



City of Elkins

Planning Commission Meeting

October 12, 2023
3:30 PM
401 Davis Avenue
Council Chamber, 2nd Floor

Meets every 2nd Thursday

AGENDA

1. **Call to order and roll call**
2. **Public comment**
3. **Minutes**
 - a. Proposed minutes for the meeting of September 14, 2023
4. **New business**
 - a. Zoning of CSX property near North 12th Street
5. **Announcements**
6. **Adjournment**



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	October 12, 2023
Section:	Minutes
Category:	Action Item
Agenda Item Name:	Proposed minutes for the meeting of September 14, 2023
Recommended By:	Clerk
Summary:	Minutes proposed for your meeting of Sept. 14, 2023.
Fiscal Impact:	n/a
Recommendation:	Consider for approval.
Attachments:	1. Planning commission - 2023_09_14 - minutes_proposed

Proposed Minutes

**PLANNING COMMISSION
REGULAR MEETING
MINUTES**

***401 Davis Avenue
Elkins City Hall
401 Davis Avenue
September 14, 2023
3:30 p.m.***

Present were Planning Commission members K. Somers, J. Marco, D. Talbott, A. Carroll, and P. Kolsun.

Also present were G. Roberts (city attorney) and S. Stokes (city clerk).

V. Jackson and B. Woods were absent.

PUBLIC COMMENT

Joe Chabut addressed the commission about an unzoned parcel owned by CSX near North 12th Street that he leases.

MINUTES

Marco **MOVED APPROVAL OF THE MINUTES OF THE MEETING OF JULY 12, 2023.** The motion carried.

NEW BUSINESS

Carroll **MOVED ADOPTION OF ELKINS PLANNING COMMISSION RESOLUTION #2-2023, ZONING PREVIOUSLY UNZONED PARCEL OWNED BY CSX.** The motion carried.

The meeting adjourned at 4:36 p.m.

The foregoing minutes were approved at the meeting of _____, 2023.

Name & Title

Signature



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	October 12, 2023
Section:	New business
Category:	Action Item
Agenda Item Name:	Zoning of CSX property near North 12th Street
Recommended By:	Clerk
Summary:	At its regular September meeting, the commission considered the matter of an unzoned parcel owned by CSX near North 12th Street. At that time, the commission adopted Planning Commission Resolution #2-2023, as amended (attached). Council has not yet taken up this recommendation. Please see attached memo for further information.
Fiscal Impact:	n/a
Recommendation:	Consider and discuss the matter of unzoned parcel owned by CSX near North 12th Street.
Attachments:	1. Memo - unzoned parcels near 12th - 2023_10_09 2. planning commission resolution 2023_02 - unzoned near 12th street

Memo

To: Elkins Planning Commission

From: Sutton Stokes, City Clerk

Date: October 9, 2023

Re: Summary of issues related to unzoned parcel of CSX land near North 12th Street

The following bullet points summarize the matter of the unzoned parcel owned by CSX near North 12th Street (i.e., “the brick street”). A map and various section of the city’s zoning code are appended to this memo.

- The 2022 zoning update left unzoned a parcel of land owned by CSX between North 12th Street and the railroad tracks, near where North 12th Street intersects South Davis Avenue. Presumably this land was left unzoned on the assumption that it was part of the railroad right of way and essential to rail operations.
- However, staff subsequently learned that CSX has long leased this land for non-railroad use to Joe Chabut, owner of Elkins Truck Service. Again, this parcel is currently unzoned.
- In August, a business (WV Seafood) located a modular building on this parcel and announced plans to open in this location. WV Seafood has not yet applied for a building permit, business license, or water/sewer service.
- In developments since your last meeting, it has been confirmed that (1) Mr. Chabut now leases the entire CSX parcel and (2) CSX has granted permission for WV Seafood to operate on this parcel.
- There is no provision in the city zoning code covering this situation, i.e., when the city is found to contain an unzoned parcel. The closest analogues arise in Section 21-37 (appended to this memo). This section covers two different categories of unzoned land: (1) land that was formerly a city-owned right of way that has been “vacated,” or transferred to private owners; and (2) land that has been integrated into the city via annexation.
 - o If the commission were to treat the CSX parcel like category 1, above (i.e., like a “vacated” former city right of way), it would simply involve extending the zoning of adjacent blocks. This was the option proposed at your last

meeting. The process of zoning vacated city rights of way in this manner is relatively simple and could be described as almost automatic.

- o If the commission were to treat the CSX property like category 2, above (i.e., like land that has been annexed into the city), the process is more complex, including 30-day notice and public and property-owner notification requirements, as well as a public hearing before city council. Another difference is that, whereas the process for category 1 includes direction as to how to zone an unzoned parcel (i.e., identically to the adjacent already-zoned blocks), category 2 is more open-ended and would not necessarily require such a match.
 - o It could be argued that category 2 is the closer fit, because the land that needs to be zoned is more like private property that has been annexed into the city than like previously city-owned right of way that has been transferred into private hands and had no existing uses prior to such transfer.
 - o Again, neither of the above two options applies precisely to this situation. Section 21-37 is simply the section that describes situations most like the one regarding this CSX property.
 - o At its September 14 meeting, the commission recommended that council zone the CSX parcel using an approximation of the category 1 approach. However, the recommended zoning did not precisely match the adjacent blocks.
- Part of the CSX parcel is adjacent to a Commercial (B-1) District. Part is adjacent to a City Residential (R-2) District. The sections of your zoning code regulating these districts are appended to this memo. Note that, among other points of interest in these sections, the CSX parcel would have a 15-foot setback requirement if zoned City Residential but no setback requirement if zoned Commercial.
- Another consideration for the CSX parcel includes the availability of city sewer and water service. Currently, city water and sewer service lines lie no closer than the north edge of North Twelfth Street, i.e., across North Twelfth Street from the grassy section of the CSX parcel, where the WV Seafood building sits.
- The ownership of North Twelfth Street seems unclear, but it seems possible that it may also be owned by CSX. If North Twelfth Street is owned by CSX, then extension of water or sewer service lines across North Twelfth Street would be the responsibility of either CSX or Mr. Chabut. This may complicate the use of the CSX parcel for modular or other buildings.

Possible actions by the commission:

The following are some of the actions that the commission might elect to take:

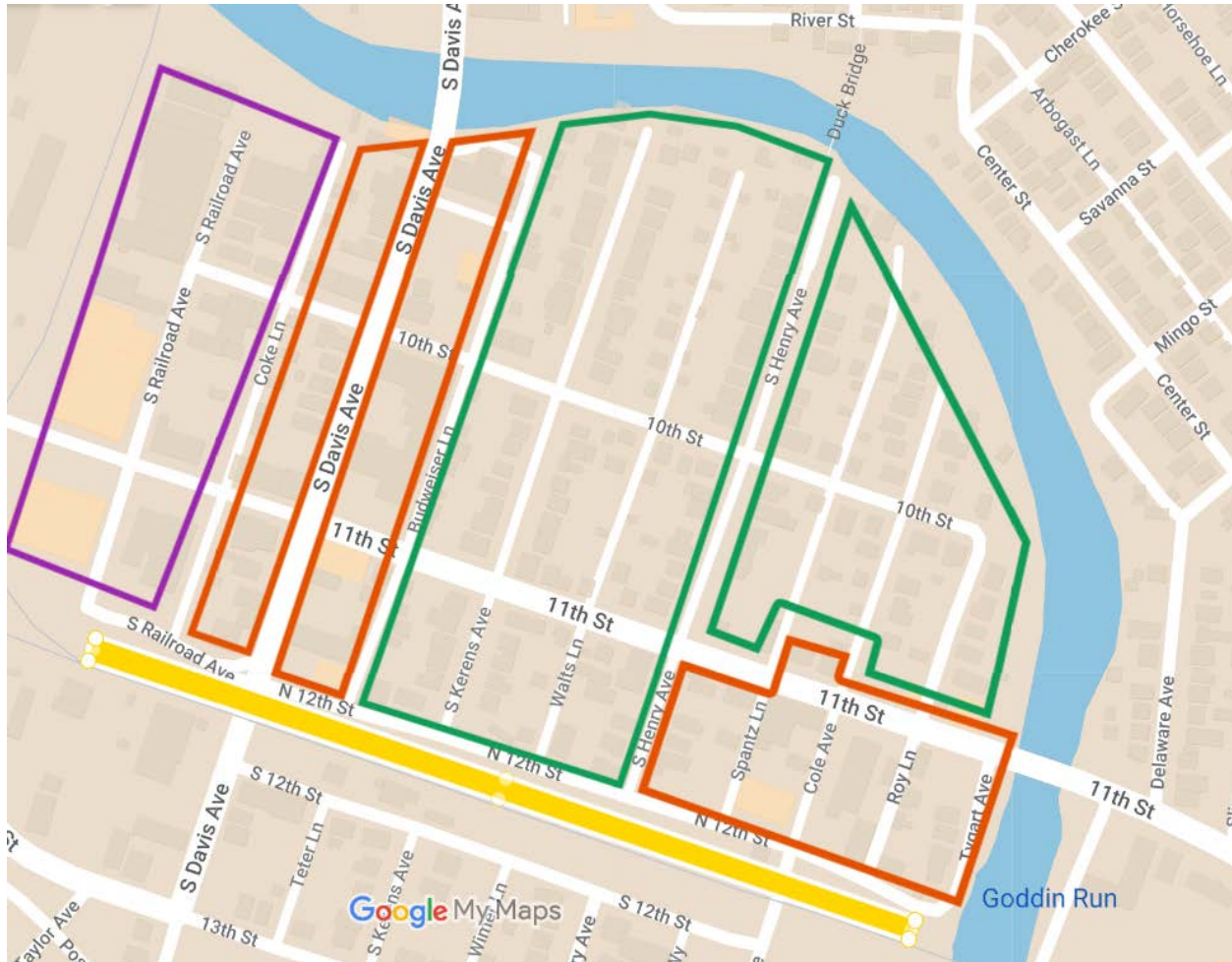
- The commission could recommend to council that the CSX property be zoned identically to the adjacent blocks. This would be similar to the process in Elkins Zoning Code Section 21-37 for “vacated” rights of way. This would be similar to the action taken at the last meeting, but it may be worth considering devising a closer match between the CSX parcel sections and the adjacent zoned blocks than was recommended at the September 14 meeting.
- The commission could recommend to council that the CSX property be zoned using the process in Elkins Zoning Code Section 21-37 for parcels that have been annexed into the city. In this case, the commission would direct staff to commence the 30-day public notification process and prepare for the public hearing stipulated in 21-37.
- The commission could devise another course of action that is not analogous to provisions of the city zoning code. Again, there is no requirement in the code that covers this precise situation.

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Reference Map

The map below shows the approximate location of CSX's unzoned parcel as a yellow block. The color polygons show the adjacent zoned areas.

- Purple = Industrial
- Red = Commercial
- Green = City Residential



Elkins Zoning Code Section 21-37 Procedures Relating to Annexed or Vacated Areas.

(a) *Zoning of Annexed Lands.* Zoning classification for any land annexed into the City shall be established by ordinance, pursuant to Chapter 8A, Article 7, simultaneously with the adoption of the annexation resolution required by West Virginia Code, Chapter 8, Article 6, as amended. City Council shall hear zoning recommendations from the Planning Commission for the subject area during the required hearing for annexation. Prior to any hearings, the Elkins Planning Commission shall submit its written recommendations, to be consistent with the comprehensive plan, to City Council at least thirty (30) days prior to the hearing for annexation.

(1) Prior to the annexation hearing and formal zoning designation of any parcel(s) of land being annexed, the City shall, at least thirty (30) days prior to the enactment of the zoning map amendment:

(i) Give written notice, by certified mail, to the landowner(s) whose property is directly involved in the proposed amendment; and

(ii) Publish a notice of the proposed amendment to the zoning ordinance map as a Class II-0 legal advertisement, pursuant to West Virginia Code Chapter 59.

(2) After the required thirty (30) day notice period ends and the property owners have been notified by certified mail, the City Council shall hold a public hearing regarding the zoning designation of the newly annexed land. After the hearing, City Council can, by ordinance, designate the zoning districts for the annexed land.

(b) Whenever any street, place, alley, public right-of-way, railroad right-of-way, waterway, or other similar area is vacated by proper authority, the districts adjoining each side of such street, place, alley, public way, railroad right-of-way, waterway, or similar area shall be extended automatically to the center of such vacation and all area included in the vacation shall then and thenceforth be subject to all appropriate provisions of the extended districts. In the event of a partial vacation, the adjoining district, or district nearest the portion vacated, shall be extended automatically to include all of the vacated area.

Elkins Zoning Code Section 21-44 Permitted Uses in the City Residential (R-2) District.

(a) The following shall be uses permitted by right in the City Residential District:

- (1) Bed and Breakfast Inn I
- (2) Bed and Breakfast Inn II
- 40
- (3) Bus/Transit Shelter
- (4) Child Day Care Facility, Class 3
- (5) Child Day Care Facility, Class 4
- (6) Dock
- (7) Dwelling, Accessory
- (8) Dwelling, Single-family
- (9) Dwelling, Two-family
- (10) Essential Utilities and Equipment
- (11) Event, Special
- (12) Factory-built Home
- (13) Factory-built Home Rental Community
- (14) Greenhouse, Noncommercial
- (15) Group Residential Facility
- (16) Group Residential Home
- (17) Home-based Business (No Impact)
- (18) Park
- (19) Solar Energy Facility, Small
- (20) Solid Waste Disposal Area/Facility, Public
- (21) Water Treatment Plant
- (22) Wireless Telecommunications Facility, Small Cells

Elkins Zoning Code Section 21-45 Conditional Uses in the City Residential (R-2) District.

(a) The following shall be conditional uses in the City Residential District:

- (1) Bakery
- (2) Brewery Pub
- (3) Community Facility
- (4) Conversion of School/Church
- (5) Dwelling, Conversion Apartment
- (6) Dwelling, Multi-family
- (7) Emergency Shelter
- (8) Event, Mass Gathering
- (9) Governmental Operation
- (10) Home-based Business (Low Impact)
- (11) Parking Lot
- (12) Places of Worship/Religious Institution
- (13) Reception Facility
- (14) Recreation, Municipal
- (15) School, PreK-12
- (16) Senior Independent Housing

Section 21-46 City Residential (R-2) District Lot Requirements.

City Residential District Requirements	
Max. Building Height	80 feet
Min. Lot Size (Sq. Ft.)	No minimum
Min. Lot Width	No minimum
Max. Lot Coverage (as a %)	Interior lot: 40 Corner lot: 50 Triangular lot: 60
Min. Front Setback	Average of the two adjoining properties which have pre-existing structures* 15 feet for vacant lots**
Min. Side Setback	If structure height is 40 feet or less = 5 feet If structure height is more than 40 feet = 15 feet
Min. Rear Setback	Not less than 15 percent of the depth of the lot
*Only the setbacks on the lots that abut each side of the site and are on the same street may be used. Setbacks across the street or along a different street may not be used. **When one adjacent lot is vacant, the average is of the setback of the adjacent non-vacant lot and the required setback for the vacant lot. When the subject lot is a corner lot, the average is of the setback of the adjacent non-vacant lot and the required setback of the subject lot.	

Elkins Zoning Code Section 21-55 Commercial (B-1) District.

The purpose of the Commercial District is to provide space for larger scale commercial businesses that serve both the City and the traveling public.

Elkins Zoning Code Section 21-56 Permitted uses in the Commercial (B-1) District.

(a) The following shall be uses permitted by right in the Commercial (B-1) District:

- (1) Animal Hospital/Veterinary Office
- (2) Automobile Car Wash
- (3) Automobile Repair/Service
- (4) Bakery
- (5) Bank/Financial Institution
- (6) Bed and Breakfast Inn I
- (7) Bed and Breakfast Inn II
- (8) Bed and Breakfast Inn III
- (9) Boat and Marine Sales/Service
- (10) Brewery Pub
- (11) Broadcasting Studio (radio/television)
- (12) Building Materials Facility
- (13) Bus/Transit Facilities
- (14) Bus/Transit Shelter
- (15) Butcher Shop
- (16) Catering Business
- (17) Child Day Care Facility, Class 1
- (18) Child Day Care Facility, Class 2
- (19) Child Day Care Facility, Class 3
- (20) Child Day Care Facility, Class 4
- (21) Clinic
- (22) Community Facility
- (23) Continuing Care Facility
- (24) Convenience Store
- (25) Cultural Service
- (26) Distillery
- (27) Distribution Facility
- (28) Dock
- (29) Dog Day Care
- (30) Dry Cleaner
- (31) Dwelling, Mixed Use
- (32) Dwelling, Multi-family
- 45
- (33) Dwelling, Single-family
- (34) Dwelling, Two-family
- (35) Educational Institution
- (36) Equipment Rental/Repair
- (37) Essential Utilities and Equipment
- (38) Event, Mass Gathering

- (39) Event, Special
- (40) Farm/Construction Equipment and Supply Sales
- (41) Farmer's Market
- (42) Funeral Home/Mortuary
- (43) Garden Center
- (44) Governmental Operations
- (45) Greenhouse, Commercial
- (46) Greenhouse, Noncommercial
- (47) Group Residential Facility
- (48) Group Residential Home
- (49) Health Club
- (50) Home-based Business (Low Impact)
- (51) Home-based Business (No Impact)
- (52) Hotel/Motel
- (53) Laboratory
- (54) Laundromat
- (55) Liquor Store
- (56) Medical Adult Day Care Center
- (57) Medical Cannabis Dispensary
- (58) Medical Cannabis Organization, Health Care
- (59) Office Supply Establishment
- (60) Park
- (61) Personal Service
- (62) Pet Shop
- (63) Pharmacy
- (64) Photographic Studio
- (65) Place of Worship/Religious Institution
- (66) Private Club
- (67) Professional Services
- (68) Reception Facility
- (69) Recreation, Commercial Indoor
- (70) Recreation, Commercial Outdoor
- (71) Recreation, Municipal
- (72) Restaurant
- (73) Retail Store/Shop <7,000
- (74) Retail Store/Shop 7,000 to 25,000
- (75) School, Commercial
- (76) School, PreK-12
- (77) Senior Independent Housing
- (78) Shopping Center
- (79) Solar Energy Facility, Small
- (80) Studio, Dancing, Music or Art
- (81) Tattoo Parlor/Body Piercing Studio
- (82) Tavern/Drinking Establishment
- (83) Theater

- (84) Vehicles Sales/Rental and Service
- (85) Video Gaming or Lottery Establishment
- (86) Winery
- (87) Wireless Telecommunications Facility, Small Cells

46

Elkins Zoning Code Section 21-57 Conditional Uses in the Commercial (B-1) District.

(a) The following shall be conditional uses in the Commercial (B-1) District:

- (1) Conversion of School/Church
- (2) Emergency Shelter
- (3) Flea Market
- (4) Gas Station
- (5) Gas Station, Large
- (6) Hospital
- (7) Kennel
- (8) Manufacturing (Light)
- (9) Night Club
- (10) Parcel Delivery Facility
- (11) Parking Lot
- (12) Parking Structure
- (13) Recycling Facility
- (14) Retail Store/Shop >25,000
- (15) Roadside Vendor Stand
- (16) Sports Arena
- (17) Theater, Drive-in

Section 21-58 Commercial (B-1) District Lot Requirements.

Commercial (B-1) District Requirements	
Max. Building Height	130 feet
Min. Lot Size (Sq. Ft.)	No Minimum
Min. Lot Width	No Minimum
Max. Lot Coverage (as a %)	No more than 90 percent
Min. Front Setback	No Minimum
Min. Side Setback	No Minimum
Min. Rear Setback	No Minimum

A RESOLUTION OF THE ELKINS PLANNING COMMISSION

(#2-2023)

September 14, 2023

Assigning Zoning District To Property Previously Not Zoned Pursuant To the Provisions and Procedures of Elkins City Code, Chapter 152: Zoning

WHEREAS, the Elkins Planning Commission has met and reviewed certain sections of Chapter 152: Zoning which refer to recommendations and specify the procedures related to annexed or vacated areas; and

WHEREAS, the Elkins Planning Commission has been presented with specific circumstances involving property owned by CSX Transportation, Inc., ("CSX") as part of its railroad right of way, that was not transferred to the West Virginia State Railway Authority by deed dated September 26, 1997 and of record in the Office of the Clerk of the Randolph County Clerk in Deed Book 454 at page 608; and

WHEREAS, at the time of the passage of the zoning ordinance, the CSX property was not zoned because it was believed to be part of the railroad right-of-way and the zoning ordinance did not assign a zoning district to railroad rights-of-way along with other categories of rights-of way for obvious reasons as to the uses for those parcels of land; and

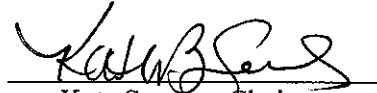
WHEREAS, recently it has come to the attention of City officials that it would be furthering the purpose of the zoning ordinance and in the best interests of the citizens to assign a zoning district to that certain non-zoned parcel of land owned by CSX, pursuant to City Code Sections 152.065-152.069; and

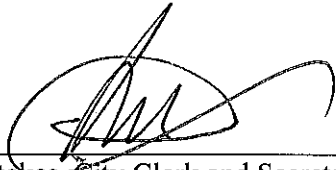
WHEREAS, the Elkins Planning Commission has determined that, pursuant to Section 152.024, recommendations regarding Chapter 152: Zoning are warranted and recommends the actions as follows.

NOW THEREFORE BE IT THEREFORE RESOLVED THAT:

1. The Elkins Planning Commission has determined that this proposed recommendation is consistent with the adopted comprehensive plan.
2. The Elkins Planning Commission recommends to City Council, that by ordinance, the parcel of land owned by CSX, adjacent to N. 12th Street and being described as a 3.5 acre tract, identified as Tax Map 17 Parcel 258, be assigned zoning designations that are the same zoning class of the adjoining district, which may include more than one adjoining zoning district adjacent to said parcel owned by CSX.

Amended: All CSX property along N. 12th recommended to be zoned commercial except for the section between S. Kerens & S. Henry, which would be zoned City Residential.


Kate Somers, Chairman
Elkins Planning Commission


Attest: _____
Sutton Stokes, City Clerk and Secretary to Commission

July 13, 2023

Page 2

Map showing zoning of CSX parcel recommended by commission at its Sept. 14 meeting.

