

***MINUTES OF THE
MIAMI COUNTY PLANNING COMMISSION
JUNE 1, 2021***

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

ATTENDANCE

CHAIR: Mark Oehlert

VICE-CHAIR: John Menefee

PLANNING COMMISSION Kelli Broers, Joshua Brown, Phil Elliott, Randy Kitchen,
and Bret Manchester

ABSENT MEMBERS: Kevin Collins and Mark Ross

EX-OFFICIO MEMBERS: None present

PLANNING DIRECTOR: Teresa Reeves

COUNTY COUNSELOR: Not Present

PLANNER: Kenneth Cook

PC SECRETARY: Angie Baumann

ECONOMIC DEVELOPMENT Janet McRae

COUNTY COMMISSION: None Present

COUNTY CLERK: Not Present

PRESS: Not Present

MINUTES

JUNE 1, 2021

MIAMI COUNTY PLANNING COMMISSION

CALL TO ORDER

Chair Mark Oehlert called the meeting to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE

ROLL CALL

Roll Call was taken and seven (7) members were present, constituting a quorum. Collins and Ross were absent.

DISCLOSURE OF ANY EX PARTE COMMUNICATIONS OR POTENTIAL CONFLICTS OF INTEREST

None disclosed.

ADOPTION OF THE AGENDA

Menefee moved to adopt the Agenda, as presented. Manchester seconded, and the motion passed unanimously, 7-0, via roll call vote.

CONSENT AGENDA

- **May 4, 2021** Planning Commission Minutes

Elliott moved to adopt the Consent Agenda as presented. Menefee seconded, and the motion passed via roll call vote with five (5) in favor and two (2) abstaining (Broers and Oehlert), with both citing absence from last month's meeting as the reason for their abstentions.

REGULAR AGENDA

Old Business:

None.

New Business:

Public Hearing 21002-Z: Rezone from Countryside (CS) to Commercial (C-2)

Reeves presented the staff report for consideration of an application to rezone approximately 0.69 acres from Countryside (CS) to Commercial (C-2), in accordance with Sections 8 and 22 of the Miami County, Kansas Zoning Regulations. The subject property, addressed as 28740 Somerset Rd, Paola, is located approximately 272' south of 287th St, on the west side of Somerset Rd, in the NE ¼ of Section 5, Twp. 17, Range 24, Middle Creek Twp. Submitted by Lesli Baker on behalf of The Somerset Schoolhouse, LLC, the property owner of record.

Reeves briefly addressed each of the *Golden Criteria* enumerated in the staff report for use by the Planning Commission when making Findings to approve or deny the requested Rezoning. She concluded that staff recommends approval of the requested Rezoning; and she invited questions from the Planning Commission.

Oehlert asked why rezoning would be preferable to a conditional use permit.

Reeves answered that the proposed uses are not allowed with a conditional use permit in the Countryside (CS) District. However, they are allowed in the Low Intensity Commercial (C-1) and Commercial (C-2) Districts; therefore, the subject property must be rezoned. Reeves further explained that the proposed boutique and the coffee shop are uses that are allowed by right in the C-1 District, but the specialty cocktail shop is not. Rather, the specialty cocktail shop is allowed in the C-2 District.

Elliott asked Reeves if the reason why a conditional use permit is not an option is that the uses proposed are explicitly allowed in another district.

Reeves confirmed. She also explained that because the specialty cocktail shop involves the sale of alcohol it is not explicitly allowed in the C-1 District, but it is allowed in the C-2 District.

Oehlert asked if the nearby wineries have C-2 zoning.

Reeves answered that State legislature considers wineries to be agricultural.

Kitchen recalled a previous application for rezoning regarding the New Lancaster General Store.

Reeves noted that the applicants for that rezoning wanted to sell alcohol from their offsite winery, which use required the property to be rezoned. She recalled that those applicants also wanted to sell local products.

Menefee asked if the uses on the subject property will be limited to what is allowed in that township.

Reeves responded that the property is subject to Countywide zoning.

Elliott asked which of the proposed uses would not be allowed in the CS District with the approval of a CUP.

Reeves answered that the Zoning Regulations do not contain CUP provisions for a boutique or a coffee shop in the CS District; however, both are permitted in the C-1 District. Sale of alcohol is allowed only in the C-2 District.

Reeves stated that one allowed use in the C-2 District, which is typically a source of concern, is adult entertainment. She explained that the Miami County Code has additional requirements for adult entertainment businesses, one being that such a business cannot be located within 1,000 feet of public parks, residences, etc.

Reeves announced that the Applicant is present this evening and available for questions.

Oehlert then opened the public hearing and invited the Applicant to speak first.

Lesli Baker (29490 Masters Dr., Louisburg) approached the podium with her husband, Jimmy Baker, and introduced herself and her husband as the owners of the Somerset Schoolhouse. Mrs. Baker stated that she grew up in Somerset, and her whole family resides there. She expressed that the old Somerset Schoolhouse and its history—dating back to 1920—has great meaning to her as her grandparents attended the school and her mother and father met there at a school dance.

Mrs. Baker explained that she came up with the idea of a home boutique as a way of sharing the old schoolhouse with the community again. Mrs. Baker then briefly described the layout and plans for use of the building, including a home boutique on the main floor featuring local products such as honey, pecans, and blueberries and the work of local artisans; and, a coffee shop in the basement, which will also serve custom cocktails in the afternoons. In the afternoons, visitors will have the opportunity to enjoy cigars and whiskey in the backyard.

Mrs. Baker noted that she wants to offer something different to visitors on the wine trail. She believes this will not only show off Miami County, but will also generate revenue for Miami County and the State of Kansas. She then invited questions from the Planning Commission.

Manchester asked about the building's square footage.

Mrs. Baker responded that it is 1,875 square feet, which does not include the full basement underneath the original one-room main floor. She explained that a room was added to the building in 1963. She is renovating the building and will bring the main floor back down to one room.

Manchester referenced the Narrative, which notes a photograph and a booklet. He asked if they have been included in the meeting packet.

Mrs. Baker answered that she was referring to a school yearbook, which she described as a small booklet listing the teacher and student names, the school colors, and the school flower. She reported that she is continuing to research the old Somerset Schoolhouse and would like to have the building placed on the local and State historical registers. She offered to provide the Planning Commissioners with the booklet referenced in the Narrative.

Broers asked about the Applicant's plans for parking.

Mrs. Baker referenced the Site Plan, which shows the existing driveway on the north side of the building. She noted that it appears the previous owners continued to drive behind the building to access the shed (on the west side of the building). Mrs. Baker plans to chip and seal the existing driveway, extend it the entire length of the property, and add a turnaround at the back of the property (on the west side), for a total driveway length of 330'. She explained that ADA accessible parking will be on the north side, and closest to the building. Additional parking spaces will be situated along the hedge row on the north side of the property.

Regarding screening, Mrs. Baker reported that thick hedge rows run along three sides of the property (north, west, and south). She noted that she will do some cleanup of these hedge rows and plant cedars or evergreens as well, as she wants visitors to have the feeling of the country when they're on the back porch. Mrs. Baker stated that she is willing to install a fence if the Planning Commissioners deem this as necessary.

There were no additional questions for the Applicant.

Oehlert then twice invited public comment. There being no response, Oehlert closed the public hearing.

The Planning Commissioners had no questions for staff and no comments.

Manchester then moved to recommend approval of the Rezoning from Countryside (CS) to Commercial (C-2), based upon the Findings listed in the staff report. Kitchen seconded, and the motion passed unanimously, 7-0, via roll call vote.

Reeves announced that this item will go before the Board of County Commissioners on June 23, 2021 at 1:00 p.m. *Note: The time for the June 23rd meeting of the Board of County Commissioners was subsequently changed.*

Findings for Approval

1. The proposed Rezoning conforms to the Goals and Objectives of the Comprehensive Plan, as the subject property is already accessed by adequate, paved road networks, and the historic schoolhouse is being recognized for its value to the sustainability of the village.
 2. With the implementation of screening on the subject property, the uses that are permitted in the proposed Commercial (C-2) District are compatible with residential uses in the village, and are also compatible with tourism along the wine trail.
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Public Hearing 21001-CUP: U.S. Cellular Communications Tower

Cook presented the staff report for consideration of an application for a Conditional Use Permit for a 195' tall communications tower, including an equipment shelter and appurtenant equipment located within a 75' x 75' leased compound area with a 30' access easement, per Sections 5-2.03.13 and 14-2.01.4 of the Miami County, Kansas Zoning Regulations. The subject tract of approximately 0.129 acres (plus access easement), is located approximately 310' SW of the intersection of Cherokee Ln and Poplar Ridge Dr, in the NE 1/4 of Section 21, Twp 17, Range 23, Paola Twp. Submitted by David Wells of Branch Communications, LLC on behalf of U.S. Cellular, the Applicant. Nicole Burnett and Jamie Weaver are the property owners of record.

Cook recalled from staff's previous discussions with the Applicant regarding this request that the Zoning Regulations would have allowed staff to approve the tower without a conditional use permit had the tower site been located slightly farther south on this parcel. However, due to the change in elevation and the floodplain as you head south on the parcel it would not have been preferable to have a tower site in the southern portion of the parcel. Therefore, the tower site is proposed to be located farther north.

Cook then covered each of the applicable minimum development standards for communications towers and 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 conditional use permit.

Staff recommends approval of the request for a conditional use permit, based upon the Findings and subject to the Conditions provided in the staff report.

Cook briefly addressed the five (5) Conditions recommended by staff. He noted that Condition No. 2 regarding the Applicant's Narrative is not attached to the staff report as the Applicant will be supplying that document this evening. Cook also noted that in the past the County included a 10-year term as a condition of approval for CUP's for communications towers. However, the County has more recently discontinued doing so, although such a condition is still an option if the Planning Commission believes it is appropriate.

Cook invited questions from the Planning Commission and announced that the Applicant is present this evening.

Kitchen asked how the County would enforce Condition No. 5 (removal of the tower within six months of cessation of use as a communications tower).

Cook answered that the County would first need to be aware that the tower had not been used for a period of six months, which could be a challenge. Once aware of the cessation of use, the County would notify U.S. Cellular that the tower is in violation of the CUP and must therefore be removed. If the company does not comply, the County would likely proceed with taking the company to court.

Kitchen commented that he assumes if the tower had not been in use for six months the company's finances would not be sufficient to pay for removal of the tower. He asked who would be responsible for removing the tower if that were the case.

Reeves answered that in some of the other communications tower CUP's the County has required the company to post a bond so the County could use those funds to remove the structure. However, she is not certain whether the County's ability to require such a bond is preempted by current State or federal regulations.

Kitchen noted that if a house is damaged by a fire the homeowner is responsible for ensuring that it is cleaned up, and the County can hold their insurance claim until the cleanup is complete.

Cook noted that considering the increasing demand for communications towers and services, he has never known of a tower being left unused. He added that the only scenario in which he can imagine this happening would be if a tornado or major storm were to severely damage a tower.

Kitchen commented that another company could buy out this company and decide that it does not need the tower.

Reeves advised that if this is the Planning Commission's desire a Condition could be added, which states that the company is required to post a bond if the County is so authorized to require a bond. She noted that before presenting this to the Board of County Commissioners, staff could research State and federal law to determine whether the County has the authority to require a bond.

Broers asked if the County may require screening as a Condition. She noted that as currently presented the tower compound is mostly hidden from sight. However, the property owner could remove the trees, and the lessee would have no obligation to replace them.

Cook responded that the Planning Commission could require screening or require that screening be maintained so that if the existing trees are removed the company is the party that is responsible for screening the compound area. He noted that this request differs from other such requests in that this tower is proposed to be placed closer to a residential area as opposed to being located in the middle of a field.

There were no additional questions for staff.

Oehlert then invited the Applicant to speak.

Mr. David Wells, of Branch Communications, LLC (1414 E. 39th St., Tulsa, OK) approached the podium and stated that Branch Communications is a direct vendor to U.S. Cellular. He expressed that Cook has done an excellent job of presenting this application.

Mr. Wells reported that Mr. Gene Oliver lives nearby and oversees the subject property, which is owned by his daughters.

Mr. Wells then described the purpose of the tower, which is to increase LTE voice, data, and 5G coverage in the central portion of Miami County as well as the residential areas within the City of Paola. He reported that this location has been identified as an area deplete of data and voice coverage.

He reported that the proposed tower meets all requirements of the FAA and FCC; will be compliant with all federal regulations such as the National Environmental Policy Act; and has concurrence from the State Historic Preservation Office as well as the Tribal Historic Preservation Office.

Mr. Wells described the proposed tower as being a 195' tall self-support lattice structure with a galvanized finish, which will be located within a 75' x 75' fenced lease area. He noted that the tower will be designed to the latest engineering requirements of the Miami County Building Code, and in accordance with the International Building Code and the TIA/EIA structural loading criteria. Mr. Wells reported that the tower will be located approximately 370' from the nearest residence and approximately the same distance from the nearest public right-of-way. He added that the tower's distance from the nearest residential structure is nearly double the height of the tower.

He then reported that the proposed tower is designed to accommodate at least three future collocations. He added that U.S. Cellular is dedicated to sharing the tower with any future service provider that needs infrastructure in the area, and is dedicated to expeditiously processing requests for collocation.

Mr. Wells noted that in the past the public heavily attended public hearings such as these, in opposition of communications towers. He commented, however, that the past 18 months have caused us to realize how badly we need broadband service for work, for educational purposes, and to be connected to the world. He further commented that broadband access provides all kinds of opportunities to work, learn, play, and improve.

Regarding posting a surety bond to cover removal of the tower Mr. Wells stated that the company would be open and agreeable to doing so if that is a recommended Condition of the CUP. He reported, from an insurance perspective, that the company has approximately \$5M set aside for each occurrence as well as all kinds of blanket coverages, and is insured as much as is possible. Mr. Wells also commented that U.S. Cellular has excellent frequency holdings; and, although the company is not as large as AT&T, T-Mobile, or Verizon, its value is immense. He reported that the term of the lease agreement with this property owner is approximately 30 years, and that the lease agreements he signs for AT&T and Verizon have lease terms of generally 85 to 95 years. He further reported that the large companies in the industry are anticipating this technology to last for 100 years. Mr. Wells commented that this technology is the wave of the future and will be the backbone for how we communicate with one another as we enter the next century. He indicated that if U.S. Cellular was unable to maintain this tower in the future, another company would be interested in the tower. He concluded that the proposed tower is anticipated to be in use for 100 years.

Mr. Wells invited questions from the Planning Commission.

Manchester commented that the proposed tower is required to be located at least 205' from the property lines, which it exceeds by five (5) feet.

Mr. Wells noted that the location had been adjusted to avoid removing as many trees.

Oehlert then opened the public hearing and twice invited public comment. There being no comments, Oehlert closed the public hearing.

Kitchen alluded to an issue of towers interfering with GPS signals on farm equipment.

Cook responded that the County cannot make comments regarding frequencies, radiation, etc. if a tower complies with FCC requirements.

Oehlert asked Mr. Wells if he is supplying the Applicant's Narrative this evening.

Mr. Wells responded that he has the Narrative with him, but that it incorrectly states that the tower is a monopole tower instead of a self-support tower. He then provided the Narrative for the record.

Elliott suggested that the Applicant correct the Narrative before the request goes to the Board of County Commissioners.

The Planning Commissioners had no additional questions or comments for staff.

Menefee moved to recommend approval of the conditional use permit, based upon the Findings and subject to the Conditions as presented in the staff report. Elliott seconded, and the motion passed via roll call vote with five (5) in favor and two (2) against (Kitchen and Manchester).

Cook announced that this item will go before the Board of County Commissioners on June 23, 2021 at 1:00 p.m. *Note: The time for the June 23rd meeting of the Board of County Commissioners was subsequently changed.*

Findings

1. The subject property is immediately adjacent to the City of Paola as well as US-169 Highway, a major transportation corridor in Miami County. The requested use, as conditioned, will be compatible with the surrounding zoning and character of the neighborhood.
2. The Countryside District permits communications tower upon the approval of a conditional use permit, when such towers are found to be compatible with other uses permitted in the district. With its low traffic impact and low visual impact, the proposed tower, as conditioned, will be compatible with the zoning and uses of the surrounding neighborhood.
3. There is no evidence to suggest that the requested use, as conditioned, will detrimentally affect nearby properties or property values.
4. The proposed use is anticipated to generate a very low volume of traffic, with most vehicle trips being pickup trucks. Therefore, Cherokee Lane will not be overburdened.

Conditions

1. Except as amended by these Conditions, the property shall be developed according to the Site Plan, attached hereto as Exhibit "A".
 2. Except as amended by these Conditions, the property shall be developed according to the Applicant's Narrative, attached hereto as Exhibit "B".
 3. Development shall comply with all sanitary, building, fire, and other applicable County codes and permit requirements.
 4. All lighting shall comply with Federal Aviation Administration regulations and requirements. Any security lighting shall utilize a fixture that directs light downward and prevents light from traveling out above a horizontal plane relative to the bulb (shoebox-type design).
 5. The tower shall be removed within six (6) months of cessation of use as a communications tower.
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GENERAL DISCUSSION

Possible Future Amendments to Zoning and Subdivision Regulations

1. Common Access Easement requirements
2. Sign Regulations
3. Telecommunications Regulations
4. Height limits for radio, television, internet antennas and satellite dishes designed for individual residences.

There was no discussion among the Planning Commissioners regarding possible future amendments to the Regulations.

ANNOUNCEMENTS BY STAFF / COMMISSIONERS

Reeves announced that the Planning Commission workshop with the Comprehensive Plan consultant previously scheduled for June 8th has been postponed until the County has some direction regarding the Petition for Incorporation for a city known as "Golden, Kansas". Reeves also announced that the public hearing regarding that Petition is scheduled for June 23, 2021 from 3:00 p.m. to 8:00 p.m. at Paola Middle School.

Reeves noted that a public hearing concerning an application to amend the Living Proof conditional use permit is scheduled for the July Planning Commission meeting.

There being no further announcements, Oehlert asked for a motion to adjourn. Elliott moved to adjourn the meeting, Kitchen seconded, and the meeting was adjourned by unanimous vote, 7-0, at 8:07 p.m.

Approved this 6th day of July, 2021.



Angie Baumann, PC Secretary



Chair, Mark Oehlert / Vice-Chair, John Menefee

Minutes taken by Angie Baumann