

**AGENDA**  
**Independence Planning Commission**  
**Independence Board of Zoning Appeals**  
**Tuesday, October 6, 2020**  
**Veterans Room Memorial Hall 5:30 p.m.**

To join by Conference Call dial: 1 785-289-4727 Conference ID: 652 632 373#

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**Call to Order**

**Minutes**

- a. Consider approving minutes of the August 4, 2020 meeting.

**Planning Commission**

- b. Public hearing to consider text amendments to Appendix B-Zoning of the City code relating to Sections 1701 – 1705.
- c. Public hearing to consider text amendments to Appendix B-Zoning of the City code including, but not limited to Appendix A. “Listing of Permitted and Conditional Uses” including, but not limited to “Retail trade not elsewhere listed.”
- d. Public hearing to consider a conditional use permit for a church in a C-4, highway commercial services district at 3176 W. Main Street.
- e. Other items for discussion
  - 1. Letters sent to past members
  - 2. Other discussion

**Board of Zoning Appeals (Does not include outside City appointments)**

- f. None.

**Adjournment**

## **Minutes**

- a. Consider approving minutes of the August 4, 2020 meeting.

**MINUTES**  
**Independence Planning Commission**  
**Independence Board of Zoning Appeals**  
**Tuesday, August 4, 2020**  
**Veterans Room   Memorial Hall   5:30 p.m.**

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**Call to Order**

The Planning Commission meeting was called to order by Chair Andy McLenon.

**Planning Commissioners Present**

Andy McLenon (in person). Mary Jo Meier (in person), Michelle Anderson (via phone), Brent Littleton (via phone), Lisa Richard (via phone), Kendall Neill (via phone, then in person) and Rachel Lyon (via phone at 5:47 p.m.).

**Planning Commissioners Absent**

Tony Royse and Barb Emert

**Staff Present**

Kelly Passauer, Assistant City Manager/Zoning Administrator, and Jeff Chubb, City Attorney

**Visitors**

**Minutes**

Consider approving minutes of the May 5, 2020 meeting.

Mary Jo Meier will sign in lieu of Michelle Anderson since Michelle is not at the meeting in person.

*Kendall Neill made a motion to approve the minutes of the May 5, 2020 meeting, Brent Littleton seconded the motion. The motion carried 7-0.*

**Planning Commission**

- a. Welcome new member Rachel Lyon.
- b. Orientation by City Attorney Jeff Chubb.  
Jeff Chubb reviewed the orientation outline and bylaws. See attached orientation packet.
- c. Consider joint letter with the City Commission thanking past members.  
Staff recommends authorizing joint thank you letters for past members.

Dear \_\_\_\_\_:

This letter is to thank you for your many years of faithful service to the citizens of Independence as a member of the Planning Commission. You have spent countless hours reviewing materials and participating in meetings, and we want you to know that your contributions do not go unrecognized.

Thank you again for your leadership and efforts to make Independence a better place to live, work, and visit.

Sincerely,

---

Andy McLenon, Chair  
Planning Commission

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Leonhard Caflisch, Mayor  
City Commission

Personalization will be added to each letter. Kelly Passauer will work with Andy McLenon to finalize.

***Mary Jo Meier made a motion to send a joint letter with the City Commission thanking past members, Steve McBride, Jim Hardy, Phillip Umlauf and Brian Beecham, Kendall Neill seconded the motion. The motion carried 7-0.***

**Board of Zoning Appeals (Does not include outside City appointments)**

d. None.

**Adjournment**

***Mary Jo Meier moved to adjourn the meeting, Kendall Neill seconded the motion. The motion carried 7-0.***

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Andy McLenon, Chair

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Michelle Anderson, Secretary

## Planning Commission

- b. Public hearing to consider text amendments to Appendix B-Zoning of the City code relating to Sections 1701 – 1705.

On August 27, 2020 the City Commission initiated a public hearing before the Planning Commission to consider a text amendment removing building inspection responsibilities from the zoning code. Several years ago, when the original ordinances were adopted, the Building Inspector and Zoning Administrator duties were filled by the same employee. Past restructuring has separated these duties; however, the code was not updated to reflect this change. In addition, the Building and Flood Administrator has been working with ISO Specialist Melissa Mitchell to implement the CRS program for the City of Independence. As part of that process, it was noted that some of our ordinances needed to be updated. On June 30, 2020 the City Commission adopted Ordinance 4330 regarding the duties and qualifications of the building inspector. The attached proposed ordinance would remove Building Inspection Responsibilities from the Zoning Code; however, these responsibilities would remain in the Building Code.

City code 1604.2 provides the following regarding text amendments:

*1604.1. Recommendations:* Upon the conclusion of the public hearing the planning commission shall prepare and adopt its recommendations and shall submit the same, together with a record of the hearing thereon, to the governing body. Said recommendation may be for approval, disapproval or approval in part and reasons for the recommendations shall be included as appropriate.

*1604.2. Amendments to text:* When a proposed amendment would result in a change in the text of these regulations but would not result in a change of zoning classification of any specific property, the recommendation of the planning commission shall contain a statement as to the nature and effect of such proposed amendment and determinations as to the following items:

- a. Whether such change is consistent with the intent and purpose of these regulations;
- b. The areas which are most likely to be directly affected by such change and in what way they will be affected; and
- c. Whether the proposed amendment is made necessary because of changed or changing social values, new planning concepts or other social economic conditions in the areas and zoning districts affected.

If the Planning Commission wishes to approve this text amendment, then it is recommended that the following determinations be included in the motion:

- a. That such change is consistent with the intent and purpose of these regulations;
- b. That the areas which are most likely to be directly affected by such change will include the corporate City limits; and
- c. The proposed amendment is made necessary because of past restructuring of job duties, and all zoning districts will be affected.

Included for your reference are the following documents:

1. Request for Commission Action (RCA) to the City Commission for their September 10, 2020 meeting
2. Ordinance 4330 adopted by the City Commission on June 30, 2020
3. Proposed Ordinance
4. Public Hearing Notice



**REQUEST FOR COMMISSION ACTION**  
**CITY OF INDEPENDENCE**  
**August 27, 2020**

Department Administration

Director Approval Kelly Passauer

**AGENDA ITEM** Consider initiating a public hearing before the Planning Commission to consider a text amendment removing building inspection responsibilities from the zoning code.

**SUMMARY RECOMMENDATION** City Staff recommends initiating a public hearing before the Planning Commission.

**BACKGROUND** The Building and Flood Administrator has been working with ISO Specialist Melissa Mitchell to implement the CRS program for the City of Independence. As part of that process, some of our ordinances needed to be updated. On June 30, 2020 the City Commission adopted Ordinance 4330 regarding the duties and qualifications of the building inspector. The attached proposed ordinance would remove Building Inspection Responsibilities from the Zoning Code.

Any text amendments to the Zoning Code require the Planning Commission to conduct a public hearing, after which they will forward their recommendation to the City Commission for final consideration.

**BUDGET IMPACT** There would be no budget impact.

**SUGGESTED MOTION** I move the City initiate a public hearing before the Planning Commission to consider a text amendment removing building inspection responsibilities from the zoning code.

**SUPPORTING DOCUMENTS**

1. Ordinance 4330 adopted by the City Commission on June 30, 2020.
2. Proposed Ordinance for consideration at a Planning Commission public hearing.

**ORDINANCE NO. 4330**

**An Ordinance Repealing City Code Sections 18-35 and 18-37 and Replacing Them with New Provisions Regarding The Appointment, Duties and Qualifications of a Building Inspector**

*BE IT ORDAINED* by the Governing Body of the City of Independence, Kansas:

**Section 1.** Current City Code Sections 18-35 and 18-37 are hereby repealed and replaced by the provisions of this ordinance

**Section 2. Office of the building inspector.**

a. There is hereby established the office of building inspector.

b. The city manager shall appoint a person who in his opinion is qualified through education and experience to hold the title of building inspector. The building inspector may hold another office or position concurrently.

c. The budget for the office of building inspector and the salary for the building inspector shall be established by the governing body in the same manner as for all other departments and staff salaries.

**Section 3. Duties of the building inspector.** The building inspector, or designee, shall enforce these regulations and in addition thereto and in furtherance of said authority, he shall:

a. Approve and issue all permits and certificates regarding compliance with all applicable building codes and ordinances, and make and maintain records thereof.

b. Conduct inspections of buildings and structures to determine compliance with the provisions of the applicable building codes and ordinances.

**Section 4. Building Permits.**

a. Unless a building permit shall first have been obtained from the office of the building inspector:

1. The construction, building, moving, remodeling or reconstruction of any structure shall not be commenced;

2. For any property located in the flood plain, any improvement to any structure located thereon shall not be commenced, provided however, the building permit fee shall be waived for any work that would not ordinarily require a building permit, as determined in the discretion of the building inspector.

3. The improvement of any plan preliminary to any use of such land shall not be commenced; and

4. Any building permit issued in conflict with the provisions of this ordinance shall be null and void.

b. For any property located in the flood plain, any application for a building permit for all new or substantially improved structures in the Special Flood Hazard Area shall submit an elevation certificate with the application for building permit.

c. A building permit shall either be issued or denied by the building inspector within ten (10) days after the receipt of a complete application, or within such further time period as may be agreed to by the applicant. If the building inspector denies the application for a building permit, the reasons for the denial shall be provided to the applicant in writing.

d. A building permit shall become null and void six (6) months after the date it was issued, unless within such six (6) month period construction, building, moving, remodeling or reconstruction of a structure is commenced.

## **Section 5. Occupancy Certificates.**

a. No structure or any addition thereto constructed, built, moved, remodeled or reconstructed after the effective date of this ordinance shall be occupied or used for any purpose unless an occupancy certificate shall first have been obtained from the office of the building inspector consistent with the provisions of this ordinance.

b. No occupancy certificate for a structure or addition thereto constructed, built, moved, remodeled or reconstructed after the effective date of this ordinance shall be issued until such time as all work has been completed and the premises inspected and certified by the office of the building inspector to be in full and complete compliance with the plans and specifications upon which the building permit was issued. Pending issuance of a permanent occupancy certificate, a temporary occupancy certificate may be issued to be valid for a period not to exceed six (6) months from its

date pending the completion of any addition or during partial occupancy of the premises. An occupancy certificate shall be issued or denied within ten (10) days after the receipt of an application therefore. If the occupancy certificate is denied, the building inspector shall provide the applicant the reasons for the denial in writing.

**Section 6. Appeals.** Any person or persons jointly or severally agreed by any decision of the building inspector may appeal such decision to the board of zoning appeals in accordance with the procedures set forth in City Code Sections 2-114 and 2-116.

**Section 7. Fees, Charges and Expenses.** The governing body shall establish a schedule of fees, charges, and expenses, and a collection procedure, for building permits, certificates of occupancy, appeals, and other matters pertaining to this ordinance. The schedule of fees shall be posted in the office of the building inspector and may be altered and amended only by the governing body. No permit or certificate shall be issued unless or until such costs, charges, fees, or expenses listed in this ordinance have been paid in full, nor shall any action be taken on proceedings before the governing body, unless or until such fees have been paid in full.

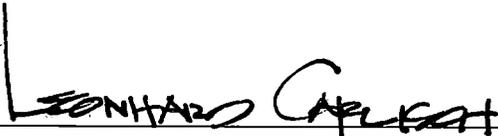
**Section 8. Violations.** If any building or structure is erected, constructed, reconstructed, altered, converted or maintained, the city, in addition to other remedies, may institute an appropriate action to prevent such unlawful erection, construction, reconstruction, alteration, conversion; to restrain, correct, or abate such violation; to prevent the occupancy of said building, structure or land; or to prevent any illegal act, conduct, or business in or about such premises. Such ordinance shall be enforced by the building inspector, or designee, who is empowered to cause any building, structure, place or premises to be inspected and examined, and to order, in writing, the remedy of any condition found to exist therein or in violation of any provision of this ordinance.

**Section 9. Penalty.** Pursuant to K.S.A. 12-710 as amended, the owner or agent of a building or premises in or upon which a violation of any provisions of this ordinance has been committed or shall exist or lessee or tenant of an entire building or entire premises in or upon which violation has been committed or shall exist, or the agent, architect, building contractor, or any other person who commits, takes part, or assists in any violation or who maintains any building or premises in or upon which such violation shall exist, shall be guilty of a misdemeanor and shall be punished by a fine not to exceed \$500.00 for any one offense. Each day of noncompliance with the terms of this ordinance shall constitute a separate offense.

Nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation. However, nothing shall deprive the citizen of his rights under the U.S. Constitution.

**Section 10.** This Ordinance shall take effect upon its publication in the official City newspaper.

*Adopted by the Governing Body of the City of Independence, Kansas, on the 30<sup>th</sup> day of  
June, 2020.*

  
LEONHARD CAFLISCH, Mayor

ATTEST:

  
DAVID W. SCHWENKER, City Clerk

**ORDINANCE NO. \_\_\_\_\_**

**An Ordinance Amending Zoning Code Sections 1701.0  
Through 1705.0 to Remove Building Inspection Responsibilities**

*BE IT ORDAINED* by the Governing Body of the City of Independence, Kansas:

**Section 1.** Zoning Code Section 1701.0 is amended to read as follows in its entirety:

**1701.0. – Office of the zoning administrator.**

a. There is hereby established the office of zoning administration.

b. The city manager shall appoint a person who in his opinion is qualified through education and experience to hold the title of zoning administrator. The zoning administrator may hold another office or position concurrently.

c. The budget for the office of zoning administration and the salary for the zoning administrator shall be established by the governing body in the same manner as for all other departments and staff salaries.

**1701.1. – Duties of the zoning administrator.** The zoning administrator, or designee, shall enforce these regulations and in addition thereto and in furtherance of said authority, he shall:

a. Approve and issue all zoning permits and certificates and make and maintain records thereof.

b. Conduct inspections of buildings, structures and uses of land to determine compliance with the provisions of the zoning regulations.

c. Receive, file, and forward to the board of zoning appeals the records in all appeals and all other applications.

d. Maintain permanent and current records of the zoning regulations, including but not limited to, all zoning maps, amendments, conditional uses, variances, appeals and applications therefor and records of hearings thereon.

e. Prepare and have available in book, pamphlet, or map form, on or before September 30 of each year:

1. The compiled text of the zoning regulations and amendments thereto, including all amendments adopted through the preceding June 30th, and

2. A zoning map or maps, showing the zoning districts, divisions and classifications in effect on the preceding June 30th.

f. Maintain for distribution to the public a supply of copies of the zoning map or maps, the compiled text of the zoning regulations, and the rules of the board of zoning appeals.

g. Provide such clerical, technical and consultative assistance as may be required by the planning commission, board of zoning appeals and other boards, commissions and officials in the exercise of their duties relating to these regulations. a. There is hereby established the office of zoning

**Section 2.** Zoning Code Section 1702.0 is amended to read as follows in its entirety:

**1702.0. – Appeals.** Any person or persons jointly or severally agreed by any decision of the zoning administrator may appeal such decision to the board of zoning appeals in accordance with the procedures set forth in City Code Sections 2-114 and 2-116.

**Section 3.** Zoning Code Section 1703.0 is amended to read as follows in its entirety:

**1703.0. – Occupancy certificates.**

No structure or addition thereto constructed, built, moved, remodeled or reconstructed after the effective date of these regulations shall be occupied or used for any purpose, and no land vacant on the effective date of these regulations shall be used for any purpose except for agricultural use and no use of any land or structure shall be changed to any other use, unless an occupancy certificate shall first have been obtained from the office of the zoning administrator certifying that the proposed use of occupancy complies with all provisions of these zoning regulations.

**1703.1. – Application for occupancy certificates.**

Every application for an occupancy certificate for a new or changed use of land or structures shall be filed with the office of the zoning administrator and be in such form and contain such information as the zoning administrator shall provide by general rule.

**1703.2. – Issuance of occupancy certificate.**

No occupancy certificate for a new use of any structure or land shall be issued until the premises have been inspected and certified by the office of the zoning administrator to be in full and complete compliance with all the applicable regulations for the zoning district in which it is located. Pending the issuance of a permanent occupancy certificate, a temporary occupancy certificate may be issued to be valid for a period not to exceed six months from its date pending the completion of any addition or during partial occupancy of the premises. An occupancy certificate shall be issued, or written notice shall be given to the applicant stating the reasons why a certificate cannot be issued, within ten days after the receipt of an application therefor, or after the office of the zoning administrator is notified in writing that the structures or premises are ready for occupancy.

**Section 4.** Zoning Code Section 1704.0 is amended to read as follows in its entirety:

**1704.0. – Fees, charges, and expenses.**

The governing body shall establish a schedule of fees, charges, and expenses, and a collection procedure for certificates of occupancy, appeals, and other matters pertaining to the ordinance. The schedule of fees shall be posted in the office of the zoning administrator and may be altered or amended only by the governing body. No permit, certificate, conditional use approval, or variance shall be issued unless or until such costs, charges, fees or expenses listed in this ordinance have been paid in full, nor shall any action be taken on proceedings before the governing body, unless or until fees have been paid in full.

**Section 5.** Zoning Code Section 1705.0 is amended to read as follows in its entirety:

**1705.0. – Violation and penalty.**

**1705.1. – Violations.**

If any building or structure is used in violation of this ordinance, the city, in addition to other remedies, may institute any appropriate action to prevent such unlawful maintenance or use; to restrain, correct, or abate such violation; to prevent the occupancy of said building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about such premises. Such ordinance shall be enforced by the zoning administrator, or designee.

**1705.2. – Penalty.**

Pursuant to K.S.A. 12-710 as amended, the owner or agent of a building or premises in or upon which a violation of any provisions of this ordinance has been committed or shall exist or lessee or tenant of an entire building or entire premises in or upon which violation has been committed or shall exist, or the agent, architect, building contractor, or any other person who commits, takes part, or assists in any violation or who maintains any building or premises in or upon which such violation shall exist, shall be guilty of a misdemeanor and shall be punished by a fine not to exceed \$500.00 for any one offense. Each day of noncompliance with the terms of this ordinance shall constitute a separate offense.

Nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation. However, nothing shall deprive the citizen of his rights under the U.S. Constitution.

**Section 6.** This Ordinance shall take effect upon its publication in the official City newspaper.

*Adopted by the Governing Body of the City of Independence, Kansas, on the 22<sup>nd</sup> day of October, 2020.*

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LEONHARD CAFLISCH, Mayor

ATTEST:

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DAVID W. SCHWENKER, City Clerk

City of Independence, Kansas

**NOTICE TO THE PUBLIC**

The Independence, Kansas, Planning Commission will conduct a public hearing on:

Tuesday, October 6, 2020 at 5:30 p.m.

To receive comments to consider text amendments to Appendix B-Zoning of the City code relating to Sections 1701 - 1705.

**Case Number:**

2020/ZA/03

The hearing will be conducted in the Civic Center, Memorial Hall, Penn/Locust, Independence, Kansas, and will begin at 5:30 p.m. However, due the social distancing participation is encouraged via conference call: [+1 785-289-4727](tel:+17852894727) Conference ID: 652 632 373#

All interested persons should participate in the meeting and they will be heard. Persons wishing to comment, but who cannot attend this hearing, should provide their written comments to:

Kelly Passauer  
Zoning Administrator  
811 W Laurel Street  
Independence, KS 67301  
(620) 332-2506

Information regarding this application is available in the Zoning Administrator's office. If special accommodation is required, please inform the Zoning Administrator.

Kelly Passauer, Zoning Administrator

- c. Public hearing to consider text amendments to Appendix B-Zoning of the City code including, but not limited to Appendix A. “Listing of Permitted and Conditional Uses” including, but not limited to “Retail trade not elsewhere listed.”

On September 10, 2020 the City Commission initiated a public hearing before the Planning Commission to consider a text amendment to Appendix B-Zoning of the City code including, but not limited to Appendix A. “Listing of Permitted and Conditional Uses” including, but not limited to “Retail trade not elsewhere listed.”

City code 1604.2 provides the following regarding text amendments:

*1604.1. Recommendations:* Upon the conclusion of the public hearing the planning commission shall prepare and adopt its recommendations and shall submit the same, together with a record of the hearing thereon, to the governing body. Said recommendation may be for approval, disapproval or approval in part and reasons for the recommendations shall be included as appropriate.

*1604.2. Amendments to text:* When a proposed amendment would result in a change in the text of these regulations but would not result in a change of zoning classification of any specific property, the recommendation of the planning commission shall contain a statement as to the nature and effect of such proposed amendment and determinations as to the following items:

- a. Whether such change is consistent with the intent and purpose of these regulations;
- b. The areas which are most likely to be directly affected by such change and in what way they will be affected; and
- c. Whether the proposed amendment is made necessary because of changed or changing social values, new planning concepts or other social economic conditions in the areas and zoning districts affected.

City staff has been approached by a new business located in an industrial district who is manufacturing honey and coffee products who would also like to conduct retail sales both related and unrelated to their operations. 607.2.n. allows “Retail sales for permitted industrial uses when located on the same site as the industrial use.” However, since some of the retail sales are not related to their industrial use it would require modifying the “Listing of Permitted and Conditional Uses” to allow “Retail trade not elsewhere listed” as a conditional use in the M-1 and M-2 industrial districts. Currently, “Retail trade not elsewhere listed” is currently allowed as follows:

Land Use Category	Code	Permitted Zoning District													
		A-1	R-1	R-2	R-3	R-4	R-5	O/P	C-1	C-2	C-3	C-4	M-1	M-2	
Retail trade not elsewhere listed	5990	C								C	P	P	P		

It should be noted that if this text amendment is ultimately approved by the Commission, it would still require the business to go through the conditional use permit process, which is similar to the rezoning process. A public hearing would need to be held before the Planning Commission, and their recommendation would be forwarded to the City Commission for final consideration. The recommendation from the Planning Commission could include additional conditions. If the City Commission approved the conditional use permit, they could also modify the conditions recommended.

If the Planning Commission wishes to approve modifying “Retail trade not elsewhere listed” to allow such use as a conditional use in the M-1 and M-2 districts, then it is recommended that the following determinations be included in the motion:

- a. That such change is consistent with the intent and purpose of these regulations;
- b. That the areas which are most likely to be directly affected by such change will include the M-1 and M-2 districts which will allow “Retail trade not elsewhere listed” with a conditional use permit which does provide an opportunity for property owners within the notification area to voice any concerns to both the Planning Commission and City Commission prior to approval;
- c. The proposed amendment is not made necessary because of changed or changing social values, new planning concepts or other social economic conditions in the areas and zoning districts affected.

Included for your reference are the following documents:

1. Request for Commission Action (RCA) to the City Commission for their September 10, 2020 meeting
2. Public Hearing Notice



**REQUEST FOR COMMISSION ACTION**  
**CITY OF INDEPENDENCE**  
**September 10, 2020**

Department Administration

Director Approval Kelly Passauer

**AGENDA ITEM** Consider initiating a public hearing before the Planning Commission to consider a text amendment to Appendix B-Zoning of the City code including, but not limited to Appendix A. "Listing of Permitted and Conditional Uses" including, but not limited to "Retail trade not elsewhere listed."

**SUMMARY RECOMMENDATION** City Staff recommends initiating a public hearing before the Planning Commission.

**BACKGROUND** The City has been approached by a new business that is located in an industrial zone that would like to sell their products they manufacture, plus additional unrelated products. Retail sales of related products is allowed in an industrial zone, however, the sale of unrelated products is not. City staff recommends that the permitted and conditional use table be modified to allow "Retail trade not elsewhere listed" in an industrial zone with a conditional use permit. This will allow this business to apply for a conditional use permit for this purpose.

**BUDGET IMPACT** There would be no budget impact.

**SUGGESTED MOTION** I move the City initiate a public hearing before the Planning Commission to consider a text amendment to Appendix B-Zoning of the City code including, but not limited to Appendix A. "Listing of Permitted and Conditional Uses" including, but not limited to "Retail trade not elsewhere listed."

**SUPPORTING DOCUMENTS** Public Hearing Notice

City of Independence, Kansas

**NOTICE TO THE PUBLIC**

The Independence, Kansas, Planning Commission will conduct a public hearing on:

Tuesday, October 6, 2020, at 5:30 p.m.

To receive comments to consider text amendments to Appendix B-Zoning of the City code including, but not limited to Appendix A. "Listing of Permitted and Conditional Uses" including, but not limited to "Retail trade not elsewhere listed."

**Case Number:**

2020/ZA/04

The hearing will be conducted in the Civic Center, Memorial Hall, Penn/Locust, Independence, Kansas, and will begin at 5:30 p.m. However, due the social distancing participation is encouraged via conference call: [+1 785-289-4727](tel:+17852894727) Conference ID: 652 632 373#

All interested persons should participate in the meeting and they will be heard. Persons wishing to comment, but who cannot attend this hearing, should provide their written comments to:

Kelly Passauer  
Zoning Administrator  
811 W Laurel Street  
Independence, KS 67301  
(620) 332-2506

Information regarding this application is available in the Zoning Administrator's office. If special accommodation is required, please inform the Zoning Administrator.

Kelly Passauer, Zoning Administrator

City of Independence, Kansas

**NOTICE TO THE PUBLIC**

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To receive comments to consider text amendments to Appendix B-Zoning of the City code including, but not limited to Appendix A. "Listing of Permitted and Conditional Uses" including, but not limited to "Retail trade not elsewhere listed."

**Case Number:**

2020/ZA/04

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All interested persons should participate in the meeting and they will be heard. Persons wishing to comment, but who cannot attend this hearing, should provide their written comments to:

Kelly Passauer  
Zoning Administrator  
811 W Laurel Street  
Independence, KS 67301  
(620) 332-2506

Information regarding this application is available in the Zoning Administrator's office. If special accommodation is required, please inform the Zoning Administrator.

Kelly Passauer, Zoning Administrator

- d. Public hearing to consider a conditional use permit for a church in a C-4, highway commercial services district at 3176 W. Main Street.

**Summary**

On March 3, 2020 the Planning Commission determined that a conditional use permit would be required for a church with potential seating for up to 250 at 3176 W. Main in a C-4 district per Section 901.1 of the City Code. The Planning Commission has received a request for a conditional use permit from Brian Norvell, the Pastor at the Hub of Indy Church which is being relocated to 3176 W. Main Street. The land is zoned as C-4, highway commercial district, and will remain as such. Pending the approval of this conditional use, the proposed use for this land is to remodel an existing building to accommodate a church.



**Conditional Use Permit**

The zoning ordinance in section 901.1 describes the purpose of a conditional use as: “...those types of uses which are considered by the City to be essentially desirable, necessary or convenient to the community but which by their nature or in their operation have:

- 1) a tendency to generate excessive traffic,
- 2) a potential for attracting a large number of persons to the area of the use thus creating noise or other pollutants,
- 3) a detrimental effect on the value of potential development of other properties in the neighborhood, or
- 4) an extraordinary potential for accidents or danger to the public health or safety.

Such conditional uses cannot be allowed to locate as a ‘right’ on any parcel of land within certain districts without consideration of existing conditions at the proposed locations and of properties neighboring the specific site

*considered, nor without adequate and sufficient safeguards, when necessary, to lessen the impact of adverse effects.”*

***Staff Report***

The Planning Commission has the authority to place additional conditions on the site that they deem necessary to protect the best interests of the City, the surrounding property and to achieve the objectives of the ordinance. In considering those types of uses which may be desirable, necessary or convenient to the community, the Planning Commission should review and make recommendations based in part on 901.1

Additionally. The decision of the Planning Commission to recommend approval or denial of the proposed conditional use shall be based on the following criteria (902.2):

- a. The proposed conditional use complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations and use limitation.*
- b. The proposed conditional use at the specified location will contribute to and promote the welfare and convenience of the public.*
- c. The proposed conditional use will not cause substantial injury to the value of other property in the neighborhood in which it is to be located.*
- d. The location and size of the conditional use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the sire with respect to streets giving access to it are such that the conditional use will not dominate the immediate use of the neighboring property in accordance with the applicable zoning regulations. In determining whether the conditional se will so dominate the immediate neighborhood, consideration shall be given to:
  - i. The location, nature and height of buildings, structures, walls and fences on the site, and*
  - ii. The nature and context of landscaping and screening on the site.**
- e. Off-street parking and loading areas will be provided in accordance with the standards set forth in these regulations (article VII).*
- f. Adequate utility, drainage, and other such necessary facilities have been or will be provided.*
- g. Adequate access roads or entrance and exit drives will be provided and shall be so designed to prevent hazards and to minimize traffic congestion in public streets and alleys.*

***Action by the Planning Commission***

Recommendations regarding the conditional use permit for the given subject properties shall be based on Section 902.2, previously outlined in this report. After consideration of all factors, the Planning Commission may either approve or deny the conditional use permit. Following your action, the application and your recommendation will be forwarded to the City Commission at which time they will have 30 days to adopt, modify or deny the Planning Commission’s recommendation.

***Staff Recommendation***

City staff recommend granting the conditional use permit with the following conditions:

1. The applicant will submit a site plan meeting the off-street parking and loading regulations in Article VII of the Zoning Code, including, but not limited to:
  - a. A minimum of one parking space per 4 seats or 8' of bench length in the main auditorium, and
  - b. Service drives to off-street parking areas shall be designed and constructed to facilitate the flow of traffic, provide maximum safety of traffic access and egress, and maximum safety for pedestrians and vehicular traffic on the site.
2. If the parking lot surfacing is expanded beyond its current size, the applicant will submit a drainage plan sealed by a licensed Kansas Engineer.
3. The conditional use permit is not transferable to another location.
4. The applicant must follow all City codes.

If any of the above conditions are not met, the conditional use permit will no longer be valid. The basis of the staff's recommendation is that granting the conditional use permit is consistent within the criteria of "a through g" of Section 902.2 of the zoning code.

Included for your reference are the following documents:

1. Public Hearing Notice
2. Notification areas
3. March 3, 2020 Planning Commission Minutes
4. Application

City of Independence, Kansas

**NOTICE TO THE PUBLIC**

The Independence, Kansas, Planning Commission will conduct a public hearing on:

Tuesday, October 6, 2020 at 5:30 p.m.

To receive comments on a request for a conditional use permit for a church in a C-4, highway commercial services district at 3176 W. Main Street.

**Legal Description:**

A tract of land located in a portion of the SW/4 SW/4 SW/4, Section 26, Township 32 South, Range 15 East of the 6<sup>th</sup> P.M., Montgomery County, Kansas, being more particularly described as follows: Commencing at the SW/C of Section 26; thence N00°02'20"E along the West line of the SW/4 of Section 26 a distance of 40.98 feet to the North right-of-way line of U.S. Highway 160 & 75; thence following said right-of-way S89°08'32"E a distance of 130.02 feet to the Point of Beginning; thence continuing S89°08'32"E a distance of 99.01 feet; thence N00°18'39"E a distance of 30.23 feet; thence S89°13'20"E a distance of 74.79 feet along said North right-of-way lines; thence N00°04'54"W a distance of 590.16 feet to the North line of the SW/4 SW/4 SW/4 of Section 26; thence N89°08'27"W along the North line of said SW/4 SW/4 SW/4 a distance of 305.43 feet to the West line of said Section 26; thence S00°12'41"E along said West line a distance of 310.53 feet; thence S89°10'00"E a distance of 130.00 feet; thence S00°12'41"E a distance of 310.06 feet to the Point of Beginning, Containing 0.925 acres.

**Common Addresses:**

3176 W. Main Street

**Applicant/Owners:**

HMS Enterprises Inc, Owner

Brian Norvell, The Hub of Indy Church, Applicant

**Case Number:**

2020/CUP/05

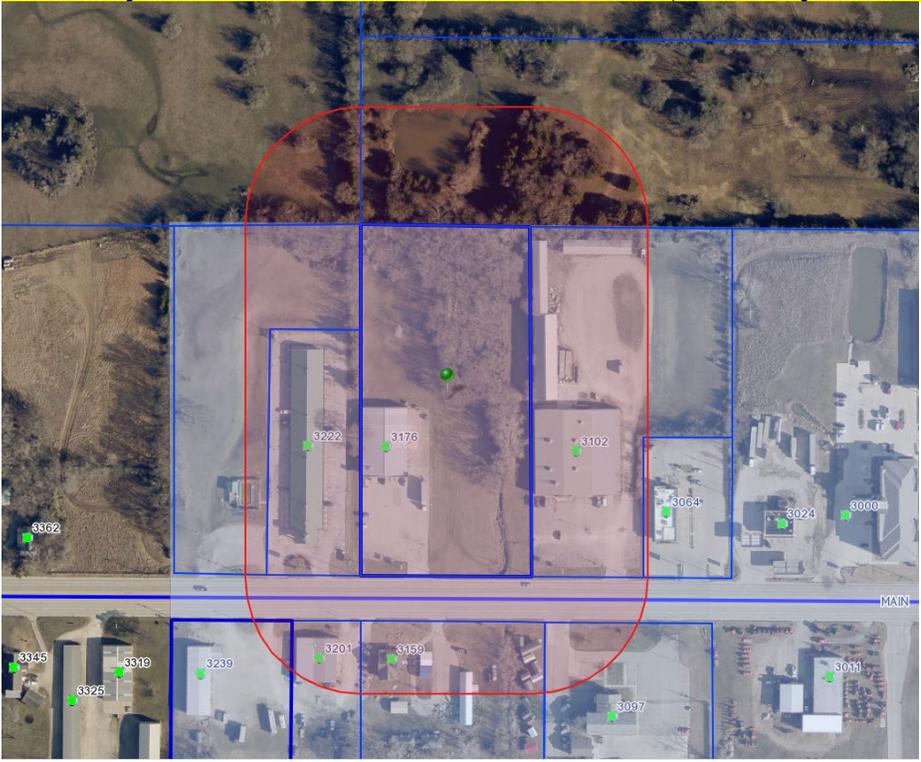
The hearing will be conducted in the Civic Center, Memorial Hall, Penn/Locust, Independence, Kansas, and will begin at 5:30 p.m. To encourage social distancing, participation is encouraged via conference call: [+1 785-289-4727](tel:+17852894727) Conference ID: 652 632 373# All interested persons should participate in the meeting and they will be heard. Persons wishing to comment, but who cannot attend this hearing, should provide their written comments to:

Kelly Passauer  
Zoning Administrator  
811 W. Laurel Street  
Independence, KS 67301  
(620) 332-2506

Information regarding this application is available in the Zoning Administrator's office. If special accommodation is required, please inform the Zoning Administrator.

*Kelly Passauer, Zoning Administrator*

Inside City -- 200' Notification Area Shown in Red (Inside City Limits Shaded in Blue)



Outside City -- 1,000' Notification Area Shown in Red (Inside City Limits Shaded in Blue)



- c. Annual review of the Comprehensive Plan.

The following staff report was provided:

By State statute the Planning Commission is required to review the Comprehensive Plan annually. In previous years the Planning Commission has recommended to the City Commission that the Comprehensive Plan be updated. Due to budget constraints funding has not been allocated for this purpose. The estimated cost to update the plan would be approximately \$100,000.

***Mary Jo Meier moved to direct staff to prepare a draft request in writing to be reviewed at their next meeting to ask the Commission to set aside \$50,000 for 2021, and \$50,000 for 2022, or consider funding a portion from the revised 2020 budget to update the Comprehensive Plan. The motion was carried 6-0. Member Kendall Neill was not yet in attendance during this vote.***

- d. Consider whether to initiate a conditional use permit for a church at 3176 W. Main.

The following information was reviewed by City staff:

The potential applicant advised that seating would potentially be up to 250. The applicant would be required to follow the off-street parking regulations which require one space per 4 seats or 8' of bench length in the main auditorium.

Does the Planning and Zoning Commission find the request to have a church at this location for an occupancy of up to 250 individuals have characteristics listed in clauses (1), (2), (3) and (4) of section 901.1 of this article?

1. a tendency to generate excessive traffic,
2. a potential for attracting a large number of persons to the area of the use, thus creating noise or other pollutants,
3. a detrimental effect upon the value of or potential development of other properties in the neighborhood, or
4. an extraordinary potential for accidents or danger to the public health or safety.

If so, the applicant would be required to obtain a conditional use permit.

***Lisa Richard moved to let the owner know that the Planning Commission will require a conditional use permit, seconded by Mary Jo Meier. The motion carried 6-0. Member Kendall Neill was not yet in attendance during this vote.***

**Board of Zoning Appeals (Does not include outside City appointments)**

- e. Consider status update for 2016/VAR/09 relating to a variance from the hard surface requirement in an O & P zoned district at 900 W. Myrtle.

APPLICATION FOR CONDITIONAL USE PERMIT  
PLANNING AND ZONING COMMISSION

DATE FILED \_\_\_\_\_  
\$200 FEE PAID \_\_\_\_\_

NAME AND ADDRESS OF PERSON MAKING APPLICATION:

*The Hub of Indy Church 3176 W Main*  
*Brian Maxwell 1307 Birdie Dr.*

LEGAL DESCRIPTION OF LAND INVOLVED:

*See Attached Paper*

COMMON ADDRESS OF SAID LAND:

*3176 W Main*

PRESENT ZONING CLASSIFICATION: *Commercial + Industrial*

STATEMENT OF INTENDED USE OF PROPERTY:

*Church Services*

DESCRIPTION OF ARCHITECTURE & EXTERIOR MATERIAL TO BE USED:

*Existing steel building*

On the reverse side, please provide the following information: (1) Site Plan, drawn at appropriate scale, showing existing and proposed building location, parking areas, interior drives, and location and type of outdoor lighting; (2) Existing and proposed topography, drawn at appropriate contour intervals as specified by the Zoning Administrator; (3) Location of, and proposed connections to, existing water supply and sanitary sewage system; (4) North point, scale and date; (5) Names of landowner, developer and firm preparing the plan.

*8-18-2020*

Date

*Brian Maxwell*

Signature of Applicant

I hereby certify that I have personally verified the dimensions as shown on the attached drawing and find them to be a correct representation of the conditions.

\_\_\_\_\_ Date

\_\_\_\_\_ Signature of Building Inspector

Action of Planning and Zoning Commission:

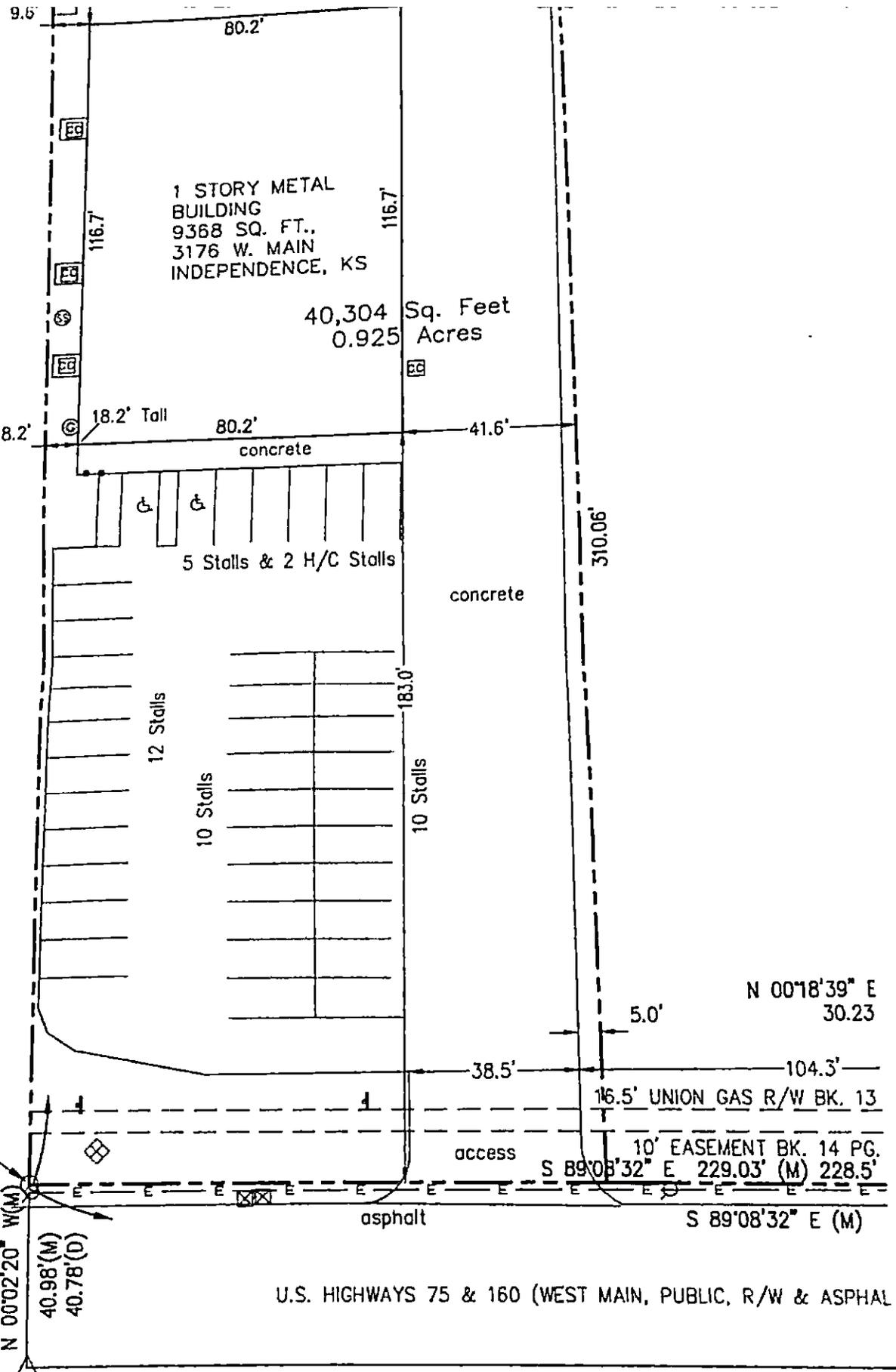
(Approved, Denied --- Date)

Comments:

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Vice Chairman

\_\_\_\_\_  
Secretary



POINT OF BEGINNING  
EXISTING IRON ROD  
WITH CAP LS 1071

U.S. HIGHWAYS 75 & 160 (WEST MAIN, PUBLIC, R/W & ASPHAL)

SW. CORNER SW/4 SW/4 SW/4  
SEC. 26, T32S, R15E  
EXISTING IRON ROD WITH  
ALUMINUM KDOT CAP  
PER PREVIOUS REFERENCES  
POINT OF BEGINNING

Exhibit "A"

A tract of land located in a portion of the SW/4 SW/4 SW/4, Section 26, Township 32 South, Range 15 East of the 6<sup>th</sup> P.M., Montgomery County, Kansas, being more particularly described as follows: Commencing at the SW/C of Section 26; thence N00°02'20"E along the West line of the SW/4 of Section 26 a distance of 40.98 feet to the North right-of-way line of U.S. Highway 160 & 75; thence following said right-of-way S89°08'32"E a distance of 130.02 feet to the Point of Beginning; thence continuing S89°08'32"E a distance of 99.01 feet; thence N00°18'39"E a distance of 30.23 feet; thence S89°13'20"E a distance of 74.79 feet along said North right-of-way lines; thence N00°04'54"W a distance of 590.16 feet to the North line of the SW/4 SW/4 SW/4 of Section 26; thence N89°08'27"W along the North line of said SW/4 SW/4 SW/4 a distance of 305.43 feet to the West line of said Section 26; thence S00°12'41"E along said West line a distance of 310.53 feet; thence S89°10'00"E a distance of 130.00 feet; thence S00°12'41"E a distance of 310.06 feet to the Point of Beginning, Containing 0.925 acres.

# HIGHWAY PERMIT FOR HIGHWAY ACCESS

Permittee:	
Norvell	Brian
Last Name	First Name
1307 Birdie DR.	
Address	
Independence	KS 67301
City	State Zip Code
620-926-0708	
Phone No.	Ext. Fax No.
Email Address: pastorbriannorvell@gmail.com	
Notify By: <input checked="" type="checkbox"/> Mail <input type="checkbox"/> Email <input type="checkbox"/> Fax	
Contact:	
Norvell	Brian
Last Name	First Name MI
1307 Birdie DR.	
Address	
Independence	KS 67301
City	State Zip Code
620-926-0708	
Phone No.	Ext. Fax No.
Email Address:	
Business:	
PLMR I LLC	
Name	
3176 W. Main St.	
Address	
Independence	KS 67301
City	State Zip Code
918-671-9246	
Phone No.	Ext.
Church	
Use: Fast Food, Restaurant, Service Station, Office, Shopping Center, etc.	

Permit No: 04-20-000012A  
 D-A-S: 04 - 03 - 02  
 Project Number: \_\_\_\_\_

**Description of Work:**

This is for a change of use only.

KDOT Acceptance of Restored ROW Days to Complete: 365  
 KDOT & City Acceptance of Restored ROW Construction Expiration Date: 05/14/2021  
 Check if no liability insurance required  Dist. Plan

KDOT Authorized Representative: Marcus Leck [KDOT] (620) 577-7313

Access Type: Type 2: Special-use: Treatment plant, microwave station, utilities maint stations and like roads.

Shared Use Access  
 Variance Report Needed  
 Access Route Class: B  
 Frontage Rd Access  Yes  No

Location Information:									
MONTGOMERY-083	U0007500	21.8	37.225716000	95.746671000	26	32S	15E	INDEPENDENCE	
County	Route	Ref Point	Lat	Long	Section	TWP	Range	City	
<input type="checkbox"/> City Connecting Link			1.010 Miles		east		US160W/ct		
Public Road Intersection		<input type="radio"/> Yes <input checked="" type="radio"/> No		Side of Highway		Left of Centerline		Access Expiration Date	
Divided Highway		<input checked="" type="radio"/> Yes <input type="radio"/> No							

Area Approval: Signed by Darin E Petrowsky at 5/4/2020 1:12:30 PM on PC DTD10012

Reviewed by AMU: Signed by David D Soitz at 5/11/2020 5:33:30 PM on PC DT12W07BMS

District Approval: Signed by Michael D Bright at 5/14/2020 9:25:58 AM on PC DTD00023

11.4 It is further agreed that written notice will not be required for the Secretary's (or City's) normal maintenance including, but not limited to, cleaning ditches, repair/replace surfacing and drainage structures and sign installation or replacement. The Permittee agrees to hold the Secretary (or City) harmless for any temporary loss of use or inconvenience arising out of maintenance activities.

12.0 **SNOW REMOVAL ON FACILITY:** The Permittee is obligated to perform any and all snow and ice removal maintenance to the Facility. Permittee further understands and agrees the Secretary (or City) does not assume any responsibility for the removal or clearance of snow and/or ice, the opening of windows by authorized representatives engaged in normal winter maintenance operations. Permittee agrees to save and indemnify the Secretary (or City) against any and all claims related to maintenance of the Facility.

13.0 **ABANDONED OR RETIRED IN PLACE:** The Permittee agrees to notify the Secretary (or City) when the Facility has been abandoned, in whole or in part, or retired in place and to be responsible for all costs associated with removal and/or closure of said Facility. In the event Permittee receives notice from the Secretary (or City) to remove the abandoned and/or retired Facility, Permittee agrees to perform said work within 180 days of notice. Should Permittee fail to properly perform said work, the Secretary (or City) reserves the right to remove and/or close the Facility at Permittee's expense.

13.1 The Secretary (or City) reserves the right to require Permittee to place certain gates or other infrastructure, as set forth in the *KDOT Access Management Policy*, across the Facility the Secretary (or City) deems inactive. In no event shall the Permittee block or otherwise impede the Facility pursuant to this Permit without the express written authorization of the Secretary (or City).

It is understood and agreed by the Parties that this Permit only creates a license for Permittee to have the right and privilege to use the right-of-way for the specific purpose stated herein and subject to the terms of this Permit. It is further understood and agreed by the Parties that this Permit does not create, grant, convey, transfer, or vest, any property right or interest in the Secretary's real property to the Permittee; thus, the Secretary may terminate, modify, or revoke this Permit without notice and without duty, obligation, penalty, damages, or compensation owed to the Permittee by the Secretary unless otherwise stated herein.

This Permit is hereby accepted and its provisions agreed to by the parties hereto:

KDOT's Access Management Unit has reviewed the Permit and provided comments to the District Engineer regarding the conditions of the Permit.

N/A  Reviewed (Access Types 5 and 6, and all variances)

<b>PERMITTEE</b> The person signing as the Permittee must be the Owner or legal representative of the property (Agent of the Owner) served by the permitted access and have full authority to accept the Permit and its terms and conditions.	<b>APPROVED</b> The permit must be signed by the duly authorized representative of the Secretary of Transportation, the city (when applicable) and the Permittee. The permit is not valid until signed by all parties and returned to KDOT for Permit Approval Date.
Owner/Agent of the Owner Brian Norvell	The City of (when applicable) <b>INDEPENDENCE</b>
Street Address 1307 Birdie DR.	City Representative
City, State, Zip Independence KS 67301	<input type="checkbox"/> Mayor <input type="checkbox"/> City Manager <input type="checkbox"/> City Engineer
Permittee By: <u>Brian Norvell</u> <input type="checkbox"/> Owner <input checked="" type="checkbox"/> Agent of the Owner	Recommended by (KDOT) Signed by <u>Darrin E Petrowsky at 5/4/2020 1:12:30 PM on PC DTD10012</u> Area/Metro Engineer <input type="checkbox"/> AM Engineer
	Secretary of Transportation of the State of Kansas <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Denied By: <u>Signed by Michael D Bright at 5/14/2020 9:25:58 AM on PC DTD00023</u> District Engineer or Designee
	For KDOT Use Only Permit Approval Date : _____ By: _____ KDOT Representative (Please Print)



- e. Other items for discussion:
  - 1. Letters sent to past members
  - 2. Other discussion



City Manager's Office  
811 w. Laurel Street  
Independence, KS 67301

August 18, 2020

Jim Hardy  
1229 N Park Blvd  
Independence, KS 67301

Dear Jim:

This letter is to thank you for your many years of faithful service to the citizens of Independence as a member of the Planning Commission. Your exceptional attendance over the last several years was vital to moving forward numerous projects. You have spent countless hours reviewing materials and participating in meetings, and we want you to know that your contributions do not go unrecognized.

Thank you again for your leadership and efforts to make Independence a better place to live, work, and visit.

Sincerely,

---

Andy McLendon, Chair  
Planning Commission

Leonhard Caflisch, Mayor  
City Commission



City Manager's Office  
811 w. Laurel Street  
Independence, KS 67301

August 18, 2020

Philipp Umlauf  
500 N. 2nd Street  
Independence, KS 67301

Dear Phillip:

This letter is to thank you for your many years of faithful service to the citizens of Independence as a member and officer of the Planning Commission. Your leadership and willingness to voice a differing opinion provided another perspective that led to constructive dialog that may not have otherwise occurred. You have spent countless hours reviewing materials and participating in meetings, and we want you to know that your contributions do not go unrecognized.

Thank you again for your leadership, including serving as Chair, and your efforts to make Independence a better place to live, work, and visit.

Sincerely,

  
\_\_\_\_\_  
Andy McLenon, Chair  
Planning Commission

  
\_\_\_\_\_  
Leonhard Caflisch, Mayor  
City Commission



City Manager's Office  
811 w. Laurel Street  
Independence, KS 67301

August 18, 2020

Steve McBride  
724 S. Park Blvd  
Independence, KS 67301

Dear Steve:

This letter is to thank you for your many years of faithful service to the citizens of Independence as a member and officer of the Planning Commission. Your leadership and witty perspective injected a unique sense of levity into whatever business was being considered. You have spent countless hours reviewing materials and participating in meetings, and we want you to know that your contributions do not go unrecognized.

Thank you again for your leadership and efforts to make Independence a better place to live, work, and visit.

Sincerely,

Andy McLendon, Chair  
Planning Commission

Leonhard Caflisch, Mayor  
City Commission



City Manager's Office  
811 w. Laurel Street  
Independence, KS 67301

August 18, 2020

Brian Beecham  
720 W. Hickory Street  
Independence, KS 67301

Dear Brian:

This letter is to thank you for your many years of faithful service to the citizens of Independence as a member of the Planning Commission. Your willingness to investigate and propose modifications to the zoning code are appreciated. You have spent countless hours reviewing materials and participating in meetings, and we want you to know that your contributions do not go unrecognized.

Thank you again for your leadership and efforts to make Independence a better place to live, work, and visit.

Sincerely,

---

Andy McLennon, Chair  
Planning Commission

---

Leonhard Caflisch, Mayor  
City Commission



City Manager's Office  
811 W. Laurel Street  
Independence, KS 67301

August 18, 2020

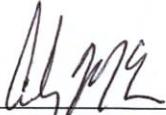
Nick McCollam  
335 Woodrow Road  
Independence, KS 67301

Dear Nick:

This letter is to thank you for your many years of faithful service to the citizens of Independence as a member and officer of the Planning Commission. Your prospective as a local business leader helped guide decisions for the betterment of Independence. You have spent countless hours reviewing materials and participating in meetings, and we want you to know that your contributions do not go unrecognized.

Thank you again for your leadership, including serving as Chair, and your efforts to make Independence a better place to live, work, and visit.

Sincerely,

  
\_\_\_\_\_  
Andy McLenon, Chair  
Planning Commission

  
\_\_\_\_\_  
Leonhard Caflisch, Mayor  
City Commission

**Board of Zoning Appeals (Does not include outside City appointments)**

f. None.