

City of Leawood
Planning Commission Work Session
August 10, 2021
Beekeeping
Planning Commission Bylaws

Planning Commission Members in Attendance: McGurren, Belzer, Hunter, Block, Stevens, Elkins.

Chairman Elkins: I see a quorum is present, and we'll move forward. Mr. Klein?

Beekeeping

Mr. Klein: We have an ordinance in the packet, and we'll discuss something that will go in the Leawood Development Ordinance (LDO). Ashlee Tomasic will be on as well to answer questions. The Sustainable Advisory Board (SAB) worked on this ordinance for the City Code. They considered setbacks, watering, feeding, flyways, number of beehives per lot, creation of nuisance, and other definitions. Permitting will be through the City Clerk. I'll move on to some definitions. An apiary is where the bees are kept. We tried to find pictures to give a general sense. The Sustainable Advisory Board is recommending a maximum of two apiaries. This is something we saw in a lot of different cities. I'd like to draw your attention to a table that shows adjacent cities and their regulations. We looked at Lenexa, Overland Park, Shawnee, Olathe, Prairie Village, KC, MO, Fort Collins, and Lawrence. We also have a definition of bee, which means all life stages of common domestic bee, along with scientific name. That is important because Africanized honeybees, commonly referred to as killer bees, are mainly located in the southern states. It is uncertain if they would survive in colder climates.

Comm. Hunter: Do the boxes in the picture show one hive per box?

Mr. Klein: I believe there is one hive per box, and we are recommending two boxes.

Comm. Stevens: It could be the taller series of boxes that are under 5 feet.

Mr. Klein: We do have a height limitation of 5 feet. A couple of the other cities also had that same limitation. We can talk about how the bees behave. We mentioned a flyway and a colony, which is an aggregate of bees consisting principally of worker bees, having a queen and a brood. The vast majority are female. A hive includes any manmade habitation in which the bees are harbored or kept.

Chairman Elkins: A colony includes drones, brood, combs, honey, and receptacle inhabited by the bees. A hive includes any manmade habitation in which bees are harbored or kept, including beehives, standards, boxes, or apiaries. Wouldn't it make sense, since you have a definition for hives, to put hives in the definition for colonies?

Mr. Klein: It probably would. There are different types of hive structures. They have removable trays that can collect honey. The queen is typically located in the center. Beekeepers have requested to go away from the four-column hive because it's an older style. They still recommended the removable vertical trays. The hives usually have an area at the bottom where they enter and leave; however, some have other holes in the boxes for that purpose. The bees will congregate around those and disperse outward, which gets us into a flyway area. This needs to be more or less a solid structure or dense landscaping of 6 feet in height. The idea is that the bees exit the hive, and it will actually force them up in their flight pattern. It is a way to limit the contact with the adjacent property owners.

Chairman Elkins: What is the maximum height for a fence?

Mr. Klein: Maximum height is 6 feet. This fits right in there. I saw a regulation that required a fence to go around, so they were limited to the back yard and were required to fence the yard. I'm still trying to explore that. It seems that the regulations have the flyway, which is located in front of the beehive, running parallel to the property line. It has to extend 10 feet on either side of the beehive.

Comm. Hunter: I was thinking that our fences needed to be 4 feet, and a variance would be required for 6 feet.

Mr. Klein: Yards with a pool and/or hot tub are allowed 6 feet, and a variance or exception can be granted for 6 feet otherwise through the Board of Zoning Appeals.

Comm. Hunter: So, if there is a 4' fence and then a beehive, the height would be discussed.

Mr. Klein: Yes, and I imagine that would be something we'd want to talk about. The SAB indicated shrubs could be used as well, and they can grow taller than 6 feet.

Comm. Block: Don't a lot of neighborhoods prohibit wood fences?

Mr. Klein: In Leawood, wood fences are still allowed in single-family districts.

Comm. Block: Some HOAs are more restrictive.

Mr. Klein: Yes, and that could lead to using a bush or landscaping.

Comm. Hunter: The HOAs can probably be more restrictive.

Mr. Klein: Yes, they can. We looked at different city ordinances. Debbie Brenner's cousin is a beekeeper, so we talked with him as well. He recommended that we contact the Northeastern Kansas Bee Association. I sent an email, but I haven't heard back. I'm hoping to be able to speak with them a bit more. They had a lot of good information on

their website. In this case, the flyway is to lift the pattern of the bees up, and they stay there until they're ready to drop down. A lot of the regulations try to address limiting the contact of bees with the adjacent neighbors. The American bee isn't known to be aggressive, but there is a possibility of the Africanized ones. Regulations could include types of bees, permitted lot locations to include rear lots, and setbacks from property lines, adjacent residential structures, and sidewalks. The Northeastern Beekeepers Association indicated that beekeepers should be paying attention to a mapping site to figure out where other beehives are because oversaturation is not sustainable. This could lead to poor honey collection and poor health of the hive.

Chairman Elkins: So, the issue is really the health of the bees.

Mr. Klein: Yes, and it could also lead to swarming. The beekeeper indicated that bees are often more docile when they are in swarms and can be handled; however, I have also read things that indicate that swarming should be reduced as much as possible. Situations with swarms or more defensive actions would require re-queening. The queen is the life of the hive. Additionally, pests such as mice and raccoons could be attracted to the bees. This is a situation that is easily addressed.

Chairman Elkins: What's the city's response to a citizen who has a wild hive? Does Animal Control respond to this?

Mr. Klein: I don't think so, but I don't know for sure. I would need to check into that. Also, many of these have rocks on them to keep the tops on in heavy winds. The beekeeper we talked to had a pitched roof that looks a bit more attractive. I imagine it would have more weight to it. It is important because other bees are attracted to the hive and the honeycomb. If it is exposed for a period of time, there will be robber bees from other colonies that steal honey. Some of the ordinances require quick retrieval to discourage this.

The SAB recommends standards for setbacks, including 25 feet from the property line. SAB is proposing 50 feet to any adjacent house. Lenexa has 100 feet; Overland Park has 75 feet. Some are less, and some don't specify. Regarding setback from a public right-of-way, SAB proposes 50 feet. Lenexa and Overland Park require 100 feet. Most of the others didn't specify. Regarding setbacks from property lines, SAB proposes 25 feet. Lenexa and Shawnee require 50 feet; Overland Park requires 25 feet. Olathe only has 15 feet. Lawrence requires 25 feet and only 10 feet from a public sidewalk. This is to hopefully give perspective on what some of the other cities are doing. The cities with the smaller setbacks also tended to limit beekeeping more to agriculture properties. Lenexa and Overland Park are a bit more liberal with location but require larger setbacks. SAB currently does not restrict zoning. Fort Collins has a restriction of two hives for ¼-1/2 acre and more for ½-1 acre. An R-1 lot is over ¼ acre, but some zoning districts, such as RP-2, have smaller lots. A consideration for the Planning Commission is to consider limitations based on zoning district.

Chairman Elkins: Could you speak a little bit to the principle of legal, nonconforming use?

Mr. Klein: Currently, beekeeping is not a permitted use. Anything currently existing, therefore, would not be legal unless it predated the existing ordinance. In that case, it would be allowed to remain but not expand. If this ordinance is adopted, anything that is currently existing could remain but would not be able to become more non-conforming.

Chairman Elkins: Would they still be required to get a permit?

Mr. Klein: I might have to ask legal about that. I'm not sure if Ashlee would be able to speak to that or not.

Comm. Belzer: What is required signage that is mentioned in the list of regulations?

Mr. Klein: Some of the ordinances require that signage on the box includes name of the beekeeper and contact information, and a separate sign is allowed as well. Others require signage indicating an apiary is on the site. The main reason for it is if there is a problem, contact information is available. Currently, with the SAB proposal, the homeowner could have the apiary, but someone else could take care of it. In that case, the beekeeper's name and contact information would be listed.

Chairman Elkins: Leawood still has some areas zoned Agriculture, correct?

Mr. Klein: Yes, and there are still RPA-5, which is around 143rd Street and Mission Road, that are a minimum of 5 acres. Many R-1 lots are larger than 15,000 square feet. Even some RP-1 lots are larger than RP-1 minimums.

Chairman Elkins: Some of those lots at 143rd and Mission are 10 acres.

Mr. Klein: Yes, they are.

Comm. Belzer: Have there been issues that precipitated this need for a change?

Mr. Klein: The reason for the ordinance is that the city would like to consider allowing it, and it is not currently allowed. The SAB has evaluated it and considers it a good proposal. Bees are having trouble with dying off, and Colony Collapse Disorder has caused whole colonies to disappear. This is not overly dangerous as long as proper precautions and ordinances are in place. The SAB considers it a nuisance if it does not meet the ordinance, and it would then need to be removed within seven days. We don't foresee one of these on every lot, especially with setback limitations.

Comm. McGurren: I noticed on Page 4 that the top references renewal fees needing to be paid on or before December 31st. Is it fair to say that city offices are consistently open on the last day of the year?

Mr. Klein: Ashlee might be better able to answer that. We probably have an annual renewal on a number of permits. If it happens to fall on a weekend, it would be required to be obtained before the date.

Comm. McGurren: If offices are open on the 31st, wording is appropriate; if not, it should probably say, “before December 31st.”

Mr. Klein: It changes from year to year. That portion of the SAB ordinance is probably related more to City Code as opposed to the LDO. That would actually probably be more the City Council regulating that portion of it. With regard to enforcement, the City Clerk’s office would take the lead on it.

Comm. McGurren: You and the committee have done a nice job of putting together a thorough document and checking in with all the other cities. It seems as though this is very thorough, and I would support it.

Chairman Elkins: I’m a little curious about the City Clerk office. Can they actually issue an order?

Mr. Klein: The City Clerk would work with Codes Enforcement or Animal Control.

Ms. Tomasic: The City Clerk currently does all the permitting for dogs and cats within the city. Mr. Lambers wanted to keep this in the same processing system, and they would work with other departments on enforcement.

Comm. Stevens: You described the heights, and it seems consistent between cities in how it relates to the flyways and fences. I noticed Lawrence shows hive options that are elevated, such as rooftops. Is that allowed?

Mr. Klein: It is not proposed with SAB, and it would not be proposed here. Some communities allow it. The mindset is that a roof is really over the property lines, and then the bees would drop down. Leawood is not considering it.

Comm. Stevens: It is not an option?

Mr. Klein: Currently, it would not be a direction. It would almost need to be a flat roof, and those are not common in Leawood.

Comm. Stevens: Maybe the 5’ height is not just the box height but rather a maximum height?

Mr. Klein: That’s an excellent point. I took it as a maximum height. Perhaps the SAB discussed it.

Ms. Tomasic: I don’t recall that being a topic with them at any of their meetings. The reason for that is to be consistent with what other cities are doing. Legal proposed LDO

revisions to accompany this to include that it be required to remain in the rear yard and not on a roof or a deck. This goes to the question about issues with the ordinance. We tried to be more on the restrictive side because we can always pare it down as we see that it is working. If requests for roofs or decks come in, changes could be considered at that time.

Comm. Belzer: What is the annual cost for a permit?

Mr. Klein: Ashlee, do you know?

Ms. Tomasic: The Schedule of Fees would show the cost. We haven't discussed it yet. It would probably be in line with the Special Animal Permit for dog and cat licensing.

Comm. Belzer: Would it be permitted per hive?

Mr. Klein: I believe it would be per property.

Comm. Belzer: Would it be per property or per box? Would a property with two boxes need two permits?

Mr. Klein: I was thinking it would just be one for both, but Ashlee might be better able to answer that.

Ms. Tomasic: I think it would be per property as well. Having one or two doesn't really change the process at all. We can check on and have a more definitive answer for you.

Mr. Klein: The SAB also talks about a fresh water source. Water is extremely important to bees. Most of the ordinances recommend that the water source is close to the beehive so the bees don't go out to search for water. This could lead to them seeking out dog bowls, air conditioners, and bird baths.

Chairman Elkins: We're talking about confining the bees to a relatively small area. In their normal pattern of collecting pollen, how far away do they typically wander away from the hive? My sense is that it's much farther than 25 feet.

Mr. Klein: Once they go out, they'll disperse a bit, pollinate, and come back to the hive. The farther they get, the more dispersed they are. From what I read, they typically go two miles away. We understand they will go out and pollinate. The intent is to ensure they have what they need in the hive for other activities. The beekeeper I spoke with told me the season makes a big difference. For instance, summer could lead to 50,000 bees, and at the end of winter, it could be 15,000. Some will be up to the beekeeper, and the SAB indicated they should follow best practices. If the beekeeper harvests too much honey, it takes food from the bees, and they could become more defensive. It could then become declared a nuisance.

Comm. Hunter: They could have 50,000 bees in one box?

Mr. Klein: Either one or two, yes.

Comm. Belzer: I have a friend who's a beekeeper. Her videos of catching a swarm are intense.

Mr. Klein: I've seen videos of people using bare hands with no protective equipment. The queen is everything, so when there are problems, one of the ordinances refers to re-queening with a queen that is bred to be more docile.

Comm. Block: Starting out, you said that the vertical hives are preferred by some but are not the newest technology?

Mr. Klein: I need to research more, because they sound exactly the same. In Fort Collins, some of the beekeepers were asking to not be limited to just the Langstroth. It could be a small variation that the Langstroth has that is not limited by the others.

Comm. Block: Maybe we just keep it open enough so we wouldn't have to go change it. You also mentioned problems such as too small of an area where too many properties could have them. I don't know how you deal with that. Should that be included in here somehow, or is the language broad enough to be able to deny an application?

Mr. Klein: I didn't see any other ordinances that regulated that. It was part of the Northeastern Kansas Beekeepers Association's information. They provided a website to track different hives.

Comm. Block: I just wondered if it would cause problems on the back end.

Mr. Klein: We can look at that.

Comm. Block: You said the stand for the hive would deter rodents. It seems that we should just be proactive and require that it be put on a stand and address the rocks on the top. It seems that we should just require them on the front end.

Mr. Klein: I completely agree.

Comm. Block: Is there such a thing as a certified beekeeper? It seems like that would eliminate a lot of these problems with official training or something that could be taken away if they don't do it right.

Mr. Klein: I haven't run into anything like that. The Northeastern Beekeepers Association recommended that their beekeepers take classes prior to doing this, but it didn't seem that there was any kind of certification.

Ms. Tomasic: I can weigh in. Regarding hives in a certain area, when the City Clerk is deciding whether to conditionally approve or deny the application, there factors that can

be considered, including whether the keeping of bees will negatively affect the health, safety, and welfare of the neighbors or if it will create a nuisance and disturb peace and quiet of surrounding neighborhoods. I think those two are probably broad enough that they could be used to prohibit too many in one area. You asked about certification. When I was drafting this a year ago, I spoke with Shawnee, who has a Special Animal Permit process as well. He said that in his experience, he has not had any issues with someone wanting to have a beehive and that most of the people he's found who have done it have taken classes and want to do it the right way. It's not people who are just doing it as a random hobby without doing research. There is one Leawood resident who wants to have bees who came to at least one SAB committee meeting. He appeared very knowledgeable and had educated himself. I think the strong majority of people who take up this hobby do the work and educate themselves even though there isn't an actual certification process.

Mr. Klein: I would echo that.

Comm. Block: I just think of the person who is highly allergic or can't enjoy the outside because someone close has a beehive. I assume the input from neighbors goes out far enough. That is pretty cumbersome for the city to try to figure out who is okay with it and who's not. The only other thing I had is in Section C.4 where it talks about removing the bees within seven days. That just seems really aggressive only because I don't know if they can be removed in seven days. It just seems like a specialized kind of thing. I understand trying to do it quickly; I just don't know if it's realistic.

Mr. Klein: I'll try to check into that further.

Comm. Block: Any idea how many you anticipate?

Mr. Klein: No. I personally haven't been contacted. I'm sure there are a handful, and there may be more in the future. I don't get the sense that it will be many.

Comm. Stevens: Maybe this was described upfront, but Article 6 on beekeeping is not currently in City Code.

Mr. Klein: Correct.

Comm. Stevens: At the same time we're having this discussion, this would be adopted into the City Code. Then you're saying there would also be an addition to the LDO.

Mr. Klein: From my understanding, the LDO will be the first one, and then City Code will match. The Planning Commission plays a big part as far as considering all the angles. I agree with Commissioner Block that we want to make sure we don't have problems down the road, so if we can address as many of these issues now, it is a win-win.

Chairman Elkins: Is the draft we've talked about tonight a draft change or addition of Article 6 to the City Code or to the LDO?

Mr. Klein: It is City Code. Staff will write the LDO amendment. We'll consider three sections of the LDO for this. One is the Accessory Uses, where a lot of the heart of the topic will appear as far as location, water, and flyways. A separate section within the Accessory Uses refers to how far structures can encroach into the setback. There are a lot of structures that are currently allowed to encroach, such as playground equipment, pools, and sport courts. Accessory structures are also required to be attached to the house. Typically, these beehives won't be attached to the house, so we would need to modify that section to allow that. We will also need to change Definitions, most likely in Article 9, or possibly in the section itself. We're hoping to bring this to you on August 24th.

Chairman Elkins: From my personal perspective, I would look to exempt AG-zoned properties as well as space that is greater than 3 acres. I wouldn't think this level of regulation is required for lots that big, particularly in the AG-zoned space. I don't know how you would write those exceptions, but I'd be interested in hearing the rest of the commission talk about that.

Mr. Klein: A lot of the permitting is going to go along with the SAB or City Code because typically, we don't get into permit fees or permits in the LDO; it is more bulk regulation standards and allowed uses.

Chairman Elkins: I'm thinking about somehow folding that into the allowed uses chart.

Comm. Block: That's just hard. Maybe you have places in mind. There is a lot of AG on 135th right now until it is developed, but other than that, it's the farm on Mission Road between 127th and 133rd, but it's surrounded by a lot of houses.

Chairman Elkins: That's the one in particular I'm thinking of because they've been there before the houses, and their beehives have been there for nearly 100 years. The others I'm thinking of are along 147th Street, where there are multiple lots that are 5-10 acres. It's a fair point worth discussion.

Comm. Block: Going down 135th Street, it makes sense because it's open, but then in the smaller areas such as Mission farther north, it is around a lot of houses.

Comm. Hunter: What happens if a beehive isn't maintained?

Chairman Elkins: The hive dissipates. Last winter was really hard, and a lot of beehives in Prairie Village died because the bees died because of the cold.

Comm. Hunter: So, it doesn't get taken over by the African bees?

Mr. Klein: From what I've seen, the African bees aren't this far north.

Chairman Elkins: We didn't think they'd come across the ocean. Those are hardy bees.

Mr. Klein: The American honeybee has been around for a long time, and there are natural hives that will exist in trees that nobody is taking care of. If somebody has a hive, we want to make sure it's being cared for properly and will have as little impact as possible on surrounding properties.

Chairman Elkins: Any other thoughts as Mark drafts this? It's good discussion to be had on permitting. I can also see an argument that the preexisting ones should have a permit. Shall we move on?

Bylaws

Ms. Knight: The Bylaws are in front of you. You have a clean copy and a markup copy. This has been in the works since when Andy Hall was here. I know we reviewed and edited them, and they just never got to you. Then the pandemic hit, and we didn't have an agenda to put them on. We had some issues during the pandemic with suspending rules, so we wanted to put those changes in the Bylaws, too. As you read through it, hopefully you'll see that most are self-explanatory, but I'll take questions. Before we get to that, as I said, this has been in the works for years. Doing another read-through before the meeting, I noticed a couple things I wanted to point out and correct. The first is at the bottom of Page 32. The last line starts with, "Other items not pertaining to text amendments." On Page 4, the second paragraph says, "Other items not pertaining to text amendments." It's not an exact duplicate. I don't know how it happened. The line at the bottom of Page 3 is not the same as the paragraph that says, "Other items not pertaining to text amendments." The original one at the top of Page 4 says, "Items not pertaining to text amendments need to be removed by withdrawal by applicant or by vote of the members." The next paragraph says, "Items not pertaining to text amendments" - meaning cases, not LDO amendments - "may be continued or withdrawn by the applicant prior to the agenda deadline or can be continued by the commissioners." I would propose we take the paragraph at the top of page 4 that talks about text amendments being continued or withdrawn and replace the line in the paragraph above it with that line. We still need the very last line in the paragraph above that says, "Items may be added to the agenda by affirmative vote of the majority of the members present voting." The line before that will be replaced with this new paragraph.

Chairman Elkins: I have two questions about that. Is there ever an applicant for an ordinance amendment other than the city?

Ms. Knight: I don't believe so.

Chairman Elkins: I kept hearing about applicants, and I thought about people who come up here every week talking about their plans as opposed to you talking about LDO amendments. I'm taken by the phrase "text amendments." Why not just say, "amendments to the ordinance"? What kind of amendments to the ordinance are not text amendments? Is there a point that we're making by focusing on text?

Ms. Knight: This has been years in the making, so I'm trying to think back. Previously, it said, "Other items not pertaining to ordinance passage may be removed." I don't think we liked that. I think we can absolutely change it. What was your suggestion?

Chairman Elkins: It was, "amendments to the ordinance" and remove the word "text." Just give it some thought.

Ms. Knight: Yes, it occurs before that. I'll look for other instances and come up with a better way to write that. The second one is on page 5 in the second paragraph under "Motions." I have added the line, "However, if any members are participating by telephone or other medium for interactive communication, all vote shall be by roll call." I don't think that's the case. This goes back to states of emergency and rules promulgated by the Attorney General on how to have an open meeting when everyone is at home. I believe the roll-call vote was required when City Hall was closed and the public could not attend or if all commissioners were at home. At the very beginning of the pandemic, there were rules adopted by the Attorney General. Hopefully, we're never in that situation again, but we very well could be. We could either change it to clarify that it's not when anyone is participating; it is either when everyone is remote or the building is closed. We could redraft it to write that, or we could delete that line entirely. The line a few lines prior that says, "By voice, hand vote, or roll call at the discretion of the Chairperson" covers this, I think, if we are in a state of emergency and we have direction from either city staff, the Attorney General, or someone else.

Chairman Elkins: I get your point, and I don't know that this solves it, but we had an issue a couple meetings ago where we had some commissioners participating by Zoom, and I called for a hand vote. The particular commissioner was confused, and his vote was recorded in a fashion other than what he had intended. Whether or not a roll call would have solved that, I'm not sure. I think the issue was that the Chairman garbled the statement of the motion, or there was a glitch in the Zoom communication. I found out afterward. It didn't have an impact on the vote, so we didn't go back to try to correct it. It's a long way of saying that maybe it's a good idea to say that when some commissioners are participating by phone that we should require a roll-call vote. I'm open for suggestions. I don't have a strong feeling one way or the other.

Ms. Knight: It can get tedious when you're approving the agenda and doing things like that. If we leave it at the discretion of the chairperson, as long as there is no state rule under a state of emergency that applies, you would have discretion to do approval of the agenda, closing of Public Hearings, and things like that by voice vote and then requiring roll call when voting on an item.

Comm. Hunter: I guess the hard part is that Marc didn't know that there was confusion.

Chairman Elkins: Yes, so I'm not sure it would have solved it.

Ms. Knight: I still think if you eliminate the line that is what I would call incorrect that requires a roll-call vote if anyone is participating remotely, it goes back to the discretion of the Chairman, who could decide. If it's close, someone else could call for a roll call. It gives some freedom.

Comm. Hunter: I think that's fair.

Chairman Elkins: I think so.

Ms. Knight: The second line in that same paragraph says, "Vote shall be," and I would want to change that to "Votes" and make it plural. It is a typo I can fix. Those are the only things I wanted to point out to you. On any other items, I'll take questions.

Chairman Elkins: I know it won't surprise you to know I have a fair number of questions. I want to let everyone else have a chance to ask first.

Comm. Block: On the bottom of page 3, it talks about standing rules. It says that the agenda will be prepared five days before, but it seems like it should be posted and not just prepared.

Chairman Elkins: Or prepared and distributed?

Comm. McGurren: Good idea.

Ms. Knight: We'll change to that to, "and distributed." That was the idea. It's usually released on Friday.

Comm. Block: Maybe I'm creating a bigger problem than it needs to be, but when it talks about the public comments, sometimes it's three minutes; sometimes, it's five minutes. I just don't know if we want to set how long they are limited to. Again, it could be at the discretion of the Chair to either extend or shorten. I just didn't know if we could give cover to establish a set amount. That way, it doesn't look like there is favoritism shown on some cases and not others.

Comm. Belzer: It's the length of the timer.

Chairman Elkins: He sets it to whatever I tell him to. I don't remember three minutes, but there may be. It varies between four and five, depending on the significance of the issue. I'm not going to be offended.

Comm. Block: I just didn't know if it gave you the ability to make sure it's consistent.

Comm. Belzer: Or, if it's something we've heard multiple times and people are speaking on the same specific thing, this would be a time you could use discretion and lessen the time the person has to speak. That leads me to my question. On page 4 in the same section, there is a part that says, "The chairperson may announce time limits for staff and

applicant presentations, depending on the number of items on the agenda.” Just as a point of clarification, does that mean that the chairperson has the discretion to tell an applicant there is a time in which the presentation needs to be wrapped up? Does that need to be communicated prior to the beginning of the presentation?

Ms. Knight: Yes, we’ve had some long cases. I’ve used the example that a death penalty case in front of the Supreme Court doesn’t get unlimited time. You can have time limits. It is totally discretionary, and it also can depend on the number of items on the agenda. We’ve had cases carry over. We’ve had cases continued because we don’t get to them. Just based on looking at the agenda, the chairperson could, at the beginning of the meeting or the beginning of the item, give each side a certain amount of time. He wouldn’t have to, but he could. That is separate from public comment and time period Commissioner Block mentioned. Historically, we have let the chairperson decide.

Comm. Belzer: This is saying something different, though. This is about the applicant presentation.

Ms. Knight: I agree; I was just commenting on Commissioner Block’s statement.

Comm. McGurren: It’s an excellent idea.

Ms. Knight: If it’s discretionary, he doesn’t have to use it.

Comm. Belzer: But it doesn’t have to be told to the applicant prior to that meeting? Let’s just say, perhaps, there is an applicant who has appeared multiple times with a specific project, multiple times and will be coming to present another time. Would that be a situation where the Chair would have to give the applicant the time limit prior to the meeting, or is it something the chairperson, when opening the agenda and calling the case, could announce the time allocated for it?

Ms. Knight: That’s going to be at the discretion of the Chair. I think, depending on the circumstances, it could be done multiple ways. Sometimes we know who it is and we can contact them and tell them they have a certain amount of time because it’s a big agenda. If it’s the only case or last case, he could choose not to limit it.

Comm. McGurren: I agree completely with the statement we just talked about and having the flexibility in the environment just discussed would be excellent in my opinion. On page 5 in the middle, it says, “The members of the commission may ask questions of any speaker.” Is that new in the sense that we may choose to ask questions of Leawood residents who are speaking within the Public Hearing?

Chairman Elkins: I will say that it seemed new to me. I’d ask if it was intended to be new.

Ms. Knight: It was previously worded, “Members of the commission and staff having an opportunity to question any speaker.” My edits were more grammatical. I don’t know that

I was trying to change anything there. Having been in many Public Hearings, there are not a lot of questions, but if someone had a question, I don't know that it's prohibited.

Comm. McGurren: That's helpful. The top of page 6, it references a period not to exceed two months. Is that an attempt to keep things from constantly being continued and lasting an entire year?

Ms. Knight: We didn't change that language. We eliminated "not less than one month." I think the idea was not to continue it so far out that we lose track of it. Two months is the maximum. There might be limits on the number of times applicants can continue their own case.

Mr. Klein: Currently, we allow a maximum of three continuances. The idea behind it is that perhaps they just weren't ready, and they just need to withdraw the application and file a new application when they are ready.

Comm. McGurren: I agree with that completely. It just seems like we have gone over the two months a number of times. Maybe I'm the one who has missed it.

Mr. Klein: We do allow staff to continue the items and have them not count against them. If we have a situation where the applicant wants to go forward but we don't think they are ready, we do have the ability to continue them. We've done that in the past.

Chairman Elkins: I don't see the limit of three in here, so I don't know if you need the authority to enforce that limit.

Mr. Klein: I want to say it was in the LDO. I'll look again.

Chairman Elkins: If there is, you may want to put a cross-reference in there.

Ms. Knight: I think there is. It came up with Hills of Leawood Villas that got continued a lot due to litigation. They ran out of continuances, so the city started continuing it.

Comm. McGurren: Also on page 6, under "Public Hearing," should it reference supporting an opposing testimony from members of the Leawood public? Is it fair to say that only Leawood residents are allowed through the Public Hearing process?

Chairman Elkins: I don't think we want to limit it that way. I think that could create some other issues for us.

Comm. McGurren: So, it's not fair to say that Leawood residents are the only ones who come through the process?

Chairman Elkins: The one I'm thinking of is an adjacent business owner who has an interest in what's going on in the lot next to them, but they happen to be a Missouri resident.

Comm. McGurren: Fair enough. On page 7 under “Conflict of Interest,” where it talks about members shall so state for the record and vacate his chair, should it be “his/her”?

Ms. Knight: We’ve been changing those gender pronouns to “their,” so I’ll change it.

Comm. McGurren: The very last reference under “Suspension of Rules” talks about membership. Should it be commission membership?

Ms. Knight: We refer to members present voting throughout this, so it is a majority of the quorum.

Comm. Hunter: On page 7, it talks about the applicant not in attendance. Instead of his/her, you could say “its.” Then, if an applicant doesn’t show up, should it be more certain what we would do?

Chairman Elkins: The times I’m aware of when it has happened for certain are when cases are on the Consent Agenda. A lot of times, the applicant would be there just in case, but I know we’ve had many instances where the applicant is not present for a Consent Agenda item. I think the last line gives us the discretion to do whatever we want to do with it. It’s worth a discussion.

Comm. Block: I don’t want to be here past 10:00, but at the same time, I don’t know that it’s fair to the applicant or the residents that have cases that keep getting continued. I don’t know how we fix it, though. Maybe it’s the hour limit or what you were talking about earlier.

Mr. Klein: The Planning Commission actually starts at 6:00, so it is actually four hours if we go until 10:00. The concern is that decisions may not be as good because everyone wants to end it.

Comm. Block: I understand that. I’m not advocating to take it longer. I just don’t know if there’s something to fix it so one case doesn’t run over multiple meetings.

Mr. Klein: One thing that is being proposed to give the Chair the ability to limit presentations could help. An item that is being continued has been presented. You don’t necessarily need the entire presentation again. If they start repeating themselves, this gives the Chair the ability to encourage them to move on.

Chairman Elkins: I think it’s a good point. I’m reluctant because of the concern about an arbitrary and capricious standard if I just cut things off. This is why I tend to be pretty generous, especially with some of our applicants who have been litigious in the past. To take at least one arrow out of their quiver, somehow the commission has been arbitrary and capricious in the way they handle the process. I guess I think it’s good to have the discretion to put it in.

Comm. McGurren: How would you feel about what Commissioner Belzer said earlier with telling the applicant ahead of time, in very rare situations, that there is an hour or hour and a half allotted or whatever the process would be?

Chairman Elkins: I think that would be prudent to do that. I think we still run some risk of being viewed as an arbitrary limitation on the applicant's ability to present their case. As said, though, in court, you get your eight minutes or whatever it is, and you leave the stage.

Comm. Belzer: I can remember a couple of times when we continued for a half hour and then another half hour and just stopped right in the middle of something. Would it be prudent to, instead of continuing for a half hour and then another half hour, to stop and continue the whole piece until the next meeting? It's very choppy. We were in the middle of a Public Hearing once and then in the middle of moving from a Public Hearing to discussion.

Chairman Elkins: We can do that now. There's nothing to say we have to continue it. If we get to the 9:00 hour, we can continue the case to the next available time. That's certainly within our discretion right now.

Mr. Klein: I can remember a number of times with a case that was ready to start with 20 minutes left, and because it wouldn't be enough time to get through it, just waiting for the next meeting.

Comm. McGurren: On page 1, the movement from May to March seems reasonable to me, but is there anything behind that to help support the city better?

Chairman Elkins: I thought about this, too. It's always struck me as a little bit odd that the officers' terms don't run concurrent with the members' terms. This seems to bring them together, I think.

Ms. Knight: It had to do with the change in elections and when the mayor would take over with appointments.

Chairman Elkins: With these changes, they'll both be March 1st?

Ms. Knight: Yes.

Chairman Elkins: The only thing that's a little bit odd about that could be an instance where a new member would be asked to vote on an officer without any meetings to evaluate the candidates. I don't have a strong feeling on that, though. In my first meeting, I had to vote for Chairman because I was filling someone's unexpired term. It felt odd to be voting because I didn't even know their names.

Comm. Belzer: Could you abstain for that very reason?

Chairman Elkins: I could have abstained.

Ms. Knight: Previously, it was May and May. That doesn't change that with it being the first meeting.

Chairman Elkins: I know we've done at least one in March. I know I was surprised one night when Mark told me we were having elections. They're in sync now, and that makes sense. Under "Terms," you're talking about vacancies being filled by appointment by the mayor, and then under "Filling Vacancies," you talk about vacancies being filled by recommendation. I don't know that there's a difference between them, but it would seem good to me to be consistent there. By the same token, since you have a section about filling vacancies, I just wonder if that whole sentence under "Terms" ought to be moved down to under "Vacancies."

Ms. Knight: Thank you. Those are good points. We tried to move things around to where it made more sense. I'll move that.

Chairman Elkins: I think it makes sense, but I want to point out to the commissioners that if the chairperson resigns, the vice-chairperson becomes the chairperson until the next regular election. That could be almost a year in advance; whereas, if the vice-chairperson resigns or if that person replaces the chairperson, a new vice-chairperson has to be elected the next regular Planning Commission meeting, which makes a lot of sense. I have questions about the "Secretary" section. If the city appoints the secretary, we wouldn't vote on that anymore. Is that intended to be that they appoint one every night? What do we do on the night that the secretary is absent? There is not really a provision in here for filling that spot.

Ms. Knight: Do you think it's addressed in the second paragraph at the top of page 2 where it says, "The secretary is provided by the City of Leawood"? Tonight, it's Mark Klein; next month, it could be Ricky Sanchez.

Chairman Elkins: I guess I wonder if it is saying the secretary is provided for the year or for the night.

Ms. Knight: I suppose each meeting could have a different secretary.

Chairman Elkins: You may just want to put some clarifying language in the second paragraph to address that. I have a more substantive question. We talk about minutes, and we approve minutes, but the minutes are really a transcript. I'm wondering if, when we're talking about the minutes, if we want to just scrap the idea of minutes and talk about a transcript that we approve, and the transcript becomes a part of the record.

Ms. Knight: I'm not 100% sure it's a transcript. I know it is pretty close, but I don't know that it truly meets what a transcript is defined as. We send that out to a third party, and that could change if we have another person.

Chairman Elkins: What is the purpose of having both minutes and a recording of the meeting as part of the record? Isn't that duplicative?

Ms. Knight: The recording is the DVD or video that people can request and see and hear. Of course, you want minutes because litigation can become a part of it. It's something that you all read. Members are absent, and they can read them.

Chairman Elkins: How are they different? What purposes do they serve? If anything, they create an ambiguity between the recording and the minutes. I think the last thing you want is ambiguity.

Ms. Knight: I think we need minutes, and I don't think we want to not keep the actual meeting recordings. There are errors in the minutes and typos.

Chairman Elkins: So, why have minutes at all? If we have that problem, what purpose is served by the minutes that's not already covered by the recording, other than we always have minutes? Maybe Robert's Rules say you have to have minutes of meetings.

Ms. Knight: I'd have to check to see if they're required by something other than the idea that we've always had them. They definitely serve a purpose. In litigation, it is something that be read and attached.

Chairman Elkins: As are recordings.

Mr. Klein: Part of the advantage is we can make copies of the minutes, and City Council can read them; whereas, if it is just a recording, City Council would have to watch the recording.

Chairman Elkins: It's been my observation that City Council is watching the video as opposed to reading the minutes.

Ms. Knight: They're also searchable by word, so when we talk about beekeeping, we can search and find which meeting it was.

Chairman Elkins: That's a fair point. I get concerned because it seems like every meeting, there is a discrepancy between the written part we've gotten and the commissioners think and know they said. I'd just like to find a way to eliminate those discrepancies.

Comm. Hunter: It's interesting because if it's sent out, it would be like a deposition, where it should be exact, but it's not exact. It's kind of in this middle ground. Some of it is paraphrased, and some is not. If it was transcribed, maybe we would avoid that.

Mr. Klein: Originally, we had summary minutes, and City Council just has summary minutes. If you read through those, they're a lot more abbreviated. When I first got here, that's the way it was, too. They just have added more detail. I don't think they're

intended to be a transcript; they're just intended to be a bit more detail than summary minutes, where you'd have to go back and watch the tape to see what it was. They're trying to add a bit more to it. The intention was never to be a transcript of the meeting itself.

Chairman Elkins: I probably belabored it a bit more than I should have, but it's an issue that kind of resonated with me, especially this year. We can't seem to get Block and Coleman straight on who said what and all kinds of stuff. Then, going to page 3, under "Quorum," the last line talks about transaction of business and conducting hearings. I think you could drop the "of" there before "hearings." Under "Meetings," the sentence in the middle about the 30-minute extension for a maximum of two extensions that may be voted by the commission members is awkward and could be worked on. It says "an additional 30-minute session," so that suggests there is just one. Then, it talks about a maximum of two.

Comm. Belzer: It could just be, "additional 30-minute extensions for a maximum of two extensions . . ."

Chairman Elkins: The five-day indicator is interesting because I think I usually get mine on Friday night, which effectively gives me three or four days. I'm not quite sure about that. As a general comment, if we could get the packets distributed a little earlier, it would be helpful. I know it's hard because you're working until the last minute on them. Going to page 4, under "Agenda," and at the bottom of page 3, "Other items not pertaining to . . ." we talked about that maybe being removed. Then we put the continuance sentence in there. We have a section on page 6 about continuances. I wonder if all of that ought to be moved over away from "Agenda" and to "Continuances." Again, I don't feel strongly about that. After 15 years, one thing I still don't have straight in my mind is under the Consent Agenda, we say, "Items not requiring a Public Hearing may be placed on the Consent Agenda section of the Agenda." I guess that does make sense now that I think about it. Anything that is not a Public Hearing could go to a Consent Agenda, right?

Mr. Klein: Yes, but typically, we try to have cases with a bit more meat in them come to you, or if there is a certain issue that we're not sure you agree with staff on, we'll have that go to you as well.

Chairman Elkins: Under "Meeting Procedure," the first sentence says, "The meetings of the Planning Commission are generally conducted under Robert's Rules of Order, Revised." I think we probably ought to put an exception in there, "except as provided herein." We have a couple places in here where we deviate from Robert's Rules, and appropriately so. Then, in the last paragraph of page 4, it gets back to the point I argued until the horse wouldn't die, "The name and address of each speaker shall be entered into the record as well as a summary of his/her presentation." I guess the summary would be the minutes, right?

Mr. Klein: Yes.

Chairman Elkins: Again, this is picky, but at the top of page 5, “If a Public Hearing is required by ordinance or statute for an agenda item.” I think we may have gotten this already, but if not, in the second paragraph, we talk about, “Once the Public Hearing has been opened . . .” and there is proponent and opponent testimony; someplace else in this, you use the phrase, “supporting and opposing testimony.” Just looking at consistency there.

Chairman Elkins: Then, under “Motions,” this is the substantive one that took me a little bit by surprise. If I read this correctly, a motion to amend zoning regulations or an amendment to subdivision regulations and a change to the Comprehensive Plan require a majority vote by the membership, which is everybody, no matter how many are here; whereas, the implication here is that an LDO amendment is only a vote by the members present. That surprises me that an LDO amendment doesn’t require a vote by all members, but a zoning amendment does.

Ms. Knight: That goes back to the text amendments. Text amendments to zoning regulations would be an LDO amendment. Maybe we just need to reword that.

Chairman Elkins: Alright, so zoning regulations would be amendments to the zoning of the particular piece of property?

Mr. Klein: Correct.

Chairman Elkins: That’s different than a change to the LDO, right?

Ms. Knight: Zoning regulations are the LDO.

Chairman Elkins: I’m not sure you and Mark are saying the same thing.

Ms. Knight: I agree. We’ll look at that. I can’t say I double-checked all of that. I know the Comprehensive Plan requires majority of the membership, and that’s why we added it. I’ll check the others and look at the language.

Chairman Elkins: It just seems that the same standard ought to apply across the board. At the bottom of page 5, “Following the meeting, the Planning Commission shall transmit an accurate written summary of the proceeding to the City Clerk.” Does that mean after we’ve reviewed and approved the written summary?

Mr. Klein: Correct.

Chairman Elkins: Should we add the qualifier, “following the meeting and approval by the commission, an accurate written summary of the proceedings shall be transmitted to the City Clerk”? I think that’s it.

Comm. Block: And shouldn't the accurate summary should just be minutes? It should be consistent.

Chairman Elkins: Yes, that's a good point.

Ms. Knight: That was language that I didn't spend a lot of time on. Do we think that means minutes will be provided to the City Clerk? Is that the meeting summary?

Chairman Elkins: I think that's what that means.

Ms. Knight: We could probably strike that whole sentence. We talk about that elsewhere, and it's confusing because it doesn't refer to minutes. It's not immediately following the meeting.

Chairman Elkins: When I first read it, I thought it meant immediately following the meeting.

Ms. Knight: I know you occasionally sign Planning Commission resolutions. I was thinking it was maybe those because they are also kept by the City Clerk. That's not a summary of the meeting; that's a summary of each item.

Chairman Elkins: That's the decision.

Ms. Knight: Do we want to modify that or strike the entire line?

Chairman Elkins: Whatever you think is right. Strike it? Less it more, except when I'm writing, and then I always write too much. Thank you for your patience.

Comm. Block: Can we go back to the time limit on the bottom of page 4, where it talks about the applicant's presentation? Maybe to your point about the Supreme Court, could it just be limited to 30 or 45 minutes or whatever it is and then do it across the board from here on out?

Chairman Elkins: I guess that there's just such a variance in complexity. If someone wants to put a swimming pool in, that's one thing; if somebody wants to build Town Center Plaza, it's an entirely different thing.

Comm. Block: It's not going to limit the questioning. You might be right; I'm just wondering if there is some way to make it standard. That was just one thought.

Ms. Knight: You're right; it doesn't limit questioning and rebuttal. Case presentations do vary. Cameron's Court is bigger than other projects we have. It also depends on what else is on the agenda. It just gives you some freedom. I'm not too worried about arbitrary and capricious; that applies more to your decision-making than the time you give them. If you can say on the record, "I'm sorry; we've got eight cases that are very complex, and I'm giving you an hour," I don't think that's arbitrary or unreasonable.

Comm. McGurren: Can I add one final comment? To me, it sounds like there is a universal opinion that says that the Chair should utilize this option in those rare circumstances where the time is an issue.

Chairman Elkins: I think that probably depends on the Chair and what's going on in the world at the time and, frankly, whether there's a reporter sitting in the back of the room.

Comm. Hunter: Just to go back to whether we're getting exact transcripts, I'd be interested to know if there is a minimum requirement for minutes? I think, as a city and as a government body and as things become more litigious, you never know if someone will look at something 30 years from now. I was thinking about this. I was looking at Planning Commission notes from the 1970s, and I know it was paraphrased, and I wish it wasn't paraphrased. Would it be better for the city if it was transcribed?

Ms. Knight: I think you're getting into cost. If you want a transcript, it's going to be significantly more expensive if it has to be precise. I think we have very good minutes. Of course, occasionally, there are errors, which is why you're supposed to review them. I think what we have is great and helpful.

Mr. Klein: It also comes with a timing issue because we don't take these items forward to Governing Body until after the minutes are done. If we get into transcribing, I worry that it would also cause a domino effect.

Chairman Elkins: Interesting question.

Ms. Knight: I have one more thing. Was there a decision on the line about any members participating by telephone and the votes by roll call? I think we could just strike the line, and then it depends on the state of emergency or whatever the chair decides. Are we okay striking that line?

Chairman Elkins: Yes. Being the nerd I am, I actually reviewed Robert's Rules this afternoon. I think that under Robert's Rules, the chair has the option, if he/she ever is uncertain about what the vote is, it could always go to a roll-call vote with the discretion of the chairperson if there is a question about how the vote came out. There, they talked about people standing or sitting. I'm not going to ask you to stand up. Alright, Mark, what's coming up for us later in the month?

Mr. Klein: We had a couple items that just got continued. You'll see State Line MXD at this next meeting. That will probably be the big one.

Chairman Elkins: Will Cameron's Court be back?

Mr. Klein: We have that scheduled for the September 14th meeting. We want to keep that on its own so it doesn't knock other people off.

Chairman Elkins: I will not be here for the next meeting, so David will be chairing that meeting. I wish he was chairing the one for Cameron's Court. If there is nothing else to come before us, we'll stand in adjournment until August 24th.

Mr. Klein: Cameron's Court is the 14th, and we need everybody we can possibly get. Last time, we were missing some commissioners, and we need a fuller vote.

Comm. Belzer: We'll be out of town.

Chairman Elkins: You could call in.

Comm. McGurren: Special four hours.

Chairman Elkins: Anything else?

Comm. Stevens: Could be the first time you use the time limit.

Chairman Elkins: We might do that. I sense that I got a lot of encouragement from the commission to use that discretion. Perhaps that will be the time. Thanks everybody.

MEETING ADJOURNED