction - ? Who is the go-to person that's going to take all the responsibility?

Mr. Palos: I don't know if you all have been to Symphony in the Hills. It's something that's done in the Flint Hills by a private not-for-profit organization. They do it in different counties. They've done it in Chase County several times. If something like that was to come here, the special event requirement would cover that now. That's how we'd do it. We wouldn't do it through a conditional use permit because it's a one-time event. If the Park District was sponsoring it, we'd probably still ask them to do a special event. I'm not sure. That's something we need to think about. I think the special event process has been a good one. It's just that we need to catch up with current things of what people are wanting to do. We need to be more specific about what we're regulating and how we're regulating. Again, that won't necessarily come to you all. Historically, that's something that has been handled in the county manager's office.

Chairman Iliff: Before we move on, I would like to acknowledge that Julie Berggren is here, and as a person with a vested interest in this issue, your comments would be welcomed if you have anything to say.

Julie Berggren appeared before the Planning Commission and made the following comments:

Ms. Berggren: After our last meeting, I was kind of curious about some of the things that were said. Dean and I have talked about those items. So, I went to the Department of Agriculture for clarification because I didn't know what the answers were. You have asked for clarification regarding the statutory definition of "agritourism activity" with regard to a pumpkin patch, because I know my pumpkin patch was the big elephant in the room last time. So, I wanted to ask them what their take was. The Kansas Department of Wildlife, Parks, and Tourism regulates the registering of tourism activities pursuant to KSA 32-1430. "Agritourism activity" means activity which allow 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, historic, cultural, or natural attractions. An activity is not an agritourism activity if the participant is paid to participate in that activity. The participant is any person who engages in a registered agritourism activity. KSA 32-1432 is a statute that provides that agritourism may have a recreational or entertainment purpose, and that participation is for purposes of enjoying farming activities. Hence, entertainment activities on the farm can take place and the business may still be considered agricultural.

Chairman Iliff: Okay. And I think that ought to be taken account, but I guess we proceed on. Thank you, Ms. Berggren. I appreciate it.

V. LONG TERM CONDITIONAL USE PERMITS AS A MECHANISM FOR REGULATING PUBLIC FACILITIES.

Chairman Iliff: I hope we're coming to a conclusion on this.

Mr. Palos: I think the person who is most hopeful is Karen, who has spent more than a yeoman's labor on this. To put this into context, this issue came up a little over half a year ago with the approval of a conditional use permit for a new fire station located in Fire District No. 3. The CUP that staff recommended was for a 20-year permit, typical of what we recommend for most public facilities. The zoning board agreed with the request from Fire District No. 2, that they would like to have a 50-year CUP term. The Board of County Commissioners approved that 50-year term request and said we needed to work on this. They asked us to go back to the drawing board. We invited the Planning Commission and the Board of County Commissioners to meet with us late last summer and we had a great discussion. I think everyone aired their concerns and thoughts. My perception was that Chairman Eilert was supportive of a proposal that Don Jarrett, chief legal counsel, had recommended, which was something called a "special permit," which could be designed to address specifically whether or not public facilities could have an unlimited term. In other words, there would be no term. They would be exempt. Karen has drafted that and she's going to talk about that. It's proposed as Article 33, a whole new article that she has prepared. At our last meeting, Roxanne and Chairman Iliff said why don't we look at the other option of sticking with a conditional use permit, which is the other document that you have, which would basically make an exemption for up to a 50-year term for conditional use permits for public facilities. We said we would come back to you with both options and we can discuss both. We're hopeful at the end of this discussion that you will direct us to go ahead and set a public hearing for next month.

Staff is supportive of either one of these recommendations. Initially, staff said we were supportive of only a 20-year term, but after discussing this with you all and drafting these regulations, we think up to 50 years works. The benefit of a 50-year term is that it's still open to discussion. Karen will explain that to you. We've run both of these drafts past our Legal Department, so they are aware of them. Legal had some minor changes that Karen said related to this.

Ms. Miller: With Legal, I got their comments back today. We've been talking all along. There's nothing in the special permit regulations that is a major hurdle. There are three or four substantial things to look at and work through. So, when I come back in February, there might be some changes to point out. Then, Legal also offered some words on the conditional use permit terms.

Mr. Palos: Karen and I talked about how to proceed with this. She can summarize both of these documents, or go into detail on them. That's up to you. Article 33 reminded me of, why couldn't we come up with a zoning district? Article 33 is a brand-new article. It's basically a hybrid of a conditional use permit and a zoning district.

Chairman Iliff: I'm certainly open to whatever comments members of the commission might have. I would say that the way I'm leaning is that, as fully as I understand anything in the Zoning and Subdivision Regulations of this county, I think I understand conditional use permit. I have sat in on dozens, maybe hundreds of conditional use permit hearings. My sense is that by extending the term limit to 50 years, we have preserved whatever virtues the conditional use permit has, including the fact that most of our zoning board members understand them. At the same time, they have taken away any obvious downside to the applicant who is building a fire station, a utility, or whatever it might be. So, that's why I'm inclined to go towards the conditional use permit with the longer period of time before it's terminated.

Comm. Bonar: I have one question, and this is because it will come back to our local zoning boards, on landscaping. Who determines the stipulations on the trees? Do you look, like to Rick Miller's group? The Kansas Forestry?

Mr. Palos: Right now, our current regulations are pretty general about landscaping requirements. Under the current regulations, staff looks at the application, we make our judgment and recommendation relative to whether we think there are adequate trees, or not adequate trees. Or shrubs, or whatever. And, we recommend to the zoning board, the zoning board reviews it, and sends its recommendation on to the Board of County Commissioners. Under Article 33, because of the way it's established, all that needs to be done up front because you're not going to be able to come back and review it. That's why Karen has drafted it in such specific details, the screening methods and requirements associated with it. So, it's a lot of detail up front because the presumption is that you only get one shot at making the request. Since this is going to be permanent, we want to make sure that it's clear what's required and what's not required. Am I saying that correctly?

Ms. Miller: Yes.

Comm. Bonar: Dean, I see where you're coming from, but maybe somebody at a zoning board meeting, somebody that you've requested on these stipulations of the trees, is going to object. Where does that leave us? Can we fall back onto authority of the regulations to plant certain kinds of trees?

Ms. Miller: Are you wanting some sort of waiver to supply an alternative method to this?

Comm. Bonar: I think if we were to reject it on the basis of the customer, so to speak, does not want to plant any of those trees, and we send it back to you under the advice of the professional - ?

Ms. Miller: There's a deviation clause that allows that if you supply something equivalent, there's an equivalency deviation in there. So, if somebody doesn't want to provide those particular trees, and they showed what they're proposing to do would be equivalent, that deviation could be approved. So, it's a little more complicated than just the way we handle CUPs right now, where we just have a discussion and alter it. But, there is a process where you could provide something else.

Comm. Bonar: And you'd likely have to referee, so to speak, as to who is right. That's what I'm trying to get at.

Mr. Palos: That's one of the, I don't want to say hazards of trying to set this up the way we did, but the presumption is that this is going to be permanent. We don't get to come back and review it at another time. Unless they haven't done what they said they were going to do. We're presuming these things are going to be here forever and ever. We're trying to be as specific as we can.

Ms. Miller: I will point out that the way the screening section is set up, it's trying to provide a variety of ways to provide screening. You don't just have to provide landscaping. You can use buffering, which means provide setbacks. You can use berms, fencing, and you can even count existing vegetation and buildings and that type of thing. So, landscaping isn't the only thing that would work for screening.

Mr. Meier: If I could interject. There are two professional landscape architects over here. After working with most of the cities in the metro, almost every city has a recommended plant list that they will only allow in their cities. And I would just say that we have an appendix or something like that, that references that. That can be updated whenever it needs to be, but there are lists of recommended trees, shrubs and plants that can be used in this area, that do well in this area. That might be an idea.

Mr. Palos: We've kind of stayed away from that in the unincorporated area because the area is so large. If it's a commercial development and it requires landscaping – We have been through a situation where people haven't been in agreement with us. It's usually a friendly discussion. We have had situations where zoning boards have disagreed with staff about the need for landscaping, and those issues have been resolved. So, the way we do it now is with a lot more flexibility, and I think it's worked pretty well. But, I'm very familiar with the kind of list that you're talking about. Our experience is that most people who come before us pretty much know what they want to do and the type of tree they want to put in. So, the discussion is about where they're placed, and if it's adequate screening.

Comm. Morse: I wanted to address the landscaping also and recommend something similar to what Jason just said. As a master gardener, as soon as I read these plants listed here, they are no longer – and have not been for some time – actually recommended by the Extension Office. They are the ones that are dying off all over due to new disease and insects just in the last 15 years. I'm speaking of the Austrian Scotch Pine. The White Pine is a little more difficult to grow here also. Some make it, and some don't. So, I talked to Dennis Patton just to verify that what I'm saying tonight, that it's the Extension Office's thoughts, too. If you're going to lists things, the Juniper is the most hardy. And there are a number of different varieties. That's the only native evergreen, if we have an evergreen in the state. Also, the spruces from Norway, they're a little bit more hardy than a Blue Spruce. And the Green Giant [*inaudible*] is another one that's looking good. And I could make suggestions on the smaller trees. You might want to include Dogwoods. Redbuds have an average life of 15 years, and we're talking indefinite. And who's to say what new disease or insect is going to come along and make these not desirable, too? So, as Jason suggested, since this is in the county, perhaps you could put something as, you know, list provided by K-State/Johnson County Extension. They have a number of lists for all of these things, different size trees, shrubs, etc.

Mr. Palos: That's a good suggestion because over time, that list –

[*Overlapping comments.*]

Mr. Palos: –Yes I agree we will reference that list. Okay.

Comm. Hoffman: As I was reading through this about the trees, I don't know how long these trees live and how sturdy they are, but I wondered if some fruit trees could be included, and the produce could be sent to the pantries, or the people who live there. It would be double duty – helping feed people, as well.

Comm. Morse: That's a great idea. I don't know how that would work. It would depend on the location. Fruit trees are kind of high maintenance.

Comm. Hoffman: I know they are. I just thought it would be a nice opportunity for, I don't know who –

[*Overlapping comments.*]

Mr. Palos: -- public parks, putting in orchards for that very thing.

Comm. Hoffman: I know community gardens are pretty popular now.

Comm. Opperman: I'm a landscape architect. Either one of these ordinances, the inspiration for it was for approving public facilities, correct?

Mr. Palos: Yes. And there's a definition in both sections of what that includes.

Comm. Opperman: Right. And actually whether they're public facilities or private, typically if somebody is going to be building something that is possibly going to be out there for 50 years, they're probably going to need a survey from an engineer, to produce some plans for them. And in most cities, they typically require that there be some type of landscape plan. I think these should be kept general and not saying you should use a particular species, etc. That there just be a landscape plan provided with the special use permit or conditional use permit, or whatever, along with the engineering plan, to be approved by staff.

Mr. Palos: That's what we do now.

Comm. Opperman: Right. I recall you calling me up from time to time, saying, "Could you look at this plan and tell us if they're using decent trees?", or whatever. But it doesn't take much to look at a plan and tell whether or not it's sufficient for, you know – What it says in item e., what kind of landscaping to do, almost everything it says there is out of date, to me. For instance, being able to plant [*inaudible*] at a 24-inch spread under the power line in lieu of trees? That doesn't accomplish anything. So, I think that item should basically say that a landscape plan, should be submitted with any permit to be approved by staff. Keep it general. Like, you use these species or these species, five years from now, new diseases are going to come along and those species are going to not be used anymore. Potentially.

Mr. Palos: Which page are you talking about? Page 4?

Comm. Opperman: It starts on page 4, C.

[*Overlapping comments.*]

Chairman Iliff: Would you like the guidance of a vote by us with regard to whether we go with a special permit or a conditional use permit? Either way, I think we're going to ask you to back off on the specificity of the species of plants.

Mr. Palos: Ultimately, that's what we're hoping you'll do. We're hoping you will give us direction and set a public hearing for next month on one of these choices, and that if there are minor changes, we'll make sure we'll go through Legal and make sure we have that taken care of and address this issue if it turns out to be – I don't think we need to do anything on the CUP, but on Article 33, we need to make the changes you've requested. But, there may be other minor changes. What we hope to present to you with either of these is a final document that you can approve, and you can still make recommendations for changes at the public hearing, as long as they're noted that these are the changes.

Chairman Iliff: Do I hear a motion for a recommendation?

Comm. Morse: I'd like to ask a question first. Karen, I think you did a good job. I do have one thing I'd like you to clarify. It's something I brought up before, about what happens 40 or 50 years from now when something new comes along that's not included in this plan. For example, schools. Schools are included in this. You build a high school, you have your plan laid out, your ball fields, your parking, and so forth. And I'm thinking of Blue Valley High School because it's been added onto a number of times. Ball fields have been added, parking has been added, but none of those things were even considered to begin with. So, what happens with that? Do they have to come back? Do they have to come in for a conditional use permit? Or do they just get it because they have the school and the property approved?

Ms. Miller: It depends on the extent of the changes. In here, there is a statement that you have to follow your approved development plan. That's kind of your reference point, your approved development plan. Also, there would be a resolution. So, if a special permit is approved, you would have a resolution, and attached to the resolution would be a development plan, and any other things like landscaping plans, etc.

Also, basically, this list of current standards that has to follow would be attached to it. So if somebody wants to come in and make changes –

Comm. Morse: I saw the percentages.

Ms. Miller: Yes, page 12.

Comm. Morse: So, if it exceeds that, we would call for another public hearing.

Ms. Miller: Yes. Things that exceed the items on page 12 would then be brought to a public hearing situation. At that point, depending on how much has changed, you might have a public hearing and a new decision by the Board of County Commissioners, based on just those changes, if they are small changes. Or, if it's something really large, basically the whole thing would need to be reconsidered.

Comm. Morse: I understand now. Thank you.

Comm. Huggins: I would think that for public facilities, except for the few exceptions that are listed in this draft, I would prefer the special permit regulations, with no term limit. I'm not sure we're including this street and highway auxiliary facility, sidewalks, street lighting, etc.

Ms. Miller: Those are excluded because they're allowed by right now.

Comm. Huggins: Okay. So, I would prefer that.

Comm. Hoffman: On page 14, Section 11, Cessation of Special Permit Usage, I'm a little confused on that.

Ms. Miller: A conditional use permit has a term. For instance, I have a conditional use permit that I worked on for a communication tower. It had a term of 10 years, I believe. They never built it. So, 10 years came around, and they had to come in to get renewed. We had to look at the surrounding property again to make sure at this point in time, is that appropriate for the character of the neighborhood? All those Golden criteria things. Well, if you come in and get a special use permit for a wastewater treatment plant and you don't build it immediately, and 10 or 20 years pass, the neighborhood changes, and the entity then decides to build it, it might be a problem because the neighborhood has changed so much. So, we were concerned with this issue, getting a special permit, a very long time passing, and then having it constructed when the neighborhood was completely different. So, we put in this kind of sunset clause that we have, and we chose three years after you're approved to build your project, or to get it started.

Comm. Hoffman: Okay, but my question is a little different. A site is no longer used for a use approved by special permit for a period of 12 months. If whoever has the permit is vacated and no one else has come along and requested something similar that would require a special permit, why are we waiting 12 months? The building is just going to sit there and deteriorate for 12 months. My thinking is, if you move out, you move out, and that's the end of that special permit. Am I being too tight on the regulations?

Ms. Miller: This time period is used in another section of our regulations under the non-conforming use regulations, and it uses a 12-month period, too. Now, I don't know initially where that came from.

Mr. Palos: I don't either, but I'm kind of on the other side of it. I know of schools that have been closed, the school district was going to get rid of them, and six years later, the schools reopen. So, frankly, I think 12 months is too short. That's compatible with other regulations that we have. So, that's where it came from. We were trying to be consistent.

Comm. Morse: Do I understand that if we [inaudible] different from a special permit to a CUP, it would be an indefinite term? Is there less cost involved in applying for a special permit as opposed to a CUP?

Mr. Palos: A CUP is probably a little less expensive.

Comm. Morse: So there's not a cost issue involved.

Mr. Palos: And our costs are pretty much on par with all the other communities we do. You all have actually gone through a review of our fees and they're consistent –

Comm. Morse: And the special permit, the zoning administrator can approve minor changes to the permit. Can that be done under a CUP?

Mr. Palos: For example, a fire station. If they want to build an addition on to an existing fire station, they want to put a new bay on it, they'd have to get a new development plan. But if that had been shown on the original plan, they could do it. If they wanted to build a new training tower, that would require another development plan. If they wanted to have a cell tower on their property, which normally requires a conditional use permit, they'd have to go through the CUP process.

Comm. Morse: So, is there anything else? Or is it just the term that is different?

Mr. Palos: Well, the term is different, and what is significantly different is that we put in all these descriptions of all these performance standards like landscaping, which we don't have in the CUP.

Comm. Morse: Couldn't those be incorporated into a section of the CUP and just have a different term limit for that?

Mr. Palos: I'm going to refer to the comment Pete made. We feel like our system right now works fine the way it is, without that level of specificity.

Comm. Morse: [*Inaudible.*]

Mr. Palos: Yes. We think it gives us much more flexibility to work with developers. This is a system that has been in place since 1982, and we're comfortable with it.

Comm. Morse: Okay. Thank you.

Chairman Iliff: Any other questions or comments? Mr. Huggins expressed an opinion that he would prefer to see us proceed on with a special use permit as opposed to a conditional use permit. Would you call it a motion, Mr. Huggins?

Comm. Huggins: Yes. I would make a motion that we take the special permit regulation forward for a public hearing.

Comm. Opperman: Mark, what about what Dean just said, about the conditional use permit actually giving them more flexibility to work with a developer, whether public or private, as opposed to everything being written down? And whoever is wanting to do whatever they're wanting to do saying, "Well, it says right here that I can do this." That they can negotiate that out - ? Is that right, Dean? Is that how you feel, that this gives more power, so to speak?

Mr. Palos: Yes, this is what we've done in the past. I don't want to say we negotiated. We worked with developers individually on a case-by-case basis to come to some resolution. A great example is the New Century AirCenter, where staff wanted trees, but the zoning board didn't want trees, and the applicant said they would put the trees in. They were willing to do it. There was flexibility on what trees were required and the number of them. But, this Article 33 wouldn't give you that flexibility.

Comm. Opperman: And it doesn't dictate how many trees you need, either.

Ms. Miller: It doesn't give number of trees. It describes it as 75 percent visually solid, I believe. There's a list of things that have to be screened, like storage areas, etc. If it has to be screened, then it has to be screened up to 12 feet in height, and it's going to be five percent visually solid. As it's written now. I mean, that's up for discussion.

Comm. Huggins: To address Pete's question, I don't see why a special permit would have more restrictive guidelines than a conditional use permit.

Ms. Miller: That's the legal structure that the Legal Department gave us. They defined to Planning what a special permit is. It's this animal without a term that has the performance standards up front. Basically, we're writing a master list of stipulations. It's like a conditional use permit with a master list of stipulations approved up front. We've tried to get a lot of flexibility where possible. That was the definition Planning was given by Legal.

Comm. Huggins: So, Legal is saying it could not be administered without these guidelines? I mean, essentially, that's what is done in development everywhere else. I mean, there are standards, but have uses and options for designating different uses. And then, there are guidelines that you work within.

Mr. Palos: Right. Standards that we put in here are in addition to the standards that we have. They are a lot more specific in detail than in the current regulations, particularly with regard to the screening. The concern we had is that we think it's generally incumbent upon any kind of public facility or utility to do its very best to reflect well on the government. To look good. And one of the concerns we had were with things like sewer treatment plants, with pump stations. We know these are utility type uses. What we'd like to do is make sure that they look good, whether it's through a fence, or whether it's through landscaping. Same thing with schools and other kinds of – Even a public facility like a KDOT work area. I mean, K-10 is an example where KDOT puts all their stuff out there. We don't regulate it. And there's not a tree in site. You drive past that every day. That's the kind of thing we're trying to avoid and to address up front specifically. And Karen is right. This was the guidance that Legal gave us, is that this is how this is to be constructed. We don't know of an example of this anywhere else. So, Karen has worked with legal staff to put this together.

Chairman Iliff: We have a motion. Do we have a second?

Comm. Bollin: I'll second it.

Chairman Iliff: Discussion? I'll just say that I'm going to vote against the motion, for no better reason than I understand conditional use permits and prefer to stick with what I know. Feel free to make any comments you want before we take a vote.

Comm. Morse: I think it would be good to hear what the public has to say. We won't be making our decision until next month.

Chairman Iliff: I think what the Planning Department would like is a specific up-or-down vote next month at a public hearing on conditional use permits. And it could be voted down. And the public certainly could come in, and if there was a groundswell of affirmation for special use permits, such that the public were to demand it, we could do that. Or, a conditional use permit, for that matter. You never know where the ground is going to swell. Further comments before we vote?

Result of Vote was 5 in Favor and 5 Opposed. (A quick show of hands did not provide sufficient time to register how each member voted.)

Comm. Opperman: Could you clarify something for me, Dean? If you're able to use the conditional use permit as opposed to the special permit, the conditional use permit gives the Planning Department more flexibility?

Mr. Palos: I believe it does, yes. I think it gives the developer more flexibility.

Comm. Opperman: But you try also at the same time to work with them, instead of being tied to, "This is what it says."

Mr. Palos: That's the difference between the two, yes.

Comm. Opperman: I think that's a good thing.

Chairman Iliff: Well, in light of the tie vote, my recommendation is that both be presented at the public hearing. Let's see what the public has to say, and perhaps there will be a change of mind among our number between now and then.

Comm. Huggins: My only preference for the special permit regulation is just the basis that, if it is a public facility, I don't know why it can't be a permanent use. I don't understand why the rest of the conditions can't be adjusted as needed to make for better development in the county. That's the only criteria that really stops me from supporting the conditional use.

Mr. Palos: The premise behind the conditional use permit, why staff initially supported this – and we still feel this way, that it should be a 20-year permit – was because regardless, there's still an opportunity over a certain time period to come back and reassess a new - . One of those examples is we have, out at Heritage Park, there's been a soccer field out there for 20 years. They came in for a renewal, and there's been a lot of new development in that area, on the southeast corner of Lackman and 175th Street. So, it allowed an opportunity for people in the area to come and talk about it again. And there were no problems. People didn't complain about it. They were relieved that they weren't asking for lights there because people would have been upset about that. But, it gives people in the area another opportunity to make comment after an extended period of time has passed. That's why we've been supportive of the 20 year. Here, we think 50 years is better than none at all. We think with public facilities, it's incumbent upon them to be good neighbors. And I think one way to assess that is to go through that public hearing process and giving neighbors and other folks an opportunity to comment. And I would say, for the most part, I don't know of any problems that we've had with a long term. But, what you talked about, Roxanne, is an example of, I don't think we would have come back and told the school district they had to do anything as far as their parking lot and fields and things that they put in. Because they are a school.

Chairman Iliff: Well, this gives the lobbyists in the county an opportunity to wine-and-dine us between now and next month. [*Laughter.*] I regret making you proceed with both of them, but I think it will be necessary, and we'll also have an opportunity to have members of the public, should they be interested in the topic, express an opinion. Actually, I would encourage members of the Board of County Commissioners to have an interest in this and also come if they feel strongly about it, rather than sending something up to them and they decide they don't want to do it.

VI. FUTURE ZONING REGULATIONS.

Mr. Palos: This is a list of things to come, that we hope to address in the future.

Chairman Iliff: Any updates? Is the fourth Tuesday in February open for us to have a hearing?

Mr. Palos: Do you want to make a motion to set a public hearing?

Chairman Iliff: I think we should set a public hearing. I think we've talked about this enough.


Comm. Lund: I move that we hold a public hearing on February 23rd.

Comm. Huggins: Second.


Motion passes unanimously.

ADJOURNMENT

The next regularly scheduled Planning Commission meeting will be Tuesday, February 23, 2016, at 5:45 p.m.


Chris Iliff, Chairman

ATTEST:


Secretary to the Board