

**TONGANOXIE PLANNING COMMISSION
MINUTES
NOVEMBER 6, 2008**

Call to Order – The Planning Commission met for a scheduled session at 7:00 pm in the City Council Chambers. The meeting was called to order by Chairman Joel Skelley. Members present were Commissioners, Bob Altenhofen, Steve Clark, John Morgan, Bill Peak and Joel Skelley. Members absent were Jim Bothwell and Joshua Mast.

Approval of Minutes–Steve Clark made a motion to approve the minutes of the Planning Commission Meeting held on August 7, 2008, the Joint Workshop Meetings held on August 21 and October 8, 2008 and the Community Meetings held on September 17 and October 15, 2008. Bob Altenhofen seconded the motion.
Motion carried; five ayes.

Regular Agenda Item 3a – Public Hearing Special Use Permit for an In-Home Hair Salon

The Planning Commission followed the Public Hearing Script for consideration of a Special Use Permit for an In-Home Hair Salon located at 2095 Hidden Valley Place submitted by Kevin and Joan Cobb.

Kevin Kokes, AICP, Bucher, Willis & Ratliff Corp. presented the staff report. He reviewed background information, home occupation zoning, mandatory zoning considerations and staff recommendations. He stated the surrounding neighbors received notification of the special use permit application and to date there had not been any negative comments. He feels this in-home occupation is allowable with the conditions listed in his staff report dated November 6, 2008. The applicants were present but declined comment. A neighbor, Larry Grove, 2075 Hidden Valley Place, spoke to the commissioners in support of the special use permit. He stated he talked with Mr. Cobb regarding the business and agrees the business will not cause any problems in the neighborhood.

The chairman closed the Public meeting. The commissioners reviewed and discussed the mandatory zoning requirements and agreed this special use permit met all of the review considerations.

- **Bob Altenhofen made a motion** to accept the mandatory review considerations and recommend approval of the special use permit subject to the following conditions as recommended by staff:
 - ✓ The special use permit shall be valid for a period not exceeding two (2) years from the date of approval by the City Council, on or before December 1, 2010. The special use permit shall expire prior to said expiration date if the specially permitted use ceases or is abandoned for a period of more than 12 months.
 - ✓ The property shall be permitted an “In-home” salon as a home occupation within the existing single-family residence. The home occupation shall comply with all home occupation regulation provide in Section 32 of the City’s Zoning Ordinance.
 - ✓ In accordance with Section 22-014.C of the City of Tonganoxie’s Zoning Regulations, the special use permit for home occupation shall not be transferable to a new owner of the real estate.
 - ✓ The applicant shall maintain and display all necessary licenses including a Tonganoxie Occupational License.

The motion is based on the following mandatory rezoning considerations:

- a. The location and size of the proposed use in relation to the site and to adjacent sites and uses of property, and the nature and intensity of operations proposed thereon.* In-home salons are generally low-intensity uses and a compatible use within a single-residence. The home occupation has minimal impact upon the surrounding area.
- b. Accessibility of the property to police, fire, and refuse collection and other municipal services; adequacy of ingress and egress to and within the site; traffic flow and control; and the adequacy of off-street parking and loading areas.* The subject property is currently served by municipal services and has access from adjacent public streets. The use has minimal impact upon such municipal services and existing streets.
- c. Utilities and services, including water, sewer, drainage, gas and electricity, with particular reference to location, availability, capacity and compatibility.* The subject property and existing structure is served by utilities. No new services are necessary.
- d. The location, nature and height of structures, walls, fences, and other improvements; their relation to adjacent property and uses; and the need for buffering or screening.* The In-home salon use is conducted entirely within the residence and no additional buffering or screening is necessary for surrounding properties.
- e. The adequacy of required yard and open space requirements and sign provisions.* No significant modifications to the existing residence and site are proposed for the operation of the home occupation.
- f. The general compatibility with adjacent properties, other properties in the district, and the general safety, health and comfort and general welfare of the community and surrounding neighborhood.* The in-home salon use in a single-residence has less impact upon the surrounding area than other uses allowed by right in the existing R-SF zoning, such as churches, schools, and lodging facilities.

- **John Morgan seconded** the motion.
- **Motion carried**, aye 5.

The City Council will consider this item at 7PM on the 1st of December 2008, in the City Council Chambers located at 321 S. Delaware.

Regular Agenda Item 3b – Public Hearing Rezone Request 301 Green St.

The Planning Commissioners followed the Board of Zoning and Appeals Public Hearing Script for consideration to rezone property from HBD-Historical Business District to R-SF-Residential Single Family property located on the corner of 3rd & Green Streets, more commonly known as 301 S. Green. The application has been submitted by the property owners Joe and Bonnie Hicks.

Kevin Kokes, AICP, BWR Corp. presented the staff report. He reviewed background information, mandatory review considerations and staff recommendations as provided in his written staff report dated 11/6/2008. He explained the property is currently zoned HBD-Historical Business District and stated the intended uses listed in the Zoning Regulation Appendix B Use Groups by Category. The current residential house is considered a legal “Non-Conforming Use” and is in conformance with

Section 21, Nonconforming Uses of the City's Zoning Ordinances. It may remain as an occupied residential dwelling unless the structure is damaged more than 50 percent of its fair market value. If that occurred the structure would have to be restored to meet current HBD zoning regulations. The existing structure can also currently be used for any office or retail use permitted by the HBD zoning regulations. The Mandatory Rezoning Considerations were reviewed.

Joe and Bonnie Hicks property owners were present to speak in favor of their request to rezone. They explained the nonconforming use regulations makes the structure's use as a residential house difficult to insure since the owners might not be able to rebuild as a single family home if the structure is severely damaged, but not totally destroyed. The structure is believed to have been constructed as a residential home in 1873. Mr. & Mrs. Hicks also explained the difficulty they have been having trying to sell the property. They have had several potential buyers for the property until the lenders learn of the legal non-conforming use regulations.

Nancy Cook, Loan Officer from Fidelity Bank, spoke in favor of the potential rezone. She explained the concerns her loan department has regarding the property. She stated they cannot approve a federally insured residential loan for the potential buyer if structure cannot be rebuilt as a residential structure. She heard that the City could change the zoning of the property or develop and implement design standards to the Zoning Regulations. She would need something in writing from the City to this effect so the loan could be approved or the current applicant would lose the opportunity to buy this property. She stated no one will loan on property for a residence if it cannot be rebuilt as a residence.

Velda Roberts, 496 12th St. Tonganoxie spoke in opposition to rezoning the property. She stated she is a former councilmember and has volunteered on several committees. She pointed out the surrounding corners on this City Block are all occupied by established businesses. This structure is the only residential building left on the block. She also stated the City has just hired a consultant and conducted a study that included the downtown area and she thought this property should remain zoned as it is to protect the future of Downtown development. She also wanted to clarify the insurability of the structure, because the structure can be insured for commercial purposes as currently zoned. She stated she talked to some insurance agents who stated they would insure the structure 100% but if the structure were damaged more than 50% the payout would only be up to 50%. She stated a structure would be able to be rebuilt on this property it would have to be built to HBD-standards which does not include residential unless it is and upper level apartment over a business. She suggested the Commissioners consider changing the text in the Nonconforming Use Section from 50% damaged to 75% instead of changing the zoning of the property.

Rebecca Freeman, potential home buyer was present she spoke in favor of the zone change. She did not want to buy the property, have 50% damage and lose her investment and place to live because she could not rebuild as a residential structure.

Mr. & Mrs. Freeman, parents of the potential home buyer were present and spoke in favor of the zone change. They wanted the area to be rezoned to R-SF so the residential house could be rebuilt if it were damaged. They also had concerns regarding the City taking the property for commercial development and their daughter losing her home.

The commissioners discussed timelines and options that were available to them. They discussed an Ordinance for text amendments this would require publishing notices and holding public hearings, protest periods and approval by the City Council. Mr. Kokes stated that changing text in the nonconforming use regulations will apply to all sections of the city not just this property, and for that reason the city should not rush into making decisions about changing Section 21, Nonconforming Uses. He said Tonganoxie's nonconforming use regulations are consistent with the regulations in most communities. The purpose of the nonconforming regulations is to allow the continued use of a property that does not conform with the regulations of the underlying zoning district. If however, it is determined the actual use of the property is appropriate for the long-term, then the property should be rezoned to a zoning classification that allows the use by right.

There were no other members of the public desiring to comment about the application. The Planning Commission closed the public hearing.

The Planning Commission discussed the possibility of making changes to the HBD-Historical Business District regulations to allow other types of residential housing and setting design standards for the rebuilding of residential housing in the HBD-Historical Business District.

Joel Skelley, Planning Commission Chairman, addressed the commission and the citizens and explained that in the long term changes can be that will be suitable to both the city and the home buyer, but this would take time if the HBD regulations were to be amended. He also stated that the Planning Commission will only make a recommendation to the City Council at this meeting. The final decision about the rezoning application is made by the City Council.

- **Bob Altenhofen made a motion** to deny the rezone request because it does not meet with the character of the neighborhood; the block is primary commercial and is properly zoned for the future development of the downtown business district.
- Motion died due to a lack of a second.

Discussion continued regarding rezone consequences. Items discussed were: will the change be for the better, is there a market for business today, setting precedence for other property owners, time frames for making text amendments to the HBD regulations, if the zoning is changed to R-SF will the city be able to get back the HBD zoning if needed for future downtown development and change to the HBD boundaries.

- **John Morgan made a motion** to recommend acceptance of the rezone request because the housing design as it stands today does not affect the character of the neighborhood, the area to the west and north is zoned residential. The existing residential house has been in the neighborhood as a family home for more than 100 years. The rezone will help the future sale of the property as a single-family residence. The motion is based on the following mandatory rezoning considerations:
 - (a) **Character of the neighborhood:** The surrounding area consists of a combination of single-family residential and commercial uses. The subject property functions as a transition between nearby neighborhoods and the downtown commercial district. The property has been a residence since the late 1800s and is in character with the neighborhood.
 - (b) **Zoning and uses of properties nearby:** Properties across the street to the north and west are zoned R-SF and used as single-family dwellings, while adjoining properties to the east and south are zoned HBD and used for business purposes. Maintaining the property as a residence will not have a negative impact on the surrounding neighborhood.
 - (c) **Suitability of subject property for the uses to which it has been restricted:** The property is considered a legal nonconforming use and can continue to be occupied as a residential dwelling in conformance with Section 21 (Nonconforming Uses) of the City's Zoning Ordinance. As currently zoned, the property can be converted to a business use, or a lodging use such as a bed and breakfast.
 - (d) **Extent to which removal of the restrictions will detrimentally affect nearby property:** While changing the zoning classification to R-SF could potentially impact the future expansion of adjoining properties zoned HBD, the change to R-SF could reduce possible conflicts with existing residential dwellings to the north and west from any potential business use as currently zoned.
 - (e) **Length of time the subject property has remained vacant as zoned:** Not applicable.

- (f) **Relative gain to the public health, safety and welfare by the destruction of the value of the landowner's property as compared to the hardship imposed upon the landowner:** Approval of the change in zoning classification to R-SF would help facilitate the future sale of the property and the on-going use as a single-family residence.
- (g) **Conformance of the requested change to the adopted or recognized comprehensive plan of Tonganoxie, Kansas:** The Future Development Plan in the current Comprehensive Plan (**Vision 2020 For Tonganoxie, Kansas**) identifies the area south of 3rd Street for "downtown", with the area on the north side of 3rd Street for "medium density residential, and the area to the west of Green Street as "mixed use".
- **Steve Clark** seconded the motion.

ROLL CALL VOTE – Bob Altenhofen, nay; Bill Peak, aye; Joel Skelley, aye; John Morgan, aye; Steve Clark, aye.

- Motion carried 4 ayes, 1 nay.

The City Council will consider this item at 7PM on the 1st of December 2008, in the City Council Chambers located at 321 S. Delaware.

Regular Agenda Item 3c– Approval of 2009 Application & Review Schedule

The commissioners reviewed the 2009 Planning Application and Review Schedule. Kevin explained this is only a guideline and not all submittals will be held to the strict timeline. If documents are submitted correctly and reviewed in a timely manner they will be presented at the next available Planning Commission Meeting. The Commissioners reviewed the dates; one date in question was Wednesday, January 7th. The regular Planning Commission meeting for January fell on a Holiday.

- **Bob Altenhofen made a motion** to accept the 2009 Planning Commission Application and Review Schedule.
- **Bill Peak** seconded the motion.
- Motion carried 5 ayes.

Regular Agenda Item 3d– Discussion – Home Occupations Regulations

Planning Consultant, Kevin Kokes, AICP, with BWR Corp. presented the staff report. He explained that the City Zoning Ordinances should be amended to clarify Section 32 (Definitions) for home occupations, to provide a list of uses permitted as home occupations, allow some home occupations to be approved administratively without a special use permit, provide standards for traffic and parking. The commissioners directed staff to prepare the amendments and bring options to a future Planning Commission meeting for discussion.

Old Business Agenda Item 4a – Discuss Comprehensive Plan Appendix A – Implementation Strategies and Appendix B – Projected Timeline

Planning Consultant, Kevin Kokes, AICP, with BWR Corp. presented the staff report. He reviewed the updated Appendix B: Projected Timeline. He reviewed the projected timeframes that could be used. The commissioners directed staff to make the changes and prepare Appendix A & B for another joint discussion with the City Council before a public hearing to amend the Comprehensive Plan.

Old Business Agenda Item 4b – Discussion – Residential Design Principles

The commissioners reviewed the Residential Design Principles as presented and directed staff to gather local information and present recommendations to a future joint City Council and Planning Commission meeting.

Old Business Agenda Item 4c – Discussion – Storm Water Management & Green Infrastructure

The commissioners reviewed the Storm Water Management and Green Infrastructure articles and agreed this is another item they would like to discuss at a future joint meeting with the City Council. Staff will also schedule a presentation from Constance C. Buckner, Environmental Scientist; Bureau of Water, Watershed Management, from Kansas Department of Health and Environment.

There being no other business the meeting adjourned at 9:50 p.m.

Respectfully presented,

Patty Hagg
Recording Secretary