



STATE OF KANSAS

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Attorney General

April 8, 1975

Opinion No. 75-152

The Honorable Lloyd Buzzi
State Representative
3rd Floor - State Capitol Building
Topeka, Kansas 66612

Dear Representative Buzzi:

You inquire whether K.S.A. 19-2920 requires that issuance of a conditional use permit pursuant to article 19 of the zoning regulations for unincorporated territory of Douglas County be approved by an unanimous vote of the board of county commissioners, or by a majority vote thereof.

K.S.A. 19-2914 et seq. authorizes counties to adopt official comprehensive plans for the coordinated development of the county, and zoning regulations concerning use of property therein. Under K.S.A. 19-2919, the regulations

"may restrict and regulate the height, number of stories, and size of buildings, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, the location and use of buildings, structures and land for industry, business, trade, residence, the use of land located in areas designated as floodplains and other uses Such resolution shall define the boundaries of zoning districts. . . ."

K.S.A. 19-2920 specified the procedure to be followed in adopting and amending such regulations. The planning board must first recommend to the county commissioners "the boundaries of districts and appropriate regulations to be enforced thereon." Upon receipt of the regulations, the board of county commissioners may adopt them with or without change. After adoption, the board

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may "from time to time thereafter amend, supplement or change the boundaries or regulations . . ." All proposed changes must first be submitted to the planning board:

"[N]o amendment or change shall be made without a hearing before the planning board, . . . and the procedure for the consideration and adoption of which shall be in like manner as that required for the consideration and adoption of the original zoning resolution."

If the planning commission recommends an amendment, supplement or change of the boundaries of any zoning district or of zoning regulations, and a timely protest is filed signed by

"the owners of twenty per cent (20%) or more of any property proposed to be rezoned, or by the owners of twenty percent (20%) of the total area, . . .,"

then and in that event the amendment may not be passed except by unanimous vote of the board of county commissioners.

Articles 6 through 15 of the zoning regulations for unincorporated territory in Douglas County provide for ten different zoning districts: agricultural, county home residential, single-family residential, neighborhood business, general business, limited industrial, light industrial, heavy industrial, valley channel and valley plain. Article 19 is entitled "Supplementary Use Regulations -- Conditional Uses -- Temporary Uses." It commences thus:

"Recognizing that certain uses may be desirable when located in the community, but that these uses may be incompatible with other uses permitted in a district, certain conditional uses listed in Section 19-4 below, when found to be in the interest of the public health, safety, morals, and general welfare of the community may be permitted, except as otherwise specified, in any district from which they are prohibited."

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Article 19 enumerates 22 types of conditional uses, including, e.g., airports and landing fields, hospitals, fairgrounds, athletic and baseball fields, race tracks, slaughter houses, sale barns, salvage and junk yards, and commercial feed yards. Mobile home parks constitute one conditional use, permitted only in residential districts, under regulations set forth in article 19, governing location, size of parks, density, access, drainage, spaces, and the like. Drive-in theatres are one permissible use permitted in a valley plain, business or industrial district, and extending into an agricultural district.

Thus, some conditional uses are permitted in all zoning districts, while others are restricted to only specified districts. The effect of article 19 is to identify particular uses of property which, although otherwise permitted in one or another zoning district, require a special permit therefor. A mobile home park is an example of a clearly residential use of property, which without special provision therefor would be permitted in the districts zoned for residential use. However, the regulations recognize that mobile home parks, in common with other of the enumerated conditional uses, may warrant special consideration to assure compatibility with the area in which it is permitted. To grant a permit for a mobile home park or for rooming, board and lodging houses, another enumerated conditional use, in a residential area is clearly not an amendment of any zoning regulation. The entire article 19 is designed as a procedure not to amend any zoning regulation, but to provide a means whereby certain prescribed uses of property, called "conditional uses," must be authorized by a conditional use permit, regardless of the zoning district in which the use is proposed to be permitted.

Such provisions are not uncommon. At 8 McQuillin, Municipal Corporations, §25.10a, the writer states thus:

"An ordinance may empower a zoning board to permit any use in a district deemed by the board to be in general keeping with uses authorized in that district. Frequently, certain special uses are not forbidden in particular classes of districts, but approval and a permit from the municipal council or from a zoning board must be obtained before they are commenced. Commonly, for example, such approval or a permit

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must be obtained before the erection or operation of a garage or filling station. This may be required for such a special use in a commercial or an industrial district, as well as in a residential district. Certificates of approval from a board of adjustment or zoning appeals may be required for the location of certain businesses in a commercial or an industrial zone, even though such a certificate is not required for other uses enumerated as permissible in such zones. . . . A provision that by special permit a particular use, e.g., a church, may be allowed in a restricted residential district is to be construed as meaning a special permit under reasonable restrictions." [Footnotes omitted.]

Article 19 is designed, as indicated above, to provide a procedure whereby the planning commission and the board of county commissioners may review the authorization of particular uses, which are deemed to require special consideration to assure compatibility with the surrounding area, and that, in the words of section 19-1,

"the public health, safety, morals, and general welfare will not be adversely affected, that ample off-street parking facilities will be provided, and that necessary safeguards will be provided for the protection of surrounding property, persons and neighborhood values."

The granting of a conditional use permit for a residential use, such as for a mobile home park, for example, or for a lodging house, in a district already zoned residential is not, of course, a variance or amendment of any zoning regulation. A number of conditional uses share in common the characteristic that large numbers of persons may be attracted by the use. Fairgrounds, racetracks, hospitals, public or government buildings are examples. The granting of a permit for any such use enables the planning commission and the board of county commissioners to make those determinations recited above concerning protection of surrounding property, neighborhood values and the like.

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Granting of a permit for a hospital, e.g., in any zoning district is not a rezoning of that site to any other zoning classification or district, but merely a determination by the governing bodies that the construction or operation of a hospital at the proposed site will conform to those values which the zoning laws are designed to protect.

The granting of a conditional use permit leaves intact all the zoning regulations and districts set forth in the document entitled "Zoning Regulations for Unincorporated Territory of Douglas County, Kansas," which is stamped "containing all amendments through October 31, 1974." The granting of a conditional use permit does not entail any "amendment, supplement or change" in such regulations which requires unanimous approval by the board of county commissioners under K.S.A. 19-2920 when objections are lodged against the granting of a permit. A conditional use permit, like any other permit, requires only majority approval by the board.

If you should have further questions concerning this matter, please feel free to call upon us.

Yours very truly,



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