1. Call to Order – Roll Call – Oath of Office to Greg Tice

Commissioner Jim Costello called the meeting to order at 7:00 p.m. Diana Brooks, Secretary called roll with the following members present: Dennis Gruenbacher, Angie Banz, Ginger Payne, Brent Foust, Tom Glasscock, Greg Tice, and Bob Hein. Commissioner Michelle Collins was absent.

Ms. Diana Brooks, City Clerk gave the oath of office to Greg Tice.

2. Approval of the Agenda

Commissioner Gruenbacher moved that the Planning Commission approve the agenda as presented. Commissioner Banz second the motion. There was no discussion. Upon a call vote the motion carried 8-0.

3. Approval of the Minutes

A. Planning Commission meeting of February 23, 2010

Commissioner Hein moved that the Planning Commission approve the minutes of the February 23, 2010 meeting as presented. Commissioner Payne second the motion. There was no discussion. Upon a call vote the motion carried 7-0 with Commissioner Glasscock abstaining due to being absent from the February meeting.

4. Public Hearings

Commissioner Gruenbacher moved that the Planning Commission recess and reconvene as the Board of Zoning Appeals at 7:05 p.m. Commissioner Banz second the motion. There was no discussion. Upon a call vote the motion carried 8-0.

A. Review of Application No. BZA-V-10-01 a request for a variance from the front yard setback limitation at property located at 614 Homestead – Greg and Dena Tice

Commissioner Jim Costello opened the public hearing at 7:08 p.m. on Case No. BZA-V-10-01 a request for a variance from the front yard setback limitation for the purpose of building a porch addition on property zoned as the R-1 Single Family Residential District.

Commissioner Costello laid out the ground rules for the hearing, and asked if any Board member intended to disqualify themselves from the hearing because they or their spouses owned property in the area of notification or had conflicts of interest or were particularly bias on the matter. Commissioner Costello requested that the minutes reflect that Commissioner Tice disqualified himself because he and his wife were the property owners and applicants for the variance.
Commissioner Costello stated that Commissioner Tice had temporarily disassociated himself from the assembled Commission and declared that there was a quorum of seven (7) members present for the hearing.

Commissioner Costello stated that the notice of the hearing was published in the Mt. Hope Clarion on February 25, 2010 and notices were mailed to the applicant and 20 real property owners of record in the area of notification on February 18, 2010. He declared that proper notification was given as there was no evidence to the contrary.

Commissioner Costello questioned if any members of the Board had received any ex parte communications on this application, hearing none, Commissioner Costello called for the Zoning Administrator, Diana Brooks to report on the case.

Ms. Diana Brooks, Zoning Administrator, gave an overview of the request, a brief case history, location, site size, and adjacent zoning and existing land uses. Ms. Brooks provided a detailed history regarding the platting of the property in which the front yard setback was set at 30 feet which was five feet farther than currently required. Ms. Brooks reviewed the zoning regulations in effect in 1976 and suggested that it was possible the Commission in 1976 intended to designate Homestead Dr. as a major street.

Ms. Brooks highlighted the answers to the specified conditions to be met and stated that she felt the conditions could not be met at this time and asked the Commissioners review her recommendations to the answers for the conditions. She stated that Mr. Tice would be providing a response to staff’s answers.

Commissioner Costello asked the applicant to provide a presentation and comment on the Zoning Administrators report. Mr. Greg Tice, property owner, gave a history of the purchase of the property, the reasons for the variance being: that no improvements could take place to the home without the improving the front of the house, the more restrictive setback requirement as platted being prohibitive to the renovations, and the renovations bringing the home up to the standard of the housing development to the south.

Commissioner Costello thanked Mr. Tice for his presentation and solicited comments from the public.

Mr. John Kennedy, 610 Marian questioned the distance of the improvement from the west property line. Mr. Tice stated he was not widening the home. He discussed the past Commissions actions towards one of his neighbors, the broken fence between him and Mr. Tice, and that he had no objections regarding the design of the improvements.

Mr. Gary Steadman, 608 Homestead, stated that when his home was built the Planning Commission at that time would not let him set his home differently than platted, and that he thought the Tice’s were overbuilding for the area.
Ms. Velma Ellenz, 600 Homestead, expressed that the improvements may obstruct the view to the west, questioned the guarantee that the improvements would be completed, and the length of time the home had gone unimproved. Mr. Tice stated that he had been unsure of what would be done with the home and did not want to invest in the improvements until a decision had been made. He stated that the porch would not be enclosed and would not obstruct the view to the west.

Ms. Ellenz questioned the impact the renovations would make on the property values surrounding the Tice property and the ramifications if Mr. Tice were unable to complete the improvements. Ms. Brooks reviewed the processes used to determine the tax value of homes. She explained the time limitations placed on the variance process and building permit.

Commissioner Costello questioned if there had been any written communications. Ms. Brooks stated that she had been in contact with the people who expressed the same concerns as those present. Ms. Corene Ketzner, Deputy City Clerk expressed that she received a phone call from a neighbor who said that even though it was not a hardship, the improvements would improve the looks of the property and the caller did not have a problem granting the variance.

Commissioner Costello asked if the applicant wished to make any final comments. Mr. Tice reiterated the reasons for not improving the property.

Commissioner Costello called for final public comments, hearing none closed the public hearing at 7:50 p.m.

Commissioner Costello reviewed the seven instances which the Board of Zoning Appeals could grant a variance. It was determined that the second factor being: *To vary the applicable bulk regulations, including maximum height and lot coverage and minimum yard requirements* permitted them to consider the variance.

Commissioner Costello requested that the Board consider items 1-4 as set out in Section 10-107D1.

1. The particular physical surroundings, shape or topographical condition of the specific property involved would result in a particular difficulty or unnecessary hardship upon or for the owner, lessee or occupant, as distinguished from a mere inconvenience, if the provisions of these regulations were literally enforced.

   **The physical surroundings, shape or topographical condition of the specific property does not have a particular difficulty or present an unnecessary hardship upon or for the owner.**

2. The request for a variance is not based exclusively upon a desire of the owner, lessee, occupant or applicant to make more money out of the property:
The variance was based upon the owner’s desire to improve his home thus increasing the value of the property.

3. The granting of the variance will not be materially detrimental or injurious to other property or improvements in the neighborhood in which the subject property is located: and

The granting of the variance will not be materially detrimental or injurious to other properties or improvements in the neighborhood.

4. The proposed variance will not impair an adequate supply of light or air to adjacent property, substantially increase congestion on public streets or roads, increase the danger of fire, endanger the public safety or substantially diminish or impair property values within the neighborhood.

The proposed variance would not impair an adequate supply of light or air to adjacent properties, does not substantially increase congestion on public streets or roads, does not increase the danger of fire, does not endanger the public safety or substantially diminish or impair property values within the neighborhood.

Commissioner Costello stated that each of the five findings of fact will be read and the collective opinion summarized for the minutes.

a. 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; It was agreed that the house was not placed right to begin with.

b. That granting of the variance will not adversely affect the rights of adjacent property owners or residents; There was one objection as Commissioner Gruenbacher expressed concern regarding the sight line affecting adjacent property owners. There were no other objections.

c. 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; If the regulations were strictly held the improvements could not be done and are too strict.

d. That the variance desired will not adversely affect the public health, safety, orals, order, convenience, prosperity or general welfare; and Commissioner Gruenbacher expressed concern regarding the safety factor and there was discussion regarding the existing sight obstructions impacting the neighborhood.

e. That granting the variance desired will not be opposed to the general spirit and intent of these regulations. There was no disagreement.
Commissioner Costello having discussed and conducted the hearing called for a motion on the applications to include any conditions.

Having considered the evidence at the hearing and determined that the findings of fact have been found to exist that support the five conditions set out in Section 10-107D1 of the Zoning Regulations and K.S.A. 12-759(e) of the state statutes which are necessary for granting of a variance, I Tom Glasscock move that the Chairperson be authorized to sign a Resolution granting the variance for Case No. BZA-V-10-01 subject to the following condition that in the future the porch not be enclosed. Motion second by Bob Hein. Motion passed 6 to 1 with Commissioner Gruenbacher voting nay.

Commissioner Costello stated that the variance would be valid for a period 180 days from the date of the meeting unless within such period a zoning permit was obtained and the variance started. He reminded the public that the Board may grant extensions not exceeding 180 days each upon written application, without further notice or hearing. He thanked all for participating and called for a motion to recess the Board of Zoning Appeal and to reconvene as the Planning Commission.

Commissioner Banz moved that the Board of Zoning Appeal recess at 8:23 p.m. and reconvene as the Planning Commission. Commissioner Gruenbacher second the motion. There was no discussion. Upon a call vote the motion carried 7-0.

5. Public Agendas

There were no items for public discussion.

6. Screening Plans

There were no screening plans for review.

7. Committee and Staff reports

A. Review of the March expenditure reports

Ms. Brooks stated that there were limited expenditures for the month of March and expenditures were within budget limits.

B. Review of the monthly zoning activity report

Ms. Brooks reported that there were no permits issued in February, 2010.

C. Review of the community questionnaire

Ms. Brooks thanked the Deputy City Clerk for retying the community questionnaire. There was discussion regarding the need to add redevelopment questions regarding the downtown area, where do the citizens want the downtown district, and should the current downtown district be a mixed use zone.
Discussion continued to target on the survey recreational enhancements such as walking paths being expanded and the challenges of the sidewalks along 53rd after leaving the Sunflower walking trail.

D. Council liaison report – Mayor Spexarth

Mayor Spexarth thanked the Planning Commission for their participation and Mr. Tice for filling the vacancy. He informed the Commission that the appellant court upheld the judge’s decision in the Abengoa lawsuit and that they had 30 days to wait to see if the case would be appealed to the Kansas Supreme Court.

There was discussion regarding the ball fields in the park, the challenges with the placement of the sewer lines due to limited street right-of-way being full of utilities, the plans for a public hearing contingent upon the election results, and the screening for ICM being completed. Discussion continued regarding ICM’s commitment to uphold their pledge to construct the ball fields.

8. Plats

There were no plats.

9. Miscellaneous

There were no miscellaneous items for discussion.

10. Adjourn

There being no further business, Commissioner Hein moved for adjournment at 8:45 p.m. Commissioner Banz second the motion. There was no discussion. Upon a call vote the motion carried 8-0.

Respectfully submitted,


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Diana K. Brooks, Secretary