

# Jefferson County Planning & Zoning

## Oskaloosa, Kansas

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### OFFICIAL

#### OFFICIAL MINUTES OF THE JEFFERSON COUNTY PLANNING COMMISSION

##### Minutes of Planning Commission Meeting of May 27, 2014

**Item 1. Call to Order.**

**Item 2. Approval of the Agenda**

*COMMISSIONER FRAKES MOVES TO APPROVE THE AGENDA. VICE-CHAIR JOHNSON SECONDED THE MOTION.* Votes were taken by Ayes and Nays and recorded as follows:

<b>Matt Scherer</b>	<b>Paul Johnson</b>	<b>Roger Wood</b>	<b>Tim Bailey</b>	<b>Alex Noll</b>	<b>Bret Frakes</b>	<b>Kelli Curry</b>
DNV	Aye	Absent	Aye	Aye	Aye	Absent

The motion carried unanimously, 4-0.

**Item 3. Roll Call**

<b>Matt Scherer</b>	<b>Paul Johnson</b>	<b>Roger Wood</b>	<b>Tim Bailey</b>	<b>Alex Noll</b>	<b>Bret Frakes</b>	<b>Kelli Curry</b>
Present	Present	Absent	Present	Present	Present	Absent

Staff Members Sam Henderson, Zoning Administrator; Erin George, Planner I, were also present.

**Item 4. Approval of the April 28, 2014 minutes.**

Chair Scherer asked if there were any corrections or additions to the minutes. Comments were addressed. Chair Scherer asked for a motion to approve the minutes.

**Action:** *MOTION MADE BY COMMISSIONER JOHNSON MOVES TO APPROVE THE APRIL 28, 2014 MINUTES WITH CORRECTIONS, SECONDED BY COMMISSIONER NOLL.* Votes were taken by Ayes and Nays as follows:

<b>Matt Scherer</b>	<b>Paul Johnson</b>	<b>Roger Wood</b>	<b>Tim Bailey</b>	<b>Alex Noll</b>	<b>Bret Frakes</b>	<b>Kelli Curry</b>
DNV	Aye	Absent	Aye	Aye	Aye	Absent

The motion carried unanimously, 4-0.

**Item 5. CHAIRMAN SCHERER OPENED THE PUBLIC HEARING**

**Z2014-01 by Israel of God Church** to change the District Zoning Classification of 7392 Palmberg Rd., from "SR" Suburban Residential to "CP1" Planned Light Commercial District.

*Mr. Henderson presented the staff report for Z2014-01.*

*Chairman Scherer:* Mr. Sanders, would you care to make any comments?

*Applicant:* It's no different than last month. I have not got the entry up to County specs because I wasn't sure how this was going to go. I wasn't going to do anything unless it was approved. I would appreciate it if you would waive the pavement of the parking lot because that is a big expense for me right now. Any questions for me?

*Chairman Scherer:* Are there any questions for the Applicant at this point?

*Vice Chair Johnson:* A couple at this point. You're in the process of buying this entire church?

*Applicant:* Yes.

*Vice Chair Johnson:* So there's not going to be an Israel of God Church here, you're basically the applicant, but not the owner?

*Applicant:* They did not have the money to put up for the application so I told them I'd do it. They signed the affidavit where I could do that.

*Vice Chair Johnson:* And your plans for if this is approved you'll go with improving the driveway entrance, putting in the culvert?

*Applicant:* Yes, whatever the County needs.

*Vice Chair Johnson:* And the existing surface of the parking lot now is gravel?

*Applicant:* There's probably a 12 or 14 foot apron that's concrete that you can see right there in the picture.

*Mr. Henderson:* With the remaining surface being gravel. I'm not sure if that was originally intended for parking or for a sidewalk. It's not wide enough, technically, to be entirely parking spaces. Parking spaces are about 20 feet deep 9 feet wide and like he said that concrete is only about 14 feet across. There is hard surface area.

*Vice Chair Johnson:* This might be for staff, what would be the minimum number of parking spaces for then for this?

*Mr. Henderson:* It is based on the square footage of the building itself, we do have the Regs here. One moment.

*Commissioner Frakes:* He did have it on the development plan last month.

*Vice Chair Johnson:* And how long has the property been vacant?

*Applicant:* I don't know, but it's been a while.

*Mr. Henderson:* It would be 1 space per 300 square feet of floor area. Do you know the square footage of the building?

*Applicant:* 14-1500.

*Mr. Henderson:* So, 5 spots would be required.

*Vice Chair Johnson:* And what are your plans for signage?

*Applicant:* I will keep it as it is, I'm just going to change it to my signs. I'm not going to add any more signs.

*Vice Chair Johnson:* You're just going to change out the existing signs?

*Applicant:* Yeah, there's one right here that's a two sided sign and there's one down here somewhere that's just one sided facing the highway. This one here there's power running to it. If it's not working I'll get it running again. I'm not going to add lighting to the other one.

*Mr. Henderson:* And there's one on the face of the building that he's going to take that down and replace it with his.

*Applicant:* My current office is over in the strip mall over here and I've got a one way sign that is lit and I'm going to move it to the front of the building.

*Chairman Scherer:* Are there any further questions for the Applicant at this point?

*Mr. Henderson:* It would be a rezoning to Commercial not a Conditional Use so if he needed to add more signs to the building he could, he'd just need to meet the standards for the sign regulations for that district. So it's not a conditional use permit where he'd be limited to the signage he requested or showed in the development plan right now. He'd be limited by the regulations for the CP-1 District.

*Vice Chair Johnson:* And that would be an administrative ruling by your office?

*Mr. Henderson:* Yes.

**END OF APPLICANT PRESENTATION**

**OPEN OF PUBIC COMMENT**

Chair Scherer asked if there was anyone who would like to speak in favor of the application. *No comment was given.*

Chair Scherer asked if there was anyone who would like to speak in opposition to the application. *No comment was given.*

*Chairman Scherer:* Did we have any correspondence?

*Mr. Henderson:* No additional correspondence from last time.

*Mr. Henderson reviewed the correspondence discussed at the previous public hearing for the case.*

**END OF PUBLIC COMMENT**

**ACTION:** *COMMISSIONER BAILEY MAKES A MOTION TO RECOMMEND APPROVAL OF Z2014-01 AS PRESENTED BY STAFF AND WAIVE REQUIREMENTS IN ARTICLE 18 OF THE ZONING REGULATIONS FOR PAVING THE PARKING LOT. COMMISSIONER NOLL SECONDED THE MOTION.*

<b>Matt Scherer</b>	<b>Paul Johnson</b>	<b>Roger Wood</b>	<b>Tim Bailey</b>	<b>Alex Noll</b>	<b>Bret Frakes</b>	<b>Kelli Curry</b>
DNV	Aye	Absent	Aye	Aye	Aye	Absent

Staff informed the applicant when the case would be submitted to the County Commission for final approval and let them know they would receive notice prior to the meeting.

**PR2014-05 and Z2014-07 by Robert Bryan Diehn** To consider a final plat of the Whispering Meadows Subdivision and to consider rezoning 11130 Osage Rd, Oskaloosa, KS, generally located on the East side of Osage Rd. between 110th and 112th Streets, from "AG" Agricultural to "RR" Rural Residential District.

*Mr. Henderson presented the staff report for PR2014-05 and Z2014-07.*

*Chairman Scherer:* Are there any questions for Staff?

*Vice Chair Johnson:* I have 2 or 3, so lots 2 and 3 will stay zoned agriculture?

*Mr. Henderson:* Yes, sir.

*Vice Chair Johnson:* And, they needed to go to the County Commission last fall to get the variance for lot 3 so that they could then draw up these plats.

*Mr. Henderson:* They did receive permission from the County Commission last fall to do that. Otherwise if they had just brought it to Staff with that limited frontage on lot 3, Staff would have told them that we would not have been able to recommend approval of that without an exception being made.

*Vice Chair Johnsons:* So they went to the Commissioners with kind of a general preliminary plat of what they wanted to do with this land?

*Mr. Henderson:* I believe, based on the minutes that their request was to turn this back 89 into a buildable lot. This request varies from that because they are splitting this along a pretty dense tree line which would have prevented access to this portion of the property from the east so they went with where they could access it from the west from Osage. That is the only way that it varies from the request that they brought to the County Commission last fall.

*Vice Chair Johnson:* I don't know if this strays a little beyond, but to build homes on lot 2 and 3 are there minimum requirements for water service?

*Mr. Henderson:* Yes, the requirements would be that they would be able to get water to those sites.

*Vice Chair Johnson:* So that would be part and parcel of any building permits and could they do it on drilled wells versus having rural water service?

*Mr. Henderson:* If there is not access to a rural water district they could drill wells if it was possible. There is a state requirement on proximity to public water. If there's public water within, I think, 400 feet or sewer a new development is required to hook up to that. I'm not sure where the lines were located, but if it's within that distance they would be required to hook up to it.

*Chairman Scherer:* Are there any further questions for staff? Seeing none, would the Applicant like to make a presentation?

*Applicant:* I don't have anything further to say.

*Chairman Scherer:* Okay, we may have questions for you later.

## **END OF APPLICANT PRESENTATION**

### **OPEN PUBLIC COMMENT**

Chair Scherer asked if there was anyone who would like to speak in favor of the application. No comment was given.

Chair Scherer asked if there was anyone who would like to speak in opposition to the application.

*Rodney Gilbert:* I have some questions. I own property that backs up to lot 3. How big of lots are they planning on breaking this up into and how many homes, just one on each lot?

*Chairman Scherer:* As it is set up there can only be one home on each lot.

*Rodney Gilbert:* And the entrance for lot 3 wouldn't be off 110<sup>th</sup> it'd be go through lot 2?

*Chairman Scherer:* No. It would be off 110<sup>th</sup>. That is what required the variance from the County Commission.

*Vice Chair Johnson:* There would be potential for an Ag Split on lot 2? Meaning that there could be two homes there potentially within the Ag zoning regulations. If they came back and wanted to put in 8 homes there, or whatever, we'd go through a whole rezoning case to change that lot.

*Mr. Henderson:* Potentially, if there was enough frontage. I don't recall the exact frontage.

*Rodney Gilbert:* As of right now they're just wanting approval for 1 home on each lot?

*Vice Chair Johnson:* Well as I said, on lot 3 it's probably pretty clear that there's only 1 site there. Lot 2 is the one where it's possible if it's configured right to do 2.

*Rodney Gilbert:* Lot 1 already has a home on it?

*Chairman Scherer:* Yes.

*Phoebe Schneck:* We live at 11371 Osage Rd. My biggest concern is water. Yes we do have rural water on District 12 but we do not have very good water pressure where we live. For example, when he turns the hydrant on to water the cattle I have very, very little water pressure in the house and if we add more meters, more people using water, even if District 12 says they can supply the water are we going to be able to keep the pressure up and if and when that would happen would the cost of ours go up because they would have to enlarge their water system, their pumps and everything to furnish more water to that area. And also, another thing, I am very concerned about the traffic on the roads. Even though they are gravel roads, we have a lot of traffic on Osage Rd and it is fast traffic, to me, and I would like to see maybe if this has to go through, I would like to see a speed limit put on that road. Those are my two big concerns, the water and the traffic on the road, the dust, just more vehicles on the road. So, that's my big concern. Thank you.

*Chairman Scherer:* Any questions for the witness?

*Vice Chair Johnson:* The interplay of water pressure and water systems on neighbors, is that a consideration in building permits that you can allow?

*Mr. Henderson:* We basically operate off the water district's report to us. If they say they can provide the water then we do not have any reason to not allow permits. If they say they cannot provide water then that is something else. But they've already said that they have meters available and can provide water to the two locations. That might be something to talk to their water district board about. I'm not sure what options they would have available to improve their systems.

*Vice Chair Johnson:* So you don't get into discussion with the water district whether there will be impact on water pressure?

*Mr. Henderson:* They have their own staff that evaluates those requests.

*Commissioner Frakes:* And usually if there's much of a development they have an engineer on retainer that would conduct a study if there's much of a development.

*Commissioner Bailey:* Usually they make the applicant put in a bigger pipeline.

*Vice Chair Johnson:* Which is not shared with other existing customers?

*Commissioner Bailey:* No he has to pay for the whole deal.

*Vice Chair Johnson:* And as far as the road issues are concerned, that would be a relative discussion with the County Commissioners when it comes before them as to what impact this might have on traffic.

*Mr. Henderson:* The residents of that area are welcome to schedule a time to discuss the traffic on the road with either the staff in the public works department or the County Commission at any time, not just in reference to this request. It will be noted in the minutes what those concerns were and we can highlight those as well when it comes to the County Commission if that is something you would like to be done.

*Gaylord Schneck:* I thank you guys for letting us speak on one thing or another. We come from Douglas County 17 years ago. What (he) is planning here I think is down the future he's, lots that your saying is going to be one house here, that's not going to happen. What's going to happen, in a little time someone is going to come in and say I want to change this. I want to put 5 lots over here. That's what happened down there and people were not aware of it. They didn't bring it out in the public. It was under. You people know what I'm talking about. I'm also, like she was talking about the water, the Courtney's across the road, when I start watering cattle their pressure goes, too. Now, we're going to give you water. When we moved up here our rural water district down there, number 1, was the first one in the county. The Water bill, we got 3000 gallons for 13 or 14 dollars. When we come up to here it more than doubled and we didn't get any water. So I questioned, why was that? Well, we had to spend a lot of money to bring up the service, the service had to be brought up some more. I think we're talking about the same thing. I've been rural ever since, there was 4 years my wife and I lived in Lawrence, but I've been rural ever since and before that. I'm 80 years old. I've been out in the country. I like the freedom. I also question what is going to happen on the tax bill on this property that we're talking about. There's a difference between the Ag use and then we go up, is there going to be more money put on that? That's a question I ask. Is it? Can you guys tell me that it's going to go up? He's going to have to pay more for having it changed? So he can make more money?

*Chairman Scherer:* I can't tell you that.

*Gaylord Schneck:* That's what we're all in here talking about. We're talking about him making money. I'm not against the guy. He's a hell of a good neighbor. He's helped us out some. I'm against the principles. I think what's going to happen, this is going to be a lot out up here with a house and this will be a house up here and pretty soon we'll need to put a driveway up through here. That's what happened down in Douglas County. I have experience on it. That's something we have to talk about. This idea is okay for him, but what if he sells it and Sam Jones comes in and says I want to zone this different. You guys won't be here, there'll be different people here. That's some of my concerns. I don't want to see my tax bill go up for something like this. I like the open space. That's the reason why we bought the place. That's where I'm coming from. I think we're leading up to a whole lot more than what's here. I really believe that. If not, I wouldn't be up here hollering. I thank you.

*Donald Adam:* I live at 13631 110<sup>th</sup> St. I want to really thank the Gilberts for saying exactly what I think all of our concerns are. The water pressure is bad. The potential is there to have a real subdivision and I don't think anybody that lives there wants that. I think that you guys did a wonderful job presenting and I'm proud of you. I think that they're right.

*Jeff Jeffers:* I live in Valley (Falls), but I own a little salvage yard nearby. I work for King Construction and like Gaylord said, we do a lot of work like this we'll come in and put new streets, new guttering, do the dirt work, and the next thing you know you've got 15-20 houses in there. And everywhere we've done this everybody's taxes went up. That's what I'm afraid that is going to happen around us, is our taxes going up, because then they'll want to pave the road out front 110<sup>th</sup> and Osage they won't want to pay for that and our taxes will really go up. I've heard a lot of complaints about water pressure. I don't have a meter out there, but the reason why there ain't enough water pressure for these folks is they don't have enough towers. That's where you get your water pressure from, your towers. I'm opposed to this because they'll hire someone like my company to come in here make a road through there and put cul-de-sacs in here and then you have buku houses. Like I said, taxes always go up. That tree line right there, with D8s and track hoes, it's nothing. You can put concrete culverts, box bridges and that's gone. It could all come out to be one place.

**Applicant Rebuttal**

*Applicant:* My whole goal here was to split this off and if anything I wanted to do this in case I wanted to sell this lot to my son or daughter and they could live next to me. My plan is not to create a subdivision with lots of lots.

**END OF PUBLIC COMMENT**

*Chairman Scherer:* I'm going to ask Staff to explain the rules with regards to further development with any one of these lots just for the information of those who have a concern.

*Mr. Henderson explained the process required by the Jefferson County Subdivision Regulations for further development of lots.*

*Gaylord Schneck:* I have a question. We was not notified, or knew about the Planning Commission doing this stuff, this is the first we heard of it, when we got this notice. Can anybody go down to the Planning Commission and let them do the deciding and then bring it up to the County Commission without notifying anybody? Can they make that decision? I don't know, I'm asking the question.

*General discussion of the notification process ensues. It was discovered that no sign was posted for the rezoning case at this time. Letters were received.*

*Rodney Gilbert:* I've got a quick question, it might be back tracking, if he's only wanting to break off a lot for his daughter or son, why do you got to mess with lot 3, why do you got to have that included in this deal if you're not wanting to divide it up later on?

*Mr. Henderson:* That was just the request that was submitted.

**ACTION:**

*Vice Chair Johnson:* I have 2 or 3 comments about this. My involvement with the Planning and Zoning Commission started with redoing the Comprehensive Plan for Jefferson County and one of the tenants that we saw with the Comprehensive Plan was trying to hold on to the rural, rustic agricultural nature of Jefferson County and it's been a challenge. We're a bedroom community. I think we and Pottawatomie County, there's 2 of us that have most of our people living outside of the 8 small cities we have in Jefferson County. We're a very rural based county and the countervailing forces in our County is a County Commission that is pretty desperate for a budget and trying to figure out here that the development of new homes here is one of the key components of what is going to keep this County budget afloat and theoretically the people who build on these lots should be absorbing the bulk of those property taxes. They should be paying that property tax increase. That should not be passed to other land owners. I'm no tax expert, I'm not sure if that's exactly how it works, but that's the mentality that we hear from some of our County Commissioners is that they need this development for other revenue purposes. So, we're trying to find that balance of how we hold on to the agricultural heritage of this County at a time when everybody knows about what's been happening in agriculture, we know the consolidation, we know the commuting that is going on out of this county. I don't have easy answers to it, but I want to believe that compared to Douglas County that we have the right philosophy to try and hold on to certain open spaces and a rural, rustic environment that we all value and see in our lives and it's a constant struggle over these kinds of changes. A theory is that we'd love to push all this development around the 8 cities that we have in Jefferson County, and that would be the ideal place for some of this development, but that's not how the real world works many times.

*Commissioner Bailey:* I have a problem with why the County is granting variances on frontage on a piece of property like this when I know there's a lot of other places that are in the same boat. I was trying to buy a place this fall and we couldn't get any variance on it and it really kind of irritates me that the variance was granted on lot 3.

*Commissioner Frakes:* This is the second time in the 20 years that I've been on here where the commission's done it either prior to us hearing it or after we had denied it.

*Commissioner Bailey:* I would move to deny it just for that reason.

*Commissioner Frakes:* I appreciate him doing his checking and finding out from the Commissioners whether it would be a viable option before he went to the expense of the plat. I have no problem with that. I mean, I would have done the same

thing. Since this is a recommending body to the Commissioners that make the final decision I would go to the man that makes the final decision and discuss it with him.

*Commissioner Bailey:* Well, there's enough space there that he could build a road and if we're going to have a subdivision in Jefferson County we're supposed to have a paved road paid for by the applicant. Put the paved road in.

*Commissioner Frakes:* Exactly. If he subdivides it that's a recommendation we can make to the people that make the final decision. That's the best we can do. We're not the elected officials and if my water pressure was bad, I'd be on my rural water district already. Every month if I had to.

*Mr. Henderson:* I would like to reiterate, too, that the case is within the notification area for Oskaloosa and they had no objections to the rezoning request for the 10 acre lot the plat itself is not required to go to the City for recommendation but the zoning was and so they had no objection to it.

*Chairman Scherer:* Was there any correspondence regarding the case?

*Mr. Henderson:* We did not receive any. I think that the folks that had some comments were all here at the meeting, but we did not receive any phone calls or letters for or against the request.

*COMMISSIONER FRAKES MOVES TO APPROVE Z2014-07 AND PR2014-05 AS PRESENTED BY STAFF AND SUPPORT OF THE CITY OF OSKALOOSA. Motion dies for lack of a second.*

*COMMISSIONER BAILEY MOVES TO RECOMMEND AGAINST APPROVAL OF Z2014-07 AND PR2014-05 DUE TO THE VARIANCE FOR LOT 3. COMMISSIONER NOLL SECONDS THE MOTION.*

*Commissioner Frakes:* I totally disagree. I understand that our toes have been stepped on a lot of times, but if I was going to go to the expense of doing the plat I would go talk to the County Commissioners. I wouldn't necessarily ask for a formal approval of it, but I would want to get the feeling of what I was going to be facing even if it was denied here this is just a recommendation and final approval will be coming from them. I don't feel on this one that he's stepped beyond his due process like with some of the others. That's just my opinion.

*Commissioner Bailey:* My opinion is that they're going to take the thing and run with it by giving the variance, let them just handle the whole thing from the get go. We're not important.

*Commissioner Noll:* It kind of cuts us out.

*Commissioner Frakes:* Another thing is it can be just an Ag lot and never build on it.

Votes were taken by Ayes and Nays and recorded as follows:

<b>Matt Scherer</b>	<b>Paul Johnson</b>	<b>Roger Wood</b>	<b>Tim Bailey</b>	<b>Alex Noll</b>	<b>Bret Frakes</b>	<b>Kelli Curry</b>
DNV	Aye	Absent	Aye	Aye	Nay	Absent

Motion carried by a vote of 3-1.

Staff informed the applicant when the case would be submitted to the County Commission for final action and let them know they would receive notice prior to the meeting.

**Z2014-03 by Jacob Jaap** To consider rezoning Lots 1 through 10, 12 through 35 of the Simedo Village Subdivision from "SR" Suburban Residential District to "RR" Rural Residential and vacate all roads lying North and South of Simedo Drive and any and all utility easements within said lots and along said roads.

*VICE CHAIR JOHNSON MOVES TO POSTPONE CONSIDERATION OF Z2014-03 DUE TO LACK OF APPLICANT REPRESENTATION. COMMISSIONER BAILEY SECONDS THE MOTION.*

*Commissioner Frakes:* Under what justification are we going to postpone this decision? The applicant does not have to be here.

*Vice Chair Johnsons:* I would like to see the applicant, I do have two or three questions that I would like to ask.

*Chairman Scherer:* Did the applicant give any indication that he would or would not be here.

*Mr. Henderson:* No. The last time I spoke to him was around the deadline for the application and he was still working on purchasing one of the lots and he finally got that done so we put it on the agenda for this meeting. He had wanted to go to the April meeting, but he hadn't purchased that lot yet. I don't think there is any real rush.

*Commissioner Bailey:* I have a lot of questions on this dogleg over here and tract 2. That should be a paved road through there.

*General discussion of the application ensues. Chairman Scherer asks for further discussion and then called for a vote on the motion on the floor. Votes were taken by ayes and nays and recorded as follows:*

<b>Matt Scherer</b>	<b>Paul Johnson</b>	<b>Roger Wood</b>	<b>Tim Bailey</b>	<b>Alex Noll</b>	<b>Bret Frakes</b>	<b>Kelli Curry</b>
DNV	Aye	Absent	Aye	Aye	Nay	Absent

Motion carried by a vote of 3-1

**PR2014-06 by Daniel and Marietta Heinen** Good Earth Subdivision No. 2 a re-plat of Lot 1 of the Good Earth Subdivision, 13729 K-4 Highway, Valley Falls, KS.

*Commissioner Frakes removed himself from the commission for the case due to conflict of interest. Still having a quorum present Chairman Scherer directed Staff to present the case.*

*Mr. Henderson presented the staff report for PR2014-03 and Z2014-05.*

*Chair Scherer:* Seeing no questions for Staff at this time, Mr. Frakes do you wish to make a presentation?

*Applicant:* The use of the property is not changing. The property owner spoke with Scott Cushing at KDOT and the driveway is fine as it is. The building will be used to store hay and semi-trucks. The property owner's step-son owns all the surrounding property and deeded him the 1 acre piece that is included in the re-plat.

**END OF APPLICANT PRESENTATION**

**Open Public Comment**

No members of the public were present at this time.

**Close Public Comment**

**Action:** COMMISSIONER BAILEY MAKES A MOTION TO APPROVE PR2014-06 AS RECOMMENDED BY STAFF. COMMISSIONER NOLL SECONDS THE MOTION. Votes were taken by ayes and nays and recorded as follows:

<b>Matt Scherer</b>	<b>Paul Johnson</b>	<b>Roger Wood</b>	<b>Tim Bailey</b>	<b>Alex Noll</b>	<b>Bret Frakes</b>	<b>Kelli Curry</b>
DNV	Aye	Absent	Aye	Aye	Abstained	Absent

Motion carried unanimously by a vote of 3-0.

**TA2014-01 by Jefferson County Board of County Commissioners** to consider an amendment to the text of the Jefferson County Zoning Regulations defining in home Day Care facilities.

*Mr. Henderson presented the staff report for TA2014-01.*

*Chair Scherer:* Are there questions for Staff?

*Commissioner Frakes:* What if it's a preschool/day care combination with the serving of meals?

*Mr. Henderson:* It doesn't say anywhere in the definitions that they couldn't combine those services in one facility.

*Commissioner Frakes:* I just didn't want to get into something that somewhere down the road we'd be having to deal with again. Because I know that Valley used to have one that had a preschool/day care and they had morning preschool and afternoon preschool, but they had day care so the kids when they weren't in preschool they were in day care.

*Mr. Henderson:* That would be something that the County Health Department would have to regulate. If they came before the Planning Commission or the County Commission as far as zoning would go it would more than likely be as a result of a Conditional Use Permit request and so it would be up to us as Staff and you as Planning Commission to get exactly what they want in the CUP so that it could be regulated fairly by the CUP process and Health Department Staff.

*Vice Chair Johnson:* Did they give you any kind of number of how many of these different facilities that we have here in the County.

*Mr. Henderson:* I did run a search and there were many. They didn't have any addresses attached to them so I wasn't sure which ones were in City limits and which were in the unincorporated areas of the county, but there were many. It wasn't on the KDHE website it was just kind of a web search there was no guarantee as to which of those were still active. Not being as familiar with the County yet, I couldn't tell which ones were in the County.

*Vice Chair Johnson:* Why does that make a difference?

*Mr. Henderson:* For jurisdiction.

*Vice Chair Johnson:* That is helpful to know. I have a couple of broader questions. 1. Can people operate this privately without these registrations?

*Mr. Henderson:* Legally, I don't think so.

*Chairman Scherer:* This is a public hearing so we need to note that there are no members of the public present.

### **Open Public Comment**

No members of the public were present to comment on the case.

### **Close Public Comment**

*Vice Chair Johnson:* We went through a real discussion when we adopted the new zoning and subdivision rules and regulations about whether these facilities should be Conditional Use Permits and if they should come through the Planning Commission and we decided that in interest of neighbors and these facilities around the County that we should do that. Do you have a sense of how unique Jefferson County is in listing these as Conditional Use Permits? And from your background in Finney County and other planning officials around the state is this in your mind the best way to handle it?

*Mr. Henderson:* I can tell you that in Finney County and Garden City as well as Holcomb out there in Finney County we did planning and zoning for all three jurisdictions that last year we amended all three jurisdictions regulations to similar definitions based on county health department recommendations. They are CUPs in various districts. They're not the same as Jefferson County's districts, so they're not the same, but it's similar. They're either a special use permit, which is kind of an administrative permit, or a CUP depending on which district the location is governed by. It's similar. These definitions are being changed for the same reasons. The Staff that was regulating them out in Finney County was dealing with applicants that wanted to do things that the zoning regulations prevented us, as Staff, from approving administratively and so we got with their staff out there to change the zoning regulations to match.

*Commissioner Frakes:* We're just trying to align it with state statute for the most part.

*Mr. Henderson:* Right, to make everything as smooth as possible. Technically the County could keep what is in the Zoning Regulations and say you are limited to this number regardless of what state statute says, we're stricter in this regard.

*Vice Chair Johnson:* I'm comfortable aligning this with what the County Health Department has to deal with. I guess my basic question is, should this only be an administrative procedure on your part as opposed to a CUP?

*Mr. Henderson:* I'm fine with it being a CUP. If it was an administrative permit, I'd be okay with that as well. I think the CUP allows the neighbors to have better input. Some of the categories could provide higher traffic volume those could be dealt with administratively but to avoid undue angst I think the CUP process provides neighbors with an avenue to provide their input. Like with cases earlier tonight provided them with an opportunity to at least be heard.

*Vice Chair Johnson:* And you couldn't do that administratively. You couldn't administratively say we still have to send out letters, people still can give input, we're just going to do it in house?

*Commissioner Frakes:* I think you're asking for trouble doing it that way.

*Mr. Henderson:* I think this way (CUP) is simpler and more transparent.

*Commissioner Frakes:* I would like for it to be administratively done myself, but I think it causes a lot more headache for you guys than what we realize because like you said I think it needs to be a public hearing with neighbors and things,

personally. I'd like to see more things change administratively, I think a lot of things come to us that shouldn't come to us, but maybe this isn't one of them.

*Chairman Scherer:* One option seems to be some of these categories can only have 11 kids but if it was a commercial.

*Commissioner Frakes:* If we could narrow it down to where it would be easier for you guys. If it's open ended I think it needs to come here for discussion so that the neighbors have input. If it was a very strict guideline, really tight to where you could go yes, yes, yes, no you're denied.

*Mr. Henderson:* If we could remove the subjectivity then it would be more administrative.

*Commissioner Bailey:* There's also a lot of liability issues when it becomes administrative rather than commission.

*Commissioner Frakes:* Like I said, I don't think it's a headache that they should have to deal with.

*Chairman Scherer:* I do have a couple of concerns myself about the way this is set up. One I just noticed that under "d." it says a facility having 13 children. I didn't see where 13 was a magic number for a preschool.

*Mr. Henderson:* Someone arbitrarily picked that, I'm sure. I think that where it starts with the term preschool but I think that would be better formatted in item "d." where it says "The term "preschool"..." is a separate paragraph.

*Chairman Scherer:* My bigger concern that I definitely have is that we're referencing KDHE regs and in one case a statute, I wish Kelli was here, because whenever I wrote a reg the attorneys just slapped me silly if I put a reference to somebody else's document and did not date that, because if KDHE changes that reg it automatically changes our Zoning Regulations without a public hearing or anything else except one that they hold, not one that we can hold. So maybe just ask County Counsel if those should be dated regs.

*Mr. Henderson:* We'll ask him that or if he wants us to just take those references out.

*Commissioner Noll:* The State is going to be the governing body on this regardless, long story short.

*Chairman Scherer:* Yeah, we're just defining these and somehow we're using these definitions further on in the regulations presumably, if not then we're wasting a lot of time here.

*General discussion of terms appearing in the regs and reiteration of changes discussed above and consideration of regulating adult day care for the elderly ensues.*

**Action:** VICE CHAIR JOHNSON MOVES TO APPROVE TA2014-01 WITH THE PROVISO THAT STAFF CONSULT COUNTY COUNSEL ABOUT INCLUDING REFERENCES TO STATE REGS. COMMISSIONER FRAKES SECONDS THE MOTION. Votes were taken by ayes and nays and recorded as follows:

Matt Scherer	Paul Johnson	Roger Wood	Tim Bailey	Alex Noll	Bret Frakes	Kelli Curry
Aye	Aye	Absent	Aye	Aye	Aye	Absent

Motion carried unanimously by a vote of 5-0.

**Item 6. Public Comment**

No comment was given.

**Item 7. Old Business and General Staff Report:**

**Election of Officers:**

**Chairman:**

Commissioner Frakes nominates Matt Scherer for Chairman, Commissioner Bailey seconds the nomination. Chairman Scherer accepts the nomination.

Commissioner Bailey moves to cease nominations. Commissioner Frakes Seconds the motion. Votes were taken by ayes and nays and recorded as follows:

Matt Scherer	Paul Johnson	Roger Wood	Tim Bailey	Alex Noll	Bret Frakes	Kelli Curry
DNV	Aye	Absent	Aye	Aye	Aye	Absent

Motion carried unanimously 4-0.

Votes were taken for Matt Scherer for Chairman of the Planning Commission and recorded as follows:

<b>Matt Scherer</b>	<b>Paul Johnson</b>	<b>Roger Wood</b>	<b>Tim Bailey</b>	<b>Alex Noll</b>	<b>Bret Frakes</b>	<b>Kelli Curry</b>
DNV	Aye	Absent	Aye	Aye	Aye	Absent

Motion carried unanimously 4-0.

**Vice Chairman:**

Commissioner Frakes nominates Paul Johnson for Vice Chairman, Commissioner Bailey seconds the nomination. Vice Chair Johnson accepts the nomination.

Commissioner Frakes moves to cease nominations. Commissioner Noll Seconds the motion. Votes were taken by ayes and nays and recorded as follows:

<b>Matt Scherer</b>	<b>Paul Johnson</b>	<b>Roger Wood</b>	<b>Tim Bailey</b>	<b>Alex Noll</b>	<b>Bret Frakes</b>	<b>Kelli Curry</b>
DNV	Aye	Absent	Aye	Aye	Aye	Absent

Motion carried unanimously 4-0.

Votes were taken for Paul Johnson for Vice Chairman of the Planning Commission and recorded as follows:

<b>Matt Scherer</b>	<b>Paul Johnson</b>	<b>Roger Wood</b>	<b>Tim Bailey</b>	<b>Alex Noll</b>	<b>Bret Frakes</b>	<b>Kelli Curry</b>
DNV	DNV	Absent	Aye	Aye	Aye	Absent

Motion carried unanimously 3-0.

**Secretary:**

Commissioner Frakes nominates Alex Noll for Secretary, Commissioner Bailey seconds the nomination. Commissioner Noll accepts the nomination.

Commissioner Bailey moves to cease nominations. Vice Chairman Johnson Seconds the motion. Votes were taken by ayes and nays and recorded as follows:

<b>Matt Scherer</b>	<b>Paul Johnson</b>	<b>Roger Wood</b>	<b>Tim Bailey</b>	<b>Alex Noll</b>	<b>Bret Frakes</b>	<b>Kelli Curry</b>
DNV	Aye	Absent	Aye	Aye	Aye	Absent

Motion carried unanimously 4-0.

Votes were taken for Alex Noll for Secretary of the Planning Commission and recorded as follows:

<b>Matt Scherer</b>	<b>Paul Johnson</b>	<b>Roger Wood</b>	<b>Tim Bailey</b>	<b>Alex Noll</b>	<b>Bret Frakes</b>	<b>Kelli Curry</b>
DNV	Aye	Absent	Aye	DNV	Aye	Absent

Motion carried unanimously 3-0.

**General Staff Report:** Staff updated the Commission on the status of cases from the previous month. No other Old Business was presented.

**Item 8. New Business**

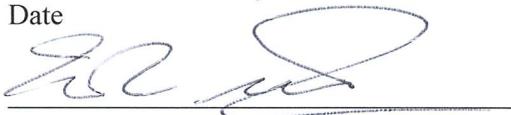
No New Business.

**Item 9. Adjournment**

**Action:** Commissioner Frakes made a motion to adjourn. Commissioner Bailey seconded the motion. Motion carried unanimously.

Minutes taken by:   
\_\_\_\_\_  
Sam Henderson, Zoning Administrator

Approved: June 23, 2014  
\_\_\_\_\_  
Date

Chairman:   
\_\_\_\_\_  
Matt Scherer

Secretary:   
\_\_\_\_\_  
Alex Noll