

**MINUTES OF THE
MIAMI COUNTY PLANNING COMMISSION
March 7, 2023**

**MIAMI COUNTY ADMINISTRATION BUILDING
COMMISSION CHAMBERS
201 SOUTH PEARL STREET
PAOLA, KANSAS 66071**

ATTENDANCE

CHAIR:	John Menefee
VICE-CHAIR:	Kelli Broers
PLANNING COMMISSION	Charles Armour, Joshua Brown, Randy Kitchen, Bret Manchester, Joe Flake, Topher Philgreen, and Gary Brockus
ABSENT MEMBERS:	
EX-OFFICIO MEMBERS:	None present
PLANNING DIRECTOR:	Kenneth Cook
ASST. PLANNING DIRECTOR:	vacant
PLANNER:	Not present
PC SECRETARY:	Casey d'Augereau
COUNTY COUNSELOR:	Not present
ECONOMIC DEVELOPMENT	Not present
COUNTY COMMISSION:	None Present
COUNTY CLERK:	Not Present
PRESS:	Not present

**MINUTES OF THE
MIAMI COUNTY PLANNING COMMISSION
March 7, 2023**

CALL TO ORDER

Chairman John Menefee called the meeting to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE

ROLL CALL

Roll Call was taken with all nine (9) members present.

DISCLOSURE OF ANY EX PARTE COMMUNICATIONS OR POTENTIAL CONFLICTS OF INTEREST

There were none.

ADOPTION OF THE AGENDA

Philgreen moved to adopt the agenda as presented. Broers seconded, and the motion passed unanimously (9 - 0), via a show of hands.

CONSENT AGENDA

- Minutes: Approval of the February 7, 2023, Planning Commission Minutes

Philgreen moved to approve the consent agenda. Armour seconded, the vote was 8-0 with Broers abstaining per her absence from the February 7, 2023, meeting, via show of hands.

REGULAR AGENDA

Old Business:

Public Hearing – 23001-TA: Retail Sales of Agricultural Equipment

Cook requested the Planning Commission to consider possible changes to the Zoning Regulations in regard to the Retail Sales of Agricultural Equipment. In 2012 Miami County adopted changes to the regulations allowing for Agricultural Equipment Retail Sales to occur in the Agriculture District of Miami County through the Conditional Use Permit (CUP) process. Recently the Planning Commission discussed a proposal for amendments to the regulations. It was discussed that in 2012 the Planning Commission had no way to gauge how much land would be needed for Retail Sales of Agricultural Equipment. In the ten (10) years since the regulation was originally adopted and the size of equipment has changed. Cook stated the Planning Commission had been considering the possibility of increasing the allowable size to not exceed 5% the size of the parcel or 20,000 square feet, whichever is greater and limit the display area to no wider than 30% of the area of the frontage for the property. No changes were discussed for any other conditions, including any display and storage areas must be setback at least 100' from a property line. Cook stated on page two (2) of the Staff Report there is an example of the proposed changes compared to the current regulations.

Following are estimates of what the proposed changes would allow as compared to the current regulations. For a property described as a ¼ of a ¼ of a Section (40-acres), the maximum display area would increase to 87,120 square feet (2-acres) and a maximum frontage of 396 feet (max size of 396' x 220'). If the property was described as a ½ of a ½ of a ¼ of a Section (still 40-acres), while the maximum display area would remain the same the frontage would increase to 792-feet (max size of 792' x

110'). As most properties that are owned as 80-acres tracts are described as ½ of a ¼ of a Section, the maximum display area would increase to 174,240 square feet (4-acres) and a maximum frontage of 792-feet (max size of 792' x 220').

Cook stated the proposed changes to the size of the display area provided significant increases compared to the current requirements. An 80-acre property increases is from the existing 20,000 square feet to 174,240 square feet, or a size that is 8.7 times larger. Cook stated his biggest concern is the change from the current regulations to the rather large proposed change. Cook stated Agricultural Sales are also permitted through Commercial Districts and believes, from a Staff prospective, this is an intensity of land use that may be more appropriate in a Commercial District. Miami County has chosen to allow some Agricultural Sales to be considered through the Conditional Use Permit (CUP) process. Cook stated another point he believes to be important is the size of storage allowed, while there are size limitations on the display area there are no size limitation on the storage area.

Cook briefly commented on Auction Facilities as part of the operation of a property that has received an approval of a CUP for the operation of Retail Sales of Agricultural Equipment. Cook stated it had been pointed out multiple times that a business in Miami County was holding auctions not allowed as a part of their CUP. Cook stated after additional research he noted that Auction Facilities are included in the list of uses which may be considered through the CUP process in the Agricultural District. In Cook's opinion regular ongoing auctions of agricultural equipment would be done as an application for a CUP. Cook also stated a person has a Retail Sales of Agricultural Equipment CUP could hold an auction of agricultural equipment in the area approved for retail sales through a CUP. Cook stated his understanding of some of the agricultural equipment auctions are a lot larger than where the agricultural equipment is stored, and it's not limited to only agricultural equipment.

Cook stated the main things he would like the Planning Commission to consider is:

- Could a smaller increase work and provide for additional space especially as someone considers different size equipment.
- The one (1) operation we currently have is located along US 69 Highway which is designated Scenic Byway and could change the Character of the area with an increase.

Cook stated Staff offers the following for consideration and discussion:

17. Retail Sale of Agricultural Equipment:

- A. Infrastructure such as roads and available water flows to meet applicable fire codes will be evaluated for each proposal. Refer to Sections 5-3.12 and 5-3.13 of the Miami County Subdivision Regulations for minimum infrastructure requirements for conditional uses.*
- B. All structures, parking areas, storage areas or other improvements associated with the retail use shall be a minimum of one hundred (100) feet from all property lines.*
- C. Except in emergencies, activities that cause noise, odor, smoke, heat, vibration, or similar effects shall not occur earlier than 5:30 a.m. nor later than 10:30 p.m.*
- D. All open storage (non-display) areas shall be adequately screened from rights-of way and all adjoining properties with fencing, landscaping, or other approved screening method. Areas designated for product display may be required to be screened from neighboring residential uses.*
- E. Off street parking shall be provided for the approved use(s) in compliance with the parking requirements for the use(s) as outlined in these Regulations.*
- F. The total area of display/sales lots shall not exceed 5% of the approved parcel or twenty thousand (20,000) square feet, whichever is greater, and shall not be wider than 30% of the frontage along a public road right-of-way ~~two hundred (200) feet along a public road~~ frontage. Display areas shall be clearly defined on the required site plan, and visible display of items for sale shall be limited to that area.*

- G. Retail sale of agricultural equipment shall be accessory to an existing residential use on the same parcel.*
- H. Any illumination associated with equipment sales shall be shielded so that the light source (bulb) is not visible from, and so that it does not cast light upon, adjacent properties or rights-of-way.*
- I. There shall be a compliance review conducted by staff two (2) years after approval of any conditional use permit for agricultural equipment sales.*

Manchester referred to 17A (*Infrastructure such as roads and available water flows to meet applicable fire codes will be evaluated for each proposal. Refer to Sections 5-3.12 and 5-3.13 of the Miami County Subdivision Regulations for minimum infrastructure requirements for conditional uses.*) and asked if there are fire hydrants in the area of the current Retail Sales of Agriculture Equipment business in Miami County.

Cook stated that is to be used for a case by case situation. A facility that includes structures would bring more concern than a facility that does not include structures.

Kitchen asked if that means it is the discretion of the Planning Commission to decide if a fire hydrant is needed or not.

Cook agreed.

Menefee stated his understanding is it will be based on what the Conditional Use Permit (CUP) is requesting. If the CUP application indicates an indoor display area, then the Planning Commission will take the fire codes/fire hydrants into consideration.

Brown asked if that would be handled by the Building Codes.

Cook stated yes, but it would depend on the type of construction.

Kitchen referenced 17D (*All open storage (non-display) areas shall be adequately screened from rights-of way and all adjoining properties with fencing, landscaping, or other approved screening method. Areas designated for product display may be required to be screened from neighboring residential uses.*) and asked if there are adjoining properties and the neighbors are in agreeance not to have screening between their properties would the CUP applicant still be required to have screening for the CUP. Kitchen's main concern is using trees on a property line for screening. His opinion is that the trees grow and can impact adjoining properties and fencing.

Cook stated the screening issue can be considered for future amendments. With all live screening there will have to be maintenance to the screening. The Planning Commission has the authority to say, "no live screening on property", "a required set back limit for live screening is...", or even "only a specific type of live screening may be used".

Kitchen stated his concern is for the neighbors. There is no compensation for problems live screening can cause for adjoining properties. Live tree root system affect the adjoining properties and some mature trees can have a root system up to 60-feet. Kitchen believes live screening needs to stipulate a setback distance from the property line to accommodate the type of trees and the trees' root systems to prevent having a negative effect on the adjoining neighbor.

Menefee asked if the adjoining neighbors agree to no live screening, what will the County's stand on that be since it is a condition of the CUP.

Armour stated he wants it clear that six foot privacy fencing can be on the property line, live screening cannot be on the property line.

Cook used Solar Farm Regulations as an example and stated that in a lot of the regulations for Solar Farms it states there can be a mutual agreement between the solar operator and the house that the land is being leased from. Or if the adjoining neighbor and the solar operator have a mutual agreement to not have live screening, then they could sign as agreement. Cook's opinion is that mutual agreements work great in a

short-term scenario but in a long-term scenario it may not. Eventually, one or both properties will change hands and the new owner(s) may not like the mutual agreement between the previous owners.

Kitchen stated if he is the adjoining property owner, and the screening is trees he has the right to get rid of the trees on the property line. If there is a CUP the conditions state there must be screening.

Cook stated in his opinion if screening is required the applicant is actually installing it him/herself and it should be located fully on the applicant's property. Depending on the type of screening being used would depend on how close the screening is to the property line. Fencing can be located on the property line whereas live screening needs to have a setback based on the type of live screening. Live screening needs to have some set back, and the adjoining neighbor would have some abilities to trim things up but probably wouldn't have the right to remove the screening.

Public Hearing – 23001-TA: Retail Sales of Agricultural Equipment opened at 7:27 p.m.

No one came forth to talk on this item.

Public Hearing – 23001-TA: Retail Sales of Agricultural Equipment closed at 7:28 p.m.

Planning Commission Discussion opened at 7:28 p.m.

Menefee referred to Kitchen's concern with screening stating he doesn't feel there is a good solution to writing a general regulation to put in the book. He believes a Conditional Use Permit (CUP) allows flexibility for the Planning Commission to review screening on a case by case basis. Menefee stated he is open to suggestions on changing the wording on 17D (*All open storage (non-display) areas shall be adequately screened from rights-of way and all adjoining properties with fencing, landscaping, or other approved screening method. Areas designated for product display may be required to be screened from neighboring residential uses.*).

Flake believes there are some advantages to leaving it as currently stated and noted it could be difficult to write something to suit every situation.

Broers stated it gets a little meddlesome solving that problem. Mutual agreements between adjoining property owners, is it a written agreement or a handshake. Menefee asked if it would have to be written by an attorney. Broers stated she would hate the thought of her being responsible for taking the rights of the property owners to make a mutual agreement.

Menefee stated he would hope that the County's common sense would kick in when there is a mutual agreement between the property owners.

Philgreen stated if a property owner has screening and decides to bulldoze it, new neighbor moves in and has a complaint about no screening. Does the applicant now have to put up screening when they had an agreement with the previous owner.

Kitchen stated that's the problem, it is being left up to the neighbors and there is no condition.

Cook asked what is appropriate screening. If the location between neighbors is a half mile, the distance might be sufficient screening. Whereas, allowing the Planning Commission to consider the original CUP to have the discussion about screening and what is and isn't appropriate screening. If there is a mutual agreement between adjoining property owners the two (2) property owners need to sign a document stating they agree to the screening.

Philgreen noted what the Planning Commission is looking at tonight, is item 17F (*The total area of display/sales lots shall not exceed 5% of the approved parcel or twenty thousand (20,000) square feet, whichever is greater, and shall not be wider than 30% of the frontage along a public road right-of-way two hundred (200) feet along a public road frontage. Display areas shall be clearly defined on the required site plan, and visible display of items for sale shall be limited to that area.*).

Cook stated yes. He did not address anything else in the Planning Commission Report and didn't propose amend setbacks.

Philgreen stated this is Retail Sales of Agricultural Equipment, not car sales.

Cook stated he had a couple of people recently ask, "what are Retail Sales of Agricultural Equipment". Cook wonders if this needs to be more specific. Cook stated he doesn't know if it is part of the auction facilities and activities or just part of the normal retail sales. People have expressed concern there are items that are not Agricultural Equipment. Cook stated he explained to them that some of these items are very grey and could be Agricultural Equipment. Cook stated this has been brought up several times. Cook gave the example of a utility trailer. It could be used for agriculture, but most people would not use it for agriculture.

Kitchen stated it depends on the person that bought the utility trailer. If that person is going to use it for agricultural purposes then it would be considered Agricultural Equipment.

Cook stated he understands there is some sort of a hunting blind out there now for sale. Cook stated there is a court case that talks about hunting being considered agricultural because it is harvesting things from the land. That blind can also be used with dealing with predators.

Broers stated Cook mentioned concerns about the size being too large and asked if anyone else has any feelings on addressing the display size increase. Broers used a 10-acre piano key example and asked what would that look like.

Kitchen stated it may not fit in a 10-acre piano key lot.

Menefee stated it would, but it will be 66-foot wide.

Broers asked if the size and shape would be something to consider if a Conditional Use Permit (CUP) application is presented for a Retail Sales of Agricultural Equipment.

Menefee stated that is a good idea because a lot will be dependent on how that land lays, how much road frontage they have. Menefee believes that would be better to leave to the individual application.

Cook noted in that type of situation if all the properties are 10-acre piano key lots that are all right next to each other and they each have houses it would not be a good fit.

Armour asked for clarification on 17G (*Retail sale of agricultural equipment shall be accessory to an existing residential use on the same parcel.*).

Cook stated he believes that was to ensure the property owner resided on the property with the CUP in hopes to have better upkeep.

Menefee stated this only pertains to land being used for Retail Sales of Agricultural Equipment.

Cook agreed.

Armour gave an example asking if a person owns two (2) 80-acre parcels their house is on one parcel can the Retail Sales of Agricultural Equipment be on the adjoining 80-acre parcel.

Kitchen stated the two (2) parcels would have to be combined into one (1) or no Retail Sales of Agricultural Equipment.

Cook agreed. Cook stated a person applying for a CUP on a property they live on is usually looked at as being preferred to a person applying for a CUP and doesn't live on the property.

Brockus stated after listening to everything said tonight this sounds like it falls in that "sweet spot" of not too specific and not too vague and believes it needs to stay inside that area.

Philgreen moved to accept the amendments of 17F: *The total area of display/sales lots shall not exceed 5% of the approved parcel or twenty thousand (20,000) square feet, whichever is greater, and shall not be wider than 30% of the frontage along a public road right-of-way two hundred (200) feet along a public road frontage. Display areas shall be clearly defined on the required site plan, and visible display of items for sale shall be limited to that area.* Brown seconded, and the motion passed unanimously (9-0), via a show of hands.

New Business: None.

GENERAL DISCUSSION

Discussion on Solar Farms

Cook stated his main goal tonight is to get more direction from the Planning Commission and to touch on the main items of Solar Farms. Cook stated he would like to have something drafted for the May 2023 meeting; it is too late for the April 2023 meeting as the publication deadline has passed for April. Cook stated the current moratorium expires in June and the desire is not to have another extension of the moratorium. Cook stated if they are making progress it might be possible to get that extended.

Cook stated he received an email earlier in the day stating the State of Kansas Legislature was considering possible adoption for a moratorium Statewide regarding solar projects in order for additional study on impacts on people and environment. Cook believes that has been pulled from the bill but will be keeping an eye on this.

Philgreen stated he heard the same thing about an adoption of a moratorium Statewide. Philgreen asked if there is a way for the utility companies to bypass regulations at a State level.

Cook stated in his opinion is a moratorium on the State level would include.

Kitchen asked if the Planning Commission can regulate a public utility access getting to easements.

Menefee stated he believes a public utility has the right to have access.

Kitchen agreed with Menefee's statement but stated he doesn't want to deny them use of the easement just access getting to the easement. Kitchen stated he doesn't believe a solar farm will be built on a property off of a paved road, and if it is off of a gravel road the roads and culverts may not be able to sustain the solar farm's vehicle(s).

Philgreen stated he knows the utility status is above the County, and asked if it is also above the State of Kansas.

Kitchen stated public utilities are regulated by KCC but asked how much KCC really enforces the public utilities. Kitchen stated he would like to see the State of Kansas' regulations for solar farms.

Broers stated she had a conversation with a person from KCC and if her memory recalls correctly, they have no authority to regulate solar farms at this time under State Statutes. Broers stated she would welcome KCC to oversee solar farms due to the added level of resources. Broers stated one of her concerns is that the County doesn't have the resources to really regulate solar farms from the beginning of a project to the decommissioning of the project.

Kitchen asked what benefit will the County get out for allowing solar farms.

Menefee stated he found a document from almost a year ago and read from the document:

"More specifically the wind and solar generation systems with KCC only have jurisdiction over these generation resources when they are owned or operated by jurisdictional utility to serve it's customers."

Kitchen believes there is a company wanting to come into Miami County with a solar farm and they are wanting to become a public utility. Kitchen asked what can the County do to prevent them on the infrastructure, the neighbors will be affected by a solar farm.

Cook stated if it is for water, power, or another type of public utility, their lines are all allowed to be placed in the right-of-way. If it is a private utility that is different, they would have to get approval to use the easement.

Kitchen asked if they would need to get an easement from the landowner and pay the landowner for the easement.

Cook stated that is one possibility. They will have to work with the County as well.

Kitchen stated even the Rural Water Districts have to get an easement from the landowner to run water lines.

Cook stated his understanding is that Rural Water Districts place their lines outside the right-of-way because if they are within the right-of-way and they need to move the lines for a project then it is the utility's responsibility to move the lines at their expense. When the utility is placed outside the right-of-way and the County has a project that requires the utility to be moved then the County is responsible for cost of moving the lines.

Kitchen stated he knows of utilities that were not able to get an easement and would run the line down the middle of the road. Kitchen asked if the utility companies are allowed to do this or are they required to get a permit.

Cook stated he believes there is a right-of-way permit they would need to get to make sure the utility is buried deep enough that it won't impact the road.

Broers reminded Staff there was a request made by the Planning Commission at the September 20, 2022, solar farm workshop for legal to prepare a legal memo stating what the Planning Commission can and cannot do regarding solar farm regulations. Broers asked if that legal memo is still coming. Broers' concern with the regulations presented last fall was the fulsome, piecemealed, and had not undergone any legal review. Broers stated although she isn't a utility expert she has drafted regulations before and some of the regulations presented didn't look right. Broers' opinion is that if the Planning Commission had approved the regulations presented in the fall of 2022 and took it to the public for review they would have laughed at the Planning Commission. Broers stated her understanding is that legal reviews regulations after the Planning Commission approves them. She would like to have that reversed and have legal review the proposed regulations prior to the Planning Commission reviewing them for consideration of approval. Broers believes that if something is being presented to the public it needs to be more than face value.

Cook stated he has had conversations with legal and will be working with her as he has questions or issues he needs advice on. Cook stated he wants to make sure we stay within the boundaries we are required to work within. Cook asked Broers for clarification on the legal memo the Planning Commission is wanting from legal, asking if they are wanting to know about fully banding solar farms.

Broers stated she will need to go back to her notes and the video from September 2022 to verify what the exact request from legal was. Broers stated legal came to a meeting and promised a memo. Legal stated she was about to have an intern working for her and she would have the intern get on this.

Menefee stated his understanding is that staff wants guidance on what the Planning Commission would like to do regarding solar farms. Menefee stated to Broers' point, in his opinion a lot of this is out of their expertise so the Planning Commission is relying on legal and staff. Menefee stated the two (2) most important things to him are:

1. Screening. It has to be adequately screened, he doesn't want to drive down the road and see a solar farm.
2. Menefee personally wants to see it limited to brown fields only. Examples given were rock quarries, closed landfill sites, and things of that nature. He does not want to see the solar farms taking up prime farmland, cattle land, and things of that nature.

Kitchen asked what if there is a regulation stating no solar farm on agricultural land that has been used in the last 5 or 10 years for agricultural purposes.

Menefee stated that is why he mentioned limiting solar farms to brown fields.

Broers stated that they have discussed hunting is considered agricultural use. A person could have 160 acres of wetland dedicated to duck hunting.

Kitchen stated they can't build in a wetland.

Broers stated that was a bad example, but the Planning Commission knows what she is trying to say.

Kitchen asked if their offer is \$2,500 per acre for 20-years what are they really willing to pay per acre. Kitchen asked if the solar project is for a private company can a regulation be put in place stating they must pay the negotiated rate up front. Kitchen doesn't believe the landowner will receive payment in full over the allotted years and doesn't want to see them with the short end of the stick.

Cook stated most of the regulations he has reviewed does have provisions for some kind of financial security that they have to provide. Some of those are based off of an engineer's estimate on the cost to completely remediate the site and to remove all materials (completely or down to four (4) foot below grade). Cook stated he believes both Douglas County and Johnson County have regulations referencing the salvage value to reduce the cost of decommissioning the solar farm is not to be considered.

Kitchen stated the Planning Commission talked about the bond a few months ago about revisiting the bond throughout the process because the cost of cleaning up today will be less than the cost of cleaning up in 5, 10, or 20 years down the road. Kitchen asked if Miami County tells the utility company they need to increase their bond to \$5 million dollars and the utility company says "no", what is the County's recourse.

Cook stated they will be operating under a Conditional Use Permit (CUP) and Planning & Zoning will need to go through the process of reviewing the CUP per the conditions listed on the CUP. If the solar farm is found operating out of compliance with the CUP then a violation letter will be sent, if the violation is not corrected then it goes to Codes Court. After Codes Court then procedures begin to revoke the CUP. Kitchen stated then that will cost the citizens of Miami County to pay for a legal procedure on a battle we won't win.

Brown stated when calculating the amount of the bond, calculating periodic increases can be calculated into the bond amount.

Kitchen believes the money needs paid up front and then Miami County can earn interest on it.

Menefee asked when there is an escrow account with Miami County, what does the county do with that money and who controls it.

Cook stated he will need to look into the escrow account and get back with the Planning Commission. Cook believes when there is an escrow account the county does not get to use the interest that is earned on the account.

Menefee stated if the interest goes back into the account with the escrow it will help to offset the inflation for the clean-up, but it won't be enough.

Kitchen stated the Planning Commission can stipulate 10% of the cost of construction needs paid up front.

Brown used Homeowners' Association (HOA) as an example stating if a person is in violation of the HOA regulations the HOA can pretty much take your property. There is a lot of recourse that can be taken.

Menefee stated he agrees with Kitchen. Menefee stated the County wants to make sure they have teeth into this. If the solar farm goes defunct like the gas company in Miami County did many years ago and left oil wells all over the County and there was no clean-up. There was no recourse for the County to take to force them to come back and do the clean-up.

Kitchen stated that was all government money they were playing around with, probably the same thing with the solar farms.

Menefee stated he wants to make sure solar farms aren't a repeat of the gas company and they just leave without cleaning up and leaving the County with no recourse to force them to clean things up. Menefee believes it will be more of an eye sore with a solar farm then it was with the gas company.

Kitchen stated he has dealt with a big company before and speaking from experience; the company comes in promising the world and convincing a person they will make all sorts of money. Kitchen stated the gas company might have made it five years but doesn't believe they did, but they are gone and left a mess behind. KCC was supposed to be overseeing the gas company.

Cook's understanding with some of the financial responsibilities in the agreements Cook has read are typically non-revocable so the company can't just unilaterally decide to cancel the bond. It has to allow the County the ability to call that at any time. Violations can go through the Codes Court process or through District Court. Violations of the Zoning Regulations, or Conditional Use Permits are misdemeanors, and each day is a separate offense at \$500 per day. When there is a company operating in bad faith, it takes time, but the County has the abilities to take them through those processes, especially since we have the ability to say each day is a separate offense. Cook stated enforcement is always a challenge in everything the County does.

Kitchen stated if the Planning Commission requires the property to be used as a dual purpose requiring farm animals to be on the same property as the solar farm who is going to verify that there are farm animals on the property and how many. Kitchen stated if the land isn't used for agricultural then it needs to be zoned as commercial.

Menefee stated the Planning Commission can recommend the property remain agricultural but cannot enforce that. It is up to the property owner to decide if he will leave it as agriculture property or rezone it as commercial.

Kitchen stated he understands it is up to the landowner, but if there is absolutely no agricultural then does it automatically become commercial.

Brown stated his thought is to keep solar farms on brown fields unless they are willing to use the property for a dual purpose. If dual purpose it must include agricultural.

Kitchen asked if the landowner has livestock on the property for one (1) month out of the year, is it considered dual purpose. Kitchen's vote would be no for this scenario.

Broers stated that is her problem with "dual purpose" is that unless a specific type of panels (using cattle panels as an example) then they could just put four (4) sheep on 160 acres and call it good. The difficulty with the livestock and the number of livestock will be enforcement.

Cook stated his understanding, from what the Planning Commissioners are saying, is that the County highly desires the preservation of the County's agricultural land. Cook stated this gives him something to be watching for as he looks through the regulations for solar farms with the surrounding counties. Cook stated he did visit with a person wishing to have a solar farm in another county, for their purposes, the dual purpose of agriculture and solar didn't match up.

Menefee stated to him the more restrictive the better. Menefee stated he is not a big fan of solar farms, but if the County does nothing and just says "no" the County could end up in litigation and lose. Menefee believes if the County has some regulations in place and makes them restrictive for sitting, then it would still serve the County's purpose.

Broers stated when reading through the other counties' solar farm regulations Broers is completely turned off when reading a solar farm cannot be larger than 1,000 acres. Broers stated she does not want to drive past a 1,000 acres of nothing but solar panels in Miami County.

Flake stated he is new to this process but asked if it can be expected that the energy produced by the solar farm(s) in Miami County will stay in Miami County.

Kitchen stated no and that is why he asks the question "what does Miami County get out of the solar farm(s)". Kitchen stated he believes they are wanting to build the solar farms to send power to the new battery business in DeSoto, KS.

Cook noted the DeSoto project referred to is Panasonic. Cook stated some of the wind farms in Kansas could provide power to people in Florida. The same would be true for the solar farms, some of the owners might be from out of the State of Kansas. Every regulation he has seen has required some sort of power purchase agreement to show they have a company that is actually going to be purchasing the power generated by the solar farm. Cook doesn't believe the power generated by the solar farm(s) will directly

for Miami County. If it is being added in compacity for deal with the increase power demand use by Panasonic Plant, it might provide benefit to Evergy. But in order to have other large projects like this development, it will require Evergy to do new things for generation of power.

Kitchen asked if a regulation can be made stipulating construction of the solar farm cannot be started for four (4) years after the completion of the application. Kitchen doesn't believe this will be an issue in four (4) years.

Broers stated something that has been discussed was the development of solar farm(s) cannot take place in the wetlands. When looking at the land actually available in Miami County, there isn't very much land available for solar farms.

Menefee stated that goes back to his request to using brown fields only and be restrictive.

Kitchen stated he does not like Conditional Use Permits (CUP) period. Miami County has zoning regulations in place, the County allows a CUP, and the applicant of the CUP reaps the benefits not the surrounding area. The County has changed the whole neighborhood for one (1) person. Kitchen asks if a solar farm is approved, how do the surrounding neighbors benefit from it.

Menefee stated he believes CUPs are a cleaner process, allowing the zoning districts to remain in place. Otherwise, people will be coming forward to change the zoning of properties all the time.

Kitchen stated regulations are being placed on the person applying for the CUP, but does that really help the surrounding neighbors. The surrounding neighbors don't want the CUP going in next to them, but it's allowed.

Cook stated this is unique compared to most CUPs done in the County, most of the CUP applications are a lot smaller. Although some of them might have some impacts on the County that might go out around a quarter of a mile from them there's few the County considers at that cover a couple of sections of ground.

Menefee stated as long as it goes through the CUP process the *Golden Criteria* still applies. Cook agreed. Menefee stated then the County will still need to confirm the CUP fits in the neighborhood. Cook agreed.

Kitchen asked what do we do for the neighbors that the CUP could possibly affect.

Menefee stated all the Planning Commission can do, regardless of what CUP, is look at the facts when a CUP is presented to them and base the decision on our own value judgements on how we vote. Menefee stated he doesn't believe the Planning Commission will always come up with the right solution.

Kitchen stated if they are talking about one (1) or two (2) sections, that is a square mile and asked how many neighbors will be affected by the solar farm. Kitchen stated he can't find two (2) empty sections in Miami County anywhere.

Menefee stated what's different about this CUP compared to others is this one is generational because it will be 25 – 30 years for a solar farm. A lot of CUPs won't last that long because the people will retire, the business will close, or people will even move on.

Cook reminded the Planning Commission that whenever they are making a recommendation for an approval, the recommendation needs to be focused on the *Golden Criteria*. That doesn't mean it has to meet all the *Golden Criteria* factors or the majority of the factors, there can be one (1) factor that weighs in more than the other factors. On the same hand, while we do request comments from the public and the comments from the public are important, we are not supposed to make decisions solely based on the "feelings of the neighbors". Cook stated not only will there be solar farm Conditional Use Permit (CUP) applications but there will be other CUPs coming that will have similar concerns with neighbors both opposed to the CUP as well as in favor of the CUP. In all cases, all the *Golden Criteria* needs to be taken into consideration.

Philgreen stated one (1) of his struggles is that he tends to be a realist not an idealist and uses the word "practicalist" because to Philgreen it is what happens practically. Philgreen stated for him when it comes to CUPs it is; screening, cleanup, and balancing property rights. To Philgreen balancing property rights is

the hardest. The property owner has the right to do with their property what they want provided they follow the regulations and if there is a CUP, follow the conditions of the CUP versus what's good for the global good. Philgreen asked if the Planning Commission has the right to tell a property owner they can't rent their property out to someone. Philgreen would like to hear what legal says about the right to lease property to someone else. There has been a lot of idealistic information, that's great but it is idealistic and at the end of the day it is coming. The Planning Commission needs to get as much in the regulations as they can that can be enforced and get ahead of it. Regardless of what happens at the State level.

Kitchen stated the problem is they are a third party, not a property owner, wanting to install a solar farm. Kitchen's opinion is third parties change everything. Why can't an individual do it instead of a third party. Kitchen stated the Planning Commission is trying to regulate someone they don't even know who they are. The Planning Commission won't be regulating the landowner, they will be regulating someone else.

Manchester stated he has pipelines and Union Pacific Railroad running through his property and both are very difficult to deal with. Manchester stated last March he was in a bottom ground field near the railroad tracks and a train stopped there blocking him from being able to move. There is a phone number posted for the Railroad and he called it, but they didn't care, and he had to walk home two (2) miles. Manchester stated he is aware the Board of County Commissioners want these regulations; he has read a lot of the Johnson County and Franklin County Solar Farm Regulations and there are a lot of legal terms as well as information about decommissioning the solar farm. Manchester believes a lot of the information he has read is over the Planning Commission's heads and it needs to be handled by legal.

Menefee stated what he would like to see happen is by the April 2023 meeting with legal's guidance a very rough draft proposal of what the Planning Commission can debate. Menefee stated the Planning Commission can continue to discuss this tonight for the next three hours and not get anywhere until they have a document to actually debate.

Kitchen asked if there are any CUPs in operation that are not owned by the landowner in Miami County. Philgreen stated he has a CUP for a rock quarry, he doesn't own the property. A third party came in and he is managing it. Third parties come in all the time, it's not the third party that is regulated it is the property owner that is regulated.

Brockus stated he has read the Johnson County Solar Farm Regulations and has looked over the other counties that were given as examples as well. Brockus thought the Planning Commission was going to go through each of these and pick what they like and didn't like about each to base their regulations off of. Brockus stated all the categories the Planning Commission discussed tonight are in the various regulations from the other counties. He believes the Planning Commission needs to pick what they like and fine tune it to fit Miami County.

Cook stated tonight's discussion has been helpful to him. Cook has an idea of what topics are important to the Planning Commission. Cook stated today he received a letter from another organization trying to catalog other solar farm and wind farm regulations. He has not had the opportunity to look through the information yet and is hoping that it will provide examples that might be directed more towards what the County desires. Cook stated looking at the surrounding counties' regulations he believes Johnson County is more fit to how he would look at something for Miami County but yet they didn't mention preserving land for agricultural uses. Douglas County gave some consideration in preserving land for agricultural uses. Cook stated he would like to go through and pick some different regulations from the various regulations that fits Miami County. Cook had hoped to go through some of the regulations with the Planning Commission to get their thoughts on the various ones, but the discussion tonight gives him a starting point.

Flake asked once the Planning Commission comes up with regulations for a solar farm will that lead to regulations for a wind farm.

Menefee stated a text amendment can be done if that ever comes up, for now it will be solely solar farms. Kitchen stated around ten (10) years ago wind farms came in front of the Planning Commission, and it was voted down. Kitchen believes it went to the County Commission and was tabled, never saw it again.

Flake asked if it is unrealistic for the Planning Commission to say, "we don't want a solar farm".

Cook stated his understanding is that legally it's a possibility. This was based off the litigation from another county, Wabaunsee County, stated they don't want wind farms. Cook believes there are some limitations to say "absolutely no" anywhere.

Broers stated if our recommendation is "no" then we don't give the public anything to give us feedback on. If we at least draft something that's a framework, people can give their input on it, and it might be "no", but the public at least has a starting point.

Kitchen stated he agrees with Broers and asked if anyone else believes there is a difference when it is a third party. Kitchen believes a property owner should be able to do what they want, as long as it abides by the regulations, but when a third party comes into play that is a whole different thing.

Philgreen stated a utility is above Miami County and the County cannot control the utility. If the utility wants to come into Miami County and do something, they will if Miami County doesn't have regulations in place.

Broers asked if Miami County doesn't have regulations on oil and gas wells. Oil and gas have already come in. If the State decides "this is a utility, we're putting it in, and we're going to regulate it" that can happen right now regardless of if we have regulations or not.

Broers stated the old Planning Commission discussed they did not want battery storage in Miami County at all. That can be skipped unless the new Planning Commission members want to take a look at that.

Philgreen stated he doesn't know if he is there yet.

Cook stated he believes it could be a discussion at a later date and have it as a bullet point and at the public hearing. Reading through the other counties regulations, if battery storage was allowed, then the company was required to provide fire equipment.

Broers stated she had just returned home from Yellowstone and Yellowstone had shut down a portion of the park because the battery storage facility caught on fire.

Brown stated it is an environmental risk. It is a health and safety issue.

Kitchen stated he would still like a guest speaker to give a presentation on the pros and cons.

Philgreen stated he brought up in a previous meeting "if a tornado hits a solar farm and spreads debris over 200 acres, is that considered a hazardous waste site". Then the Planning Commission is protecting the adjoining property owners.

Flake stated he agrees that a guest speaker would be nice.

Broers asked if the videos from the solar workshops could be made available to the Planning Commission.

Cook stated all Planning Commission meetings are recorded and uploaded to the County website following each meeting. Anyone can access them to review at any time.

Flake asked were the previous workshop meetings unbiased.

Philgreen stated there is no such thing as unbiased.

Cook stated concern of finding an expert witness in regard to being fair and objective to both sides of this issue.

Kitchen stated he believes there is a Kansas Senator that has done a lot of research on solar farms that might be able to give insight (he doesn't remember which Senator).

Menefee stated although there has been a lot of turnover on the Planning Commission, and some of the current Planning Commissioners have missed the solar farm workshops, the County has given us a deadline that has already been extended once. Menefee doesn't believe the County Commissioners will be receptive to a "no" for solar farms or a request to extend the moratorium again. Menefee doesn't believe it is realistic to come up with regulations in the next two (2) months. Menefee believes we need drafted regulation coming out of the April meeting and a public hearing in May.

Cook noted a couple questions:

- How is the County at regulating size of these facilities (one county said 1,000 and another county 2,000). Cook assumes this would be a utility scale size, would the County be ok with suggesting a medium sized area.
- Would the County want to regulate how close the solar farms can be to each other.

Brockus asked about taking the strictest of the regulations from the surrounding counties for each category and use as a starting point for Miami County's regulations.

Menefee stated he is thinking the same thing as Brockus and added size doesn't matter. Menefee believes no matter if it is 10-acres or 200-acres they need to be treated the same and go through the same process.

Cook stated the regulations he has read both require a Conditional Use Permit (CUP) no matter the acreage size accept one doesn't have a separation requirement and a little bit of an easier process. Some of the communities are requiring additional requirements beyond our CUP application process.

Menefee stated he does like taking the most restrictive and see where that lands. The one thing different with Miami County compared to Douglas County and Johnson County is that Douglas County and Johnson County are a lot more urban.

Kitchen stated he believes around 70% of the county stated they want the county to preserve the agricultural lifestyle.

Armour asked if there is anything stating what the County gets out of it. Giving the example of 10% of the energy in the County.

Cook stated not that he has seen. Cook stated to him it's not what the County gets out of this but what the property owner with the solar farm on their property gets out of it. Cook stated he is assuming some of these will be more like the wind farms where they might have a pilot agreement. Example given was paying a certain dollar amount to the County in lieu of paying taxes. Cook stated his understanding is that a lot of the solar stuff is exempt for 10-years.

Kitchen stated he asked at a previous meeting if the Planning Commission could stipulate where the energy goes and was told no.

Cook stated someone can install solar panels on their own property and sell the excess back to Evergy, but they will only pay a certain amount for the excess energy.

ANNOUNCEMENTS BY STAFF / COMMISSIONERS

Cook stated Planning & Zoning received an application from Always & Forever for a Conditional Use Permit (CUP), it will be published in the paper March 8, 2023, and will be on the April Planning Commission meeting.

Cook stated Planning & Zoning is shorthanded right now and this is creating a challenge.

Cook stated Planning & Zoning has received a couple of applications for the May Planning Commission meeting already:

- A CUP application for a cell tower and
- KC Watersports, current CUP is about to expire, and they are wanting to make some improvements with the CUP renewal

Menefee stated he may not be at the May Planning Commission meeting; his wife is expecting their child in early May.

Cook stated since the Solar Farm Moratorium ends in June does the Planning Commission want to consider holding a special meeting to discuss Solar Farms.

Menefee asked if Cook is wanting it after the April meeting.

Cook replied yes.

Philgreen stated he would prefer an extra meeting to extending the moratorium another year down the road.

Broers stated she would like the special meeting to discuss just "Solar Farms".

Kitchen asked if it could be on a day other than Tuesday and would like to do it just as soon as possible after the regular April meeting, preferably within 1 week.

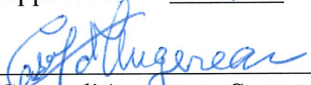
Possible Future Amendments to Zoning and Subdivision Regulations

- A. Common Access Easement requirements
- B. Sign Regulations
- C. Telecommunications Regulations
- D. Height limits for radio, television, internet antennas and satellite dishes designed for individual residences.

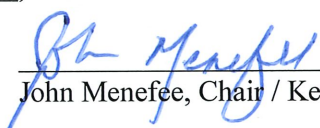
There was no discussion regarding these "Possible Future Amendments" to the regulations.

Philgreen moved to adjourn the meeting, Armour seconded. The meeting adjourned at 8:58 p.m. with a unanimous vote (9-0), via show of hands.

Approved this 4th day of April, 2023.



Casey d'Augereau, Secretary



John Menefee, Chair / Kelli Broers, Vice-Chair

Minutes written by Casey d'Augereau