

RECORD OF PROCEEDINGS OF THE GOVERNING BODY CITY OF GARDNER, KANSAS

Page No. 2024 – 17

March 4, 2024

The City Council of the City of Gardner, Kansas met in regular session on March 4, 2024, at 7:00 p.m. in the Council Chambers at Gardner City Hall, 120 East Main Street, Gardner, Kansas, with Mayor Todd Winters presiding. Present were Councilmembers Mark Baldwin, Kacy Deaton, Mark Wiehn, Steve Shute and Steve McNeer. City staff present were City Administrator Jim Pruetting; Finance Director Matt Wolff; Police Chief Pam Waldeck; Utilities Director Gonz Garcia; Parks Director Jason Bruce; Community Development Director Dave Knopick; Public Works Director Kellen Headlee; City Attorney Ryan Denk; City Clerk Renee Rich. Others present included those listed on the sign-in sheet and others who did not sign in.

There being a quorum of Councilmembers present, Mayor Winters called the meeting to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE

Mayor Winters led those present in the Pledge of Allegiance.

PRESENTATIONS

PUBLIC HEARINGS

PUBLIC COMMENTS

CONSENT AGENDA

- 1. Standing approval of the minutes as written for the regular meeting on February 19, 2024.**
- 2. Standing approval of City expenditures prepared February 15, 2024 in the amount of \$128,197.28; and February 22, 2024 in the amount of \$275,370.14.**
- 3. Consider a recommendation to appoint a City of Gardner representative to the Kansas Municipal Energy Agency Board of Directors.**
- 4. Consider authorizing the execution of a contract with Golconda Group, LLC to construct the Locust Street Joint Repairs Project.**

Councilmember Deaton made a motion to approve the Consent Agenda.

Councilmember Shute Seconded.

With all of the Councilmembers voting in favor of the motion, the motion carried.

PLANNING & ZONING CONSENT AGENDA

None

COMMITTEE RECOMMENDATIONS

- 1. Consider adopting an ordinance approving a rezoning County RUR (Rural) District to A (Agriculture) District; for potential animal care facility located on the north side of 199th Street approximately 1300' west of Gardner Road (Tax ID CP19000000 0004).**

Community Development Director David Knopick says this is one presentation for both committee recommendation items since it is a rezoning associated with a conditional use permit. When you annex property from the county into the city, the property brings the original zoning with it. These items are associated with the idea that changing the city zoning to agriculture, which is equivalent to the RUR, then this type of facility is allowed in with a conditional use permit. It is not allowed as a use by right but is allowed if approved as a conditional use permit and the conditions tied to the permit have to be met. This is 10 acres in a primarily residential area approximately 1300 feet west of Gardner Road on the north side of 199th Street. This is for a proposed new building which would be 80 by 40 that would be utilized for boarding approximately 40 dogs. The Planning Commission did hold a public hearing on both matters and their recommendation is for denial of both the rezoning and the conditional use permit. Staff recommendation to the Planning Commission was approval of the rezoning and approval of the conditional use permit with conditions. If you reaffirm the Planning Commission recommendation, it is a simple majority vote, so four out of six. If you choose to go against the Planning Commission's recommendation, it's a two-thirds required

**RECORD OF PROCEEDINGS OF THE GOVERNING BODY
CITY OF GARDNER, KANSAS**

Page No. 2024 - 18

March 4, 2024

vote, because of the nature of the council, it will still be four out of six. There are two motions listed for you. The third motion you have after hearing from the applicant and others here tonight, is to send this back to the Planning Commission. You will have to give guidance and direction on what you want them to reconsider.

The floor was opened to public comment.

Rod Freund - 29750 W 199th – I own the property directly to the east. I have property value and privacy concerns with this in my backyard. The barking dogs and headlights shining in the back of my house are a big concern.

Mary Freund – 19880 S Gardner Rd – The 60 acres was planted into a subdivision for single family dwellings and to state lots of five and ten acres. We are also the owners of the property at 19730 S Gardner Rd and we oppose the rezoning and conditional use permit for an animal care lodge. The 19730 property is on the east side of the property, very close to where the kennel would be. Our neighborhood has always been a very private, quiet single-family neighborhood. The proposed animal kennel would greatly impact all the neighbors. It is proposed to have 22 dog runs and 40 dogs which would bring traffic and excessive noise of dog barking and lights shining into the neighbor's properties. An 80 by 40 animal facility is a business and requires commercial zoning and not be in a single-family neighborhood. We as neighbors are all very much opposed to the rezoning and the conditional use permit as it is invasive to our single-family neighborhood, its values and privacy. Clint Bergdorf has asked me to speak for him because he has the subdivision to the north, and he has three lots adjoining the property. He would prefer they didn't hear dogs barking and is very much against this. I have provided you with a copy of his letter as he agrees this is commercial and needs to go somewhere else.

Randy Sparks- My wife and I are in favor of this project. This is a hard decision. The Freund's have been great to me. If it wasn't for Ron, I wouldn't have a conditional use permit on my property right now. The city wanted to shut me down for building a metal building to run our lawn company out of. Ron played a huge part in getting the process through so I could get my conditional use permit and I wouldn't have gotten it without his help. I would like to do the same thing for Jason and Angela. He's trying to get off the road and quit traveling and he wants to start a business at home, and I have no problem with that. My conditional use permit is a one-year permit. This one is five years and could be canceled afterwards if it doesn't work out like we think it's going to. At least, that is how I understood it when I was working on my permit, but I would like to give him a chance at it. I don't think we will know they are there since we all have metal buildings in our backyards.

Ron Freund-19880 S Gardner Rd – I did help Randy with his conditional use permit and the reason is, Randy's lawn business works well in agriculture zoning. I had a conditional use permit years ago for a Butler Building when I had grain storage, and the county took it away from me. I know you can take them away, but I could only have one light out front and I was only open one or two nights a week from 4 to 7 and it was public in and out because those were the rules they had on me. I am very much against a dog kennel in our subdivision. I've been there 80 some years and it's just not meant to be in a housing unit in a subdivision as a commercial business.

Frank Bannister - 19815 S Gardner Rd - I am almost directly east of this proposed commercial enterprise. I am against this because it could be a noise problem for neighbors. I am not against dogs or dog kennels, but I am very much in favor of commercial businesses in commercial areas. I'm not sure if everyone is aware the State of Kansas has a current lawsuit against the City of Edgerton and North Pointe Development Company to prevent warehouses from being built right across from this property. This has been tied up for two years in litigation or you would be looking at a strong possibility of warehouses and more semi-trucks. I and five other families funded this lawsuit until the State of Kansas took over the lawsuit. We prevailed in the district court in Olathe and the judge said we agree that North Pointe and the City of Edgerton illegally annexed land, but you do not have standing to file suit. The State of Kansas must do that for you, so the Attorney General's Office has taken over the suit. The primary reason the lawsuit was filed was to prevent commercial development in rural residential areas in southern Johnson County. Where we live is the last remaining rural area of Johnson County. We do not want commercial development out there and we do not want an Amazon warehouse across the street. If you start approving commercial development in small acreages, where are you going to stop? This is not an appropriate fit and needs to be in areas that are

RECORD OF PROCEEDINGS OF THE GOVERNING BODY

CITY OF GARDNER, KANSAS

Page No. 2024 - 19

March 4, 2024

commercial, not people's back yards. This will be a problem for the neighbors, and I believe this will be a problem for the subdivision directly to the east.

Crystal Wise – 29954 W 199th St – I live just to the west of them and I'm ok with them putting a dog kennel in.

Councilmember Shute asked about the golden criteria. How did staff determine this was a congruent use based on the surrounding properties. Knopick said the surrounding properties are a larger acreage format and most of the properties in this area are slightly under 4 acres up to 10 acres. There's a development on the north, which is more suburban and he's building in phases, so when we look at this area, it is primarily a rural residential area typical of anything you would find along 199th Street. In this case, all those properties are either zoned RUR or agriculture. Under those zoning categories, this type of use is allowed as a conditional use, not as a use by right. We looked at the fact that it's a conditional use permit and the idea is you can place conditions on the actual permit beyond the zoning match that puts us in a position where we think we could see something operating that would mitigate noise, mitigate lights, those types of things. That is why when staff made its recommendations, there was a series of conditions that went with those. What really guided us was the separation of the houses and the size of the lots. If we were in a typical suburban area even under that zoning, you would not have a proposal like this because they could not come forward without rezoning the property to something else. When we look at agriculture and rural residential, we look at those as equivalent zoning. To issue a conditional use permit, we really need it to be in the city zoning category since we don't have county zoning to enact. Shute said normally when we see A zoning, it is either farmland or a commercial tree farm or you could put a machine shop on it if it doesn't have a detrimental effect on the property itself. In the case of an A zoning, it would be more open space. This sounds more like a commercial operation which has a significant outdoor presence. It's not just the building, but there's also runs and outdoor play areas and is different from an enclosed metal building like a machine shop or something you can put in a backyard or side yard and be able to run a business out of it. I think that's why the Planning Commission had a negative reaction to this. Can you address that. Knopick said the Planning Commission had concerns after the public hearing related to the noise issues and other factors like lighting and traffic. The staff's role is to look at it in light of the ordinances and what's allowed, and then public hearing comes into play. The Planning Commission was listening to the public comments and the applicant and had significant discussion. They had a number of questions and that is where they landed with concerns of noise.

Applicant Jason Carmen - 29852 W 199th St – These are 10 acre lots and fairly long. We are proposing to put this structure at the back side of the lot which is currently enclosed by a tree-lined area. It is enclosed to the north, to the west and to the south. Then, within the plan, we will put in additional tree lines on the east side. It will be a 40 by 80 enclosed building acoustically insulated. We've done calculations on the number of dogs inside along with what we expect for the acoustic dampening in the building. When dogs are inside of this building, it's expected that you won't be able to hear them outside of the property line based on how everything is constructed. There are going to be some outdoor runs as well and this is going to be an actively managed facility. Maximum occupancy is 40 dogs, but that is not what we are going to start with. Even when it is at capacity, we will be moving dogs in and out. They are not going to be outside all day. There will probably be five dogs outside at a time. They are playing and have to be watched. There is also an indoor play area. They will be moving in and out in rotations. Councilmember Shute asked the maximum number of dogs that would be outside at a time. Jason said five to ten. Shute said that presumably the dogs will be barking while they are playing. Jason said yes, dogs do bark. At the loudest with dogs outside barking and the expected noise they will be making, the loudest it should be at a neighbor's house is 43 Db and this is assuming no tree line attenuation. This is the equivalent to a soft whisper from 5 feet away per OSHA guidelines. The beauty of this location is it's a distance away from any actual residences. We do have neighboring properties, but there are no houses back by where the building is going to be.

Baldwin clarified that the trees that go east west at the back of the property where the building is going, and asked if those trees are staying to the south of the building. Jason said yes. There is currently a heavy tree line to the north and there's good tree line to the west and tree line to the south. We'll be planting trees on the east side as well. Shute confirmed there is a stream between this property and the Tuscan Farms. Jason confirmed and said

**RECORD OF PROCEEDINGS OF THE GOVERNING BODY
CITY OF GARDNER, KANSAS**

Page No. 2024 - 20

March 4, 2024

there are three tree lines between them as well. He also has the area on the back section on the other side of the creek before it gets to the Tuscan Farms area.

McNeer wants detail on the decibel levels for neighboring houses for the outside activities; how it was measured and who did the measurements. Jason said this was done on the inverse square law so it's a common method to check acoustic levels and is essentially physics. We do it at my workplace when we are checking ambient noise levels and what is going to be perceived at a distance away from so that was calculated and double checked. And triple checked with some online methods as well just to confirm everything is the same. It ranged from 37 to 43 Db. McNeer said normal conversation is about 50 to 60 Db. Jason confirmed that is common from three feet away.

McNeer wants to be clear there are two separate issues, the first part is bringing zoning to a compatible city zoning, which is separate from the conditional use permit. Knopick says they are separate but related. To qualify for the conditional use permit, the rezoning would have to occur to get to the A zoning district. Your action on the zoning district does not automatically guarantee the conditional use permit.

McNeer asked if we could agree to rezoning without agreeing to the conditional use permit. And clarifying the conditional use permit cannot be approved without the rezoning, but the rezoning can be approved without the conditional use permit. Knopick confirms that the conditional use permit could not be approved without the rezoning. That is the reason these items are together. McNeer asks if the conditional use permit could have a yearly review process. Knopick says staff recommendation was for a five-year permit. The Planning Commission as well as the governing body have the ability to adjust the permit any way you see fit, it is merely a recommendation. If you would like a shorter time frame with interim administrative review points to check for issues or complaints, we would need to re-write the conditions per your guidance. If you are going in that direction with conditions, there are other things that could be added like capping the capacity or operational things, but that would have nothing to do with the rezoning. McNeer confirms we could have an administrative review like we have done with the cigar shop and food trucks. Knopick said we have done that before and could set that up. We will check with the police and fire departments to see if there have been any issues. We would also send letters to the neighbors to see if there are complaints with the operation over the past year. If there are findings administratively or are things going against the conditional use permit, we can bring them back in for revocation consideration. We have the same kind of authority under the nuisance laws and other code enforcement elements that could be used outside of the conditional use permit. McNeer confirms that we could set this up as a one-year permit and then bring them back for review. Knopick says the applicant should be asked about a one-year review because there may be a significant amount of money to invest in a one-year risk versus a five-year risk.

Jason wants to know what kind of criteria would cause a review to be needed at one year. If it is just hearsay type of nuisances, that would not be appropriate. I live in the neighborhood, and I love all my neighbors, so my intention is not to cause any division or nuisances. That is the reason we have planned it the way we have, so it would not be an obstacle for them. I do not want to put risk out there that in one year because there were five phone calls, I'm told we will be shut down. This is a big capital investment with the requirements necessary to be able to adhere to all city guidelines. It is a significant amount for my family that I need the five-year time period. If there are real nuisances, I assume we have legalities to shut it down at that point. Shute clarified for everyone that there are six mitigating requirements that may not be in front of everyone. They are:

1. All drive access and parking areas to and from the dog boarding facility from 199th Street shall be paved with a hard surface, not gravel, constructed to meet adopted city technical specifications and construction standards and withstand use by emergency service vehicles;
2. On the site plan, provide construction details for an area that addresses the treatment of high bacteria loads and specifications on how waste is being treated; I believe there was someone who was speaking and addressed that there was no plan yet as to how to handle waste disposal, but this would be a requirement going forward,

**RECORD OF PROCEEDINGS OF THE GOVERNING BODY
CITY OF GARDNER, KANSAS**

Page No. 2024 - 21

March 4, 2024

3. The construction plans for any utilities, infrastructure, stormwater or other public facilities shall meet all technical specifications and land disturbance and public improvement plans shall be submitted and approved prior to the issuance of a building permit; they would have to take care of some of these mitigating circumstances, so this is the standard by which this would be measured in a conditional use permit scenario,
4. Provide visual screening from adjacent properties along the east side of the proposed facility; this is to try and mitigate the light pollution issue,
5. Provide noise dampening measures within the wall construction of the boarding facility; which has already been addressed, and
6. This Conditional Use Permit is for a 5 year period, starting on the date of approval by the Governing Body. After the 5 year period, if the applicant is abiding by all conditions they can apply for an extended Conditional Use Permit through the Planning Commission and the Governing Body.

That is the criteria right now unless we amend it. We have a six-zero motion here to deny. We have placed trust in our Planning Commission as they are appointed by the body to be our eyes on this, and we would have to come up with real justification as to why we would overturn a six nothing decision on the part of the Planning Commission. The commercial use and the contextual aspects of this are the reasons why they were denied. We would need to be convinced those would not be going forward and justification to deny.

Deaton said this feels very commercial. She asked if most of the current dog boarding facilities in Johnson County are in commercial areas or more agriculture and rural areas. Knopick said the county allows these types of facilities in rural areas as well. The applicant presented during the Planning Commission there is a facility similar to this in the Spring Hill area. It's not unusual, but it's also not so prevalent that everybody's doing it. Many of the conditional uses that you see in agriculture or rural districts recognized large lots where the configuration is larger than the norm and many times they are associated with adjunct kind of employment or at home type of employment. It is not unusual to see some of these types of proposals come forward for an agriculture building for farm machinery repair or something that is adjunct to their farming activity. The applicant did bring forward an example near the Spring Hill area that is a similar context.

Jason discussed Mystic Acres in Spring Hill and says that facility is almost identical to what this proposal is, except their facility is twice as large. We spoke with neighbors around there to see if they had any concerns or complaints since the facility is larger. They had no complaints. They did say you barely know it's there and occasionally you hear a dog barking, but nothing different than any neighbor has. If this is built properly, there should not be any nuisance to any neighboring facility.

Deaton says if we approve this, would this start neighbors possibly asking for food trucks or wineries, etc and then when does this area become a commercial row.

Knopick says the state has some regulations for agriculture tourism which allow for certain things like wineries. This has been discussed in state statute. Not every business or business type is allowed to have a conditional use permit under the agriculture zoning. There are only a few uses in the agriculture district where there is allowance for conditional use permits recognizing the large format land, so it does not open to every kind of business that's allowed in commercial zoning. A lot of them are adjunct or associated secondary businesses and with the advent of home businesses you get unusual applications for somebody who may be trying to turn a hobby into a home business, and we would look at it as a conditional use permit because it is now a business. Deaton wanted to know if this is allowed because animals are involved. Knopick was not for sure. It has been found in zoning laws in other jurisdictions and seems to be a common item similar to daycares in rural areas. Business at this scale is not unusual to see in this type of zoning district in other jurisdictions. Deaton said this business would have a lot more movement and traffic compared to a lawn care business where they are storing stuff, then coming and going for the business and not customers going in and out.

Knopick said this is the same as conditional use permits in suburban neighborhoods with home businesses because we are looking at similar conditions such as the traffic, lights, safety, noise, materials, etc. The same things you are

**RECORD OF PROCEEDINGS OF THE GOVERNING BODY
CITY OF GARDNER, KANSAS**

Page No. 2024 - 22

March 4, 2024

asking about are the same things the Planning Commission had as concerns. So, the issue becomes, is this a detrimental impact on the neighborhood or can some of these things be mitigated by certain conditions and that is where you come in as decision makers.

Shute is looking at the property itself and says it is almost 300 feet by almost 1300 feet and the proposed building would take up about a quarter of the width of the north end of the property. The property directly to the east is farmland at the north end of the property. That property could be subdivided in the future. The owners say they would not have a buyer if this business is here because it would hurt their value. He says that even though the statutes and ordinances state the property can support this, there is a bigger picture involved and that is why we are here. I commend the applicant for attempting a new business and Gardner could use a boarding business, but I am not necessarily inclined to approve this or go against the Planning Commission.

Wiehn said he is hesitant to call this a commercial business, but if they were to build a barn to house livestock, would those people have to come before us with the same rigor. Knopick said there are standards for livestock, but it would be a different standard under the agriculture zoning. There are limitations to the number per acre.

McNeer clarified what the business hours would be and asked the applicant if he would agree to additional restrictions for sound by unannounced measurements being taken. Jason said the drop off and pickup will be between 8:00 and 5:00 which would be scheduled, and the typical day would be expected to be maybe 10 cars coming in and out. Headlights are a valid concern by neighbors, so that is why we chose the 5:00 time. And he is open to acoustical guidelines and random checks. During quiet time, the dogs will be boarded inside in the evening.

McNeer recommends sending it back to the Planning Commission to review additional requirements for public business hours and suggest they be subject to random inspections for noise pollution. Baldwin said it would be difficult to do random inspections because we would have to get permission from neighbors, and we already have nuisance laws. McNeer suggested a one-year administrative review, but Shute reminds that this is a significant financial investment. Wiehn asked where this process would be in a year and the applicant wasn't sure if the building would be up and the business running.

Baldwin is not concerned about car lights because there is screening and business hours have been established. Noise has been addressed by a mitigation plan. If not, people can complain and there is a process. Traffic doesn't sound like there would be a huge increase. My concern is that this may be commercial, but looking at the agriculture zoning, he could have lots of animals. From what I'm hearing, all criteria have been met. My concern was commercial, but since we allow it by codes, I don't know what criteria we are using to say no. He's putting in money to put in concrete driveway, the code says it has to be 600 feet from the nearest residence, we can put the stipulation of pickup times which are during daylight hours, so that removes the issue of headlights. If he is willing to put the money into this knowing that there could still be people complaining and in five years, this could get pulled, I'm having a hard time understanding what the concerns are. I believe it is doable and allowed.

Shute says it is a contextual issue and the properties around it. And, we have some additional information that was not available when the Planning Commission was reviewing it. My concern was the properties around them because they are only 300 feet wide. A lot of these properties are set back from the road. A couple of the neighbors have expressed concern that this may hurt their property value if they ever decide to subdivide in the future. And I'm concerned that we would be overturning a six nothing recommendation to deny the Planning Commission recommendation.

Baldwin asks on what grounds did the Planning Commission deny it, other than the things we have now addressed. Deaton asks if the current county zoning would have allowed this. Knopick said it would have been allowed with a conditional use permit. Knopick said our rezoning is an equivalent district.

Wiehn asked if they approved the rezoning. Knopick said Planning Commission recommended denial based on the public hearing process.

RECORD OF PROCEEDINGS OF THE GOVERNING BODY

CITY OF GARDNER, KANSAS

Page No. 2024 - 23

March 4, 2024

Ron Freund came back up to talk about when he was annexed into the city. If Edgerton would have gotten to this area first, this would not have been allowed because it would be warehouses. I feel like we were protected by Gardner, so we are asking for protection from commercial use in our subdivision. There was another person that lived there with three labs and you could hear them from 600 or 700 feet away. Please protect me.

Mayor Winters says we don't know what the smells, sounds or traffic is going to be until this is done. It doesn't make sense to put something this intense into this neighborhood.

Knopick reminds that these are considered conditional use permits instead of an allowed outright use because when they are placed into the codes, you are generalizing what would be acceptable. Conditional use permits recognize there could be locations where even though zoning is there, the context may not be right for what may be proposed. The Planning Commission is trying to reflect on what this context is and does it relate to the context.

Discussion continued on whether to do the rezoning without the permit. The applicant would not want the rezoning if the conditional use permit is denied.

Councilmember Shute made a motion to adopt the recommendation of the Planning Commission and deny the rezoning of certain lands located in the City of Gardner.

Mayor Winters Seconded.

With all of the Councilmembers voting, the motion fails.

McNeer:	No
Baldwin:	No
Deaton:	No
Wiehn:	No
Shute	Yes
Winters	Yes

Councilmember Shute made a motion to continue the rezoning to a time when deemed ready by the staff.

Councilmember McNeer Seconded

With all of the Councilmembers voting in favor of the motion, the motion carried.

2. Consider adopting an ordinance approving a conditional use permit for an animal care facility located on the north side of 199th Street approximately 1300' west of Gardner Road (Tax ID CP19000000 0004).

Discussion continued to take up the motion on the conditional use permit because the applicant has advised if the permit is denied, they do not want the rezoning. Discussion continued about what conditions could be added to the permit. Baldwin said he doesn't feel like we need to continue with the restrictions because it's on the owner to be sure he is in compliance with the criteria because if he is not, he will be out of business. Discussion went on about whether to send it back to the Planning Commission. Shute does not feel like all the concerns that have been expressed have been addressed. Shute does not feel this should be complaint driven and is a disservice to the neighborhood. They are the first people to be annexed into the city and got the momentum done to get all of 199th Street annexed. Baldwin said we did protect them from Edgerton, but we are not talking about neighbors. We are talking about property rights and we have to respect each property owner. We have to look at this in totality by taking everything into consideration. Wiehn asks if we should send this back to the Planning Commission because we are talking about an additional item we can't agree on. Deaton said if the Planning Commission denied it because it's commercial and we have looked at the zoning and it is allowed in the zoning, should we have them review it without the commercial aspect and conditions to see if we can make this work. Baldwin feels this was already presented and they still felt like it was commercial. Baldwin said that every issue that has come up as a concern

**RECORD OF PROCEEDINGS OF THE GOVERNING BODY
CITY OF GARDNER, KANSAS**

Page No. 2024 - 24

March 4, 2024

has already been addressed. Rod Freund said the existing trees are all deciduous trees that lose their leaves in the winter, so this will only help for about six months. How long will it take for the trees being planted to be big enough to help.

Baldwin reminds everyone that the criteria would be required before the building permit is issued. Knopick offered that this item could be tabled and have the applicant come forward with a screening plan and that comes back to you to see if it meets your concerns. We may be able to assess if it's adequate to meet the adjacent property owners since you are the decision makers on this.

The previous motion to approve the conditional use permit is withdrawn. Deaton clarifies that if we table this, we could include a presentation on the other conditions. Ron Freund offered everyone could drive in my driveway where the original farmhouse is so you can see there are three trees between his building and my property. If my property were split into two, that would put one house very close to this. Before you vote on this, find out how far away you can hear a dog. He has been a good neighbor, but I don't want to see him put this up because there are going to be complaints on dogs.

Angela Carmen – 29852 W 199th St – I just want to address that we have already spent a lot of money for this and the requests from the Planning Commission to redraw engineering and do a water test. If we are going to have to go back and get additional drawings and go back through the Planning Commission to ultimately not get approved, then it is more money lost. We don't want to create division with our neighbors and don't want to continue drawing this out. We want to see this through and feel like we have a really strong case to see this through and keep our neighbors happy. With the amount of money we have already spent, it shows our dedication to seeing this through. Shute confirmed that right now, we are planning to table this item and bring it back here and not to the Planning Commission. We would be requesting a screening plan for sound and light, and you would work with the staff to identify how this is taking place. Knopick believes the current site plans could be used. They would be looking for some quantities and distances. Baldwin thinks we can make this possible without disturbing the neighbors.

Councilmember Shute made a motion to continue Committee Recommendation 2 in tandem with Committee Recommendation 1.

Councilmember McNeer Seconded.

With all of the Councilmembers voting in favor of the motion, the motion carried.

NEW BUSINESS

None

COUNCIL UPDATES

Utilities Director Garcia discussed the FOG (Fats, Oils and Grease) Program. This was implemented in 2020. The program is to try and prevent fats, oils and grease from entering the wastewater system which causes routine maintenance and clogs the sewer system. The system is mainly aimed at food service establishments. Under the program, the food service establishment is required to be part of the program. Every year they get a letter to submit information on the establishment and pay a \$300 fee. Any establishment that does not have enough fat, oil or grease are exempt from installing an interceptor, but they are not exempt from the program. This could change if food service expands, or they change their menu. Every year each establishment has to send new information. We will send an inspector to determine if an interceptor is necessary. Mayor said he was contacted by a restaurant owner who has little to no grease and was concerned with the \$300 to be exempted. Garcia said the fee is for staff to review the information, inspect the establishment and put it into the system. Deaton asked how long the review takes and Garcia said it takes about an hour and then a person has to go to the business. Shute asked if this is based on a fee schedule that we have agreed upon and similar to other jurisdictions. Garcia said the program was based on the Johnson County Wastewater system, so we adopted basically the same regulations and guidelines. Deaton clarified that everyone has to pay. Mayor asked if it would be reasonable to

**RECORD OF PROCEEDINGS OF THE GOVERNING BODY
CITY OF GARDNER, KANSAS**

Page No. 2024 - 25

March 4, 2024

have a smaller fee if nothing has changed and the interceptor is not necessary. Baldwin asked if we would be able to tell from sewer inspections if something had changed. Garcia said it would be hard to determine in some locations. Prior to this program, we had to clean the line between Fronteras and the bank about once a month, now that is being done semi-annually because we are looking at the amount of grease they are disposing. Baldwin asked if we could do a quick inspection every year and then do a more extensive inspection every 3-5 years like a conditional use permit. Garcia said we would follow council recommendations. McNeer asked if there has been a business that went from exempt to non-exempt. Garcia said we have not seen any since this program was established.

Community Development Director Knopick said he is going to Kearney, NE for continuing education.

Frank Bannister came back up to say he is amazed the city would even consider allowing commercial operations like this in the city limit. Dogs barking will be a problem. He is amazed that it would be considered in a neighborhood. He asked Baldwin if he would live next door to this. Baldwin said he thinks this can be structured in a way that would be doable. There is always going to be a place where commercial meets up to another classification.

Ron Freund says he was on the Planning Commission for 23 years and he said he has never seen a decision the Planning Commission made be turned over.

EXECUTIVE SESSION

ADJOURNMENT

There being no further business to come before the Council, on a motion duly made by Councilmember Shute and seconded by Councilmember McNeer the meeting adjourned at 8:54 pm.

City Clerk