

***MINUTES OF THE
MIAMI COUNTY PLANNING COMMISSION
AUGUST 3, 2021***

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

ATTENDANCE

CHAIR: Mark Oehlert

VICE-CHAIR: Absent

PLANNING COMMISSION Kelli Broers, Joshua Brown, Kevin Collins,
Bret Manchester, and Mark Ross

ABSENT MEMBERS: Phil Elliott, Randy Kitchen, and John Menefee

EX-OFFICIO MEMBERS: None present

PLANNING DIRECTOR: Teresa Reeves

COUNTY COUNSELOR: Shelley Woodard

PLANNER:

PC SECRETARY: Angie Baumann

ECONOMIC DEVELOPMENT Not Present

COUNTY COMMISSION: None Present

COUNTY CLERK: Not Present

PRESS: Not Present

MINUTES

AUGUST 3, 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 six (6) members were present, constituting a quorum. Elliott, Kitchen, and Menefee were absent.

DISCLOSURE OF ANY EX PARTE COMMUNICATIONS OR POTENTIAL CONFLICTS OF INTEREST

None disclosed.

ADOPTION OF THE AGENDA

Ross moved to adopt the Agenda, as presented. Collins seconded, and the motion passed unanimously, 6-0, via roll call vote.

CONSENT AGENDA

- **July 6, 2021 Planning Commission Minutes**

Broers noted that the second sentence on Page 12 of 18 of the July 6, 2021 Minutes should be revised by deleting "is" and replacing it with "could be", so that it reads as follows:

"She believes that the language in recommended Condition No. 1 *could be* appropriate as written."

Broers then moved to adopt the Consent Agenda, as amended. Manchester seconded, and the motion passed unanimously, 6-0, via roll call vote.

REGULAR AGENDA

Public Hearing 21001-VAC: Petition to Vacate Final Plat

Reeves presented the staff report for consideration of a petition to vacate the entire Final Plat of Ken's Retreat, a Subdivision in the SW ¼ of Section 17, Township 16, Range 25. The Subdivision consists of two lots totaling approximately 6.88 acres with approximately 17.85 acres identified as Tract A in a non-buildable open space conservation easement. Total area of the plat to be vacated is approximately 24.99 acres including conservation open space, access easements and restrictions and only the utility easements that were dedicated with this plat. All

previous easements of record and right-of-way will remain valid. The property is located on the east side of Metcalf Rd, approximately 0.15 mi south of 259th St, in Wea Twp. Submitted by Kenneth and Debra Rau, property owners of Lots 1 and 2, and Tract A, Ken's Retreat.

Oehlert asked if the subject property would be eligible for subdivision in the future.

Reeves answered that it could potentially be subdivided in the future. She explained that by vacating the entire Final Plat, the subdivided property is reverted to acreage.

Oehlert asked Reeves if the Applicant is present this evening.

Reeves responded that the Applicant is not.

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

Broers noted that the staff report includes discussion about a demolition permit:

“The second residence that was previously on the property has been removed, but without obtaining a Demolition Permit, including inspections to ensure compliance. The Applicant will need to contact the Building Codes Department to obtain a Demolition Permit.” *(Page 3 of 3 of the staff report)*

Broers asked if this should be included as a Condition for approval of the Petition.

Reeves explained that the County had no record of a demolition permit, but that yesterday the property owner provided a copy of the demolition permit from 2006. She reported that the demolition site was inspected today, and this requirement is now complete.

Oehlert asked if the completion of this requirement should be added as a Finding.

Reeves answered that the Planning Commission is welcome to include a Finding that all the Conditions of the Final Plat have been met and that the second residence has been removed.

Ross moved to approve the Petition to vacate the entire Final Plat of Ken's Retreat, based on staff's Findings. Collins seconded, and the motion passed unanimously, 6-0, via roll call vote.

Reeves announced that this item will go before the Board of County Commissioners on August 18, 2021.

Findings

1. The public will suffer no loss or inconvenience by such Vacation / Reversion, and no private rights will be injured or endangered.
 2. The second residence on the property was demolished in 2006.
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Living Proof Church – 2021 Expansion (continued from July 6, 2021)

Reeves presented the staff report for continued consideration of an application to amend the existing conditional use permit for a church facility, per Sections 5-2.02.24 and 14-2.01.16 of the Miami County, Kansas Zoning Regulations, to include a new 120' x 60' youth activities building as Phase I of the proposed expansion; a possible future 20' x 120' addition of Sunday School rooms to the existing south building as Phase II of the proposed expansion; and allowed use of the existing baseball fields by community groups for ball practice and tournaments. The subject property of approximately 15.75 acres is located in the Southwest Quarter of Section 28, Township 17 South, Range 23 East, and is addressed as 32401 Harmony Road, Paola.

Reeves reported that the Applicant had sent an email late Saturday night, which staff received Monday morning. She noted that the email attachments included an amended Narrative and a revised Site Plan, both of which she has provided to the Planning Commissioners this evening. She pointed out that she has highlighted the Applicant's changes to the Narrative; and the additional parking on the revised Site Plan is shown in red. Reeves stated that she has not had the opportunity to review the Site Plan to ensure that it meets the site plan requirements as noted in the staff report. She also noted that the Applicant will still need to provide an updated Stormwater Plan that incorporates the additional parking spaces. Reeves recalled that the Planning Commission had also requested that the Applicant provide a parking and traffic plan, and that the Applicant has addressed part of their plan for parking in the revised Site Plan.

Manchester asked about legal counsel's review and recommendations in this matter.

Reeves announced that Shelley Woodard, the new County Counselor, is present this evening and available for questions. Reeves explained that one of the main issues is ensuring compliance with the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), which is extensive. Reeves stated that RLUIPA protects First Amendment rights; therefore, the County is subject to strict scrutiny regarding regulating land use of religious institutions. Reeves believes the County will be compliant with RLUIPA as long as it treats the Applicant in the same manner as any other Applicant and is not discriminating against the Applicant based on the fact that it is a church or a particular denomination, etc. She announced that she is providing to the Planning Commissioners, for training purposes, information regarding RLUIPA.

Ross commented that during the last meeting he had been concerned about the Applicant's initial estimated number of events (4-5 outdoor events) because it would seem to limit the Applicant to a certain number of events, and could be problematic if the neighbors determine that the Applicant has exceeded that limit. However, after reading the information in the staff report regarding RLUIPA, it is his impression that there is no limit to the number of events that can be held.

Oehlert commented that Page 3 of 4 of the staff report nicely summarizes what the Planning Commission should consider:

“ . . . legal counsel has advised that the Planning Commission focus on the *Golden Criteria*, on parking and traffic issues, on the number of events per month/year, and on restricting public use of the facilities. . . ”

Oehlert commented that the Planning Commission should limit its discussions and its decisions to the *Golden Criteria* and non-religious factors.

Ross agreed.

Reeves advised that the Planning Commission should not consider whether the use is a religious use, and should instead consider this solely from a zoning perspective.

Broers recalled from the last hearing that many of the Planning Commissioners had expressed that recommended Condition No. 1 was too vague, and some had wanted to specify certain kinds of activities. She then referenced Condition No. 1 on Page 11, and commented that this Condition reads differently than she remembered. She asked whether staff had redrafted this Condition with legal counsel. *(Note: The August 3rd staff report did not include recommended Conditions. The July 6th staff report listed recommended Conditions on Pages 11 and 12, and was provided as an attachment to the August staff report.)*

Reeves explained that she had begun a redraft of the Conditions; however, as staff did not receive updated information from the Applicant, she did not include redrafted Conditions in the current staff report, and instead just recommended continuing the meeting.

Reeves noted that the information she will be providing to the Planning Commissioners will provide a foundation for understanding what RLUIPA is and is a good background regarding discussions that were being had when RLUIPA came about.

Oehlert asked Reeves where she obtained the information regarding RLUIPA that she will be providing to the Planning Commissioners.

Reeves answered that the information comes from the American Planning Association and is written for Planning Commissioners.

Reeves noted that she did not have the opportunity to review the church's updated documents, but it appears the fire lane is addressed on the Site Plan, as well as additional parking, although the Site Plan does not show the number of additional parking spaces being proposed. She further noted that the church will need to have its engineer verify whether stormwater modifications will be needed because of the additional parking. Reeves reported that part of the additional parking is either in or is very close to the drainage swale at the north end of the property. She recalls that the engineer had previously discussed possibly needing to amend the swale and the Stormwater Plan.

There being no further questions for staff, Oehlert invited the Applicant to speak.

Bo Gerken (22360 W. 303rd St., Paola) of Living Proof Church approached the podium. He apologized to Reeves, and noted that he, too, received these documents late. He explained that his architect has been in rehab with his wife, who suffered a stroke three days after the last Planning Commission meeting. Mr. Gerken reported that within 10 minutes of receiving the updated documents, he forwarded them to Reeves.

Mr. Gerken acknowledged that the church has parking issues when it's at full capacity. He reported that they have determined there have been no parking issues—parking along Harmony Road—on Sundays or during normal church activities this year. He further reported that prior to the COVID-19 pandemic, there were parking issues on Easter Sunday and on Christmas Eve. However, a parking team has since been created. He explained that because the parking areas are gravel and the parking spaces aren't marked, people had not previously been parking their vehicles as closely as they could.

Mr. Gerken noted that the dance recital was the one instance when there was a parking issue. He commented that the church views the dance recital as a ministry tool, and has had several families come to the church because of that event. He explained that the church holds an Easter egg hunt, which is not truly Christian, to draw people in, and the same is true for baseball. Mr. Gerken added that these activities are a way for the church to become involved in people's lives and build relationships with them so that they will feel comfortable coming to church.

He explained that there was no parking team on the day of the dance recital because he didn't realize how many people they were expecting for the event. He reported that the church discussed with the organizer(s) of the dance recital that the next time they do this there will be a parking team; there will be no parking along Harmony Road; and there will be a limit on the number of people going in and out. He added that he has since learned that many grandparents unexpectedly attended the dance recital and stayed around to talk while vehicles were arriving for the next portion of the dance recital. Mr. Gerken expressed that this was the church's first time holding such an event, and the next time they will do better.

Mr. Gerken then asked the Planning Commissioners to consider the parking issues experienced during the various school graduations. He added that although graduations are a one-time event, the schools don't change their entire parking plan. He also added that it's the same problem with any baseball event anywhere in this County. He asserted that there are one-time events with parking issues being held throughout the County, but he doesn't see the County coming down hard on those.

He expressed that he wants to fix the parking issue and he wants to have a plan for handling parking when the church reaches maximum capacity. He added that the church body will have to address this. For right now, the best he can do is add parking. He reported that yesterday he emailed the engineer who conducted the stormwater study. The engineer told him the additional parking will not be problem and they will just widen the swale in one area to catch stormwater from that parking area.

Oehlert noted to Mr. Gerken that the next Planning Commission meeting is scheduled for September 7th. He asked if this will be enough time to produce the remainder of the documentation that has been requested.

Mr. Gerken responded that this should be sufficient because the Stormwater Plan will not be changing significantly.

Ross asked if the Planning Commission must have all the requested documentation prior to approving the request. He added that the documentation would have to be submitted before a building permit could be issued.

Reeves advised that the Planning Commissioners should review all the documentation so that they can make an informed decision because they will be making a recommendation to the Board of County Commissioners. She noted that in the past the County has tried to move things along to avoid holding up the church, but doing so has proven to be problematic for everyone, including the church. She commented that she would like the Planning Commissioners to have a clean package to deliver to the Board of County Commissioners.

Ross asked if staff is recommending that the Planning Commission continue this until such time that staff has received and reviewed all the necessary documentation.

Reeves advised that the Planning Commission is legally obligated to specify a date for the meeting.

Oehlert asked Reeves by what date staff would need this documentation if this is continued to the September 7th meeting.

Reeves answered that staff would need the documentation by no later than two weeks prior to the meeting because staff will need to send the information to the County's contracted stormwater engineer for review and comment.

Oehlert announced that the deadline would be August 23rd, and asked Mr. Gerken if this is a reasonable timeframe.

Mr. Gerken agreed.

Manchester moved to continue the meeting for Application No. 17005-CUP: Living Proof Church – 2021 Expansion to September 7, 2021. Collins seconded, and the motion passed unanimously, 6-0, via roll call vote.

Broers asked for confirmation that the public hearing portion is closed.

Oehlert confirmed that the public hearing portion was closed at the last meeting, and explained that this meeting is being continued so that staff may present updated information and recommended Findings and Conditions.

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 a Planner has been hired and will begin work on August 16th.

Shelley Woodard, the new County Counselor, then introduced herself to the Planning Commissioners.

Reeves announced that the Board of County Commissioners will begin receiving testimony tomorrow regarding the petition for the City of Golden.

Woodard noted that the Board's study sessions will be streamed live. She announced that outside legal counsel will be giving a summary tomorrow of all public commentary received during the public hearing. The following week, the Board will hear Sheriff Kelly's and Woodard's presentations. She noted that the tentative schedule is posted to the County's website.

Reeves briefly announced the items for the September Planning Commission agenda. She also announced that staff has received two variance requests that will go before the Board of Zoning Appeals.

There being no further announcements, Oehlert asked for a motion to adjourn. Ross moved to adjourn the meeting, Manchester seconded, and the meeting was adjourned by unanimous vote, 6-0, at 7:37 p.m.

Approved this 7th day of September, 2021.



Angie Baumann, PC Secretary

Casey d'Angereau

Minutes taken by Angie Baumann



Chair, Mark Oehlert / Vice-Chair, John Menefee