

**MINUTES OF THE
MIAMI COUNTY PLANNING COMMISSION
September 5, 2023**

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

ATTENDANCE

CHAIR:	John Menefee
VICE-CHAIR:	Kelli Broers
PLANNING COMMISSION:	Bret Manchester, Joe Flake, Gary Brockus, Joshua Brown, Topher Philgreen, and Randy Kitchen **Gary Brockus joined the meeting at 8:19 p.m.**
ABSENT MEMBERS:	Charles Armour
EX-OFFICIO MEMBERS:	None present
PLANNING DIRECTOR:	Kenneth Cook
ASST. PLANNING DIRECTOR:	Jennifer Koehn
PLANNER:	Bobby Wardecker
CODE ENFORCEMENT OFFICER:	Kevin Collins
PC SECRETARY:	Casey d'Augereau
COUNTY COUNSELOR:	Alex Gilmore
ECONOMIC DEVELOPMENT	Not present
COUNTY COMMISSION:	None Present
COUNTY CLERK:	Not Present
PRESS:	Not Present

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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 seven (7) members present. Brockus joined the meeting at 8:19 p.m.

DISCLOSURE OF ANY EX PARTE COMMUNICATIONS OR POTENTIAL CONFLICTS OF INTEREST

Cook reminded the Planning Commission to keep an open mind throughout the entire process, listening to everything the applicants and public have to say and to consider the *Golden Criteria* as specified in the Zoning Regulations. Staff provides recommendations based on Staff findings regarding the case meeting or not meeting the *Golden Criteria* and any weighing of those factors. The Planning Commission should include consideration of the *Golden Criteria* and how those factors impact the recommendation to the Board of County Commissioners and any weighing of those factors.

Menefee stated it is Staff's recommendation to have Public Hearing for 23007-CUP (Always & Furever Midwest Animal Sanctuary follow the 23008-CUP (Fontana Christian Church) as the Fontana Christian Church will not take as much time as the Always & Furever Midwest Animal Sanctuary.

ADOPTION OF THE AGENDA

Philgreen moved to accept the Agenda moving Always and Furever Midwest Animal Sanctuary to follow Fontana Christian Church. Flake seconded; the vote was unanimous via show of hands (7-0).

CONSENT AGENDA

Broers noted a typo needing corrected in the August 7, 2023, Minutes asking that Middle Brook be corrected to Middleburg.

Philgreen moved to approve the Consent Agenda with the typo corrected on the August 7, 2023, Minutes. Broers seconded; the vote was unanimous via show of hands (7-0).

REGULAR AGENDA

New Business:

Public Hearing 23008-CUP: Fontana Christian Church

Cook stated this is a renewal of an existing Conditional Use Permit (CUP) for Fontana Christian Church. The church is located a few hundred feet North of the City Limits of Fontana. The original CUP was approved on June 23, 2003, by resolution R03-06-053 for the operation of the church and a preschool. The applicant is not proposing changes to the CUP. Staff did make a few modifications to the conditions in an attempt to bring it into compliance with the current regulations.

This facility has 81-regular parking spaces, and 4 ADA spaces. The applicant prepared a new Stormwater Plan and Traffic Study associated with the use as it was required by the original Conditional Use Permit (CUP). The existing church consists of an 8,185 square foot one-story building. The site plan shows a ball

field and soccer field that have not been developed at this time. The only changes made include a small storage building added near the trash enclosure and a playground behind the church. The church had requested a modification to the parking plan to allow a larger parking lot. This was approved administratively by Staff in 2006 but has not been constructed and the applicant will need to go through the process again if they still wish to build a larger parking lot.

Cook noted the area is primarily residential with agricultural uses and is near the edge of the city limits of the City of Fontana. Churches are listed as a conditional use in the Countryside (CS) District and Ag District. CUPs do not change the zoning of the property but acts as an overlay for the church use to occur. Staff did not find any changes regarding the *Golden Criteria* from the original request and the applicant is not expanding from the original request.

Cook stated Staff recommends approval of the request based on the findings and *Golden Criteria* listed in the Staff Report. Cook noted this request was originally for a term of 20-years. With no changes being proposed Staff kept the original 20-year term for the renewal term.

Cook noted regarding Condition No. 4 (regarding the preschool) that the current zoning regulations for preschools require additional information to be submitted as part of the CUP approval. The applicant does still have a desire to have a preschool within the facility at some point. The condition was reworded to state the applicant will need to apply for an amended CUP prior to operating a preschool.

Cook stated any landscaping shown on the Site Plan needs replaced and continually maintained as needed. Cook noted additional wording was added to Condition No. 6 regarding the use of the soccer and ball fields for other types of uses. This is to stay consistent with other CUP cases. This includes the use of the ball fields, buildings, or parts of the property for public or community use for ballgames, tournaments, or other events that are not commonly associated with a church facility are specifically excluded as part of this CUP.

Menefee invited the applicant to the podium to speak at 7:13 p.m.

Ed Bollin, 33675 Lone Star Rd, stated he is representing Fontana Christian Church and had nothing to add to the Staff Report but is willing to answer any questions the Planning Commission might have.

Kitchen asked if the preschool will be in the near future.

Bollin stated it is not in the planning stages at this time but they would like to have it listed in the CUP for an option down the road.

Menefee opened the Public Hearing for 23008-CUP: Fontana Christian Church at 7:15 p.m. No one came forth to speak. Menefee closed the Public Hearing at 7:16 p.m.

Menefee called for deliberation among the Planning Commission at 7:16 p.m.

Kitchen stated the application requested an indefinite term and asked Staff if they picked a 20-year term because it was a 20-year term previously.

Cook stated the original Conditional Use Permit (CUP) application requested an indefinite term but was approved with a term of 20-years.

Kitchen stated after 20-years of having a CUP and the area hasn't changed any, are they still required to obtain a CUP.

Cook stated the only way our Regulations wouldn't require a CUP is if it was zoned Commercial. If it were zoned Commercial it would be permitted by right and a CUP wouldn't be required. Since it is Countryside (CS) District it does require a CUP and gives the Planning Commission a chance to consider the unique characteristics of that area and the applicants specific request and make sure they fit together.

Kitchen stated the applicant is less than a quarter of a mile from city limits and asked if the City of Fontana were to annex the church would they need a CUP.

Cook stated when annexations take place properties usually keep the same zoning and entitlements and at the end of the term they would need to renew. At this time the City of Fontana doesn't have zoning so no approval would be required.

Broers moved to recommend approval of 23008-CUP (Fontana Christian Church). Flake seconded; the vote was unanimous via show of hands (7-0).

Old Business:

Public Hearing 23007-CUP: Always & Furever Midwest Animal Sanctuary

Cook stated this item was being continued from the August 7, 2023, Planning Commission Meeting. There was no hearing held last month but the item was continued to allow Staff and the Applicant to make updates and comments. Cook stated the Planning Commission heard a request very similar to this earlier in the year and which was proposed on the same property as the new request. While staff anticipated similar comments it was noted this is a brand-new request. Staff noted all individuals with interest in this request will be allowed to be heard and make their comments.

Staff noted that while a Staff Report was prepared for last month's meeting, after the item was tabled, the applicant submitted additional comments and concerns. All new comments and concerns have been included in the current packets. In part of the review of the additional comments, updated narrative, and site plans; Cook made a number of changes to the Staff Report. The August Staff Report was used to create the current Staff Report. In an attempt to keep the report clear new information was highlighted in yellow, and items removed were struck through.

Cook stated the request is for the operation of a kennel and associated activities and a private Veterinary Clinic/ Hospital for animals in the care of the rescue organization. Cook noted the previous request considered earlier in the year included 230 animals (190 of the animals would have been dogs and 40 cats), while the current request from the applicant is reduced to a total of 160 animals (120 dogs and 40 cats). The request is still for the entire 40-acres proposed in the original request. The applicant proposed keeping the development of the structures to the North half of the site only. The South half of the site would remain open space used for the walking and exercising of dogs and include a pond for the detention facility. The property is proposed to be enclosed by a 6-foot black chain link fence and include four (4) dog barns. Cook noted red-barn No. 1 appears to be the administrative space and a number of the structures have been reduced in size from the original request. The Always & Furever Veterinary Clinic and cat haven will be a single facility where they were previously separate facilities. The site plan also shows 3 dog villas and a couple of storage and maintenance buildings Cook stated the proposed facility will include 83-parking spaces with the parking lot located North of the main structure. All structures housing dogs will have play-yards for the dogs. All play-yards will have 6-foot privacy fences to keep the dogs contained within the play-yards. When dogs are outside, they will be supervised at all times. The hours of operations proposed are 7:00 a.m. to 7:00 p.m. with no dogs being outside from 7:00 p.m. to 7:00 a.m.

Cook stated the current request shows a reduction in the number of staff and volunteers to 32 staff and 8 volunteers over two (2) different shifts. Cook noted the applicant has described some social gatherings in the narrative, specified these activities will be RSVP, appointment only and the facility is not intended for people to stop by.

Cook stated he will touch on the high points of his review of the *Golden Criteria*, discussed in the Staff Report

1. **Character of the neighborhood including zoning and uses.** The subject property is currently zoned Countryside (CS) as are most of the surrounding properties. Staff describes the area as mostly residential uses including a number of residential subdivisions. The subdivisions were developed prior to the adoption of Zoning and Subdivision Regulations in a more intense residential density than what is seen in most parts of rural Miami County. Additional small lots have been developed either prior to the adoption of regulations or through the lot split process. There are a few larger properties in the area that are primarily used for agricultural purposes. The City of Spring Hill is located approximately 2,700 feet East of the subject property and the property is approximately 1-mile from the Highway 169 interchange with 223rd Street. Some of the properties with businesses or different zoning include areas that are currently annexed into the City of Spring Hill and include a mixture of Restricted Business District, - and M-1 (General Industrial District). Cook also noted a small property zoned C-2 at the intersection of Old Kansas City Road and Columbia Road. Cook noted another business in the area is Alvarez Ranch Arena, which operates under a Conditional Use Permit (CUP). Alvarez Ranch Arena has a number of restrictions associated with its CUP including only a 5-year operating term that must be reviewed every 5-years and the CUP being limited to 1-Saturday per month for 6-months a year with restricted hours of operation. Cook stated regarding the character of the neighborhood, he has concerns with the primary function of the property being for the operation of a kennel and private vet clinic, the intensity of the proposed operation together with the additional activities being proposed, the granting of the proposed CUP will not be compatible with character of the neighborhood and uses of nearby properties due to the predominant residential character/uses of adjacent and nearby properties, existing development patterns and would place a non-residential use in the middle of a residential neighborhood.
2. **The suitability of the subject property to its present use.** Cook noted that while the property had been vacant and included several accessory structures. Staff understood the property was used for agricultural activities and noted residential uses are permitted in the Countryside District. Staff finds the subject property would be considered appropriately used for agricultural uses or residential purposes. Cook noted if the Planning Commission determines the kennel and veterinary clinic would be appropriate uses for this property, they would need to make a finding that this use could be made compatible with uses permitted with the Countryside District and be in the interest of the public health safety, morals, and general welfare of the community.
3. **The extent to which removal of the present zoning will detrimentally affect nearby property.** Cook stated the current zoning is Countryside (CS) and the proposed Conditional Use Permit (CUP) would not change the zoning of the property. The CUP process allows for other uses that are not normally permitted by right. Cook stated a table was included in the Staff Report listing other kennel operations that have been permitted by the County over the years. Sandy's Kennel

was the most similar to the proposed application based upon the number of animals, allowing a maximum of 85 dogs on 20 acres Cook noted that Sandy's Kennel has a higher use intensity than Always & Furever's proposal of 120 dogs on 40 acres when comparing dogs to acres. Sandy's Kennel only had four (4) houses within 1,000-feet of the facility while the current application from Always & Furever has twelve (12) houses within 1,000-feet of the subject property Cook noted there were other CUP requests for kennel operations that had larger numbers of houses within 1,000-feet. Cook noted while Mystic Kennels had 15 houses within 1,000-feet and was approved by the City of Spring Hill when the property was in the Growth Area. Miami County did not approve the CUP for Mystic Kennels but when the Growth Area was removed it came back under the jurisdiction of Miami County.

Cook noted when looking at the traffic study report submitted by the applicant the trip per day numbers were higher than what is anticipated. Even with the higher number of traffic volume calculated in traffic study report, it is not anticipated that 223rd Street will be impacted negatively. 223rd Street does have the ability to handle the additional traffic that would be generated by this proposed application.

Cook stated in regard to the Sandy's Kennel operation, which was approved in 2005, the traffic volume used to consider the request was what the traffic would be if developed for residential use and estimated 7-14 trips per day for residential use. Based off a 10-acre density and multiple that by four (4) that will show how the traffic was estimated in 2005. Today's proposed application's traffic study report anticipates 104-trips per day in a typical day.

While the approval of any Conditional Use Permit (CUP) or development will create impacts that could have detrimental effects on nearby properties, the regulations do allow for the consideration of the granting of specified uses through the CUP process when the activities are assured to be compatible with the surrounding properties when special conditions and safeguards can be attached to assure the public interest can be served. In this case Staff notes the applicant appears to have designed the facility to address many of the impacts and do meet the minimum development standards that are provided for kennels in the Zoning Regulations. Staff notes the primary impact would be associated with the character of the neighborhood in regard to the intensity of the development, possibility of dogs barking, and other possible impacts that could happen from this facility. It appears the applicant has done a lot to attempt to mitigate the impacts that could be anticipated.

4. **The length of time the subject property has remained vacant as zoned.** Cook noted the property has not been used much except for minor agricultural use.
5. **The relative gain to the public health, safety, and welfare by the destruction of the value of the nearby property as compared to the hardship imposed upon the individual landowner.** Cook agreed that the creation of a facility to take in stray animals is something that could provide a benefit to the larger community. The current facility the County takes stray animals to runs at full capacity. While Cook noted there may be a need for this type of facility, the Planning Commission also needs to take into consideration the impacts of the facility to the adjacent property owners and make sure it fits in with the character of the neighborhood. What is being proposed is more intense than other kennel operations previously proposed, especially when comparing the residential nature of this neighborhood to past requests. Cook noted that it will be difficult to find a location for this type of facility where there would not be concerns from

neighboring properties.

6. **Whether the proposed Conditional Use Permit (CUP) would be consistent with the intent and purpose of the Zoning Regulations.** Cook noted the Countryside (CS) District is primarily considered a residential district, but the Zoning Regulations allow for certain activities to be permitted through the CUP process, including dog kennels and veterinary clinics / small animal hospitals. The Zoning Regulations do provide minimum development standards as part of the approval of any kennel operations as a CUP. Cook specified the request does meet these minimum development standards. The regulations also provides that the Planning Commission, in considering and approving a CUP, needs to make sure it fits the character of the neighborhood and can be compatible with those uses currently located on adjacent properties.

Cook stated he believes the intensity of the use proposed by Always & Furever would unduly and adversely affect the general welfare of the neighborhood and would not be compatible with the surrounding property and uses.

7. **The recommendations of the County's permanent or professional staff.** Cook found this request has a mixture of findings with some findings in favor of the request and others having a negative or neutral impact. Cook noted as this request has a mixture of findings the Planning Commission needs to determine which of the factors have the greatest impact and weight in regard to the circumstances found for this application. Cook found this request was developed in compliance with the minimum development standards for kennels as specified in the Zoning Regulations and noted kennels and veterinary clinics could be considered uses which are not opposed to the intent and purpose of the Zoning Regulations as they are listed as possible CUP uses in the Countryside (CS) District. Cook also noted the use/facility being proposed could be considered as providing a benefit to the greater community that could be considered a gain to the public health, safety, and welfare as there is a need to address the problem of stray and abandoned animals in the community. Cook found the length of time the property has remained vacant and the suitability of the property to its present use to be neutral factors that do not appear to support the approval or denial of the request.

After considering the merits of the request, its implication to the surrounding neighborhood and weighing the factors associated with the *Golden Criteria*, Cook had concerns whether appropriate conditions could be implemented to allow the proposed use to be compatible with the surrounding properties and uses due to the size and intensity of the operation being proposed and the overly residential nature of the surrounding area. While the proposed kennel, private veterinary clinic, and associated uses would serve a good and respectable function of rescuing animals in need of care. While it appears 223rd Street has the necessary capacity to address additional traffic, Cook found the proposed operation would not be consistent with the zoning and uses of nearby properties, compatible with the character of the neighborhood, consistent with the intent and purpose of the Zoning Regulations and would not be in conformance with the Comprehensive Plan's goals and objectives. Cook made a recommendation for denial of the request.

8. **The conformance of the requested Conditional Use Permit (CUP) to the adopted Miami County Comprehensive Plan.** Cook noted the subject property is not currently located within a village expansion area or within an area of regional significance. Cook did not find the proposed Conditional Use Permit (CUP) would meet the goals or objectives of the Comprehensive Plan for commercial uses. While the Comprehensive Plan provides that certain commercial uses can occur

outside of these areas and while the property's location on an arterial road provides the property with access to an adequate paved road, Cook did not find the proposed use to be considered compatible with the surrounding neighborhood due to the intensity of the use being proposed and rural residential nature of the area.

Cook asked if the Planning Commission has any questions regarding the Staff Report.

Flake asked how far is the applicant's property from the city limits of Spring Hill.

Cook stated approximately 2,700-feet West of Spring Hill city limits.

Menefee invited the applicant to the podium at 7:48 p.m.

Curtis Holland, legal counsel for Always & Forever Midwest Animal Sanctuary (A&F), introduced his team with him tonight. Holland stated they were here four (4) months ago as Cook indicated, and this application came from the comments A&F received from the Planning Commission and residents last time they were here about the intensity and scale of the operation that was proposed. The previous application was located on the same 40-acre parcel and basically had buildings throughout the 40-acres. There was a feeling of too much intensity, too much going on. Holland stated this application has been scaled down from the last application. Holland stated they are here tonight for a Conditional Use Permit (CUP) request for a kennel although they are really a rescue network. A&F is just a kennel because under the definitions of the code both the Statute's and County's regulations there will be more than 19 dogs at this facility and once they exceed 19 dogs they are considered a kennel. Holland stated this is not a kennel and not a commercial kennel. They don't board animals there, they don't breed, they are only rescuing animals for no compensation no fee. Holland stated they are a 501c3 non-profit organization, all revenue are donations that comes from people that believes dogs and cats are important and should do everything possible to save them. Holland stated they were founded in 2018 and focused on saving lives of cats and dogs who are never too old or sick to be given a second chance and that is A&F's mission.

Holland stated Cook mentioned this application was continued from August 2023, and he doesn't believe it show as a continuance since the applicant and public weren't present for the meeting. Holland noted the reason for the continuance was because he didn't receive the Staff comments until three (3) days prior to the agenda being published, and the applicant didn't have time to get through all the material and get their responses sent to Cook. Holland stated the responses provided to Cook were not in the Staff Report and he didn't believe it was fair to A&F and asked for a continuance to allow Planning & Zoning to get the Staff Report as updated and correct as possible. Holland is concerned that there are things in the Staff Report that shouldn't be in the report and attention to items that weren't on the application.

Holland showed an aerial photo of the subject property/location indicating how close the property is to the city limits of Spring Hill. Holland believes the character of the neighborhood also includes A&F's existing facility to the West of the applicant's property. It is a 5-acre rescue network, and the reason A&F is present tonight to broaden and expand.

Holland pointed out W. 223rd Street on the aerial map and stated it is an arterial road in Miami County and ultimately going to be a 120-foot wide right-of-way and in the future it will be carrying more weight than it is today, currently its capacity is 3,500 to 4,000 trips per day.

Holland showed a landscape plan and stated all operations have been moved to the northern half of the property indicating the southern half is not developed. Holland stated the landscape plan is green because the property is filled with trees and foliage they plan on keeping. The trees and foliage will create screening

and buffers to the existing neighbors.

Holland stated there are now eight (8) buildings to house the animals; four (4) barns, three (3) dog villas, a veterinary clinic, and a maintenance/storage facility. There will be 83-parking spaces and the main entrance will be off of 223rd Street with a service entrance on the easterly portion of the property. There is a retention for drainage and the drainage will run east to west and will eventually make its way to Hillsdale watershed area over a mile away with a lot of land in between the watershed and the retention area.

Holland stated the maximum number of dogs is 120 compared to the previous application that had 190. The maximum capacity doesn't mean there will always be 120 dogs housed, and it is unlikely. The maximum number of cats is 40. The cats will never be outside the buildings.

Holland indicated to the landscape plan and showed playground areas for the dogs. These areas are around each building and will have 6-foot tall wooden privacy fences. These areas are intended for the dogs to play, socialize, and go to the bathroom. Dogs are not outside all at one time, they are on a rotation, all waste is picked up when the dogs are outside, and the South half of the property will not be touched. The only thing planned for the South half of the property is to walk the animals, they will be double leashed, and they will be walked on the property. There will be a parameter fence surrounding the entire property, it will be a 6-foot black chain link fence. Holland showed pictures of buildings similar to what A&F plans to have on the property, the goal is to make the buildings blend into the rural residential neighborhood.

Holland stated they have moved all the buildings, roads, and lights to the North 20-acres of the property and reduced the number of buildings from 19 to 10, two (2) of the buildings are for maintenance and storage leaving eight (8) to house animals. The square footage of the buildings was reduced from 77,000 square feet to 38,000 square feet, the entry way was changed from a 3-lane entry to a 2-lane entry, the number of dogs was reduced from 190 to 120, and increased the amount of open space of the property to 98% open space.

Holland moved to the *Golden Criteria*. Holland stated he will be talking about the Golden Criteria in the order that makes sense to him. The property has been vacant for decades, located on an arterial road, W. 223rd Street, that will ultimately be a 120-foot right-of-way a mile from the highway and a half mile from the city limits of Spring Hill. Holland stated whether the folks here like it or not, development is coming this way.

Holland mentioned the character of the neighborhood stating this area is agricultural and has large lot residential and has residential less than what Countryside (CS) residential requires which is 15-acres per lot. The subject property is adjacent to the existing property of Always & Furever and part of the neighborhood now. The foliage on 223rd Street is dense and thick, none of it is being removed, no one will be able to see the facility.

Holland stated Yankee Bit Lane are their neighbors, they respect and appreciate them, A&F doesn't want to do anything to impact or disrupt their lives. Holland stated while they are part of the neighborhood the size of the lots needs to be taken into consideration as they are smaller than what would otherwise be allowed in the Countryside (CS). Holland stated when talking about the 12-homes within the 1,000-feet it is because of a group of homes that are denser/smaller than what is allowed in Countryside. Holland stated along with agricultural and residential uses in the area there are also commercial uses nearby. Holland showed a map of commercial uses nearby and spoke about a few of them. Holland stated one of the commercial uses is Alvarez Ranch, Holland believes Alvarez Ranch has more activity than what has been presented at the meeting. The Alvarez Ranch is less than a mile from the subject property. Holland

stated Alvarez Ranch holds concerts with music and light shows as well as dances. Holland doesn't know how often these events take place. Holland stated the events at Alvarez Ranch go well past 5:00 p.m. as it is dark when the events are going on. Holland believes the noise and traffic from Alvarez Ranch is ignored completely but there are concerns with the noise and traffic that might happen if the proposed request is approved. Holland stated this area isn't primarily residential there is also commercial uses in the area, and he would like that recognized.

Holland stated *Golden Criteria* number 3 "The extent to which removal of the present zoning will detrimentally affect nearby property.", A&F is not rezoning the property, they are applying for a Conditional Use Permit (CUP) it can be allowed with certain stipulations, conditions, and standards that can be applied by the Planning Commission. Holland stated the proposed application is not a commercial business it is non-profit. Holland stated the 40-acres is heavily treed and only a small amount of the trees will be removed to allow for the buildings they need to operate. Holland showed another aerial photo to show the thickness of the trees on the property. Holland showed a picture of Sandy's Kennel and stated the difference between the two (2) facilities is that A&F is rescuing lives and Sandy's Kennel is producing lives. Holland indicated the general location of Sandy's Kennel is in the same proximity to houses as A&F will be if approved and asked what the difference is. Holland believes there is 85-dogs and no employees at Sandy's Kennels and questions if no employees is correct asking how does one (1) person handle that many animals. Holland stated Sandy's Kennel is the closest to what A&F is wanting to do although Sandy's Kennel is a commercial business and A&F is not.

Holland stated the Staff Report mentions concerns of noise and raised as potential concerns by the residents. Holland stated he believes A&F has addressed the concerns about noise by insulation in the walls and on the parameters of the walls. Holland believes if 50-feet away from the buildings and a dog is barking it won't be heard. Holland stated there will be staff managed access to play yards, he believes this is important as he can hear the neighbors dogs barking but as long as there is managed supervised trained staff with the dogs when they are outside the building there won't be constant barking. Holland stated to his knowledge there are no complaints about dogs barking/noise and questions why would they believe they will hear dogs barking/noise with a facility built better than the current facility. Dogs will never be allowed to roam the Homestead unattended, the dogs will be double leashed, there will be two (2) gates the dogs will have to go through to get out and there will be a parameter fence surrounding the property.

Holland stated they had a professional traffic report study completed and the traffic that will be generated from this facility will be nominal. The level of service, which is the way they measure the performance and impact on roads, is nothing; it is an A now and it will be an A afterwards. The traffic report stated there will be no additional improvements are needed or recommended. Holland stated the traffic was counted in October 2022 and it was at 1,667 vehicles per day which is at less than 50% of the capacity. Holland stated the capacity of W. 223rd Street is 3,500 to 4,000 vehicles per day and believes to suggest 100 extra trips per day is going to have an impact isn't right. Holland doesn't believe the extra traffic will have an impact on the neighborhood. Holland stated Miami County just passed a "no truck ordinance" on W. 223rd Street. Holland stated there has been suggestions that A&F will be having events and the events aren't normally associated with this kind of a kennel. Holland agrees the events are normally associated with a kennel, and added A&F is not a kennel it is a rescue network. Holland stated A&F gives "freedom rides" that is when they receive a call to pick up an animal and they drive to the animal and bring it to the Homestead, that is their operation. There are some events and doesn't believe they will be a big impact

on traffic or noise. There won't be that many events: anniversary once a year, adoption once per month in the winter, Thanksgiving event, and dog yoga and birthday parties.

Holland stated the lighting won't be an issue, down shielded, turned off at 7:00 p.m., retaining trees to help block out the light, and zero foot candles at the property lines.

Holland stated there is some suggestion that this facility will have a negative impact on the surrounding property values. Holland stated they looked at the property values of the surrounding properties with the current A&F facility and believes there was no impact.

Holland moved to *Golden Criteria* No. 2 "The suitability of the subject property to its present use.", it is a large acreage, it has been vacant, and with appropriate conditions and design standards, Holland believes all of the proposed uses will be suitable for the property. Holland stated they are mitigating what is perceived to be problems.

Holland stated there have been concerns about waste and it getting into the Hillsdale Lake Watershed. Holland stated Hillsdale Lake is a 12,000-acre park and over a mile away from the subject property. The lake itself has 4,500-acres with 76,000 acre/feet of water which equals to 25-billion gallons of water. Holland stated there is a professional drainage report that indicates there will be no impact to Hillsdale watershed. Holland stated since the property is zoned Countryside (CS) there could be 40 cows put on the 40-acres and 1 cow produces 65 pounds of waste daily which is nearly 24,000 pounds of waste annually and 40 cows would produce nearly 1-billion pounds of waste annually. Holland stated he has a hard time believing a single dog that creates less than a pound of waste annually would have a negative impact.

Holland stated the *Golden Criteria* No. 5 "The relative gain to the public health, safety, and welfare by the destruction of the value of the nearby property as compared to the hardship imposed upon the individual landowner." there will be no harm from the facility to the surrounding property values. This is a private rescue facility and they have saved up to 4,000 lives over the past five (5) years. Holland believes given the size of the property and the facility proposed there will not be any impact to the surrounding neighbors.

Holland moved to *Golden Criteria* No. 6 "Whether the proposed Conditional Use Permit (CUP) would be consistent with the intent and purpose of the Zoning Regulations." stating allowing the proposed CUP allows the Planning Commission to impose conditions and limitations to control whatever impacts that are perceived. Holland stated they intend to satisfy each stipulation and intend to comply with all the rules and regulations by the County and the State. The State inspects the facility annually and any issues have been minor and have been addressed.

Holland showed the Miami County Conditional Use Permit definition and stated this definition to a lawyer presumes this condition is allowed as long as the County can address the specific issues that could come from it. Holland stated he would like the Planning Commission to impose conditions and stipulations. Holland asked if they could meet the conditions and stipulations then let them try to do this and do good for the County.

Holland asked the Planning Commission to give them a chance. Holland stated he is surprised about the recommendation by the Staff for a denial of the application. Holland stated there are conditions and stipulations in the Staff Report and he believes they can abide by all of them except the stipulation not allowing them to hold certain events. He asked the Planning Commission to allow the events as all the events listed are normally associated with their facility and asked that the Planning Commission approve the Conditional Use Permit (CUP).

Flake asked if the applicant is looking for a CUP with no time frame on it.

Holland stated yes. Holland stated if the CUP is approved and has a time frame of 10-years he would say yes to that, but if it is approved with a 2-year time frame he would say that's not enough time.

Flake asked with 160 animals, looking down the road to 2, 5, or 10 years, A&F is going to stay at 160 animals and doesn't expect to grow.

Holland stated he is focused on this application and these number of animals and not about the future.

Jen Dulski, founder of A&F, stated currently allowed 19 animals and has saved 4,000 animals. It's not about the number of animals they can have at the facility it's about finding them homes and believes this is where they differ from other facilities.

Flake stated at the last meeting the applicant talked about working with the City of Osawatomie with the pound and there was not a contract at that time and asked if that has changed.

Dulski stated that hasn't changed but still in negotiations and they will need to use the Osawatomie as a holding facility because if the Police pick up a stray animal they are not able to cross the city lines to bring the animal to Spring Hill. Dulski stated she has reached out to Paola, Louisburg, and Miami County and the Miami County Sheriff is present tonight to speak.

Flake asked if the Osawatomie Pound is for the City of Osawatomie or is it a County facility.

Dulski stated it is a County facility.

Holland corrected Dulski and stated it is a City facility and is a true pound. Osawatomie Pound takes in strays and A&F gets the strays from the Osawatomie Pound.

Dulski stated she is not allowed to take a stray from an individual but is allowed to take a stray from a facility so there is a transfer agreement signed every time they pick up an animal.

Holland stated A&F is currently operating the Osawatomie Pound at their expense including maintenance to the facility and staffing.

Kitchen stated the applicant makes it sound like the City of Spring Hill is very close and the Hillsdale Lake watershed is a long ways away. Kitchen stated dog waste kills grass and cow waste grows grass.

Dulski stated dog waste would kill grass, but every A&F member carries doggie bags to pick up the waste.

Kitchen stated without grass the cows don't eat and beef is food to humans. Without grass there will be a problem with the watershed because of erosion.

Dulski asked out of fairness isn't it her grass to have or not.

Holland stated he was attempting to make a point that there is a lot more waste with cows.

Kitchen stated in regard to an additional 100 vehicles driving on the road per day, where Kitchen lives and additional 100 vehicles per day would change his neighborhood.

Dulski stated she lives next door to the subject property. Cars drive on the road all day long and at 5:00 in the morning the only sounds outside are the neighbors dogs and cars on the road.

Kitchen stated a person's dog(s) on their property is completely different than the proposed request.

Broers asked how many, on average, animals are in the rescue network on a given day.

Dulski stated right now around 200.

Broers clarified, that is both Kansas and Missouri.

Dulski stated yes. Dulski stated one non-profit facility but licensed in the State of Kansas and the State of Missouri.

Broers asked if that number includes the foster dogs.

Dulski stated yes.

Broers stated she read in the report that the veterinary care would be for all animals in A&F's care and asked if that would include the foster dogs and animals at any other location.

Dulski stated correct.

Broers asked of the animals in the network how many originated in Miami County.

Dulski stated last year they rescued around 400 animals from Osawatomie Pound and believes they average around 1,000 animals a year.

Broers asked how many of the animals came within the city limits verses the county.

Dulski stated she doesn't know that number.

Broers stated for clarification the subject property is within the Hillsdale watershed. The watershed starts at the city limits, the lake a distance away but all the surrounding properties are within the watershed.

Broers stated Holland opened with "there are some things in the Staff Report that shouldn't be considered" but then invited the Planning Commission to look at the existing facility as part of the neighborhood and asked if Holland can speak to whether he thinks the existing facility is within compliance or if it needs a Conditional Use Permit (CUP).

Holland stated he believes this is going into legal territory.

Broers stated the applicant opened the door by stating A&F has been a part of the neighborhood for 5-years.

Holland stated his only point is that they have been a part of the neighborhood. And there are lots of things in the report he doesn't like. Holland believes the second or third page of the report is about the existing facility and not what the application is.

Kitchen asked if the Planning Commission shouldn't be aware if there are violations from an applicant.

Holland stated he doesn't believe it is fair to mention violations and complaints in the Staff Report when there haven't been any violations or complaints.

Broers stated her recollection is that the Staff Report stated "unable to corroborate"...

Holland stated then it shouldn't have been mentioned.

Manchester stated there was mention about the property values and the main reason the property owners is the biggest investment almost everyone makes. Manchester stated the applicant represents with 100% certainty that the facility will not affect the property values of the surrounding property owners. Manchester stated he believes the neighbors have a legitimate concern and believes this request will have an impact on the property values. Manchester stated he agrees with Kitchen about increased traffic, 100 additional vehicles per day would impact the character of the neighborhood.

Dulski stated since she moved into the area in 2017 her property value has increased by \$300,000 and most of the surrounding property owners' have seen an increase of approximately 20%.

Kitchen stated it changes the classification of the land.

Dulski stated it is not being rezoned.

Kitchen stated it doesn't have to be rezoned, the classification is different, the State tax is Ag land.

Menefee stopped the discussion with the Planning Commission and applicant and asked to save remaining questions for the applicant until after the public comments.

Menefee opened Public Hearing 23007-CUP: Always & Furever Midwest Animal Sanctuary at 8:55 p.m.

Menefee invited the citizens to the podium to speak advising citizens may come forward one at a time, state name and address, all comments must be directed to the Planning Commission only, and there is a three (3) minute time limit. Menefee stated he will give a warning at 2 minutes 30 seconds and will abruptly cut a person off at 3 minutes if needed. Menefee asked that if a person coming up to speak agrees with something someone else previously said to simply state that you agree with that person to help save time.

Jane Booth, 23898 W. 223rd St, Spring Hill, KS, stated she lives within 1,000-feet of the applicant and is baffled by this meeting as a lawyer has been allowed to talk for over 1 ½ hours without the public getting a chance to talk. Booth believes a lot of things have been steamrolled over such as property values. Booth believes this whole debate continues to be about whether or not this rescue is a worthy operation and worthy of expansion. Booth believes it is worthy of expansion but to Booth this is not about the organization it is about land use. Booth stated although Cook indicated it will be difficult to find a good location for this organization, Booth believes this is particularly a difficult location for this organization with the zoning is Countryside (CS) and there are a number of houses there. Booth believes this year long process is due to the applicant's dream of massively expanded animal rescue organization. Booth stated A&F has harnessed the passion of animal rights advocates across the world through social media to press this enormous change on the fabric of quiet rural Countryside (CS) community. Booth believes the proposal includes a significant number of employees beyond the ones listed in the CUP. Booth stated both her husband and her are strongly against this location for A&F's expansion that would change the fabric of their Countryside (CS) neighborhood. Booth stated they are animal rights advocates as well as human rights advocates, there is room for both.

Amy Stucker, 8106 W. 72nd Ter, Overland Park, KS, stated she is a real estate agent. Stucker stated the density of the trees prevents a person from seeing onto the property. Stucker stated she showed the property to several appraisers, she said didn't pay them to show up and they aren't going to show up just to show up, the appraisers told her if they can see a tall building they will knock the value. Stucker is convinced the buildings won't be visible from the roads. Stucker stated from a real estate prospective she will happily list any home in the area and have little concern in this market.

Susan Burns, 36405 Hedge Lane, Paola, KS, stated she has 20-acres and loves the peace and quiet, but people need to understand that Johnson County is moving South, and it can't be stopped. Burns believes if a high-rise goes in they will develop more than just 20-acres of the property and there will be more traffic than just an additional 100 vehicles on W. 223rd Street, there will be noise 24/7. Burns stated she would prefer an organization that has jumped through all the hoops thrown at them next door to her than a high-rise apartment, or a complex with semi-trucks going in and out. Burns believes this will be the least impact this area will ever have; change is going to happen and W. 223rd Street is prime.

Christina Zahnter, daughter of Jan Lutzow who lives at 22971 W. 223rd Street, Spring Hill, KS, stated her mom's house is the "797-feet away from a building" on one (1) of the maps the applicant showed. Zahnter

asked if the applicant can hear the two (2) dogs outside running loose how can they say Lutzow won't hear the 120 dogs next door to her. Zahnter stated her mom is worried about the noise pollution, and the traffic. Zahnter was pulled over on 223rd Street because she didn't realize the speed limit was reduced. She questioned why the speed limit was reduced and the officer advised because there have been too many accidents on W. 223rd Street. Zahnter stated Lutzow thinks A&F is doing a great thing and she is a dog advocate; she just doesn't want it next door to her house. Zahnter stated if the CUP is approved it is crazy not to believe it won't grow. Zahnter stated in the applicant's proposal it states they have meet all the neighbors. Lutzow's property butts up next to A&F and she has never meet anyone from A&F.

Ken Richardson, Miami County Animal Control, stated he has been contracted through the County for the past five (5) years. Richardson stated he reviewed dog bites in the last 1 ½ years and he has responded to 77 dog bites. They ranged from minor to major dog bites. Richardson stated he looked back seven (7) years to determine how often dog bites happen at A&F and there were only three (3) incidents. Richardson stated he has two (2) people waiting for room at the Osawatomie Pound so they can hand over stray dogs they found. Richardson doesn't believe it is right to ask someone to hold onto a stray, feed, water, and tend for it until the Osawatomie Pound has room. Richardson believes the Conditional Use Permit (CUP) request is a viable solution for some of the problems he is encountering through animal control. Richardson stated the Osawatomie Pound has been full six (6) times so far this year.

Kitchen asked at what point are the dogs in the kennel euthanized.

Richardson stated that is the goal of Always & Furever not to allow euthanizing but there have been three (3) occasions where a dog had to be euthanized due to the viciousness of the attack; one was court ordered, and euthanizing a vicious animal is not above A&F they had to euthanize a dog before.

Kitchen asked if court proceedings are involved does Animal Control keep custody of the dog.

Richardson stated they have to follow whatever direction ordered by the court, and have to maintain custody of the dog until court is finalized.

Broers asked when Animal Control asks a person to hold an animal is this for strays or relinquished animals.

Richardson stated strays.

Manchester believes people are the problem and asked why that hasn't been enforced by the County.

Richardson stated they have to follow the County Regulations.

Shorey Berlin, 6508 N Camden Ave, KC, MO, stated she owns land adjacent to the current Always & Furever Midwest Animal Sanctuary and boarder the West boarder of the 40-acres being proposed for a Conditional Use Permit (CUP). Berlin stated her land has been in her family for over 50-years and her daughter wants to return to the property to build her forever home. Berlin asked the Planning Commission to deny this Conditional Use Permit (CUP) stating the Planning Commissioners have their letter and know their concerns. Berlin stated even with the reduced scale of the project on the Northern 20-acres facing 223rd Street the Berlins still have the same concerns. Concerns of the 120 dogs waste that would flow onto their property, their pond, and eventually into Hillsdale Lake. Concerns about the compliance and the lack of foresight to verify the operation is in compliance. Concerns about the amount of traffic that will be generator particularly with a veterinary hospital that will serve the 300 dogs located on site, at the Osawatomie Pound, or foster homes, yearly. Berlin stated there is also concerns with the scope of this project and how it will affect the value of their property. Berlin stated even with the reduced scope of this

complex it will drastically and irrevocably change the character of the existing rural residential neighborhood and continues to not be in keeping with the Miami County Zoning laws and *Golden Criteria*. Berlin stated she strongly believes this organization is better suited for a commercial area not in the rural residential area. Berlin stated she was one of the first volunteers for A&F and supports the organization she just asked that it not be next door.

Ted Bartlett, 40135 Evening Star Rd, Lane, KS, stated he is a Miami County resident and was the Animal Control Officer for Osawatomie and currently manages the Osawatomie Pound. Bartlett stated A&F's relationship has been ongoing for a number of years, it was a rough start but have overcome a lot of hurdles and they work well together. Bartlett stated a facility like this is greatly needed in Miami County and the Planning Commission get to make the decision as to where that should be. Bartlett stated A&F does pick up the waste at the Osawatomie Pound, and they double leash the dogs when outside. Bartlett stated he visits the facility at least 2-3 times a week and there is no waste on the ground, there little plastic bags on the ground and they pick them up at the end of a day. They play soothing music for the dogs at the end of the day. The facility is City owned, it is licensed to the City of Osawatomie and the cages are in bad shape. Bartlett stated someone mentioned euthanized dogs, since A&F the only dogs that were euthanized were either sick and unable to be rescued or deemed vicious by a court order.

Kitchen asked what the budget for the Osawatomie Pound is.

Bartlett stated he doesn't know.

Deana Brim, 711 Carr Ave, Osawatomie, KS, stated she has managed the Osawatomie Pound for the past four (4) years. Brim stated last year there were 302 animals at the Osawatomie Pound and of that 302 animals 65 of them were reclaimed by their owners. The Osawatomie Pound does not get paid for these animals the fees collected goes to the department that picks up the animals. Brim stated there are 12-kennels and they are all currently full. Brim stated in the past nine (9) months she has had 198 dogs and cats of the 198 only 40 have been reclaimed by their owners. By allowing the veterinary clinic on site A&F plans to spayed and neutered the animals to help keep the population down. Brim stated they'll be microchipped; dogs get out they jump fence... Brim asked the Planning Commission to consider approving the Conditional Use Permit (CUP).

Shannon Walcott, 3705 NW 95th St, KC, MO, gave a brief history of her family's property and stated she plans to build her forever home on the family property but doesn't know if she can if the CUP is approved. Walcott stated they may not be rezoning the property, but they are changing the absolute use of the land and what A&F is wanting to do is not agricultural and not residential it is commercial. Walcott stated if they don't like the term commercial then call it a non-profit organization or even Dulski called it a corporation tonight. There will be 104 vehicles going to the facility per day. Walcott asked the Planning Commission how would they like living next to this facility with 120 dogs and 40 cats. Walcott stated this is a Countryside (CS) residential land. Walcott asked the Planning Commission to deny this application.

Bruce Young, 22542 Yankee Bit Lane, Spring Hill, KS, stated the Staff has a difficult job and appreciates the decision Staff came to and he agrees with it. Young stated A&F is a neat group and does some special things and as neighborhood they are not against A&F's mission but against dogs that could potentially be dangerous near their homes. Young doesn't want a dangerous dog within 1,000-feet of his house, his kids, or his grandkids. Young would like for them to be outside playing without worrying about a dangerous dog that got out. Young stated the terminology of commercial property or enterprise, like Walcott said, that changes the neighborhood in a substantial way. Young believes the *Golden Criteria* was clearly meet

in the fact that it impacts the neighborhood in a negative way. Young stated he has heard the term “Sole of Spring Hill” used in regard to A&F and he disagrees with this term being used that way. Young stated there are a lot of special people that live in Spring Hill that represents Spring Hill.

Christine Richardson stated her husband is the Animal Control for Miami County. Richardson stated she doesn't know a lot about the Spring Hill site but knows what A&F does for helping out the people of Miami County and running the Osawatomie Pound. Richardson stated she has observed the way they help out the citizens of Miami County in the past five (5) years. By A&F making the Osawatomie Pound a “no kill shelter” it brings comfort to people that are anxious about giving up their pets because they went into an assisted living facility. They help work out options for people needing care for their pets temporarily or short term, it helps people from not dumping their pets or not turning over the strays for fear the pet will be put down. Richardson listed several other ways A&F is helping the citizens of Miami County. Richardson believes the shelter A&F is proposing is unique and stands out from those of Franklin and Johnson County.

Stephanie Myers, 23409 Yankee Bit Lane, Spring Hill, KS, stated she is a few feet short of the 1,000-foot neighbors to the subject property and believes her voice is important as her property lays within the neighborhood of this critical balance. Myers stated with A&F first started as a sanctuary for 19-senior dogs in a nursing home environment Myers was a committed volunteer and a financial supporter. Myers stated Dulski knew within a matter of months that 19-dogs was just a drop in the bucket and sat out to change her rescue. Myers believes with the approval of this Conditional Use Permit (CUP) there will be an immediate impact on her quiet neighborhood. Rescue is a demanding 7-day a week business even in a tree fenced area there will be bustling sounds from staff, volunteers, deliveries, maintenance, fund raisers, and barking dogs. Myers stated those are all good sounds of a successful rescue just not in a residential area. Myers believes just like the 19-dogs, another 120-dogs and 40-cats is just another drop in the bucket. Myers asked the Planning Commission to deny the request and allow A&F to find a more fitting location for their rescue.

Judy Katterhenrich, 4984 Somerset Dr, Prairie Village, KS, stated she is a member of the board for A&F and a longtime volunteer. Katterhenrich learned about A&F from Stephanie Myers and stated she is glad she did. Katterhenrich stated there was an incorrect statement just voiced, her job in rescuing dogs is to find a home for that dog then she will save another dog. Katterhenrich stated they are not looking at having 120-dogs today and coming back in two (2) years asking for 400. Katterhenrich stated they will use the numbers to get the dogs a home and make room for another. Katterhenrich stated they don't intend to have 120-dogs on the property, but would like that capacity. Katterhenrich stated their intentions are good and is not intended to cause any kind of havoc. Katterhenrich stated A&F have worked very hard to address every concern the neighbors brought up. Katterhenrich stated this is her peaceful place too she loves it here and doesn't even live here.

Joane Haworth, 20112 W. 220th St, Spring Hill, KS, stated she is a Miami County resident and lives within 5-minutes of A&F. Haworth stated she fully supports A&F and has been a volunteer off and on since 2018. Haworth stated she spoke at the last meeting about all the good A&F does, she believes a look at the bigger picture is needed. A thriving community has diversity, respects all forms of life, sustainability, active, opportunities to give back, and helping others to live a good life. Haworth asked what gifts does her community offer, and what role model is she for her children and youth. Haworth believes A&F builds strong relationships and offers far reaching effects to her kids. Haworth stated there is a problem in Miami

County with strays, a neighbor spent thousands of dollars attempting to rescue stray cats. Haworth stated she has driven to the subject property, it is peaceful, it is beautiful, and when you drive down 223rd Street you don't hardly know it is there. Haworth asked the Planning Commission to support A&F.

Susan Hain, 23424 Yankee Bit Lane, Spring Hill, KS, stated she has lived at her current resident for 6-years, a Miami County resident for 28 years, her family has lived in Miami County around 35 years, and is a 1,000-foot neighbor of A&F. Hain stated of her many concerns her biggest concern is safety. Hain stated A&F have several dangerous and aggressive in their care now and it will increase with expansion. Hain stated she understands the extra features being added to assure the dogs don't escape, but everyone knows a motivated dog can climb or dig his way under fences, trees fall on fences, and human error occurs. Hain believes they had and have dogs in their care that have killed cats, killed other dogs, and attacked adults and children. Hain believes these dogs put her, the surrounding neighbors, their families, the staff of A&F, and potential adopters at risk. Hain stated regarding safety she is concerned with the animal waste getting into Hillsdale Lake contaminating the drinking water. Hain asked if this Conditional Use Permit (CUP) is worth the risk of thousands of Miami County residents and visitors. Hain stated it is her hope that the Planning Commission has read all the letters from the surrounding neighbors and the Staff Report with the recommendation to deny the CUP, she hopes the Planning Commission vote to deny.

Scott Schneider, 5225 Ward Parkway, KC, MO, stated he is a board member for A&F. Schneider stated he will visit on dog waste because that is the job he was given. Schneider stated in Cook's report there is a link to a study that was done in Belgium. In section 3.3 of the report, it says if a person uses a plastic dog bag to pick up after a dog then 97% of phosphates is removed and 56% of nitrates. Schneider reiterated he found that information in Cook's report.

Eric Berlin, 6508 N Camden Ave, KC, MO, stated despite the modifications that have been made to the proposal and regardless to the commercial or non-commercial nature of this operation, which Holland has been very focused on, the neighbors believe this will be a beehive of activity if it is approved. Berlin believes the applicant would like it to be that busy. Berlin stated the Planning Commission are only to consider this application tonight, but Berlin believes if approved it is inevitable that future applications for expansion will follow. Berlin asked if this amount of activity is appropriate for this location. Berlin stated he concurs with the Staff Report that the answer is clearly no. Berlin asked the Planning Commission to deny the CUP.

Denise Woodard, 22481 Yankee Bit Lane, Spring Hill, KS, stated she is within 1,000-feet of the applicant. Woodard stated she has been a Miami County resident for 45 years and enjoys the peace and quiet of the neighborhood. Woodard stated she is concerned with the tranquility being at risk by the proposal. Even with the reduced proposal there are concerns about the level of noise coming from the facility. The noise comes from the dogs outside the buildings not inside. Dogs bark, they bark at other dogs/animals, and they bark when they play. Woodard stated she can hear the dogs barking at the current facility from her backyard. The proposal is six (6) times the current size and will be a considerable amount of increased noise coming from the facility. Although leaving trees on the property to act as a buffer for the noise, the trees will not have leaves year round, they lose their leaves 6-months of the year that is when it will really become a concern to Woodard. Woodard is also concerned with the vicious dogs housed on the property and rehomed by A&F. Woodard believes A&F knowingly rehomes dogs that have a history of attacking people and concerned with the safety of the volunteers, staff, neighbors, and unknowing fosters and adopters. Woodard is concerned about the vicious dog that escapes the property and wanders onto her

property and attacks one of her dogs, her, her family, or one of her neighbors. Woodard stated she knows dogs will escape the property, they have done it in the past, human error happens and dogs get lose. If a dog is determined to escape it will. Woodard believes there is a better place in Miami County for this facility, away from residential neighborhoods.

Rhonda Mark, 3713 S Emery St, Independence, MO, stated she moved from Maine five (5) years ago. In Maine the road Mark lived on had 15 houses a lot across the street sold and there is now 85 houses on the road. Mark is questioning the concerns voiced with the dogs at A&F being vicious when they aren't addressing the fact that their dogs are running lose. Why are they not concerned with who is going to take care of those dogs. Mark asked how do the neighbors know the dogs barking are at A&F and not the dogs running lose. Mark believes development is going to happen and there will be no say. Mark would prefer having a homestead with 120-possible dogs then she would 85-houses with no control over who moves in.

Priscilla Myers, 6214 W. 128th St, Overland Park, KS, stated she has family and friends in the area that will be affected by A&F. Myers asked if Miami County has the will and or resources to provide oversight on an operation that has an antagonistic relationship with the local population and yet wants to become the nation's destination site for animal shelters. Rather than launching a continuous unending assault on the integrity of the neighborhood rural Countryside (CS) zoning Myers believes if A&F wants to be an asset to the community they might try working with the County to find a suitable location for it's enterprise. A site compatible with the ambitious nature of the A&F operation, it might be slightly inconvenient then the property next to Dulski's house. Refocusing their efforts on a location more appropriate for the scale of their plans would save everyone involved a lot of time, effort, expense, and heartache and hostility.

David Anderson, 20901 S. Clare Rd, Spring Hill, KS, stated he has lived in Spring Hill for 64 years and growing up 223rd Street was a 1 ½ lane gravel road. It is a lot better today. Anderson stated the concern for safety is "what if" a dog gets out, "what if" this happens, he suggest that the people living in the Hillsdale Lake area to set up some game cameras because the State of Kansas released eight (8) mountain lions four (4) years ago to the North end of Hillsdale Lake, six (6) females and two (2) males. Each female can have two (2) more, they will travel up to 100 miles depending on the food source. Anderson stated he would be concerned with his kids/grandkids playing in the yard in this area with the mountain lions. Anderson stated in regard to the roadway go two (2) houses to the East there is a garage with 19 vehicles that are being worked on. Anderson believes he is running a shop there and doesn't have a permit for it. Anderson stated the Alvarez Ranch website, it shows there are rodeos going on, there are bleachers, band stands, and in their videos everyone is drinking beer. Anderson stated there are 100 – 200 vehicles parked out there and people tailgating, and people charged to get in. Anderson believes times are changing, things are changing and there is nothing that can be done about it but to except it.

Miranda Munden, 20929 Emerald St, Spring Hill, KS, stated she has been a staff member at A&F for a little over four (4) years and is representing the whole staff team tonight. Munden clarified what is intended by "birthday parties", it is a gaggle of seven (7) year old girls that collected donations in lure of gifts and came to A&F to pet dogs for an hour. It's not a normal birthday bash. Munden stated the neighbors are concerned with noise, but she closes the barn she regularly hear the concerts down the road and up until this week assumed it was a Yankee Bit Lane neighbor having a party in their backyard, she didn't realize that it was a large scale music venue. Munden reiterated that the Planning Commission

recently approved. Munden stated if there are concerns about the noises from A&F and not Alvarez's then she believes A&F are be to a double standard. Munden stated the dogs have never accidentally gotten out since the implementing the new safety measures years ago. Munden stated there is not one instance when one of the dogs bit a neighbor. Munden stated the neighbors' dogs get out and charge them on A&F property daily. Munden asked if the neighbors are concerned with living next to vicious, uncontrolled dogs she believes they need to look inward upon themselves and not throw their unjustified fears upon others. A&F's dream is simply to build a series of barns to house animals and make a positive impact in the community around them. Munden stated the barns may not hold sheep or cattle, but they will hold animals and save them from death with the help of the Conditional Use Permit (CUP). The animals will be provided the highest care this nation has ever seen let alone anything this county could ever imagine their animals could receive. Munden believes the request is nothing more than a hobby farm for four (4) legger creatures to live peacefully that would otherwise be killed. Munden believes the request is a nature sanctuary preserving the trees and landscape and would otherwise be a 500 unit multi housing complex or commercial warehouse. Munden stated A&F cares, has been making a positive impact in the lives of the neighbors, families, teachers, and businesses. Munden believes A&F has transformed the land from a junkyard to a peaceful nature retreat and it will remain.... Time was called.

David McCreight, 22526 Yankee Bit Lane, Spring Hill, KS, stated last time he was in this room the Planning Commission asked the applicant about reducing the size and she emphatically said no. McCreight believes the applicant request expansions if this is approved. McCreight stated it is clear this does not meet the character of the neighborhood and will adversely affect his property value. McCreight believes this facility should be located in the proper zoning., McCreight believes this entity preforms all the functions of a commercial kennel.

Aaron Woodard, 22481 Yankee Bit Lane, Spring Hill, KS, stated he is within 1,000-feet of the proposed A&F expansion. Woodard stated even with the reduction in the size of the proposed expansion he is concerned with the waste with the number dogs housed on the property will still have a significant impact on the Hillsdale watershed. Woodard stated according to the EPA dog waste is a non-point pollution which is caused by rainfall or snow melt moving over and through the ground. Non-point pollution is the leading cause of water quality problems and has harmful affects on drinking water supplies, recreations, fisheries, and wildlife. Woodard stated the Miami County Comprehensive Plan states that impacts to Hillsdale Lake and it's watershed should be considered as land development occurs. The Comprehensive Plan specifically mentions non-point sources of pollutions and states these cause the most impact on reservoir's water quality, it states that it's important for land uses and land management practices within the watershed be closely monitored and improvements and proactive efforts supported. Woodard stated dog waste has a more significant impact on the environment then cattle or wildlife. Cattle and wildlife typically take from nature and give to nature they don't add something that wasn't already there. Dogs eat food very rich in nutrients which causes their waste to have more of an impact on the environment, urine will also affect the environment due to the high levels of nitrogen. Woodard stated there is a pond on his neighbor's property right next door to A&F and a stream downhill on the South side of the 40-acres the runoff will be collected and the stream feeds into Hillsdale Lake.

Jane Cozzolino, 7504 W 143rd Ter, Overland Park, KS, stated she has been with A&F from the start and there are policies and procedures in place that provide effective oversight of the operation. Cozzolino stated they maintain adequate insurance, annual audit of financial statements, obtain all required licenses,

and follow the rules to maintain them. Cozzolino stated A&F is routinely inspected by the Kansas Department of Agriculture with no advance notice. There is also an annual inspection by a veterinarian that assesses A&F standards of care and animal inventory. Cozzolino stated although the request is for 120-dogs and 40-cats the intent is to use the maximum capacity for urgent situations. A&F strives to move the animals into foster or forever homes as quickly as possible, there are no adoption fees and there is no profit made. Every animal taken in is seen by a vet, A&F maintains the highest level of care, and all financial obligations are met. Cozzolino stated A&F can expand and effectively use their experience to meet a community need of caring for stray and unwanted animals allowing them to live out their lives. Cozzolino believes A&F can do this while adhering to all regulations ensuring compliance and compatibility.

Darren Hain, 23424 Yankee Bit Lane, Spring Hill, KS, stated page 8 of the Staff Report provides valuable insight as to whether A&F will play by the rules. The Staff Report states the existing operation still is not in compliance with the Zoning Regulations. Hain asked if past behavior is any indication to the future behavior, it's unlikely that A&F is going to abide by all the County's zoning regulations, or any conditions placed on a Conditional Use Permit (CUP) if approved. Hain believes if the only consequence for someone out of compliance for five (5) years is to issue a CUP for a massive expansion Hain doesn't believe the potential ramification of the CUP is any kind of incentive to comply with the rules. Hain believes approving this CUP will set a bad precedent for the County, this is a land use issue. Conditional Use Permits are not permitted by rights because they are inherently risky. Hain stated zoning exists to separate incompatible uses and conditional uses shouldn't go anywhere in the County. There are many things that could be permitted by a CUP including demolition, landfills, and asphalt plants and it doesn't matter if they're non-profit. A non-profit asphalt plant doesn't belong in rural residential Miami County and A&F's proposal doesn't fit the character of the neighborhood. Hain stated he respectfully asks that the Planning Commission consider the Staff recommendation for a denial. Hain noted according to the Spring Hill Comprehensive Plan this area is outside the Spring Hill Growth Area, and the commercial activity is in the Spring Hill city limits. A&F says they just want a chance, Hain stated they have had five (5) years. There have been dogs out of the facility, he knows because he has called A&F and they claimed the dogs. Hain stated there have been complaints about A&F made directly to A&F, the lesson the neighbors have learned is to start calling the law so that the complaints can be documented. Hain stated Alvarez Ranch holds seven (7) events per year, not daily and not daily staff. Hain stated A&F was welcomed into the neighborhood and the neighbors were fools to believe it was "19 senior dogs" personal dogs. Time was called.

Gary Harvey, 22719 W 223rd St, Spring Hill, KS, stated he has lived here for approximately 40 years and is not afraid of expansion if it is the right kind of expansion. Harvey agrees with the concerns of the neighbors and asks the Planning Commission to deny the request.

Menefee closed Public Hearing 23007-CUP: Always & Forever Midwest Animal Sanctuary at 10:00 p.m. Broers moved to take a five (5) minute break. Kitchen seconded; the vote was unanimous via show of hands (8-0).

Menefee called the meeting back in session at 10:05 p.m. and opened the Planning Commission discussion for 23007-CUP: Always & Forever Midwest Animal Sanctuary.

Menefee invited the applicant or applicant's legal representative to the podium to respond to public

comments at 10:06 p.m.

Holland stated Conditional Use Permits (CUP) are listed in the Zoning Regulations by zoning district, so a rock quarry or asphalt plant aren't allowed in Countryside (CS) district.

Holland stated in regard to dangerous dogs the comments are "what if". A&F have measures, protocol, and procedures in place to address every "what if". Holland stated dogs don't just run and jump over a fence when they are double leashed to somebody. Holland stated human error can be said as much as they want but he believes they have done as much as they can, anything they can, and will do more if they have to prevent any kind of accident like that from happening. There are measures in place; double gates, fencing, leashing at all times, no loose dogs on the property. The buildings do not have doggie doors so that the dogs can come and go as they please, they are supervised by a person when in the yard.

Holland referenced the quiet neighborhood and noise stating that dogs can bark. They bark when they're not supervised, and when a dog is on a leash it doesn't bark as much as it would if they were unsupervised. Dogs don't cause a problem when watched and supervised, which A&F will be doing.

Holland referenced the comments about the traffic, 100-trips per day sounds like a lot but it is less than 5% of what's there today on an arterial road.

Holland stated there has been more discussion about waste than he ever thought there would be because the waste is not a problem. Holland stated there was neutral testimony by Animal Control that the dog waste is taken care of with baggies and is picked up daily. Holland stated there is a detention pond at the facility to accommodate drainage, it is built to accommodate a 100-year storm, any drainage from the property has to go through the pond first before it goes to anyone else's property or downstream. Holland believes dog waste is a non-issue.

Holland stated there is been no evidence A&F will cause an impact to property values. Holland stated if the Planning Commission is going to deny a CUP based on property values, you need evidence to say A&F can't comply, or not going to comply, not speculation. You need hard evidence. Holland stated Miami County's ordinances are set up to allow these uses. Standards and conditions in place to address the issues the ordinance says that they are presumed to be allowed. Holland stated they are asking that the Planning Commission give them a chance and believes they have proven they deserve a chance to be allowed to continue the rescue efforts.

Menefee opened the Planning Commission deliberation at 10:11 p.m.

Menefee stated tonight he doesn't feel that the Planning Commission is judging or evaluating the request. The Planning Commissioners have heard a lot of good testimony from those for and against this Conditional Use Permit (CUP) request and it is not the Planning Commission's job to determine if the animal sanctuary is good, that is not in question. Menefee stated it is not the Planning Commission's job tonight to figure out how to handle the strays in the County, mountain lions, or neighbors' dogs. The Planning Commission has a very specific job tonight and that is to look at the *Golden Criteria*, the rules and regulations and figure out if this request does in fact meet those. Menefee stated he has listened to many people make a comment "not in my back yard". Menefee stated no one wants him in the back yard either because he raises pigs. Menefee stated if they had a quarter section maybe it would be a better fit, Menefee believes this is a very tough case. Menefee stated in the past when a CUP is denied it waits a full year before it comes back; this request has been downsized from the former request heard earlier this year and asked if the downsize is a substantial enough change to come back before the Planning Commission this early. Menefee requested clarification on the CUP process with this application.

Cook stated the former Conditional Use Permit (CUP) application was withdrawn prior to being heard by the Board of County Commissioners and therefore didn't need to wait a full year before coming back to the Planning Commission with a revised request.

Broers stated she is looking at 14-1.01 and doesn't see that there is a presumption that the Planning Commission should approve a CUP and asked Staff if they have an opinion on that. Broers stated it was mentioned a couple of times and she reads "it can be made compatible under specific conditions when found in the interest of the public health, safety, morals, and general welfare of the community". Broers stated we need to do some fact finding, she doesn't see a presumption one way or another.

Cook stated he agrees there is no presumption and that is part of the reason for the *Golden Criteria*, there are other issues that can be looked into as to how it fits into the character of the neighborhood. Cook stated if it said any kennel operation is permitted anywhere in the County as long as on a road or met certain criteria then that opens it up a lot. Cook asked should this operation or some other CUP should it be permitted anywhere on 223rd Street because 223rd Street is going to be able to handle the traffic. The applicant has put a lot of effort into looking at the impacts and attempting to mitigate them.

Broers stated she is asking when the Planning Commission walks into a meeting there's not a presumption that they will approve an application unless they prove otherwise. Broers stated there shouldn't be a presumption either way, the Planning Commission is supposed to be keeping an open mind throughout the presentation, listen to all of the facts and circumstances and then apply the rules and regulations and the *Golden Criteria* when making the decision.

Cook stated he agrees, it would be incorrect for the Planning Commission to presume an application is approved or denied until it is proven otherwise, either way the Planning Commission needs to look at the factors and findings.

Broers stated A&F's Counsel brought up the conditions Staff recommended if the CUP is approved, and the special events and Staff mentioned Special Event Permits might be an option. Broers asked how many Special Permits an organization can apply for in a calendar year and is the organization then limited once they have exhausted the number of Special Permits allowed in a calendar year.

Cook believes that is a one (1) time per year and possibly two (2) events per year unless there is some other approval.

Broers asked if that system isn't really designed for the kind of events A&F is wanting and the frequency they are wanting.

Cook stated if it were the one (1) time a year anniversary or another type of special event it would be more appropriate. Cook provided the example of running with the cows receiving a special event permit for that event.

Brockus stated for the record when driving to the meeting tonight he was listening to the meeting on the live stream prior to his arrival at 8:19 p.m. Brockus stated this application is significantly smaller than the original, fewer buildings, less square footage, and fewer dogs. Brockus asked if it is legally possible to cap the maximum number of animals to where they can never increase the number of the animals in the future. Is there a legal document they can sign agreeing to never request an increase.

Cook stated as part of the CUP a condition can be added that stipulates a maximum number, but there's nothing stopping them from coming back with an amended request to increase the number of animals.

Alex Gilmore, Miami County Counselor, stated the applicant could theoretically agree to a condition prohibiting it from seeking an increase in the future, but the Planning Commission cannot bind them to that condition as a recommending body and it would be up to the Board of County Commissioners to set any conditions.

Cook stated that he didn't know if that would be legally allowed.

Kitchen asked if they are going about this the wrong way, the Planning Commission have been working on the Comprehensive Plan and asked what the number one (1) response from the public was.

Menefee stated he doesn't recall the exact words, but they want the "rural feel" rural; agricultural; country.

Manchester stated he believes it was 76 or 77% of the survey respondents want the rural, agrarian lifestyle.

Kitchen stated as a board allowing Conditional Use Permits (CUP) anywhere doesn't do that. Kitchen stated and he continues to hear statements "Johnson County is coming", Kitchen believes the board's job is to stop it if that's what the people of Miami County sent back on the survey.

Brown asked if the nearby homes that don't fit the current zoning were grandfathered.

Cook stated some of them might have been created prior to the adoption of the Zoning Regulations. There was a period of time that the Zoning Regulations only required a minimum of 5-acre dwellings.

Philgreen stated if he were a dog he would want to be born here, he has been in 26 countries and none of them treat their dogs as good as we do. Philgreen stated everyone wishing to be heard was heard and unfortunately there's no way for everyone to leave happy tonight. Philgreen stated as a board they are not in the decision making entity they are an advising entity; the County Commissioners are going to be the ones to make the decision. The Planning Commission will give their opinion to the County Commissioners and the County Commissioners can overturn the Planning Commission recommendation. Philgreen stated the recommendation from the Planning Commission for the former request was to deny the request, the applicant went back to the drawing board and changed the request substantially from the original request. Philgreen stated he is a big believer in property rights and the board doesn't have the right to tell someone they can or cannot do something with their property until it affects someone else. Philgreen stated the Planning Commission's job is to protect one (1) citizen from another citizen. Philgreen stated it's not a popularity contest, just because one (1) person/group has more to say than another does not mean they have more weight. Philgreen stated he does listen to who talks and, to him, the people that live nearby have more weight than people that don't. Philgreen stated when he thinks about what decision he is going to make, which he still has not made a decision as he is waiting. Philgreen stated he is the most curious about the concern "not in my yard" because no one wants it in their backyard. Philgreen stated when a person that lives nearby says they love what the organization is doing but not in my backyard, Philgreen believes that changes his job from "how does it affect the property owner" verses "how it affects the property owner on 283rd Street" who doesn't want it in his backyard and now it is one (1) citizen against another.

Philgreen stated there is a 46 page traffic study report for cars that will be turning off of a very busy loud road. Philgreen believes any noise coming from the property will be overwhelmed by the traffic noise from 223rd Street.

Philgreen believes the applicant has done a great job mitigating the safety concerns. Philgreen stated in his opinion he believes this organization has bent over backwards to care for their citizens, and neighbors.

Broers stated she finds equal parts compelling and frustrating for the fact that this is a need in our greater

community and the government entities aren't meeting that need. Broers believes if there is a stray problem the County should be doing something about it and finds that disappointing. Current state is, it sounds like the applicant is fulfilling a need in Osawatomie and they are running that shelter. Broers asked if the Osawatomie Pound would be a better place for the expansion. It is already existing. Broers stated she appreciates the new request is about a 30% reduction in head count, and fewer buildings. Broers stated the argument that traffic doesn't change the character of the neighborhood she finds a little disingenuous. Broers mentioned construction on Bellevue in KC, MO, and the rerouting of traffic into the West Plaza area asked if Holland was familiar with the project. (Recording did not pickup Holland's response). Broers stated they can agree to disagree then because her road is now paved and people now drive 65 MPH instead of 45 MPH, that has changed the character of Broers neighborhood. People no longer walk on the road; Broers does walk on it but won't walk on it with her children and she quickly gets to the nearest gravel road. Broers stated small increases in traffic can change the character of the neighborhood. Broers stated if a person misses a turn in the applicant's area, they will go to Yankee Bit Lane to turn around, based on the traffic study a number of people will be coming from the East and if they miss that turn off they will end up on Yankee Bit Lane to make a U-turn. Broers believes that is something that needs to be acknowledged. Boers stated that she believes the traffic impact study is geared towards the impact to the physical road and concedes it doesn't have a negative impact to the physical road. The road is designed to handle the traffic, but the commissioners need to consider other impacts as well.

Broers stated she appreciates the reduction in size, but the number of animals is still too high for her as well as the number of parking spaces. Broers stated as the Planning Commission continues to deliberate she would like to explore reducing the number of animals to under 100, reducing the number of parking spaces, and see if that can't get them somewhere.

Menefee stated he agrees with Broers and what Philgreen had alluded to. Menefee stated he has been on the fence with this application all night and believes it could go either way. Menefee stated his biggest hold up with the request is that there is still a lot of room for expansion to the proposed operation and without a way to limit and restrict and to say absolutely no, then he has a hard time approving this request. Menefee does believe it impacts the character of the neighborhood Menefee stated when he looks at the request he doesn't believe it benefits the character of the neighborhood particularly when there is another 20-acres that can be developed.

Brockus stated that is why he was asking if there is a way to cap it now and forever to where they can never expand.

Brown stated there is no way for them to expand without coming back to the board and request an expansion. Brown doesn't believe there is a threat of them expanding unless the Planning Commission approves it or the board after us approves it. Brown noted the character of the neighborhood could change in the future when commercial development has moved closer.

Menefee noted the property could be annexed by the City of Spring Hill in the future.

Philgreen believes by the time they will need to expand it might not be in the County or jurisdiction. Philgreen stated there were several people that stated they are within 1,000-feet of the subject property but believes there is only one (1) that is actually within 1,000-feet of the operation and believes most of the houses are the equivalent of 4-football fields away with a lot of trees in between.

Broers asked how annexations work, would Spring Hill have to get consent from all the landowners.

Cook believes there would be a couple of options, one (1) would be an island annexation which would

require approval from the Board of County Commissioners, Spring Hill, and probably the property owner and generally less likely to occur. With the way annexation laws are now, it is consent annexation so each property along the way would need to be annexed.

Flake stated this is a very difficult decision and has looked at this several different ways in the last couple of months. Flake stated it says a lot when there is this many people that showed up two (2) months later, especially with regards to democracy in general. Flake stated he loves the idea this application will not impact the County's taxes and that the organization will be handled by donations. Flake believes the applicant came to the meeting with a response to everything that was addressed two (2) months ago and was impressed by this. Flake stated he recalls specifically saying he would like to see the request downsized, and the applicant came to the meeting tonight with a downsized request. Flake asked how can he deny the request when the applicant did what he asked them to do. Flake stated there will be more cars on the road, but with 100 vehicles per day he doesn't believe it will have a huge impact on the neighborhood. Flake does believe it will have an impact on the neighborhood just not a big impact. Flake believes the applicant is doing everything they can to take care of the safety concerns. Flake said this is just a really tough decision. Flake stated if they come back in 5-years he doesn't believe he will be in favor of an increase in size. Flake stated he is impressed with the organization and that it won't cost the County anything.

Kitchen moved to deny 23007-CUP Always & Furever Midwest Animal Sanctuary based on Staff's Findings and recommendation. Manchester seconded.

Brockus stated he believes the applicant came back and answered every issue the Planning Commission had a concern with. Brockus stated he doesn't have the concerns he had initially.

Brown voiced his appreciation to Staff and all the work they have put into this request. Brown believes Staff was very thorough. Brown stated he doesn't recall an applicant ever having to bend over backwards as much as this applicant has been asked to. Brown stated he believes this is beneficial to the County and residents, part of rural life is dogs and if the County can't manage the dogs people aren't managing themselves then that effects the County.

Kitchen stated he has complained about Conditional Use Permits (CUP) for years. The County has Zoning Regulations, districts were set aside with certain rules attached to the district then a person builds and lives on their property and along comes someone into their area wanting a CUP next door to them. The County is now allowing something everyone in that district didn't think would ever be subjected to.

Brown gave example using the number of laws from 1960 compared to current day as a comparison to the County Zoning Regulations and Conditional Use Permits.

Broers stated there is a motion on the table. Broers stated as it exists, she is a no. Broers stated she needs the request to include fewer dogs, fewer head count. That she is explaining what her reasoning for her decision. Broers stated there would be a need to discuss the other events being proposed and how they would be limited, capacity numbers and shorter term for the CUP. Broers noted she is currently a no vote and would need the conditions to be a little more restrictive to even consider getting to yes.

Philgreen stated when the applicant was before the board last time it was 230 dogs, the board told them they need fewer dogs in order to consider the request, we want more security...

Kitchen stated he wants something that fits the character of the neighborhood.

Menefee believes Philgreen is saying that last time some of the Planning Commission members were

opposed to it last time were not opposed to it entirely and might be willing to support approval with fewer dogs.

Philgreen stated it feels as though they have done this.

Kitchen stated the neighbors still believe this will change their way of life, Planning Commission is supposed to protect their lifestyle, the Zoning Regulations is supposed to protect your way of life. Kitchen noted the junk yard down the road has been there for 50 years and these people built their houses after the junk yard was already there.

Brown asked isn't development expected when property is purchased. Brown noted people move here for the peace and quiet and they built on 169.

Kitchen stated he has said that before, everyone is moving to rural Miami County and it's not going to remain a peaceful quiet rural area if everyone keeps moving here, it will be a nightmare. Kitchen stated it's a fact the more population there is the more problems there are.

Brockus stated Philgreen brought up "not in my backyard" if it's not here it will be in someone else's backyard.

Menefee stated that's why he made the comment earlier that he believes the perfect setting is in the middle of 160-acres. No one will know it is there, but it will be cost prohibitive and other issues. Menefee stated he always likes to hear how long people have lived here and his family has lived here or in the general area for 170-years and his view is that the ground around him will eventually come up for sale because he doesn't own it. Menefee stated, not this CUP specifically but other CUPs that have been approved, if they are ever proposed and put in next to Menefee he would sell and move because it's not going to be in his backyard. That would be the breaking straw for Menefee because he lives in the country, he farms, he wants his kids to be able to go outside and run around the yard and not have to hear whatever noise it is coming from a Conditional Use Permit (CUP) next door. Menefee stated Kitchen mentioned earlier that the Planning Commission have been tasked by the citizens of Miami County to protect that lifestyle. Menefee believes that, when looking at the *Golden Criteria* and Comprehensive Plan, needs to be a priority for the Planning Commission because it is a priority to the tax paying citizens of Miami County. Kitchen discussed how close his neighbors are to him and how long their families have lived in the area. Brown asked how you preserve this 40-acres being rural? Brown noted that this is item in front of the Planning Commission.

Kitchen stated 40-acres is not really a farm. It can be a pasture, hay ground or whatever. It could also be a housing development.

Philgreen stated the thing he struggles with is property rights. Philgreen stated he isn't evaluating whether or not to have a dog park, dog rescue, or what the operation is, Philgreen's question is how much is that operation going to affect other citizens of the County. Philgreen doesn't believe, based on traffic, safety noise, screening, it will be a big impact to the neighbors.

Menefee stated there are nine (9) people on the Planning Commission, each with their own insight and it doesn't mean half the members are right and half are wrong we just look at things differently. Menefee stated they need to understand that when they leave tonight its not that someone was right, and someone was wrong it is just a difference in opinion.

Menefee stated there is a motion on the table to deny 23007-CUP: Always & Furever Midwest Animal Sanctuary based on Staff Findings and recommendation and called for a vote. The vote was 4-4 via show

of hands with Brown, Flake, Philgreen, and Brockus voting against. Motion was lost.

Brown referenced Condition 2d and asked Broers if allowed an event like a birthday party the Planning Commission wouldn't regulate an individual to keep the birthday party under 30 people.

Broers stated before she gets there she needs to talk about the intensity of the operation. Broers stated people can say what they want about the Staff Report, but she feels very strongly about the amount of parking on the site plan, and the number of restrooms in the building are indicative of a desire to... (inaudible comment from the audience) there are 72 parking spaces, but events will only have 20-30 people.

Brown asked didn't the Planning Commission ask them to consider more parking spaces at the last meeting.

Menefee stated to Broers' point, one of the things Menefee has struggled with tonight during the presentation is that they don't plan on it being at capacity but at the last presentation they wanted 230 total animals. Menefee asked if they don't look at having 120 dogs on site at a time, what was the need for 230. Menefee stated the reason if voted for the denial is because there is still a concern to him for expansion because there is a CUP that was approved years past that returns every couple of years for an expansion.

Kitchen stated he is concerned this will be coming back every 3-4 months with something different.

Menefee stated that is his concern is, and he is not a permanent no but with the possibility of further expansion he struggles with that.

Kitchen asked Staff would the conversation be if this wasn't a 501c3.

Cook stated it doesn't matter if this is a private individual, a 501c3, or it's a Government entity, it's a kennel operation and it's the use of the property. Cook doesn't believe it matters if they are making a profit on it or it's all donations it is the use.

Kitchen stated the use of the property.

Cook agreed.

Kitchen asked if a commercial property would be allowed in the Countryside (CS) district.

Cook stated to rezone this to commercial district would be a possibility. The current Comprehensive Plan shows 223rd Street and 169 Highway is considered a Regional Area of Significance and right at the interchange, it might be more appropriate to be commercial. When you start getting farther away from the interchange, it starts becoming more of a concern. Cook noted he would not be surprised sometime in the future that the zoning keeps moving farther away from the interchange, Cook believes things will eventually change here.

Kitchen asked if it was more than 100 rescued horses as a non-profit, would the Planning Commission be talking about the same thing.

Cook stated yes but with some slight differences.

Kitchen asked if the request was for horses, would it change how this was looked at.

Brown referenced Menefee's question about why the original request was so big and stated he believes the applicant outlined an idea and indicated multiple phases to be implemented until they reach the big dream.

Menefee stated he wants the big dream to go away.

Flake stated he specifically asked the applicant what they think the future will hold and the answer was “we’re looking at this application” and Flake believes the Planning Commission needs to do the same. Flake stated the Planning Commission doesn’t need to vote on the future they need to vote on the current application.

Kitchen stated he thought they had to think about the community that it is going in and where that future is going.

Philgreen asked Broers if there is a number that would change her opinion.

Broers stated she was hoping it would encourage some discussion amongst the four (4) Planning Commissioners that voted against the motion. Broers asked how low would they go and still be willing to approve the application.

Broers stated she does have concerns with the watershed, she believes the Planning Commission is tasked to protecting a very important water source in the community. The entire community of Gardner/Edgerton gets their water from Hillsdale. Broers stated to say the Planning Commission are only considering this application, but the Planning Commission also has to consider the Comprehensive Plan and the Comprehensive Plan tasks the Planning Commission with considering the watershed. This has to be considered as a wholistic idea. Hillsdale Lake is already considered an at risk lake because of the development in Edgerton. Broers appreciates what they are proposing with the solid waste, but the urine cannot be mitigated and it is going to go into the soil, into the ditch, and eventually end up in the Hillsdale Lake.

Philgreen stated he agrees with Broers, but he also understands biology it’s water, and that’s what septic systems do and there is nothing more purifying than soil. Philgreen stated it would be better than 100 head of cattle.

Kitchen stated the cattle give back to the environment, dogs take away.

Broers stated cattle are a national security because they are food, and this is why agriculture is protected, when done properly it works to improve soil. This isn’t what we are tasked with, this application isn’t agriculture, and it isn’t protected. This application is intense and that is the concern Broers has with it is the intensity. Its not 5 dogs peeing on 40-acres, it’s 120 dogs, that’s a lot of urine.

Brown asked if it were 40-homes with 40-septic systems and everybody using roundup to get rid of dandelions...

Broers stated she is the wrong person because by right, could they do that, does Broers think it’s the best practice, absolutely not. Broers stated she is very passionate about protecting the community’s water.

Menefee called on legal counsel for applicant.

Holland stated listening to the Planning Commission’s concerns about future expansion, Holland stated they would agree to not coming back for an expansion if approved with a 15-year term. Holland is prepared to say on record that A&F will not come back to the Planning Commission for an expansion if the Conditional Use Permit is approved for a term of 15-years.

Broers asked if that is enforceable.

Holland stated its on record and in the minutes. Holland stated it will take a lot to do what they are asking tonight. Holland wants to put the fear of an expansion to rest.

Menefee asked is Miami County's legal counsel if that is actually enforceable.

Gilmore stated it can be a condition of the Conditional Use Permit (CUP), but this is only a recommendation from the Planning Commission and ultimately it's the Board of County Commissioners decision.

Philgreen stated if they come back in five (5) asking to expand, past behavior is indicative of future and that would be the biggest damage to them.

Broers stated that doesn't make it enforceable though.

Brockus stated it would color their view of it.

Philgreen stated the Planning Commission cannot make a decision for future boards.

Broers stated that is what Holland is offering, to tie their hands for 15-years and Broers wants to make sure that doesn't violate some right to due process.

Holland stated they can waive their rights to due process.

Menefee stated he would only consider it if it were a legal binding document.

Broers stated ultimately it is only a recommendation.

Menefee agreed and stated they only submit the recommendation to the County Commissioners, and they can overturn the recommendation if they want to.

Kitchen asked it's ok if the CUP doesn't meet the *Golden Criteria* as long as they don't expand for 15-years.

Menefee stated the whole reason for a CUP is to approve uses and define the uses with conditions. Menefee feels it's important to look at the Findings provided by Staff as well.

Cook stated when looking at the *Golden Criteria* there is a mixture of Findings and when it comes to the Findings its based on the items that have the most impact on this request. It comes down to a weighing of the factors. It is possible that only one (1) factor is against but it's the most important factor and the Planning Commission could decide to deny it because of that one (1) factor.

Philgreen noted that with regard to a legally binding document, that would be up to the commissioners. The Planning Commission could approve it based upon the applicant's agreement to not come back and expand, they would have two weeks to figure out how to put that into a document.

Menefee noted he would not expect a copy of the agreement tonight but would only feel comfortable voting in favor was if it was a condition.

Flake asked why Fontana Christian Church had to come back for approval.

Menefee noted some CUPs have terms of 5 years or 20 years.

Cook noted some CUPs do not have term limits.

Kitchen stated denial against approval. The denial states it does not fit the character of the neighborhood or the zoning or uses of neighboring properties due to the size and intensity of the operation. Approval; it's on a paved road. Kitchen asked if being on a paved road makes it worthy. Number 2 for denial states it would not be in conformance with the adopted Comprehensive Plan as proposed property is not located within an area of Regional Significance and will not match the intent for Rural Residential as the intensity of the use will conflict with the primary uses that exists on the neighboring properties. The Zoning District allows kennels. Put those two against each other.

Cook stated those aren't intended to be compared 1 to 1.

Brown stated there are three (3) Findings for approval.

Kitchen agreed but stated Finding 3 should be under denial "The proposed use/facility would provide a relative gain to the public health, safety, and welfare of the greater community of Miami County as there is a need for a facility to address the problems of stray and abandoned animals and the proposed conditions would sufficiently limit impacts to the surrounding neighborhood."

Brown stated he believes this would benefit the entire County.

Kitchen stated he cannot physically put a dog in place of a person.

Flake believes Kitchen is looking at it wrong. The facility will be operating at the benefit of Miami County at no cost to the County.

Kitchen stated they are already running the Osawatomie Pound and the word on the street is that the City of Osawatomie is selling the Osawatomie Pound to them, not sure how without putting it up for bid, and asked why don't they build their operation there. It abuts Kitchen's property, and no houses can be built there.

Brockus asked if the Planning Commission were to add a Condition 11 "Applicant agrees to not request expansion of facilities for 15-years in writing..."

Menefee stated there are other issues that have been brought up by Broers that haven't been addressed. Menefee stated the more the Planning Commissioners discuss this the more questions Menefee has but believes putting a condition on the Conditional Use Permit (CUP) regarding expansion is a positive.

Kitchen asked about Condition No. 3 "The term of this Conditional Use Permit shall be ten (10) years commencing from the date of County Commission approval. Change of ownership or subleasing of the property/facilities shall require review by the Planning Commission to ensure the use substantially complies with the original CUP." and stated he didn't know it was possible to change ownership or lease a CUP.

Menefee and Cook stated that is standard on any CUP.

Broers stated Kitchen is very compelling in reminding the Planning Commission what the rut of the purpose is. Broers feels like she has been compelled to find a way to say yes, but at the end of the day does this fit the character of the neighborhood, to Broers it doesn't, as it exists today, as presented. Broers believes there is a need, but not in this community.

Menefee asked Staff if they end up with a hung jury what happens.

Cook stated if the Planning Commission feels more time is needed to make a decision they can make a request to table, direct staff to perform additional research, allow additional time for the Planning Commission to consider the request, but Cook's understanding is a tied vote is considered a denial.

Menefee noted for him a request to table would not be for additional information but allow time for him to process what has been presented.

Philgreen moved to approve 23007-CUP for Always & Furever Midwest Animal Sanctuary based on the Findings and Conditions by Staff with an amendment to the conditions adding Condition No. 11 that they put it in writing they will not come back for an expansion for 15 years. Brockus seconded.

Menefee asked for clarification that this would be based upon the finding for approval by staff and staff conditions.

Philgreen agreed. Based upon the conditions by staff, the Planning Commission's interpretation of the Golden Criteria as discussed and condition #11 that the applicant will not come back for an expansion for a minimum of 15 years.

Menefee asked for discussion on the motion to approve.

Flake called the questions.

Menefee stated he doesn't know that it addresses Broers' concerns with Condition 2d or the applicant's concerns with 2d or Broers concerns with the numbers.

Menefee called for a vote for 23007-CUP for Always & Forever Midwest Animal Sanctuary. The vote was 4-4 via show of hands with Kitchen, Manchester, Broers, and Menefee against.

Philgreen asked if the Planning Commission can send it up with no recommendation.

Menefee agreed that this is what happens.

Menefee asked Miami County's legal counsel if a motion is necessary for it to be sent to the County Commissioners to review and vote on.

Gilmore stated no motion is needed to send this to the County Commissioners with no recommendation.

Philgreen just wanted to make sure it passes up to the Board of County Commissioners.

New Business:

Public Hearing 23002-TA: Regulation Amendment for Retail Sales of Agricultural Equipment

Cook presented the Staff Report stating this item came about from a previous request amending the Regulations for Retail Sales of Agricultural Equipment earlier this year. The County Commissioners asked Staff to look into the Regulations focused on the required setback for the display area to allow the display area to possibly be closer to the road, specifically the issue that came up related mostly to setback when adjacent to a highway right-of-way. Cook stated screening is required for the display area because the intent is to display the items for sale, yet a 100-foot setback is currently required in the Regulations.

Cook stated he came up with three (3) options:

1. Make no changes and continue to require 100-foot setback from all property lines.
2. To reduce it to some specified number of feet, Cook suggested 50-feet because that matches the normal front yard setback.
3. There are other communities, such as properties that abuts to a highway that has full access control where there might be a different setback requirement because some don't have access to the highway, so it is treated like a side or rear yard rather than being a front yard.

Kitchen asked if there is a definition of Retail Agricultural Equipment.

Cook stated there have been a couple of different discussions, there are a lot of people with Ag equipment that might sell one (1) piece of equipment on their property, but Cook doesn't believe that is the intent of the Retail Sales of Agricultural Equipment is. Cook believes the main intent of this regulation is for a person operating a business selling Agricultural Equipment.

Kitchen asked if there is a limit as to what an individual can show for sale before it is considered Retail Sales of Agricultural Equipment.

Cook believes that is a little bit of a grey area. Cook believes if a person is buying equipment from a manufacturer and bringing it to his property listing it for sale that would be considered Retail Sales of

Agricultural Equipment.

Kitchen stated that is for new equipment but what about used equipment.

Menefee stated most Ag equipment retails will sell a mix of new and used equipment.

Manchester asked if this is being looked at for Stone Farms.

Cook believes that is the main reason.

Broers stated Stone Farms is the only retail sales of agricultural equipment currently in Miami County.

Broers stated she believes option No. 2 suggested by Staff strikes a nice balance.

Menefee agreed.

Philgreen asked if Staff were to make a recommendation would it for option No. 2.

Cook stated he isn't making a recommendation, but to him No. 2 makes the most sense because it will match the 50-foot setback currently used for development.

Broers asked if I-35, 69, and 169 the only access highways in Miami County.

Cook stated K-68 is starting to. Menefee stated because of the expansion on it.

Menefee opened the Public Hearing for 23002-TA: Regulation Amendment for Retail Sales of Agricultural Equipment at 11:34 p.m. No one came forth to speak, Menefee closed the Public Hearing at 11:35 p.m.

Philgreen moved to approve amending the Zoning Regulations for Retail Sales of Agricultural Equipment to reduce the setback to 50-foot, Staff's Option No. 2. Broers seconded.

Menefee asked if staff needed anything else regarding this request.

Cook noted the regulations amendment had been published as a general amendment to the entire section related to the Retail Sale of Agriculture Equipment. Cook noted that an operation that is currently occurring is already within the 50-foot setback, and even within 15-20 feet. Cook also noted the Planning Commission could also discuss if other changes were needed to other requirements of this section. Cook noted that this provision is supposed to be limited to the retail sale of agricultural equipment and that the county has received complaints from neighbors related to the selling of things that are not agricultural.

Menefee noted with no further discussion, he called for a vote approving staff's option number 2 for a 50-foot setback. The vote was 7-1 with Kitchen against via show of hands.

GENERAL DISCUSSION

None.

PLANNING COMMISSION TRAINING

Time did not permit.

ANNOUNCEMENTS BY STAFF / COMMISSIONERS

None.

Possible Future Amendments to Zoning and Subdivision Regulations

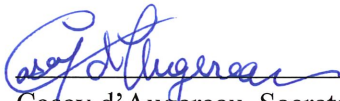
A. Common Access Easement requirements

- 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.

Kitchen moved to adjourn the meeting, Philgreen seconded. The meeting adjourned at 11:38 p.m. with a vote of 7-1 (Kitchen), via show of hands.

Approved this 3rd day of October, 2023.


Casey d'Augereau, Secretary


John Menefee, Chair / Kelli Broers, Vice-Chair

Minutes written by Casey d'Augereau