

SMITHVILLE PLANNING COMMISSION

REGULAR SESSION

November 8, 2022

7:00 P.M.

City Hall Council Chambers and Via Videoconference

**1. CALL TO ORDER**

Chairman Melissa Wilson called the meeting to order at 7:00 p.m.

A quorum of the Commission was present: Melissa Wilson, Alderman John Chevalier, Billy Muessig, Dennis Kathcart, Deb Dotson, Mayor Damien Boley & Rob Scarborough.

Staff present: Jack Hendrix and Brandi Schuerger.

**2. MINUTES**

The October 11, 2022, Regular Session Meeting Minutes were moved for approval by MUESSIG, Seconded by KATHCART.

Ayes 6, Noes 0, Abstain 1 (Mayor Boley). Motion carried.

**3. STAFF REPORT**

HENDRIX reported:

We are at 57 single family residential building permits since January 1, 2022.

The Eagle Ridge subdivision by the high School has sold 2 units and 4 more have contracts.

There has been no change with commercial construction. They are all still trying to finish up construction on the permits that we issued from last year.

Our December Planning and Zoning meeting will consist of: The Herzog Lodge will be back and are requesting to change the zoning with a different

type of conceptual layout. A new residential subdivision on the north side of Second Creek Road will be coming forward as well.

McBee's Coffee N Carwash and Richardson Street Plaza are both under construction.

#### **4. PUBLIC HEARING:**

- **REVISIONS TO FENCE REGULATIONS**

##### **Public Hearing Opened**

HENDRIX stated that a request was made by a couple of Alderman to put the fence regulations up for discussion related to primarily the definition of decorative fences and whether or not vinyl coated chain link fences should meet that definition. While preparing for this meeting I did a statutory interpretation review of this ordinance which was written in 2003 or 2004. Several other issues were found so if we are going to have this discussion lets fix all of it now. A draft was provided in the packet for the meeting with yellow highlights indicating items that need to be discussed for potential changes. Also, at the Board of Alderman meeting last week someone came in and spoke about electric fences and this is also an item we will discuss.

**Patricia Ward—400 Maple Ave—**Spoke about the existing fence on her property and provided pictures she had taken of her fence to the commission for them to look at. She has lived in the home her son purchased for her since 2013. She had a black vinyl coated chain link fence installed. She chose this over a grey chain link fence because she didn't like the look of the grey fencing. The black vinyl chain link fence matches the roof and shutters on her house. She didn't need or want a fancy or more decorative fence and thinks it would have looked out of place in her neighborhood. 9 years later we have been notified that a permit was never pulled for the fence installation. I have never had a fence installed and didn't think about asking for a permit. Why must I be penalized 9 years later for this. Many neighbors have told her how nice the fence looks. Did installing this fence deter from the value of the property? I think not. I live on social security and can't afford to tear down this fence and install another

one. Can't I pay the permit fee and any penalty and be allowed to keep my fence? I would also like to ask for a review and a change to the fence code.

**Adam Ward—9901 N Revere Ave Kansas City, MO 64154**—Stated that he is disappointed that there is no statute of limitation or grandfathering in. He feels that the fence looks great and there are other properties in Smithville that look terrible. They have done nothing but put money into this house and improve it and it doesn't seem fair to wait almost 9 years to audit our location and send a letter in the mail stating we must comply within 30 days. He requested that the commission change the rules and he also ask for an audit of some of the other properties around Smithville.

**Public Hearing closed**

## **5. REVISION OF FENCING REGULATIONS**

### **DISCUSSION:**

HENDRIX gave a historical explanation of how the fence ordinance in existence today came to be. The packet provided to the commission included the 1966 ordinance, the 1997 electric fence ordinance, and the 2004 ordinance. When he did his statutory interpretation of this code to prepare for this meeting he found several issues that would need to be addressed. As initially indicated, now would be the time to address these issues with a new ordinance regulating fences. The issues to be addressed are as follows:

1. Define the phrase "Decorative Fences" to include or exclude those provisions deemed appropriate.
2. Determine if front yard fences on all lots is allowable if they meet the new "Decorative Fences" definition.
3. Describe the circumstances when lots with multiple "front yards" may vary the decorative fences provisions.
4. Should the electric fence provision be incorporated into the overall fence regulation scheme?
5. If it is incorporated, should the electric fence provisions be amended?

6. Should the ban on barbed wire fences in all districts except agricultural be adjusted to include industrial and/or commercial?

WILSON suggested the commission discuss Item # 1: Define the phrase "Decorative Fences" to include or exclude those provisions deemed appropriate.

ALDERMAN CHEVALIER stated that from the pictures Mrs. Ward passed around he doesn't feel that the vinyl coated chain link fence looks bad.

KATHCART agreed.

ALDERMAN CHEVALIER stated that he would like to see that this type of fence is allowed but only as long as we have provisions that require they maintain it.

KATHCART stated only specifically vinyl coated chain link. You can't have vinyl coated wire mesh.

WILSON agreed. She thought the fence in the pictures looked very nice.

HENDRIX asked if we will only allow black vinyl coating or are other colors ok?

ALDERMAN CHEVALIER asked if people could paint a picket fence other colors?

HENDRIX stated yes. We don't regulate that.

ALDERMAN CHEVALIER stated that there is no difference then.

KATHCART stated that we need to state commercially coated and not painted.

SCARBOROUGH stated that he doesn't want to bog us down with specifying certain colors.

ALDERMAN CHEVALIER stated that we should just say "well maintained professionally vinyl coated chain link fence".

HENDRIX stated that we have a property maintenance code that requires that fences be maintained and it would be addressed that way. We are now seeing 2" or 3" square cattle panels being used for guards on decks and are now also being used in fences and are completely encased in wood. In these scenarios they are not vinyl coated. Wire mesh would be chicken or rabbit fencing. There is also safety fencing which is green and orange in color.

DOTSON stated that all of the materials he just mention would not be considered decorative.

HENDRIX stated that is the question. Is it decorative or is it not? Generally, depending on the person putting it up everything would be considered decorative. It's another one of this vague terms. What I need to know is if you have problems with all wire or wire mesh.

MAYOR BOLEY and SCARBOROUGH stated that it looks good on decks.

KATHCART stated that it should not be allowed on fencing.

HENDRIX stated that he just wants to be sure that we are excluding what we want to be excluded. These wire cattle panels are starting to become more popular and if we are going to allow or exclude them now is the time to do that. If adding vinyl coated chain link as an approved material is the only change he can do that very easily.

DOTSON stated that in her opinion it should be the only change.

WILSON stated that she believes we have given the answer to Item # 1. Let's move on to Item # 2: Determine if front yard fences on all lots is allowable if they meet the new "Decorative Fences" definition.

HENDRIX stated that with our current code if you live in the middle of a block you are not allowed to have a fence in the front yard. It was never intended to do that because they were issuing permits for fences in front yards when I got here. They even allowed them to be chain link. Non decorative. The decorative only applied to corner lots. Everything they tried to do they screwed up in that ordinance and in enforcement afterward. Adding the vinyl coated stuff will allow us to clean it up. The definition of a front yard fence in the draft ordinance I have provided you is: A decorative or ornamental fence located in a front yard that contains or abuts an

adjacent lot that contains, the primary entrance to the building or a driveway access to the lot, or both.

DOTSON believes it would be fine as long as it meets the decorative standards.

The rest of the commission agreed.

HENDRIX stated that the commission has also provided what he needs for Item # 3: Describe the circumstances when lots with multiple "front yards" may vary the decorative fences provisions. By the direction he was given for Items # 1, # 2. Item # 3 has been answered as well.

WILSON moved on to discuss Item # 4: Should the electric fence provision be incorporated into the overall fence regulation scheme?

HENDRIX stated that this one was a head-scratcher to him. It never went to the Planning Commission in 1997 and went straight from the Board of Alderman. I didn't see anything in the minutes of the meetings before it and I don't know where it came from. There's no record of how it was brought forward but it went directly to the Board of Aldermen and interestingly enough they use all kinds of references to the zoning code in it but it's not a zoning ordinance because it's a different type of construction ordinance. With that being said it would make sense bring it into the zoning ordinance if we want to go there. The reason it is on the agenda is because at a recent Board of Alderman meeting a local business owner who has a business in the Industrial district spoke and would like to install an electric fence. He recently had a break in and they stole a bunch of parts off of cars in his lot. He said that electric fences in other communities are allowed and asked why he can't do it. Both times he has asked over the last 8 years we informed him because electric fences aren't allowed unless you have a farm and even then it's got to be 75 ft away from your property.

ALDERMAN CHEVALIER asked if with this electric fence he is looking to install is it 75 ft away from his property or what does that mean exactly?

HENDRIX stated that he is not a hundred percent certain and the secondary aspect of it is I can't answer that question because the business owner doesn't even know. He just said that he wanted to install one. He said that he could install it inside the existing chain link fence or wherever. I told him he could do it if it was allowed.

DOTSON stated that she could understand why someone would want to install it but on the other hand we don't want someone getting hurt.

HENDRIX stated that it's security versus safety. He understands the debate. How do other communities handle it? It's literally all over the board.

ALDERMAN CHEVALIER stated that we also run into this issue in an agricultural area too, right? If the ag space is next to a neighborhood you can still have people and kids wandering off to touch an electric fence.

DOTSON stated that her neighborhood borders some ag property with mules and horses. It has an electric fence. It's not going to hurt anybody it's just going to give somebody a good strong tingle but it won't kill them or give them a heart attack.

MUESSIG asked if he is wanting something like an electric prison fence?

HENDRIX stated that all he has requested is to be allowed to have an electrified fence.

ALDERMAN CHEVALIER stated that from what I gather he's going to continue to have the regular fence but he wants to also have an inside perimeter electric fence.

MAYOR BOLEY stated that if you can cut through one fence can't you cut through another. Wouldn't insulated cutters cut through an electric fence?

HENDRIX stated that there is a secondary aspect of it that I want to highlight. If we're drafting an ordinance for one piece of property were falling down a trap that will come back and bite us. We need to look at it from a broader perspective.

MAYOR BOLEY stated that if you have the equipment to cut off converters in minutes to get in and out you probably have the equipment to get through an electric fence. So what is this solving?

ALDERMAN CHEVALIER asked if this ordinance is somehow prohibiting others from wanting to bring a business to the industrial area of Smithville.

MUESSIG stated that he doesn't think we should have any fences in Smithville that will do damage to a person if they touch it.

ALDERMAN CHEVALIER stated that we don't have to allow a fence that is that severe right? What is the plan? Can we not have it the same as an ag fence or similar in scope?

DOTSON stated that an ag fence won't slow anyone down.

ALDERMAN CHEVALIER stated that to be honest he doesn't really know what this business owner wants.

MUESSIG stated that he doesn't either. An ag fence is a pulsating 15,000 volt fence and is .0003 of an amp. So, no it's not going to kill you but you will feel it. You can hold on to it and it does hurt but you can move on about life. But if we are talking about a prison fence, that's about 12,000 volts and about 100 amps. You will not walk away from that.

HENDRIX stated the other aspect of it is a security fence has multiple meanings and in addition to the electric provisions there's barbed wire and razor wire scenarios that could be added. The draft that I've provided incorporates the potential of using barbed and razor wire in an industrial district and barbed wire only in commercial districts. With Industrial we generally won't have any single family housing or apartments immediately adjacent to it. We will with commercial but commercial has security concerns as well. So, if they have one can they put a barbed wire security fence around the top as long as it leans in?

MAYOR BOLEY stated like the 3 lines of barbed wire along the top.

MUESSIG asked if it could lean out as well.

HENDRIX stated that if it leans out it's over onto the next door neighbor's property.

MUESSIG stated that when they build a fence they would need to make sure to set the fence inside a little.

ALDERMAN CHEVALIER asked if whatever decision is made here it can still go to the Board of Alderman and they can make a determination or is this going to be the final answer?

HENDRIX explained that everything this commission does is a recommendation only. It then goes to the Board for final approval. The

Board can say that they disagree and can change it all they want. Ultimately they just need to take your recommendation into consideration.

ALDERMAN CHEVALIER asked Mayor Boley what the direction from the Board was? Was it to have it come here first and then go to the Board?

MAYOR BOLEY stated that with electric fences we weren't really going to discuss that today. What Jack is saying is that electric fences isn't a part of the current Planning and Zoning code. It's part of the Board of Alderman and their decision. What Jack is asking is should the electric fence provisions be incorporated into the overall fence regulations. Because right now it's not.

ALDERMAN CHEVALIER said if we say no here then the Board is still going discuss this.

MAYOR BOLEY said yes.

SCARBOROUGH asked if this would include buried fences?

MAYOR BOLEY stated like dog remote fences.

HENDRIX stated from his perspective they are electrified but they would not be included. If you read the ordinance on electric fences they are a danger to people. Those fences are not.

WILSON asked the commission if the consensus on electric fences is no?

All commission members agreed.

HENDRIX stated that electric fences will stay under the miscellaneous construction ordinances and not under the Planning and Zoning purview. Moving on, if the answer to Item # 4 is no, then Item # 5 is irrelevant.

WILSON moved on to discuss Item # 6: Should the ban on barbed wire fences in all districts except agricultural be adjusted to include industrial and/or commercial?

HENDRIX stated we have numerous commercial and industrial type fences currently that have the barbed wire on them.

MAYOR BOLEY stated doesn't the storage facilities have them? Doesn't CPC have to have them due to the State regulations?

HENDRIX stated yes, the state regulations in industrial require it to a certain extent.

WILSON asked if at the storage facilities are they 6 foot or are they taller?

HENDRIX stated that some are 6 foot and some are 8 foot tall.

WILSON asked if 6 foot was tall enough or if they needed to be taller.

HENDRIX stated that the other aspect of it is, in my definitions in here it's 8 foot in industrial and 6 foot in commercial. The security apparatus couldn't be farther out than the fence and that it leaned in. I have heard tonight from several of you that those fences should lean out. If this is the case I can change the language to state that it cannot be farther out than the property line which means they will have to set their fence back so that the security apparatus doesn't lean into the neighbor's property. If the apparatus hangs out 18 inches then the fence has to be installed 18 inches inside the property line. These provisions related to barbed wire, etc., would not change the other regulations so a 4-foot fence in the front yard applies across the board. All of that still is the same.

MAYOR BOLEY asked that we make sure if we do go forward with this we exclude the B-4 district. That is still considered commercial but we don't want barbed wire downtown.

HENDRIX stated yes. He would suggest that we only allow it in B-3 because they are the ones that will most likely use it. Also, in any Industrial district. B-2 is offices and B-1 is real low impact stuff that's going to be right in the middle of residential.

DOTSON asked if barbed wire included razor wire.

MAYOR BOLEY said no.

HENDRIX asked if razor wire is something they would allow in Industrial?

WILSON stated that she doesn't think it matters.

MAYOR BOLEY agreed. You just want security.

MUESSIG he feels it doesn't matter if it's industrial. Gerber Collision and Glass on 169 Hwy has a chain link fence with wire on the top of it. I don't know that it's razor wire.

MAYOR BOLEY stated that he doesn't think that it's razor wire.

HENDRIX stated that this highlights an issue. Any fence built prior to 2004 when the ordinance came in and started requiring permits for them, it was kind of Katy bar the door because there was no permit required. There was literally two people in that entire department. One was the building inspector and the other was the Development Director. So, the ability to check the 9 1/2 miles for new fences as they popped up just didn't happen.

WILSON stated that if we allow razor wire in B-3 should the fence height be raised to 8 foot. With Item # 5, do we need to change it or is it ok?

MAYOR BOLEY stated that we just need to give Jack some parameters and let him give us a draft.

HENDRIX stated if the commission doesn't want razor wire it will be removed out of the language in all aspects of it. If the security apparatus part of the fence sticks out we will adjust it to where that doesn't hang over onto the neighbor's property.

MUESSIG stated that he doesn't think it matters in the B-3 district since you won't have residential people walking by. I just don't think it's much of an issue.

HENDRIX stated that from his perspective I don't think razor wire is necessary.

MAYOR BOLEY stated that he thinks razor wire would be more of a deterrent if it's on the ground in front of you than an electric fence.

HENDRIX stated that if we eliminate razor wire we are then talking about allowing barbed wire only with a security apparatus at the top of the fence that leans out so that it's harder to climb. We will also require that the fence is installed in a manner that doesn't allow that security apparatus to go over

on the neighbor's property. The last question is if a maximum height of 8 foot for the fence and then have the security apparatus on top in B-3 is ok only if it's a security fence. Or a maximum height of 6 foot for the fence and then have the security apparatus on top.

MUESSIG stated that he thinks 8 foot maximum should be allowed.

KATHCART stated up to 8 foot maximum.

HENDRIX stated it will be 8 foot maximum in Industrial and B-3 only with a security apparatus including barbed wire.

MUESSIG stated that he believes the security apparatus should be limited to 18" to 24". If we don't limit that as well someone will take advantage of that.

HENDRIX stated that he has enough information to have a draft ready for the commission's final review at our December Planning and Zoning meeting.

## **6. ADJOURN**

MAYOR BOLEY made a motion to adjourn. KATHCART seconded the motion.

VOICE VOTE: UNANIMOUS

CHAIRMAN WILSON declared the session adjourned at 7:59 p.m.