

# FINAL

## SPECIAL MEETING MCPHERSON COUNTY BOARD OF ZONING APPEALS NOVEMBER 22, 2024

Meeting was held at the Public Works Building 1115 W Avenue A McPherson, KS 67460

### CALL TO ORDER

At 8:00 am **Kathy Nicholson** called the meeting to order and welcomed those in attendance. She asked that the audience members sign in and reminded everyone to silence their phones during the meeting.

### ROLL CALL

**Kathy Nicholson** called on the interim Recording Secretary, **Nicole Settrini**, to take roll call. **Members Present:** Kathy Nicholson, Chris Goodson, Jim VanGoethem, Raymond Williams, Lori Bower, Christina Reynolds. **Members absent:** Shelby Shaw, Glenda Taylor, and Jeff Smith.

**Jon Kinsey**, McPherson County Planning & Zoning Administrator and **Nicole Settrini**, Interim Recording Secretary, were also in attendance.

### Guests in Attendance:

Julie Wenthe

The meeting began with **Jon Kinsey**, he gave the background of the property located at 962 14<sup>th</sup> Avenue McPherson, KS, that was in question. He stated that on Wednesday 11/20/2024 Julie Wenthe, the real estate broker, reached out to him regarding the property. Following the timeline printout that was provided to each attendee included below.

- 10/17/2016 Variance hearing with the County Planning Board for a variance form the minimum lot size requirements-Approved with Conditions
- 10/17/2016 Resolution VAR2016-06 for the variance and all of its conditions were filed with the Register of Deeds office 10/27/2016 (Book 664 Page 7018)
- 11/28/2016 Mortgage Inspection sent to Sheets Adams and to Logan (buyer at time) with a notation on the report about Variance resolution in effect
- 01/31/2022 Office notes Logan requested from previous Zoning Administrator Gina Bell about building a garage. Gina explained that resolution and stated it was not allowed. Resolution was mailed to Logan.
- 09/08/2022 Google Earth picture taken does not show the building as being in existence
- 04/01/2023 Google Earth pictures show the building existing (shown to all attendees of the meeting on the large screen)

**Jon Kinsey** then explained the process of the special meeting being called. The By-laws that allow the meeting and the purpose of the meeting.

**Jon** then shows the attendees the real estate listing and the view of the property on Esri to show the building, its location as per the property lines, and the distances of Water well and sanitation.

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**Jon Kinsey**, recommended that the building be removed. There was some conflict of opinion when he reached out the members of the Regulation Sub Committee. Due to those conflicts the chair member called a special meeting to discuss the situation. The meeting was then handed over to the board.

**Kathy Nicholson** started the discussion with her position on the situation, that in a former case the board had set precedence that they were not going to force a property owner to dismantle a building. She also spoke about the amount of time it takes to reach a decision and the fact that there are ongoing real estate transactions in the process and not wanting to delay those transactions. She stated that the likelihood of making a property owner tear down a building was not going to happen. She agreed that the steps in which the property owner took to erect the building even though there was a variance that stated it could not be built was in effect and he had been told by previous administrator that it could not be build and he still built the building was indeed wrong of him. She cannot in good faith ask someone to tear their building down.

**Kathy Nicholson** then asked **Jon Kinsey** if this is something that the board will indeed vote on? She was under the impression that after the previous case similar to this, that the board was no longer voting on these situations.

**Jon Kinsey** stated he can make the decision and meet with counsel. The reason we were in a meeting was due to the conflict of opinions with the Regulation Sub Committee. He then stated that for an answer to her question he needs to speak with the Commissioners and see what process they would like to follow from here on out.

**Chris Goodson** asked if they were meeting as the board of zoning appeals, and will there decision today be final?

**Jon Kinsey** answered Yes.

**Chris Goodson** stated the **Glenda Taylor** has sent an email with her thoughts and asked for that to be read into the meeting.

**Christina Reynolds**, read the email from **Glenda Taylor** aloud.

**Kathy Nicholsons** states her issue is why drag out the situation.

**Lori Bower** stated there are two issues here. First, is the building actually a health or hazardous issue that would lead it to be needed torn down? Second, how do the penalty work?. Stated the penalty should be standardized.

**Jim VanGoethem** states there is a standardized penalty. Then explained it is up to \$500.00 a day and up to 6 months in jail.

**Jon Kinsey** said it didn't have to be that amount, that most of the time those types of violations are handled by **Brian Bina**.

**Kathy Nicholson** then asked **Julie Wenthe** if she knew the value of the garage.

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**Julie Wenthe** stated that with concrete and the size the value of a garage similar would range from between \$50,000 to \$70,000.

**Julie Wenthe** also stated that she was told the garage was built in 2020. She asked the buyer about a permit, and he stated there was no permit. He denies being told he couldn't not build.

**Raymond Williams**, ask how we know that **Gina Bell** spoke with Logan?

**Jon Kinsey**, stated all he had was a hand written note in the file.

**Jim VanGoethem** stated the note carried a lot of weight with him.

**Kathy Nicholson** stated the Logan was in the wrong and there was no denying that part of this issue but asked to move forward with the situation. Asked if they needed a full meeting to discuss it and decided by the full board.

**Jim VanGoethem** stated that if enforcement isn't being done then the board would be back multiple times to handle situations like this. That should be an enforcement issue and follow the process with **Jon**. He referred to a previous case and the steps that they followed and the reasons for those steps.

**Jon Kinsey** also offered some information from an administrator standpoint. He explained the size of the lot and in the chance that the septic system ever fails, that puts the new buyer in a situation to invest in a more expensive type of septic system due to the lack of acreage and unoccupied space on the property. He also pointed out that the variance was before Logan, so by building the building he caused the problem, so therefore there isn't an easy fix. He then told the board that somewhere in the process variances are getting lost during the purchase in a real estate transaction.

**Julie Wenthe** stated that when they get the title work it is forwarded to the buyer and seller including the link to any variance. She also stated that 99% of them do not look at it although they sign off and say they do.

**Lori Bower** states right now the issue at hand is what is the penalty?

**Jon** stated that we also must consider the neighbor.

**Christina Reynolds** asked if there had been any complaints from neighbors?

**Jon Kinsey** stated Not that he is aware of.

**Lori Bower** stated that to her that it was a non-consideration of what is going on. Asked if they made a motion if to go to the county attorney or if they are the decided factor. She then asked what they should base their penalty on, size, cost, per sq. ft?

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**Jim VanGoethem** states that no decision had been made on whether or not the building should be torn down.

**Jon Kinsey** states that the assessor's office did not have this building on records, therefore it has been tax free since it was built. And that should be considered.

**Christina Reynolds** asked **Julie Wenthe** why the owner was not present.

**Julie Wenthe** responded that he had to work.

**Julie** then asked Jon if he spoke with Logan on 11/21/2024. **Jon** confirmed that he spoke with him, that **Nicole Settrini** was present during that call, and that Logan had admitted that he was in the wrong.

**Kathy Nicholson**, stated she appreciated that Jim wanted to follow the letter of the law but she stated that she would not ask any owner to tear down a building or home.

**Christina Reynolds**, asked if this was a second residential would it make a difference?

**Lori Bower** stated there is a difference because of the living corridors.

**Jim VanGoethem** said that people continue to violate the regulations. There has to be enforcement and at some point in time, someone is going to be the first one to encounter that. Going by the notes in the file, he was specifically told No and he did it anyway.

**Lori Bower** suggested putting a motion on the table.

**Kathy Nicholson** called for a motion.

**Jim VanGoethem**, advocated for running the process set out.

The board members continue to deliberate about the outcome, if they should follow the process, and if they should motion for a solution.

**Kathy Nicholson** states that the decision they made in the past was for Jon to discuss it with Sub Committee and then Jon carry out that decision.

**Lori Bower** points out that the issue is the subcommittee isn't agreeing on what should be done so without a final decision Jon cannot follow through with those steps.

**Christina Reynolds** asked if what they decided today set precedent?

Other members all answered yes.

**Jon Kinsey** explained to **Julie Wenthe** the previous case that the board is referring to.

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**Kathy Nicholson** asked what the point in following the process wasting 4 months of time and potentially canceling a sale transaction? To prove a point?

**Jim VanGoethem** states there is no point to prove, that the board signed onto follow and enforce the codes. He stated that they are not giving justice to the process.

**Kathy Nicholson** does agree there needs to be some kind of penalty.

**Lori Bower** asked if they followed the correct steps in conducting the meeting.

**Jon Kinsey** then read the appeal process from the regulations.

Discussion between the board members on the process.

**Raymond Williams** asked, if we are here to make a motion and we make that motion, are we taking the power away from you?

**Jon Kinsey** made a short presentation to explain how the power of authority works within Planning and Zoning.

**Christina Reynolds** asked if the decision made today will be the standard for any other case coming forward?

**Jim VanGoethem** stated yes.

Discussion continues about processes.

**Kathy Nicholson** called for a motion. **Lori Bower** motioned to either tear down the building or to issue a penalty in the amount of \$25.00 per Sq. Ft. Motion Seconded by **Chris Goodson**.

**Kathy Nicholson** asked if there was any further discussion.  
Board members discussed the motion. Including the amount of the penalty.

**Jim VanGoethem** again voiced he felt that they should allow the process to take place.

After discussion, **Lori Bower** amended her motion to either tear down the building or issue a penalty in the amount of \$20.00 per sq. ft. (\$12,000.00) to be paid to McPherson County prior to closing of a sale.

**Kathy Nicholson** Call for a Roll call vote. **Nicole Settrini**, interim recording secretary, took roll call

Lori Bower- Yay

Chris Goodson- Yay

Christina Reynolds- Yay

Jim VanGoethem- Nay

Raymond Williams- Nay

**Motion carries 3-2.**

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Kathy Nicholson adjourned the meeting at 9:12am.

Kathy Nicholson  
Chairman  
12-9-24  
Date

Jan King  
Secretary