

# **PLANNING AND ZONING BOARD/BOARD OF ZONING APPEALS MEETING MINUTES**

CITY OF VALLEY CENTER, KANSAS

TUESDAY, JANUARY 28, 2020, 7:00 P.M.  
CITY HALL, 121 S. MERIDIAN AVE.

**CALL TO ORDER:** Interim Chairperson Rick Shellenbarger called the meeting to order at 7:00 P.M. with the following members present: Don Keenan, Mike Boyd, Katie Patry, and Toby Meadows

**Members Absent:** Gary Janzen and Kelsey Parker

**Staff Present:** Ryan Shrack, Tristan Hendrickson, and City Administrator Brent Clark

**Audience:** Robert Holloway, Jerry Muldowley, Daniel Shults, Saul Escobar, Andy Quandt, and Patrick Edwards.

Meeting started with the Pledge of Allegiance to the American Flag.

**AGENDA:** A motion was made by Interim Chairperson Shellenbarger and seconded by Board Member Keenan to set the agenda. Motion passed unanimously.

**COMMUNICATIONS:** Ryan thanked Rick Shellenbarger for being Interim Chairperson while Gary Janzen is gone.

**APPROVAL OF DRAFT MINUTES:** Interim Chairperson Shellenbarger made a motion to approve the December 19, 2019 DRAFT meeting minutes. The motion was seconded by Board Member Meadows. Motion passed unanimously.

## **PUBLIC HEARING BEFORE THE PLANNING AND ZONING BOARD/BOARD OF ZONING APPEALS:**

- A. Review of V-2020-01, application of B+T Group, pursuant to City Code 17.10.08., who is petitioning for a maximum cell tower height variance of thirty (30) feet for a proposed cell tower to be constructed at 400 W. Industrial St., Valley Center, KS 67147.

Community Development Director Ryan Shrack presented the following staff report to the Planning and Zoning Board:



### **Applicant's Reasons for Variance Request:**

Per the City of Valley Center's Zoning Code, the maximum allowed height of a cell tower on Industrial zoned land is 150 ft. The applicant, who represents the cell tower builder and end user (AT&T), is seeking permission to construct a 180 ft. cell tower (please see attached letter from AT&T at the end of this report). In the applicant's letter, they state that constructing the cell tower at 180 ft. will allow for better coverage for their customers and eliminate their current degradation areas.

### **Review Standards for a Variance per 17.10.08.D. (*standards in italics*):**

1. *That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zoning district, and is not created by an action or actions of the property owner or the applicant.*

This variance request is unique to this property and is not the result of any actions already taken by the property owner. There are currently two other cell towers located within the incorporated boundary of Valley Center. One of these towers is located in the Valley Center Industrial Park at 220 S. Cedar Ave. This tower is 180 ft. tall. The second cell tower is located just south of the Industrial Park at 521 W. Industrial St. This tower is 150 ft. tall.

2. *That granting of the variance will not adversely affect the rights of adjacent property owners or residents.*

The granting of this variance will not adversely affect the rights of adjacent property owners. The applicant has supplied all documentation requested by the City of Valley Center, including an approval letter from the FAA stating that the proposed cell tower is not a hazard to air navigation. A public notice was published in *The Ark Valley News* and notice letters were mailed to all property owners within 200 feet of the applicant's property boundaries. To date, no responses have been received by City staff.

3. *That strict application of the provisions of these regulations from which a variance is requested will constitute unnecessary hardship upon the property owner represented in the application.*

The property owner will not have unnecessary hardship because the proposed cell tower has not been constructed yet. However, the end user of the cell tower, AT&T, would experience hardship in the fact that construction of the cell tower at the allowed 150 ft. will result in signal degradation and poor coverage for customers in the service area.

4. *That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.*

The variance will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare of the surrounding neighbors or the community in general. The construction of the cell tower will improve cellular service in the community. The cell tower owner will carry liability insurance and be liable for any damage done to any surrounding properties in the case of a tower collapse.

5. *That granting the variance desired will not be opposed to the general spirit and intent of these regulations.*

The granting of this variance will not be opposed to the general spirit and intent of the referenced regulations.

**Staff Recommendation:** Staff recommends approval of this variance application.



AT&T  
12851 Manchester Road  
Des Peres, MO 63131

January 2, 2020

**RE:** Variance request for proposed AT&T Telecommunications Tower (AT&T Site: KSL05624/ Valley Center DT RS)

To Whom It May Concern,

The telecommunications tower being proposed by Uniti Towers, LLC will be used by AT&T to provide coverage primarily within the town of Valley Center and the area to the South. AT&T will use this proposed structure to replace our existing facility at 200 South Cedar, Valley Center. Because we currently provide coverage, we need to ensure that we minimize any negative impact to our existing customers.

Wireless telephones operate by transmitting a low power radio signal between a wireless phone and telecommunication equipment mounted on a tower or other structure. Because of the low power a telecommunications facility is only able to transmit to a wireless phone within a limited geographical area. Due to these limitations, maximizing height to install equipment is crucial to performance.

ATT uses specific software designed to analyze a mobile network to determine the acceptable solutions for the network. We reviewed existing structures in the area because it is always our preference to use existing structures as the first option. Unfortunately, the existing options would cause a degradation of service for our existing customers in the geographical area that our current site covers.

After eliminating existing structures, AT&T contracted with a company to find other options. The proposed location was brought to us for analysis. We looked at the 150' level but that caused the same issues as the existing locations. We looked at the 180' level and that provided coverage as good or better than our current location, and there are no degradation areas. Moving to the proposed location at 180' will improve coverage to the south of the proposed location.

Based on analyses AT&T had determined that a height of 180' must be achieved in order for their radio frequency objectives to be met. At any height that avoids a variance would not provide the necessary coverage.

Regards,

Ron Humphrey  
Principal RAN Engineer  
AT&T

Ryan gave an overview that B+T Group would like a variance to build a cell tower 180 feet, 30 feet more than the ordinance which is 150 feet maximum height with a mono pole design, it will be fenced off and will have landscaping around it. This variance also has staff approval.

Interim Chairperson Shellenbarger opened the public hearing at 7:11 P.M.

Robert Holloway with B+T Group explained they want to build the tower at 400 W. Industrial to bring cellphone service to the southern part of valley and eventually build more towers to expand the service even greater because then the tower would ping off each other.

Interim Chairperson Shellenbarger asked about the range of the service, how far it can and will go.

Jerry Muldowley the engineer for B+T Group answered that the towers services can reach 1-1 ½ mile. It is like a transponder. They are looking into the next site to build a cell tower to expand the services. As of right now AT&T will be one of the services on the tower; eventually there will be two more services for rent that cell phone providers such as T-Mobile and Verizon for example. Muldowley let the board know he received a letter from AT&T that the tower meets wireless criteria and state criteria to bring wireless service to residents of Valley Center. He also explained that they will not camouflage the tower because in doing so it will mess with the RF waves and coverage; the tower would still work just not as efficient. Next, he informed the board about the mono pole design for the tower. Mono pole design is the safest design for towers such as these. The design will keep the tower from just falling and possibly endangering the community, it will bend, become stronger and give the builders time to fix whichever part of the tower gave out. Lastly, the mono pole design is safer in high wind weather such as hurricanes and tornados, if an object hits the tower it will hit and roll off; poles that are not this design will catch object leading them to sticking, raising the risk of harm to the community. Mudowley then sat down.

Next up to the podium was Patrick Edwards lawyer at Stinson LLP who is the attorney representation for SBA Communication which is the owner of the cellular tower on cedar. Edwards greeted the board and explained he is at the meeting to oppose the cell tower going up, in his words it is to close the Cedar tower. He explained that his client SBA Communications randomly found out online about the Planning and Zoning meeting with agenda around 4 P.M. Monday, January 27<sup>th</sup>, 2020 so he had less than 24 hours to prepare for this meeting to represent his client who is in Florida. SBA Communications told Edwards they never received a letter from G+T Group stating that a tower would be going up so close to theirs. AT&T, Sprint and Cricket all have contracts with SBA Communications to provide wireless service to the Valley Center Community.

Interim Chairperson Shellenbarger asked if the contract with SBA is expired or if AT&T will leave. Edwards replied that as of right now SBA still has a contract with AT&T to be on the tower, also that if B+T Group puts this tower up it will interfere with SBA's tower and the towers being so close they will both be giving the same distance of AT&T service.

Ryan stood to inform Edwards that this review is for a variance on the height not the tower being built, so if he does not any valid points to oppose the height that he will need to come back to the podium on the next agenda SP-2020-01 the application to approve B+T Group site plan. Edwards respectfully sat down.

Interim Chairperson Shellenbarger closed the public hearing at 7:35 P.M.

Based on City Staff recommendations, public comments, and discussion by the Planning and Zoning Board, Interim Chairperson Shellenbarger made a motion to approve V-2020-01 variance to grant B+T Group extra 30 feet to make the tower height 180 feet total. Board Member Boyd seconded the motion. The vote was unanimous.

- B. Review of SP-2020-01, application of B+T Group, pursuant to City Code 17.12., who is petitioning to build a 180 ft. cell tower on the property located at 400 W. Industrial St., Valley Center, KS 67147

Community Development Director Ryan Shrack presented the following staff report to the Planning and Zoning Board:



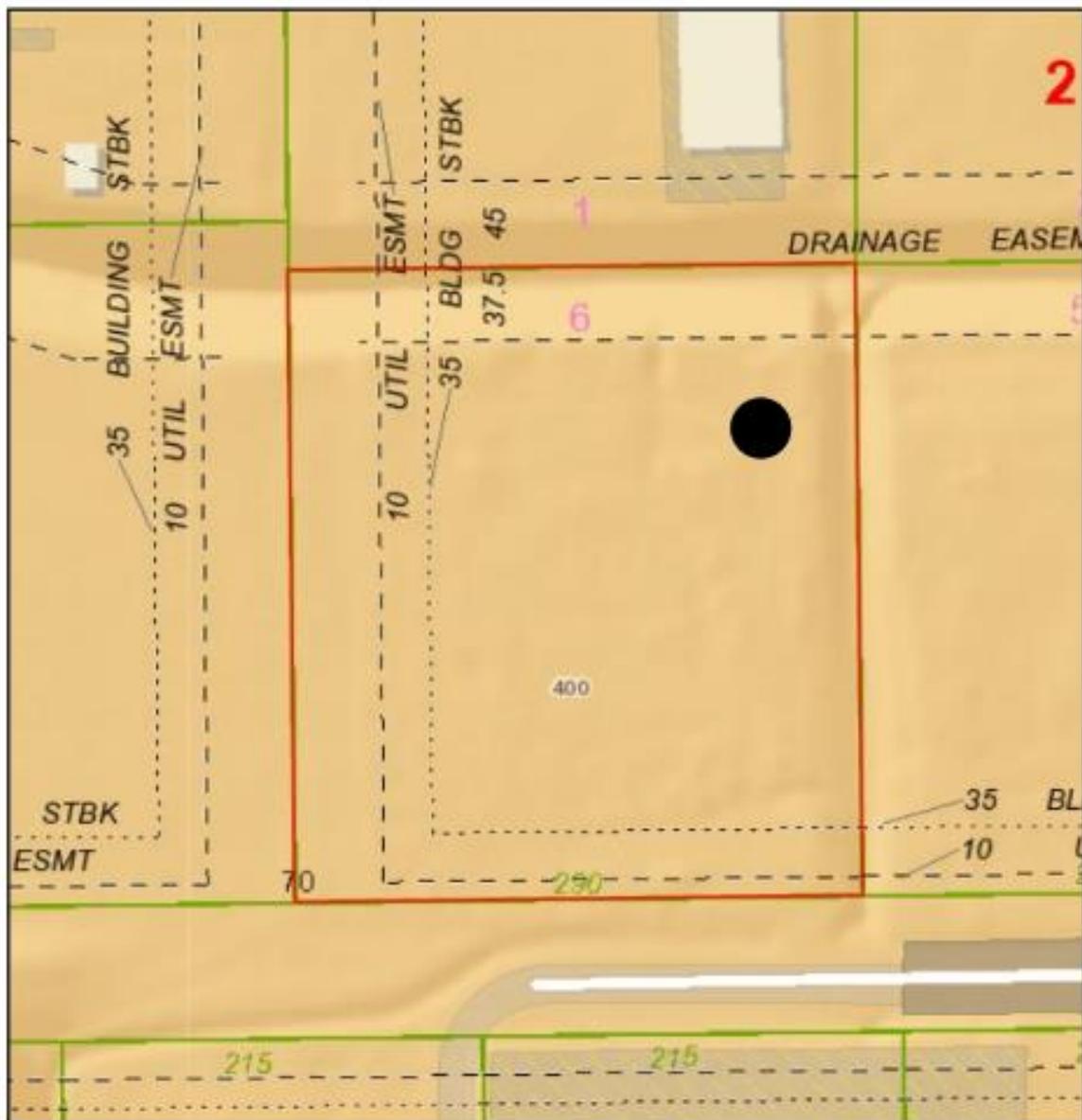
**Date:** January 21, 2020

**To:** City of Valley Center Planning and Zoning Board

**From:** Ryan W. Shrack, *Community Development Director*

**Applicant:** B+T Group (SP-2020-01)

**Location of Site Plan:** The proposed 180 ft. monopole cell tower will be constructed on the property addressed as 400 W. Industrial St. The map below shows the lot on which the cell tower will be constructed (outlined in red) and the approximate location of the cell tower is noted with a black circle.



**Existing Zoning:** I (Industrial District)

**Size of Parcel:** The lot on which the cell tower will be constructed is 2.17 acres in size. The submitted site plan meets all bulk regulations required of the zoning district.

**Purpose of Site Plan Application:**

**17.12.05 Site Plan Requirements:**

*Projects which are subject to review by the Planning and Zoning Board generally are required to meet the following standards:*

- A. *Show the location and dimensions of all right-of-way, easements and setback lines either required by these regulations or by platting or separate instruments.*
- The proposed cell tower will be constructed within the site development area noted on the separate site plan sheets, which also show the location of all right-of-way, easements, and setback lines.
- B. *The site plan map generally should be oriented to the north with north arrow and scale plus dimensions and property boundary lines for the zoning lot.*
- Dimensions are shown on the site plan and the site plan is generally oriented to the north and a scale is present. Property boundary lines are also shown on the site plan map.
- C. *Topography by contour lines may be required if slopes exceed 5%, buffer berms are used, or a drainage plan is required.*
- A contour map is provided as part of the site plan and erosion control is also shown. Per the City Engineer, a drainage plan was not required for this construction project.
- D. *Show existing and proposed structures by bulk dimensions plus number of stories, gross floor area and entrances.*
- The site plan shows the dimensions for the proposed cell tower. A structural report for the tower is also attached to this staff report.
- E. *Existing and proposed curb cuts, aisles, off-street parking, loading spaces and walkways, including type of surfacing and number of parking spaces. Delineate the traffic flow with directional arrows and indicate the location of direction signs and other motorist's aids (if any).*
- Parking spaces are not needed for this project. The site plan shows an access easement that will allow the tower owner and telecommunications user access to the designated tower area on the property.
- F. *Location, direction and intensity of proposed lighting. All exterior lighting must be "full-cut-off" light fixtures when located near adjacent residential properties (no light should spill over on adjacent residential parcels)*
- Exterior lighting is not proposed for this project.

G. *Location and height of all existing (to remain) and proposed signs on the site, the setback dimensions from any sign to property lines, location and routing of electrical supply, surface area of the sign in square feet, size of letters and graphics, description of sign, frame materials and colors.*

- No exterior signs are proposed for this project.

H. *If disposal containers will be on the site, indicate how such areas will be fully screened from public view by means of a structure (including swinging doors) constructed with either solid treated lumber walls, cement block (with or without brick), or other materials deemed acceptable. The enclosure must also have the capability of latching the doors in a closed position, or when trash is being picked up, in an open position. Outdoor storage areas may also need to be screened if required by these zoning regulations.*

- There are no disposal containers proposed for this project. It should be noted that the site plans do include a landscaping plan to provide natural screening once the cell tower and surrounding fence have been constructed.

I. *Vehicular ingress and egress to and from the site and circulation within the site to provide safe, efficient and convenient movement of traffic, not only within the site but on adjacent roadways.*

- Vehicular ingress and egress to and from the site and circulation within the site will be safe, efficient, and convenient. As noted on the site plan sheets, there will be a driveway constructed within the access easement that will connect the cell tower area to Industrial Street. This access will be private and not open to the general public.

J. *Site plan provides for the safe movement of pedestrians within the site.*

- The proposed development is a private, fenced off development not located directly adjacent to any public right of way where pedestrians would normally be found. The plan does show safe movement for anyone walking within the defined area.

**STAFF RECOMMENDATION:** City staff recommends approval of this site plan application.

Ryan explained to the board that the site plan review is to give B+T Group permission to build a cellular tower at 400 W. Industrial St., Valley Center, KS 67147. B+T Group will have to go through Sedgwick County MABCD with tower plans to get approved, stamped, and inspected by MABCD. Whoever is the service provider is above the City and will have to get FCC permits in order to place wireless facilities on the proposed tower.

After the report presentation, Interim Chairperson Shellenbarger opened the public hearing at 7:16 P.M.

Brent Clark City Administrator stood to enlighten the board that as a city we cannot have a say in the disagreement and legal issues between SBA Communications and B+T Group only in the building of B+T Groups tower. Sabre made the design for the tower, he worked with them before in Nebraska “they are a very good company, the mono pole design and structure is the best structure for towers as of right now.

Robert Holloway stood for questions at the podium.

Board Member Keenan asked why there was a propane tank in the image of the tower, if it was used for heat.

Holloway answered that is there is a propane tank for the backup generator in case the electricity goes out in the tower. Holloway then sat down.

Patrick Edwards came back up to the podium. He represents SBA Communications, which operates a tower at 200 S. Cedar. He claimed that a new tower would have the same capacity as the existing tower that AT&T currently utilizes for services in the area. Edwards brought to the board’s attention the Valley Center Zoning Ordinance page 139 and 143. Please see below for Edwards evidence, it is highlighted.

## APPENDIX: WIRELESS COMMUNICATIONS FACILITIES

**Review Criteria for Wireless Communications Facilities** In order to accommodate the communication needs of residents and business while protecting the public health, safety, and general welfare of the community, these criteria are necessary to:

- Comply with the federal Telecommunications Act of 1996 and facilitate the provision of wireless communication service to the residents and businesses of the City;
- Minimize adverse visual effects of wireless communication facilities through careful design and siting standards;
- Avoid potential damage to adjacent properties from wireless communication facility failure through structural standards and setback requirements;
- Maximize the use of existing and approved wireless communication facilities
- Buildings to accommodate new wireless communication facilities in order to reduce the number of wireless communication facilities needed to serve the community.

**A. Definitions.** The following definitions shall be used in the interpretation and construction of these regulations:

**AMATEUR RADIO:** Radio equipment and associated antennas or support structures operated for the purpose of receiving or transmitting communications by radio station as described in Section 153(g) of Title 47 of the U.S. Code and which is operated under license by the FCC.

**ANTENNA:** A whip (omni-directional antenna), panel (direction antenna), disc (parabolic antenna) or similar device used for transmission and/or reception of radio frequency signals.

**ANTENNA ARRAY:** More than one whip, panel, disc or similar device used for the same carrier at the same frequency.

**APPLICANT:** A person or entity with an application before the City of Valley Center for a permit for a wireless communication facility.

**AGL (above ground level):** The actual height of the wireless communication facility from the ground at the base of the structure to the highest part of the amount or the antenna, whichever is higher.

**BROADCAST SYSTEMS:** Wireless communication system that are licensed for the broadcast of AM/FM radio or television.

**CAMOUFLAGE:** To paint or mount a wireless communication facility in a manner that requires minimal changes to the host structure and hides the facility in the context of its surroundings on the host structure.

**CARRIER:** A company licensed by the Federal Communications Commission (FCC) that provides wireless communication. A wireless communication facility builder is not a carrier.

**CELLULAR:** A personal wireless service capable of transmitting and receiving voice that operates in the 800 MHz spectrum.

- B. Co-Location Requirements:** All commercial wireless telecommunication facilities erected, constructed, or located within the City shall comply with the following requirements:
1. A proposal for a new wireless communication facility shall not be approved unless the telecommunications equipment planned for the proposed wireless communication facility cannot be accommodated on an existing or approved wireless communication facility or building within a one mile for proposed wireless communication facilities greater than 120 feet in height, one-half mile for wireless communication facilities between 60 and 120 feet in height and one-quarter mile for wireless communication facilities under 60 feet in height of the proposed wireless communication facility due to one or more of the following reasons:
  2. The planned equipment would exceed the structural capacity of the existing or approved wireless communication facility (WCF), as documented by a qualified and licensed professional engineer, and the existing or approved wireless communication facility cannot be reinforced, modified or replaced to accommodate planned or equivalent equipment at a reasonable cost.
  3. The planned equipment would cause interference materially impacting the usability of other existing or planned equipment at the wireless communication facility as documented by a qualified and licensed professional engineer and the interference cannot be prevented at a reasonable cost.
  4. Existing or approved wireless communication facilities within the search radius cannot accommodate the planned equipment at a height necessary to function reasonably as documented by a qualified professional radio frequency engineer.
  5. Other unforeseen reasons that make it infeasible to locate the planned equipment upon an existing or approved wireless communication facility.
  6. Any proposed wireless telecommunication facility shall be designed structurally, electrically, and in all respects, to accommodate both the applicant's antennas and comparable antennas for at least two additional users if the wireless communication facility is over 100 feet in height or for at least one additional user if the wireless communication facility is over 60 feet in height. The wireless telecommunication facility must be designed to allow for future rearrangement of antennas upon the wireless telecommunication facility and to accept antennas mounted at varying heights.
- C. Construction Requirements.** All antennas and wireless communication facilities erected, constructed, or within the City, and all wiring therefore, shall comply with the following requirements:
1. The requirements set forth in Chapter 14.04, Building and Construction, of the Code of the City of Valley Center and FCC Guidelines.
  2. All applicable provisions of the Code of the City of Valley Center,
  3. Wireless communication facilities shall be certified by a qualified and licensed professional engineer to conform to the latest structural standards and wind loading requirements of the Building Code and the E/A/TIA-22 1996, as maybe amended.
  4. With the exception of necessary public electric and telephone service and connection lines, no part of any antenna or wireless communication facility nor any lines, cable, equipment or wires or braces in connection with either shall at any time extend across or over any part of a public right-of-way for a street, highway, sidewalk or lot line,
  5. Wireless communication facilities and associate antennas shall be designed to conform with accepted electrical engineering methods and practices and to comply

Ryan stated the structural engineering report was filed by a Kansas licensed engineer.

Brent and Ryan shared with the board that they would confer with the local code, as well as the KSA statutes to determine how to move forward in response to Mr. Edwards' comments.

The board had no further questions.

Interim Chairperson Shellenbarger closed the public hearing at 8:04 P.M.

Based on City Staff recommendations, public comments, and discussion by the Planning and Zoning Board, Interim Chairperson Shellenbarger made a motion to table SP-2020-01 until the next meeting Tuesday, February 25, 2020 to allow the city, both B+T Group and SBA Communication to gather more information. Board Member Boyd seconded the motion. The vote was unanimous.

**NEW BUSINESS-** Ryan had no new business.

**OLD OR UNFINISHED BUSINESS-**

A. Discussion with Daniel Shults regarding V-2019-05.

Daniel Shults came back to ask the board if he could be put on the next Planning and Zoning meeting Tuesday, February 25<sup>th</sup>, 2020 regarding V-2019-05. Board agreed to have Daniel Shults put on the agenda for Tuesday, February 25<sup>th</sup>, Meeting.

B. Board Attendance Policy Discussion

The Board decided to table this item until next meeting since Chairperson Gary Janzen was absent.

**COMMITTEE AND STAFF REPORTS-** Ryan reminded the Board the next Planning and Zoning Meeting will be Tuesday, February 25<sup>th</sup>, 2020 at 7 P.M. City Hall.

**ITEMS BY PLANNING AND ZONING BOARD MEMBERS:**

Gary Janzen-Not present

Don Keenan-Nothing

Kelsey Parker-Not present

Rick Shellenbarger-Nothing

Katie Patry-Nothing

Mike Boyd- Nothing

Toby Meadows – Nothing

**ADJOURNMENT OF THE PLANNING AND ZONING BOARD MEETING:** At 8:30 P.M., a motion was made by Interim Chairperson Shellenbarger to adjourn and was seconded by Board Member Meadows. Vote was unanimous.

Respectfully submitted,

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Ryan Shrack, Community Development Director

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Gary Janzen, Chairperson