

**City of Leawood
Planning Commission Work Session
Rain Barrels
Tuesday, August 14, 2012**

STAFF MEMBERS PRESENT: Kip Strauss, Ken Roberson, Joe Rexwinkle, Franki Shearer, Mark Klein, Justin Peterson, Marc Elkins, Len Williams, Kelly Jackson, Lisa Rohlf, David Ley.

Mr. Klein: We are bringing rain barrels forward soon. They have become more of an issue as far as people wanting to capture water and use it to water gardens and such, taking advantage of rain. Last summer, we experienced an increase in the number of rain barrels, and we did receive a few complaints with regard to people who thought they looked unsightly. We wanted to try to address them in the LDO, as they are not currently addressed at all; and if something is not listed, it is prohibited.

Chair Rohlf: What were some of the complaints? Were these standardized rain barrels you could buy at a store? Were they fabricated at home out of junk?

Mr. Klein: Some of them were actually a fairly large rectangle; others were generic-looking. That may have been what their opposition was, or maybe people didn't feel they blended in with the house. We are trying to allow them while having them blend in to reduce objections.

Comm. Jackson: Is it considered an accessory because it's attached to the downspout? It seems like planters outside can be similar in size and aren't restricted in any way.

Mr. Klein: Landscaping doesn't have any restrictions. In fact, the only requirement we have on single-family landscaping is street trees when the subdivision comes in. We haven't received comments or complaints on that.

Comm. Jackson: I don't see why a rain barrel isn't part of that.

Mr. Klein: This is probably more of a structure to hold water, and while a planter is a structure to hold landscaping, it is just a bit different. There is much variation with rain barrels. Some look generic with primary colors and are maybe a bit larger than what people would expect to see in a single-family house.

Comm. Strauss: It has a functional use

Comm. Jackson: You're saying the way the code is written, it's not allowed unless we do something.

Mr. Klein: Technically, the way the code is written, that is true. There are uses that are not addressed as accessory uses that are allowed. For instance, we don't list air conditioners as a specific use in accessory uses, but we allow them. However, we have dealt with emergency generators as something that relates to power and is similar to the size of an air conditioner and creates more noise. We wrote a special amendment for these.

The majority of the rain barrels are between 50 and 70 gallons. They come in all shapes and sizes. Typically, they do have to be elevated because a spigot is located at the bottom. There are concerns as far as mosquitoes if they are left open on top. Some have a filter for the downspout, and the water filters down into the rain barrel. Then they can use that for a hose. (*Shows examples*) This is showing two examples with one that is more decorative and one that is more generic.

Chair Rohlf: Are these out there?

Mr. Rexwinkle: They are taken from online.

Mr. Klein: We would like to consider location of the rain barrel. Obviously, they will have to be fairly close to the house. We are proposing them to be located within 6 inches of the house. This makes sense because the downspout is there, but sometimes, people can get pretty inventive and take the downspout and run it out to the middle of the yard. They need to be elevated to attach the spigot to the bottom. If the spigot is located farther up on the rain barrel, there will be standing water within the barrel. Placement would be ground level or on a platform to keep it level so it won't tip. Regarding construction materials, a number of people out there use a website to make a rain barrel. We are proposing that they need to be decorative. You might still be able to make it, but it needs to meet certain characteristics. We want to limit the size of the rain barrels. If somebody brought in a 200-gallon tank or something like that and hooked it up to a rain barrel, it would not meet our expectations. This gets us to appearance. Those manufactured and available for sale tend to be decorative in nature; however, there are many that are not. Staff is recommending the following criteria:

- Located in the side or rear yard
- No greater than 70 gallons
- No greater than 5 feet in height above the adjacent grade
- Fed by a downspout
- Within 6 inches of the house

Comm. Ley: Would you allow them underneath decks? Those would be significantly larger. They wouldn't be seen if there was a skirt around the deck.

Mr. Klein: We hadn't thought about that. I didn't realize that was something that was a possibility.

Comm. Williams: It's a good idea if you've got it concealed. It wouldn't matter.

Mr. Klein: We can consider that if it's hidden.

Comm. Strauss: That's what I was thinking because you can have it on the side of your house but still pretty visible from the front. Can we request screening in the side yard?

Chair Rohlf: Can't be visible from the street.

Comm. Williams: When we talk about the side yard, it could be to the front of the house but not on the front of the house. The downspout should be on the side, but it would be visible from the street, so we probably would want to have some screening.

Comm. Strauss: Even on corner lots, the side lots can be very visible.

Comm. Williams: I've got two downspouts that are located on the sides of the house, but they're toward the front face. Both would be very visible from the street, despite the landscaping.

Chair Rohlf: I'm not sure I understand. Do you take the section of the downspout off that takes it to the ground and put the rain barrel underneath that?

Mr. Klein: Yes, and we would like to see it draining into something that filters the water and then goes down to the rain barrel to prevent standing water.

Chair Rohlf: It could go over to the neighbor's yard.

Comm. Williams: The water is going to go anywhere.

Comm. Roberson: Is there any danger to these things tipping over?

Mr. Klein: That could definitely be a concern. If they're fairly full, I imagine they would be pretty hard to knock over, but it's possible. That is why we would like them on a flat surface. Are you suggesting a requirement that it be secured to the house?

Comm. Roberson: I was just thinking that if it's over a certain height, it's able to be tipped maybe. The downspout may hold it.

Comm. Williams: If it's full of water, it's going to be pretty heavy. If it's on a flat surface, it will be hard to pull over but not impossible. Some of the online rain barrel websites I've seen talk about making one of your own. They do talk about having an attachment to the house to prevent it from tipping over. It could be a strap or an anchor that just prevents it from tipping. You think about tipping a 55-gallon barrel full of water on a kid; it's going to be dangerous.

Comm. Roberson: It will be dangerous, and then once again, you're depending on the homeowner to make a stable, flat surface.

Comm. Williams: Unfortunately, unless it's a 3-foot or more deep concrete pad, the pad will shift as the ground shifts. It may start out being level today but who knows about next year?

Mr. Klein: Would you like to see something with regard to anchoring it?

Comm. Roberson: I don't want to be too anal about it, but I'd hate not to address something.

Comm. Williams: They may have more risk of injuring kids with their own flat-screen TVs, bookcases and other things in the house. We certainly don't need to add to it.

Comm. Strauss: If I were environmentally conscious and went to WalMart to buy the decorative one, it's easy. But now to say that I have to secure it to the house, it's a lot harder.

Comm. Jackson: I don't think they're sold with a strap on them.

Mr. Ley: Some of the nicer ones are sold with one.

Mr. Rexwinkle: We could look to see if they're sold anywhere like that.

Mr. Klein: Or if there is some sort of device they can use.

Comm. Williams: At some point, we're getting into product safety liability, and is that really what we need to worry about? We get into these guidelines, and it's their responsibility.

Chair Rohlf: Is there anything about putting it on a level platform?

Comm. Elkins: It's on the next page.

Chair Rohlf: Was that part of the discussion?

Mr. Klein: It was part of the discussion, but you're right that something needs to be added.

Chair Williams: Maybe where it talks about the 6 inches, add the platform.

Mr. Klein: As we talked about before, we were looking at something to require that they are more decorative and try to blend with the residential neighborhood. We would want something complementary to the color of the house. No primary colors could be used. The rain barrel should be permanently fitted or constructed with an inside guard. This addresses mosquitoes. The rain barrel shall not be elevated more than 6 inches above grade because then tipping becomes more of an issue as well. We just talked about adding a requirement to locate them on a hard, level surface.

Comm. Strauss: I don't write ordinances, but I was thinking "complementary to the color of the house or a natural color." This would allow terra cotta or something.

Mr. Klein: Right.

Comm. Strauss: Terra Cotta would be good, or have something that fits within the landscaping.

Comm. Jackson: Color is a little too subjective. I would even just scratch that one.

Comm. Williams: Or list the colors it cannot be, like the primary colors.

Chair Rohlf: Do we have any in Leawood?

Mr. Klein: There are some. We became aware of them because some people had a complaint against it. Then we've also been approached by other people who want them.

Chair Rohlf: Is there anything out there that they have complained about that we haven't put in?

Mr. Klein: I don't believe so. I believe the reason they were complaining is they just didn't think it looked good, period.

Chair Rohlf: Rain barrels of any style or rain barrels that looked like that?

Mr. Klein: The one that I saw a picture of, I didn't think it looked that bad. Taste is so subjective as far as what you think is an attractive nuisance and one that isn't. We're trying to find that fine line. We would like to allow these in the City of Leawood and provide them as an option. If you just allow them outright, you'll get a lot of different things, many will complain, and suddenly, it will be a push to ban. This is a way to allow them but make sure they look good.

Comm. Jackson: My thought would be to scratch the color requirements altogether.

Comm. Roberson: You've got to have something.

Comm. Jackson: Why?

Comm. Roberson: You'll end up with bright blue.

Comm. Jackson: People put bright blue planters out in their yard. What's the difference?

Chair Rohlf: If it's not visible from the front, it would be more important.

Comm. Jackson: Yes, say you can't see it from the front.

Mr. Klein: We talked about not from the street.

Chair Rohlf: Yes, as long as you can't see it, maybe the color doesn't need to be regulated.

Comm. Strauss: I like something that restricts the color because if you're a neighbor and are always looking at something that is a hot pink barrel, it seems like it would bother me for a while. I'm in favor of some sort of color restriction.

Comm. Jackson: Pink is not a primary, and purple is not primary; turquoise is not primary. The problem is that it's so subjective.

Comm. Roberson: Just like Ford: any color as long as it's brown.

Comm. Jackson: We're keeping the size at a minimum. It's not going to be this huge barrel.

Comm. Roberson: So what color can a hose be? And how long are we going to allow the hose to stay out? Permanently?

Comm. Jackson: We've got to draw the line somewhere.

Chair Rohlf: The hose has to match the rain barrel.

Comm. Williams: Designer garden hoses.

Ms. Shearer: My recommendation would be to say a neutral color or no talk about color at all.

Mr. Klein: That is pretty much the review of rain barrels. We would like to bring this forward fairly soon, so you will probably see it the month after next.

LDO AMENDMENTS

Mr. Klein: Developments are starting to pick up now, and we may see more life in the next year or two. We thought we would start looking at our ordinances and things that the LDO doesn't address. One of the things we discussed with 135 Street Corridor is the lot lines that go through the center of the street; they're private drives. That is considered an internal lot line. Currently, the LDO requires setbacks from public right-of-ways and exterior property lines. However, we don't technically have a requirement that the building has to be set back more than the typical interior property line setback of 10 feet. If the drive is 24 feet in width, you could put the building right on top of it and possibly even encroach into the street. Staff has always made the argument based on common sense to get it out of the sight triangle, but we also try to be at least 20 feet behind the curb. That is something we would like to bring forward fairly soon to make sure there is some sort of requirement.

Comm. Roberson: That makes sense.

Mr. Klein: We have 40 feet for the public right-of-way. Sometimes, you can add a little creativity within the internal property lines. Is it something you would like to see them set back 40 feet from the back of curb or from the internal lot lines, or would you be in favor of letting them go a little closer?

Comm. Strauss: Is there a minimum for the sight lines that you can calculate?

Mr. Klein: Currently, we measure 30 feet along each direction, and they have to stay out of that. If they move it back far enough this way, they can still move it much closer. Anything that has an interior drive has the same kind of issues where they're private streets. It's not uncommon; pretty much every development we have has interior property lines. If we divide it with this going down the middle of the street, it would be nice to have a requirement.

Chair Rohlf: We'll start seeing some things come back maybe.

Mr. Klein: We currently have a deviation available for interior property line setbacks for situations when the building is going over the property line and maybe dividing into two condominiums. We allow those. Park Place has that situation, but it is a little different because it is a sidewalk. They have the distance from the curb.

Comm. Strauss: That CVS is on two different properties?

Mr. Klein: This looks like it, but I don't remember that.

Comm. Williams: I don't remember that being an issue when we saw it.

Mr. Ley: I don't think it is. Originally, when it developed, this was one separate tract.

Chair Rohlf: Where would this fit in the LDO?

Mr. Klein: I'm thinking in regulations of the zoning districts where we have the rest of the setbacks.

Chair Rohlf: Is this driven by something specific?

Mr. Klein: Before development really starts kicking up out there, we would like to address this. A lot of these developments have been turned over to the bank, such as Villaggio and Parkway Plaza. Cornerstone, I'm not sure about. They are trying to sell these pieces of property. We talked to Bank of Oklahoma, and they talked about possibly bringing in a developer who would redo the whole Villaggio development. If that did happen, there are opportunities for building placement. The more it gets built out, the harder it is to change.

Comm. Strauss: You're saying the LDO has setbacks already set for the perimeter lot line but not the interior lot lines.

Mr. Klein: Yes, that's right.

Comm. Strauss: It makes sense to have consistency with the interior lot lines the same way that you would do the exterior lot lines.

Mr. Klein: Since they're platting down the middle of these streets, it could be written as a certain distance from the property line, which would be harder because of taking into account the width of the drive, or it could be from back of curb, which could be easier to get that distance away. That way, the width of the drive

could change and you would still have that same requirement to locate it a certain distance from the back of the drive.

Comm. Williams: That sounds good.

Comm. Jackson: How does this affect Park Place if they wanted to come in? The guy that came in talked about those mixed uses, with more intense usage.

Mr. Klein: We do have a deviation available where it makes sense. That way, it's something that we can point to as far as a requirement, and then a deviation is available currently so the Planning Commission and City Council can take a look at that specific instance to see if it makes sense that they should actually be granted the deviation.

Mr. Rexwinkle: We just had one for Palo Verde because they had a property line go through the middle of the parking lot. You recommended approval of the deviation, and City Council approved to reduce it to zero because it was a shared parking lot.

Comm. Strauss: Are we going to get back to that topic of the 135th Street Corridor and our vision?

Mr. Klein: Governing Body is looking over the current 135th Street Corridor study right now, so yes.

Comm. Jackson: Was a new study done?

Mr. Klein: No; they're looking to see if a new study should be done just because things have changed out there and the Comprehensive Plan has changed a great deal as far as what's designated out there. At the time that study was done, there was a lot of retail. Now, we have practically the entire thing designated Mixed Use. In that corridor study, they indicated vehicular use should be located along Nall and State Line, and then around Market Square should be very pedestrian with lower floor area ratios. They want to look at whether that makes sense anymore.

People come in to the building department for various accessory structures, which could be a garage that's attached architecturally or a pool house in this example. The way the LDO currently reads is that it is allowed to be a maximum of 2% of the lot. When you get a fairly small lot, it doesn't really allow the structure to be very large at all; however, if you get a very large lot, it could allow a structure that could be larger than a house. These examples would allow an accessory structure of 379 square feet and 8,612 square feet. We would like to bring forward an amendment that maybe matches the size of the accessory structure a bit more to the size of the primary structure. Maybe it is a certain percentage of the size of the primary structure, be it 30% or 40%. We still have the requirement of 30% of open space that the lot has to maintain. That requirement is still there no matter what.

Comm. Roberson: Is a structure just considered a building? What about a tennis court?

Mr. Klein: Typically, we haven't counted tennis courts as a structure, but we have counted a garden structure like a pergola.

Comm. Elkins: Does a pool count as a structure?

Mr. Klein: We don't allow above-ground pools, and we don't consider the in-ground pools to be structures.

Comm. Elkins: If we did that, could it be done in such a fashion that there would be some sort of availability of a deviation or variance?

Ms. Shearer: You can always get a variance for anything. You have to go to the BZA, but you can get a variance to anything in the LDO. We could write an exception in. What were you thinking?

Comm. Elkins: You probably know better than I do, but on some lots such as the ones we're looking at, the owner might want to have horses. You could have a barn that would exceed the limits that you have. Again, if you tie it to the primary structure on the lot, it may be too restrictive. I'm just trying to figure out a way that we could do something that would give us the kind of limitation we want but yet give us the flexibility. It may not be, possibly; maybe they just have to go through the BZA process. I could see a situation where you have a relatively modest house and you want a horse barn. As horse barns go, it might not be that big, but it might well exceed the limitation you have tied to the principle structure.

Mr. Klein: I wonder if we can tie it to the zoning as well. Within AG, for instance, it wouldn't have that restriction.

Comm. Roberson: Stu Sharp's place is a perfect example. He's got two barns plus the freezer chicken coop, for lack of a better term. It would far exceed the size of his home.

Comm. Elkins: That was one that came to mind.

Ms. Shearer: You could maybe write an exception for AG uses somehow.

Comm. Roberson: When Regnier had the horses, it was an awfully small structure.

Comm. Elkins: The house was very small. At least give that some thought.

Mr. Klein: That's a good idea. What we've been running into is that some of the pool houses and things like that have gotten very large, especially on the larger lots. Then some of the people on the smaller lots haven't been able to build hardly anything at all, even though they far exceed the 30% open space. Maybe it's also a combination of relationship to the primary structure as well as the size of the lot. Maybe there is some sort of formula.

Those are two of the main ones I wanted to bring up. An issue that is somewhat related regarding setbacks is that monument signs currently are not required to meet the building setback. They are often times located much closer to the street, which we have allowed in the past, but it's not something that is really addressed in the LDO as far as how far they need to be set back. We require that they are located outside that sight triangle, but if they weren't near the corner and were along the flat side of it, it could actually probably go right up to where the sidewalk is. I'm not sure if that is something we want. We would like to see if you would be supportive of a setback to the structure such as a monument sign. Maybe it would not be as great as 40 feet because most of the time, the monument signs, you want out front.

Chair Rohlf: Are you talking monument signs for the whole development?

Mr. Klein: It could be either. Individual office buildings will have them, and then a development may sometimes have monument signs as well.

Chair Rohlf: In Parkway Plaza, how far is that monument back from 135th Street?

Comm. Elkins: Not very far.

Mr. Rexwinkle: It is on private property, but it's right on the property line, I think.

Chair Rohlf: I don't think it would hurt to quantify it.

Mr. Klein: I'm not sure if it would be something like 10 feet. We can take a look at what's existing out there and determine what we think looks good and what we think might look a little too close.

Comm. Roberson: That works. Take some pictures.

Mr. Klein: That's pretty much what I had for tonight.

Comm. Elkins: This isn't necessarily for tonight, and I know I sound a bit like a broken record, but I want to make sure that we don't lose track of this cell tower issue. I've already lost track of it.

Ms. Shearer: I was on an hour-long telephone conversation today with International Municipal Lawyers. There is some new federal legislation that all of us are working on trying to understand.

Comm. Elkins: As I said when we extended the SUP for two years, which takes us to 2014, you know that I'm not one to be terribly fair to the telephone companies, but having said that, to be somewhat fair to them, we need to give them a heads-up as to what we think we're going to do, and they offered to come in and try to educate us. I happen to know there are some alternative technologies out there to introduce in OP and Leawood.

Ms. Shearer: We are working on that.

Comm. Elkins: Those two years are going to go by fast. We're almost a year into it, if we decide we're going to take a really cutting-edge approach to this, we need to leave enough time to let the telephone companies address what Leawood is going to take as a leading-edge approach to it.

Ms. Shearer: I will tell you this about all I've worked on for two weeks: there is some new legislation that sort of complicates things for us, and I'm working on a memo about that.

Comm. Elkins: Legislation that has been passed and is already enacted into law?

Ms. Shearer: Yes, in February.

Comm. Jackson: Making it harder for the city to put restrictions?

Ms. Shearer: Yes, so you'll be hearing more about that from us.

Chair Rohlf: Where do we stand on this? We spent an awful lot of time on monuments and Park Place. Is any of that going to come to fruition?

Mr. Klein: I received a call from Ed Cooper as well. We're going to have to write something and bring it forward. There seems to be a little bit of variation. Not everybody seems to be on the page, including staff, as far as what the appropriate number is. Ultimately, I think Richard is going to make that determination, and then we'll write an ordinance and bring it forward to you.

Comm. Roberson: Did you call Dick, then?

Mr. Klein: I called Dick before, and he called me this last time. He called me about another issue, I think, and then I talked to him at that point.

Comm. Roberson: Have you talked to him since August 3rd?

Mr. Klein: I talked to him last week.

Comm. Roberson: Then you've done what I asked you to do.

Chair Rohlf: What happened with the McDonald's situation?

Mr. Klein: Yes, the menu board situation is done. The two that have been the toughest have been the identity monuments at Park Place and Church of the Resurrection and trying to figure out how to limit it to campuses like Church of the Resurrection. I don't think anybody was against the concept itself except for maybe the number that was there. Then post and panel came in on both Park Place and Church of the Resurrection, who also had the banners on the light poles. We currently have those going up and down the street and over at Town Center Plaza. Not to say too much, but I talked to Dick about it and let him know that it might not be everything they're asking for but that we'd take it forward.

Ms. Shearer: It sounds like we just need to sit down as staff.

Mr. Klein: Yes, we need to figure out what the limit is and then write it. Then we'll bring it to you, and if you have an issue, it will come out and get adjusted.

Comm. Roberson: I would prefer it to go that way than for us to get involved in it on a one-by-one basis.

Chair Rohlf: Is the parking garage for AMC approved and done?

Mr. Klein: Yes.

Chair Rohlf: I don't know that we ever saw the final version.

Comm. Elkins: With one dissenting vote, it was done.

Mr. Klein: It looks pretty much as you saw it, except they added a little more wood over on the west side. You know they have the green glass. I think the version you saw was pretty much mostly green glass along that elevation. They tried to match the other elevations where they have the vertical wood poles or beams mixed in there with it.

Chair Rohlf: Did they come in for their building permits for any of the residential portion?

Mr. Klein: They did, and staff is reviewing it. It's just a really big project.

Comm. Roberson: It seems like they can move the commercial stuff along fairly quickly.

Ms. Shearer: This is on our end. As Mark said, it's a really big review.

Comm. Roberson: Let's go back to McDonald's. That place is falling apart, it seems, with the road and the parking lot. It's a dump.

Mr. Klein: There are possibly CIVs that City Council has accepted as far as policy. I know that a number of the developments may be pursuing a CIV to make some improvements. It's a possibility that some of them could be improved that way.

Comm. Williams: I don't know if you've noticed, but they are changing all the McDonald's in the area, so this may be in the queue for that.

Mr. Rexwinkle: Are they repaving for part of that project? I can't remember.

Mr. Ley: They're doing paving because they're adding that right turn lane on Nall. I think they would, as much money as they're putting in to that building.

MEETING ADJOURNED