

**MINUTES OF THE
MIAMI COUNTY PLANNING COMMISSION
October 3, 2023**

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

ATTENDANCE

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

**MINUTES OF THE
MIAMI COUNTY PLANNING COMMISSION
October 3, 2023**

CALL TO ORDER

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

PLEDGE OF ALLEGIANCE

ROLL CALL

Roll Call was taken with seven (7) members present, making a quorum.

DISCLOSURE OF ANY EX PARTE COMMUNICATIONS OR POTENTIAL CONFLICTS OF INTEREST

There were none.

ADOPTION OF THE AGENDA

Philgreen moved to adopt the agenda as presented. Flake seconded, and the motion passed unanimously (7-0), via a show of hands.

CONSENT AGENDA

- Minutes: Approval of the September 5, 2023, Planning Commission Minutes

Philgreen moved to approve the consent agenda. Broers seconded, the motion passed unanimously (7-0), via show of hands.

REGULAR AGENDA

Old Business: None.

New Business:

Public Hearing – 23002-Z: Rezone from Countryside (CS) to Low Intensity Commercial (C-1)

Menefee opened Staff Presentation.

Cook presented the staff report for consideration of 23002-Z, application to rezone approximately ½ acre (.50 acre) from Countryside (CS) to Low Intensity Commercial (C-1) submitted by Matthew and Christina Randall, the property owners of record. The subject property is located directly north of the intersection of Plum Creek Rd and Old Kansas City Rd, in the SW ¼ of Section 14, Twp 18, Range 22, Osawatomie Twp.

Cook then addressed each of the Golden Criteria enumerated in the staff report to be used by the Planning Commission when making Findings to approve or deny the requested Rezoning. This included Miami County's Zoning Regulations, Uses allowed by right or through the Conditional Use Permit (CUP) process, and the past uses of the subject property. Cook noted the properties surrounding the subject site are largely zoned for industrial or commercial use. The subject property has been used as a church in the past, but the building and site is more suitable for a commercial use. Cook concluded that Staff was supportive of approving the requested rezoning and believes this will be an appropriate place for the rezoning from CS to C-1 based on the following Findings from the staff report:

1. The proposed Rezoning to Low Intensity Commercial (C-1) conforms to the Goals and Objectives of the Comprehensive Plan as being a Long-term Area of Regional Significance, adjacent to the City of

Osawatomie, and its proximity to major road corridors and highway interchange, with appropriate infrastructure in place.

2. The uses permitted in the Low Intensity Commercial (C-1) district are compatible with the commercial and industrial, uses occurring on adjacent and nearby properties, and with the mixed residential and agricultural uses in the vicinity.
3. The proposal allows for a new use of a building originally designed to be used for commercial purposes.

Cook noted the following items for additional consideration by the Planning Commission:

- Part of a rezoning request typically requires the Applicant to submit a site plan. The site plan process allows approval to be done administratively or by the Planning Commission.
 - Zoning Regulations require a 15-foot strip between the edge of right-of-way and the parking lot planted with grass and shrubs and/or trees. Currently the paved parking lot abuts the edge of the right-of-way. Staff's opinion is based on the Character of the neighborhood, the inherited layout of the property and past Uses, Staff does not find additional landscaping a practical requirement in this case.
- The parking lot will need to comply with Zoning regulations.
- Due to no substantial changes being proposed by the Applicant to the site, Staff does not find it necessary to require a drainage plan.
- Staff does not believe there will be a significant change in traffic with the proposed new use of the property and therefore does not believe a traffic study will be necessary.

Staff recommends not requiring a drainage plan and traffic study for this application.

Cook had nothing further to add and asked for questions from the Planning Commission.

Manchester asked what the body shop across the road to the South is zoned as.

Cook stated it is zoned Commercial (C-2).

Manchester asked if residents within 1,000 feet were notified.

Cook stated yes, 15 neighbors live within 1,000 feet, all were sent a notification and no comments were received.

Brockus asked if a sewer line is in the area.

Cook replied he does not believe so due to the floodplain and river between the subject property and the City of Osawatomie. Cook does not believe it is likely to have sewer extended to that area without a significant project that will pay for it.

Brockus asked if they have septic.

Cook stated yes but does not recall if it is a holding tank or a small lateral field. Cook stated that he suggested the Applicant wait until the rezoning process is complete and approved before putting a lot of money into other plans and making improvements to the site. If the rezoning application is approved the Applicant will need to do a change of occupancy since the building was most recently used as a church, and the Applicant intends to have a retail establishment at this location. An architect will need to inspect the property and ensure it meets

code requirements, noting any needed changes and improvements that will be necessary prior to a change of occupancy being issued.

Menefee opened Public Hearing – 23002-Z: Rezone from Countryside (CS) to Low Intensity Commercial (C-1) at 7:21 p.m. There were no public comments. Menefee closed the Public Hearing at 7:22.

Manchester stated he has no issues with Staff's recommendation to approve the rezoning application.

Menefee stated he agrees with Manchester.

Broers stated if this property is rezoned it will bring the property into better alignment with the surrounding properties.

Manchester moved to approve 23002-Z rezoning application based on the Findings in the staff report. Philgreen seconded; the vote was unanimous (7-0) via show of hands.

23012-SUB: Harmony Estates

Menefee opened Staff Presentation at 7:24 p.m.

Cook explained that normally the subdivision applications for Harmony Estates and Limestone Ridge would be on the Consent Agenda, but they both have unique qualities and challenges making it necessary to bring these items to the Planning Commission for consideration of approval.

Cook presented the staff report for consideration of a subdivision application submitted by James Coyle, Manager of DAC Ventures, LLC, the property owner of record. The proposed subdivision includes approximately 64.46 acres to be divided into 4 lots ranging in size from 15 acres to 17.82 acres.

Cook explained the subdivision regulations specify any lot smaller than 20 acres in size are required to have a shared access easement to minimize the number of entrances onto a road. There are maintenance and safety issues with the number of entrance points to a road. The Applicant has requested the Planning Commission consider waiving the requirement for shared access easements between each set of two lots as the properties are located on a dead-end road that will have limited amounts of traffic. The Road and Bridge director confirmed this situation lessens traffic safety concerns individual driveways potentially create in subdivisions therefore Cook does not oppose the Applicants request to waive the access easement requirement in this case.

Cook stated that Harmony Road is currently substandard, and the roadbed currently measures less than 20-feet. The Applicants are working with Road and Bridge to improve the road corridor to meet the infrastructure requirements. The Applicants are also working with the Rural Water District regarding meeting the requirements for the extension of water to the subdivision.

Cook noted the Applicant is working with Evergy to have the blanket easement for this plat released/ redefined. He also stated if the Planning Commission approved the plat, it would not go before the Board of County Commission until the blanket easement has been defined on the plat.

Cook reminded the Planning Commissioners of resolution 23-001 approved on July 11, 2023, requiring all blanket easements impacting a property being platted shall be redefined and the location shown on the plat for a plat application to be considered complete. Cook stated at the time this resolution was approved the two (2) subdivision applications on the agenda (Harmony Estates and Limestone Ridge) were already in process.

Cook had nothing further to add and asked for questions from the Planning Commission.

Philgreen asked Staff to point out the location of the cell tower.

Cook used the aerial map to demonstrate the location of the cell tower.

Philgreen asked why the cell tower didn't improve the road.

Cook indicated to the aerial map and stated the cell tower is to the far South end of the property on the East side of Harmony Road. The road was improved enough for the cell tower use and because of the limited nature of the cell tower, Road & Bridge only required improvements to simply provide access the site.

Philgreen asked if the Applicant would be bearing any of the burden of updating the road that the cell tower should have and didn't.

Cook stated he understood the road was sufficient for what the cell tower needed, and this will be additional improvements needed for the residential development of this property.

Menefee stated the County requires 24-foot roadbed and asked what the roadbed is currently.

Cook stated it is a 13 – 15-foot roadbed.

Philgreen stated there was a discussion about changing the requirement from 24-feet to 22-feet so that it wouldn't be a problem for situations like this one and asked where Staff is with that or if that is still a possibility.

Cook stated there have been several discussions between himself and Eric Sandburg, Road & Bridge Director, about roadbed width. They would like to have better standards adopted for Miami County that would specify that and take into consideration the type of road being used.

Manchester asked how much of Harmony Road needs to be brought up to standard.

The Applicant stated approximately 1,500 feet. Cook agreed.

Broers asked if they would lose all the trees on that road if the road is widened.

Cook stated probably on the West side to allow for drainage on both the East and West side of the road.

Manchester asked if the Applicant is willing and able to improve the road if this is approved.

Cook stated when talking with individuals about improving roads many of them choose not to move forward with the application. When an applicant chooses to move forward with the application the applicant understands it is their responsibility to improve the road and the County will take over the maintenance once the improvements are completed.

Philgreen asked when talking about blanket easements does that mean the easement covers the entire property and when it is redefined it will be defined to only be the area under the lines.

Cook stated a blanket easement covers the entire property and when redefined it only affects the areas necessary

for the easement.

Flake stated he has no issues with the Applicant having four (4) entrances off the road and asked if Staff sees a problem with four (4) entrances versus two (2).

Cook stated with this property being on a dead-end local road Staff agrees with Road & Bridge and does not see a substantial issue.

Cook stated the Applicant is present.

Philgreen stated he does not believe four (4) driveways is an issue. Philgreen stated making it a blanket agreement for shared driveways throughout the County would be an issue for him. Philgreen noted he will not purchase property that requires a shared driveway.

Menefee stated he agrees with Philgreen especially since it is on a dead-end road.

Flake asked the Applicant if there is a bar-ditch on the West side of the road.

Clayton Coyle, Applicant representative, stated there is a ditch and they are currently taking bids from contractors to improve the road with the plan to have a cul-de-sac at the South end of the road.

Cook noted if a motion is made to remove the shared access driveways, then Conditions 2, 3, and 5 will also need to be removed.

Broers moved to approve 23012-SUB: Harmony Estates adopt Staff's Findings and Conditions with an amendment to strike Conditions 2, 3, & 5. Philgreen seconded; the vote was 6-1 with Manchester voting against, via show of hands.

23013-SUB: Limestone Ridge

Menefee opened Staff Presentation at 7:50 p.m.

Cook presented the staff report for consideration of a subdivision application to include approximately 65.88 acres being divided into 4 lots ranging in size from 15.95 acres to 16 acres submitted by Charles D. Klaasmeyer II, the property owner of record. This request is utilizing the Standard Subdivision criteria per Section 5-5.02.1A of the Miami County Kansas Zoning Regulations. The subject property is zoned Countryside (CS) and is located on the East side of Crescent Hill Rd, approximately 491 feet south of 271st St, in the Northwest Quarter of Section 27, Township 16S, Range 22E, Richland Twp.

Cook noted this property has a blanket easement and he had anticipated it being a simpler process because the property owner of the quarter section to the East was able to get the pipeline company to define their easement. Last week it was brought to Staff's attention there is a cathodic line adjacent to the road right-of-way for Crescent Hill Road South of the Pipeline. The Applicant and surveyor are working with the pipeline company to get the easements defined.

Cook stated that the location of the shared access entrance for Lot 1 and Lot 2 would be located where the pipeline cathodic line is. Cook stated the Planning Commission will need to include in their decision if it will

be allowed to waive the shared access entrance for Lots 1 and 2. Cook stated there should still be at least one (1) shared access easement and it does not matter to Staff if it is between Lots 2 and 3, or Lots 3 and 4. Staff would recommend the shared access be located at Lots 3 and 4.

Cook concluded that Staff was supportive of approving the Subdivision Application based upon the Findings and Conditions listed in the Staff Report.

Cook noted the Applicant's representative is present for any questions.

Philgreen asked about the direction the pipeline runs through Lot 2.

Cook demonstrated the location and direction of the pipeline on the survey stating the cathodic line impacts the North ½ of Lot 2.

Philgreen asked how Lot 1 will access their lot.

Cook demonstrated the access point on the survey noting usually the pipeline has a representative present during construction and will usually allow for a driveway to cross at a 90-degree angle to get the vehicle across the pipeline as quickly as possible.

Broers asked if there is any communication from the pipeline on what their specifics are. Broers recalled a Court Appeals Case in Kansas that a property owner had a tree that was impacting the pipeline and the pipeline wanted to cut the tree down. The pipeline won. Broers is concerned Lot 1 will not be a usable Lot and that the Applicant will be at the mercy of the pipeline.

Cook stated that would be a little bit of concern but there is still space North of the pipeline that could be used to construct a dwelling.

Broers stated then the house, barn, and everything would be stacked in that space.

Manchester asked what size pipeline is on the property.

The Applicant responded 36-inches.

Manchester stated with a 36-inch pipeline on Lot 1 there won't be enough room to develop anything.

Cook stated the property to the East of the Applicant's property, the pipeline defined their easement and the width being shown on the survey matches the width of the pipeline on the property to the East that the pipeline company defined it down to. Cook noted there are no current regulations in the Zoning Regulations specifying how far from a pipeline development can occur other than to say nothing can be built in an easement. Cook noted he believes by defining the easements the County is protecting the public by not allowing them to develop too close to a pipeline and allowing the property owner more certainty in knowing what part of their property is being impacted by a pipeline.

Menefee stated the Applicant is a businessman and he feels safe the Applicant has probably looked into this issue.

Cook stated anyone interested in purchasing the property, especially now that the easement has been defined, will probably impact someone's desire to purchase this property. Property owners need to do their due diligence when purchasing property to ensure they are informed of issues prior to purchasing a property. Cook noted

that we do send notification and request for comments to the pipelines for each subdivision application received. No comments were received from the pipeline for this proposed subdivision.

Manchester stated if it is a 36-inch line the Lot isn't wide enough for development.

The Applicant stated he misspoke that it is another property he is working with that has the 36-inche pipeline.

Cook repeated the Applicant's response and stated Staff isn't sure what the size of this pipeline is.

Cook stated the future purchasers of these properties need to contact the pipeline company to see what they will allow in the easements.

Broers asked if Staff is certain the cathodic protection area only goes South of the pipeline and not to the North.

Menefee invited the Applicant's representative to the podium.

Robert Zoller, Realtor for property owner, stated he was present when the flags were being placed and the cathodic pipeline only goes from the pipeline and South. It is 4 – 5 feet deep and 2 feet from the pavement.

Manchester asked if anyone knows what the cathodic protection is for.

Zoller stated there is a pole near the pipeline with electric wiring to the pipeline to prevent the pipeline from corroding.

Manchester stated no steel posts can be placed in the ground near it, the steel post will corrode off within six (6) months.

Flake asked if there is a way to bring a driveway in through the South side of the pipeline.

Cook stated pipeline companies do not typically want the cathodic areas to be impacted by any development.

Menefee stated it's the Applicant's decision as to where to put the Lots. Menefee does not believe it is the Planning Commission's job to deny the application for that reason. Menefee noted he has no problem with this application.

Cook stated if there were additional pipelines or other restrictions making it a non-buildable area that would be different.

Broers stated this is a significant waterway and asked how one gets a waterline to a house in these circumstances.

Cook stated any development in the Floodplain requires a Floodplain Development Permit. The process begins when an Applicant applies for the Entrance Permit, they will be required to submit a Floodplain Development Permit as well. This requires plans showing where the driveway will go and demonstrate it won't create more than a foot of rise with the improvements being made. The applicant will usually place the waterline in the same location as the driveway.

Broers stated it looks to her like these will require bridges or culverts, and asked will it run on top of the culvert.

Cook stated they will want it at a certain depth to protect it from freezing. They might bore under the stream, so they wouldn't actually dig a ditch through the channel.

Philgreen stated the minimum regulations for minimum lot size for something like this will automatically create huge separations between driveways and asked if the Applicant thinks this will be an issue between Lots 3 and 4.

Zoller has lots 2, 3, and 4 under contract and stated he was talking with the buyers for Lots 3 and 4 advising there will be a shared drive. Neither of the buyers like the idea of a shared drive. Zoller believes if they had submitted a request for four (4) 20-acre lots instead of the five (5) 15-acre Lots then each Lot would have its own driveway. Zoller posed the difference between 20-acre lots a 15 acer lots is not that much of a difference and asked the Planning Commission to consider waiving the requirement for the one (1) shared drive.

Philgreen stated when allowing lots of this size that require a shared driveway, he believes the County is setting themselves up for years of fighting and an ugly driveway. Who's taking care of it, who's standard, is it a nice entrance... Philgreen stated he has looked at a property and he walked away from it because it was a shared driveway, and he does not want a shared driveway. Philgreen recommends not requiring a shared driveway.

Cook stated the current Comprehensive Plan recommends the number of entrances be restricted to protect the roadway. As part of that when the regulations were adopted it was specified lots of any size on arterial or collector roads are required to have a shared access between each set of two (2) lots. On local roads, lots less than 20-acres are required to have shared access drives.

Philgreen asked if that is a recommendation or regulation.

Cook stated it is a regulation.

Broers stated this is a local road, but it is very heavily traveled.

Menefee stated the one thing the Planning Commission always tries to avoid is the piano key effect where there is a string of 10, 15 or other size lots with each of them having an entry access to a heavily trafficked road. This is a common conversation.

Cook explained the requirement for a shared drive is a 50 x 50 easement on the shared property line and by the time the driveway is 50-feet out of the right-of-way each driveway should be fully located on their own property. Cook restated shared access is a requirement of the regulations for parcels less than 20-acres.

Flake asked didn't the Planning Commission just approve a subdivision to have its own access with 15-acre Lots.

Menefee stated that was different because it was on a dead-end road.

Flake stated now the discussion isn't on how many entrances it's how busy the road is.

Cook stated that's correct and noted the number of entrances can effect the function of a road and create more points of conflict.

Flake stated he realizes a line needs to be drawn somewhere but does not see an issue with allowing one more access point on this road.

Brockus moved to approve 23013-SUB: Limestone Ridge based on the Conditions presented by Staff amending the Conditions to strike Conditions 3, 4, and 5. Flake seconded.

Philgreen asked Staff what waving the requirement for the shared drive for the proposed subdivision will do to the County.

Cook stated he tries to stay as consistent as possible knowing there are unique situations that require different decisions to be made. Cook stated due to the lateness of learning about the cathodic protection area Staff didn't have time to reach out to the pipeline company but in past experience, pipeline companies will not allow these areas to be impacted. Cook stated again that staying in line with the current regulations is recommended.

Broers stated she will be voting against the motion on the table with the stricken Conditions because there isn't a good reason to diverge from the requirement and believes it will set a bad precedent going forward. The applicant knew when making the decision to divide the lots into 15-acres instead of 20-acres there would be a shared access required. She believes the shared access should stay.

Flake stated he agrees with consistency and believes it is important but likes the idea of the Planning Commission's ability to evaluate cases on an individual basis.

Menefee stated he does not know how many subdivisions were approved on previous Consent Agendas that had shared access and no one brought it up before. Menefee noted it was never an issue until this application was being reviewed.

Menefee reminded the Planning Commission of the motion on the floor and called for the vote regarding 23013-SUB Limestone Ridge based on the Conditions presented by Staff amending the Conditions to strike Conditions 3, 4, and 5. The vote failed 2-5 with Brown, Philgreen, Menefee, Broers, and Manchester voting against via show of hands.

Philgreen moved to approve 23013-SUB Limestone Ridge with all Staff Findings, Conditions and Recommendations presented by Staff. Broers seconded; the vote passed 6-1 (Manchester) via show of hands.

Menefee asked Staff if the two (2) subdivisions presented at the meeting will be held by the Planning Department and not presented to the Board of County Commissioners until the blanket easements have been resolved.

Cook replied yes.

GENERAL DISCUSSION

Menefee called for General Discussion amongst the Planning Commissioners and Staff.

Menefee asked Cook if he would like to start with the Comprehensive Plan.

Cook stated he had brief discussions with some of the Board of County Commissioners and Shane Krull, County Administrator. Cook stated there have been comments made leading him to believe there are areas where the Planning Commissioner and Board of County Commission are not necessarily aligned. Cook suggested the Planning Commission, Board of County Commission, Staff, and the Consultants meet to discuss the draft document.

The Planning Commissioners agreed this would be the best way to handle this.

Cook stated he will set things up.

Philgreen asked for an update on the Solar Farm Moratorium.

Cook stated he believes the newest moratorium was approved in June of 2023 for two (2) years and the main concern the County Commissioners have is to get through the Comprehensive Plan before moving forward with the Solar Farm Moratorium. Cook stated the Comprehensive Plan will give some of the guidelines needed for the discussions on Solar Farms and what the County wants.

Brockus asked if Miami County is the only county within the surrounding counties that has not adopted Solar Farm Regulations.

Cook stated Johnson, Douglas, and Franklin counties have adopted some sort of regulations for Solar Farms. Franklin County has a moratorium on Wind Farms.

Cook stated Reeves has been helping on a part-time basis to assist with some of the ongoing projects in Planning & Zoning and Reeves is currently working on the Sign Moratorium.

PLANNING COMMISSION TRAINING

Cook stated the training tonight will be a video provided through his American Planning Association membership and is a 27-minute video on Managing the Planning Commission Meeting. Staff and Planning Commission discussed the training.

ANNOUNCEMENTS BY STAFF / COMMISSIONERS

Cook noted some changes he is looking at implementing in the Planning & Zoning office that might affect the

Planning Commissions:

- Changes to the presentation of staff reports to Commissioners
- The format of the Staff Reports
- The format of the Minutes

Flake asked when to expect Always & Furever before the Planning Commission again.

Cook stated per the regulations the Applicant will not be able to come back with a new application for at least one (1) year.

Menefee asked for the results of the Retail AG Equipment amended regulation.

Cook stated the Board of County Commission passed the amended regulation adjusting the recommended 50-foot setback to 20-foot setback.

Cook moved to an issue with Rural Water Districts willingness to provide a letter to the applicant stating they have water availability. Rural Water District #2 is willing to provide a letter to applicants stating at the time of the application water is available but cannot guarantee there will be water availability at the time of the development. Rural Water District #3 does not feel comfortable making the statement that water is currently available but is willing to say there is water in the area and until the meter has been paid for and all costs involved water will not be available.

Menefee asked if anyone has spoken with Rural Water District #3.

Cook stated he did have a conversation with a representative of the Rural Water District and they presented it to the board members. Rural Water District #3 expressed they were not willing to make any changes. Cook stated he does not like the idea of penalizing an applicant because they are unable to obtain a letter from the Rural Water District.

Brown stated he can't penalize the applicant and if Staff and Planning Commission are transparent, and everyone knows the situation...

Menefee stated if a property owner splits the property into 15-acre lots and can't get water, they won't be building on the property.

Cook noted the next Planning Commission Meeting will be on Monday, November 6, 2023, at 7:00 p.m.

Philgreen asked if it is possible to know if there will be a quorum a few days before the weekend. The November meeting Philgreen will be traveling back specifically for the meeting and knowing if there is a quorum prior to the weekend will be helpful to him.

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.

Broers moved to adjourn the meeting, Philgreen seconded. The meeting adjourned at 9:46 p.m. with a unanimous vote (7-1), via show of hands.

Approved this 6th day of November, 2023.


Casey d'Augereau, Secretary


John Menefee, Chair / Kelli Broers, Vice-Chair

Minutes written by Casey d'Augereau

