



City of Clearwater Planning Commission Meeting Agenda
Tuesday August 2, 2022, at 6:30pm
129 E Ross Clearwater, KS 67026

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1. Call meeting to order

2. Roll Call

Lyle Berntsen

Michael McBee

J.J. Riggins

Samantha Warkins

Kenny Watson

John Hurley

Ryan Karrick

3. [Approve Minutes from the July 5, 2022](#)

4. Public Forum - None

5. Public Hearing – None

6. Other Business:

a. [Action – By-Laws](#)

7. Adjournment

City of Clearwater, Kansas
Sedgwick County
Planning Commission - **MINUTES**
July 5, 2022
Clearwater City Hall
129 E. Ross Avenue Clearwater, KS 67026

1. Call to Order

Lyle Berntsen called the meeting to order at 6:30 p.m.

2. Roll Call

Deputy City Clerk called the roll to confirm the presence of a quorum. The following members were present:

Lyle Berntsen, John Hurley, Michael McBee were present. Samantha Warkins was present via GoToMeeting. Kenny Watson was absent.

Donna Tibbets, Ohio Township; Tim Erwin, Ninnescah Trustee, Burt Ussery, Mayor: David Foster and Debra Foster with Foster Design Associates, LLC.

The following staff member was present:

Jaye Poe, City Clerk; Carol Reitberger, Deputy City Clerk.

3. Approve Minutes from June 7, 2022

Hurley asked to amend the minutes stating that Hurley did not second the nomination for Hurley to be Vice President. The second should have been Berntsen. Reitberger stated she would fix the minutes.

Motion: *Hurley* moved, *McBee* seconded to approve the minutes with the correction. The motion passed unanimously 4-0

4. Public Forum

Nothing at this time

5. Public Hearing Clearwater Comprehensive Development Plan 2022-2042

- a. Open Public Hearing – 6:37 p.m.
- b. Call on Zoning Administrator- Jaye Poe stated the Public Notice was published in the Times Sentinel Newspaper on June 9, 2022

Commissioner Watson entered the meeting at 6:38 p.m.

- c. Call on Mayor – Mayor Ussery introduced David Foster with Foster Design Associates David Foster had several slides to show the Commission about the 20-year plan. He explained coordination with Governing Body is crucial to making the plan be successful. In the subdivision regulations there are tools to implement the Comprehensive Plan such as size of lots. The population data from the Census will be helpful as well, such as 60% of the homes in Clearwater have one or two persons in them and one quarter of the homes are single parents with children.

Foster also stated planning the future of Clearwater with the entrance coming into town should be light industry with eye appeal to have people want to come to Clearwater. Planning goals should include social, economic and government needs. People should want to live, work and play in Clearwater with a high quality of life.

Mayor Burt Ussery stated he would like to share the goals with the schools and work together.

Foster recommends the Planning Commission review the Comprehensive Plan yearly and make changes at that time if necessary. Also, the City Council should review the Plan as well.

- d. Questions/Comments - Commission Members – David Foster asked Commission if there were any questions.

Commissioner John Hurley asked if the whole plan would have to be re-done and Debra Foster replied that only the change would have to be published in the newspaper as an amendment to the Comprehensive Plan. It would then have to approved by the Governing Body.

- e. Open for Public Comments – None at this time
- f. Close Public Portion – Berntsen closed the hearing at 6:59 p.m.
- g. Discuss Comments and Consider any Amendments-No questions at this time.
- h. **Motion: *McBee*** moved, ***Hurley*** seconded to Adopt Resolution 001-2002 the Clearwater Comprehensive Development Plan 2022 – 2042
- i. Jaye Poe announced the Comprehensive Development Plan will be considered by the Governing Body on July 12, 2022
- j. **Motion: *Hurley*** moved, ***McBee*** seconded to Close Public Hearing 7:02 p.m.

6. Other Business:

- a. **Next Meeting** – August 2nd, Review By-laws

7. Adjournment

With there being no other business, ***McBee*** moved, ***Watson*** seconded to adjourn the meeting. Voted and passed unanimously 5-0

The meeting adjourned at 7:03 p.m.

CERTIFICATE

State of Kansas }
County of Sedgwick }
City of Clearwater }

I hereby certify that the foregoing is a true and correct copy of the approved minutes of the July 5, 2022, Planning Commission meeting.

Given under my hand and official seal of the City of Clearwater, Kansas, this 2nd day of August 2022.

Carol Reitberger, Deputy City Clerk, Secretary

Lyle Berntsen, Chairperson

CLEARWATER PLANNING COMMISSION BY-LAWS

ARTICLE I: CREATION, MEMBERSHIP, AUTHORITY AND DUTIES

Section 1. Creation

The Clearwater City Planning Commission, hereinafter referred to as the "Commission" has been re- established by the Clearwater Governing Body by Ordinance No. 667 in December of 1991 and Chapter 2 Article IV of the Municipal Code. The Commission was first established by Ordinance No. 274 in 1954.

Ordinance No. 667 in 1991 revised the membership, appointments, terms of *voting* procedures, adoption of the by-laws, comprehensive plan, approval of public improvement plan, and penalty for violations.

Section 2. Membership

The membership shall consist of not less than seven nor more than fifteen members of which two members shall reside outside of the city, but within the area of influence of the corporate limits of the city, but the remaining members shall be residents residing within the corporate limits of such city. The members of this commission shall be appointed by the mayor, by and with the consent of the city council. Members shall be appointed for terms of three years. Vacancies on the commission shall be filled by appointment for the un-expired term only.

Section 3. Disqualification

Regular attendance and maintaining a quorum for voting purposes are important responsibilities of the membership. Any member that is absence for more than three consecutive regular meeting without reasonable cause; or misses a total of one-half of the meetings during a calendar year may be notified that the Chairperson will recommend to the mayor that his or her membership be declared vacated, and a replacement appointment be made.

Section 4. Conflicts of Interest

Members of the Commission shall be aware at all times of the responsibility to the citizenry of the City of Clearwater and to the residents of the surrounding Planning Area. Members of the Commission shall abide K.S.A. 75-4305 and shall fully disclose any actual or potential conflict of interest they may have on any issue that may be presented to the planning commission. Members shall abstain from taking part in the discussion of, recommendation or action on any matter before the Commission in which they or members of their family have, either directly or indirectly, present, or potential financial interest.

Section 5. Authority

The Commission is vested with the responsibilities of a planning commission as contained in the State Planning and Zoning Statutes. I.E., K.S.A. 12-741, et seq., as amended and K.S.A. 12-715b.

Section 6. Duties

As provided for by the statutes referred to in Section 5, the duties of the Commission shall be:

1. To make or cause to be made, adopted, and maintained an official Comprehensive Plan for the City

and any unincorporated territory lying outside the City but within its Designated Area of Influence in Sedgwick County and Sumner County as may from time to time be determined, subject to the approval of the Governing Body by ordinance (K.S.A. 12-747).

2. To annually review, at its first regular meeting of the calendar year, the Comprehensive Plan to propose amendments, extensions, or additions to the plan (K.S.A. 12-747 (d)).
3. To determine the conformance or non-conformance to the Comprehensive Plan of public improvements, facilities or utilities of a type embraced within the recommendations of the Plan, which are proposed for the Governing Body unless conformance is otherwise determined by reviewing the City's capital improvement program (K.S.A. 12-748).
4. To prepare, adopt and maintain Zoning Regulations for the City; to recommend the approval of such regulations to the Governing Body; and to hold hearings and make recommendations on all zoning regulation amendments and zoning applications (K.S.A 12-753 through 12-758 and 12-763).
5. To prepare, adopt and maintain Subdivision Regulations for the City; to recommend approval of such regulations by the Governing Body; and to process and approve plats and to transmit them to the governing body or acceptance of dedications thereon (K.S.A. 12-749, 751[a], 752 and 764).
6. To maintain a planning reference library of plans, reports, maps, ordinances, regulations, and policies located at and in cooperation with the City Office accessible to officials, developers, and citizens.
7. To hold hearings, provide plans for and/or make recommendations on such other matters including annexations and vacations as may be periodically assigned to the Commission by the Governing Body.

Section 7. Compensation

Members of the Commission shall serve without compensation for their services; however, members may receive reimbursement for their authorized out-of-pocket expenses including travel when related to the Commission's activities as the Governing Body by policy may deem desirable.

ARTICLE II: OFFICERS, ELECTIONS AND DUTIES

Section 1. Officers

The officers of the Commission shall consist of a Chairperson, Vice Chairperson and Secretary. The Chairperson and Vice Chairperson shall be members of the Commission; however, the Secretary may or may not be a member of the Commission.

Section 2. Elections

Officers of the Commission shall be elected at the first regular meeting following the first of June. Officers shall hold their offices for one year. Officers may serve more than one term.

Section 3. Duties

The Chairperson shall preside at all meetings of the Commission. In the absence of the Chairperson, the Vice Chairperson shall preside. In the absence of both Chairperson and Vice Chairperson, the Secretary shall preside to select a temporary Chairperson. The Chairperson shall sign all minutes and other official papers and documents to indicate that they have been approved by the Commission. The Chairperson shall represent the Commission at all meetings with other groups unless another member is designated to perform that function.

The Secretary or designate shall perform the following duties:

1. Prepare the minutes of each meeting and submit them to the Commission for approval.
2. Maintain the official file or record book of the minutes as approved and signed by the Chairperson and Secretary and provide copies to the Governing Body and Administrator.
3. Attest to resolutions and certificates and maintain all documents pertaining to the official Comprehensive Plan.

ARTICLE III: MEETINGS & WORKSHOPS

Section 1. Regular Meetings

When a regular meeting of the Commission is held, it shall be on the first Tuesday of each month. All meetings shall be held in the City Hall in Clearwater, Kansas, **beginning at 7:00 p.m.**; provided, however, that the Commission may vote to adopt another hour, date, or place of the meeting. Public notice of such change shall be given.

Section 2. Special Meetings

When a special meeting is called, notice as to date, time, place, and purpose for the meeting shall be given. The announcement of a special meeting at a regular meeting shall constitute notice to those members present. Members not present and the Governing Body shall be notified. No agenda items other than those stated in the notice shall be considered at a special meeting.

Section 3. Adjourned Meetings

If the business before the Commission is not completed, the Commission may make a motion and vote to adjourn the meeting to a specific date, time, and place. No further notice need be given.

Section 4. Open Meetings and Closed Sessions

Having determined that a quorum is present, all actions of the Commission shall be open to the public. Closed sessions, if deemed necessary, may be held to deliberate a rezoning application, including a Special Use permit, where such action is a quasi-judicial function. The motion for a closed session shall be placed in the minutes including the justification for closure, subject to be discussed and the time the open session will be resumed. No binding vote may be taken in closed session.

Section 5. Workshop Sessions

The Commission may meet at a regular or special meeting in a workshop session for general discussion; however, the Kansas Open Meetings Act applies, and no binding action may be taken. Regular minutes are not required.

Section 6. Recording of Meetings

The Secretary shall keep complete records of all proceedings of the Commission. Permanent records shall be kept for public view at the City Hall.

ARTICLE IV: CONDUCT OF MEETING

Section 1. Order of Business

The General order of business shall be as follows unless otherwise decided by the Commission:

1. Roll Call
2. Approval of Minutes
3. Citizen Comments
4. Public Hearings
5. Other Business, and
6. Adjournment

Off-agenda items may be considered if consideration would be in the best interest of the general public and not contrary to the provisions of public notice.

Section 2. Appearance before the Commission

Applicants and petitioners or their representatives and members of the community at large or individuals or their representatives who feel that they will be affected by any action of the Commission may appear to present views and statements either for or against agenda items. Personal appearance before the Commission is recommended; however, written communication may be presented instead. The Commission may at their discretion defer items coming before the Commission if the applicant or petitioner is not present and has not submitted written communication.

Section 3. Action

In all formal matters, the Commission shall act by motion unless a resolution is required by law or governmental regulations. All notices required by law to be given by publication, including those for public hearings, shall be published in the officially designated city newspaper. Every motion of a substantive matter shall set forth reasons.

Section 4. Voting

All actions of the Commission shall be taken by majority vote of the members present and voting of the Commission (K.S.A. 12-745). Voting shall be by individual voice vote. Individuals abstaining from voting shall be counted with the majority and are still counted as present for a quorum. Members disqualified from voting because of a conflict of interest, and/or inclusion in the area required notification are not to be counted when determining a quorum and shall not participate in the general discussion until the item is acted upon. Those members may, as citizens, appear before the Commission to speak on the issue and sign protest petitions.

ARTICLE V: HEARING PROCEDURES

Section 1. Intent and Purpose

It is the intent of the Commission to hold fair and impartial hearings on all matters requiring a public hearing at which adequate legal notice has been given to all concerned parties. The purpose of such hearing is to make it clear that decisions are based on the relevant evidence presented and that well organized hearings and procedures will lead to legally defensible decisions which are not arbitrary, discriminatory, or unreasonable.

Contacts in the form of verbal or written communications outside of a hearing are discouraged. Commission members should:

- (a) Come to a hearing without favoring either side.

- (b) Have no personal interest in the outcome.
- (c) Treat both sides alike; and
- (d) Base their decision solely on the facts presented as evidence before the Commission.

Any facts determined by personal investigation should be reported to the Commission at the hearing as ex parte information.

Section 2. Order of proceeding for Zoning Hearing

Applications for rezoning amendments and Special Use permits that are site specific are considered quasi-judicial proceedings. The latter includes the procedural due process elements of notice and opportunity to be heard in a fair, open and impartial hearing. At the end of the hearing, the Commission shall adopt a written report or place in the minutes a statement summarizing the evidence and stating the factors that it considered in arriving at its decision. The following order of proceeding shall be used for all such rezoning and special use hearings:

1. Determination that a quorum is present.
2. Determination that proper notice has been given.
3. Report of ex parte contacts with Commission Members.
4. Introduction of application by staff.
5. Presentation by Applicant.
6. Commission and staff question applicant.
7. Public comments on proposed application.
8. Receipt of written communications or petitions.
9. Applicant presents closing comments.
10. Staff presents closing comments.
11. Public portion of hearing closed by presiding officer.
12. Planning Commission deliberations.
13. Review findings and factors on which recommendations are based.
14. Motion to recommend to the Governing Body the approval, disapproval, or modification of the application or to table the agenda item to a specific date, time, and place.

While no further public comments will be received after the hearing is closed, the Commission may question any participant at any time during the proceedings. At its discretion, the Commission may instruct the Secretary to record all the hearings.

Section 3. Legislative Hearing

Hearing for the adoption of comprehensive plans and zoning and subdivision regulations and amendments are considered legislative in nature. The order of proceeding for hearings may be modified for a legislative hearing

as to the role of the applicant and the findings and factors on which a decision is based. In any event, the Commission's recommendation to the Governing Body shall be in writing accompanied by a written summary of the hearing.

ARTICLE VI: AMENDMENTS TO BY-LAWS

Section 1. Amendments

The Commission may, by two-thirds majority vote of the entire membership, amend these by-laws or any provisions or sections, at any time when not in conflict with any laws of the State of Kansas or Ordinances of the City. Notices of proposed amendments shall be furnished to Commission members and the Governing Body not less than four (4) calendar days prior to the meeting at which such amendments are to be considered. A current signed copy of the by-laws adopted by the Commission shall be filed by the Secretary with the City Clerk.

Section 2. Adopted

The by-laws are hereby adopted as the by-laws of the City of Clearwater Planning Commission subject to the approval of the City Council by a majority vote. When approved by the City Council, these by-laws shall become effective and prior by-laws repealed.

Adopted by the Planning Commission this ____ day of _____ 2022.

Lyle Berntsen, Chairperson

ATTEST:

Carol Reitberger, Secretary

Approved by the Clearwater Governing Body this ____ day of _____ 2022.

Burt Ussery, Mayor

SEAL

ATTEST:

Jaye Poe, City Clerk



[Please note that the meeting agenda is subject to change during the meeting.]

City of Clearwater Board of Zoning Appeal Meeting Agenda
Tuesday August 2, 2022, at 6:30pm
129 E Ross Clearwater, KS 67026

1. Call meeting to order

2. Roll Call

Lyle Berntsen

Michael McBee

Samantha Warkins

Kenny Watson

J.J. Riggins

3. Approval of Minutes from July 5, 2022

4. Other Business

a. **Action – By-Laws**

5. Adjournment

Sedgwick County
Board of Zoning Appeals - **MINUTES**
July 5, 2022
Clearwater City Hall
129 Ross Avenue Clearwater, KS 67026

1. Call meeting to order

Lyle Berntsen called the meeting to order.

2. Roll Call

Deputy City Clerk called the roll to confirm the presence of a quorum. The following members were present: Lyle Berntsen, Kenny Watson, Michael McBee and Samantha Warkins was present via Go To Meeting.

3. Approval of Minutes from June 7, 2022

Motion: *Warkins* moved, *McBee* seconded to approve the minutes of the June 7, 2022 as presented. The motion passed unanimously. 4-0

4. Other Business

- a. Next meeting – August 2nd Review By-Laws

5. Adjournment

With there being no other business, *McBee* moved, *Watson* seconded to adjourn the meeting. Voted and passed unanimously. 5-0

The meeting adjourned at 7:05 p.m.

CERTIFICATE

State of Kansas }
County of Sedgwick }
City of Clearwater }

I hereby certify that the foregoing is a true and correct copy of the approved minutes of the July 5, 2022, Board of Zoning Appeals Board.

Given under my hand and official seal of the City of Clearwater, Kansas, this 2nd day of August 2022.

Carol Reitberger, Deputy City Clerk, Secretary

Lyle Berntsen, Chairperson



CLEARWATER BOARD OF ZONING APPEALS BY-LAWS

ARTICLE I: CREATION, MEMBERSHIP, AUTHORITY AND DUTIES

Section 1. Creation

The Clearwater City Board of Zoning Appeals, hereinafter referred to as the "Board" has been re- established by the Clearwater Governing Body by Ordinance No. 835 in February of 2005 and Chapter 38 Article XI of the Municipal Code.

Ordinance No. 835 in 2005 established the membership, appointments, meetings, records, filing fees, public hearing and notice, powers and jurisdiction, procedure, variances, exceptions, and performance.

Section 2. Membership

The membership shall consist of not less than three nor more than seven members all shall be residents residing within the corporate limits of such city and all members shall also be appointed to the Planning Commission. The members of this Board shall be appointed by the mayor, by and with the consent of the city council. Members shall be appointed for terms of three years. Vacancies on the Board shall be filled by appointment for the un-expired term only.

Section 3. Disqualification

Regular attendance and maintaining a quorum for voting purposes are important responsibilities of the membership. Any member that is absent for more than three consecutive regular meeting without reasonable cause; or misses a total of one-half of the meetings during a calendar year may be notified that the Chairperson will recommend to the mayor that his or her membership be declared vacated, and a replacement appointment be made.

Section 4. Conflicts of Interest

Members of the Board shall be aware at all times of the responsibility to the citizenry of the City of Clearwater. Members of the Board shall abide K.S.A. 75-4305 and shall fully disclose any actual or potential conflict of interest they may have on any issue that may be presented to the Board. Members shall abstain from taking part in the discussion of, recommendation or action on any matter before the Board in which they or members of their family have, either directly or indirectly, present, or potential financial interest.

Section 5. Duties

The Board of Zoning appeals shall administer the details of appeals or other matters referred to it regarding the application of Chapter 38, Zoning, of the Clearwater Municipal Code. The Board shall have the following specific powers:

1. To hear and decide on appeals where it is alleged that there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement.
2. To interpret the provisions of the chapter in such a way as to carry out the intent and purposes of the adopted comprehensive plan, and to correct the several districts accompanying and made a part of the

chapter where the actual street layout varies from the street layout as shown on the zoning district map.

3. To authorize, in specific cases, a variance from the specific terms of the regulations which will not be contrary to the public interest and where, due to special conditions, a literal enforcement of the provisions of the regulations, in an individual case, results in unnecessary hardship, and provided that the spirit of the regulations shall be observed, public safety and welfare secured, and substantial justice done. Such variance shall not permit any use not permitted by the zoning regulations in such district.

The board must find that the granting of such variance will not merely serve as a convenience to the applicant but will alleviate some demonstrable or unusual hardship or difficulty.

4. To grant exceptions to the provisions of the zoning regulations in those instances where the board is specifically authorized to grant such exceptions and only under the terms of the zoning regulations. In no event shall exceptions to the provisions of the zoning regulation be granted where the use or exception contemplated is not specifically listed as an exception in the zoning regulations. Further, under no conditions shall the board of zoning appeals have the power to grant an exception when conditions of this exception, as established in the zoning regulations by the governing body, are not found to be present.

Section 7. Compensation

Members of the Board shall serve without compensation for their services; however, members may receive reimbursement for their authorized out-of-pocket expenses including travel when related to the Board's activities as the Governing Body by policy may deem desirable.

ARTICLE II: OFFICERS, ELECTIONS AND DUTIES

Section 1. Officers

The officers of the Board shall consist of a Chairperson and Secretary. The Chairperson shall be members of the Board; however, the Secretary may be an officer or an employee of the city.

Section 2. Elections

Officers of the Board shall be elected at the first regular meeting following the first of June. Officers shall hold their offices for one year. Officers may serve more than one term.

Section 3. Duties

The Chairperson shall preside at all meetings of the Board. In the absence of the Chairperson, the Secretary shall preside to select a temporary Chairperson. The Chairperson shall sign all minutes and other official papers and documents to indicate that the Board has approved them. The Chairperson shall represent the Board at all meetings with other groups unless another member is designated to perform that function.

The Chairperson of the Board of Zoning Appeals does not need to be the same Chairperson as Planning Commission.

The Secretary or designate shall perform the following duties:

1. Prepare the minutes of each meeting and submit them to the Board for approval.
2. Maintain the official file or record book of the minutes as approved and signed by the Chairperson

and Secretary and provide copies to the Governing Body and Administrator.

3. Publish in the official city newspaper notices of hearings.
4. Maintain all documents pertaining to all hearings.

ARTICLE III: MEETINGS & WORKSHOPS

Section 1. Regular Meetings

When a regular meeting of the Board is held, it shall be on the first Tuesday of each month. All meetings shall be held in the City Hall in Clearwater, Kansas, beginning at 7:00 p.m.; provided, however, that the Board may vote to adopt another hour, date, or place of the meeting. Public notice of such change shall be given.

Section 2. Adjourned Meetings

If the business before the Board is not completed, the Board may adjourn the meeting to a specific date, time, and place. No further notice need be given. All such conduct must be formally adopted by motion, second and recorded vote.

Section 4. Open Meetings and Closed Sessions

All actions of the Board shall be open to the public.

Section 5. Recording of Meetings

The Secretary shall keep complete records of all proceedings of the Board. Permanent records shall be kept for public view at the City Hall.

ARTICLE IV: CONDUCT OF MEETING

Section 1. Order of Business

The General order of business shall be as follows unless otherwise decided by the Board:

1. Roll Call
2. Approval of Minutes
3. Public Hearings
4. Other Business, and
5. Adjournment

Off-agenda items may be considered if consideration would be in the best interest of the general public and not contrary to the provisions of public notice.

Section 2. Appearance before the Board

Applicants and petitioners or their representatives and members of the community at large or individuals or their representatives who feel that they will be affected by any action of the Board may appear to present views and statements either for or against agenda items. Personal appearance before the Board is recommended;

however, written communication may be presented instead. The Board may at their discretion defer items coming before the Board if the applicant or petitioner is not present and has not submitted written communication.

Section 3. Action

In all formal matters, the Board shall act by motion unless a resolution is required by law or governmental regulations. All notices required by law to be given by publication, including those for public hearings, shall be published in the officially designated city newspaper. Every motion of a substantive matter shall set forth reasons.

Section 4. Voting

All actions of the Board shall be taken by majority vote of the members present and voting of the Board (K.S.A. 12-745). Voting shall be by individual voice vote. Individuals abstaining from voting shall be counted with the majority and are still counted as present for a quorum. Members disqualified from voting because of a conflict of interest, and/or inclusion in the area required notification are not to be counted when determining a quorum and shall not participate in the general discussion until the item is acted upon. Those members may, as citizens, appear before the Board to speak on the issue and sign protest petitions.

ARTICLE V: HEARING PROCEDURES

Section 1. Intent and Purpose

It is the intent of the Board to hold fair and impartial hearings on all matters requiring a public hearing at which adequate legal notice has been given to all concerned parties. The purpose of such hearing is to make it clear that decisions are based on the relevant evidence presented and that well organized hearings and procedures will lead to legally defensible decisions which are not arbitrary, discriminatory, or unreasonable.

Contacts in the form of verbal or written communications outside of a hearing are discouraged. Board members should:

- (a) Come to a hearing without favoring either side.
- (b) Have no personal interest in the outcome.
- (c) Treat both sides alike; and
- (d) Base their decision solely on the facts presented as evidence before the Board.

Any facts determined by personal investigation should be reported to the Board at the hearing as ex parte information.

Section 2. Order of proceeding for the Board of Zoning Appeals Hearing

Applications for variances are considered quasi-judicial proceedings. The latter includes the procedural due process elements of notice and opportunity to be heard in a fair, open and impartial hearing. At the end of the hearing, the Board shall adopt a written report or place in the minutes a statement summarizing the evidence and stating the factors that it considered in arriving at its decision. The following order of proceeding shall be used for all variances:

1. Determination that a quorum is present.

2. Chairperson opens the public hearing, stating the time
3. Call on the Secretary to determine that proper notice has been given.
4. Report of ex parte contacts with Board Members.
5. Introduction of application by staff.
6. Presentation by Applicant.
7. Board and staff question applicant.
8. Public comments on proposed application.
9. Receipt of written communications or petitions.
10. Applicant presents closing comments.
11. Staff presents closing comments.
12. Public portion of hearing closed by presiding officer, stating the time.
13. Board deliberates.
14. Review findings and factors on which recommendations are based.
 - a. The following requirements must be met before the board may grant a variance:
 - i. The applicant must show that his property was acquired in good faith.
 - ii. The request for a variance must arise from a condition which is unique to the property in question, is not ordinarily found in the same zone or district and is not created by an action or actions of the property owner or applicant.
 - iii. The granting of a variance shall not adversely affect the rights of adjacent property owners or residents.
 - iv. The strict application of this chapter will cause unnecessary hardship upon the property owner represented in the application.
 - v. The granting of a variance shall not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.
 - vi. The granting of a variance will not violate the spirit and intent of this chapter.
15. Motion to recommend to the approval, disapproval, or modification of the application or to table the agenda item to a specific date, time, and place.

While no further public comments will be received after the hearing is closed, the Board may question any participant at any time during the proceedings. At its discretion, the Board may instruct the Secretary to record all the hearings.

ARTICLE VI: AMENDMENTS TO BY-LAWS

Section 1. Amendments

The Board may, by two-thirds majority vote of the entire membership, amend these by-laws or any provisions or sections, at any time when not in conflict with any laws of the State of Kansas or Ordinances of the City. Notices of proposed amendments shall be furnished to Board members and the Governing Body not less than four (4) calendar days prior to the meeting at which such amendments are to be considered. A current signed copy of the by-laws adopted by the Board shall be filed by the Secretary with the City Clerk.

Section 2. Adopted

The by-laws are hereby adopted as the by-laws of the City of Clearwater Board of Zoning Appeals subject to the approval of the City Council by a majority vote. When approved by the City Council, these by-laws shall become effective and prior by-laws repealed.

Adopted by the Board of Zoning Appeals this ____ day of _____ 2022.

Lyle Berntsen, Chairperson

ATTEST:

Carol Reitberger, Secretary

Approved by the Clearwater Governing Body this ____ day of _____ 2022.

Burt Ussery, Mayor

SEAL

ATTEST:

Jaye Poe, City Clerk