

**EXCERPT MINUTES OF THE MAY 21, 2015 WICHITA-SEDGWICK COUNTY  
METROPOLITAN AREA PLANNING COMMISSION HEARING**

**Case No.: DER2015-00004** - Amendment to Article II, Section II B.2.f of the Wichita Sedgwick County Unified Zoning Code: Board of Zoning Appeals means the board or boards appointed by the governing body of the City or the County.

**BACKGROUND:** Kansas Statute (K.S.A.) 12-759 et seq. states that any governing body which has enacted a zoning ordinance or resolution shall create a board of zoning appeals (BZA). The Wichita-Sedgwick Unified Zoning Code (UZC), Article VI, Section VI-E, authorizes the BZA to hear “variances” and “appeals of zoning administrator’s interpretations.” Variances are requests that allow for deviation from the basic development standards specified by the zoning code, such as, a reduction in minimum building setback, lot area or maximum building height. Variances may be granted by the BZA only when certain circumstances are found to be present. An appeal is a request by an aggrieved party for the BZA to review a decision or interpretation made by the zoning administrator, such as, if an unregistered use, structure or lot is nonconforming or illegal.

The City of Wichita adopted a zoning code in 1923. In 1985, Sedgwick County adopted a zoning code for the unincorporated portions of Sedgwick County. Up until January of 2013 the two jurisdictions had separate BZAs. The two BZAs has separate membership, bylaws and meeting schedules. The City Council appointed seven individuals to serve on the City’s BZA. The Board of County Commissioners appointed five individuals to serve on the County’s BZA. In January of 2013, the two BZAs were combined into one joint board known as the Wichita-Sedgwick County Board of Zoning Appeals.

Currently, the unified BZA has a membership of 14 individuals, seven individuals appointed by the City Council and seven by the Board of County Commissioners. On April 1, 2015, the Board of County Commission directed staff take the necessary steps to dissolve the unified BZA and re-establish an independent Sedgwick County BZA.

From a zoning code standpoint, the required step is an amendment to Article II, Section II-B.2.f of the UZC changing the current zoning code’s definition of the Board of Zoning Appeals to reflect two distinct BZAs. Currently the UZC defines the “board of zoning appeals” as “the Wichita-Sedgwick County Board of Zoning Appeals.” The proposed amendment would modify Article II, Section II-B.2.f to read “Board of Zoning Appeals means the board or boards appointed by the governing body of the City or the County.”

**CONFORMANCE TO PLANS/POLICIES:** As noted above, state law requires the establishment of a board of zoning appeals is the jurisdiction has enacted a zoning ordinance or resolution. The City of Wichita and Sedgwick County have adopted a zoning code, triggering a requirement that the two jurisdictions have either a unified board of zoning appeals or two separate boards.

**RECOMMENDATION:** Based upon the information available at the time the staff report was prepared it is recommended that the Metropolitan Area Planning Commission approve the requested change, the “Board of Zoning Appeals means the board or boards appointed by the governing body of the City or the County.” Approval of the request will comply with the Board

of County Commissioner's earlier action to direct staff to establish a separate Sedgwick County Board of Zoning Appeals; complies with state law requirements for the establishment of a board of zoning appeals if a zoning code has been adopted and will not detrimentally impact the delivery of variance or appeals services to county property owners.

**DALE MILLER**, Planning Staff presented the Staff Report.

**DENNIS** said for the record he was a City appointee. He said he thought this was a serious disturbance to the community and citizens of Sedgwick County that the Planning Commission is even being asked to do this. He said he was very distressed with the decision of the County Commission because all along there has been an effort to consolidate things in Sedgwick County and the City of Wichita and now they are being asked to split the BZA up. He asked if the current City BZA members would remain on the Board or will there also be a separate City BZA.

**MILLER** replied that staff understands that there would be a separate Sedgwick County Board of Zoning Appeals appointed by the Sedgwick County Commission and a separate City of Wichita Board of Zoning Appeals appointed by the City Council. He said staff's proposal was that the seven City Council appointees to the Planning Commission continue as the City of Wichita Board of Zoning appeals appointees.

**DENNIS** said he didn't see any choice in the matter unless there were questions so he guessed the Commission just needed to move to approve it.

**NEUGENT** indicated that she was a County appointee. She said when the BZA was originally consolidated she was still working for the City of Haysville and when it happened, some of the smaller communities were concerned about the significance of that move. She said having been a Planning Commissioner and having been at meetings she would agree with everything Commissioner Dennis said. She said she thinks this is nuts.

**DAILEY** said living in the unincorporated part of Sedgwick County and having previously served on the Sedgwick County Board of Zoning Appeals, he said he thought it was a mistake to combine the BZA Boards. He said he thinks you need people who are interested in what is in the County to decide what goes on in the County. He said he didn't see anyone giving a financial reason for taking the action. He said he feels consolidation isn't good in every case. He said in services and the building code he can agree with, but not on the zoning appeals. He said the City of Wichita should not tell people on the outer limits of Sedgwick County what to do and try to influence little cities to do what Wichita wants.

**GOOLSBY** commented to that although Commissioner Dailey lived in the unincorporated area of the County he was making comments on development in the City of Wichita. He added that one day the unincorporated area Commissioner Dailey lives in may be a part of the City of Wichita. He said he felt it was good to have, not necessarily consolidation; but collaboration; and dismantling the BZA speaks, in his opinion, of the intent of the County to enact chaos and not collaboration, and that does not sit well with him.

**DAILEY** said to him it was the City of Wichita trying to tell the outbound Sedgwick County what they can and can't do.

**RAMSEY** said he contends that every citizen of Wichita is a citizen of Sedgwick County.

**DENNIS** said he was a citizen of Sedgwick County who has been on the Planning Commission for nine (9) years and at no point has he ever made a decision that he felt would be detrimental to Sedgwick County. He said he takes exception to Commissioner Dailey's statement that he is not considerate of what is going on in the outlying areas. He said he is a citizen of Wichita, Sedgwick County, State of Kansas and United State of America. He said he supported the entire nation when he was in the military and will continue to support it in his capacity as a board member.

**WARREN** asked a procedural question; what would happen if the Commission voted against the proposal.

**ROBERT PARNACOTT, ASSISTANT COUNTY COUNSELOR** clarified that the Board of County Commissioners has already taken action to dissolve the BZA effective July 1, 2015. The County Commission will move forward with a separate five (5) member County BZA. He said the Planning Commission is being asked to amend the Unified Zoning Code (UZC) so that the definition of the Board of Zoning Appeals conforms to that action already taken. He noted that because this was an amendment of the zoning code text the by-laws require that a majority of the entire membership vote in favor of the motion in order for it to go forward. He said that would require eight (8) votes.

**WARREN** asked what happens if the wording in the UZC doesn't match up with reality.

**PARNACOTT** explained that the Planning Commission was making a recommendation whether or not to amend the Code. He said the governing body can override any recommendation by a super-majority vote. He said if that action does not happen, attorneys have ways of dealing with inconsistencies in Code. He said this would eliminate any ambiguity; however, if it did not change, the courts would figure it out. He concluded by saying that it would be better to have the Code match up with reality.

**FOSTER** asked how many County Board of Zoning Appeals cases the Board has heard.

**MILLER** responded that from 2005 -2014 there have been 22 County BZA applications and 98 City BZA cases. He said if you divided that up that would be 2.2 County cases per year.

**FOSTER** commented that it would be difficult to put a price tag on the separation but he mentioned the physical effort needed to accomplish another board meeting including additional staff time, packet mail out, setting up the meeting room, etc.

**MILLER** said instead of one mail out that includes both BZA and MAPC material, there will be a separate mail out, additional postage and staff time to set up a separate meeting but in the overall scheme of things those costs may be marginal given the number of times the County Board of Zoning Appeals meets.

**RICHARDSON** asked about County taxes being the same no matter where you lived in the County.

**PARNACOTT** responded that the County has a general mill levy that imposes the same tax whether you reside inside or outside the City.

**RICHARDSON** remarked so City residents pay both City and County taxes and have a vested interest in County business.

**CHAIR GOOLSBY** asked if anyone from the public was present to speak on the issue.

**MOTION:** To not approve staff recommendation for the requested change.

**NEUGENT** moved, **FOSTER** seconded the motion.

**DENNIS** said he thinks what is being done is stupid, but basically it has already happened so the Commission might as well do what needs to be done to make sure the UZC conforms to what has happened so he would like to make a substitute motion to approve staff recommendation on the item.

**SUBSTITUTE MOTION:** To approve subject to staff recommendation.

**DENNIS** moved, **B. JOHNSON** seconded the motion.

**NEUGENT** said she understands that at this point what the Planning Commission does makes absolutely no difference because the Board of County Commissioners has made a decision regardless of what any of the Planning Commissioners think. She said she also believes that not rubber stamping the County Commission decision and voting no is the only way to send a message that not everybody is in love with every action the County Commission is taking at this point.

**DAILEY** said he believes the UZC needs to conform to what the reality is for the public.

**CHAIR GOOLSBY** said so in the spirit of simplicity Commissioner Dailey should be advocating to keep the BZA together.

**DAILEY** said the Commission should make the UZC conform to what the County Commission has voted to do.

**NEUGENT** said she believes it would be a mistake for her to go along with a law change that she does not support, believe in, or thinks is really a benefit. She said she was speaking as a County representative who lives within an incorporated City that is not Wichita. She added as Commissioner Norton's appointment that might explain why her view is what it is.

**WARREN** clarified that if the Planning Commission votes for denial of the request, the County Commission has the ability to approve the request with a super majority.

**PARNACOTT** responded yes.

**MCKAY** asked if he had a conflict of interest because he has been contacted about being a member of the County Board of Zoning Appeals.

**PARNACOTT** said no it was not a conflict of interest since this was a legislative matter, not a quasi-judicial matter since the vote is on the body of laws adopted by the County Commission.

**DENNIS** clarified that it takes a 4-1 vote or super majority by the County Commission to override the Planning Commission's recommendation.

**PARNACOTT** indicated that was typically the way it worked but added that he would review the Statute. He said if the County Commission sends the item back to the Planning Commission to review, then it would take a simple majority to override it when it goes back to the County Commission.

**KLAUSMEYER** said as a County Commissioner appointee he was going to agree with Commissioner Neugent. He said he thought what the County Commission was doing was nuts in light of working on consolidation and streamlining things. He said he sees zero point in this action. He said if the combined Board wasn't working or if there were problems then that would be another matter.

The **SUBSTITUTE MOTION** to approve failed (5-7). **DENNIS, FOSTER, GOOSLBY, KLAUSMEYER, NEUGENT, RAMSEY** and **WARREN** – No.

The **ORIGINAL MOTION** to deny failed (7-5). **DAILEY, B. JOHNSON, MCKAY, MITCHELL** and **RICHARDSON** – No.

It was noted that eight (8) votes were needed so both motions failed.

**DENNIS** said he felt the Planning Commission needed to clarify the reason for the vote on the amendment to the Board of County Commissioners. He suggested a respectful letter from the Planning Commission Chair explaining that they are concerned citizen(s) of Sedgwick County interested in seeing consolidation in Wichita and Sedgwick County and not meaning any disrespect to the County Commissioners, let them understand that the Planning Commissioners feel they are all citizens of Sedgwick County.

**MOTION:** That the Commission draft a letter to more clearly articulate why it voted the way it did on the amendment.

**DENNIS** moved, **RAMSEY** seconded the motion, and it carried (12-0).

**PARNACOTT** clarified that the minutes of this meeting with this recommendation not to approve will go forward to the County Commission. He said the letter might better explain since the minutes are not verbatim.

**NEUGENT** asked if the Planning Commission would see the letter. She said her reason is she is not a big fan of the term "consolidation" but she does like the terms cooperation and coordination.

**GOOLSBY** mentioned collaboration and working together. He mentioned bringing the letter back to the Commission June 4, 2015.