

**THE MINUTES OF THE REGULAR MEETING
OF THE BOARD OF COMMISSIONERS
OF MIAMI COUNTY, KANSAS**

The Board of Miami County Commissioners met in regular session, in the Commission Chambers, Miami County Administration Building, Paola, Kansas, on September 27, 2023. Those present were:

Tyler Vaughan, Chairman	Shane Krull, County Administrator
George Pretz, Pro-Tem	Andrew Holder representative from
Keith Diediker, Commissioner	Fisher, Patterson, Sayler & Smith, LLP
Rob Roberts, Commissioner	Stacey Weaver, Deputy County Clerk
W. Jene Vickrey, Commissioner	Shannon Gaboni, Operation Specialist

Visitors: Shea Miller, Bryan Smith, Miranda Munden, Sara Mills, Kristy Plam, Jane Cozzolino, Michael Eravi, Patricia Hight, Erin Socha, Jeff Oliver, Robert Sabin, Rick Stone, Karen Shepherd, Ron Stiles, Judy Katterhenrich, Konnie Knale, Shana Cooper, Kerry Knott, Meghan Swan, Amy Stecker, Wendy Curry, Susan Hain, Darren Hain, Gary Woodward, Kelly Woodward, Denise Woodard, David McCreight, Jane Booth, Shorey Berlin, Eric Berlin, Leslie Owen, Tom Owen, Scott Schneider, David Anderson, Bonnie Marshall, Brandi Kiper, Jen Dulski, Victoria Cotsworth, Curtis Holland, Beth VanAaken, Juanita Sprinkle, Deana Brim,

CALL TO ORDER

Chairman Vaughan called the meeting to order at 1:00 p.m.

PUBLIC COMMENTS

Michael Eravi from Lawrence Accountability wanted to address the Commission regarding an issue that Lawrence, KS is having with the homeless population in the city. There are a lot of issues with violence and drugs. Mr. Eravi, not here in an accusatory manner, would like to encourage the county to not send homeless people in their county to Lawrence. The City of Lawrence cannot handle the surrounding counties overflow. The issue needs to be addressed by the community where those homeless people are located. Mr. Eravi encouraged the Commission to become aware of the term Trauma Informed and to speak with professionals to help understand the homeless issue in their area.

CONSENT AGENDA

Commissioner Pretz moved to approve the Consent Agenda, as follows:

- Approval of minutes of the county commission meeting on September 20, 2023
- Approval of AP payment vouchers and payroll
- The award for Sheila Schultz will not be presented and will be moved to a later date.
- Remove Action Item #6; Approve Health Department RN Job Classification Market Wage Adjustments to Provide Pay Equity

Commissioner Vickrey seconded; the vote was unanimous.

PRESENTATIONS AND AWARDS AND PROCLAMATION

Recognize Kaitlynn Atterbury as July Employee of the Month. Kaitlynn is the Lab Technician at the Miami County Health Department.

EXECUTIVE SESSION

Commissioner Pretz moved to have an Attorney-Client Privilege Exception Session to discuss attorney-client privilege in the 2nd floor conference room for 15 minutes beginning at 1:15 p.m. to include the Commissioners, County Administrator, County Counselor and Planning Director. Commissioner Roberts seconded; the vote was unanimous. No action was taken at this time. Chairman Vaughan reconvened the regular meeting at 1:30 p.m.

NEW BUSINESS

Kenneth Cook, Planning Director, requested the Commissioners to consider a resolution for proposed text

September 27, 2023
Page 2

amendments to the Miami County Zoning Regulations pertaining to Agricultural Equipment Sales, as recommended by the Miami County Planning Commission. The affected regulations include Article 14, Conditional Uses. The Planning Commission recommends approval of the proposed revisions as they will support the regulations' purpose to promote the safety, morals, order, and general welfare of the citizens of Miami County. The changes are as follows: all structures, parking areas, storage areas or other improvements associated with the retail use shall be a minimum of one hundred (100) feet from all property lines except the minimum setback for product display areas shall be fifty (20) feet from a property line that is a right-of-way line for a limited-access highway (example: adjacent to I-35, US-69 Hwy & portions US 169 Hwy). Commissioner Pretz moved to approve with exhibit A changed from 50 feet to a 20 foot set back, Commissioner Vickrey seconded; the vote was unanimous. **(R23-09-041)**

Kenneth Cook, Planning Director, requested the Commissioners approve a renewal request for a conditional use permit for the operation of a church facility, Fontana Christian Church, per Section 5-2.02.24 and Article 14, and operation of a preschool per Section 5-2.02.12 and Article 14-2.01.5 of the Miami County Zoning Regulations and sign the corresponding resolution. The subject property is located at the southeast corner of 383rd Street and Hedge Lane in the NE ¼ of Section 3, Township 19S, Range 23E, Osage Township. The original CUP was approved 20 years ago and there have been no changes to the operation of the church. There have been some minor property changes; addition of an outbuilding and playgrounds. Commissioner Pretz moved to approve as presented, Commissioner Diediker seconded; the vote was unanimous. **(R23-09-042)**

Kenneth Cook, Planning Director, requested the Commissioners to consider a request for a Conditional Use Permit (CUP) to operate a kennel and associated activities as well as a private veterinary clinic/hospital for animals in the care of the rescue organization, Always & Furever, located in the Countryside zoning district, per Section 5-2.02 of the Miami County, Kansas Zoning Regulations. The subject property contains approximately 40-acres and is located on the south side of 223rd Street, approximately one half of a mile west of Columbia Road. The staff recommendation is to deny the application for a Conditional Use Permit named (23007-CUP) and approve a resolution denying 23007-CUP. Mr. Cook said the County's comprehensive plan shows this property is in a rural residential area in the Springhill Communication area and Hillsdale Watershed. Notice was sent to the City of Springhill and no comment was received. An initial request for the CUP was amended and that amended plan is what is being presented today. The Planning Commission held their public hearing where 358 comments were submitted before the hearing and approximately 28 individuals showed up to the meeting to give public comment both in favor and against the request. There are additional documents included in the paperwork for the Commission meeting today that were not included in the initial Planning Commission paperwork. These documents include a letter from the applicants proposing a reduction in the maximum number of dogs from 120 down to 85 and protest petitions from individuals located within 1000 feet of the subject property. Mr. Cook said the proposal does not include just dogs but cats as well. The original application was for a total of 230 animals, 190 dogs and 40 cats. The second proposal reduced the number of animals down to 160 animals, 120 dogs and 40 cats. The request to reduce the number of animals to 85 was not presented to the Planning Commission prior to the meeting. The updated site plan proposes all buildings will be located on the north 20 acres of the property, the south side of the property would be left open area where dogs could be walked and exercised but would not include any structures. The proposal also includes a 6-foot black chain link fence around the entire property to secure the site with 83 total parking spaces and four dog barns. The hours of operation would be 7:00 a.m. to 7:00 p.m. Mr. Cook said according to Section 14-1.03 of the Miami County Zoning Regulations if valid protest petitions are received within 14 days following the public hearing, then it would take a ¾ majority vote of the governing body to approve the request. With a valid protest petition being filed, the Board of County Commissioners may only approve the requested CUP upon approval of a ¾ vote of all members of the governing body. This requires a vote for approval of the request by at least 4 out of 5 of the Board of County Commissioners due to the Planning Commission's failure to make a recommendation

regarding the proposed CUP as they had tie votes both for denial and approval of the request. Mr. Cook's review of the Golden Criteria area as follows. The first item of the Golden Criteria is the character of the neighborhood including zoning and uses of nearby property. The subject property is zoned Countryside and area has several residential properties and residential subdivisions. Regarding the character of the neighborhood there are concerns with the primary function of the property and would not be compatible due to the predominant residential character uses of adjacent properties and it would place a non-residential use property in the middle of a residential neighborhood. Item number 4 is the suitability of the subject property to its present use, which the subject property is considered suitable to its present use. The third item is the extent to which removal of the present zoning would detrimentally affect nearby property. This is a request for a Conditional Use Permit the zoning of the property will not be changed, it is just consideration of the additional use for a kennel and vet clinic. The primary anticipated impact of the CUP approval would mainly be the impact to the character of the neighborhood, in Mr. Cook's opinion. There would also be some impact with increased noise due to dogs barking. Mitigation efforts have been included with the design and operation plan, but members of the Planning Commission felt it would still have a negative impact on adjacent residential properties. Item four of the Golden Criteria is the length of time the subject property has remained vacant as zoned. Mr. Cook stated the property has not been used much except for minor agricultural use and the applicant has cleaned up the property. Item number five is 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. Mr. Cook agreed that the creation of a facility to take in stray animals is something that could provide a benefit to the larger community as the current facility the County takes stray animals to runs at full capacity. Mr. 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. Mr. 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. Item number six is whether the proposed Conditional Use Permit (CUP) would be consistent with the intent and purpose of the Zoning Regulations. Mr. 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. Mr. 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. Mr. Cook stated he believes the intensity of the use proposed by the applicant would unduly and adversely affect the general welfare of the neighborhood and would not be compatible with the surrounding property and uses. The seventh item is the recommendations of the County's permanent or professional staff. Mr. 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. Mr. 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 District. Mr. 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. Mr. 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. Mr. 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

September 27, 2023
Page 4

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, Mr. 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. Mr. Cook made a recommendation for denial of the request. The eighth item is the conformance of the requested Conditional Use Permit to the adopted Miami County Comprehensive Plan. Mr. Cook noted the subject property is not currently located within a village expansion area or within an area of regional significance. Mr. Cook did not find the proposed Conditional Use Permit 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 provides the property with access to an adequate paved road, Mr. 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. Mr. Cook noted that some of the Planning Commissioners that voted opposed to the proposal specified that they are not completely opposed but the number of dogs was one item of concern along with some other items that needed to be addressed beyond just the number of dogs regarding how this would fit into the character of the neighborhood and the impact on adjoining properties. Chairman Vaughan thanked Mr. Cook for his detailed summary and said that the Commission has received a voluminous amount of information and have done a lot of studying. Chairman Vaughan would like to point out that the Commission would like Mr. Cook to take into consideration the reduction of dogs to 85 although that is extremely non-conventional and then invited the applicant to address the Commission.

Curtis Holland, legal counsel for the applicants Always & Furever from Polsinelli law firm, had a slide show ready in hopes it would give some context and help the Commission visualize the space. The existing Always & Furever is located on an adjoining 5-acre tract which is owned by the founder of Always & Furever, Jen Dulski, and they are part of the neighborhood although it does not come out that way in the report. Mr. Holland says a lot of work has gone into this and he hopes the Commission can appreciate that on everyone's part and hopes that he can address the issues that were raised. There has been an evolution of changes, as this is the second application and wanted to give some context to the most recent change of reduction of dogs to 85 total as the original application, submitted a year ago, had 230 animals and a much larger aggressive future-forward looking multi-phase development plan. He said the plan had many building on the property however this was something that would have been done over many years. He said Mr. Cook kept saying they were Commercial operation; however, they are primarily a rescue network, not a kennel. Mr. Holland says that the rescue has save upwards of 4,000 – 5,000 dogs in the 5 years they have been in operation. He said the Planning Commission gave a suggestion of just building on the Northern 20-acre side of the property. So, the plan was revisited and decided that was the better thing to do which resulted in the current site plan. Comparing us to other facilities that already have a CUP in place; they were allowed 85 dogs. The difference being they have 20 acres, and we have 40. He said that there are residences closer to Sandy's Kennel than what we are talking about with Always & Furever. This is how they got to 85 dogs. Mr. Holland says they have spent a lot of time on the Golden Criteria. He showed a map of Commercial use properties nearby including a property that is allowed to have concerts. He stated that their impact will be much less to the neighborhood than that. He also said that they have mitigated every single potential issue brought up by the Planning Commission; noise, lighting, traffic, and animal waste to name a few. He said the animals will not be allowed to roam free. Chairman Vaughan said they were comfortable with all of this and the only thing they have not studied was the 85-dog limit and asked if there was anything else he would like to say to the Commission. Mr. Holland said if you are comfortable with reading all the material, he wouldn't take up their time. He said we do want a change to start and reducing the number of dogs was a big compromise. They want to continue to rescue and save dogs and are afraid of what would happen if we don't

get this change.

Commissioner Pretz made the distinction that Sandy's Kennel was a breeder's kennel and Always & Forever is a rescue. Mr. Holland said the main point was that it was approved. Chairman Vaughan said that each CUP is unique and considered on its own merit. Chairman Vaughan asked for any comments from the Commissioners.

Commission Roberts said he looked at Sandy's Kennels approval for CUP. It was a single building breeder operation who got approval from every property owner within 1000 feet. So, I look at it simply as a comparison and did we apply the same set of guidelines. He said there were 12-13 owners who were against it. He said the site plan was for just one building where you have several buildings. What would the buildings be used for? Jen Dulski, applicant, she says they currently use an old horse barn to rescue 19 dogs. There are 4 large barns being proposed which will house 22-23 dogs and will give the dogs individual suites with a meet and greet room. She said this is the dream. The villas are four tiny houses broken up into 4 rooms which is for the dogs that are safest to stay with us forever, those with medical conditions, or pregnant dogs who cannot be house in the barn. The other building is the Veterinary Clinic and the Cat Haven. She says she is the most adjacent neighbor and right now she sleeps at night next to the red barn that isn't even insulated. She says the dogs sleep at night because they walk them every day. We put meaning into their lives every single day. Commissioner Roberts asked how are you doing it now? Through the state? Ms. Dulski said that the Department of Agriculture says you can have up to 19 animals if you adopt/foster out. If you hit 20 you would become an animal shelter. She said that she is a rescue, not a kennel, as they have never once charged an adoption fee. She said that they hope one day when they are approved Miami County will bring their animals to us at no charge to the taxpayers; they just want to take care of the animals. Commissioner Roberts asked if she had other facilities elsewhere? She answered they rent a facility in KCMO and are a licensed shelter in Missouri. Commissioner Roberts said they have received a lot of letters about all of the good you do. What will you do if this doesn't get approved today? She answered that she will come back. We're open and want to find a way. We own this land outright and have just as much right as our neighbors with me being the most adjacent neighbor. This would be another story if this was not a permitted use which required a CUP. We have standing basis to ask you to consider what we can do to get this across the finish line.

Commissioner Pretz asked if they had to notify anyone if they keep a dog for over a year. Ms. Dulski said we have a rescue network license which ties to an address, so that we can have fosters for dogs who are in our care for over a year.

Chairman Vaughan said that a unique thing he found was the letters of support were not from a lot of Miami County Residents, they were from a lot of different states. So, I question if we are serving our community or serving the United States. Ms. Dulski said there was a Miami County Petition that was signed for the first time we submitted for a CUP. There were over 200 signatures on that Petition. Chairman Vaughan asked if you put priority for local request over national request. She said yes, we don't pull dogs around the world. They primarily get them from the pound. She said they do pull from Wichita, but we also help residents who are seniors that are going into homes. We are heavily focused in Miami County and the surrounding areas.

Commissioner Diediker asked if an animal passes away how do you dispose of it? We are not like other places that have a crematorium. We have a vet say goodbye and we reach out to a private crematorium. No animal ever dies alone with us. Every animal deserves to be loved and treated like our own from beginning to the end.

Chairman Vaughan said that no one is questioning her passion but as a Commission they do have to look at this procedural. We very much have to understand what we are voting on today. We have to make sure it would meet the Golden Criteria and we also have a recommendation of denial from our staff due to an even vote from our Planning Commission which resulted in that recommendation. This would take substantial evidence from us to either agree or override them by a super majority. He wanted to focus this is a procedural

September 27, 2023
Page 6

not a passion-based decision.

Ms. Dulski added that they pulled back from the 190, we took a step back. We accessed that it was too much for the neighborhood. So, what can we do to make this work for the mission, for the law, for the Golden Criteria. We pulled our application back and we reached out to Mr. Cook we waited for months for a response. Not one correspondence from the staff. Why not? Why wasn't there an open conversation about what we could do to get across this finish line? Silence....we lowered it to 120. There was a recommendation to deny before they saw our comments. Why?

Chairman Vaughan asked if there were any other comments from the Commissioners. Chairman Roberts wanted to show you the dilemma that this commissioner has. Sec 2 – 101 of the zoning regulations. So as to ensure compatibility with the surrounding properties and uses. Then I go back to your site plan, the building you are building are commercial type buildings. Just as if an Agriculture (Ag) producer would build a building for his animals, it would be considered a commercial building. The Appraiser would tax him as Commercial for that building. He said no matter how you (Ms. Dulski) may not think it is a Commercial operation but in that neighborhood, there is a host of new buildings that will change the character of that neighborhood. He said an Ag farmer could buy the property and build however Ag is unregulated in Kansas; yours is. Ms. Dulski says that no one can see the property. Commissioner Roberts says another thing that concerns him is the 11th hour change of the number of animals. It's a change in the application process that Planning Commission has not heard. The Commission has 1 application in front of it which is the application that had the public hearing and went before the Planning Commission. Chairman Vaughan said that the Planning Director has taken the change into consideration, and it did not change his recommendation.

Commissioner Pretz said that he thought it really created problems for the character of the neighborhood as a negative impact on the countryside. Just the commutative effect of all the buildings, high-density of the development. He thinks it's a real encroachment of all of the residents and even the agriculture areas. And it's really not in an area of regional significance.

Commissioner Diediker said he was concerned with it being north of Hillsdale Lake. The amount of runoff from the animal's waste product-wise since the wildlife uses that for drinking water.

Commissioner Vickrey said he appreciates her passion and the work that she is doing. However, it is a negative impact and is not compatible with a Countryside Residential and Ag area. Doesn't conform with our comp plan even with the reduction to 85. It has a detrimental negative effect on the adjacent residential area. He stated even though it is a non-profit it is still fits and looks like a Commercial type of property.

Chairman Vaughan stated that you have an abundant amount of support from yourself, your volunteer staff, and a lot of people who share the same vision as you. Also, you don't have an abundant amount of support from the people who reside in the area and are in that district and I would agree with them on what the original purpose of that area is. My concern has always been extremely consistent with protecting the Watershed. Not for the same reason as Commissioner Diediker stated but more of that area is allocated specifically for that Countryside environment. The people I represent feel strongly about that and so do I. I don't think that fits inside this area. I do acknowledge the passion in what you are doing and that is why I made the distinction in a procedural vote and an emotional vote.

Commissioner Vaughan moved to uphold the staff's decision for denial that came before us. Commissioner Vickrey seconded. Chairman Vaughan said he would do a roll call vote for the Always & Forever CUP. With a NO vote saying you would support the CUP approval for Always & Forever. Stacey Weaver, Deputy County Clerk started the roll-call vote. District #1 Commissioner Vickrey: Yes, District #2 Commissioner Roberts; Yes, District #3 Commissioner Pretz; Yes, District #4 Commissioner Vaughan; Yes, District #5 Commissioner Diediker: Yes. The vote was unanimous.

Commissioner Roberts stated during the roll-call vote that no one was shutting down Ms. Dulski as regards to what you can and are allowed to do under state regulations. You have been very successful. My concern is not about what you are doing but that we are building basically a Commercial Operation and different than Ag you would have somewhere between 30 – 40 employees working there which changes the character of

that neighborhood. So, my vote is to support the denial.

Jim Starling, Building & Grounds Director, requested the Commissioners to consider accepting and awarding to Legacy Contractor LLC, for the lowest, best quote, for the project of partial office renovation of the Appraisal and Register of Deeds. There were two bids submitted for the project and Legacy's came in at a lower price of \$20,759.00, which is approximately \$3000.00 less than the competing bid. The renovations were requested by the Appraiser and Register of Deeds office for enhanced safety and to help with their work product. Commissioner Pretz moved to approve as presented, Commissioner Diediker seconded; the vote was unanimous.

Eric Sandberg, Road & Bridge Director, requested the Commissioners to consider a citizens request to get permission to upgrade Rockville Road, South of 287th Street. The Road and Bridge Department recommends that Commission allow the individual to upgrade the road. Mr. Sandberg introduced Shea Miller, Arrowhead Land Company, is here representing the potential buyers. The road in question has not been in use for many years and is currently impassable and overgrown. There are also two bridges located on the right of way that have not been maintained as well. The main questions from the potential buyer are can the road be opened and who will be responsible for it, they would like to know the potential of those questions before purchasing the property. Mr. Sandberg clarified for the Commission that it is currently listed as a minimum maintenance road. Chairman Vaughan requested that the request be tabled for 2 weeks so that the Road and Bridge Department can gather more information regarding cost, which will be the buyer's responsibility as that is what the County's policy has been in the past. Commissioner Pretz moved to table the request for 2 weeks, Commissioner Vickrey seconded; the vote was unanimous.

COMMISSIONERS COMMENTS

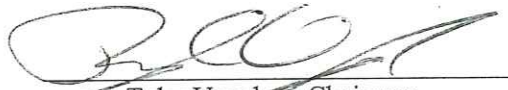
Commissioner Roberts wanted to make clear his vote for the approval of the Legacy quote for the Appraiser and Register of Deeds office to show that the Commission is unified in solving problems. He does not 100% agree with the reasoning behind the request as it does not solve all the security concerns in those departments.

Commissioner Pretz announced a couple of upcoming events. The public open house dates and times for the courthouse are as follows; September 29, 2023, 10:00 a.m. to 3 p.m. and October 9, 2023, from 5:00 p.m. to 8:00 p.m. The Republican Party is meeting on September 28, 2023, at 6:30 p.m. at Timbercreek Bar and Grill in Louisburg, KS. Miami County Employee Appreciation Week is next week, and the county administration building will be closed from 11:00 a.m. to 1:00 p.m.

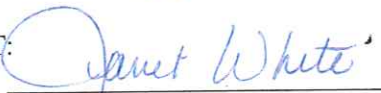
ADJOURNMENT

The meeting was adjourned at 3:16 p.m.




Tyler Vaughan, Chairman

ATTEST:


Janet White, County Clerk