

**SUBJECT:** Appeals Process for Conditional Use Permits

**EFFECTIVE DATE:** November 5, 2003

**POLICY NUMBER:** PL - 011

**SEE ALSO:**

## **POLICY SUMMARY**

### Conditional Use Permit Application Process

Section 42-597.2 of the Salina Zoning Ordinance sets out the application and review process for Conditional Use Permits. This section gives final decision making authority on Conditional Use Permit applications to the Planning Commission with a right of appeal to the City Commission. Prior to 1988 Conditional Use Permit applications were approved or denied by the Board of Zoning Appeals and the only option for appealing the BZA's decision was to District Court.

The application and review process for conditional uses is virtually identical to a rezoning case. An application is filed, notice is sent to property owners within 200 ft. of the request area and a full public hearing is held by the Planning Commission. The Planning Commission is supposed to review all applicable evidence presented at the hearing regarding the site, existing and proposed structures, neighboring uses, parking areas, driveway locations, street access, traffic generation and circulation, utilities, drainage, proposed hours of operation, and such other evidence as deemed appropriate and then vote to approve or deny the permit application.

In approving a Conditional Use Permit, the Planning Commission is authorized to impose any safeguards or conditions of approval it deems appropriate to help minimize the impact of the proposed use on adjacent property.

### Appeals to the City Commission

An applicant who is dissatisfied with the decision of the Planning Commission on their Conditional Use Permit application may appeal the decision to the City Commission, provided the appeal is submitted in writing to the Planning Department within fourteen (14) days from the Planning Commission's action. Upon receipt of an appeal from the action of the Planning Commission, the City Commission shall set a hearing date to consider all information, testimony and minutes of the Planning Commission's public hearing to reach a decision on the applicant's request. Under K.S.A. 12-757(b) the City Commission may affirm the Planning Commission's decision or return the application to the Planning Commission for further consideration together with a statement specifying the basis for their disagreement with a majority vote of 3 of the 5 City Commission members. The City Commission may overturn a decision of the Planning Commission if there are 4 votes in favor of such action. If the application is returned to the Planning Commission, then upon receipt of a second decision from the Planning Commission, the City Commission may affirm, modify or overrule the decision of the Planning Commission. The City Commission may overrule the Planning Commission at this point by a favorable vote of a majority of the full board of commissioners (3 votes).

### Protests by Adjacent Property Owners

Affected property owners in a conditional use case have the same right to present a protest petition to the City Commission as property owners in rezoning cases. The protest procedure is set out in K.S.A. 12-757(c). If a valid protest petition is received by the City Clerk's Office within 14 days of the Planning Commission's decision, then the Conditional Use Permit application goes to the City Commission for final action. Under the protest petition provisions in K.S.A. 12-757(c), approval of a Conditional Use Permit that has been "protested" requires a 3/4 vote of the full membership of the board of commissioners or 4 affirmative votes.