



# CITY OF WESTWOOD, KANSAS

## PLANNING COMMISSION MEETING

4700 RAINBOW BLVD. WESTWOOD, KS 66205

Monday, May 05, 2025 at 7:00 PM

### AGENDA

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Welcome to your Westwood City Council meeting. This meeting may be attended remotely via Zoom:

**Access Online:** <https://us02web.zoom.us/j/89009964959>

**Access by Phone:** (312) 626-6799 / **Webinar ID:** 890 0996 4959

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*[Note: This agenda is subject to changes, additions, or deletions at the discretion of the Governing Body]*

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#### REGULAR MEETING AGENDA

##### I. CALL TO ORDER

##### II. APPROVAL OF THE AGENDA AND MEETING MINUTES

A. Consider approving the May 5, 2025 Planning Commission meeting agenda

B. Consider approval of February 24, 2025 City Council-Planning Commission joint work session minutes

C. Consider approving the March 3, 2025 Planning Commission meeting minutes

##### III. PUBLIC HEARINGS

##### IV. PRESENTATIONS

A. Legalities Training (Katie Dumovich, MVP Law)

##### V. OLD BUSINESS

##### VI. NEW BUSINESS

A. Election of officers (Chair, Vice-Chair, and Secretary)

##### VII. ANNOUNCEMENTS/PLANNING COMMISSIONER COMMENTS

##### VIII. STAFF REPORTS

A. Administrative Report (City Administrator Leslie Herring)

##### IX. UPCOMING ITEMS

A. Annual review of the Planning Commission bylaws, per Article 6 Section 4 of the bylaws (June)

## X. ADJOURNMENT

### UPCOMING MEETINGS

Regular meetings of the Westwood Planning Commission are held at 7:00 PM on the first Monday of each month. The next regular meeting of the Westwood Planning Commission will be held Monday, June 2, 2025, at 7:00 PM at Westwood City Hall or virtually, depending on current public health protocols in place. The City Calendar may be accessed at [www.westwoodks.org](http://www.westwoodks.org). To receive further updates and communications, please see or sign up for the following:

**Westwood Buzz Email:** <https://bit.ly/3wA4DWx>

**Facebook:** [City of Westwood Kansas-Government](#)  
[Westwood, KS Police Department](#)

**City of Westwood, Kansas  
City Council Planning Commission Joint Work Session  
February 24, 2025 – 6:00 p.m.**

Council Present: David E. Waters, Mayor  
Jeff Harris, Council President  
Jason Hannaman, Councilmember  
Laura Steele, Councilmember  
Holly Wimer, Councilmember

Council Absent: Andrew Buckman, Councilmember

Commissioners Present: Sarah Page, Chair  
Ann Holliday  
David Kelman  
Emily Keyser  
Mark Neibling  
Sarah Page  
Matt Prout

Commissioners Absent: Kevin Breer  
Samantha Kaiser

Staff Present: Leslie Herring, City Administrator  
Curtis Mansell, Police Chief  
John Sullivan, Public Works Director  
Abby Schneweis, City Clerk

**Call to Order**

Mayor Waters called the work session to order at 6:00 p.m. on February 24, 2025. Ms. Herring called the roll. A quorum was present. The evening’s meeting was held in a hybrid manner, with attendees joining both in person and via Zoom.

**New Business (City Council Action)**

**Consider Appointments to the Westwood Planning Commission**

The members of the Westwood Planning Commission are appointed by the Mayor, with the consent of the Governing Body, and serve for a term of three (3) years each (16.1.4.2). Planning Commissioners whose terms are expiring effective February 28, 2025 include:

- Clay Fulghum 4837 Booth St., appointed July 2021
- Ann Holliday 2714 W. 49th Ter., appointed February 2022
- Matt Prout 5106 Belinder Ave., appointed May 2017

Commissioners Fulghum and Holliday are both seeking renewal of their terms. Commissioner Prout is not seeking reappointment; he has shared that he feels he would like to focus on other priorities.

Following Commissioner Prout’s notice to vacate his seat, the Mayor issued an open call for candidates. Statements of interest from five (5) residents were received. Following review of those statements of

interest, Mayor David Waters and Planning Commission Chair Sarah Page interviewed the five candidates and the Mayor is recommending the Governing Body consent to the appointment of Scott McCracken for a three-year term.

The following candidates, who all reside in Westwood, are qualified appointees and are hereby recommended by the Mayor to serve on the Westwood Planning Commission for terms or three (3) years each.

|                 |                   |                                   |
|-----------------|-------------------|-----------------------------------|
| Clay Fulghum    | 4837 Booth St.    | March 1, 2025 – February 28, 2028 |
| Ann Holliday    | 2714 W. 49th Ter. | March 1, 2025 – February 28, 2028 |
| Scott McCracken | 2902 W. 51st Ter. | March 1, 2025 – February 28, 2028 |

Motion by Councilmember Wimer to confirm the appointment of Clay Fulghum, Ann Holliday, and Scott McCracken to the Westwood Planning Commission, each for a three-year term to expire February 28, 2028, and for Leslie Herring in her capacity as notary public to administer the oath of office at the next regular meeting of the Planning Commission. Second by Councilmember Hannaman. Motion carried by a 4-0 voice vote.

**Work Session Items/Discussion of Upcoming Matters**

Mayor Waters and Commissioner Page conducted a discussion of upcoming priorities for the City. Topics raised and discussed by the Governing Body and Planning Commission included preservation of the tree canopy, community assistance programs, and capital improvement planning and funding.

**Adjournment**

Motion by Councilmember Hannaman to adjourn the meeting. Second by Councilmember Harris. Motion carried by a 5-0 voice vote. The meeting was adjourned at 8:00 p.m.

APPROVED: \_\_\_\_\_  
Sarah Page, Chair

ATTEST: \_\_\_\_\_  
Leslie Herring, Secretary

**City of Westwood, Kansas  
Planning Commission Meeting  
4700 Rainbow Boulevard  
March 3, 2025 – 7:00 PM**

Commissioners Present: Clay Fulghum  
Ann Holliday  
Samantha Kaiser  
David Kelman  
Scott McCracken  
Mark Neibling  
Sarah Page, Chair

Commissioners Absent: Kevin Breer, Vice Chair  
Emily Keyser

Staff Present: Leslie Herring, City Administrator  
John Sullivan, Public Works Director  
Spencer Low, City Attorney for Planning Commission

**Call to Order**

Vice-Chair Kevin Breer called the meeting to order at 7:01 PM on March 3, 2025.

Herring administered the affirmation of office to Clay Fulghum and Ann Holliday and the oath of office to Scott McCracken. Chair Page invited Commissioner McCracken to introduce himself to his fellow Planning Commissioners.

**Approval of Agenda and Meeting Minutes**

Chair Page called for modifications or discussion of the March 3, 2025 meeting agenda and January 6, 2025 meeting minutes or a motion for approval. Commissioner Kelman moved to approve the agenda and meeting minutes. Commissioner Kaiser seconded. Motion passed unanimously.

**Public Hearings**

*WE-2025-02 – Application of property owner F. Kaan Akyalcin for a waiver from Westwood Zoning Ordinance Article Nos. 4.3.2.B to allow a third story (maximum allowable is 2 ½ stories), 4.3.2.H to allow the height of the primary structure to exceed that allowed, and 4.3.6.F to allow the front wall of the front-facing garage to not be located entirely behind the front wall of the primary building for a proposed new single-family residence on property located at 2012 W. 47th Ter., Westwood, KS 66205*

Chair Page invited Herring to present the staff report. Herring presented the staff report included in the meeting packet.

Chair Page called for questions from the Planning Commission of the applicant. Commissioner Kelman noted that he feels the zoning regulations should be revisited as it seems to him that the regulations as currently written do not contemplate modern architectural plans being introduced in Westwood.

Chair Page invited the applicant to address the Planning Commission. Kaan Akyalcin shared context to support his preference for accommodating an elevator with access to the rooftop living space. Akyalcin

stated that he is no longer seeking a waiver from 4.3.6.F to allow the front wall of the front-facing garage to not be located entirely behind the front wall of the primary building. He has worked it out with his architect that the garage can be recessed and will reflect that on a plan revision.

Chair Page called for questions from the Planning Commission of the applicant.

Chair Page called for public comment on the application.

Alyson Morris, 2007 W. 47<sup>th</sup> Ter., asked for clarification about whether approval of this application would allow for three story houses to be built anywhere in Westwood. She stated that she doesn't want Westwood blocks to begin looking like the blocks in nearby Kansas City, Missouri where the houses are so massive.

Leni Swails, 2009 W. 47<sup>th</sup> Ter., stated that she likes garages to be deemphasized, she likes smaller homes on her block, and she doesn't feel that the elevator needs to have access to the rooftop. She doesn't feel that the house needs to be as large as it is.

Chris Thomsen, 2013 W. 47<sup>th</sup> Ter., stated the new construction should not be granted waivers from the zoning regulations and should be designed to comply with the zoning regulations as written.

Shannon Thomsen, 2013 W. 47<sup>th</sup> Ter., stated that three stories is too much but that 2 ½ stories – which is permitted by the zoning regulations – is reasonable to her.

Chair Page closed the public comment portion of the hearing.

Chair Page called for discussion amongst the Planning Commission. Commissioner Page asked the applicant whether he could live with the elevator not having access to the rooftop. Akyalcin responded that the elevator height is not creating the issue; it is within the acceptable height maximums.

Chair Page called for discussion amongst the Planning Commission on the request for a waiver from Article Nos. 4.3.2.B. Commissioner Kelman stated that the zoning regulations do not allow for three story houses. He pointed out that there are discrepancies between definitions in the zoning regulations relating to a half story. Discussion and deliberation took place amongst the Planning Commission.

Chair Page called for direction from staff on acceptable actions for the Planning Commission to take. Low suggested that the matter could be tabled to allow the applicant to revise the plans based on the conversation at tonight's public hearing or the item could be denied and the applicant could bring back a revised plan that more clearly meets the zoning requirements.

Motion made by Commissioner Neibling to deny both the application of property owner F. Kaan Akyalcin for a waiver from Westwood Zoning Ordinance Article Nos. 4.3.2.B to allow a third story (maximum allowable is 2 ½ stories) and also to deny 4.3.6.F to allow the front wall of the front-facing garage to not be located entirely behind the front wall of the primary building. Seconded by Kaiser. Chair Page asked for discussion on the motion. Commissioner Fulghum asked whether this application should, in fact, be tabled. Commissioner Kelman restated that the question is whether the Planning Commission would grant a waiver, not necessarily whether definitions and regulations are met. Commissioners Neibling and Kaiser reaffirmed that they move to deny the applications. Motion to deny passes 7-0.

*WE-2025-01 – Application of Wulff Building & Additions on behalf of property owner Kei Kamara for a waiver from Westwood Zoning Ordinance Article No. 4.3.2.G for a front setback encroachment greater than that allowed for a proposed new single-family residence on property located at 4810 Belinder Ct., Westwood, KS 66205*

Chair Page invited Herring to present the staff report. Herring presented the staff report included in the meeting packet.

Chair Page invited the applicant to address the Planning Commission. Kirk Wulff, Wulff Building & Additions, stated that the Westwood zoning regulations don't allow for a front porch that is functional because the zoning requirements effectively allow only a 4' front porch since we also require a certain percentage of the front façade of the house to be situated on the build-to line.

Chair Page called for questions from the Planning Commission of the applicant or staff. Planning Commissioners deliberated on the issues within the zoning regulations and the need to revisit and revise the zoning language to allow for larger front porches without creating issues with other provisions of the zoning ordinance.

Chair Page called for public comment on the application.

Kathy Davis, 2006 W. 48<sup>th</sup> St. asked for verification of the address of this application.

Susan Stanley, 4811 Belinder Ct., asked what consideration to relative scale is given to applications that propose to double the square footage of the size of the existing houses on the same block.

Mike Davis, 2006 W. 48<sup>th</sup> St., stated that if the new construction homes were smaller, they wouldn't need exceptions granted.

Leni Swailes, 2009 W. 47<sup>th</sup> Ter., echoed that if the new construction homes were smaller, they wouldn't need exceptions granted.

Shannon Thomsen, 2013 W. 47<sup>th</sup> Ter., echoed that if the new construction homes were smaller, they wouldn't need exceptions granted.

Ken Patton, 4812 Belinder Ct., referenced written comment he provided to City staff ahead of the meeting. Herring acknowledged that the comments weren't seen nor forwarded until now. Herring read the written comments received and which are included as an addendum to these meeting minutes. He additionally commented that he does not understand how an egress window is an allowed encroachment.

Kristin Kamara, owner of 4810 Belinder Ct., spoke in support of her family's application under consideration. She stated that her family is looking forward to put down roots in Westwood and Westwood View Elementary and that they value building a house that can accommodate their growing family, outdoor space, community interactions around the street, and intergenerational accommodations.

Chair Page called for questions from the Planning Commission of the applicant. None were asked.

Mark Swails, 2009 W. 47<sup>th</sup> Ter., stated that there are public spaces for community to gather and recreate so that private recreational spaces at peoples' homes don't need to be so large.

Chair Page closed the public comment portion of the hearing.

Chair Page called for discussion amongst the Planning Commission. Commissioner McCracken stated that the exception needed to build this house isn't related to the size or massing, it's solely for the front porch. Commissioner Kaiser stated support for the front yard encroachment of the mud room as it adds relief to the house. The Planning Commissioners engaged in conversation about conflicts present within the zoning regulations and a general disinterest in the Planning Commission effectively serving as an Architectural Review Board.

Commissioner Neibling asked staff to comment on whether City regulations govern encroachments like egress windows in the side yard setback. Herring stated that the zoning regulations do not speak to encroachments like egress windows or utility or mechanical structures in setbacks and that staff has not denied permits to-date that include egress window or mechanical equipment encroachments.

Commissioners engaged in further deliberations about the applicant's ability to resolve the need for a waiver and identified conflicts between provisions (i.e. if the entire house is moved back on the lot, the plans would need a waiver from 60% of the front façade sitting on the build-to line).

Motion made by Commissioner McCracken to approve the application of property owner Kei Kamara for a waiver from Westwood Zoning Ordinance Article No. 4.3.2.G for a front setback encroachment greater than that allowed for a proposed new single-family residence on property located at 4810 Belinder Ct., Westwood, KS 66205. Second by Commissioner Fulghum. Chair Page requested a roll call vote. Motion passes 5-2, Holliday and Kelman opposed.

**Presentations** – None.

**Old Business** – None.

**New Business**

*FP-2025-01 - Consider application of Wulff Building & Additions on behalf of property owner Kei Kamara to plat property at 4810 Belinder Ct., Westwood, KS 66205*

Chair Page invited Herring to present the staff report. Herring presented the staff report included in the meeting packet.

Chair Page called for questions from the Planning Commission of the applicant or staff. None voiced.

Motion made by Commissioner Kelman to approve the application of Wulff Building & Additions on behalf of property owner Kei Kamara to plat property at 4810 Belinder Ct., Westwood, KS 66205. Seconded by Kaiser. Motion passed unanimously.

**Staff Reports** – None.

**Adjournment**

Motion by Commissioner Fulghum to adjourn the meeting. Second by Commissioner Kelman. Motion passed unanimously. The meeting adjourned at 8:48 PM.

**Upcoming Items**

- A. Annual legalities training (April)
- B. Election of officers (Chair, Vice-Chair, and Secretary) (May)

APPROVED: \_\_\_\_\_  
Sarah Page, Chair

ATTEST: \_\_\_\_\_  
Leslie Herring, Secretary

DRAFT

**From:** [Ken Patton](#)  
**To:** [General Information](#)  
**Subject:** WE 2025-01 written comments for 3/3/25 Planning Commission meeting  
**Date:** Monday, March 3, 2025 4:16:22 PM

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[You don't often get email from krpattton\_1@yahoo.com. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification> ]

I am opposed to the zoning waivers for 4810 Belinder Court.

I think it is odd to design a new house that doesn't follow current codes. I can understand when there is a remodel/addition that has difficulty conforming due to engineering, architectural or land issues. There doesn't appear to be any of those issues in this case. The proposed structure has 18' 7" remaining to the rear building line so it could be moved back to accommodate the needs of the new owners.

I know Wulff has designed and built many houses in Westwood. I don't know if they have requested and received other waivers in the past. I know when I worked with a landscape architect on my home, I was informed that some of the ideas discussed could not be done because of the zoning codes. It seems the codes should be considered before designing something that requires a waiver.

In this case, it appears that two different zoning codes are being violated (WZO 4.3.2.G and WZO 4.3.3). This seems to be a very presumptuous request from the builder and should be denied.

Respectfully submitted,

Ken Patton  
Current owner and resident  
4812 Belinder Court

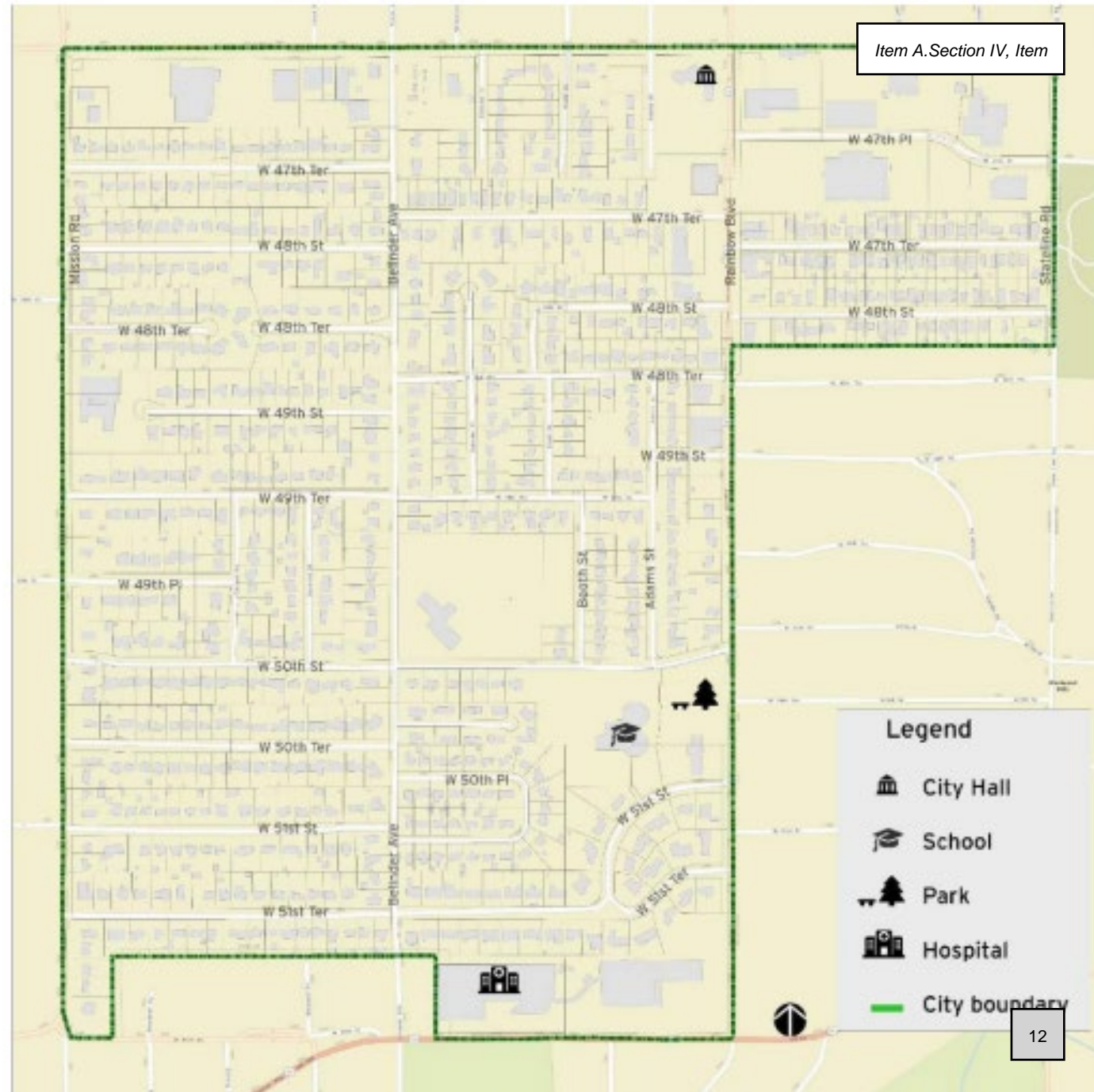
# City of Westwood, Kansas Planning Commission, Board of Zoning Appeals Training

Kathryn M. Dumovich  
McAnany, Van Cleave & Phillips P.A.



# Outline

- City Planning Generally
- Role of Planning Commission
- Role of Board of Zoning Appeals
- Roles and Responsibilities
- Types of Decisions
- How Hearings Operate
- KORA/KOMA
- Prejudging Applications



# City Planning

- Long Range
  - How actions of today impact issues of future
- General
  - Known, anticipated issues and framework to react to unanticipated
- Comprehensive
  - The city as a whole; integrated
- City Building
  - Good civic design
  - Efficient municipal / public services
  - Strong fiscal strategies
  - Places, people, value



# Planning Commission

What is the role of the Planning Commission?

- Make comprehensive plan (KSA 12-747(a))
- Approve “location, extent and character” of all public improvements (KSA 12-748(a))
- Review and recommend capital improvement program (KSA 12-748(b))
- Approve plats (KSA 12-745, 12-752)
- Review and recommend zoning changes (KSA 12-756, 12-757)
- Other decisions referred to it by the zoning ordinance (KSA 12-756, 12-757)
- Annual review of the plan (KSA 12-747(d))

Westwood Zoning Code 1.4 establishes this Planning Commission

- Unique Responsibility: Waivers and Exceptions



# Planning Commission

Elect Chair and Vice Chair (KSA 12-745)

Elect Secretary (KSA 12-745)

- Does not need to be a member (City Administrator) (KSA 12-745)

Has its own By-Laws



# Board of Zoning Appeals (BZA)

What is the role of the BZA?

- This is a “quasi-judicial” function
- Hear and decide appeals alleging an error in any order, requirement, decision, or determination by City Staff regarding the Zoning Code (KSA 12-759(d))
  - May reverse, affirm, reverse/affirm in part, or modify the order, requirement, decision, or determination by Staff (KSA 12-759(d))
- Grant variances from the Zoning Code if the following five conditions are met: (KSA 12-759(e))
  - Variance arises from a condition unique to the property that was not created by an action of the owner/applicant,
  - Granting the variance will not adversely affect the rights of adjacent property owners,
  - Strict application of the zoning code (denial of the variance) would constitute an unnecessary hardship on the property owner,
  - Variance will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare, and
  - Variance will not be opposed to the general spirit and intent of the zoning code

Created by Westwood Zoning Code 1.8



# Roles and Responsibilities

## Governing Body

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- Elected
- Legislative
- Immediate
- Execute the Plan
- Make Laws

## Planning Commission

- Appointed
- Policy / Administrative
- Long-range / Vision
- Make Plan
- Recommend / Guide / Apply Laws

## Board of Zoning Appeals

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- Appointed
- Quasi-judicial
- Adjudicate Specific Questions
  - Variances
  - Appeals



# Types of Decisions

|                                    | <b>Planning Commission</b>           | <b>Governing Body</b> | <b>Board of Zoning Appeals</b> |
|------------------------------------|--------------------------------------|-----------------------|--------------------------------|
| <b>Text Amendment</b>              | <i>Recommendation</i>                | <i>Legislative</i>    |                                |
| <b>Rezoning</b>                    | <i>Quasi-Judicial Recommendation</i> | <i>Quasi-Judicial</i> |                                |
| <b>Special Use Permit</b>          | <i>Quasi-Judicial Recommendation</i> | <i>Quasi-Judicial</i> |                                |
| <b>Site Plan</b>                   | <i>Quasi-Judicial Recommendation</i> | <i>Quasi-Judicial</i> |                                |
| <b>Exceptions</b>                  | <i>Quasi-Judicial</i>                |                       |                                |
| <b>Variance</b>                    |                                      |                       | <i>Quasi-Judicial</i>          |
| <b>Comprehensive Plan Adoption</b> | <i>Legislative</i>                   | <i>Acceptance</i>     |                                |
| <b>Fence Variance</b>              |                                      | <i>Quasi-Judicial</i> |                                |
| <b>Plats</b>                       | <i>Administrative</i>                | <i>Administrative</i> |                                |



# Types of Decisions

## Legislative *Changing the Law*

- Weigh or Make Policy
- Full Discretion
- Open to Wide Considerations

*Public Hearing / Testimony*

## Quasi-Judicial *Evaluate How the Law Applies*

- Weigh Evidence Against Policy
- Targeted Discretion
- Limited to Record

## Administrative *Apply the Law*

- No Policy
- Limited Discretion
- Record Only  
Applies Facts to Standards

*Public Meeting / Comment  
(optional)*



# Types of Decisions

## Legislative

Changing/Making the law

- Comprehensive Plan
- Zoning Text Amendments
- Full Discretion
- What should we do?

## Quasi-Judicial

Determine How the Law Applies

- Rezoning
- Variances and Exceptions
- Special Use Permits
- Targeted Discretion
- How does the law apply to these facts before us?

## Administrative

Apply the Law

- Site Plans
- Plats
- Limited Discretion
- How do these facts meet our standards?



# Legislative Decisions - Comprehensive Plan

Broadest land use control document. Basis or Guide to ensure harmonious development:

- ❖ General location and relationship of land uses
- ❖ Population and building intensity standards
- ❖ Priority of public improvements
- ❖ Plans (including funding sources) for capital improvements
- ❖ Utilization and conservation of natural resources
- ❖ Any other element deemed necessary

The comprehensive plan is not binding on municipalities

The comprehensive plan does not mandate specific zoning decisions, but is used as a policy guide for future zoning decisions



# Comprehensive Plan - Themes

## CHARACTER

- Promote and protect the neighborhood character of existing single-family detached homes
- Respecting the scale and design of the existing built environment
- Community civic spaces & additional open green space areas
- Defined gateways and corridors
- Property maintenance & codes enforcement
- Unique and distinctive identity

## CHOICE

- Encourage the reinvestment and improvement of existing housing
- Provide homes for all ages and a broader market demand
- Encourage family occupancy while facilitating a housing rental market
- Improved mobility
- Pedestrian and bicycle improvements

## COLLABORATION

- Assist the school district with planning for the future
- Existing and new residences – listen to the past, look to the future
- Local businesses, patrons and visitors
- Greater collaboration with neighboring municipalities and other elected officials
- Partnerships with agencies that can build upon a shared understanding of values and culture to support mutual needs of the community



# Comprehensive Plan

## WESTWOOD'S VISION

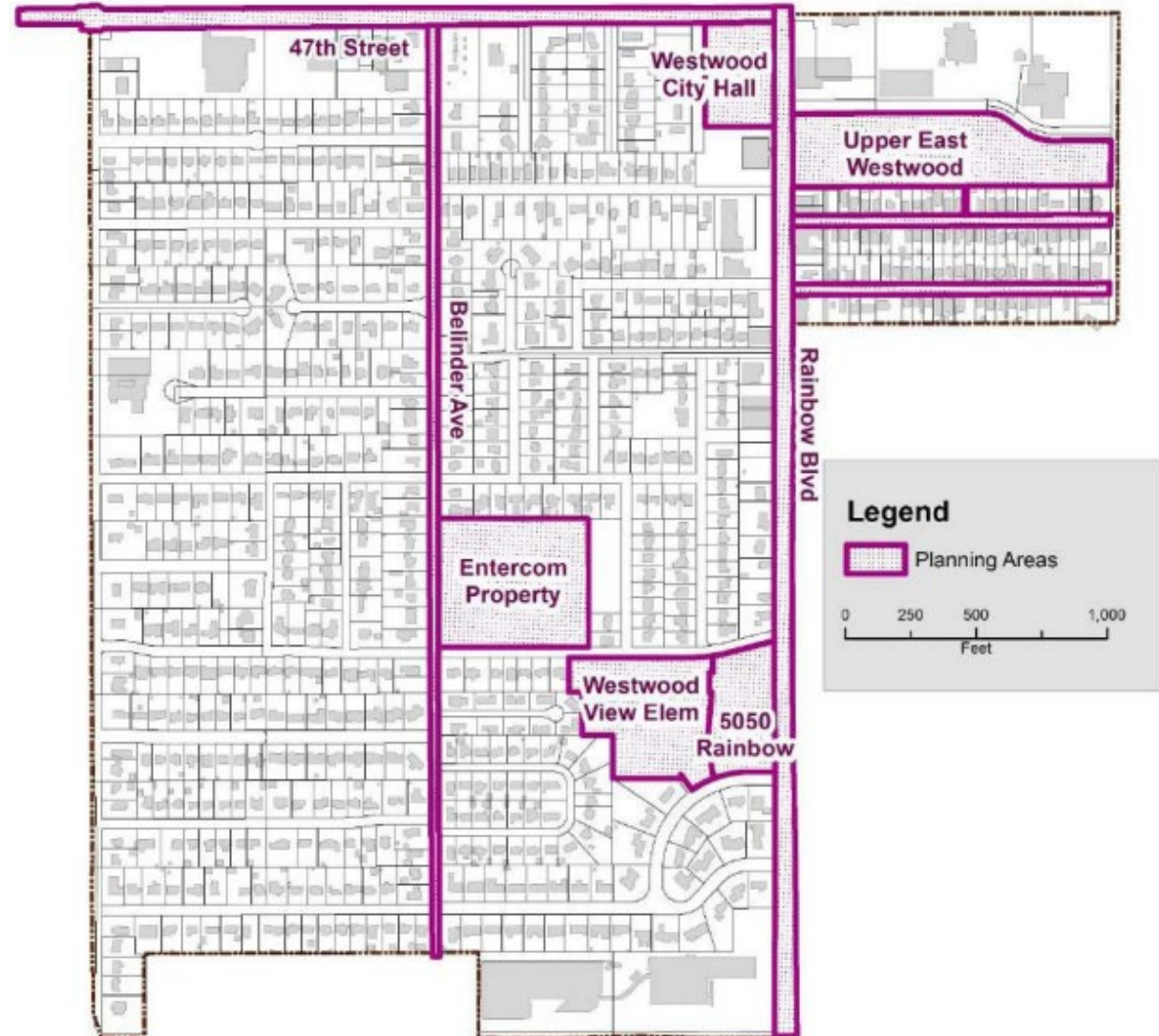
**Westwood, Kansas is a charming, vibrant and diverse city which is safe, walkable, bikeable and comfortable. It is connected to other communities and boasts locally-owned businesses, schools, and parks. Citizens strongly identify with, and value the unique and welcoming character of the community.**



# Comprehensive Plan

Figure 4.3: Westwood Planning Areas

Westwood's Comprehensive Plan outlines the land uses for Westwood's parcels



# Comprehensive Plan

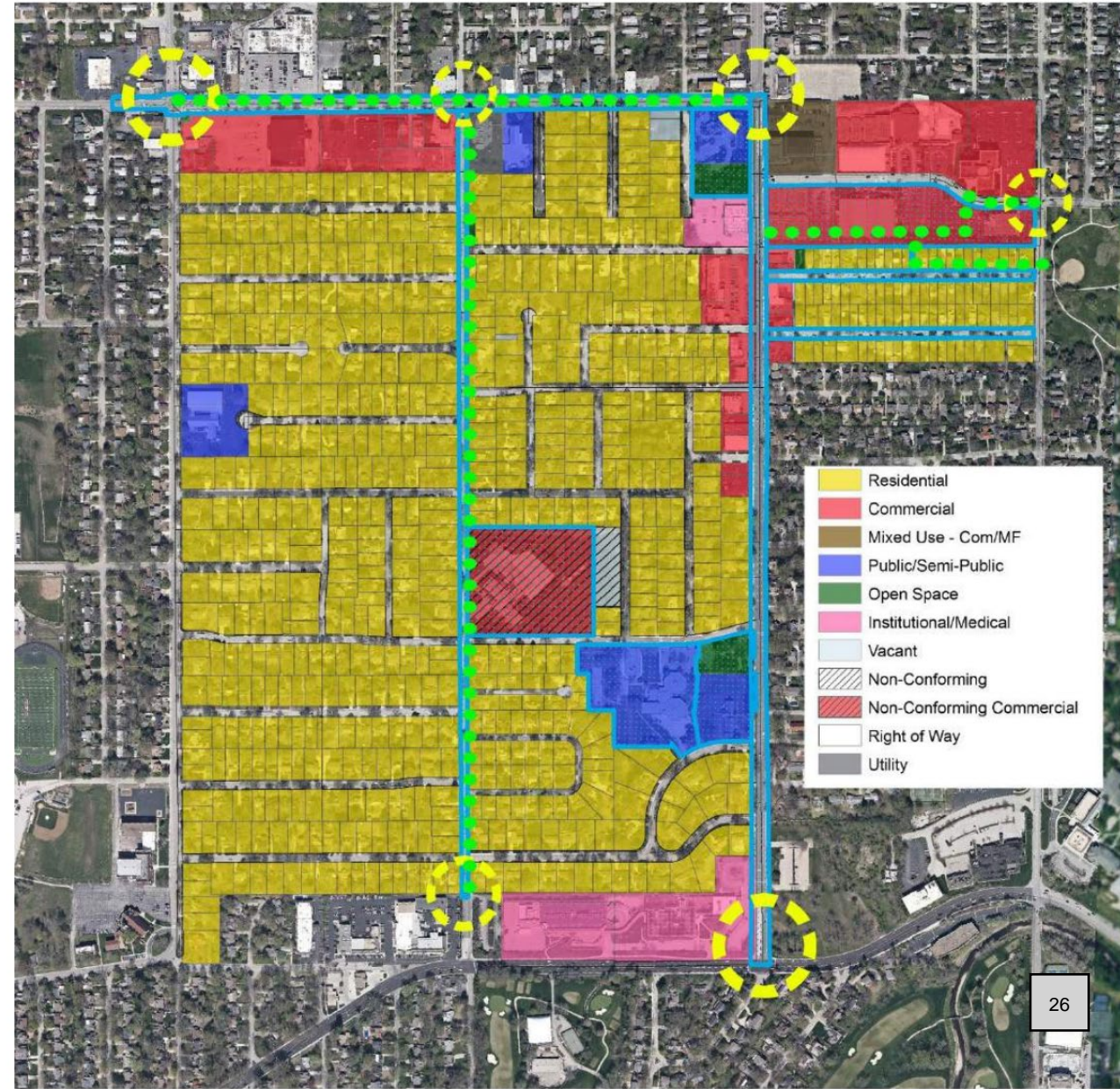
## Street Classifications

| Street Name             | Street Type                               |
|-------------------------|---|
| 47th Street             | C <small>Item A, Section IV, Item</small> |
| 47th Terrace            | Local                                     |
| 47 <sup>th</sup> Place  | Collector                                 |
| 48th Street             | Local                                     |
| 48th Terrace            | Local                                     |
| 49th Street             | Local                                     |
| 49th Terrace            | Local                                     |
| 49 <sup>th</sup> Place  | Local                                     |
| 50th Place              | Local                                     |
| 50th Street             | Local                                     |
| 50th Terrace            | Local                                     |
| 51st Street             | Local                                     |
| 51st Terrace            | Local                                     |
| Adams Street            | Local                                     |
| Belinder Avenue         | Local                                     |
| Belinder Court          | Local                                     |
| Booth Street            | Local                                     |
| Fairway Road            | Local                                     |
| Mission Road            | Arterial                                  |
| Norwood Street          | Local                                     |
| Rainbow Boulevard       | Arterial                                  |
| Shawnee Mission Parkway | Arterial                                  |
| State Line Road         | Collector                                 |

# Comprehensive Plan

Framework of the City as of 2017

## City of Westwood - Framework Plan Map



# Legislative Decisions – Zoning Text Amendments

- These are City-wide decisions that do not affect specific parcels or landowners
- These legislative decisions are entitled to a highly-deferential review by courts
  - Changes in zoning to specific properties are quasi-judicial, and while still given a great deal of deference, courts generally have more ability to review
- Apply to general categories
  - Commercial
  - Residential
  - Business or Overlay District



# Quasi-Judicial Decisions – Due Process

- Due Process applies to all quasi-judicial decisions
- Requires that all proceedings be fair, open, and impartial
- What to consider:
  - Pre-judging an application – making statements about how you will vote before considering the application, refusing to listen to or consider information provided by applicant, staff, fellow members of Planning Commission
  - Ex-parte contact – contact with the applicant or opponents to an application outside the public hearing process



# Quasi-Judicial Decisions – Rezoning

Golden Factors (*Golden v. City of Overland Park*, 224 Kan. 591 (1978))

- The character of the neighborhood;
- The zoning and uses of properties nearby;
- The suitability of the subject property for the uses to which it has been restricted;
- The extent to which removal of the restrictions will detrimentally affect nearby property;
- The length of time the subject property has remained vacant as zoned;
- The relative gain to the public health, safety, and welfare by the destruction of the value of plaintiff's property as compared to the hardship imposed upon the individual landowner
- Recommendations of permanent or professional staff
- Conformance of the requested change to the adopted or recognized master plan being utilized by the city



# Quasi-Judicial Decisions – Rezoning

## Westwood Zoning Code 1.6.17

- Incorporates *Golden* factors
- Includes additional factors to consider in addition to *Golden* factors:
  - H. The extent to which the proposed use would adversely affect the capacity or safety of that portion of the road network influenced by the use, or present parking problems in the vicinity of the property.
  - I. The extent to which the proposed use would create excessive air pollution, water pollution, noise pollution, or other environmental harm.
  - J. The economic impact of the proposed use on the community.



# Quasi-Judicial Decisions – Variance (BZA)

KSA 12-759(e) and Westwood Zoning Code 1.8.4(C) provide five factors

- (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 zone or district; and is not created by an action or actions of the property owner or the applicant;
- (B) that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents;
- (C) that the strict application of the provisions of the zoning regulations of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application;
- (D) that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare; and
- (E) that granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations;



# Quasi-Judicial Decisions – Variance (BZA)

- Uniqueness: cannot be something that was created by the property owner/applicant.
  - Irregularly shaped lot
  - Topographic features
  - Creek
- Unnecessary Hardship
  - Money is not an unnecessary hardship
  - Cannot be self-created
- Appeal is brought directly to the Johnson County District Court
- The five variance criteria are difficult to meet



# Quasi-Judicial Decisions – Exception (PC)

- Westwood Zoning Code 4.5
- Applies to specific parts of the Code
  - 4.3.2 Single-Family Primary Structure Requirements;
  - 4.3.5 Accessory Structures;
  - 4.3.6 Garages;
  - 4.3.7 Building Standards;
  - 4.3.8 Building Additions – Special Conditions;
  - 4.4 New Infill Houses – Special Considerations.

Appeal by the property owner only, to the Governing Body



# Quasi-Judicial Decisions – Exception (PC)

4.5.4: Application must meet at least one of the following criteria:

- A. An alternative higher quality development design is being proposed with no negative impacts to either near-by residential or nonresidential properties.
- B. Relief of the development restrictions imposed on the property will ensure low impact land uses, and quality building and site design arrangements in which adjoining residential properties will not be negatively impacted by any deviations from the applicable regulations.
- C. The granting of the waiver or exception will not be opposed the general spirit and intent of the adopted Comprehensive Plan



# Administrative Decisions

- Keep it simple: ensure that the standards are met
  - Not engaging in a policy decision about whether the plat is what you want it to be
- Apply the facts (usually from the staff report) to the standards of the Zoning Code
- Stay objective



# How Applications Are Heard

- Staff Report
  - Provided in advance – read it and think of questions
  - Staff report is giving you background and facts, not telling you how to make decision
- Comment or Presentation by Applicant
  - Provide additional details on application
  - Will be advocating for acceptance
- Public Hearing
  - If applicable – not all applications get public hearing
  - Time limits for public comments – Chair enforces time and decorum
  - Not a chance to engage in back and forth with public – just listen
- Discussion by Commission
- Decision by Commission
  - Approve, Approve with Conditions, Deny, Table



# Kansas Open Meetings Act (KOMA)



# Kansas Open Meetings Act (KOMA)

KSA 75-4317 *et seq.*

Passed in 1972, intended to ensure that government business is open to the public

- It is interpreted liberally, and exceptions are applied narrowly

Applies to:

1. A “covered entity” and
2. A “meeting:

PC and BZA are “covered entities”

PC and BZA are “meetings”



# Meeting – KSA 75-4317a

“Any gathering or assembly in person or through use of telephone or any other medium for interactive communication by a majority of the membership of a public body or agency subject to this act for the purpose of discussing the business or affairs of the body or agency.”

Majority of membership – open seats still count



# Interactive Communication

- Regular Meetings
- Special Meetings
- Work Session
- Telephone/Conference Call
- Video Call
- “Chance” Meetings
- Online Communication – requires contemporaneous interaction
  - Emails:
    - Not interactive where there are reasonable delays between responses
    - Interactive where two or more commissioners are simultaneously sending and responding to messages
      - The same for texting and online messaging



# Business of the Body

KOMA is only implicated where members are discussing the business of the body

Does not require “binding action” to be taken

- Just because you are not voting on something does not mean KOMA does not apply

Does not preclude members from interacting socially or on non-body-related matters

Avoid any appearances of impropriety



# Serial Meetings

Series of interactive communications

Conducted by less than the majority of the body but collectively involves a majority of the body

Shares a common topic of discussion concerning the business of the body

Exchanges are intended by any or all of the participants to reach an agreement on a matter that would require binding action

Examples:

- Text chain/group text about upcoming PC/BZA issues
- Commenting back and forth on a Facebook post



# What does KOMA Require?

Meeting must be open to the public

No binding action taken by secret ballot

Cannot completely prohibit use of recording devices

Must provide notice of date, time, and place of meeting

- Statute is silent on how notice must be given – but should be given a reasonable time in advance

Does NOT require an agenda – but if agenda is made it must be published



# Penalties for violating KOMA

Injunction or Mandamus (must refrain from doing something or must do something)

Civil penalties – up to \$500 per violation, can be assessed against individual or body as a whole

Court Costs

Attorney Fees

Invalidate any action taken

Removal from office



# Pre-Judging Applications (Don't)



# Avoiding Prejudgment

- Do not make up your mind before meetings
- Do not tell people how you are leaning, how you will vote, what you think about the application
  - More difficult in smaller community like Westwood
- Disclose any contact from the applicant directly to you (ex parte contact)
- Abstain from voting if you truly cannot vote impartially



# Abstaining and Recusing

- Difference
  - Abstain: participate in hearing/discussion but do not vote
  - Recuse: remove yourself from both the hearing/discussion and the vote
- When to do each
  - Conflict of interest – recuse
    - Leave the meeting until next agenda item
  - No conflict but do not want to vote – abstain
  - Abstain/Recuse only when necessary
  - Case by case decision
- Quorum affected by recusal but not abstention



## WESTWOOD PLANNING COMMISSION

Staff Report

Meeting Date: May 5, 2025

Staff Contact: Leslie Herring, City Administrator

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### Annual Election of Officers of the Planning Commission

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#### BACKGROUND

Article 3 of the Westwood Planning Commission Bylaws ([available via this link to the City's website](#)) provide for the following:

**SECTION ONE: Officers.** The officers of the Commission shall be a Chair, Vice-Chair, and Secretary. The Chair, Vice-Chair, and Secretary shall be elected by the Planning Commission at its regular meeting in May of each year. The term of office shall be one (1) year. The officers may be reelected by a majority vote of the membership of the Planning Commission.

**SECTION TWO: Chair.** The Chair shall preside at all meetings of the Planning Commission. At their discretion, a Chair may call special meetings and they may also relinquish the Chair to the Vice-Chair or other specific member. The Chair may not make or second motions, but they may vote on any and all motions to come before the Commission. The Chair shall appoint all committees. The Chair shall perform all of the duties assigned to their office by law and by the City Governing Body, and shall have such usual powers of supervision and management as pertain to the office of Chair. If the Chairmanship becomes vacant for any reason, the Vice-Chair shall succeed to the Chairmanship for the remainder of the term.

**SECTION THREE: Vice Chair.** The Vice-Chair shall act as Chair in the absence of the Chair or disability of the Chair and while so serving shall have all the authority held by the Chair. In the event the office of Chair becomes vacant, the Vice-Chair shall succeed to that office for the unexpired term and the Planning Commission shall elect a new Vice-Chair for the unexpired term.

**SECTION FOUR: Secretary.** The Commission shall elect a recording secretary, who shall be provided by the City of Westwood and who need not be an appointed member of the Planning Commission.

A. The Secretary shall attend all meetings of the Planning Commission, shall send notices of all regular and special meetings to all members of the Commission. In addition, the Secretary shall have, under the Chairman, responsibility for books, papers, and records of the Planning Commission, and attend to all correspondence of the Planning Commission.

B. The Secretary is responsible for keeping an accurate record of all regular and special meetings and transcribing them for Planning Commission approval. The Secretary is responsible for placement of all meeting minutes in the Minute Book of the Planning Commission. All motions shall be recorded and an accurate record made of all reasons for motions or votes by members of the Commission shall be made. The Minute Book shall become a permanent record and part of the official records of the City of Westwood.

## REQUESTED ACTION

The Planning Commission should nominate from its current membership a Chair and a Vice Chair. The Secretary will be Leslie Herring, City Administrator for the City of Westwood.

### *Suggested Motion:*

*I move to elect \_\_\_\_\_ as Chair of the Planning Commission for a term of one (1) year, to end May 2026.*

*I move to elect \_\_\_\_\_ as Vice Chair of the Planning Commission for a term of one (1) year, to end May 2026.*

*I move to elect Leslie Herring as Secretary of the Planning Commission for a term of one (1) year, to end May 2026.*