

**CAMPBELL COUNTY & MUNICIPAL PLANNING & ZONING COMMISSION
MINUTES OF THE JANUARY 8, 2013 MEETING**

MEMBERS PRESENT:

Mr. Larry Barrow
Mr. Dennis Bass
Ms. Lauri Harding
Mr. Tony Pfeffer
Mr. Edward Stubbs
Mr. Michael Williams, TPO
Ms. Cindy Minter, Chair

MEMBERS ABSENT:

Ms. Deborah Blake
Mr. Justin Verst, Vice Chair

STAFF PRESENT:

Mr. Peter Klear, AICP, Director of Planning & Zoning
Mr. Matt Smith, Legal Counsel
Ms. Stephanie Turner, Secretary

Ms. Minter called the meeting to order at 7:00 PM. Following roll call, a quorum was found to be present. Ms. Minter asked if everyone had reviewed the December 11th, 2012 meeting minutes and asked if there were any additions or corrections. A gentleman from the audience interrupted to state he wanted to hear what the minutes were all about. Ms. Minter began to explain that the minutes identified what occurred at our last meeting. He continued that he knew that, but he wants to know about the last meeting that lead to this meeting. Ms. Minter stated that discussions occurred at the November 13th meeting, but there was also a meeting in December. Ms. Minter asked the gentleman to come to the microphone and identify himself for the record and he could speak. The gentleman identified himself as Lloyd Shackelford. Ms. Minter stated that the minutes from the last meeting were distributed to the Commissioners for review. The previous meeting was to address case #115-12-SPD-01 which was an application from COPAC Warehouse Systems, LLC. Ms. Minter asked Mr. Shackelford if he wished to receive additional information regarding that case. Mr. Shackelford stated he was only interested in the case regarding the California Marketplace. Ms. Minter stated the case he was referencing was heard at the November meeting. The minutes to be approved tonight are for the December meeting. Mr. Shackelford asked if the meeting was published in the paper. Ms. Minter replied that it was. Mr. Shackelford asked when. Ms. Minter stated that if he would allow the Commission to get through the first order of business that the Commission was intending to resume discussion on that case. If he could be patient for a moment, they would get to the issue he wanted to discuss. Mr. Shackelford thanked Ms. Minter and sat down. Ms. Minter asked again if there were any comments or corrections regarding the December 11th meeting minutes. There being none, Ms. Minter called for a motion. Mr. Williams made a motion to approve the December 11th meeting minutes as submitted. Ms. Harding seconded the motion. A roll call vote found Mr. Bass, Ms. Harding, Mr. Stubbs and Mr. Williams in favor of the motion. Mr. Barrow, Mr. Pfeffer and Ms. Minter abstained. Motion passed.

Ms. Minter announced that there were no new cases to be heard tonight. However, there is a request to resume discussions on cases that were held in November. Ms. Minter called for a motion to resume discussions on case #112-12-TXA-01, a text amendment request to add Section 9.30 to the zoning ordinance. Mr. Williams made the motion to remove case #112-12-TXA-01 from the table and resume discussions on proposed Section 9.30. Ms. Minter asked if there were a second. Mr. Barrow seconded the motion. Mr. Smith asked if they were reopening the public hearing. Ms. Minter stated that, at this time, they are just resuming discussions. Re-opening the public hearing would be up to the discretion of the Commission during their discussion. Ms. Minter called for a roll call vote to remove case #112-12-TXA-01 from the table. A roll call vote found Mr. Barrow, Mr. Bass, Ms. Harding, Mr. Pfeffer, Mr. Stubbs and Mr. Williams in favor of the motion. Ms. Minter abstained. Motion passed.

Ms. Minter reminded the Commission that, on November 13th, 2012, they had some lengthy discussions relating to some text amendments. The Commission had asked staff to provide additional information. Ms. Minter called Mr. Klear to provide that information to the Commission tonight. Mr. Klear stated he would be happy to do so, but before he began he wanted to provide information as requested by Mr. Shackelford. Mr. Klear stated that the case in question right now was case #112-12-TXA-01 which is a proposed text amendment to the Campbell County Zoning Ordinance adding a new section, Section 9.30, the application of temporary retail sales permits. Mr. Klear stated that was the first item. Second, although this is not a public hearing, the Commission did at the November meeting instruct staff to publish a legal notice for the January 2013 meeting. Staff did so. In fact, we did it twice. It was first posted in the December 27th, 2002 Campbell County Recorder and the again on January 3, 2013. Mr. Williams asked if he meant December 27th, 2012. Mr. Klear apologized for his error and stated that he did mean 2012.

Mr. Klear stated that at that November meeting the Commission asked him to look into two questions. After performing research, Mr. Klear previously made available to the Commission a memo reflecting his responses to those questions. Mr. Klear indicated to the public that he had made several copies of this memo to be shared among the general public. The first task was that Mr. Klear was asked to review the current zoning ordinance for outdoor sales of established businesses; and the second task was to search for ad hoc sales. As to question number one, the review of current zoning ordinance for outdoor sales of established businesses - first some background, the business zones in the Campbell County Zoning Ordinance includes the Mixed Land Use (MLU) Zone, Neighborhood Commercial (NC) Zone, Highway Commercial (HC) Zone, Neighborhood Shopping Center (NSC) Zone, Shopping Center (SC) Zone, and Rural Commercial (RC) Zone. In our current zoning ordinance, none of these zones include outdoor sales as a permitted use. The text amendment that is under consideration deals with outdoor sales that were not included as part of the site development plan that was submitted to this body for review and approval.

Mr. Klear continued that for those of you who are unaware, Campbell County consists of fifteen cities. Five of those fifteen cities are members of this Planning Commission. Two of those cities, California and Mentor, do not have zoning what so ever. That leaves eight cities remaining. Those are the eight cities that Mr. Klear researched.

Alexandria – per City Zoning Administrator, temporary sales are not permitted; however, there is no specific prohibition in the zoning ordinance. Pumpkin and Christmas Tree sales must occur on farmer's property only. Fireworks sales must occur within a building.

Bellevue – temporary sales are restricted to commercial zones.

Cold Spring - temporary sales are restricted to commercial zones.

Dayton – temporary sales are restricted to CBD zone.

Fort Thomas – has no regulations on this issue.

Highland Heights – do not allow any temporary sales. Zoning ordinance restricts parking lot usage to only parking.

Newport - temporary sales are restricted to commercial zones.

Wilder – prohibits stands and temporary sales of businesses that are not “domiciled” within the city. Businesses with permanent locations in the city can have outdoor sales.

Mr. Klear stated that, in response to the second question regarding ad hoc sales, there is no provision for ad hoc sales within our current zoning ordinance. Outside of their respective zoning ordinances, cities in Campbell County regulate yard sales in residential zones as follows:

Alexandria – a permit is required when the sale exceeds three consecutive days OR occurs more than twice in a calendar year on the same premises.

Bellevue – requires permit. Limited to two permits per resident/household per year. Each permit is limited to a maximum of two consecutive days.

Cold Spring – requires permit. Permit is only valid for two weeks.

Dayton – requires permit. Limited to two permits per year and not more than 3 calendar days each permit.

Fort Thomas – requires a permit. Limited to three sales per year per residence.

Highland Heights – does not require a permit.

Newport – requires permit. Limited to two permits per year per resident/address.

Wilder – requires permit, except for city-wide sale held May and October. No limits on the number of permits or duration.

Ms. Minter asked what Ft. Thomas was. Mr. Klear stated that Ft. Thomas requires a permit and limits the homeowner to three sales per year per residence. Mr. Klear stated that was the extent of the research that was requested of him and he would be happy to answer any questions the Commission might have of him.

Ms. Minter asked if there were any questions for Mr. Klear. Mr. Williams asked, on the zoning ordinance for outdoor sales for established businesses within jurisdictions within Campbell County, what kind of restrictions do they have in numbers of days or limits of numbers of outdoor sales per location. Do they have restrictions similar to what we have seen in the proposed text? Mr. Klear stated that what Cold Spring has is almost identical to what we are proposing. Mr. Klear began to look through the data he had in front of him to provide a further answer to Mr. Williams. Mr. Klear stated that Alexandria does not allow temporary retail sales so there is nothing to review there. Mr. Klear apologized for not having the cities in alphabetical order. Mr. Klear stated that Bellevue, per their zoning ordinance, has a maximum allowed days of sixty days. Mr. Williams asked if that was a total of sixty days per year and not that the permit would be good for sixty days. Mr. Klear replied that was correct. Mr. Williams asked if there were a minimum or maximum consecutive days. Mr. Klear read from the Bellevue Zoning Ordinance, Section 9.27 Temporary Commercial Uses, item C: “Temporary commercial uses cannot exist or be present in any form rather open for viewing or not for more than sixty days.” Mr. Klear stated he was not their zoning administrator so he could not attest to how they would interpret that text. All he can say is that it reads “not more than sixty days”. You would have to defer to their zoning administrator for the interpretation. Mr. Klear stated that again Cold Spring is nearly identical for what we are proposing. Mr. Klear continued to review the data he has and asked that they come back to him if necessary. Mr. Williams stated that he agreed the Commission could come back to Mr. Klear later and apologized for not providing the question previous to the meeting so that Mr. Klear could research the answer.

Ms. Minter agreed they would come back to Mr. Klear to allow him additional time to search for the answers. She asked Mr. Williams if he wished to address the questions he expressed in memo form to staff previously. Mr. Williams stated he would prefer to wait until later in the meeting. Mr. Smith advised the audience that there were copies of the memo from Mr. Williams to staff available for their inspection. Mr. Williams stated he would rather wait until the audience has an opportunity to review the memo.

Ms. Minter asked if anyone else had any questions or comments for Mr. Klear. Mr. Pfeffer stated that, in regards to the memo issued by Mr. Klear, midway through the first page, Mr. Klear states: "The text amendment deals with outdoors sales that were not included as part of a site/development plan that was submitted to P&Z for review and approval." Mr. Pfeffer asked if that was the basis for creating this text amendment Section 9.30. Mr. Klear replied that it is a way to understand it, but not necessarily the basis for it.

Mr. Williams said maybe it was a good time to ask one of the two questions that he had which was included in his memo and maybe legal counsel can answer or address it. Mr. Williams stated that he must confess that, when he reviewed site development plans that pertained to convenience type stores or gas stations, he always assumed that based on tradition in this regards that there would be outdoor sales of some kind such as the planters on Mother's Day, the pumpkins at Thanksgiving or Halloween, windshield washer in the summertime, etc. Mr. Williams restated that, although they were not mentioned on the site plan, he always assumed that there would be some outside sales. Mr. Smith stated he just wanted to make the distinction between outdoor sales and outdoor storage. In Mr. Smith's opinion, if you have merchandise that is outside, but it is not sold outside, you purchase it inside the store, then that is an inside sale. For instance, propane tanks are stored outside, but if the sale occurs inside the store, then that is an inside sale. Mr. Smith thinks the issue is storage outside. He continued that he thinks in regards to site plans that they are not contemplated down to the finite detail that we would like to have shown. All the exterior stuff should be identified on the site plan. Mr. Smith stated that, in terms of a grocery store, there are inherent items that are associated with that trade or business such as an ice machine or flowers that will be stored outside. Mr. Smith thinks that, to the extent of the site plan, if you are starting to overtake parking spaces or it is starting to be a substantial deviation based on the kind of activity that is occurring then that can cause a change and the applicant should come back to get an amendment to their site plan.

Mr. Williams stated that in his memo he specifically stated "sales" – "outdoor sales". Maybe what he should have used instead are the terms in proposed Section 9.30 – "outdoor promotional or merchandising activity". Mr. Williams stated that the stacks of windshield washer and the planters are really merchandising activity. He always assumed that storage of window washer and planters were going to take place even though they were not detailed on the site plan. Mr. Williams stated the Commission was told at that previous meeting that there was a legal action that occurred – he believes Mr. Leonard Rowekamp brought it up. When the judge stated that based on tradition, you could assume that there would be this type of – Mr. Williams' not Judge Ward's term - "merchandising activity" even though they were not specifically mentioned on the site plan.

Mr. Smith replied that he did not know if he would use the term "merchandising activity". There are certain things that are traditionally inherent to grocery stores that are stored outside that are not requested on a site plan. Mr. Smith's point is that when the activity gets to be substantial and you are deviating from your site plan because now suddenly you are taking up parking spaces and it is not usual and customary things for a grocery store to sell. For example, if you go to a gas station, you will see windshield wiper fluid or fire logs. You expect those things at a grocery store. The issue is that the activities get so broad that you may have U-Haul trucks full of items that start to take parking spaces, blocking sidewalks and, at this point, it can be substantial enough that requires revisiting the site plan.

Mr. Klear added that, from a planning perspective, staff does not make assumptions. If staff feels that there is some part of the proposed use or activity that is going to occupy land or have some other impact, we note that in our staff report. You can go back and think about plans where that issue has come up. Staff does not make assumptions that it is never going to change. This is what is proposed and staff reviews what are the likely impacts relative to that development. Mr. Williams stated that this is the first time that this particular issue of making assumptions on his part (maybe they are wrong assumptions), but that he was not aware that staff was not making these same assumptions and staff did not know he was making assumptions at all. Ms. Minter stated Mr. Williams may not have been present on some of the

site plans where the Commission had discussion about the width of the sidewalk or if we had sufficient ADA access assuming products would be placed outside of the windows. Mr. Williams stated he was present and he recalls the discussions. Mr. Williams stated he knows that it was never intended that outdoor merchandising would take up parking spaces. He remembers the hours of discussions the Commission has had with applicants regarding parking spaces. He assumes they would not take parking spaces, but he is talking about around the door or along the side of the building where they would not really be taking up parking spaces. They allowed plenty enough room for pedestrians walking on the sidewalk and did not interfere with the ADA pathways and would not have been in the flow of traffic. Mr. Williams stated he knows the Commission is aware of what he is talking about. Mr. Smith stated that he is not agreeing with Mr. Williams, but he does not think the items Mr. Williams has mentioned require revisiting their site plan. Mr. Smith thinks that to the extent that the activity is occurring is substantial enough then it can cause you to have a need to revisit your site plan would be if you are operating different than a typical grocery store. Mr. Williams asked Mr. Smith his opinion on if the type of activity described would not violate the site plan. Mr. Smith stated that ice machines, propane tanks or windshield washer are considered customary for a typical grocery store.

Ms. Minter asked if there were no additional questions or comments for staff then she would ask the Commission's pleasure on re-opening the public hearing to allow those individuals present tonight the opportunity to speak. Mr. Williams stated he could defer his remaining question to later and allow the public an opportunity to speak. Ms. Minter stated it did not look like there was any objection to re-opening the public hearing. Mr. Klear reminded her that it would require a motion to re-open the public hearing. Ms. Minter called for a motion to re-open the public hearing. Mr. Williams made a motion to re-open the public comment portion of the discussion. Ms. Minter added "of the November 13th hearing" and Mr. Williams added that to his motion. Ms. Minter asked if there were a second. Mr. Barrow seconded the motion. A roll call vote found Mr. Barrow, Mr. Bass, Ms. Harding, Mr. Pfeffer, Mr. Stubbs and Mr. Williams in favor of the motion. Ms. Minter abstained. Motion passed.

Ms. Minter stated that the public comment portion of the November 13th meeting was re-opened. Ms. Minter stated that she had the sign in sheet showing three additional people wished to speak regarding this issue. She will allow these additional speakers after that point if anyone desired to speak she would allow it. Ms. Minter reiterated that we have about twenty-eight pages of minutes from the November 13th meeting. They are at length and we have reviewed those minutes so that we would be refreshed of the comments made previously. Ms. Minter encouraged the speakers to not be repetitive of the items you may have stated on November 13th. Please be brief because we want to hear from as many people as possible tonight. The comments that you provided were very important to us and caused our request for additional information to be provided to us tonight and we do appreciate you for coming out tonight.

With that, Ms. Minter identified the first person registered to speak as Mr. Bernard Dusing. Ms. Minter asked Mr. Dusing to approach the microphone and identify himself for the record. Mr. Bernard Dusing, with Dusing Brothers Ice in Erlanger, stepped forward. Mr. Dusing stated that it was requested that he appear at tonight's meeting, but that the Commission had already answered several questions that he had. He continued stating that his ice machines are all over Campbell County and, from what the Commission has said tonight, it is mainly outside storage because the sale occurs inside the store. They have machines inside and outside of some stores. Mr. Dusing stated that his company prefers to have the machines on the outside of the store. In the summer when it heats up, there is sometimes a water problem. It can create some hazard and they are constantly trying to clean up after themselves. Mr. Dusing stated that since the Commission had answered a lot of questions that he had, he was just going to sit down and listen to what happens.

Ms. Minter thanked Mr. Dusing and called the next person who was Mr. Victor Dawn. Mr. Dawn asked if he could defer until later to speak and Ms. Minter granted his request.

Ms. Minter called the next name of Mr. Leonard Rowekamp. Mr. Rowekamp identified himself as the attorney for the California Marketplace. Mr. Rowekamp stated the first thing he wanted to do was

commend the secretary for the minutes. They were the most extensive and accurate transcript of minutes from a Planning & Zoning Commission meeting that he has seen. Mr. Rowekamp continued that a lot of their concerns in regards to the outdoor storage with sales that occur on the inside of the store have been alleviated as long as it's the feeling of the Commission to follow your legal counsel's opinion that the sales of pumpkins, ice, washer fluid and Red Box are all consistent with our grocery store application since for all of those, except for Red Box, the payment is made inside the store. We just want to make sure that this is the Commission's approach and feeling in regards to these issues. The other concern we have is that we have a lot of community groups (Boy Scouts/Girl Scouts) that sell a lot of cookies and popcorn. If we strictly interpret this, they are selling this outside, but we are making the premises available to those individual. Mr. Rowekamp doesn't think we have addressed that point. He understands that this somehow fits in to Ms. Harding's comments about ad hoc sales or whatever you want to call them. He doesn't feel like we should be saying to these people that you need a permit and we are limiting you to three a year. This is the only issue we think also needs to be addressed. That is the end of my comments assuming we have agreement with legal counsel's interpretation as to how the site plan and accessory uses are going to be interpreted.

Ms. Minter asked if there were anyone else wishing to speak tonight. Mr. Lloyd Shackelford stated he had something to say. Ms. Minter asked him to approach the microphone and identify himself for the record. Mr. Lloyd Shackelford stated he shops over at the California Marketplace often and he has never had a problem with the parking spaces over there. Is it possible that a policeman can be called in to give them tickets if there aren't enough spaces? He doesn't know. Mr. Shackelford wanted to know who came up with this situation. How many places are going to be affected? Mr. Shackelford stated: "He did the research and his place is the only one affected." Mr. Shackelford paused as if waiting for a reply. Mr. Smith advised Mr. Shackelford that this was strictly his opportunity to provide comments. Mr. Shackelford stated he would just keep going then. He just wanted to know who benefited from this. Mr. Shackelford stated he benefits by shopping over there. They sell water there. Does Campbell County residents have to pool their water? He doesn't know. Mr. Shackelford stated that he knows they sell fireworks in Alexandria all the time. Mr. Shackelford reiterated his statement that he just didn't know who benefited from this. Ms. Minter thanked him for his comments.

Ms. Minter asked if there were anyone else wanting to speak. Ms. Eunice Shackelford stated that she had signed up and her name had not been called. Ms. Minter asked if there were another sign in sheet. Mr. Klear stated that there were two sign in sheets. One for the case just re-opened and one for a subsequent case to be re-opened. There may have been confusion as to which sheet she signed up on. Mr. Klear retrieved the second sign in sheet from the podium and gave it to Ms. Minter.

Ms. Minter recognized Ms. Eunice Shackelford. Ms. Shackelford stated that she was more or less curious because all the big stores she had visited such as Kroger, Wal-Mart, Kmart, and Meijer have this same stuff outside their stores. When she goes to get her gas at Meijer, there are stacks of salt and stuff sitting around the gas station. She was just curious why it would be something against the California Marketplace selling. Ms. Minter thanked Ms. Shackelford for her comments. Mr. Williams asked if Mr. Klear should respond to her question at this time because it seems that those stores are not within our jurisdiction, but that of neighboring cities. Ms. Minter stated she would prefer to wait to hear all comments and then allow for the answering of any questions.

Ms. Minter recognized Mr. Bob Barker. Mr. Barker thanked Ms. Minter for the opportunity, but stated he had already received answers to his questions. Ms. Minter stated that was all of the speakers that had signed in and asked the audience if anyone else wanted to speak. A gentleman asked to be recognized which Ms. Minter did so.

Mr. Cliff Torline stated that he had a little road side stand on the AA Highway. He stated he is out there two to three days a week and sometimes just one day a week. Mr. Torline stated he just wanted to know what effect this regulation would have on him. Ms. Minter stated that she did not have a direct answer for

him at this time. The reason for these discussions is to determine if it should be recommended that they be enacted and to what extent.

Ms. Minter asked if anyone else wanted to speak. No one responded. Ms. Minter asked Mr. Dawn if he had any additional comments that he wished to express. Mr. Dawn replied he did not and would pass on this opportunity to speak.

With that, Ms. Minter closed the public testimony of this hearing. Ms. Minter opened the floor for general discussion and called on Mr. Klear to address any issues he felt pertinent. Mr. Klear stated that Mr. Williams pretty much answered the questions. The stores mentioned are not under the jurisdiction of our Commission. Wal-Mart is in the city of Alexandria; Meijer is in the City of Cold Spring; Kroger is under the jurisdiction of Cold Spring, Highland Heights and Newport. County Market is in the City of Alexandria. Per the City of Alexandria Zoning Ordinance, outside sales are not permitted. Mr. Klear is not the zoning administrator for the City of Alexandria, so he would have to defer to the city on that element. The same is true with the other jurisdictions mentioned.

Ms. Minter asked if there were any comments or discussion from the Commissioners. Ms. Harding thanked Mr. Klear for the research he performed and Mr. Williams for his memo outlining the concerns and questions that he had. Ms. Harding stated that it appears we are comparing apples to oranges here because all the jurisdictions that were researched here are in fact incorporated cities. She believes the concerns that they have may be different than those that are in Campbell County which encompasses a large unincorporated area. Ms. Harding stated that the Commission had talked at the November meeting, for those of you who were not present, about the fact that in unincorporated areas you may have farmers or not even farmers, but people with three or four acres who may have surplus heirloom tomatoes or blackberries or eggs from their chicken. They are not just going to give them away so it is kind of fun to just put them out front and sell them. Ms. Harding stated that Mr. Klear stated that farm and agricultural areas are exempt.

Ms. Harding remains concerned that the fact that the only temporary sales that are allowed requires a commercial zone. Ms. Harding's concern is about residents in the unincorporated Campbell County who do not have commercial zoning on their property and, while she realizes this is not the object of concern for the planning commission, she is concerned that there might be something incorporated into the zoning regulations that specifically exempt these people. Ms. Harding stated she went onto the internet and pulled up several copies of other jurisdictions regarding unincorporated counties all over the nation. The one she liked most was: "Neighborhood stands conducted by residents on their own property for passers-by." This language is not what she really wants but she would like to see some exemptions worked into the language for one time sales of personal things like boats, cars and stuff like this or for perhaps clothes or raw food products grown and produced on the owners property even if it is not agriculturally or commercially zoned. She stated this would also work for seasonal lemonade stands (particularly those operated by minor children). She understands that this is not the focus of this regulation, but she would sure like to see some listed exemptions.

Ms. Harding continued that this is a concern that she has. Where she lives, in Camp Springs, they have a lot of people that want to share their excess produce, eggs or whatever and she doesn't think they should fall under this regulation. She also wants to see an exemption for one-time special events like the Herbst Fall Festival or farm days where people are free to go out there and take advantage of visitors or tourists without having to deal with commercial zoning or permits. Ms. Harding would like to add to what we already have in front of us to review a list of specific exemptions that they can all talk about.

Ms. Minter stated she wanted to thank all the Commissioners and staff for their additional research and the time they have spent reviewing and preparing for these discussions. Ms. Minter asked if there were any additional comments. Both Mr. Williams and Mr. Pfeffer started to speak at the same time. Mr. Williams deferred to Mr. Pfeffer. Mr. Pfeffer stated that he is troubled with what we are trying to permit here. He doesn't understand. Mr. Pfeffer said he is trying to get some understanding if what we are

trying to do here is the outside sales, or the propane tanks, ice or window washer. Beyond that, the person who is selling blueberries as referenced by Ms. Harding would require, according to what was stated at the November meeting, a permit. Ms. Harding agreed. Mr. Pfeffer continued that the Boy Scouts selling popcorn in front of the market place would require a permit is his understanding. If that is the case, to your (Ms. Harding) point, let's set up some exemptions, but Mr. Pfeffer stated that he goes back to the fundamental – what are we trying to regulate. Mr. Pfeffer stated he doesn't understand what we are trying to regulate. Mr. Pfeffer stated that the Commission could definitely come up with a list of exceptions. We can say if you pay inside its' ok, but what are we trying to accomplish. Ms. Harding stated that she brought this question up at the last meeting of identifying what the objective was or if this is just a revenue scheme.

Ms. Minter stated that legal counsel had some comments. Mr. Smith started to speak when Mr. Klear stated he would prefer to provide the answer if Mr. Smith did not mind. Mr. Smith deferred to Mr. Klear. Mr. Klear stated that there are a number of things that are both zoning and non-zoning related issues for temporary outside sales and some that overlap. The way it is proposed would restrict temporary commercial activities to commercial zones. So, in that aspect, we are trying to prohibit commercial activity in residential zones. Mr. Klear stated that Ms. Harding has stated she finds roadside stands acceptable. Perhaps she does, but, perhaps, there are other people who are not ok with them. They don't like the congestion, the noise and things associated with retail activity.

Mr. Klear continued that we had already discussed the reduction of required parking, but parking spaces are a land use issue that the temporary sales are occupying. Another issue is the potential for improper storage of materials which can lead to contamination and environmental concerns. You can say we're ok because it makes sense to store mulch or fertilizer. If there was not an outside storage area identified on a site plan, and those items are not properly stored and maintained, they become potential contaminants which leech into our streams, our water table and that would have a negative impact on the environment.

Mr. Klear reminded everyone that planning and zoning is where things start. We are kind of like the gateway department for the county. Then that business or that development goes out and touches other areas of county life and county government. Mr. Klear stated that you have the potential for a business to operate without an occupational license. Or you have individuals not paying for an occupational license. They are not paying occupational taxes. They may not be charging sales tax which they are required to do. You have the potential for nuisances. You have temporary unwanted signage and that is both a zoning and non-zoning related issues if they have signs in the right of way. You have got visual blight which is a zoning and non-zoning issue.

Mr. Klear stated that you have the potential, if things are not regulated, for the sales of contraband or illegal materials such as illegal CDs or DVDs. There is a safety concern which is a zoning and non-zoning issue. By way of an example, what if we were to consider the road side stand. Because of the road-side stand, you potentially have people parking adjacent to the road-side stand and blocking the road which is a safety concern. There are negative impacts that can be associated with these types of activities. Those are the kinds of things that we are trying to prohibit, reduce, or eliminate. Mr. Klear asked if that clarified anything for Mr. Pfeffer.

Ms. Minter asked if Mr. Smith had anything to add. Mr. Smith stated the only thing he could add would be that rather than exceptions, he understands that they would be a good idea, but he thinks the problem we should be focusing on is how temporary sales are defined. He thinks this is what drove all the concerns from our last meeting. What is being covered by temporary retail sales? If that were defined then that would better identify the area that we are regulating. His understanding, maybe from the last public hearing, of the intent of the regulation was to require permits in commercial districts for temporary operators that were standing outside an existing business. If you were a temporary operator standing outside an existing business in a commercial district, then you were required to get a permit. The fact it would require temporary retail sales for any outdoor promotional activities would require you to enter into a discussion of agricultural and residential areas.

Mr. Smith suggested we look first at identifying what we are talking about temporary retail sales and better defining that. If that is the intent, then you can have language that defines temporary retail sales as the sale of merchandise that occurs outside a legally operating retail business. That would identify what it is the regulations intend to cover. Mr. Smith clarified that it would be intending to cover the sale of merchandise that occurs outside a legally operating retail business of a temporary nature. Because he heard the concerns and comments from the public and the Commission in regards to the Boy Scouts and other non-profit groups, you could include in the definition of temporary retail sales the idea that a temporary retail sale does not include the outdoor sales that are conducted by non-profit organizations like schools and churches. If the intent of the regulation is to regulate the temporary shops setting up in commercial districts on commercial property then he believes that is how the temporary retail sales should be defined and then within that you could talk about what exemptions you would want to make to that. With the definition of temporary retail sales potentially covering anything, you have opened yourself up for having to put in all of the exceptions rather than just better define what it is that it does cover. Ms. Minter thanked Mr. Smith for this insight.

Mr. Williams stated that it occurs to him that over the past couple of months that most of the decisions we make – the reason for bringing it before the Commission - the reason for the decision is clear. For example, a site plan is submitted and the reason we are deciding is very clear. It occurs to him that the reason for this confusion is that the reason is not clear with this text amendment. As he was going through the minutes, several people asked if there were a problem or had there been a problem. If we are going to recommend regulation, shouldn't there be a problem that we are attempting to rectify or, because we believe there is going to be a problem, we are taking proactive action. He doesn't know what the problem is. Have there been complaints about these stands or outdoor merchandising? The more basic question he has would be - would it not be in the interest of the public that the cities determine through their own lawmakers rather to regulate or govern outdoor promotion or merchandising activity within their borders. He sees a difference between the City of Southgate or Silver Grove or even Melbourne and rural Campbell County. He lives in Southgate and if he wants to shop for fruits and vegetable it is less than a five minute drive in any direction. If he were to live in southern Campbell County, it would not be so convenient to shop the same stores as he shops. It would be nice to have these outdoor places to come and get these products. The question for him is if the cities, if they see a need for this type of legislation, bring this to the Commission's attention. Mr. Williams stated he believes that with our member cities they bring the request to them for a change to the text. Isn't that how it works?

Mr. Klear stated that we have received complaints about problems with roadside stands. Mr. Williams stated then they should be part of the record tonight – where are they coming from and what the problems were. Mr. Klear stated that, more often than not, the callers want to remain anonymous. Mr. Shackelford stated then their complaints don't count. Mr. Klear restated that we have had complaints. Mr. Williams stated he distinguished in his memo between the incorporated versus the unincorporated areas. Mr. Klear stated that this is the process. When municipalities, and the Fiscal Court is a municipal corporation, the process is that the complaint comes into the local unit of government and then it is referred to the respective planning commission for them to take action. This is what we are doing right now. This whole process is part of that public process. It is an issue that comes through to local government. It is referred to the respective planning commission for a public hearing where the public can provide feedback and input on it. That is why when you see in the staff report, not just for this case but for everything, when you talk about making changes to the zoning ordinance, you are not the final authority. You are making a recommendation to the legislative unit which is the final authority for zoning. That's why the staff's recommendation is a recommendation to the Fiscal Court for approval.

Mr. Williams asked what the problems – for example, were they concerned with traffic? Mr. Williams stated that one of the speakers mentioned that he had a stand right along AA Highway which Mr. Williams did not even know was legal. He can see that as a problem with cars whizzing by there at fifty-five miles an hour. Mr. Williams stated he has personal experience with accidents happening under those circumstances. Mr. Williams sees a difference between that situation and somebody with a market, such

as California Marketplace for example, and let's say five miles down the road from the market somebody wants to put up a fruit and vegetable stand several times throughout the summer. Mr. Williams sees that as different than somebody driving into the middle of Southgate dropping the tailgate on their truck and selling anything. Mr. Williams stated he sees that as something different. In Southgate, chances are that it is within a subdivision and the truck is in front of someone's home and anyone who stops and walks around are walking in somebody's yard on somebody's lawn and probably interfering with street traffic. Out in the county, that is probably not the case. Mr. Williams stated that if Southgate saw a concern with this then let them come before the Commission and say they want to deal with this issue. Mr. Williams stated his concern was with the unincorporated area. Mr. Klear stated that his counter would be that in Mr. Williams' example it would not, but you could come up with an equal example where it would be a problem where the stand is located in the right-of-way where it is on the shoulder of the road. That would cause a safety concern regardless if it is in the city of Southgate or in the unincorporated Campbell County. Mr. Williams stated that if you have something on the public thoroughfare there should already be a law against it. It seems to him that if the Campbell County Police is driving down the road and there are cars parked out in the right-of-way that the officer should be stopping and telling them to get the heck out of the right-of-way. Mr. Williams stated he does not feel like there should be zoning text to regulate that. At the same time, Mr. Williams stated there were several times in the November meeting minutes that there were comments to the respect that "it's our property and we can do what we want". Mr. Williams stated that he just wanted to clarify for the public that assumption is not correct. Mr. Williams stated that has never been the law and never will be the law. The only right we have to do the absolutes is to pay higher taxes. Your right to your property ends where the next person's property rights begin. Mr. Williams stated he sees a distinction between the unincorporated area and the cities. The cities should come to us and ask us to change it. Mr. Williams stated he does not see why we should tell the Cities of Silver Grove, Melbourne and Camp Springs how to rule their streets. Mr. Klear stated that, at this point, we are not doing that. Mr. Williams stated we are asking the Fiscal Court to do that. Mr. Klear stated that was not correct. This proposed text amendment is just for the unincorporated county. Mr. Williams repeated Mr. Klear's statement that the text change was just for the unincorporated county. Mr. Klear continued that it does not pertain to the five member cities.

Mr. Pfeffer stated that he had a comment in regards to Mr. Klear's explanation as to what we are trying to achieve here. Mr. Pfeffer stated that Mr. Klear mentioned keeping businesses out of residential areas. Mr. Pfeffer stated that he believes that there is a means of regulating this without having to do a temporary sales permit. The function of parking – if it is a safety issue, such as if someone has a roadside stand and has a permit, he could still be on the shoulder and cause a safety issue. If that is the case, the police should be called and he has to move the truck to a safer place. The function of parking from the standpoint of the California Marketplace – if he has firewood in a parking place, he has reduced parking on his parking lot. If his customers cannot park in his parking lot, he is not going to have customers. Mr. Pfeffer cannot see where a permit is going to correct any of that. Improper storage – if someone can sell mulch in front of a gas station in Cold Spring, then why can't someone sell mulch in front of a gas station in the unincorporated county. To him, we are restricting people in the county from doing things that people in the cities within the same county can do. Nuisances – there is a way to deal with nuisances without having to have a temporary retail sales permit. Blight – there is a way to deal with blight without having to have a temporary retail sales permit. Safety – call the police.

Mr. Pfeffer stated he would like to make a motion that text amendment Section 9.30 be declined as written and there be no further discussion on it. Mr. Smith asked if the basis of his motion was based up on information from the public hearing. Mr. Pfeffer replied that it was. Ms. Minter called for a second. Mr. Stubbs seconded the motion. Mr. Williams asked if he understood the motion correctly that we were never going to discuss this issue again. Mr. Pfeffer stated that to him this text as written is so vague and would have to list so many exceptions that it is not achieving what he was told we were trying to achieve. Ms. Minter stated she believes Mr. Williams' question is if Mr. Pfeffer could restate his motion in terms of if it was to decline Section 9.30. Mr. Pfeffer stated that was correct. His motion is to decline Section 9.30. Ms. Minter stated that a motion was on the table to decline Section 9.30 as written, and it has been seconded. Ms. Minter recognized Mr. Klear. Mr. Klear asked for a clarification if the motion could be

amended to state it was a motion to recommend denial to the Fiscal Court. Mr. Pfeffer agreed and did so. Mr. Smith asked Mr. Stubbs if he also accepted that amendment to the motion. Mr. Stubbs stated that he did.

Ms. Minter called for a roll call vote. Mr. Barrow asked if by agreeing with the motion if the subject was totally off the table or are we talking about following legal counsel's recommendation of basically rewriting and incorporating some of his guidelines. Mr. Smith stated that the motion was to recommend to Fiscal Court to deny the text amendment. It would have the ability to be brought up at future meetings to see if it were something the Commission wanted to see. Ms. Minter asked if there were any further comments or questions. Ms. Harding stated that although she agrees with Mr. Pfeffer and added that, although Mr. Klear was talking about some of the issues that overlapped zoning, as she mentioned earlier, her big concern is if we are talking about commercial zoning only. She agrees with Mr. Pfeffer that so many of these issues could be addressed through vehicles other than through zoning. She does not see them as zoning issues, but maybe they need something like a health permit or through the fire department. It can be addressed through a street vendor's permit which does not mean that you can only operate on commercial property. There are other ways to address the issues. Ms. Minter stated that this is for questions or comments on the motion itself and asked Ms. Harding if she had any questions regarding the motion. Ms. Harding stated she did not.

Mr. Barrow asked if this motion, as we recommend it, can still be overturned by the Fiscal Court. We can recommend to deny it, turn it loose and it goes to the Fiscal Court. The Fiscal Court can still say that they do not accept the Commission's recommendation and can still pass the text. Mr. Smith stated that was the prerogative with any text amendment or zone map amendment we send to the legislative body. Mr. Klear stated that as a clarification if they take a final vote and the recommendation was a denial then that is the recommendation that goes to the Fiscal Court. It is not a situation where staff presents both what Commission has determined and what staff recommends. The final verdict of the Commission is the only recommendation forwarded to the Fiscal Court. Ms. Minter asked Mr. Klear to confirm that the options of the Fiscal Court were to table, to approve or to deny the request. Mr. Klear added that the Fiscal Court could also modify the text as submitted. Ms. Harding stated that if the motion were to deny, the reason she made the comments she did is because she wanted them on record. Does the Fiscal Court review our objections and why we decided to do something? Mr. Klear stated that anytime there was an issue that needed to go before the legislative body, the reason he defers sending the packet, is so that a copy of the **approved** minutes can be attached to the packet of information to the legislative body. So yes, everything that has been mentioned by the Commission and by the public is captured in those minutes and you approve those minutes. The legislative body does receive a copy of that information. It is all part of the record that goes to them for consideration.

Mr. Williams stated that he is concerned that we were in the midst of a discussion when the motion was made. Mr. Williams is still not convinced one way or the other. There are definitely still some questions that he has and as part of the clarification of the motion, it was because Mr. Williams heard two distinct parts. One was to deny the text as written which implies if it is denied "as written" then how should it be written. Secondly, it was to terminate ending discussion on it, which Mr. Williams is opposed to. He is not happy with the way it is written right now, but he is not sure if we have totally discussed if there is a need in any fashion for any regulation relating to Section 9.30 either more evolved or much more restrictive than this is. Mr. Smith stated the recommendation to disapprove this were approved then that would end the discussion on this particular application, but you would still be free to discuss how to best regulate it in the future. There would be no need to have further discussion on a text amendment that has already been disapproved if that is the determination of the Commission. You would be free after the fact to come up with different proposed regulations for the future, so it would not end it permanently, but it would close it for this particular application. Mr. Williams thanked Mr. Smith for his opinion.

Ms. Minter asked if there were any further questions on the motion. There being none, Ms. Minter called for a roll call vote. A roll call vote found Mr. Barrow, Mr. Bass, Ms. Harding, Mr. Pfeffer, Mr. Stubbs and Mr. Williams in favor of the motion. Ms. Minter abstained. Motion passed.

Ms. Minter recognized Mr. Klear who asked for a very short recess to confer with legal counsel. Ms. Minter asked if the Commission had any objection to a short recess. There being none, a recess was called at 8:01 PM.

Ms. Minter called the meeting to order at 8:04 PM. Ms. Minter introduced case #113-12-TXA-01 which would be the adoption of the fee schedule revision necessary if there was a recommendation to approve the previous case. Ms. Minter asked Mr. Klear for confirmation that there would need to be a motion to take this case off the table as well before any discussion could occur. Mr. Klear stated that was correct. He recommended that the case be taken off the table, have discussion if you feel that is necessary, reopen the public hearing if you feel that is necessary and then his recommendation would be that based on the action you have taken in the previous case that he would suggest a motion be made to deny the adjustment to the fee schedule to be consistent with the prior action of the Commission. Ms. Minter thanked Mr. Klear for his guidance.

Ms. Minter called for a motion on case #113-12-TXA-01 so that discussion could resume on this issue. Mr. Barrow made a motion to take case #113-12-TXA-01 off the table for discussion. Mr. Williams seconded the motion. A roll call vote found Mr. Barrow, Mr. Bass, Ms. Harding, Mr. Pfeffer, Mr. Stubbs and Mr. Williams in favor of the motion. Ms. Minter abstained. Motion passed.

Ms. Minter asked if, based on the Commission's action on the previous item, the Commission wanted to take the same action on this item. Mr. Pfeffer made a motion on case #113-12-TXA-01 to deny the adoption of the revised schedule. Mr. Smith asked if he wanted to change the motion to *recommend* denial of the change to the fee schedule. Mr. Pfeffer agreed and amended his motion as such. Ms. Minter asked if there was a second to the motion. Mr. Williams seconded the motion. Ms. Minter asked if there were any questions or comments regarding the motion. There being none, Ms. Minter called for a roll call vote. A roll call vote found Mr. Barrow, Mr. Bass, Ms. Harding, Mr. Pfeffer, Mr. Stubbs and Mr. Williams in favor of the motion. Ms. Minter abstained. Motion passed.

DIRECTOR'S REPORT

There being no other cases to come before the Planning Commission, Ms. Minter asked if there was a Director's Report this evening. Mr. Klear replied that the only item he had for the Commission was to announce that it was time for the annual election of officers.

Mr. Barrow made a motion to re-elect the current officers if they desired to keep their positions. Ms. Minter identified that the current officers were Ms. Minter as Chair, Mr. Verst as Vice-Chair and Mr. Williams as Temporary Presiding Officer. Ms. Minter recognized Mr. Klear. Mr. Klear asked Ms. Minter to delay calling for a second to the motion while he checked the By-Laws. Mr. Klear reviewed the document and stated there were two items of procedure that he wanted to check. Mr. Klear explained to the Commission that according to the By-Laws there must be a nominating committee. In the past, they have waived the committee and just taken recommendations for officers from the floor which has just occurred. Mr. Klear believes that to be procedurally correct the Commission must waive the nominating committee. Secondly, Mr. Klear stated that one of the current officers is not present at the meeting tonight to accept the nomination. Mr. Klear has been in communication with Mr. Verst and asked if he would be willing to accept a nomination to serve in any capacity. Mr. Verst replied back affirmatively to Mr. Klear. Mr. Klear stated that he believes that is acceptable, but that he would defer to legal counsel on that issue. Mr. Smith stated that would be acceptable.

Ms. Minter stated she was putting Mr. Barrow nomination of officers on hold temporarily. Ms. Minter asked if the Commission wished to discuss suspending the nominating committee. Mr. Pfeffer made a motion to suspend the nominating committee. Ms. Minter recognized his motion and asked if there were a second on the motion. Mr. Williams seconded the motion. Ms. Minter asked if there were any comments or questions. There being none, Ms. Minter called for a roll call vote. A roll call vote found

Mr. Barrow, Mr. Bass, Ms. Harding, Mr. Pfeffer, Mr. Stubbs and Mr. Williams in favor of the motion. Ms. Minter abstained. Motion passed.

Ms. Minter stated there was a motion standing on the floor to elect Ms. Minter as Chair, Mr. Verst as Vice-Chair and Mr. Williams as Temporary Presiding Officer. Mr. Verst is not here, but information has been received that he is willing to serve. Mr. Klear stated that prior to calling for a second the Commissioners nominated should accept their nomination. Mr. Klear accepted the nomination on behalf of Mr. Verst. Ms. Minter accepted the nomination of the Commission to serve in whatever capacity they asked. Mr. Williams accepted the nomination as well. Mr. Klear advised Ms. Minter to call for a second to the motion. Ms. Minter called for a second to the motion on the floor. Mr. Pfeffer seconded the motion. Ms. Minter called for a roll call vote. A roll call vote found Mr. Barrow, Mr. Bass, Ms. Harding, Mr. Pfeffer, Mr. Stubbs and Mr. Williams in favor of the motion. Ms. Minter abstained. Motion passed.

Ms. Minter asked if there was any other business to discuss. Mr. Williams stated that before the meeting adjourned he wanted it on record that he doesn't think that the discussion they terminated tonight was the real end of that discussion. He is not convinced that there is no need for some regulation, but he thinks it needs to be explored further. His vote was just to deny the text that was presented tonight, not against the concept. Ms. Minter thanked Mr. Williams for his comments.

Ms. Minter recognized an audience member. Mr. Brian Painter identified himself as a Fiscal Court Commissioner. He just wanted to take the opportunity to apologize to the Commission for the state of the ceiling which had some water damage. Mr. Painter stated that, after reading thirty pages of minutes from the November meeting, he wanted to let the Commission know that he recognized the work they are putting into the issues they are encountering to vet out these issues. He appreciates taking a good long look at these things. The Fiscal Court appreciates the Commissioners for volunteering to serve their community. Mr. Painter advised the Commissioner that he was speaking on behalf of himself and Mr. Pete Garrett, another Fiscal Court Commissioner, who was also present tonight. Mr. Painter again thanked the Commission for their service. Ms. Minter thanked Mr. Painter for his comments and thanked both Mr. Painter and Mr. Garrett for attending the meeting.

Ms. Minter asked if there was any other business to discuss. There being none, Ms. Minter asked for a motion to adjourn. Mr. Barrow made a motion to adjourn. Mr. Stubbs seconded the motion. An oral vote found everyone in favor, none opposed. Motion passed. Meeting adjourned at 8:15 PM.

Respectfully Submitted,

Approved:

Peter J. Klear, AICP
Director of P&Z

Cynthia Minter
Chair