

**MINUTES OF THE
MIAMI COUNTY PLANNING COMMISSION
March 5, 2024**

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

ATTENDANCE

CHAIR:	Kelli Broers
VICE-CHAIR:	Topher Philgreen
PLANNING COMMISSION	Joshua Brown, Joe Flake, Phil Elliott, Mark Raney, and Bret Manchester (Manchester left at 8:17 p.m.)
ABSENT MEMBERS:	Randy Kitchen, and John Menefee
EX-OFFICIO MEMBERS:	None present
PLANNING DIRECTOR:	Kenneth Cook
ASST. PLANNING DIRECTOR:	Jennifer Koehn
PLANNER:	Bobby Wardecker
PC SECRETARY:	Casey d'Augereau
COUNTY COUNSELOR:	Not present
ECONOMIC DEVELOPMENT	Not present
COUNTY COMMISSION:	None Present
COUNTY CLERK:	None Present
PRESS:	None Present

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CALL TO ORDER

Chairman Kelli Broers 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. Manchester left at 8:17 p.m.

DISCLOSURE OF ANY EX PARTE COMMUNICATIONS OR POTENTIAL CONFLICTS OF INTEREST

There were none.

ADOPTION OF THE AGENDA

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

CONSENT AGENDA

- Minutes: Approval of the February 6, 2024, Planning Commission Minutes
- 24001-SUB: Gilmore Acres Subdivision

Elliott noted a typo in Condition 1 for Gilmore Acres, the word “every” should be “Every”.

Philgreen moved to approve the Consent Agenda after the correction of “every” to “Every” in Condition 1 of the Gilmore Acres Subdivision Staff Report. Elliott seconded, and the motion passed 6-0, one (1) abstained due to being at the February meeting (Raney), via show of hands.

Old Business:

There was none.

New Business:

Broers opened 24002-SUB: Davey Farm for discussion at 7:04 p.m.

Cook noted the applicant requested a change in the final plat for a buyer he had agreed to sell two (2) plats to, the buyer wants the two (2) plats to be combined into one (1) plat. Due to the change a new final plat is needing to be provided by the surveyor. Staff will need to review the application based on the new survey and will be able to present the application to the Planning Commission at the April 2, 2024 meeting.

Philgreen moved to continue 24002-SUB: Davey Farm to the April 2, 2024 Planning Commission meeting. Elliott seconded.

Broers noted the application number on the memo is different than on the agenda and asked which one is correct.

Cook stated the correct application number is 24002-SUB.

The motion to continue 24002-SUB to the April 2, 2024 Planning Commission meeting passed unanimously (7-0), via show of hands.

Cook noted the agenda shows 24001-SUB as the application for Gilmore Acres, while the memo shows 24002-SUB. Cook stated he believes the motion is still good.

Broers agreed that the motion is still good for Gilmore Acres.

24001-Z: Countryside (CS) to Commercial (C2) Rezoning Application

Broers opened Staff Presentation at 7:05 p.m.

Wardecker presented the Staff Report for consideration of a request to rezone approximately 1.46 acres from Countryside (CS) to Commercial (C2), in accordance with Section 22 of the Miami County, Kansas Zoning Regulations. The subject property is located on the East side of the Old Kansas City Rd and 200 feet South of West 255th St, in the Northeast Quarter of Section 15, Township 16, Range 23, Marysville Twp.

Wardecker noted the structure on the subject property is a non-residential structural and is permitted on site. The structure has been used in a variety of ways and has been continuously in active use since its construction. Many of the uses of this property have been C2 in nature though the property is zoned CS. The proposed rezoning to C2 will allow this property to be in line with the uses in the surrounding area.

Staff recommends the approval of the proposed Rezoning from Countryside District (CS) to Commercial (C-2), based on the Findings listed in the Staff Report and with the following conditions.

Conditions:

1. The Resolution approving rezoning shall not be recorded in the Registrar of Deeds office or be published in the paper until all of the following have occurred:
 - a. Change of Occupancy and structure brought up to commercial standards.
 - b. Site Plan approval including Storm Water management plan and construction of improvements. Construction of Commercial Entrance with a permit from Road and Bridge.
2. All use of the property as a contractor's shop/yard must cease and all construction equipment/materials removed from site until such time as property receives necessary approval of a CUP.

Raney noted the property had been cited three (3) times for violations and asked if action had been taken on any of the citations.

Wardecker stated the applicant was informed of the violations and the applicant would correct the issue(s) to become compliant.

Raney asked if that represents concerns with cooperation with the proposed changes.

Wardecker believes there is no cause for concern. Wardecker noted the applicant's intent is to sell the property. The new owner would have the opportunity to develop it to fit their needs so long as the development fits the criteria of the C2 district and be required to go through the site plan process to ensure

compliance.

Raney asked if there are any concerns with the applicant becoming compliant with the screening to provide some protection for the adjacent residents based on previous history.

Wardecker believes the applicant will be in full compliance with the Findings and Conditions.

Cook stated part of the reason for not publishing in the paper until *Condition 1* has been met (*Condition 1, The Resolution approving rezoning shall not be recorded in the Register of Deeds office or be published in the paper until all the following have occurred:*) is to assure the applicant brings the structure up to commercial standards. Cook believes several of the issues will be resolved through the site plan process. Cook noted if the applicant doesn't comply with the Conditions then it won't be rezoned.

Manchester confirmed the structure was built in 2011. Manchester is concerned about the drainage of the property, referring to the pictures of the standing water on the property. Manchester inquired about the inspection Miami County preformed in 2011 when the structure was built.

Cook stated at the time the structure was built it was permitted as a residential accessory structure. Miami County does not require drainage plans, drainage studies, and no grading is required of residential structures. Cook noted that area of Hillsdale is flat, and that area of the school will probably have drainage issues even if there were no improvements to the subject property.

Philgreen stated his understanding for tonight the Planning Commission is considering a rezoning of the subject property and the building will come later when applicant applies for a Conditional Use Permit (CUP).

Wardecker stated the Conditions require the applicant to bring the structure up to code for commercial zoning if the rezoning is approved.

Cook gave the example of a retail being operated out of this structure a CUP would not be required. Cook stated there are several uses that are permitted by right for this property and if a person were to buy this property the only real issue will be the site plan to make sure they are within compliance of the Codes.

Manchester referred to the page 2 of the Staff Report and stated Building Permit 5922 passed its Final Inspection asking the inspection was not done by Miami County but was up to the builder.

Cook agreed.

Broers invited the applicant to the podium at 7:29 p.m.

Robert Zoller, 29580 Lone Star Rd, Realtor for applicant, stated the applicant understands he needs to make changes for the water retention, make sure the building complies with regulations, but was concerned if the work was done and wasn't able to rezone the property the money would have been wasted. Due to the money involved the applicant plans to complete the necessary work if the rezoning application is approved.

Broers opened Public Hearing 24001-Z: Countryside to Commercial Rezoning at 7:31 p.m.

Broers invited the public to come to the podium to be heard. No one came forward to speak.

Broers closed Public Hearing 24001-Z: Countryside to Commercial Rezoning at 7:32 p.m.

Broers opened the Planning Commission deliberation at 7:32 p.m.

Elliott requested clarification on the workflow if this application is approved.

Wardecker stated Condition 1 stipulates the rezoning shall not be recorded in the Register of Deeds Office

and finalized until the property is brought up to code.

Cook stated there are several categories of uses permitted by rights on the subject property. The structure was built more to a residential standard. Staff's expectation is that the property owner will propose (through an architect) plans, modifications, and the subject property for sale. Cook stated if the new owner decides to turn it into an automotive shop or retail store there will be a need to bring the structure up to compliance according to the business the owner is wanting. Cook believes some of the issues with this property will be addressed through the rezoning application.

Elliott stated it is surrounded by C2 properties and does not have a concern with the rezoning itself. Elliott believes there are a handful of issues that are not connected with the rezoning of this property. In the past when rezoning property, it was about the intended use of that property and believes the structure is independent and is not rezoning related.

Cook stated Staff's main concern was that the structure was built as a residential structure and not a commercial structure.

Elliott believes that is a building use and occupancy use which is independent of the Planning Commission decision.

Cook agreed and stated the stormwater is a bigger concern to Staff and the location of it. Where they chose to build the structure has limited the property owner.

Elliott stated hypothetically a vacant piece of property rezoned to Commercial (C2) at what point would the stormwater discussion come into play.

Cook stated it would be as soon as the property owner began using it for anything or start talking about expansions, or even building a parking lot.

Elliott stated he agrees with resolving the water issue but wants to make sure what the Planning Commission does at the meeting it doesn't muddy the waters more. Elliott asked is the Planning Commission looking at rezoning the property or the structure, he believes this is two (2) separate items.

Cook stated in his opinion if someone were to rezone to Commercial (C2) then once it is rezoned to C2 the property owner isn't to use it for residential purposes and before any use of the property can occur that the conditions need to be met.

Elliott stated his preference is for the Conditions to clearly articulate that.

Cook stated there are currently three (3) excavators on the property, some of this is more of a compliance and enforcement issue that needs to be addressed. If this is approved the conditions can be modified to stipulate all issues need to be addressed before the final approval can be implemented.

Manchester stated there are two (2) residential properties to the North of the subject property. Are there any concerns with the screening for the residents.

Wardecker stated the notifications were sent to the 1,000-foot neighbors and there were no responses received back.

Cook stated a privacy fence was installed when the Dollar General Store was constructed as part of their Conditions. Cook noted any change of use to the subject property would require that the applicant go through the Site Plan process. The Site Plan process will allow for the issue with screening to be addressed.

Raney asked if the Rezone Request is an attempt by the applicant to provide a means for the property to have more latitude under the new zoning to continue with the same practices as in the previous years.

Cook stated the subject property is currently for sale. The applicant had a buyer lined up, but the buyer chose to go a different direction.

Raney asked if the Planning Commission is within bounds to attach stipulations to the rezoning request that would require the non-compliance issues to be dealt with prior to the rezoning being approved.

Cook stated when working with a Rezoning Application Staff will require the property to become compliant before allowing for a Building Permit to be applied for. Cook stated there is some latitude but generally there are few conditions placed on rezoning.

Raney stated he does not currently have an answer for or against the application, but it bothers him when he sees an applicant that has ignored prior citations, and the County will potentially go forward with the assumption that things will get better with the rezoning change.

Cook doesn't believe it will be a large stretch to withhold the publication of the rezoning if it were to be in regard to the removal of the construction equipment and other items not permitted under the current regulations and wouldn't be permitted under the regulations of the rezoning.

Broers asked Elliott if he was thinking about tweaking the stipulations. Broers stated she understands the theory the Planning Commission should be considering the land use and not the structure use, but the structure is there. If the property is rezoned then the structure will also become Commercial (C2) property.

Elliott stated it will become a C2 capable building but until the occupancy is identified and it meets code it shouldn't be allowed to be used as a C2 building.

Broers noted as the stipulations are written now.

Elliott agreed. Elliott stated what he struggled with was asking a landowner to make changes to a building that it hasn't been determined how it will be used. Elliott would like to figure out a way to protect the future buyer. Elliott stated he reread the Conditions and believes the general concept is there but if the rezoning is approved he would like it noted that the rezoning was completed and note the structure is out of compliance for the C2 zoning district.

Broers is concerned the rezoning might be premature if not willing to consider the structure.

Cook is concerned that people wanting to purchase this property, will they be willing to buy it knowing they will have to make the improvements to bring it up to Commercial Code then request rezoning. Cook noted no matter which way they go it comes back to which comes first the rezoning or the building.

Broers asked if it is still actively being used as a contractor's shop, if so she doesn't believe it is a waste of money. It's not compliant as it is being used currently and it's a public safety issue as it stands if being used.

Cook stated there is currently heavy equipment on the property right now. Cook noted he has never been inside the structure but understands there have been substantial improvements inside the structure with possible living space. Cook stated when the application first came to Planning & Zoning his first thought was C2 zoning is completely appropriate for this area. Cook noted the zoning to C2 is appropriate but need to figure out how to deal with all the other issues associated with the subject property.

Brown asked if the use of the equipment would be allowed under the C2 zoning.

Cook stated with a Conditional Use Permit (CUP).

Elliott asked if it would make sense to say "while the property may be zoned Commercial (C2) the

structure on the site was approved as a residential accessory structure and must have change of occupancy processed before use” or something like that. Elliott stated he likes the site plan approval and should be completed before the rezoning is done and cleaning up the site is necessary. Elliott stated he is hung up with the structure and while it may be out of compliance even as a residential, he doesn’t believe that is the Planning Commissioners’ issue it is a Planning & Zoning issue.

Cook noted it would be Staff and Codes Services.

Elliott asked if there is a way to list the things that need to happen without withholding the rezoning.

Cook stated he would suggest at minimum that should happen so that if anyone were to contact Planning & Zoning inquiring about the subject property then there is something to hand them showing what we know. Cook stated while Kansas is at your own risk state, hopefully, the information would be passed to prospective buyers.

Broers noted when she first read the Staff Report her first reaction was the applicant has been a terrible neighbor but is that really a rezoning question. Broers doesn’t have a lot of confidence that the issues will be resolved.

Elliott stated if he is reading the tone of the room correctly they aren’t against the rezoning but there are some issues that are making it difficult to move forward.

Raney asked if the Planning Commission follows through with the Staff’s recommendation as written then “we” don’t lose anything with respect to what the situation already is. Raney noted he doesn’t like the neighbor aspect of the request, but the request seems to be logical with respect to the surrounding area. Raney doesn’t believe anything will be lost by giving it a shot.

Elliott agreed and stated he was just looking for a different “carrot”.

Philgreen asked Staff if they have any suggestions for this issue.

Cook stated the only thing he can think of is to start the enforcement process.

Philgreen asked if they have to come back for a Conditional Use Permit (CUP) to do anything on this property.

Cook stated no, because there are some things they can do by right and a CUP wouldn’t be required and gave a couple of examples of uses by rights.

Philgreen stated if they start a mechanic shop there is nothing the Planning Commission could say about it.

Cook stated before a change of use of the property they should do the Site Plan process which does require a Stormwater Study and the screening to be considered. If it gets rezoned and someone buys it and starts an operation without going through the Site Plan process then it will become an enforcement issue.

Raney asked if it is approved by the Planning Commission it doesn’t become valid until it is published in the paper.

Cook stated the resolutions and Miami County Regulations stipulate the rezoning does not become effective until it is published in the paper. Cook noted that it will not be recorded with the Register of Deeds until the Conditions are met to avoid filing another document that states it didn’t meet the Conditions, so the rezoning was not allowed.

Raney asked if the applicant meets the Conditions, get a Site Plan approved, and they don’t implement

the Site Plan then they would be allowed to do whatever they want on the property that is allowed by rights because they presented a Site Plan.

Cook stated part of the permit application for a building it would be required for them to construct the property in compliance with whatever Site Plan was approved.

Raney moved to approve 24001-Z per Staff's recommendations and with the Conditions per Staff's recommendations. Elliott seconded.

Philgreen stated for the record there has been a significant concern by the Planning Commission that the building be brought up to standards that don't affect the adjoining properties in a negative manner, particularly the stormwater runoff.

Flake stated he has concerns with "being a good neighbor", and agrees with Elliott that the rezoning and the structure are two (2) separate issues. Flake stated he is in favor of the rezoning but doesn't believe the other issues can be tied to it.

Broers called for a roll call vote. The motion passed 6-1 with Elliott opposed, via roll call vote.

Broers stated this will be heard before the Board of County Commissioners on March 27, 2024.

GENERAL DISCUSSION:

SUMMARY OF BOARD OF ZONING APPEALS FEBRUARY 21, 2024 MEETING

Cook stated there was an appeal made to the Board of Zoning Appeals for an Accessory Dwelling Unit (ADU). Staff denied the Building Permit for the ADU because the request made was for the ADU was located closer to the road than the main dwelling. There were in depth discussions as to what "front" is defined as and the Board of Zoning Appeals ended up approving the appeal. The Board of Zoning Appeals believed although the ADU was closer to the road than the front of the main dwelling they believed it met the regulations.

Manchester left the meeting at 8:17 p.m.

COMPREHENSIVE PLAN DISCUSSION

Staff presented Section 3 of the Next Comprehensive Plan focusing on the maps in Section 3. Staff and Planning Commissioners held a comparison and discussion on the current Future Use Map, draft Future Use Map, and Future Land Use Maps for Cities.

ANNOUNCEMENTS BY STAFF / COMMISSIONERS

Cook announced the next regular Planning Commission meeting will be on April 2, 2024 at 7:00 p.m. and there will be a Planning Commission Study Session on March 26, 2024 at 6:00 p.m. to continue the Next Comprehensive Plan discussion.

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.

Elliott moved to adjourn the meeting, Philgreen seconded. The meeting adjourned at 9:12 p.m. with a unanimous vote (6-0), via show of hands.

Approved this 2nd day of April, 2024.

Casey d'Augereau

Casey d'Augereau, Secretary

Kelli M. Broers

Kelli Broers, Chair / Topher Philgreen, Vice-Chair

Minutes written by Casey d'Augereau