

## **EXCERPT MINUTES OF APRIL 6, 2017 WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION MEETING**

**Case No.: CON2017-00007** – John W. McKay, III request a County Conditional Use to allow a one vehicle RV Campground on RR Rural Residential zoned property described as:

A tract of land in the North half of the Northeast Quarter of Section 35, Township 25 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, described as beginning at the Northwest corner thereof; thence East along the North line of said Northeast Quarter 330.8 feet; thence South parallel with the West line of said Northeast Quarter 653.5 feet; thence West parallel with the North line of said Northeast Quarter 330.8 feet; thence North 653.5 feet to the point of beginning, except the North 40 feet for road.

**BACKGROUND:** The applicant is seeking Conditional Use approval for a “recreational vehicle campground” (RV campground) on the approximately 4.61-acre, RR Rural Residential (RR) zoned unplatted subject site. It is the applicant’s intention to place a single recreational vehicle on the site and use it in lieu of a permanent structure. In short, the RV will substitute for a building and will be used as a residence. A recreational vehicle campground is permitted in the RR district with Conditional Use approval.

The site is located one-half mile west of North Oliver Street (47<sup>th</sup> Street East) on the south side of East 85<sup>th</sup> Street North. Access to the site is from a gravel drive from 85<sup>th</sup> Street. RR zoned county properties completely surround the 4.61-acre tract. Large lot residential sites, pasture and agriculture uses are predominant within a two-mile radius of the property.

Two similar cases for a Recreational Vehicle (RV) Park with one RV have been approved in the county (CON2012-00028 and CON2016-00011) by the Metropolitan Area Planning Commission.

**CASE HISTORY:** The site’s “RR” zoning was established in 1985.

### **ADJACENT ZONING AND LAND USE:**

NORTH: RR	40-acre single-family residence with agricultural outbuilding and agricultural land
SOUTH: RR	Large lot single-family residence
EAST: RR	Large lot single-family residence
WEST: RR	Quarter Section with single-family residence with agricultural outbuilding and agricultural land

**PUBLIC SERVICES:** No public sewer is available to the site. The property is located in Sedgwick County Rural Water District #2. As already noted, access to the site is from a gravel drive from 85<sup>th</sup> Street. The site will have a gray water wetland filtration system and a compostable solid waste system approved by the Sedgwick County Waste Water Manager.

**CONFORMANCE TO PLANS/POLICIES:** *The 2035 Community Investments Plan* identifies this area as “Rural” which encompasses land outside the 2035 urban growth areas for Wichita and the small cities. Agricultural uses, rural-based businesses, and larger lot residential exurban subdivisions likely will be developed in this area. Such development should occur in accordance with the Urban Fringe Development Standards for Wichita and Sedgwick County.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the Conditional Use request be APPROVED, subject to the following conditions:

1. The Conditional Use permits a recreational vehicle campground for one recreational vehicle.
2. The site will have a gray water wetland filtration system and a compostable solid waste system approved by the Sedgwick County Waste Water Manager.
3. Tent camping is not permitted.
4. The recreational vehicle campground shall be developed and maintained in general compliance with the approved site plan. All improvements and the operation of the recreational vehicle campground shall be in compliance with applicable regulations and codes.
5. The Conditional Use for a recreational vehicle campground for one recreational vehicle shall be declared null and void upon issuance of a certificate of occupancy for a permanent structure on the approved site; or, after the Recreational Vehicle has been removed from the site for a period of 30 days; or, for three (3) years from date of approval with an option to extend one time for a two (2) year period by the Metropolitan Area Planning Commission.
6. If the Zoning Administrator finds that there is a violation of any of the conditions of approval of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The site is located one-half mile west of North Oliver Street (47<sup>th</sup> Street East) on the south side of East 85<sup>th</sup> Street North. Access to the site is from a gravel drive from 85<sup>th</sup> Street. RR zoned county properties completely surround the 4.61-acre tract. Large lot residential sites, pasture and agriculture uses are predominant within a two-mile radius of the property.
2. The suitability of the subject property for the uses to which it has been restricted: The RR zoning district primarily permits single-family residences on two acres, specific agritourism and agricultural uses. Recreational vehicle campground means the use of land designed for occupancy by recreational vehicles for temporary or transient living purposes, including the use of camping spaces for tents.” Condition of approval is restricted to one R.V and no tent camping. A recreational vehicle campground is permitted in the RR district with Conditional Use approval.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the request will introduce a use that is not currently in the area; however, the scale requested and the recommended conditions of approval should mitigate any detrimental impacts.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: The public’s health and safety should not be impacted by the request. Denial of the request could represent a loss in use and enjoyment to the applicant’s property.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: *The 2035 Community Investments Plan* identifies this area as “Rural” which encompasses land outside the 2035 urban growth areas for Wichita and the small cities. Agricultural uses, rural-based businesses, and larger lot residential exurban subdivisions likely will be developed in this area. Such development should occur in accordance with the Urban Fringe Development Standards for Wichita and Sedgwick County.
6. Impact of the proposed development on community facilities: None identified.

**KATHY MORGAN**, Planning Staff presented the Staff Report.

**GREEN** asked if the house need a Certificate of occupancy.

**MORGAN** said that Kelly Dixon, MABCD is present and he is saying no

**J. JOHNSON** asked if there is there a purpose for minimum of three years.

**MORGAN** said the applicant is hoping to be out within three years, but if needed the applicant would come back and ask for an additional two.

**J. JOHNSON** said he believed it was as a maximum of five.

**MORGAN** said her recommendation is a maximum of three years with an option to extend one time for a two-year period.

**DOOL** asked if the current location of the tiny house plan to keep it in relation to the road.

**MORGAN** responded yes.

**CHAIR FOSTER** asked if it is currently on wheels and if it is movable. Foundation not fixed.

**MORGAN** said it has gravel, still on wheels and anchored.

**JORDAN MULLEN 6800 E. 69<sup>th</sup> STREET NORTH VALLEY CENTER, KANSAS**, said she was raised in the community not too far from the property. Her parents purchased 80 acres where they built their forever home. When she was 11, her parents' house burned in a house fire. She stated that the reasons she is telling her story is that she values her family and relationships more than she values any other items and she wants to live a minimalistic lifestyle. She started this project a couple of months with the help of her aunt and uncle. She knew water and electricity were needed on the property. Water meter was installed, Westar Energy dropped a transformer and at that time, it was suggested to bring the unit to the property to test it. About a week later Westar look at it, OK'd it and said she should rezone it with the county since it's a tiny home and considered an RV. At that time, she felt frustrated because she wished she had been given that information a week before. She stated that the house is already out there and in the previous meeting she heard concerns brought up by the neighbors. She has been able to discuss disposal plans with the county and gray water concerns. She stated that at no time will there be sewage exiting the toile through the system. I will only be gray water. She wants to address the issue of the property values and concerns. As she understands the tiny home is private, property, and it would be moved as the landowners or herself move. The tiny house will not devalue surrounding homes. She said there are no tiny house laws in Sedgwick County because these type of homes are so new. She tried to get a variance but was instructed to apply for a CUP. She understands that the County is working with RV laws to protect individuals who live in them and around them. By agreeing with this conditional use, she would be agreeing to the rules of electricity, sewer, water intake, and paying taxes. Another concern was the lack of respect when unit was brought out. She respects her neighbors and their properties. She by no

means snuck the house to the property. As soon as she was told to obtain a permit, she immediately contacted neighbors, thinking it was important to personally send out letter before the county did. She obtain a list of address within 1000 ft. and she notified them. She was accused of being disrespectful, heartless and intentionally breaking the law. A website was referenced to show how tiny homeowners should avoid laws and live illegally. Hoping that by clarifying how steps were taken she can show that it was not her intention. If anybody had concerns is why she sent out a letter with her information. Since last MAPC meeting she had the ability to go door to door and talk to neighbors. It was at that time that she was able to talk to them about a restrictive covenant, drawn up by a title company to help protect the property from what she is intending it to be, which is her the one time use. She would like the have the freedom to go where career takes her in the future, but for now this is her home and community. She is excited to be able to live close to family and to take care of her uncle's property since before the land had no use and was tall grass. She looks forward in making this a beautiful property and addition to the neighborhood. As graphic designer, she wants to show what she has in mind for the home to look like for the next couple of years before moving on. She is asking everyone to understand that the conditional is the only way that she can live in her home in that private property. She called to verify with Sidgwick County Zoning department and was informed that it would not change from rural residential and instead is has a special statement attached to it. She would like to continue to work with the county in any way possible to help address any tiny house laws and terminology for the future.

**WARREN** commented that he appreciates the restrictions to keep it from becoming a mobile home park and asked the nature of the temporary aspect of the 3- 5 years. Why is it temporary and what happens at the end of the 5 years if additional time is needed.

**MULLEN** responded she does not plan to be there more than 3 years, but having an option for two more. She is not ready to move and likes being close to family, but knows in the future she would like to further her career in different states. That is why she found this tiny house to be suitable due to its mobility.

**RICHARDSON** asked what the square footage of the house is.

**MULLEN** said its 8 feet by 30 feet, 240 square feet and does not including her loft spaces.

**J. JOHNSON** for clarification wants to know if anybody has been living or lived in the home.

**MULLEN** said that at the beginning there were internal projects mostly aesthetics i.e. window tint and painting. Having a full time job it was a lot of late evenings and weekends. Her cat does live there at the time and she has some personal belongings in there. She lives with her parents but goes back and forth between her parents and uncles due to the project. She is there about twice a day feeding and watering her cat, but she is not living there.

**DOOL** asked if the wheels and platform remain on the house.

**MULLEN** said the intents are for the wheels to stay. The only reason she would consider taking them off would be for weather protection, adding that it will be anchored down.

**DOOL** asked if will have skirting so that the wheels are not showing.

**MULLEN** she has a design element going around the base to help with rock hitting and for weather purposes.

**ELLISON** asked her how she made decision on where to put the house in the property, was her concern screening, drainage.

**MULLEN** said she was given guidelines from the county on how far from the road and where the item needed to be. Based on requirements and looking at the flood map, privacy looking at layout working with all the restrictions she choose where to put it in. There is a good road of evergreens acting as a fence for privacy.

**ELLISON** said it is hard to understand if she elected to put an old motor in the same location vs. what she put at that location, in her opinion what would the neighbors think.

**MULLEN** responded that people could place their old motor homes on their property if they choose to. She explains that she is more for the person's character other than anything else.

**CHAIR FOSTER** commented that she has done a good job following the rules, as she knows them and filing in the blanks in his understand of the situation.

**DAILEY** commented that he has been out there twice and missed it the first time he drove by it. Due to the flood zone, he said there would not be room for a large home. He said it looks like the best choice for the land.

**JOHN MCKAY 4017 E. 85<sup>th</sup> STREET NORTH, SAID HE** owns the five acres where the tiny home is and resides across the creek directly east. He said Jordan came up with the idea, he had the five acres and she would be close to them. Explained he found out the procedure and started the process. His family for generations have lived in the area. The last thing he would like to do is devalue his neighbor's properties. He appreciates the deferral allowing them to talk to the neighbors since they were unaware of their concerns.

**MORGAN** mentioned this is recreational vehicle park for a single vehicle not a mobile home park.

**GLEN DUBOIS, 7319 S. SPENCER ROAD; NEWTON, KANSAS** said him and his wife are co-owner of the 160 acres diagonally to the northwest across the road of the proposed zoning change. His family has spent time clearing the land with the potential goal in developing a prime residential site similar to the homes already established in the area. He wants to voice his opposition regarding the application. He said according to the Sedgewick County unified zoning code the definition for recreational vehicle camp ground states that the land is designed for transient temporary living purposes, with a recreational vehicle defined as a travel unit desined as temporary living quarters for recreational camping or travel. Said Ms. Mullen intends to make this her permanent residence for 3-5 years, which is in violation of the codes and began the process many months ago. He added that with family members in the real state business and a

family member sitting on the board surely she would know the potential zoning issues they would face. Utilities services were arranged moved and the house was moved to their property on January 28-2017 with her moving in almost immediately. He continued to say that no formal plan for wetland had been submitted as of March 27, 2017. According to Tim Wagoner water quality specialist it wasn't until February 13, 2017 after electric refused to hook up the electric meter that the applicant submitted the rezoning application upon recommendation of an employee at the zoning planning department. He said in a meeting with Kathy Morgan, Senior Planner on March 15 she stated that her recommendations for approval on the presence of two applications involving actual RVs. When asked, if approving the application would extend the presence and open the door for tiny homes using conditional clause she agreed it would. He said it is time to stop this nonsense of encouraging a back handed approach to address gaps and holes in regulations that fail to address tiny homes issues. He adds that somebody needs to do their job and create tiny houses guidelines as they are and should be a viable residential option, however a conditional use change is not the answer for tiny house owners nor land owners who want to along with all of their neighbors.

**B. JOHNSON** asked Mr. Dubois to show on map where he lives.

**DUBOIS** showed on the map where his property is.

**B. JOHNSON** asked how far he lives from the site.

**DUBOIS** said he lives eight miles north, adding that he farms the land near the tiny home and has plans in the future to develop it.

**B. JOHNSON** asked what the period on development is.

**DUBOIS** responded five years' from now.

**MICHELLE GIFFORD, 4900 IDLE BANKS, VALLEY CENTER, KS** said that the Metropolitan Area Planning Department has failed to establish viable zoning guidelines as it relates to tiny houses in the Wichita- Sedgwick County areas. Instead of developing appropriate codes, homeowners are asked to agree an approval of a placement of a recreational vehicle in a conditional campground. She said the state of Kansas has establish guidelines for recreational vehicles. Ms. Mullen has personally stated that she would be alarmed if she were the neighbor. Her questions are if the tiny house has meet the State of Kansas guidelines to be classified as a recreational vehicle? Has Ms. Mullen properly tagged, titled and registered the home as such? Does three years of living in an RV meet the definition of recreational camping, vacation or travel use? Because those questions remain, she asks the commission vote no.

**JOSHUA PETRIK 5000 E. IDLE BANKS, VALLEY CENTER, KS** said that the two similar cases for recreational vehicle park with one RV that have been approved in the county by the MAPC has no similarity at all with this case. He displays photos of the locations for the two similar homes, explaining that there are not visible with few residential homes around them. Does not see the similarity, since one is large residential lots vs. agricultural lots. He requests that the board exclude from their consideration the two conditional use zoning as precedence when

making a zoning decision for this case. Adding that these cases are not comparable.

**DAILEY** asks to see the last slide presented by Petrik since he notice nice rural homes that could be comparable to the area.

**BILL BOWEN 8455 N. OLIVER** said he and his family live east about half a mile from the property in question. He stated that Ms. Mullen moved to the site about two months ago with our proper permits or utilities. He mentions a last minute deferral on the case from the MAPC meeting on March 23, 2017, and adds that there is no define zoning for a structure called tiny home, which is the basis for the conditional use request. He voices his opposition based on MAPC golden rules. Bowen displays photos of homes around the area in comparison to the tiny home saying that the structure is very inconsistent with the surrounding properties and is out of character for the neighborhood.

**KEVIN MILLER he 55210 E. IDLE BANKS,** said he has similar feelings as the other neighbors do. He and his wife oppose and want to state it for the record.

**DAILEY** asked him where lives.

**KEVIN MILLER** said he does not live in the city limits of Valley Center. He lives half a mile east and one quarter mile north of the site.

**CRISTA MCKAY, 4017 E. 85th N. VALLEY CENTER, KS,** said the only people who voice their concerns that have property within the 1000 ft. are the Dubois and other people that spoke are out of the 1000 ft. She has sold real property for over 20 years and is familiar with evaluating property. She mentions that some people overbuild and do not get their money back. Cannot compare 5 acres to 40 acres whether there is a dueling on it or not, they are not comparable. A real state appraiser is going to appraise real property, which is real, and Ms. Mullen's property is personal. Adding that Ms. Mullen's can come, go, and move in a year and she will not affect the value of the 5 acres. She understands that there are rules and regulations and as longs as she follows Sedgwick County codes, her neighbors cannot tell her what to do.

**WARREN** asked if with the zoning in place somebody could move a mobile home and as long as it is on a permanent foundation new or used it would be allowable process by right.

**DIRECTOR MILER** responded, residential designed manufactured homes.

**WARREN** asked if the applicant could take the unit's wheels off and put it on a permanent foundation, and if that would be illegal.

**DIRECTOR MILER** said if that were the case, they would not be here discussing the issue.

**WARREN** said since this is temporary he does not see this as being detrimental to the neighbors and would like to move for approval.

**MOTION:** To approve subject to staff recommendation  
**WARREN** moved, **MILES** second the motion

**RICHARDSON** asked on the issue of being able to permanently reside in a RV in an RV campground designation.

**WAGGONER** said the definition says, a unit designed as temporary living quarters. What's being proposed is a 3 to 5 years' period that would meet the temporary standard. Mr. Richardson's question regarding recreational camping or travel use comes down to interpretation. He believes those terms are not defined within the zoning code and the question can come down to how broad is recreational defined. He understands there is an intent of temporary use living quarters use of the property and that is key part of the definition.

**RICHARDSON** asked if five years would be temporary.

**WAGGONER** responded it would be temporary.

**J. JOHNSON** asked if somebody bought the property next door, would there be precedence if they wanted to do something similar with the same application.

**DIRECTOR MILER** said the principal of planning states that similar situated properties will be treated the same. If there was an identical piece of property next door and this case is approved the Commission would be obligated to look for an approval.

**MORGAN** said the property to the east is own by the same owner where the tiny house is located.

**J JOHNSON** asked what is being consider today is not a principal structure.

**MORGAN** responded, correct.

**MILLER STEVENS** asked if there is any thought t in addressing the tiny home concept in the zoning code.

**MILLER** said that the current interpretation meets all the situations and does not thing that need to be a change in the ordinance.

**B JOHNSON** commented that he was glad this item was previously deferred, adding that since this is not a zone change and just a conditional use he is in favor of it.

**DAILEY** asked if they are there for 3 years, how would they get the two-year extension.

**MORGAN** said they would have to contact the Planning Department and say they want to take the option of an additional two years. It would be note it so the the conditional use would not be voided.



**DAILEY** asked who would decide it.

**CHAIR FOSTER** commented that the condition needs clarification.

**DIRECTOR MILER** said it would happen with an Administrative Adjustment.

**DAILEY** asked if they wanted to go beyond the five years.

**MORGAN** said they would have to refile a conditional use.

**CHAIR FOSTER** said if there a permanent residence is established, this conditional use would go away. He added that this is different from what has been looked at and it is important the temporary nature in the condition and he asks if the commission if they feel the 3 to 5 year is appropriate for this application.

**B. JOHNSON** said that is a motion.

**ELLISON** commented that a similar situation was approved by the commission about a year ago and those homes did not look as good as the quality of what the tiny home will be. He applauds what they are trying to do to by making it fit in the neighborhood, even though it is not at the value as the homes in the neighborhood, and to be consistent he is in favor of it.

**CHAIR FOSTER** said there is a motion for approval with clarification that an Administrative Adjustment be required for the extension of the 3 to 5 years.

**MOTION:** To approve subject to staff recommendation with clarification that an Administrative Adjustment be required for the extension of the 3 to 5 years.

**WARREN** moved, **MILES** second the motion and it carried (13-0-1)

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