

# JOHNSON COUNTY BOARD OF ZONING APPEALS

Johnson County Administration Building

111 South Cherry Street

Olathe, Kansas

## MINUTES OF MEETING

January 19, 2022

5:30 p.m.

### I. CALL TO ORDER

A meeting of the Board of Zoning Appeals of Johnson County, Kansas, was convened at 5:30 p.m. on Wednesday, January 19, 2022, and was called to order by Richard Hemphill, Chairman, with the following members present and participating; to-wit: Connie Schmidt, Brian Rutherford, AJ Lang, Andrew Belt and Lindsay Grise. Also present were Jay Leipzig, Karen Miller and Leslie Davis, Johnson County Planning Department. Serving as Secretary to the Board of Zoning Appeals, Sherry Cross.

Ms. Davis:

*Please note, to reduce the spread of COVID-19, the Johnson County Board of Zoning Appeals meeting will be conducted online using Zoom webinar. The Board members will not be physically present in the Board meeting room. You may participate in the meeting using your computer, phone or other electronic device. Chat will be disabled once the meeting begins. If you have trouble with Zoom, please call 913-715-1700. If you would like to speak but did not register beforehand, please use the "raise hand" function, or \*9 if connecting via telephone. I will call your name when it is your turn to speak. If you emailed the Planning Department in advance of this evening's meeting and signed up to speak on an agenda item, your name will be called by the moderator in the order in which it was received. All speakers will be limited three minutes unless the Chair designates a different time period in order to accommodate all speakers desiring to speak. When your name is called by the moderator, your microphone will be unmuted. Please state your name and address for the record, followed by your comments. If you share concerns, comments or points made by others, please refrain from repeating those comments and instead note for the record that you agree with the previous individual's comments. There will be a "10-second remaining" warning sound. Board of Zoning Appeals members and presenters, please state your name every time you begin talking so the notes can be transcribed for the record. This is a public hearing. We are presenting live and recording the meeting.*

Chairman Hemphill: A point of order. I was thinking the public input session is closed, that we're opening the public hearing, but you were talking about a three-minute time limit, et cetera. It's my impression that it has been closed.

*Mark McFarland, Hinkle Law Firm, appeared before the Board and made the following comments:*

Mr. McFarland: This is a regular meeting of the Board of Zoning Appeals, so there are items on the agenda for which the people could make public comment, but Chair, you are absolutely correct. Public comment on the agenda item, which is the Application SE 21-141-BZA has been closed, and the notices to the property owners and the public have been advised that the public comment has been closed, and no further public comment will be taken on that agenda item.

Chairman Hemphill: Thank you.

## **II. AGENDA ITEMS**

### **A. Additions, Deletions, or Revisions to the Agenda:**

Chairman Hemphill: Does any Board member wish to add, delete or revise any items on the agenda? Hearing none, I will move to number III.

## **III. APPROVAL OF MINUTES**

July 15, 2020 Meeting.

Chairman Hemphill: The minutes have been distributed over the last several months, and we just haven't voted on them, so has everybody on the Board of Zoning Appeals had a chance to look at those meeting minutes? If so, could I get a motion and a second to approve them?

*Motion by Mr. Belt, seconded by Mr. Lang, to approve the minutes.*

*The motion passed unanimously by voice vote.*

## **IV. BUSINESS SESSION**

### **Application No. SE 21-141-BZA (AU) – Appeal – 7500 W. 207<sup>th</sup> Street**

Reconvening the public hearing on the Appeal of the Administrative Decision of Zoning Administrator, Jay Leipzig, concerning Stonegate Motor Test Track, on property zoned PEC3, Planned Light Industrial Park District, in Section 7, Township 15, Range 25, located at 7500 W. 207th Street regarding conditional use permits.

Chairman Hemphill: We are now in public session. Do any of the Board members wish to make any comments on all of the information we've received over the last several months? Any discussion upfront? Hearing none, I guess I would entertain a motion to go into Executive Session.

Mr. McFarland: Mr. Chair, I think if there is no further need for the public hearing, that you would need a motion to conclude the hearing, and if a motion and second is made and approved on that, then if the Board wants to go into Executive Session, they can make a motion at that time, but I think you need to conclude the hearing first.

*Motion by Mr. Belt to recess its open meeting and convene in Executive Session.*

Mr. McFarland: Again, Mr. Chair, I think you need a motion to conclude the hearing on this application, a second and a vote to close the hearing. Once the hearing is concluded and closed, then if you want to make a motion to go into Executive Session, you can certainly do that if that is the Board's choosing, but the hearing should be concluded first.

Chairman Hemphill: Okay, we are currently in open session, a public session. Would any Board member like to make a motion to conclude the public session?

*Motion by Mr. Lang, seconded by Ms. Grise, to conclude the public session.*

*The motion passed unanimously by roll call vote.*

Chairman Hemphill: Okay, the public session is closed. I guess we're back at regular session. We've had a lot of material presented to us, a lot to digest from the meeting on November 17<sup>th</sup>, our Executive Session in December, and today we need to draw it all to a conclusion. Does anybody have any thoughts? Any questions?

Mr. Belt: Richard, this is Andrew. I'm sorry for the ceremony here.

*Motion by Mr. Belt, seconded by Mr. Lang, to adjourn the open meeting and convene to Executive Session at 5:46 p.m. for one hour for the purpose of deliberation on the matter and preservation of attorney client privilege, and to reconvene into open session at approximately 6:46 p.m., or at the conclusion of the Executive Session.*

*The motion passed unanimously by roll call vote.*

*R. Scott Beeler, Lathrop GPM, LLP, 10851 Maston, Overland Park, Kansas, appeared before the Board and made the following comments:*

Mr. Beeler: For purposes of edification, is it the intent, then to come back in an hour as Mr. Belt suggested, and then have the vote tonight? Or is the meeting going to adjourn again? I guess I'm trying to understand for the attendees in particular what to anticipate.

Mr. McFarland: It will depend, but I think since the hearing has concluded and there have been no additional matters presented tonight, I think would be the intent of the Board, to do their best to be able to come to a decision, at least a consensus, and then come back and take a vote on the decision at 6:46. Just for everyone's edification, the Board members and myself are going to leave this meeting, and the Executive Session will be in a separate Zoom link, just for security purposes, and then the Board will be back in regular session not sooner than 6:46 tonight.

## **V. EXECUTIVE SESSION**

*The Board adjourned to Executive Session at 5:46 p.m.*

*The Board reconvened the Regular Session at 6:46 p.m.*

*Ms. Davis called the roll.*

## **VI. BOARD REPORTS**

[Chairman Hemphill left the meeting momentarily]

Chairman Hemphill: Excuse me. I'm the only one home, and we have a sick neighbor. The medical people are at my front door. We had the roll call and all are present. I'd like to say that the business in front of us has never been in front of this Board before, this type of detail, this type of attorney-client arrangement. Five attorneys, a lot of commotion, a lot of documents to read, something we're not used to, but I think everybody came out better on the Board of Zoning Appeals, with a better understanding of the overall process. So, we've spent three Executive Sessions, a lot of home reading, a lot of time and effort went into this decision, and I think we are pretty much ready to vote, unless anybody else on the Board of Zoning Appeals wants to make any comments. Hearing none, I would entertain a motion.

Mr. Belt: Richard, we've had our deliberation, and we've requested our Counsel to draft a written decision pursuant to the Regulations.

*Motion by Mr. Belt, seconded by Mr. Lang, to adopt all of the findings and conclusions set forth in the written decision and affirming the administrative decision of the Zoning Administrator dated May 3, 2021, to not proceed with commencement of revocation proceedings with respect to Resolution No. 023-18, based up on the request of the applicant dated March 23, 2021, and to authorize the Chair to sign the written decision on behalf of the Board and cause the written decision to be filed in the Planning Office within 10 ten days from today.*

*The motion passed unanimously by roll call vote.*

Chairman Hemphill: The motion carries. If anybody has anything else to say about this on the Board, I'd like to hear it now, but I think we made a good decision, and we need to move forward. So hearing none, we will move to number VI on the agenda.

[gap in recording]

Mr. McFarland: ...in your email box if it isn't already. In time you'll get an official copy of it, once the Chair has signed that and I've signed off on it, and it has been filed with the Planning Office.

Ms. Grise: Mark, how can the public get a copy of our findings?

Mr. McFarland: Once the decision is signed and filed within the next 10 days with the Planning Office, it will become a public record. They can request a copy of that. I would have to check with Legal to see whether or not that is actually put up on the website anywhere. I presume maybe it is, but I don't know that for a fact, so I don't want to make a representation that I don't know that I can back up. It will be available at the Planning Office.

Ms. Grise: Thank you.

Chairman Hemphill: Moving forward –

Mr. Beeler: Mr. McFarland, could you clarify, please, for the record and for the public, when was this decision drafted?

Mr. McFarland: The decision was drafted at the Board's request this evening, earlier this afternoon, and then revised according to the Board decision this evening.

Mr. Beeler: Are you stating then that the Board deliberated on this item before this evening?

Mr. McFarland: The Board had deliberations on this matter at its Executive Session meeting in December while the information from the hearing on November 17<sup>th</sup> was fresh in their mind, and they asked me to research some issues and get back to them, and then put that in a draft opinion for them. That was presented to the Board for discussion purposes only this evening. It was revised according to requests from members of the Board, and a final one was drafted, which was then presented and voted on tonight, and you have a copy of the unofficial version of that.

Mr. Beeler: So, in other words, a vote was taken prior to this evening to deny the –

Mr. McFarland: No –

Mr. Beeler: If I could finish, please, if we're on the record.

Mr. McFarland: Sure.

Mr. Beeler: A statement was given from the BZA to counsel as to how the decision should come out, and that was done before tonight?

Mr. McFarland: First, there was no vote on this by the Board until...we were just having the public session before that. As I indicated to you in an email, I believe the Board has the authority to conduct deliberations, but no final deliberations or consensus was reached, in my opinion, until the Board had its Executive Session meeting tonight.

Mr. Beeler: I appreciate your clarification.

Chairman Hemphill: Point of order. No more comments.

## **VI. BOARD REPORTS**

Chairman Hemphill: I'm not sure who to ask this to. Usually we have a staff member, but Board of County Commissioners actions, Planning Commission activity? Sherry Cross, you're the closest one.

Ms. Cross: What is it that you're asking?

Chairman Hemphill: Our next item. You're, I guess, our link to the Planning Commission and Board of County Commissioners. You're the only link available tonight.

Ms. Cross: Actually, Sean would be able to answer about the Planning Commission.

Mr. Leipzig: Mr. Chair, I would be happy to answer those questions for you. There are no actions of the Board of County Commissioners that are pertaining to the Board of Zoning Appeals. The Planning Commission, the quick summary is they have been working for the past almost a year, working on drafting regulations for utility-scale solar facilities. They have been working on that for quite some time, and there was a recommendation made to the Board of County Commissioners after considerable

deliberations, but the Board has delayed taking action on that matter until we're able to meet in person, so the hearing on that matter will be sometime in February. We believe probably the second week of February will be the hearing on that item for the utility-scale solar. Sean, I don't know if I'm missing anything you want to add to that summary.

Mr. Pendley: No, there's nothing else to add to that, other than, as Jay mentioned, nothing regarding Council or County Commissioners actions, but for the Planning Commission I would just note that there will be a study session first with the BOCC. We anticipate that will be late February, and then if that would be needing to return to Planning Commission they would do so following that meeting with the Board of County Commissioners. I have no other updates for that.

Chairman Hemphill: Thank you, Jay and Sean.

## **VII. ADJOURNMENT**

Chairman Hemphill: I guess our next item is number VII, Adjournment. Does anybody have any thoughts on that? Like a motion?

*Motion to adjourn by Mr. Lang, seconded by Mr. Belt.*

*The motion carried unanimously.*

Chairman Hemphill: Thank you all, and good night.

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*Richard Hemphill, Chairman*

**ATTEST:**

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*Secretary to the Board*