

COMMISSION MEETING

11:00 A.M.

MAY 18, 2022

The Governing Body of the City of Emporia, Kansas, met in Regular Session, Wednesday, May 18, 2022, with Mayor Smith presiding and Commissioners Brinkman, Giefer, Harter and Sauder present. Also present were City Manager Cocking, Assistant City Manager Massey, City Clerk Sull and City Attorney Montgomery.

**CITY COMMISSION
(Public Comment)**

This is the time for the public to make comments.

The public is invited to make comments at this time. Please limit comments to two (2) minutes each. Hate speech, profanity, and defamation are not allowed. Please stated your name and address prior to making comments.

Daphne Mertens, representing the Multi-Use Path Planning Board (MUPP), was in attendance to accept a proclamation declaring May 29 through June 4, 2022, as "Walk, Run & Bike Week" in Emporia. She stated from May 30th to June 4th, Emporia will once again be the host to the Garmin UNBOUND Gravel bike race which is one of North America's premier, annual, ultra-endurance cycling challenges. This year's event will include the rides of 25, 50, 100, 200 and 350 miles and the High School Junior ride. The UNBOUND Gravel rides will bring in over 4,800 participants from all 50 states, Puerto Rico, and 38 foreign countries and more than 10,000 friends, family, fans and supporters will visit our community. On June 1st and 2nd, the 40th Annual Law Enforcement Torch Run will enter Lyon County at the Coffey County line and local law enforcement officers will carry the Torch to El Dorado with an eventual destination of the Special Olympics in Wichita. She stated the Multi-Use Path Planning Board encourages residents of Emporia to follow the example of our running and bicycling visitors and get up, get out and walk, run, or bicycle as exercise leads to a healthy lifestyle and reduces illnesses related to a sedentary life.

Mayor Smith then presented the proclamation.

PLANNING AND DEVELOPMENT
(MAPC Excerpts of Regular Meeting Held 3-15-22)
(Application No. 2022-05 - Request of Eli Fowler)
(Rezone Property at 224 E. 6th Avenue)
(From R-3 High Density Res. Dist. to C-3 General Comm. Dist.)

Justin Givens, Planning and Zoning Administrator, was recognized and addressed the Governing Body. He stated this was a request from Eli Fowler to rezone the property at 224 E. 6th Avenue from R-3 High Density Residential District to C-3 General Commercial District. He stated the rezoning was necessary to facilitate an indoor storage facility on the property. The applicant desired to create apartments in the front of the property and use the rear portion of the property as an indoor storage facility. The indoor storage facility use would require a conditional use permit in the proposed C-3 General Commercial Zoning District. At their March 15, 2022 regular meeting, multiple people spoke in opposition of the proposed rezoning. He stated this item was tabled until the April 19 meeting for additional information. Upon receiving updated information the Planning Commission discussed the updated information and voted to deny the application. He stated the Governing Body, when considering a recommendation of denial from the Planning Commission on a Rezoning Application may: 1) Uphold the Planning Commission's recommendation of denial by a simply majority; 2) Override the Planning Commission's recommendation by a 2/3 majority vote of the entire City Commission and Approve an Ordinance rezoning the property; 3) Table the request for further study; 4) Return the application to the Planning Commission, giving reasons for doing so.

Commissioner Sauder made a motion to uphold the Planning Commission's decision to deny the application. Commissioner Brinkman seconded the motion. The vote follows: Commissioner Sauder, aye; Commissioner Brinkman, aye; Commissioner Giefer, aye; Commissioner Harter, aye; and Mayor Smith, aye.

**CITY COMMISSION
(Board Appointment)**

Community Housing Board/Emporia Land Bank:

It was moved by Commissioner Giefer seconded by Commissioner Brinkman that Jermy Hinkle be appointed to the Community Housing/Emporia Land Bank Board for a term that expires June 1, 2025. The vote follows: Commissioner Giefer, aye; Commissioner Brinkman, aye; Commissioner Harter, aye; Commissioner Sauder, aye; and Mayor Smith, aye.

**ENGINEERING
(6TH Avenue (US-HWY) Waterline Replacement)
(Change Order No. 1 - Project No. WM2101)**

City Engineer Jim Ubert, was recognized and addressed the Governing Body. He stated the 6th Avenue Waterline Improvements Project will improve the watermain between Woodland Street and Lincoln Street along 6th Avenue which has a recent history of line breaks, ahead of the KDOT FY2023 CCLIP paving project. He stated due to the impact of the 6th Avenue business community from the watermain improvements construction, a change order is being proposed to create an incentive for the contractor to complete the project prior to the contract's Substantial Completion date. He stated the City will consider awarding the Contractor \$1,000 per day incentive, up to \$25,000 maximum for each day the Contractor is substantially complete prior to the date specified in the contract of June 17, 2022. The liquidated damages will remain the same from the original contract. He stated staff is recommending approval of Change Order No. 1 for the 6th Avenue Watermain Improvements Project.

Commissioner Harter made a motion to approve Change Order No. 1 for the 6th Avenue Waterline Replacement Project No. WM2101. Commissioner Sauder seconded the motion. The vote follows: Commissioner Harter, aye; Commissioner Sauder, aye; Commissioner Brinkman, aye; Commissioner Giefer, aye; and Mayor Smith, aye.

**CITY COMMISSION
(Reschedule City Commission Meetings)**

City Attorney Montgomery was recognized and addressed the Governing Body. She stated the City Commission's schedule provided in Charter Ordinance Number 26 will remain in effect until Charter Ordinance Number 40 goes into effect on July 1, 2022. The City Commission may vote to reschedule action meetings whenever the Commission determines that a conflict exists with the regular scheduled meetings. She stated at the strategic planning session on April 13, City Commission discussed conducting all action meetings at the same time and holding study sessions immediately following action meetings to improve consistency and efficiency. The action meeting in May were rescheduled to 11:00 a.m. on the first and third Wednesday. Staff is recommending voting to reschedule the June and July action meetings to 11:00 a.m. on the first and third Wednesdays of the month. She stated an ordinance setting the ongoing schedule will be presented in July.

Commissioner Brinkman made a motion to reschedule the June and July action meetings 11:00 a.m. on first and third Wednesdays of the month. Commissioner Giefer seconded the motion. The vote follows: Commissioner Brinkman, aye; Commissioner Giefer, aye; Commissioner Harter, aye; Commissioner Sauder, aye; and Mayor Smith, aye.

**PLANNING AND DEVELOPMENT
(MAPC Excerpts of Regular Meeting Held 4-19-22)
(Application No. 2022-07 - Request of Kwik Shop)
(Rezone Property at 1116 Constitution from R-3, to C-3)**

The Planning Commission met in a regular session on Tuesday, April 19, 2022, with Chair Thomas presiding. Members Bucklinger, Weaver, Barnes, Duncan, Dewitt, and Colson were present.

City staff: Justin Givens and Moriah Keen were present.

Chair Thomas called the meeting to order, seven members were present.

New Business:

3a. Consider Application PC 2022-07 Requesting Rezoning of Property Located at 1116 Constitution from R-3 High Density Residential to C-3 General Commercial District.

Chair Thomas asked if proper notice had been given and if the City had jurisdiction on the item. **Givens** confirmed that proper notice was provided to the newspaper and the property owners within 200ft of the property, and that the City had jurisdiction.

Chair Thomas asked if any Commissioners needed to recuse themselves or report any ex-parte communications. No commissioners needed to recuse themselves due to a conflict of interest and no ex parte communications were reported.

Givens gave the staff report:

Application #: PC 2022-07

Applicants: Kwik Shop / PEC (Owner's Agent)

Requested Action: Consider the Approval of Rezoning a property from R-3 High Density Residential to C-3 General Commercial

Purpose: Applicants desire rezoning of the property located at 1116 Constitution to facilitate the redevelopment of the existing convenience store and relocate the gas islands.

Address: 1116 Constitution St.

Legal description: Lot 166 on Constitution Street in the City of Emporia, Lyon County, Kansas

Lot Size: 6,500 sq. ft.

Existing Zoning: R-3 High Density Residential

Future Zoning in ELC Comp. Plan: Mixed Use

Surrounding Zoning:

North- C-3 General Commercial

East- C-3 General Commercial / R-3 High Density Residential

South- R-3 High Density Residential

West - R-3 High Density Residential

Surrounding Actual Uses:

North - Vacant Property / Existing Kwik Shop

East - Multi-Family Units / Existing Kwik Shop

South- Multi-Family Units

West- Multi-Family Units / Single-Family Residential

Analysis: The applicants are proposing to redevelop the existing convenience store and gas islands. This property will be one of two properties that would be used to expand the facility. The other being the men's shelter immediately to the south of the existing building.

Kwik Shop plans to expand and remodel the building. They will also relocate, and increase the number of gas pumps.

All properties for this development are within the C-3 zoning district except the lot that is proposed for rezoning. Based on the proposed site plan, this property would be used primarily for parking and drives.

The applicant has presented a preliminary site plan that is being reviewed by staff. Two items of note for this development would be; that the applicants will re-plat the totality of the properties if this rezoning is approved, and in doing so will vacate the alley in between the properties.

Additionally, the applicants have requested that Constitution change from one-way traffic to two-way traffic to better accommodate turning motions and traffic to and from the facility. This request will be reviewed by the traffic impact team and a recommendation will be submitted to the City Commission.

Considerations: 26-108. Factors to be Considered in a Rezoning:

When a proposed amendment would result in a change of the zoning classification of any specific property, the recommendation of the Planning Commission, accompanied by a copy of the record of the hearing, shall contain statements as to the present classification, the classification under the proposed amendment, the reasons for seeking such reclassification, a summary of the facts presented, and a statement of the factors upon which the recommendation of the Planning Commission is based using the following guidelines:

1. Whether the change in classification would be consistent with the intent and purpose of these regulations;
2. The character and condition of the surrounding neighborhood and its effect on the proposed change;
3. Whether the proposed amendment is made necessary because of changed or changing conditions in the area affected, and, if so, the nature of such changed or changing conditions;
4. The current zoning and uses of nearby properties, and the effect on existing nearby land uses upon such a change in classification;
5. Whether every use that would be permitted on the property as reclassified would be compatible with the uses permitted on other property in the immediate vicinity;
6. The suitability of the applicant's property for the uses to which it has been restricted;

7. The length of time the subject property has remained vacant or undeveloped as zoned; provided, the use of land for agricultural purposes shall be considered as allowing the land to be vacant or undeveloped;
8. Whether adequate sewer and water facilities, and all other needed public services, including transportation, exist or can be provided to serve the uses that would be permitted on the property if it were reclassified;
9. The general amount of vacant land that currently has the same zoning classification proposed for the subject property, particularly in the vicinity of the subject property, and any special circumstances that make a substantial part of such vacant land available or not available for development;
10. The recommendations of professional staff;
11. Whether the proposed amendment would be in conformance to and further enhance the implementation of the City's Comprehensive Plan;
12. Whether the relative gain to the public health, safety, and general welfare outweighs the hardship imposed upon the applicant by not upgrading the value of the property by such reclassification; and,
13. Such other factors as may be relevant from the facts and evidence presented in the application.

Neighborhood Communications: At the time of writing this report, staff has not had any contact with any person in the notification area or public concerning this proposal.

Recommendation: Staff recommends the Planning Commission forward a recommendation to approve the rezoning to the Governing Body based on a finding that;

- 1- The change in classification is consistent with the intent and purpose of the Zoning Regulations.
- 2- The proposed rezoning is consistent with the Comprehensive Plan and Future Land Use Map;
- 3- The change will not have a negative impact on the public health, safety, and generalware of the City;
- 4- If approved, the rezoning would be consistent and compatabile with existing uses within the area.

Commissioner **Duncan** asked what portion of the alley would be vacated. **Givens** explained that when the applicant replats the properties, the only portion of the alley that would be vacated is what is within their plat. The remainder of the alley would remain.

Several Commissioners commented that this request had come before the Planning Commission previously.

The Public Hearing was opened.

Charlie Brown, PEC, 303 S. Topeka, Wichita, KS (Owner's Agent): **Brown** stated the reason why the initial request went forward a few years ago was that Kwik Shop was transitioning to new owners. At the time of the initial request, Kwik Shop was owned by Kroger. During the same time period, Kroger sold the Kwik Shop brand to a company in England, called EG America. EG America bought all of the Kwik Shop properties. The rezoning and expansion was put on hold until EG America determined how they wanted to proceed.

Brown continued that Kwik Shop is wanting to expand the building, move the fuel area to the west, and have a lot more parking. He stated that the lot that is being considered to be rezoned will be parking and some open space. **Brown** confirmed that they had met with the Site Planning Review, and that they will meet all of the screening requirements between commercial and residential districts. He stated that because of the replat, they wanted all of the Kwik Shop property to be zoned the same.

No further comment was provided.

The Public Hearing was closed.

Commissioner **Colson** asked how does public notice work for properties that are rentals. **Givens** said that the City is required to contact the property owners. The notification process is based upon State Statutory requirements, and that the City is required to notify property owners within 200 feet of subject properties in city limits and 1,000 feet outside of city limits. An abstractor provides the list of property owners in the area. **Colson** expressed concerns that renters within the notification area are not provided notice.

Commissioner **Barnes** made a motion to approve Application PC 2022-07. Commissioner **Duncan** seconded. Approved 6-1, Colson opposed.

Justin Givens, Zoning Enforcement Officer, was recognized and addressed the Governing Body. He stated this was a request from Kwik Shop to rezoning property located at 1116 Constitution from R-3, High Density Residential to C-3 General Commercial District. He stated the rezoning would facilitate the expansion of the existing Kwik Shop Located at the corner of 12th Avenue and Merchant Street. The subject property joined with three other parcels will be re-platted to accommodate the expansion. He stated this lot is the only lot of the four that is not currently zoned C-3. At their April 19, 2022 regular meeting, the Planning Commission voted 6 - 1 to approve the rezoning.

PLANNING AND DEVELOPMENT
(Application No. 2022-07 - Request of Kwik Shop)
(Rezone Property at 1116 Constitution from R-3, to C-3)
(Ordinance Number 22-20)

AN ORDINANCE REZONING LAND IN THE CITY OF EMPORIA KANSAS FROM R-3 HIGH DENSITY RESIDENTIAL DISTRICT TO C-3 COMMERCIAL ZONING DISTRICT AND AMENDING THE DISTRICT ZONING MAP TO CONFORM WITH SAID ZONING, to which the City Clerk assigned Ordinance number 22-20, was presented to the Governing Body for their consideration.

Commissioner Sauder stated he would abstain from the vote.

Commissioner Brinkman made a motion to approve Ordinance Number 22-20, an ordinance rezoning property located at 1116 Constitution Street from R-3 High Density Residential District to C-3 Commercial Zoning District. Commissioner Giefer seconded the motion. The vote follows: Commissioner Brinkman, aye; Commissioner Giefer, aye; Commissioner Harter, aye; and Mayor Smith, aye. Commissioner Sauder abstained.

PLANNING AND DEVELOPMENT
(MAPC Excerpts of Regular Meeting Held 4-19-22)
(Application No. 2022-06 - Request of Sutton Place Realty Investments)
(Rezone Property at 1104 Burns from R-1, to R-2)

The Planning Commission met in a regular session on Tuesday, April 19, 2022, with Chair Thomas presiding. Members Bucklinger, Weaver, Barnes, Duncan, Dewitt, and Colson were present.
City staff: Justin Givens and Moriah Keen were present.

Chair Thomas called the meeting to order, seven members were present.

3c. Consider Application PC 2022-06 Requesting Rezoning of Property Located at 1104 Burns from R-1 Low-Density Residential to R-2 Medium Density Residential.

Chair Thomas asked if proper notice had been given and if the City had jurisdiction on the item. **Givens** confirmed that proper notice was provided to the newspaper and the property owners within 200ft of the property and that the City had jurisdiction.

Chair Thomas asked if any Commissioners needed to recuse themselves or report any ex-parte communications. No commissioners needed to recuse themselves due to a conflict of interest and no ex parte communications were reported.

Givens gave the staff report:

Application #: PC 2022-06

Applicants: Sutton Place Realty Investments, LLC

Requested Action: Consider the Approval of Rezoning a property from R-1 Low Density Residential to R-2 Medium Density Residential

Purpose: Applicant desires rezoning of the property located at 1104 Burns to facilitate the development of a single-family attached unit.

Address: 1104 Burns St.

Legal description: Lot 4 In Block 2 In Burn's Addition To The City Of Emporia, Lyon County, Kansas

Lot Size: 7,560 sq. ft.

Existing Zoning: R-1 Low Density Residential

Future Zoning in ELC Comp. Plan: Residential

Surrounding Zoning:

North - R-1 Low Density Residential / R-2 Medium Density Residential

East - R-1 Low Density Residential

South - R-1 Low Density Residential

West - R-1 Low Density Residential / Public Use

Surrounding Actual Uses:

North - Single-Family Residences / Single-Family Attached Residences

East - Single-Family Residences

South - Single-Family Residences

West - Single Family Residences / Lyon Co Fairgrounds

Analysis: The applicants are proposing to remove the existing structure located at 1104 Burns, and build a new single-family attached dwelling unit. The current structure was built in 1974, and is graded as below average from the County Appraiser. The applicant states that the property has been used as a single-family home, but has fallen into disrepair. There are structural, as well as, electrical issues that would need to be addressed if the request was denied. The applicant desires to raze the structure, and build a single-family attached home in its place.

The lot, as platted, is a 72'x105' and contains 7560 square feet, which would provide a building envelope of 60'x55' when setbacks are factored in. If the new structure maxed out the buildable area, the lot coverage would be 44%. Maximum lot coverage in the R-2 district is 40%.

Further analysis is provided in the Factors for Consideration below.

Considerations: 26-108. Factors to be Considered in a Rezoning:

When a proposed amendment would result in a change of the zoning classification of any specific property, the recommendation of the Planning Commission, accompanied by a copy of the record of the hearing, shall contain statements as to the present classification, the

classification under the proposed amendment, the reasons for seeking such reclassification, a summary of the facts presented, and a statement of the factors upon which the recommendation of the Planning Commission is based using the following guidelines: **Staff Commentary in Bold**

1. Whether the change in classification would be consistent with the intent and purpose of these regulations;

2. The character and condition of the surrounding neighborhood and its effect on the proposed change; **Within the 200' notification area, there are 26 properties. Nineteen are owner occupied, and seven are rental properties. There are four properties along 12th Ave. that are zoned R-2 Medium Density. In addition, many of the homes in the area are maxed out on side and front yard setbacks. In staff's opinion, either a single-family attached home, as a single-story or two-story structure would not have a negative effect on the surrounding neighborhood.**

3. Whether the proposed amendment is made necessary because of changed or changing conditions in the area affected, and, if so, the nature of such changed or changing conditions; **There are no changed or changing conditions within this areas. However, Emporia as a whole is dealing with a housing shortage, and efforts to increase the number of dwelling units in the city have been encouraged.**

4. The current zoning and uses of nearby properties, and the effect on existing nearby land uses upon such a change in classification; **The current uses of the neighboring properties are single-family detached dwelling units zoned, R-1 Low Density. The subject property if approved would continue to have residential use, but with two units on the lot as opposed to one.**

5. Whether every use that would be permitted on the property as reclassified would be compatible with the uses permitted on other property in the immediate vicinity; **The only use allowed different in R-2 and R-1 zoning are two-family dwellings. All other uses that are allowed either by right or by conditional use permit are the same.**

6. The suitability of the applicant's property for the uses to which it has been restricted; **The property is slightly undersized by district standards, but was platted as such, and the single-family detached homes in the area approach maximum buildable lot allowances. There are multi-story homes within the subject area, and the use of such a type of duplex could maintain the required setbacks for the property.**

7. The length of time the subject property has remained vacant or undeveloped as zoned; provided, the use of land for agricultural purposes shall be considered as allowing the land to be vacant or undeveloped; **The subject property has not necessarily been vacant for a long period of time. As the applicant stated, it is in disrepair, and would need**

considerable expenditures before it could be occupied as a single-family home. The cost of those repairs could factor in to how long that the home remained vacant going forward.

8. Whether adequate sewer and water facilities, and all other needed public services, including transportation, exist or can be provided to serve the uses that would be permitted on the property if it were reclassified; **Adequate public facilities are present at the site and the street system is such that no changes would be necessary to accommodate the project if approved.**

9. The general amount of vacant land that currently has the same zoning classification proposed for the subject property, particularly in the vicinity of the subject property, and any special circumstances that make a substantial part of such vacant land available or not available for development; **There is very limited if any vacant R-2 property within the City. Generally, all property that is zoned R-2 is done so with specific development in mind or infill lots such as this one.**

10. The recommendations of professional staff; **Staff is neutral on the request. While the immediate area is dominated by single-family detached structures, there are two-family dwellings within the neighborhood, and if done properly, the new unit could maintain all required setbacks, and other bulk regulations. Staff would not be supportive of issuing any variances for building setbacks or lot coverage ratios.**

11. Whether the proposed amendment would be in conformance to and further enhance the implementation of the City's Comprehensive Plan; **As the City transitions into a more form based zoning code, these types of request are designed into the new regulations, and the Comprehensive Plan. The plan states that two-family or single-family attached homes are acceptable within this area. If developed properly, the new structure should not have a detrimental impact to on the existing neighborhood.**

12. Whether the relative gain to the public health, safety, and general welfare outweighs the hardship imposed upon the applicant by not upgrading the value of the property by such reclassification; and, **As previously stated, if allowed to develop within the required building setbacks, and bulk regulations, there would be no significant impact on the public health, safety, or general welfare.**

13. Such other factors as may be relevant from the facts and evidence presented in the application.

Neighborhood Communications: At the time of writing this report, staff has been in contact with one person who was notified about the proposed rezoning and no support for or against the project was noted.

Recommendation: Staff recommends the Planning Commission forward a recommendation to approve the rezoning to the Governing Body based on a finding that;

- 1- That the request is consistent with the intent and purposes of the regulations;
- 2- That the request is consistent with the character and condition of the surrounding neighborhood;
- 3- That adequate infrastructure exists at the property;
- 4- That the request is in conformance with and further enhances the Comprehensive Plan.

Commissioner **Colson** asked **Givens** in reference to research done on comparing property values on single-family detached home adjacent to single-family attached homes if he was collecting the data based off when the duplexes were built. **Givens** said that the two main areas that he looked at was on the northwest corner of town. He does not know the historical nature of these duplexes, but he reviewed the County's 5-year property values, and that the value of a single-family detached home located around a single-family attached home goes up consistently as other properties in town. **Colson** expressed concerns that he did not think that comparison was a fair comparison as it was undetermined which type of house was built first.

The Public Hearing was opened.

Vera Sutton-Sellers (Applicant - 8670 NW 74th ST. Kansas City, MO): Ms. **Sutton-Sellers** stated that she would like to rezone this property so that a duplex could be built on the property. She added that the house had fallen into disrepair and would need extensive remodeling and structural repairs before being habitable again. She is planning to rent both units.

Karen Shaddix, 1107 Burns St.: Ms **Shaddix** stated she only wants single-family homes in the area.

Judy Bell, 1101 Harry St.: Ms. **Bell** wanted clarification on the process and the proposal for this property. **Givens** provided Ms. **Bell** with more clarification. Ms. **Bell** stated that she is neutral on this matter and that she wants the house to look nicer.

The public hearing was closed.

Commissioner **Duncan** asked **Givens** if they are covering 40% of the lot right now. **Givens** said that he did not calculate what the current lot coverage is; the 40% is the maximum lot coverage. Staff would not be supportive of the applicant exceeding the maximum lot coverage.

Commissioner **Colson** made a motion to approve Application PC 2022-06 based on staff recommendations. Commissioner **Dewitt** seconded.

Discussion: Commissioner **Barnes** stated that he is going to vote against because he is not interested in having the property be rezoned where the surrounding area is R-1.

Approved 4-3, Commissioners Barnes, Duncan, and Bucklinger opposed.

Givens advised that there is a 14-day protest period and then the request will go to the City Commission.

Justin Givens, Zoning Enforcement Officer, was recognized and addressed the Governing Body. He stated this was a request from Sutton place Realty Investments, LLC to rezone property located at 1104 Burns Street from R-1 Low Density Residential District to R-2 Medium Density Residential District. He state the proposed rezoning would facilitate the development of a single-family attached residence on the property. The applicant has stated the property is in disrepair and would need considerable investment to return it to a habitable structure. The applicant desires to build a single-family attached residence on the property after razing the existing structure. At their April 19, 2022 regular meeting, the Planning Commission voted 4 - 3 to approve the rezoning.

PLANNING AND DEVELOPMENT

**(Application No. 2022-06 - Request of Sutton Place Realty Investments)
(Rezone Property at 1104 Burns from R-1, to R-2)
(Ordinance Number 22-21)**

AN ORDINANCE REZONING LAND IN THE CITY OF EMPORIA, KANSAS FROM R-1 LOW DENSITY RESIDENTIAL DISTRICT TO R-2 MEDIUM DENSITY ZONING DISTRICT AND AMENDING THE DISTRICT ZONING AMP TO CONFORM WITH SAID ZONING, to which the City Clerk assigned Ordinance Number 22-21, was presented to the Governing Body for their consideration.

Commissioner Giefer made a motion to approve Ordinance 22-21, an ordinance rezoning property located at 1104 Burns Street from R-1 Low Density Residential District to R-2 Medium Density District. Commissioner Harter seconded the motion. The vote follows: Commissioner Giefer, aye; Commissioner Harter, aye; Commissioner Brinkman, aye; Commissioner Sauder, aye; and Mayor Smith, aye.

PLANNING AND DEVELOPMENT
(MAPC Excerpts of Regular Meeting Held 4-19-22)
(Application No. 2022-05 - Request of Little People Daycare, LLC)
(Conditional Use Permit at 1022 Grand Street for Child Care Center)

The Planning Commission met in a regular session on Tuesday, April 19, 2022, with Chair Thomas presiding. Members Bucklinger, Weaver, Barnes, Duncan, Dewitt, and Colson were present.

City staff: Justin Givens and Moriah Keen were present.

Chair Thomas called the meeting to order, seven members were present.

3b. Consider Application PC CUP 2022-05 Requesting a Conditional Use Permit for a Child Care Center.

Chair Thomas asked if proper notice had been given and if the City had jurisdiction on the item. **Givens** confirmed that proper notice was provided to the newspaper and the property owners within 200ft of the property and that the City had jurisdiction.

Chair Thomas asked if any Commissioners needed to recuse themselves or report any ex-parte communications. No commissioners needed to recuse themselves due to a conflict of interest and no ex parte communications were reported.

Givens gave the staff report:

Application #: PC CUP 2022-05

Applicants: Little People Daycare, LLC / Amy Gaskill

Requested Action: Recommend the Approval of a Conditional Use Permit for a Child Care Center

Purpose: Applicant desires to increase the capacity of children at their present location, which is currently a licensed home day care facility.

Address: 1022 Grand St.

Legal description: Lot 42 In Block 5 In College Hills Addition to the City of Emporia, Lyon County, Kansas

Lot Size: 18,880 +/- sq. ft.

Existing Zoning: R-1 Low Density Residential

Future Zoning in ELC Comp. Plan: Residential

Surrounding Zoning:

North - R-1 Low Density Residential

East - R-1 Low Density Residential

South - R-1 Low Density Residential

West - R-1 Low Density Residential

Surrounding Actual Uses:

North - Single-Family Residences
East - Single-Family Residences
South - Single-Family Residences
West - Single-Family Residences

Analysis: The applicant has requested a Conditional Use Permit to transition from a home day care facility to a childcare center. Little People Daycare has been in their present location going on 23 years. The transition would allow the applicant to increase the number of children that can be at the center from 12 to 24 children. The center will still be required to meet all regulations set by the State Fire Marshall and Kansas Department of Health and Environment who license child-care facilities.

The applicant has stated that 14 home daycares have closed in Lyon County since March 2020, and that child-care is a need within the community. She currently has a lengthy wait list of children needing care.

Additional analysis has been provided in the factors for consideration.

Considerations: 26-109. Factors to be Considered for a Conditional Use Permit:

Because of particular conditions associated with their activities, certain uses which might have an adverse effect upon nearby properties or upon the character and future development of a district are not permitted outright in districts, but are permitted as conditional uses when their proposed location is supplemented by additional requirements so as to make the use requested compatible with the surrounding property, the neighborhood and the zoning jurisdiction.

In approving a conditional use, the minimum requirements set out in these regulations for the underlying district must be met unless otherwise reduced by specific reference in the approval of the Governing Body. The requirements may be made more stringent if there are potentially injurious effects which may be anticipated upon other property or the neighborhood or which may be contrary to public health, safety or welfare.

The Planning Commission may recommend approval of a Conditional Use that is expressly authorized to be permitted in a particular zoning district, and the Governing Body may approve such Conditional Use, using the following factors as guidelines: **Staff Commentary in Bold**

1. Whether approval of the conditional use would be consistent with the intent and purpose of these regulations; **Child Care Centers in Residential Districts are allowed as Conditional Uses. The Conditional Use process allows neighboring property owners to have some input as to whether the proposed project is a fit in the area, and allows staff, the Planning Commission, and Governing Body, to determine appropriate uses**

as well as set limitations for Conditional Uses. The childcare center as proposed, and at this location would be consistent with the intent and purposes of the regulations. Ample space is available to minimize any potential impacts that this project could have on the existing neighborhood.

2. Whether the location of the proposed use is compatible to other land uses in the surrounding neighborhood; **The property has been a home daycare center for 23 years, and staff is unaware of any issues raised by surrounding neighbors while operating as such.**

3. Whether the proposed use places an undue burden on the existing transportation and service facilities in the area affected and, if so, whether such additional transportation and service facilities can be provided; **It would be anticipated that with more children, more traffic to the property would occur. The applicant has proposed to build a parking area at the rear of the property. This would allow additional staff parking as opposed to them parking on the street or in the driveway. The additional parking would free-up space to alleviate some of the increased traffic in the area.**

4. Whether the proposed use is made necessary or desirable because of changed or changing conditions in the area affected; **Emporia as a whole has seen a reduction in childcare facilities, especially at home day care facilities that closed during the pandemic. The lack of childcare is an issue that is affecting efforts to increase the workforce in Emporia and a focus of civic organizations such as Ignite Emporia.**

5. The length of time the subject property has remained vacant or undeveloped as zoned; (the use of land for agricultural purposes shall be considered as viable use of the land and not be considered as allowing the land to be vacant or undeveloped); **N/A**

6. Whether the applicant's property is suitable for the proposed conditional use; **The applicant has space for parking at the rear of the property for additional employees. Off-street parking areas for parents as they drop-off and pick-up children are also available. The applicant has ample space for additional children in the existing structure so no exterior changes will be necessary. The applicant has stated they intend to install a privacy fence in the rear property.**

7. The recommendations of professional staff; **Based on information provided at this time, and the conditions that would be applied for this request staff is supportive of the proposed CUP.**

8. Whether the proposed conditional use would be in conformance to and further enhance the implementation of the City's Comprehensive Plan; **Expanding childcare facilities in Emporia enhances economic development, and thus is part of furthering the goals of the Comprehensive Plan.**

9. Whether the relative gain to the public health, safety, and general welfare outweighs the hardship imposed on the applicant by not upgrading the value of the property by approving the proposed conditional use; **Due to the lack of child care in Emporia, the gain of additional openings would outweigh the hardships that would continue with less child care.**

10. Whether the proposed conditional use, if it complies with all the conditions upon which the approval is made contingent, will not adversely affect the property in the area affected; **By increasing the amount of off-street parking in the rear of the facility, additional parking areas for drop-off and pick-up would be created, and should minimize the impact on neighboring properties.**

11. For uses as solid waste disposal facilities, including sanitary landfills, construction and demolition landfills and transfer stations, whether the proposed conditional use is consistent with the adopted Solid Waste Management Plan of Lyon County, and amendments thereto; and **N/A**

12. Such other factors as may be relevant from the facts and evidence presented in the application.

Neighborhood Communications: Staff has not been in contact with any person within the notification area or the public in general concerning this request.

Recommendation: If the Planning Commission finds that the project is advisable, it may forward a recommendation to approve the Conditional Use Permit to the Governing Body based on the findings that the project is consistent with the intent and purpose of the zoning regulations, will not have an adverse impact on the surrounding area and the use is consistent with neighboring uses and based on the following conditons;

- 1- The project meets all applicable zoning, building, fire, and other applicable code regulations,
- 2- Applicant will provide 3 additional off street parking area in the rear of the property.
- 3- Any additional conditions the Planning Commission or City Commission deem necessary to protect the public health, safety, and general welfare.

Commissioner **Bucklinger** asked **Givens** how many parking spots will there be in the front. **Givens** said that they have a big driveway. The applicant would be able to address the question in more detail. One thing that is helping them out is that currently there is a vacant lot across the street from them, which helps with on street parking, though it is not guaranteed that the property will remain vacant forever.

The Public Hearing was opened.

Amy Gaskill (owner and property owner of 1022 Grand St.): Ms. **Gaskill** stated that she has been in the daycare business for 30 years. There is a need for daycare. She would like to utilize her space to accommodate 12 more children for a total of 24 children at the site.

Commissioner **Weaver** asked Ms. **Gaskill** if there would be any structural changes. Ms. **Gaskill** said that there will be some inside walls that will need to be removed. She will also need to add a sprinkler system inside, and hard wire a fire alarm system, but that no exterior changes will be made.

Commissioner **Duncan** asked Ms. **Gaskill** if she lives in the house. Ms. **Gaskill** said she does not live in the house. Right now, her daughter lives in the house, but is planning to move if the Conditional Use is approved to expand the daycare.

Commissioner **Thomas** asked Ms. **Gaskill** about the hours of operation. Ms. **Gaskill** said the daycare is open from 7:30A.M to 5:30P.M, and that she selected these hours for her business.

Erin Wright, 1030 Grand St.: Ms. **Wright** stated that she lives next door and there has never been a problem. She believes that it would be a positive change that will be helping many people. Ms. **Wright** works from home so she is always there and there has never been a problem.

The public hearing was closed.

Commissioner **Barnes** asked if the conditional use stays with the property, even if it is sold. **Givens** said the conditional use stays with the property. If this property is sold, the new owners can continue to use the conditional use of the daycare center at that property. Adding that the Conditional Use Permit can be revoked if the owners become noncompliant with the requirements.

Commissioner **Bucklinger** asked could we approve the application with the condition that the conditional use will go with the owner and not the property. **Givens** said that he would have to consult with the city attorney if the conditional use can go with the owner and not the property.

Commissioner **Weaver** asked what role the city plays in those three parking spots. **Givens** said that they would follow the zoning regulations for parking.

Commissioner **Colson** made a motion to approve Application PC CUP 2022-05. Commissioner **Weaver** seconded. **Approved 7-0.**

Givens advised that there is a 14-day protest period and then the request will go to the City Commission.

Justin Givens, Zoning Enforcement Officer, was recognized and addressed the Governing Body. He stated this was a request from Little People Daycare for a Conditional Use Permit for a Child Care Center located at 1022 Grand Street. The proposed project would allow the applicant to expand their existing home daycare from a maximum of 12 children to 24 children. The applicant is required to meet all regulations set forth by the State Fire Marshall and Kansas Department of Health and Environment. He stated the applicant will be required to add three additional off-street parking spots at the rear of the property to accommodate additional staff requirements. At their April 19, 2022 regular meeting, the Planning Commission unanimously voted 7 - 0 to approve the Conditional Use Permit.

PLANNING AND DEVELOPMENT

**(Application No. 2022-05 - Request of Little People Daycare, LLC)
(Conditional Use Permit at 1022 Grant Street for Child Care Center)
(Ordinance Number 22-22)**

AN ORDINANCE ISSUING A CONDITIONAL USE PERMIT FOR A CERTAIN DESCRIBED AREA IN THE CITY OF EMPORIA, KANSAS, to which the City Clerk assigned Ordinance Number 22-22, was presented to the Governing Body for their consideration.

Commissioner Giefer made a motion to approve Ordinance Number 22-22, an ordinance issuing a Conditional Use Permit for a Child Care Center located at 1022 Grand Street. Commissioner Brinkman seconded the motion. The vote follows: Commissioner Giefer, aye; Commissioner Brinkman, aye; Commissioner Harter, aye; Commissioner Sauder, aye; and Mayor Smith, aye.

CITY COMMISSION

**(Stand Up Electric Scooters)
(Extension of Memorandum of Understanding)
(Bird Rides, Inc.)**

City Attorney Montgomery was recognized and addressed the Governing Body. She stated the City of Emporia and Bird Rides, Inc. Entered into a one year MOU in 2021 to allow the deployment of Bird Scooters within the City of Emporia. The MOU includes provisions addressing operations,

management, safety, parking and liability of scooter operations. She stated the existing MOU expires in June. The proposed extension of MOU negotiated a one-year extension of the existing MOU with the addition of a \$0.10 per ride revenue share to the City. The ride surcharge will provide a small revenue stream to aid in offsetting administrative costs and right-of-way maintenance and improvements to support active transportation. At the end of one year, the MOU will automatically renew for successive one-month terms until terminated by either party. All other provisions of the original MOU will remain in effect.

Commissioner Giefer made a motion to approve the Extension of Memorandum of Understanding with Bird Rides, Inc. Commissioner Sauder seconded the motion. The vote follows: Commissioner Giefer, aye; Commissioner Sauder, aye; Commissioner Brinkman, aye; Commissioner Harter, aye; and Mayor Smith, aye.

CITY COMMISSION
(Consider Adoption of Strategic Goals for 2022 - 2023)

Jim Witt, Strategic Planning Consultant, was recognized and addressed the Governing Body. He stated the Commission and management staff began the process to identify strategic goals for 2022 -2023 in February 2022. Each Commissioner was interviewed to ascertain what their individuals priorities were and work sessions began to address the goals. The adoption of the goals will move the Commission forward in achieving the specified goals. He stated staff is recommending quarterly reports to the Commission regarding progress towards achieving the adopted goals. He stated this action is an administrative action and as the goals move forward some items will impact the allocation of city fiscal resources. He stated recommendation is to adopt the strategic goals that include Economic Development, Housing Development, Organizational, Financial and Infrastructure.

Commissioner Sauder made a motion to adopt the Strategic Goals for 2022 - 2023 that include Economic Development, Housing Development, Organizational, Financial and Infrastructure. Commissioner Giefer seconded the motion. The vote follows: Commissioner Sauder, aye; Commissioner Giefer, aye; Commissioner Brinkman, aye; Commissioner

Harter, aye; and Mayor Smith, aye.

**CITY MANAGER'S REPORTS
(Financials & Building Permits)**

This is the time for the City Manager to make comments and reports to the public. **The following is general information for the month of April 2022 for the community:**

1. Monthly Local Retail Sales Tax Receipts Update

	2021	2022	
	\$405,028.43	\$433,010.88	Increase of \$27,984.43 for the month, and
YTD	\$1,687,955.63	\$1,894,773.05	Overall increase of 12.59% from year 2021

2. City Share from County Tax

	2021	2022	
	\$ 206,929.84	\$ 216,670.32	Increase of \$9,740.48 for the month, and
YTD	\$ 851,787.29	\$ 970,728.27	Overall increase of 13.96% from year 2021

3. **Building Permits issued from 4/1/2022 to 4/30/2022 for new construction, remodeling, repairs and demolition.**

Total number of building permits issued through Code Services:	174
Total of valuations associated with those building permits:	\$20,556,289.00
Total number of dollars collected for Building Permit Fees:	\$ 60,101.25
Construct - single family dwellings	2
Demo - single family dwellings	0
Flint Hills Mall CID for April 2022	\$ 12,018.88
Year to Date Total	\$ 61,218.17

Consent Agenda

It was moved by Commissioner Brinkman, seconded by Commissioner Harter that the Consent Agenda listed below be ratified as a whole:

- Consider the minutes of the Regular Meeting held on May 4, 2022.
- Consider the ratification of Payroll Ordinance for the period ending May 6, 2022.
- Consider approval of the Compact Excavator Lease.
- Approve Ordinance No. 22-24 Authorizing a Beer Garden for My Country Concert After Party on June 25, 2022.

e. Approve Ordinance No. 22-25 Authorizing a Beer Garden for Gravel Cycling Hall Fame Event on June 1, 2022.

The vote follows: Commissioner Brinkman, aye; Commissioner Harter, aye; Commissioner Giefer, aye; Commissioner Sauder, aye; and Mayor Smith, aye.

**CITY COMMISSION
(City Manager's Report)**

This is an opportunity for the City Manager to present information to the public that may not be reported in other news accounts or City activities or to highlight accomplishments of the organization.

At the time this Agenda was prepared, the following items were in the works for the tentative Agenda of June 1, 2022 Study Session at 11:00 a.m.

Proclamation Naming June as Zoo Month.

Proclamation for National Teachers Hall of Fame Day.

Proclamation for May Massee Day.

Approve Ordinance Amending and Updating the Floodplain Management Regulations.

Approve KDOT Grant for Runway Extension.

Approve Water Demand, Supply & Rates Evaluation.

Public Hearing for Brownstone/Red Brick Tax Increment Financing.

Approve Ordinance for Brownstone/Red Brick Tax Increment Financing.

Public Hearing for Brownstone/Red Brick Community Improvement District.

Approve Ordinance for Brownstone/Red Brick Community Improvement District.

Study Session:

- Discuss Emporia Main Street Letter.
- Discuss Budget.

EXECUTIVE SESSION

Commissioner Sauder made a motion to adjourn into Executive Session to discuss proprietary information of third parties and to invite Jim Witt, Special Projects Manager, and Garth Heerman, Dominic Eck with Gilmore & Bell from 11:37 p.m. to 11:57 a.m., in the City Commission Meeting Room. Commissioner Brinkman seconded the motion. The vote follows: Commissioner Sauder, aye; Commissioner Brinkman, aye; Commissioner Giefer, aye; Commissioner Harter, aye; and Mayor Smith, aye.

Upon reconvening the meeting in Regular Session at 11:57 a.m., this same date, in the City Commission Meeting Room, Commissioner Sauder made a motion to recess until 1:15 p.m. in City Conference Room 1AB. Commissioner Brinkman seconded the motion. The vote follows: Commissioner Sauder, aye; Commissioner Brinkman, aye; Commissioner Giefer, aye; Commissioner Harter, aye; and Mayor Smith, aye.

Commissioner Giefer made a motion to adjourn back into Executive Session to discuss proprietary information of third parties and to invite Jim Witt, Special Projects Manager; Garth Heerman, Dominic Eck, with Gilmore & Bell; Scott Briggs, County Commissioner and Dan Williams, County Controller from 1:15 p.m. to 1:30 p.m.

Upon reconvening the meeting in Regular Session at 1:30 p.m., this same date, in the City Commission Meeting Room, Commissioner Brinkman made a motion to adjourn back into Executive Session from 1:32 p.m. to 1:57 p.m., same discussion and with all the same people and city staff. Commissioner Sauder seconded the motion. The vote follows: Commissioner Brinkman, aye; Commissioner Sauder, aye; Commissioner Giefer, aye; Commissioner Harter, aye; and Mayor Smith, aye.

Upon reconvening the meeting in Regular Session at 1:57 p.m., this same date in the City Commission Meeting Room, Mayor Smith stated they had discussed proprietary information of third parties and no action was taken.

Commissioner Harter then made a motion to adjourn. Commissioner Giefer seconded the motion. The vote follows: Commissioner Harter, aye; Commissioner Giefer, aye; Commissioner Brinkman, aye; Commissioner Sauder, aye; and Mayor Smith, aye.

Becky Smith, Mayor

ATTEST:

Kerry Sull, City Clerk