

**MINUTES OF THE
MIAMI COUNTY PLANNING COMMISSION
February 4, 2025**

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

ATTENDANCE

CHAIR:	Kelli Broers
VICE-CHAIR:	Topher Philgreen
PLANNING COMMISSION	John Menefee, Bret Manchester, Joe Flake, Josh Brown, and Rusty Gerken
ABSENT MEMBERS:	Randy Kitchen, Phil Elliott
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:	None Present
PRESS:	None Present

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CALL TO ORDER

Chair 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.

DISCLOSURE OF ANY EX PARTE COMMUNICATIONS OR POTENTIAL CONFLICTS OF INTEREST

Rusty Gerken recused himself from Public Hearing 24004-Z and application 24005-SP both applications Rusty Gerken is the applicant.

Broers asked each Planning Commissioner to confirm they could remain impartial when voting on the 24004-Z & 24005-SP (Gerken Rent-All applications)

• Kelli Broers confirmed she can remain neutral	• Joe Flake confirmed he can remain neutral
• Bret Manchester confirmed he can remain neutral	• Topher Philgreen confirmed he can remain neutral
• John Menefee confirmed he can remain neutral	• Josh Brown confirmed he can remain neutral

ADOPTION OF THE AGENDA

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

CONSENT AGENDA

- Minutes: Approval of the January 7, 2025, Planning Commission Minutes.
- 24007-SUB: Somerset Ranch East

Menefee moved to approve the consent agenda as presented, Flake seconded. The motion passed unanimously (7-0), via show of hands.

New Business:

Staff report for Public Hearing 24004-Z and Application 24005-SP: Gerken Rent-All

Broers invited Staff to the podium to present the Staff Report for Public Hearing 24004-Z and application 24005-SP: Gerken Rent-All at 7:04 p.m.

Gerken joined the audience as the applicant at 7:04 p.m.

Kenneth Cook, Planning Director, noted that the Staff Report for the Public Hearing on case 24004-Z and application 24005-SP has been combined into a single Staff Report since they are related. However, when it comes time for the Public Hearing and voting, the agenda items will need to be addressed separately.

Cook presented the Staff Report, explaining the subject property was west of the main Gerken Rent-All property, located south of Paola on Old KC Road. The parcel was purchased several years ago with the intent to expand its current operations for storage of portable toilets and roll-off dumpsters. Gerken Rent-All has since established a concrete/contractor-type business on the property, utilizing volumetric trucks.

Cook clarified that the C-2 District permits contractor shops through the Conditional Use Permit (CUP) process, whereas the I-1 and I-2 Districts allow contractor shops by right. The applicant had previously considered installing a concrete batch plant on this property before acquiring the volumetric trucks. If the applicant decides to pursue a concrete batch plant in the future, it will require a Conditional Use Permit under the I-2 District.

Cook also noted that the I-2 District allows for a greater level of outdoor activity on the property, whereas the I-1 District generally requires activities to take place within a building.

Cook reviewed the *Golden Criteria* from the Staff Report while focusing on the most case relevant points, specifically:

1. Character of the neighborhood including zoning and uses.

Cook stated the subject property is located in an area with a mix of different types of uses. Most of the properties in the area are zoned Commercial (C-2) or Light Industrial (I-1), with one property zoned Commercial Office (C-O), an obsolete zoning district similar to the C-1 in the current Zoning Regulations. There is also a significant portion of the surrounding area zoned Countryside (CS). Cook noted that extending outward from the applicant's property, there are other business-type activities, including Light Industrial (I-1) properties, and the County is anticipating continued growth of this nature in the area.

3. The extent to which the removal of the present zoning will detrimentally affect nearby property.

Cook noted that rezoning the property from Commercial (C-2) to Industrial (I-2) would allow for increased intensity of operations, particularly outdoor activities. With additional operations come potential impacts such as noise, lighting, increased activity, and dust. The Zoning Regulations include specific criteria for properties zoned Industrial, particularly when adjacent to residential areas. In the I-2 District, contractor shops are generally required to be screened from residential properties, with all open storage areas screened within 1,000 feet of property lines.

When this proposal was first presented to Staff, Staff believed the use resembled a concrete batch plant operation. However, after reviewing the operation with KDHE, it was determined that it more closely fits the definition of a contractor shop, as there is no batch plant on the property. The business stores aggregate and cement on-site, which are loaded onto trucks with water but not mixed until arrival at the job site. Because of this process, there is less waste as compared to traditional batch plants.

Staff recommends that if any washing of concrete equipment occurs on-site, potential impacts should be addressed through a stormwater study and the applicant has stated the trucks are rinsed at the job sites and not on the subject's property.

5. The relative gain to the public health, safety, and welfare by the destruction in value of nearby property as compared to the hardship imposed upon the individual landowner.

Cook noted that Staff evaluated the impact on neighboring properties, the broader community, and the applicant when considering this type of operation. While the proposed use may impact some adjacent property owners—particularly in terms of noise and related activities—many existing operations in the area share similar characteristics.

Cook stated that the Sales Barn, located west of the applicant's property, has some industrial characteristics, particularly when considering the definition of industrial uses, which includes potential impacts such as odor. Given this context, Cook believes the applicant's operation is compatible with the surrounding area.

The Comprehensive Plan and Zoning Regulations recommend buffering heavy industrial uses with less intense uses before transitioning to residential areas. In this case, the applicant's property is situated between the Sales Barn (to the west), the railroad, and residential properties zoned Countryside (CS). Staff also noted commercial properties being located to the East.

Staff also recognizes the potential economic benefits of having a local concrete mixing contractor in Miami County. Currently, all similar operations serving the county are located outside Miami County. Establishing such a facility locally could provide a convenient service to area residents and businesses.

While it is impossible to eliminate all impacts on neighboring properties, Staff believes that mitigation measures can help reduce potential concerns through the Site Plan process if the Rezoning Application was approved.

6. Whether the proposed rezoning would be consistent with the intent and purpose of the Zoning Regulations.

Cook noted some of this would be the screening requirements as screening is found necessary in the Zoning Regulations.

Another item Staff noted was the Site Plan Standards which considers the layout of the property (drive isles, parking spaces, storage areas, and other uses) and is designed to lessen the impact on the surround neighbors. There is significant live screening between the applicant and the Eagle's properties at this time and Staff recommends requiring the screening to be maintained.

Cook stated on the South side of the site there is not a lot of screening on the property line, but the adjoining property has some evergreen trees. Since this side is more residential Staff recommends something more sufficient for screening from the property at that location. Planning Commission has provided several options (evergreens or 6-foot privacy fence) over the years and Staff will work with the applicant to determine what is best for the operation. Cook noted screening is also required from public rights-of-ways, Staff recommended that there be screening North of the existing building. While the property to the West is zoned Countryside (CS), it has a Conditional Use Permit (CUP), and Staff doesn't find it necessary to require screening as the existing building, and proposed building will provide screening from the storage areas on the property and the location of the lagoon on the property to the West. Cook stated there are other businesses located to the East one of which is an auto body shop with a fair amount of evergreen trees that Staff considers to be sufficiently screened. There is a property with Light Industrial Zoning, mainly mini storage, with some outside storage adjacent to the applicant's property, which is a similar use as the applicant's. Staff doesn't believe there is a need for extra screening between these properties. Staff's primary concern is the screening to the residential area to the South .

7. The conformance of the requested zoning change to the adopted Miami County Comprehensive Plan.

Cook presented the Future Land Use Map from the current Comprehensive Plan, highlighting the mixture of property types in the area (commercial, industrial, and residential). While the Comprehensive Plan designates this area as Rural Residential, the Future Land Use Map serves as a guide rather than zoning regulation, illustrating where development is anticipated. Cook also noted the properties locations near two (2) areas of regional significance and its location just South of Paola. Cook emphasized this application aligns with the intent of the Comprehensive Plan. Given the surrounding land uses (including the Sale Barn and multiple commercial businesses) it is unlikely that a new residential home would be constructed in this location. Staff believes that a business zoning designation is more appropriate for this property than Rural Residential.

8. Such additional matters as may apply in individual circumstances.

Cook noted that one (1) of the key issues Staff considers in applications like this is traffic. Staff consulted with the Road & Bridge Department regarding the proposal, and their assessment is that the existing infrastructure is sufficient to support the proposed expansion. The property's location, directly behind the existing Gerken Rent-All site, also allows for improved traffic circulation, particularly for larger trucks accessing the site.

At this stage, Staff did not require the applicant to submit a stormwater plan, as this is a Rezoning Application. However, if the rezoning is approved, a stormwater study will be required as part of the Site Plan process.

9. The recommendation of the County's permanent or professional staff.

Cook reminded the Planning Commission that their deliberation on the Rezoning Application should focus solely on whether the proposed rezoning is appropriate for the location. Cook noted the Planning Commission has the authority to approve a lesser zoning designation if they determine the requested rezoning is too intensive for the area.

Staff recommends approval of the rezoning based on the character of the neighborhood, the businesses, and other activities currently located in the area.

Cook moved onto 24004-SP, stating there are five (5) key criteria the Planning Commission must consider when evaluating the Site Plan Application.

1. The proposed use is permitted based on the zoning district in which the property is located.

Cook stated the proposed use falls under the category of a contractor shop operation. He recommended the Planning Commission discuss Staff's interpretation to ensure their understanding aligns with Staff's assessment.

While referring to the operation as a contractor shop, Cook acknowledged that it shares some similarities with a concrete batch plant, particularly in the storage of materials. However, Staff determined the proposed uses comply with the Zoning Regulations, provided the I-2 zoning is approved.

He also noted that approval of the Site Plan Application is contingent upon the approval of the Rezoning Application.

2. The proposed arrangement of buildings, off-street parking, access, lighting, landscaping, and drainage is compatible with adjacent land uses.

Cook noted a stormwater plan drainage will be required prior to building permit. Stormwater study needs to address both quantity and quality of water. Staff's recommendation is for the stormwater plan to include consideration of operation include the rinsing of the cement equipment and vehicles be taken into

consideration with the design of the stormwater plan.

Staff's main concern is that the South property line has adequate screening and a little more separation between the property line to where the activities will be occurring as part of the operation.

3. The vehicular ingress and egress to and from the site, and that vehicular and pedestrian circulation within the site, provide for safe, efficient, and convenient movement.

Cook stated that he believes all roads providing access to the site are sufficient to accommodate the proposed traffic. The location of the proposed expansion, situated behind the main Gerken Rent-All property, allows for improved traffic circulation and better site accessibility.

4. The proposed location of buildings, structures, driveways, open space (if any), and parking lots will minimize any adverse off-site impact, will be located on suitable soils, and will minimize any present or future cost to the County and provides of utility services to the site.

Cook noted this has already been addressed.

5. That the public streets and storm drainage adjacent to and within the site will be designed and improved in accordance with the Miami County Street and Storm Drainage Standards for New Subdivisions and the ultimate rights-of-way identified in the Miami County Comprehensive Transportation Plan.

Cook noted the stormwater plan submitted will need to comply with APWA (American Public Works Association) 5600, which is the currently adopted requirements for stormwater.

Staff recommended approval of the Rezoning Application to the I-2 District and also recommended approval of the Site Plan Application, contingent upon the conditions outlined in the Staff Report.

Cook ended his presentation and offered to have further discussion after the applicant's presentation.

Broers invited the applicant to the podium at 7:37 p.m.

Rusty Gerken, 26518 W. 322nd, Paola, stated he is wanting to be as neighborly as possible. Gerken stated the trucks are loaded on Gerken Rent-All's property then mixed and poured on the customer's property.

Broers opened the Public Hearing for "24005-Z" (24004-Z) Gerken Rent-All at 7:40 p.m.

Broers invited the public to speak. Broers reminded the speakers to announce their name and address for the record. All comments need to be directed to the Planning Commission. And 3-minutes are allowed.

- **Joel Haley**, residing at 26642 W. 319th, Paola, voiced concerns about the proposed rezoning, noting he lives south of the applicant's property. He stated there is already a significant amount of noise from the site, including the constant beeping of vehicles throughout the day. While he admitted he is not fully familiar with how concrete operations work, he expressed concerns about the presence of chemicals and the potential impact on water quality. Haley also mentioned he enjoys observing wildlife in the area and worries the increased noise could drive them away. Additionally, he raised concerns about potential negative effects on air quality, water resources, the environment, and property values. Haley questioned the long-term implications of rezoning the property to industrial, asking whether other industrial uses would be permitted in the area in the future.
- **Beth Armstrong**, residing at 26720 & 26680 W. 319th, Paola, expressed concerns similar to those raised by Haley. She emphasized she had worked hard all her life to retire in the country with her animals and is now worried about the impact of the proposed rezoning. Armstrong mentioned she

frequently hears the beeping of vehicles backing up and is already troubled by the heavy truck traffic from the mulch plant on 315th Street. She stated additional truck traffic on Old KC Road would be equally disturbing, not only due to increased congestion but also because of the added noise. Her primary concern is the potential loss of the peace and quiet she had hoped to enjoy for the rest of her life in this location.

Broers closed Public Hearing “24005-Z” (24004-Z) Gerken Rent-All at 7:45 p.m.

Broers asked if Staff or the applicant has additional comments.

Applicant declined.

Cook asked if the Planning Commission has questions for Staff.

Menefee asked based off the Conditional Use Permit currently allowed the rezoning won't significantly change the current operation on the subject's property.

Cook agreed.

Menefee asked if this property has to be KDHE (Kansas Department of Health and Environmental) inspected.

Gerken stated they are looking into it.

Cook added that Staff has reached out to KDHE regarding air quality and water quality concerns, and they are still in the process of verifying this information.

Manchester asked how far Haley's property is from the applicant's site.

Cook stated that it is 460 feet.

Broers asked if the applicant could accomplish everything they want to do under the current zoning with a CUP.

Cook confirmed this, noting that I-1 Districts generally have indoor operations, while I-2 Districts allow for more outdoor activities.

Broers also asked if a CUP would provide more regulatory oversight compared to a zoning overlay.

Cook stated that a CUP would allow for more specific conditions and greater control, as many CUPs have expiration dates that require periodic reviews.

Manchester asked if the applicant would apply for a CUP if the rezoning were denied.

Gerken said not necessarily.

Manchester asked if applicant is willing to plant more trees for screening.

Gerken stated he is willing to plant more trees if needed.

Menefee stated that one recurring topic during the review of the new Comprehensive Plan is the desire to locate commercial and industrial areas closer to cities and townships. Menefee believes this approach has the potential to generate more concerns and complaints from surrounding neighbors. He explained that if this were a standalone project with no other industrial businesses in the area, it would change the dynamics, but given the presence of existing industrial businesses nearby, the situation is different.

Cook stated that there is one light industrial property adjacent to the site, another light industrial property across from Eagle Drive, several small properties further south, and a lot of business park zoning near the

airport.

Brown commented that it is always a challenge to find the appropriate location for such developments. He noted personal experience with new cement trucks and remarked that the technology behind them is impressive.

In response to Haley's question about what might be allowed in the area if this property is rezoned, Menefee explained that any use allowed under the I-2 zoning could be permitted. He also mentioned that, given the choice between commercial and industrial districts, and having young children, he would personally prefer living near industrial areas. Menefee pointed out that the current use isn't being substantially changed, and that the Gerkens have been operating in the area for a long time, with the rental business existing before they purchased the property. He expressed confidence that the Gerkens are committed to staying in the area long-term.

Broers stated that she is struggling with this application and believes a more conservative approach would be to retain the existing zoning and require the applicant to go through the Conditional Use Permit (CUP) process.

Menefee disagreed with the CUP process, saying he dislikes the idea of having to revisit the process at the end of the CUP term.

Broers responded that she views the CUP process as a safety measure, especially since Staff is uncertain whether the operation qualifies as a contractor shop or a batch concrete plant. She mentioned that Staff seems to be leaning toward the contractor shop interpretation, and based on feedback from KDHE, it appears the operation may not be subject to state oversight. Broers believes that a CUP would provide a level of oversight and protection for the neighbors.

Cook clarified that environmental requirements apply to all commercial and industrial businesses, including state regulations on how materials are discharged from the property. He noted that the current C-2 operation already has some impact on neighboring properties.

Broers asked for clarification about whether the applicant is currently operating under a CUP.

Cook replied the applicant is not currently operating under a CUP. It is a C-2 District, the current operation is allowed by rights in the C-2 District.

Brown thanked Staff for conducting research on the concrete trucks, noting that the technology is new and differs from traditional cement trucks. He pointed out that the trucks produce minimal waste, as they mix the concrete while it is being poured.

Flake expressed his concern about the noise from backup alarms and asked the applicant if anything could be done to mitigate this issue.

Gerken responded that the only option would be to disable the alarms.

Cook noted this would be a safety issue through OSHA.

Flake then asked the applicant what the goal of the rezoning application was.

Gerken explained that the primary need was for more space.

Flake inquired about the number of trucks the applicant plans to have.

Gerken replied that he currently has three trucks and does not plan on adding more, only maintaining the existing fleet.

Cook noted as part of the site plan application, the applicant plans to construct a larger building. The vehicles would be stored inside the new building once it is completed, rather than being stored outdoors.

Flake agreed with Brown, emphasizing that these trucks are very different from the standard cement trucks people may be used to seeing.

Cook stated an applicant has the ability to request the zoning they seek, which is the request happening now. Cook believes it could be possible approve this through the Conditional Use Permit process, however, the County's regulations also allow for an I-2 District.

Philgreen asked if there were any conditions attached to the rezoning.

Cook responded that a rezoning application does not require conditions.

Philgreen moved to approve Rezoning Application 24005-Z (24004-Z) for Gerken Rent-All from C-2 to I-2, with Flake seconding the motion.

Broers acknowledged that she had initially been hesitant but concluded the rezoning seemed necessary to accomplish the goal. Given the existing use, the paved roads, and the Golden Criteria the Planning Commissioners are required to consider, she felt the request had merit.

Manchester stated the Gerken business is an important one for Miami County.

Broers called for a vote on the motion made by Philgreen. The motion passed with a vote of 5-1 (with Manchester voting against) and 1 recused (Gerken).

Cook noted that Staff will present the application to the Board of County Commissioners with the Planning Commission's recommendation for approval on February 26, 2025. Cook also mentioned that neighbors within 1,000 feet of the applicant have the right to file a protest petition in accordance with state statute. If a protest petition is filed, it must be submitted within 14 days of the Planning Commission meeting to the County Clerk's office.

24005-SP: Gerken Rent-All

Broers asked for comments from Planning Commission. There were none.

Menefee moved to approve 24005-SP: Gerken Rent-All with Staff's Findings and Conditions, Flake seconded.

Cook asked for clarification on screening.

Menefee replied to leave it up to the applicant.

Cook noted that if live screening is used, it will take time to mature, while a six-foot privacy fence could provide immediate coverage.

Flake asked where Staff is wanting screening.

Cook stated screening is needed on the south side and the north side where storage is located, and that Staff can work with the applicant on the details.

Broers noted that because there is a lagoon to the west, Staff does not currently see a need for screening in that area. However, she emphasized that if circumstances changed in the future, she would like the option to require screening there and for Staff to have the ability to review the matter if necessary.

Flake asked what Staff needs from the Planning Commissioners on this.

Cook stated per Menefee's suggestion, Staff will work with the applicant on this matter.

Broers called for a vote to the motion made by Menefee and seconded by Flake, the motion passed 5-1 (Manchester against) and 1 recused (Gerken), via show of hands.

Findings for Approval (Site Plan)

1. *Upon the submittal of an updated site plan addressing staff's review comments from January 28, 2025, and based upon the following conditions, the request complies with the standards of the Article 11, Heavy Industrial District (I-2); and Article 17, Parking Regulations of the Miami County Zoning Regulations.*
2. *The layout of the proposed site is adequate based on the standards of review outlined in Section 19-5 for Site Plans, of the Miami County, Kansas Zoning Regulations.*

Conditions of Site Plan Approval

1. *A final site plan including updates will need to be submitted and shall be logged as the Approved Site Plan. Except as amended by these conditions, the property shall be developed according to the Approved Site Plan. Updates to the site plan shall include staff's review comments dated January 28, 2025, and the following:*
 - a. *Update site plan to show the location of any existing or proposed exterior lighting. Include a note on the site plan that: "All exterior lighting will comply with zoning regulation requirements to be fully shielded so that all light is directed downward and is prevented from being cast in a horizontal plane in relation to the bulb."*
 - b. *Screening shall be added to the site plan along the South property line and North of the existing structure from the Sale barn property to the Eagles property. The type and height of screening proposed shall be specified on the site plan. The existing screening along the Eagles property shall also be delineated as existing screening. A note shall also be added to the site plan that: "All landscaping and screening will be maintained and replaced at any time said items are damaged or die."*
 - c. *The drive aisles, operational area and open storage areas shall be located so as to remain outside of the rear yard setback along the South property line.*
 - d. *Required standard and ADA parking spaces shall be shown on the site plan, including ADA access to the facilities.*
 - e. *Include a note on the site plan indicating all public buildings and facilities have been designed to comply with the provisions of the Americans with Disabilities Act Accessibility Guidelines (ADAAG) for buildings and facilities.*
2. *Future expansion of any open storage area, drive aisles and parking areas will require approval of an updated site plan including stormwater management plan.*
3. *A stormwater management plan shall be required prior to the construction of any new structures. This plan will need to comply with APWA standards for both stormwater quantity and quality and should take into consideration the specific uses occurring on the property. This should include if vehicles and equipment associated with the volumetric concrete operation are washed/rinsed on the site that the plan include details related to the handling of this wastewater.*
4. *Development of the site shall comply with all sanitary, building, fire and other applicable county codes and permit requirements. The development and operation of the site shall also comply with all State permits including any required permits for Air, Industrial Wastewater, and Industrial Stormwater.*

5. *The proposed access entrance shall be constructed to current county commercial standards (paved).*
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Rusty Gerken rejoined the Planning Commission meeting as a Planning Commissioner at 8:27 p.m.

Public Hearing 24004-CUP: Banuelos Ranch-Open Arena

Broers invited Staff to the podium to present the Staff Report at 8:28 p.m. for 24004-CUP: Banuelos Ranch-Open Arena.

Cook presented the Staff Report for Banuelos Ranch-Open Arena, an outdoor recreational activity and event venue featuring a Mexican Rodeo, along with other events such as private riding lessons. According to Miami County's Zoning Regulations, outdoor recreational activities may be considered through the Conditional Use Permit (CUP) process in both the Countryside (CS) District and the Agriculture (AG) District. As part of the review process, Staff evaluates various factors, including potential impacts on surrounding property owners and the availability of necessary infrastructure to support the proposed activities.

Cook stated that Staff received a complaint approximately 1 to 1.5 years ago regarding a rodeo and music event that took place on the applicant's property. Shortly after the complaint, the applicants visited the office to discuss their proposal and initiate the CUP application process.

The applicant is requesting a CUP to allow for seven (7) events per year, including rodeo-style activities and training. A similar facility, Alvarez Arena, is located on 223rd Street west of Spring Hill. Alvarez Arena was approved with conditions limiting the number of annual events, restricting hours of operation, and controlling event size. Cook noted that the primary difference between the two facilities is the road access—while Alvarez Arena is located on a paved road, the applicant's facility is on a gravel road with a significant distance to the nearest paved road. Road & Bridge conducted multiple measurements, determining that the road width varies between 19 and 20 feet, with an average width of 19 feet. Subdivision Regulations require a minimum road width of 24 feet. The Planning Commission must consider whether the existing road infrastructure meets the required standards or if improvements, such as dust control, are necessary to accommodate increased traffic.

Cook also noted that EMS and Fire services require assurance that emergency access to the property meets regulations, as this type of operation presents a higher likelihood of injuries. Adequate emergency vehicle access is essential for providing timely assistance.

During Staff's review of the property, it was discovered that the applicant installed a new entrance structure with a roof over the driveway. This structure, which includes electrical components, was built without obtaining the necessary permits. The entrance is potentially located within the right-of-way and does not meet the required setback.

Additionally, the applicant constructed an arena for personal use in close proximity to an adjoining property. Since the proposal includes music at events, the arena's location raises potential concerns regarding noise, as decibel limits are measured at the property line.

Cook then reviewed the Golden Criteria, focusing on the most relevant considerations for this case.

1. Character of the neighborhood including zoning and uses.

The neighborhood is mainly an agricultural area with some adjoining properties having houses. City of Fontana is ½ mile from the property. While the applicant's property is near a city it is on a gravel road which makes it a little more difficult.

3. The extent to which the removal of the present zoning will detrimentally affect nearby property.

Cook stated the proposed application is suitable to its present use for agricultural purposes and there is no issue with the continued agricultural operation. Cook noted during discussions with the applicant the applicant expressed an interest in training, such as horse riding on this property as part of the proposed operation. The operations discussed were more limited in nature and would generally fall under the requirements as part of a home occupation, and not something Staff considered as part of the operation. As long as the applicant meets the restrictions of no more than 5-pupils at one time, this is something that is permitted by right by the home occupation section and can happen even if this CUP is denied.

4. The extent to which removal of the present zoning will detrimentally affect nearby property.

Cook stated there is a possibility of impacts on nearby neighbors due to noise, traffic, and dust associated with the proposed operation. Additionally, some adjacent neighbors have previously complained about cattle escaping from the applicant's property and entering their land. Several neighbors are present at the meeting to express their concerns regarding the proposal.

5. The length of time the subject property has remained vacant.

Cook noted the property is not considered vacant and currently being used for agriculture and does have a residential dwelling on it.

6. The relative gain to the public health, safety, and welfare by the destruction of the value of the nearby property as compared to the hardship imposed upon the individual landowner.

Cook noted the primary hardship for the property owner is the financial investment already made in property improvements, along with their desire to establish an operational use for the site. The applicant has also expressed interest in hosting additional events, such as weddings and other gatherings, which would be impacted if the Conditional Use Permit (CUP) is denied.

Cook stated that, in terms of public health, safety, and welfare, the proposed operation would lead to increased traffic on event days and elevated noise levels in the area due to live bands and music.

7. Whether the proposed Conditional Use Permit (CUP) would be consistent with the intent and purpose of the Zoning Regulations.

Cook stated that the Zoning Regulations allow outdoor recreational activities through the Conditional Use Permit (CUP) process, requiring the Planning Commission to determine appropriate conditions to ensure compatibility with the surrounding neighborhood. As part of this process, Staff works to mitigate potential impacts and ensure the necessary infrastructure is in place to accommodate increased traffic.

8. The recommendations of the County's permanent or professional staff.

Cook read: After considering the proposal—including hours of operation, frequency of events, emergency vehicle access, the existing road infrastructure being substandard for the proposed traffic, and potential impacts on surrounding property owners—planning staff has concerns about implementing conditions to appropriately mitigate any detrimental effects the proposed CUP may have on the neighborhood.

Cook noted that staff's primary concern is related to the road providing access. It is substandard according to the typical 24-foot requirement. It is a gravel road that will experience increased traffic if the operation is approved.

Cook stated there have been multiple meetings with the applicant, and staff agreed that no improvements would be necessary until the CUP is approved. However, staff recommended that the applicant consult with the Road & Bridge Department. The primary concern is whether the right-of-way width is sufficient to allow the necessary improvements to be made and what the associated cost to the applicant would be. Staff understands the applicant contacted the Road & Bridge Director last week, but there has been no update on the discussion or potential costs.

Broers asked if there was any indication from Road & Bridge regarding the cost of improving the road, noting that the last time a similar situation arose, the estimated cost was approximately \$400,000.

Cook stated that there has been no indication from Road & Bridge but believes the cost would be substantial. He further explained that if the current right-of-way is insufficient for road improvements, additional approvals from neighboring property owners or land acquisition may be required to ensure that ditches are located within the public right-of-way.

Cook stated Staff's recommendation is for denial of the request primarily due to the current infrastructure and not fitting the character of the neighborhood. Although Staff is recommending for denial, Staff did note some Findings for approval if the Planning Commission believes the operation is appropriate for the area and recommends for approval as well as some Conditions. Cook noted if there is a motion for approval Staff suggests tabling the application giving the applicant an opportunity to address some of the Conditions listed.

Broer invited the applicant to the podium at 8:52 p.m.

Ofelia Banuelos, 24345 W. 383rd St, Paola, and Ana Duin, 27145 W 83rd St, Lenexa, the owners have made some changes:

- Proposed number of events per year was seven (7), the applicant is suggesting reducing the number of events per year to four (4) to five (5).
- The applicant is willing to comply with the required infrastructure of a 24-foot wide road.
- There will be ADA parking added to their available parking.
- The hours of operation will be 1:00 p.m. to 9:00 p.m.
- The applicant will mitigate the noise level.

Banuelos stated she did reach out to Road & Bridge last week and left a message for a returned call but has not heard back from Road & Bridge as of date. The applicant would like to visit with Road & Bridge to get a cost estimate to determine if they can afford the updates to the infrastructure.

Banuelos noted the events will be April to October and they are willing to comply to the necessary Conditions if the application is approved. Banuelos stated most events are family and neighbors related type events.

Duin stated another change is to eliminate the wedding events. Banuelos stated they don't want this to have an appearance of a venue.

Banuelos asked if the Planning Commission have any questions.

Manchester asked what the length of road on 383rd Street will need to be widened.

Brown stated less than one mile.

Flake asked how many people, and how many trucks with trailers.

Banuelos stated around 74, but plans to come back for approval in the future if they decide to expand the parking lot.

Public Hearing:

Broers opened the Public Hearing for 24004-CUP: Banuelos Ranch-Open Arena at 8:59 p.m.

Broers invited the public to the podium and reminded the speakers to announce their name and address for the record. All comments need to be directed to the Planning Commission, and 3-minutes are allowed.

- Rick Nuessen, 21587 Oakcrest Rd, Spring Hill, referred to the Site Plan and stated it shows the arena being constructed within 20-feet of the property line and he believes that is out of compliance with codes. R. Nuessen stated he puts on youth rodeo events in public arenas when there are 70 steers in the rodeo that means there will be roughly 300-contestants believes would equal to 70-80 trucks with trailers and stated the infrastructure isn't there. R. Nuessen stated they have been great neighbors, but this is a rural community and not meant for this.
- April Nuessen, 21587 Oakcrest Rd, Spring Hill, stated she is present on behalf of her grandparents (Curtis and Mary Ann Slyter). A. Nuessen stated she is a Junior Executor of the Trust as well as the Secretary of the Trust and their address is 24820 W. 383rd St, Paola. A. Nuessen stated the property owner's property borders the applicant's site on two (2) sides, and they run yearling heifers on all three (3) sides.
 - Other concerns A. Nuessen has are:
 - The structures that have been built on the applicant's property without building permits.
 - Where all the trucks and trailers will park and stated they can't park on the road.
 - Dust control
 - Increased traffic
 - Noise

April Nuessen stated she is not a fan of the application being presented and asked the Planning Commissioners to consider all aspects of the application.

- Penny Slyter, 20055 S. Hedge Lane, Paola, stated she is present on behalf of Dean Slyter who leaves East of the applicant's property. Slyter stated she has a document that states the applicant had to stop work due to violations for not filing the proper paperwork for the structures on their property. They built an arena for personal use too close to the property line creating an eye sore with a big concrete structure. Slyter stated on more than one (1) occasion at least one (1) of the applicant's bulls jumped the fence where the Slyters have cattle.
 - Other concerns Slyter has are:
 - Increase traffic
 - Parties
 - The applicant said they won't pursue weddings and other like events, then said they may pursue it in the future.

Slyter doesn't believe this type of operation is not a match for the area it is located in.

- John Young, 24430 W. 383rd St, Paola, stated he lives across the street from the applicant. Young stated the condition of the roads is not the applicant's fault and they should not be held accountable for the roads. Young stated the City of Fontana is more than half mile from the applicant's property. Young asked the Planning Commission not to hold the roads against the applicant.

Broers closed the public hearing at 9:08 p.m.

Broers asked if there were additional comments from the applicant. There were none.

Broers asked if there were additional comments from Staff.

Cook addressed the question about the distance of the applicant's property to the city limits of Fontana. Cook showed the Beacon Vicinity Map and stated the half mile distance is "as a crow flies" from the Southeast corner of the applicant's property. Cook stated when driving from the applicant's property to the city limits of Fontana it would be closer to one (1) mile.

Manchester asked if there has been any contact from the Mayor of Fontana.

Cook replied not to his knowledge.

Broers asked Staff about the arena constructed too close to the property line. Broers asked regardless of the outcome of the application will there be a remedy to the arena being too close to the property line.

Cook stated it is a unique situation as no permit is required for fencing unless the fencing is greater than 6-foot tall. If this arena is for personal use no fencing requirements are mandated. Cook noted there is no setback for fencing, fencing can be placed on a property line. If approved to run as an operation it will change things, and the applicant would be asked to make sure those things are set outside the setbacks. Cook noted if the fencing or walls are taller than 6-foot they are considered more of a structure and would require them to be outside the setback as well.

Cook used an old Conditional Use Permit (CUP) application (Cricket Fields) as an example. The individual purchased the property and built a cricket field to use for special events and practices since it was being used as a business operation it required a CUP. If the applicant would have built a house on the property and lived in the house, the cricket fields would have been considered personal use and would not have required a CUP if there was no money changing hands. The homeowner could have friends over for a game. It would be the same thing if a person were to build a basketball court on their property or a ball field. Since the property owner didn't live on the property that changed the intent of the cricket fields from personal to an outdoor recreational event facility.

Broers stated she wishes Road & Bridge would have been proactive and reached out to Planning & Zoning and the applicant with the infrastructure issues. Broers believes it is information the Planning Commission needs.

Gerken asked Staff if they have an educated guess on the cost for the road improvements.

Cook stated he has no idea but someone else mentioned at least a couple hundred thousand dollars.

Gerken believes that guess is on the low side.

Gerken asked Staff if there is a better solution the County can come up with for the applicant, maybe a different location.

Cook stated he would recommend a property on a paved road.

Gerken asked if the County has been involved in assisting the applicant in finding a different location.

Cook believes Janet McRae, Director of Economic Development, was initially involved but not sure to what extent.

Broers and Brown were curious if there is a way to scale this operation that would allow the applicant to hold the events.

Cook stated the County offers Special Event Permits for one-time events.

Broers asked if that was the only option.

Cook replied yes and noted it would go through the Board of County Commissioners for a decision.

Manchester referred to the structures already built stating they may not be safe for the public and asked if the structures will need torn down.

Cook stated there were discussions with the Codes Department on the structures. If a structure is less than 200-square foot in size a permit is not required for personal use, once it becomes business related a permit is required even for smaller structures.

Broers called for deliberation among the Planning Commissioners at 9:22 p.m.

Philgreen stated this feels like a long shot to him and there are a variety of things aside from the violations and the property. Philgreen stated there was a similar arena on the Missouri line around 235th & State Line, at the end of the events the vehicles would leave at the same time (a lot of vehicles), and a lot of them had too much to drink. There have been 3 or 4 times where an accident occurred on 223rd Street and a vehicle was abandoned. Philgreen believes there are more issues with this application than just road width and he won't be able to support this application.

Manchester asked if they should consider tabling this application until the applicant is able to meet with Road & Bridge to discuss the necessary upgrades and costs.

Philgreen stated if the application is denied the applicant can still meet with Road & Bridge as well as anything else needing attention then come back with the application.

Menefee asked Staff if there will be a one year wait period if the application is denied.

Cook stated if the Planning Commission's recommendation is to deny the application, and if the Board of County Commissioners follow the recommendation from the Planning Commission, which usually happens but not always, then the applicant will need to wait one (1) full year to reapply.

Flake stated there are a lot of obstacles for the applicant to overcome. Flake believes a smaller scale operation would be better than a large operation such as proposed. Flake stated he can't support this application.

Menefee asked how does the County define what is family/personal use versus a use that requires a Conditional Use Permit (CUP). Menefee stated there are several events similar to this application, they are bigger than the proposed application, yet these operations have never applied for a CUP.

Cook stated the County is complaint based, when a complaint is made with the County then it is addressed. There have been issues where a business has been in operation in Miami County for 10-15 years and it wasn't in compliance. If Planning & Zoning doesn't deal with it, it creates a bigger issue. Cook stated sometimes a person comes to the County for a building permit and it is discovered that the person is running a business off the property.

Philgreen moved to deny 24004-CUP for an arena, Flake seconded.

- Philgreen believes there are a lot of public venues that allows arenas and suggested the applicant not give up on their hopes and dreams but find a more suitable place to hold their operation.
- Gerken stated they would like to encourage the applicant to find the more suitable place in Miami County, keeping the business in Miami County.
- Broers stated she is having struggles with this application. Broers stated there are issues with this application and noted this is the type of venture the Planning Commission should be trying to find a way to say “yes” to. Broers believes the County shouldn’t be asking people to spend \$400,000 or more on improving a road. Broers stated because of the road improvement potential costs is why she will be a “no” vote.
- Menefee wants it on record that he will be abstaining from the vote, he wants to be able to see the numbers for the road and be able to consider that part of it.
- Brown abstained for the reason provided by Menefee.
- Gerken abstained for the reason provided by Menefee.

Broers repeated the motion to deny 24004-CUP: Banuelos Ranch-Open Arena. The motion passed 4-0 with Menefee, Brown, and Gerken abstaining from the vote, via show of hands.

Cook noted Staff will be presenting this application with the Planning Commissioners’ recommendation for approval to the Board of County Commission on February 26, 2025. Cook stated the neighbors within 1,000-feet of the applicant are allowed to file a protest petition per State Statute. If a protest petition is filed it must be done within 14 days of the Planning Commission meeting and must be turned into the County Clerk’s office.

Broers called for a 5 minute break returning to the meeting at 9:41 p.m.

Broers called the meeting back in session at 9:41 p.m.

Public Hearing 24005-CUP: Goodart Construction

Broers invited Staff to the podium to present the Staff Report at 9:41 p.m. for 24005-CUP: Goodart Construction.

Jennifer Koehn, Assistant Director of Planning, presented the Staff Report, and gave highlights of the *Golden Criteria* pertaining to the application stating they have been in operation since 1996 without a Conditional Use Permit (CUP). The applicant’s business takes place on 15-acre parcel adjacent to his home.

Koehn reviewed the *Golden Criteria*, focusing on the most relevant points, specifically:

1. Character of the neighborhood including zoning and uses.

Koehn stated the surrounding areas are all Countryside (CS) and include residential houses and Hillsdale State Park. The proposed operation is allowed under a CUP in this area per the Zoning Regulations. This operation has already been effectively integrated into the surrounding environment and with the approval of a CUP it would then comply with the current Zoning Regulations. It does not impose any negative impacts on the surrounding properties.

5. The relative gain to the public health, safety, and welfare by the destruction of the value of the nearby property as compared to the hardship imposed upon the individual landowner.

Koehn stated the proposed operation has been active for a while without any complaints against it. If the

Conditional Use Permit (CUP) is denied it would potentially create a financial hardship on the applicant.

6. Whether the proposed conditional use permit would be consistent with the intent and purpose of the Zoning Regulations.

Koehn stated the contractor's shop and storage is adequately screened on two (2) sides; the side not screened is the property line adjoining Mr. Goodart's home. Koehn stated a person driving North on Waverly Road can see the business for a brief second and other than that the business cannot be seen from the road.

Menefee asked if the house South of the business is the applicant's house.

Koehn replied yes. Koehn noted there are two (2) houses on the property with the business, one is being used as an office for the business and the other is vacant.

Koehn continued talking about the screening stating Staff doesn't believe screening is necessary on the property line between his home and the business at this time because he owns both properties. Screening is normally used to protect the neighbors. Staff would suggest screening be required if the properties come under separate ownership.

Koehn stated all open storage areas shall be a minimum of 100-feet from all property lines. The applicant's storage area is 98-feet from the property line, which is close, and with him being the adjoining neighbor Staff is not concern with it.

8. Such additional matters as may apply in individual circumstances.

Koehn stated the structures shown on the site plan are not label. The applicant stated barn 8 and house 9 are being used for the business. Barn 8 is where vehicles are being stored and house 9 is the business office. The applicant is going to have the structures labeled and will also include future structures on an amended Site Plan.

9. The recommendations of the County's permanent or professional staff.

Koehn read Staff's recommendation: The County's professional staff has reviewed the application for a Conditional Use Permit (CUP). Based on the analysis of the provided site plan, zoning regulations, and Miami County's Comprehensive Plan, staff finds that the proposed use is generally compatible with the property's Rural Residential designation. The operation has minimal impact on the surrounding area, with existing natural buffers and a paved road providing adequate infrastructure for the business. Staff recommends approval of the CUP.

Koehn covered the Findings for Approval.

1. *The proposed conditional use permit, as conditioned, adheres to Miami County Zoning Regulations as the proposed site plan shows compliance with the required setbacks and screening and can be considered as compatible with uses allowed in the district based upon the low intensity described in the narrative.*
2. *The proposed conditional use permit, as conditioned, adheres to the Miami County Comprehensive Plan as it can be considered a secondary use with adequate road infrastructure provided and will not conflict with the primary uses based upon the description of the use described in the narrative.*

Koehn presented the high points of the Conditions starting with #3:

3. This CUP is approved exclusively for the applicant (Goodart Construction Inc.). Change of ownership or subleasing of the property/facilities shall require review by the Planning Commission to ensure the use substantially complies with the original Conditional Use Permit.

Broers invited the applicant to the podium at 9:56 p.m.

Brad Goodart, 26779 Waverly Rd, Paola, noted he has been doing business here for 29 years and didn't realize he was out of compliance with Miami County Regulations. Goodart stated there are 3-drivers and 1 additional employee that come to the property with all other employees meeting on the job sites. Goodart stated he only builds Quick Trips and has done so for 37-years.

Goodart stated a lot of the structures have been there prior to his purchasing the properties one of which is a cabin that was built in the 1930s. The cabin is the building currently being utilized as the office for Goodart Construction. He learned he was not compliant with the County Regulations when he applied for a building permit to update the "office" and is now applying for a Conditional Use Permit (CUP) to become compliant with Miami County.

Goodart asked if the Planning Commission has any questions of him.

Manchester stated it appears the "outhouse" is the biggest problem because it isn't hooked up to a wastewater system.

Goodart stated at one time there were over 30-head of cattle being milked in the barn by the previous owner and that was the outhouse used. It's not currently in use, only there for show.

Public Hearing:

Broers opened the Public Hearing for 24005-CUP: Goodart Construction at 10:01 p.m.

With no public comments Broers closed Public Hearing 24005-CUP at 10:02 p.m.

Broers called for deliberation amongst the Planning Commissioners at 10:02 p.m.

Philgreen asked if staff was willing to remove the requirement the applicant must live in the house?

Koehn responded that as long as the two properties remain owned by the same individual.

Philgreen asked if the applicant retires or passes the business to his kids does the Conditional Use Permit stay with the business.

Cook stated most times the CUP will stay with the property, there have been times when a CUP is specifically for the person/applicant. There is usually a Condition on the CUP that if the property owner changes then the new property owner must come into the Planning & Zoning Office to verify they understand the Conditions. The applicant lives on the property directly adjacent to the subject property and Staff believes if the owner of both properties is living on one (1) of the properties then the issue related to the screening requirement of outside storage areas from adjoining property is not an issue. Cook also noted that when the County has approved previous CUPs, it has typically been for a business (contractor shop, kennel) where the owner resides on the property on which the business is located. Staff specified this case is a little different in that the owner resides on the property adjacent to the business location.

Broers asked if the same person doesn't own both properties will screening be required?

Cook agreed and noted if the properties were under separate ownership, the Contractor's Shop/Yard requirements found in Article 14 of the Zoning Regulations would typically require screening of storage areas with a minimum setback of 100-feet to the property line. As part of the change in ownership of either of the properties, the owner of the business would need to address the screening requirement.

Brown asked if there was a specific part that needed to be screened.

Cook noted the requirements for Contractor's shops requires outside storage areas to be screened from adjoining properties and ROW and be 100-feet from property line. Staff would suggest screening would be needed to the South of the gravel area east of the barn.

Broers asked for clarification on what would need to occur with the outhouse.

Gerken asked if this was just a Code Department issue and not a Planning Commission issue.

Koehn agreed this is a Code issue and would need to be addressed as part of an inspection of the property and would need to be verified it is not actually being used/usable.

Broers stated that condition #9 is a conditional condition.

Menefee noted that they do not need to do anything right now and if it becomes an issue, the applicant will need to comply with that condition.

Menefee moved to approve 24005-CUP for a contractor shop with the CUP going with the business and not under Mr. Goodart's name, Gerken seconded.

Broers asked for any deliberation on the motion.

Philgreen commented that he appreciates when a property owner has been operating a good business, trying to be a good neighbor, and trying to bring their property up into compliance.

Broers called for a vote to the motion made by Menefee and seconded by Gerken, the motion passed 7-0, via show of hands.

Broers noted this is a recommendation for approval that will be considered by the Board of County Commission on February 26, 2025.

GENERAL DISCUSSION:

Cook stated there are no applications to present at the March Planning Commission meeting.

ANNOUNCEMENTS BY STAFF / COMMISSIONERS

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.

Philgreen moved to adjourn the meeting; Flake seconded. The meeting adjourned at 10:17 p.m. with a unanimous vote (7-0), via show of hands.

Approved this 1st day of April, 2025.



Casey d'Augereau, Secretary



Kelli Broers, Chair / Topher Philgreen, Vice-Chair

Minutes written by Casey d'Augereau

