

**ANDOVER CITY PLANNING COMMISSION /  
BOARD OF ZONING APPEALS  
Tuesday, October 16, 2018  
Minutes**

**1. Call to order.** **00:04:40**

Chairman Lindebak called the meeting to order at 7:03pm.

**2. Roll call.** **00:04:56**

Planning Commission members in attendance: Brian Lindebak, William Schnauber, Gary Israel, Lynn Heath, Alex Zarchan and Erik Pedersen. Member Stephanie Gillespie was absent.

Staff in attendance: Mark Detter, City Administrator; Les Mangus, Director of Community Development & Public Works; Lance Onstott, Stormwater/GIS/Planning Technician.

A/V: WAV Services

**3. Approval of the minutes of the September 18, 2018 meeting.** **00:05:06**

*A motion was made by William Schnauber, seconded by Alex Zarchan, to approve the minutes of the September 18, 2018 meeting. Motion carried 6/0.*

**4. Communications** **00:05:45**

**A. Committee and Staff Report**  
**B. Potential Residential Development Report**

Gary Israel asked how many permits have been pulled in the last month.

Les Mangus responded that 2 permits have been pulled in the last month and 38 for the year.

**5. SU-2018-02- Reconsideration of an application for a Special Use request to allow the expansion of a post-secondary education facility in the I-1 Industrial District on property located at 715 E. 13th St., Andover, Kansas.** **00:06:31**

Chairman Lindebak asked if any commissioners wished to recuse and/or disqualify themselves from hearing this item.

Alex Zarchan recused himself from hearing this item, and left the room at 7:12pm.

Chairman Lindebak asked if any commissioners had any ex parte communications on this item.

All commissioners indicated no ex parte communication.

Chairman Lindebak asked Les Mangus for a brief history on the current application as well as past special use permit applications.

Les Mangus directed commissioners to review the conditions set forth on the ordinance from the 2005 special use permit application.

Chairman Lindebak asked Les Mangus to detail the resolution of those items.

Les Mangus indicated that some conditions of the approval of the 2005 application included: athletic events having a presence within the City, selling under-utilized land near 21<sup>st</sup> St. N. and Andover Rd. and that the College would work toward further consolidation of operations within the City. Most conditions have been complied with, although the Mayor in his latest veto summary of the current application takes issue with some of the conditions being met.

William Schnauber asked if any opposition to the current application has been received.

Les Mangus indicated no opposition had been received, but also advised that commissioners have the choice of reopening the public hearing. If the choice is made to reopen, commissioners can also request only new information be presented as minutes from previous meetings and hearings are available.

Mark Detter stated that the City Council has directed the Planning Commission to reconsider the seventeen findings and factors as well as the conditions outlined in Mayor Lawrence's veto summary.

Gary Israel read the Mayor's commentary regarding Factor #6 from the veto summary:

*Adequate street access is NOT currently provided. As enrollment has increased through the years, traffic has also increased and the arterial road servicing this property does not meet the peak traffic loads according to engineering standards. The cost to expand and rebuild this road should be shared by the subject property as is the case of many of our other developments. I see no current agreement in place to do so. Additionally, with the addition of Yorktown expansion to the East of the subject property and Commerce street heading West, there is not sufficient Right-of-Way granted. In the minimum a separate agreement should be place before approving this request.*

Gary Israel agreed with the Mayor's comments. He indicated that he works at Vornado next to the current college property and relays difficulties with traffic at times, specifically: difficulty exiting the Vornado property and substantial back-ups at the traffic light located at 13<sup>th</sup> St. and Andover Rd. Traffic difficulties have been getting progressively worse since he began working at the site in 1992.

Erik Pedersen asked if the costs of road improvements are generally shared between the City and the developing entity when developments are proposed.

Les Mangus responded that the impact of a development must be taken into consideration when determining what, if any, improvements are necessary.

Chairman Lindebak indicated that the applicant's property is 40 acres, which is a sizeable amount of land for any type of development. There are a lot of vehicular trips generated from a business such as this. He agrees infrastructure improvements should be evaluated, and cost-sharing provisions would seem reasonable.

Gary Israel read the Mayor's commentary regarding Factor #7 from the veto summary:

*Staff and Planning Commission both concurred that the property will need to be platted. As such they added a provision to the approval that it would need to be completed within the next 12 months. I take issue with the fact that this property has not already been platted. They have had 13 years to plat it but have not done so yet. The Plat is the instrument by which the City can acquire the ROW and dictate terms and costs associated with road construction and put other important agreements in place. An acceptable plat needs to precede this request in the minimum. Without the plat, there is no guarantee of anything and Andover residents may very end up footing the bill for what should be a County-wide issue.*

Mark Detter asked Les Mangus for clarification on what triggered the platting requirement.

Les Mangus responded that the current special use permit application triggered the platting requirement.

Mark Detter asked why the platting requirement was not triggered during the previous special use permit applications in both 2003 and 2005.

Les Mangus indicated the platting requirement is an option the City can require if desired. Industrial properties are often not platted.

Chairman Lindebak commented that platting and replatting is an effective method of orderly development and should be utilized.

Erik Pedersen asked to confirm that the requirement to plat is just an option, and the requirement was not skipped in previous cases, but was just decided against.

Les Mangus confirmed.

Chairman Lindebak stated that the College is currently navigating the platting process.

Les Mangus commented that the plat was accepted by the Planning Commission at its September 18, 2018 meeting.

Gary Israel read the Mayor's commentary regarding Factor #9 from the veto summary:

*There is in fact, suitable land and buildings available for development and usage if this zoning request is denied. As previously mentioned, the corner of 21st and Andover Road is still owned by the College and could be expanded or remodeled to accommodate the influx of new classrooms needed, should they continue to ignore the provision of the previous ordinance to sell that property.*

Gary Israel asked for confirmation that the College still owns property at 21<sup>st</sup> St. and Andover Rd.

Les Mangus responded that the College still owns and operates classrooms at that location. He indicated that the master plan produced by the College addresses this topic.

Erik Pedersen asked if the selling of this property was a requirement in the approval of previous applications.

Les Mangus indicated the ordinance includes a condition that sets forth the intention of the College to sell the property when certain conditions are met. His understanding is that the Mayor's issue is that the property is not for sale, and the College is still utilizing it.

Lynn Heath asked if the property at 21<sup>st</sup> St. and Andover Rd. is big enough to meet the needs of the College.

Les Mangus indicated that question will need to be asked of the applicant.

Gary Israel read the Mayor's commentary regarding Factor #11 from the veto summary:

*The property is NOT suitable for the current zoning. I renew my objection of placing a community college in the middle of an industrial park. It is not a compatible use. Further I do not agree that a special use for educational institutions is allowed in our industrial regulations.*

Lynn Heath commented that at the time the original special use application was approved, the industrial area was not experiencing much activity.

Les Mangus stated in 2003 there were approximately one hundred acres of property zoned industrial around this site that were vacant and not being used for industry. He was opposed to the original special use case in 2003 based on the incompatibility of students and industry, but it has proven over the years to be a pretty good fit.

Lynn Heath stated that he believes there is still vacant industrial land available, and he doesn't believe the College's presence has deterred industrial development in the area.

Chairman Lindebak stated that the applicant property constitutes a sizeable portion of all industrially-zoned property throughout the entire City. The continuation of the education use in the industrial area is potentially compromising the City's industrial corridor.

Lynn Heath stated that properties closer to the turnpike are more attractive to potential industry as compared to the applicant property.

Les Mangus stated the comprehensive plan does suggest that there is a natural buffer between the industrial activity in the area and the creek to the east. He believes the proposed use serves as a good transition between industry and potential future residential. He also stated that there is an “all other” provision listed under the identified special uses for all zoning districts that allows for uses not specifically listed.

Mark Detter stated that the only district where this type of use is permitted outright is residential. One could attempt to use the “all other” provision, but one could argue its use is not keeping with the intent of the regulations.

Gary Israel read the Mayor’s commentary regarding Factor #12 from the veto summary:

*Staff and the Planning Commission agreed that the approval of the zoning request would detrimentally affect other property with increased activities and traffic, yet overlooked this factor in approving the case.*

Gary Israel commented that activity and traffic will increase, and that decisions need to be made on how it will be taken care of.

Chairman Lindebak stated that this factor is a reasonable thing to consider.

Lynn Heath indicated that the City has not stopped development in other parts of the City because it only had a two-lane road. During or after development, a four-lane road was constructed.

Chairman Lindebak stated that private developments generate taxes and public development consume taxes. The additional taxes generated cannot be used to pay for road improvements in this particular case. It is important to remember this property is 40 acres.

Gary Israel read the Mayor’s commentary regarding Factor #13 from the veto summary:

*Again, although a special use request is available in all zoning classifications I do not agree that the zoning district classification (Industrial) is consistent with an educational facility. What I find particularly confusing is that there is no mention in the minutes or recordings of the Planning Commission meeting of August 21st, 2018 as to which this special use category would fall under in the Industrial regulations. I am left to guess what the Planning Commission has used. If they concluded the special use to fall under the zoning regulations in Section C.5 which states:*

*“other uses not otherwise specifically listed as a permitted use or conditional use, but which are keeping with the intent of the Section 4-115 and compatible with the uses permitted in Section 4-115”*

*which is my best guess, then I believe they are misinterpreting the regulations. This does not adhere to the spirit or intention of the zoning regulations as an educational facility is specifically allowed in Ag, R-1 and B-1 only. Either way, the recommendation is devoid of this piece of information and should be reviewed for consistency and accuracy.*

Mark Detter stated the Mayor is articulating his views regarding the use of the “all other” provision found in the zoning regulations. He believes the Mayor views the use of this provision to allow an educational use in the I-1 Industrial zoning district is not complying with the intent of the regulations.

Chairman Lindebak stated that it has been allowed twice before, but that the Commission must now recommend how best to work with that precedent.

Gary Israel read the Mayor’s commentary regarding Factor #14 from the veto summary:

*While the Planning Commission nor staff did not answer this factor yes or no, the request is not in conformance with the comprehensive plan because BCC is not mentioned at all in the comprehensive plan. I see no valid conclusion as to how a new special use request compliments or enhances this plan and should have not been a factor in determining to not approve the request. I do believe however, that BCC should be considered an important community member in the next update of the comprehensive plan.*

Lynn Heath and Erik Pedersen concurred with the Mayor’s comments.

Les Mangus stated that the current comprehensive plan does not specifically mention the College. The current site is shown as educational in both the existing land use map and future land use map. The vacant land is shown as vacant land on the existing land use map and industrial on the future land use map.

Chairman Lindebak stated that although the College is not mentioned specifically in the current comprehensive plan, education is encouraged in the community.

Mark Detter asked Les Mangus for confirmation that only the existing property is shown as educational in both the existing and future land use maps included in the comprehensive plan.

Les Mangus responded that the land subject to this application is listed as vacant in the existing land use map and industrial on the future land use map.

Gary Israel read the Mayor’s commentary regarding Factor #17 from the veto summary:

*While the Planning Commission noted no visible opposition to the request and simply stated “it is better to approve this request” I am of the belief that there are many in the community tiring of the ever increasing expansion and greater taxation by Butler Community College to educate an estimated 80% plus percentage of students who do not reside nor pay their fair share of property taxes in Butler County. While most recognize the importance of a good education and feel that BCC is doing a great job at that, they also note that the funding of this College by only those who reside in the County, yet service a much greater area, is simply not fair. The “out-of-county” tuition versus the “in-county” tuition rates do not even begin to relieve the economic burden that the residents of the City of Andover and Butler County as a whole, have to shoulder. To allow a greater expansion of their current facilities to service an ever-increasing out-of-county (including State, National and International) student population that does not reside in Butler County provides serious negative gain to the general economic welfare of our residents. It puts Andover at a competitive disadvantage for new businesses and housing starts when comparing our tax rates to the surrounding region.*

Gary Israel asked if the 80% of students enrolled at the Andover campus were in fact from outside Butler County.

Staff indicated this question should be asked of the applicant.

Chairman Lindebak asked staff what zoning district best suits a college of this size (40 acres).

College classes first appears as a permitted use in the B-3 Central Shopping District in the current regulations according to Les Mangus. Residential zoning districts allow for K-12 educational facilities but not post-secondary facilities.

Chairman Lindebak acknowledged the Commission’s intent to ask about enrollment with the College, but he wanted to know if the City has any estimates.

Mark Detter indicated the question is best answered by the applicant, but current estimates are between 3,000-4,000, which includes the USD 385 students enrolled in concurrent classes.

Ray Connell, General Counsel for Butler County Community College, stated that the building in 2005 was vacant – no industrial use at that time. The College had an opportunity to use the facility for classrooms, and requested permission from the City to do so. The Planning Commission at the time unanimously recommended approval, and was ultimately approved unanimously by the City Council. The Mayor vetoed at this point and listed 13 conditions he wished to see the College address. The College addressed the conditions, and an ordinance was adopted allowing the educational use. This use has existed for 13 years. The College does still own approximately 4 acres on the northeast corner of 21<sup>st</sup> St. and Andover Rd., but it has sold approximately 34 acres on the southeast corner of 21<sup>st</sup> St. and Andover Rd. Mr. Connell stated that the current special use case was prompted by USD 385’s current projects, which have resulted in USD 385 asking the College to voluntarily move from the current high school. Mr. Connell asked those in attendance who supported this application to stand. He indicated no one

has voiced opposition to the application. Both the Planning Commission and City Council have unanimously approved this application, only to be vetoed by the Mayor. Mr. Connell advised the Planning Commission that they have the option of returning their original recommendation to the City Council. He recommends they chose this option without making any revisions to their original recommendation.

Chairman Lindebak asked if those in opposition to the application would stand up.

Mr. Connell wanted to ensure the record reflects not one person was in attendance to oppose the project, and he estimated 60-75 were in support.

Lynn Heath asked how many in support of the project were employees of the College. A majority of those in attendance raised their hand.

Chairman Lindebak asked what percentage of students are Butler County residents.

Mr. Connell called on Dr. Krull of Butler County Community College to answer this question. First, he wanted to emphasize that the enrollment demographics are not land use issues and cannot be tied to the zoning application.

Dr. Krull stated that 80% of students that are enrolled throughout all campuses come from outside Butler County, but that number is not accurate for the Andover campus alone. About 50% of all high school students enrolled throughout the College are USD 385 students.

Erik Pedersen asked how many students would be relocating from the current facility at the high school to the campus on 13<sup>th</sup> St.

Dr. Krull responded that approximately 30% of their enrollment is in the high school facility currently. She clarified this application is not for an expansion. They are simply transferring the same number of offices and classrooms from the high school facility to the 13<sup>th</sup> St. campus. The only additions will be a science lab space and a larger meeting space.

Dr. Krull indicated the College prepared a response to the Mayor's veto summary. In regard to factor #6, they are not denying participation in requested improvements, have provided right-of-way and have included future road improvements in their master planning efforts.

In regard to factor #7, platting was jointly agreed to by both the City and the College, and was not done previously as it was not required by the City.

In regard to factor #9, the College continues to operate under the condition that the College will sell the property at the northeast corner of 21<sup>st</sup> St. and Andover Rd. once an appropriate price and additional space to move into are achieved. The current facility at this location does not have enough space to accommodate the relocation of students currently attending the facilities in the high school.

In regard to factor #11, unanimous approval in 2003 and 2005 did not indicate any concerns regarding the suitability of this use in this zoning district. She noted that the College does provide a great buffer between industrial use and future residential uses. Landscaping, exterior renovations and parking improvements will be part of the project if the special use is approved, and will increase the curb appeal of the property. They would also have the opportunity to connect walking and biking trails on the property to City parks and other amenities.

In regard to factor #12, the College agreed the need for reinterpretation was necessary. In regard to factor #14, College staff have been involved in the development of both the 2003-2013 and 2014-2023 comprehensive plans. Education is a priority in this community. The College is a great partner with USD 385. The College offers a low-cost education, some tuition-free courses, short-term training and faculty development opportunities.

In regard to factor #17, the College does not believe they create a detriment. The College believes denial will have a lasting impact on the school district, as it impacts their ability to deliver their services and projects on time and on budget. If denied, detrimental impacts will occur for students. 460 Andover high school students were enrolled in concurrent courses in both the spring and fall of the last academic year, totaling more than 3,000 credit hours. Fall 2018 has 309 Andover high school students enrolled. Early college academies are offered, which allows students to work toward their Associates degrees at the same time as they work on high school completion. The current meeting space at the 5000 building is not large enough for community use, and they would like for the community to be able to use the facility.

Chairman Lindebak asked for further details regarding the College's plans for infrastructure improvements.

Dr. Krull responded that the master plan indicated access to the College from Commerce St. and a potential entrance from Yorktown. The master plan showed better entrances from 13<sup>th</sup> St. Early building designs did reflect a major entrance off Yorktown. The College is unclear on what expectations the City has for improvements.

Chairman Lindebak asked if any petitions for improvements have been submitted by the applicant.

Les Mangus responded that the City Attorney has been working with the College's engineering firm that is handling the plat on petitions, but sufficient petitions have not been produced as of yet. The adjoining property owner has indicated no immediate plans for development.

Dr. Krull indicated the College is planning on engaging the adjoining property owner shortly to discuss their interest. She stated the College has always understood that there would be a need for a partnership regarding road development.

Gary Israel asked the applicant how they feel about being located in an industrial park.

Dr. Krull responded that community colleges are located within industrial areas all over the nation for partnerships and experiences that are beneficial to students. She has not received any negative feedback regarding the location from any student.

Mark Detter stated that it is appropriate for the Planning Commission to make recommendations for infrastructure based on the determinations made from considering the 17 findings and factors, and making them time specific. He would like to see the improvements completed before the transfer of students from the high school site to the 13<sup>th</sup> St. campus. He believes this is the approach required in order for the Mayor to consider not vetoing a future ordinance or getting the required number of votes for approval from the City Council.

Chairman Lindebak agreed that infrastructure improvements are a reasonable expectation, and believes the submittal of a valid petition and required letter of credit by the applicant are the appropriate mechanism for meeting these expectations.

Mark Detter stated they would hope to receive such items, but would like to see the improvement requirements within a designated time period included as a condition of approval of the special use permit application.

William Schnauber asked to confirm whether the proposed project included a new structure being built, or is it just a remodel.

Les Mangus responded that the applicant plans to build a new structure on the property that is the subject of this special use permit application. The east half that holds the existing building has an active special use permit.

Lynn Heath asked which streets are being targeted for improvement.

Mark Detter responded that Commerce St. and Yorktown Pkwy. are the identified streets. The City has presented to the College its plans for improvements to Yorktown off-site of the College's property and explained the engineering and planning studies that have dictated the proposed alignment.

Lynn Heath asked if Mr. Detter was requesting that the improvements be approved or completed prior to the special use permit.

Mark Detter responded that he would like to see them completed before the construction of the College's facility is completed.

Lynn Heath asked how long the improvements to the identified streets would take.

Les Mangus indicated improvements would take at least a year if started today.

Chairman Lindebak stated that he believes that the special use permit should be accompanied by an agreement between the City and College on infrastructure improvements. This agreement may take time and delay the special use application from being considered by the City Council.

Les Mangus stated the plat requiring improvements has been approved by the Planning Commission, but it is currently being held for lack of satisfactory petitions authorizing the improvements. The College and the City Attorney are currently working on the petitions.

Gary Israel asked if the College has a time frame for when their project would be completed.

Dr. Krull relayed their deadline to be out of the high school facility is summer of 2020. The school district's project timeline calls for the demolition of the wing the College currently occupies to begin in May 2020. The College's goal is to have at least part of their staff out even before that. The College's timeline is constricted in order for that to happen. In order to stay on their timeline, they need to start some demolition and remodeling at the current facility on 13<sup>th</sup> St. quickly. She is concerned that if road improvements are required to be completed before any work can begin on their facility, there is potential to impact the school district's timeline.

Chairman Lindebak asked Dr. Krull if she agreed that an agreement with the City could be put together regarding the timeline for improvements that would be agreeable for both parties.

Dr. Krull responded that the College's Board is the only entity that can make determinations regarding potential agreements, but that they are at the point that they need to know what they need to do. The board is ready to have those discussions.

Chairman Lindebak suggested that this agreement be a condition of approval based on the reasonableness of improvements.

Erik Pedersen agreed that an agreement between the City and the College is advisable.

Lynn Heath asked how detailed the Commission wishes to be on the improvement requirement.

Chairman Lindebak stated he thinks setting the framework is appropriate, and to let the City and College work out the details. He would like to see the plat with accompanying satisfactory petitions and special use application all be considered by the City Council at the same time.

Mark Detter responded that he would like to see the Planning Commission recommend infrastructure improvements to be completed within a specific time frame. He is not asking the Planning Commission to recommend the City Council develop any sort of agreement as a condition of approval of the special use application.

Les Mangus stated he believes the issue comes down to platting requirements; specifically, what improvements and how much. The College needs to know what the requirements are and the time frame the City expects. Much work is left to be done between the City, the College and the City Attorney.

Chairman Lindebak reiterated his recommendation that the City and College work out an agreement, through whichever mechanism is decided upon, detailing what improvements are required, the timeframe and funding.

Lynn Heath stated he does not believe the road improvements need to be completed before the College makes their facility improvements but can be completed together.

Mark Detter said the condition he is suggesting is the road improvements are completed prior to the issue of a certificate of occupancy for the College's new facility, which would allow the simultaneous construction of road improvements and the College's projects.

Chairman Lindebak asked all members if they have had enough information to digest this case.

All members responded in the affirmative.

Gary Israel read the motion from the September 11, 2018 meeting of the City Council, and commented that it appears the City Council was all for the project, but that the Mayor ultimately vetoed it. It appears that the Planning Commission could make a recommendation to the City Council that requires the identified road improvements to be completed concurrently with the College's facility projects.

Les Mangus stated the College is apprehensive to begin a project without knowing the exact improvement requirements, and the Mayor is apprehensive about approving a land use without knowing which improvements will accompany it. In his opinion, the platting process is the appropriate mechanism to work these details.

Mark Detter asked the Planning Commission to go over the Mayor's comments in his veto summary again in order to establish clear Planning Commission responses as requested by the City Council.

In regard to factor #6 of the veto summary, all members agreed that improvements are necessary.

In regard to factor #7 of the veto summary, all members agreed the property needs to be platted within the next 12 months.

In regard to factor #9 of the veto summary, all members agreed this factor is not applicable to this specific application based on the College already existing at the current location.

In regard to factor #11 of the veto summary, all members agreed this factor is not applicable to this specific application based on the College already existing at the current location, and that the site is not in the middle of an industrial area but at the edge of an industrial area. William Schnauber also commented that he believes there is a connection between industry and training.

In regard to factor #12 of the veto summary, all members agreed that improvements are necessary.

In regard to factor #13 of the veto summary, Les Mangus stated that no zoning district in the current regulations specifically lists community colleges as a special use. The central shopping zoning district does list college classes, but that provision dates back when a college might offer a course in a strip mall somewhere. The use that the college is requesting, with approximately 3,000-4,000 students would not be expected to be located within a central shopping zoning district. All members agreed this factor is not applicable to the consideration of this application.

In regard to factor #14 of the veto summary, all members agreed this factor is not applicable based on the consensus that the comprehensive plan should have been more robust in its comments regarding the promotion of education and, specifically, the College.

In regard to factor #17 of the veto summary, William Schnauber commented that he likes the connection between the College and the high school. Chairman Lindebak commented that if infrastructure improvements can be realized, he believes that there is a lot of potential benefit to the public by approving the application. Without improvements and with the additional activity, accidents and other issues with connectivity are possible. Erik Pedersen agreed with Chairman Lindebak's comments. Lynn Heath commented that the Commission does not generally discuss required improvements when considering land use applications, because the natural growth and traffic requires such improvements. Chairman Lindebak responded that private development generally produces additional tax revenue that helps pay for public improvements; whereas, this development will not produce additional revenue to be used toward public improvements. Lynn Heath commented that improvements may assist the rest of the area develop. Chairman Lindebak commented that improvements will be a very good thing for the College as well. All members agreed that the approval of the application provides for the public welfare as long as conditions are met requiring infrastructure improvements.

In summary, all members agreed that the Commission's response to factors 6, 7, 12 and 17 of the Mayor's veto summary have the most influence on a recommendation. Conditions regarding the requirement to plat and required improvements were agreed to by all members. Chairman Lindebak commented that their findings in response to the Mayor's veto summary are factoring in the requirements for platting and infrastructure improvements. Approval of the special use application does not make sense without those conditions being met.

*Having considered the evidence at the hearing and the factors to evaluate the special use application, I, Brian Lindebak move that we recommend to the Governing Body that Case No. SU-2018-02 be approved for the establishment of a post-secondary education facility on the property zoned as I-1 Industrial District with the following conditions: 1) provisions be made for public infrastructure improvements including but not limited to: Commerce St., Yorktown, 13<sup>th</sup> St., water and sewer improvements, and that those be agreed upon by both the City Council and Butler County Community College as owner of the present property, and (2) platting within one year. Motion seconded by Lynn Heath. Motion carried 5/0.*

**Recess the Planning Commission for Five Minutes**

*A motion was made by Gary Israel, seconded by William Schnauber, to recess the Planning Commission for five minutes. Motion carried 5/0.*

Chairman Lindebak called the meeting to order at 9:03pm. Alex Zarchan entered the meeting at 9:03pm.

**Recess the Planning Commission and Convene the Board of Zoning Appeals**

*A motion was made by Gary Israel, seconded by William Schnauber, to recess the Planning Commission and Convene the Board of Zoning Appeals. Motion carried 6/0.*

6. **BZA-V-2018-05- Public hearing on an application filed by Greg Reeves, 635 S. Verna Ave., Andover, Kansas, pursuant to Article 10.107 of the City Zoning Regulations, a variance of 3,556 square feet from the required 500 square foot maximum floor area of a structure used exclusively for storage permitted by Article 6.100B3 and a variance of 3,056 square feet from the required 1,000 square foot maximum aggregate total floor area of all accessory structures permitted by Article 6.100C4 for the purpose of constructing a 2,400 square foot residential storage structure, in addition to the existing legal non-conforming 1,656 square foot accessory storage structure, on property zoned as the R-1 Single-Family Residential District and generally located at 635 S. Verna Ave., Andover, Kansas.** 02:04:45

Chairman Lindebak stated that this case is being continued to the November 20, 2018 Planning Commission meeting in order for proper notification to take place.

**Adjourn the Board of Zoning Appeals and Reconvene the Planning Commission**

*A motion was made by Erik Pedersen, seconded by William Schnauber, to adjourn the Board of Zoning Appeals and Reconvene the Planning Commission. Motion carried 6/0.*

7. **Review and accept the Prairie Pointe at Cornerstone 2nd Addition Final Planned Unit Development Plan.** 02:06:02

Les Mangus stated all conditions set forth during the Subdivision Committee's approval have been complied with.

Alex Zarchan asked for clarification regarding the street name change.

Les Mangus responded that the City's addressing guidelines do not allow for the multiple courts to be of the same name. The common street will remain Cobblestone St., but each court will need a unique name. Phase I already uses Cobblestone Ct., so Phase II's courts has been revised to Millstone Ct.

*A motion was made by William Schnauber to accept the Prairie Pointe at Cornerstone 2<sup>nd</sup> Addition Final Planned Unit Development Plan as presented. Motion seconded by Gary Israel. Motion carried 6/0.*

**8. Discussion on the Unified Development Manual and consider setting the public hearing on November 20, 2018 to consider the adoption of the new regulations. 02:08:55**

David Foster and Debra Foster, of Foster Design Associates, were in attendance to present the item.

Mr. Foster explained that the purpose of tonight's presentation is to present the information to the Planning Commission that has been presented to the City Council. Mr. Foster gave an overview of the major topics to be covered which include the significant changes from current regulations. The document is meant to be a living document, thus is to be amended as much as necessary post-adoption.

Chairman Lindebak asked if a duplex-equivalent zoning district is included.

Les Mangus responded that duplexes are accounted for in the MF-1 district. The proposed zoning district regulates which type of multi-family dwellings are allowed based on lot sizes.

Mark Detter commented that duplexes, both on infill lots and new developments, have been proposed lately.

Les Mangus stated that the use of protective overlays or planned unit developments can limit the type of multi-family dwellings allowed on a lot.

Chairman Lindebak stated that he believes a separate duplex zoning district more accurately describes such developments, and it would be beneficial for all parties to have a separate duplex zoning district.

Les Mangus said he prefers to look at multi-family on a case-by-case basis as to allow examination of the context involved in each specific circumstance.

Chairman Lindebak stated he is not asking to remove the MF-1 but to add a duplex district in addition to it. This would allow a developer to choose which district best suits each individual development.

Les Mangus agreed it is something to consider.

Chairman Lindebak requested that Foster Design Associates and staff work together to make a determination on whether the addition of a duplex zoning district would be helpful.

Alex Zarchan agreed with Chairman Lindebak that there is a significant difference between two-family and multi-family units. He advised that giving people the option to build various types of multi-family within a district may not be preferred.

Mr. Foster advised the Commission that they would work with staff and respond to the Commission quickly.

Mr. Foster presented the details of the new Arterial Overlay District.

Mr. Foster stated that the 17 current findings and factors have been reduced to 14, and that 9 will be used as the Commission's review tool. The remaining 5 will be completed by staff.

Mr. Foster commented that the sign regulations have been completely rewritten to comply with recent court decisions regarding content regulations, and regulations focus on time, place and manner.

Mr. Foster presented food truck regulations, content regarding accessory dwelling units and information concerning tiny homes.

Mr. Foster presented wireless communications systems regulations that comply with state statutes and FCC regulations. Systems will be allowed as a conditional use in residential districts and a permitted use within business/industrial districts with height restrictions.

Chairman Lindebak asked if there was any method to regulate pole material/type on systems located within the public right-of-way.

Les Mangus stated he does not believe they are allowed to regulate this in the right-of-way.

Mark Detter agreed that an attempt should be considered to apply some sort of standards to these systems in the right-of-way. He stated that the City is uniquely-situated to make some sort of a stand in the matter based on the inclusion of the goal to remove utilities from the right-of-way in the adopted comprehensive plan and the subsequent investments that have been made toward achieving this goal in recent years.

Mr. Foster suggested that the discussion of this topic be continued at the City Council level, but the language in the UDM can be revised in the future. He doesn't advise letting this issue delay the adoption of regulations as a whole.

Mr. Foster presented electronic vehicle charging regulations.

Mr. Foster presented changes to the planned unit development regulations.

Mr. Foster presented short-term rental regulations and changes to restaurant patio-seating regulations.

Mr. Foster presented the changes to the Site Plan Review process.

Mr. Foster covered the public hearing process required in order to adopt the new regulations.

Chairman Lindebak asked whether triggers could be included in the regulations to remove previously-approved conditional and special use permits. For example, if you have not utilized the use approved in a certain amount of time, the approval is revoked and must be applied for again if desired to operate again.

Les Mangus stated that both conditional uses and variances have a requirement that dictates the approved action/use must be initiated within 180 days, or the approval is removed. Special uses do not have this provision. Conditional uses and variances are actions of the Board of Zoning Appeals, which allows for this provision. Special use permits are enacted via ordinance adopted by the City Council. The ordinance runs with the land.

Chairman Lindebak advised that the code be changed so that special uses do not run with the land.

Les Mangus commented that he believes the revocation of a special use may be determined a regulatory taking.

Mr. Foster summarized the two outstanding issues to be resolved include: the two-family zoning district and the regulation of types of wireless communications systems in the public right-of-way.

*A motion was made by Lynn Heath to set the public hearing date as November 20, 2018 at 7:00pm. Motion seconded by Gary Israel. Motion carried 6/0.*

**9. Member items.****03:25:00**

Mark Detter informed the Commission that a zoning decision was recently reversed in appeals court. He reminded the Commission that this is the reason why we must continue to discuss details of each case. The court reversed the City Council's decision, because it was determined that they did not provide any reasons for the denial of the zoning request.

Chairman Lindebak announced his resignation from the Planning Commission effective January 1, 2019.

**10. Adjourn.****03:27:24**

*A motion was made by Gary Israel to adjourn the meeting at 10:26pm. Motion seconded by Lynn Heath. Motion carried 6/0.*

Respectfully Submitted by,



Lance A. Onstott  
Stormwater/GIS/Planning Technician

Approved this 20<sup>th</sup> day of November 2018 by the Andover City Planning Commission/Board of Zoning Appeals, City of Andover.