

***MINUTES OF THE
MIAMI COUNTY PLANNING COMMISSION
OCTOBER 5, 2021***

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

ATTENDANCE

CHAIR:	Absent
VICE-CHAIR:	John Menefee
PLANNING COMMISSION	Kevin Collins, Phil Elliott, Bret Manchester, and Mark Ross
ABSENT MEMBERS:	Kelli Broers, Joshua Brown, Randy Kitchen, and Mark Oehlert
EX-OFFICIO MEMBERS:	None present
PLANNING DIRECTOR:	Teresa Reeves
COUNTY COUNSELOR:	Not Present
PLANNER:	Katie Jardieu
PC SECRETARY:	Angie Baumann
ECONOMIC DEVELOPMENT	Not Present
COUNTY COMMISSION:	None Present
COUNTY CLERK:	Not Present
PRESS:	Not Present

MINUTES

OCTOBER 5, 2021

MIAMI COUNTY PLANNING COMMISSION

CALL TO ORDER

Vice-Chair John Menefee called the meeting to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE

ROLL CALL

Roll Call was taken and five (5) members were present, constituting a quorum. Broers, Brown, Kitchen, and Oehlert 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. Manchester seconded, and the motion passed unanimously, 5-0.

CONSENT AGENDA

- **September 7, 2021** Planning Commission Minutes
- **Final Plat** | 21002-SUB: Club Estates No. 4
- **Final Plat** | 21006-SUB: Mottesheard

REGULAR AGENDA

Old Business:

None.

New Business:

21005-SUB: Final Plat of Phillips

Katie Jardieu presented the staff report for consideration of the Final Plat of Phillips, dividing approximately 74.96 acres into three lots containing 5 acres, 10 acres, and 57.54 acres utilizing the Agricultural Preservation standards per Section 6-5.02.1.B of the Miami County, Kansas Zoning Regulations. The subject property is located at the northeast corner of 287th Street and Bethel Church Road, in the SW ¼ of Section 33, Township 16, Range 22, Richland Twp.

Submitted by John Phillips, Successor Co-Trustee of the Frances J. Phillips Revocable Living Trust dated March 14, 1996, property owner of record.

Jardieu reported the Applicant has requested a Rule Exception from the common access easement required between proposed Lots 2 and 3, off 287th Street. She further reported the Applicant has reasoned that the common access requirement means the existing driveway for the house (on proposed Lot 2) would be eliminated and a new, entrance installed farther east. Therefore, a significant portion of the new shared entrance would need to run west, parallel with 287th Street, to provide access to the house (on proposed Lot 2).

Staff recommends approval of the proposed Final Plat of Phillips based upon the Findings and subject to the Conditions in the staff report.

Elliott commented requests for Rule Exceptions from the common access easement requirement seem to come up at every meeting, and he would like to discuss this requirement. He asked staff to clarify Road & Bridge Director J.R. McMahon's comments to the proposal (Page 54 of 69 of the meeting packet):

- "Lot- 1
- The access point on this lot is on Bethel Church Road North of 287th Street. Turkey Creek runs along the East side of Crescent Hill Road causing the applicant to install a large drainage structure in order to access said lot.
- The Department has concluded that the entrance can be sized correctly and has adequate sight distance. The entrance will be installed after the plat is finalized.
- Lot 2 has an existing home with outbuildings. Per subdivision regulations the entrance on this lot will have to be removed and relocated as a common entrance with Lot 3 with said common entrance having adequate sight distance.
- Lot 3 will require a common entrance with Lot 2.

The Department also looked at the possibility of the applicant having a hardship issue on the common entrance issue between Lots 1 & 2. If such hardship is granted by the Planning Commission the Department has no objection to keeping the current entrance on Lot 2 and allowing a separate entrance on Lot 3 as the frontage on said lot meets sight requirements."

Jardieu responded it is her understanding McMahon had initially stated it (the existing entrance on Lot 2) would need to be removed; but later determined the Department would have no objection to having a separate entrance (for proposed Lot 3).

Elliott asked how 287th Street is categorized.

Jardieu answered it is a Collector road.

Elliott commented several previous requests for Rule Exceptions have involved properties with significant natural barriers—such as streams—and other challenges that created a situation where common access would not fit. His main struggle with this particular request is 287th Street is categorized as a Collector road. He explained one reason behind requiring common access easements is safety, and this requirement prevents having too many entrances onto a road. He added Collector roads have heavier traffic than Local roads.

Jardieu pointed out the existing driveway (on Lot 2) leads to some of the outbuildings on that property; and the Applicant would like to continue using the existing driveway.

Elliott asked if the Applicant could explain to the Planning Commission the hardship.

Vice-Chair Menefee invited the Applicant to speak.

John Phillips (Spring Hill) approached the podium and introduced himself as a Trustee. He explained requiring the common access would be a hardship because the driveway to the house on the proposed 10-acre Lot (Lot 2) would be very long and would run parallel with 287th Street. In addition, four or five very large trees in front of the house would have to be removed for the driveway to remain outside of the right-of-way. Mr. Phillips also noted the driveway would cross the water line for the house.

Ross asked staff to point out on the proposed Final Plat the location of the existing driveway for proposed Lot 2. He then commented the common access would be located farther east of the current driveway, which would require the new driveway to run from the common access back to what was its original starting point.

Mr. Phillips explained the house is located only 50' to 60' from 287th Street.

Menefee asked Jardieu if there is a ditch with a culvert where the existing driveway is located.

Reeves answered that she assumes there is a culvert.

Mr. Phillips confirmed.

Elliott asked if the County would require the Applicant to identify the location of the future driveway for the other proposed Lot if we don't adhere to the common access requirement.

Jardieu answered that McMahon's comments do not address this.

Elliott explained he is asking this question because McMahon has recommended that a common access easement be placed at the common lot line between Lots 2 and 3.

Reeves responded McMahon did not specify where a separate entrance for proposed Lot 3 should be located; but he was fine with the location of the common lot line, as it meets sight requirements.

Ross pointed out recommended Condition No. 4 requires access for Lot 1 to be from another road—Bethel Church Road.

Menefee commented he understands Elliott's point of view; however, he also understands why this Applicant is claiming a hardship because there is an existing driveway and shade trees, the latter of which adds a lot of value to a property, and creates a more unique situation.

Reeves reported when the County had an engineer, applicants were required to relocate existing driveways to the common lot line, or move the lot lines to comply with the regulations. However, the existing driveway is centered in front of the house and there is no way to move the common lot line over to make it work, as the house would not meet setback requirements.

Elliott expressed he is uncomfortable with the fact that this Rule Exception involves a Collector road.

Manchester commented the hardship argument for Rule Exceptions is getting out of hand. He acknowledged that although trees are valuable, there are several companies that can remove them. He argued that having a water line installed underneath a road is not a big deal. Manchester further commented it was a big mistake to create all of the "piano key" lots on 363rd Street—one mile from Plum Creek Road—because the gravel from the 10 to 12 entrances washes two to three feet out onto 363rd Street, a blacktop road. As a result, 363rd Street becomes a one-lane road; and, a motorcycle crashed there. He added not all people who move to the country have the equipment to maintain their gravel driveways. So, the County must grade their gravel back off the road. He concluded removing trees is not a hardship; rather, it's a matter of paying someone to do it.

Elliott agreed safety is one reason for the common access requirement. He reasoned that had the Planning Commission determined the location of the Lot lines and forced this on the Applicant, the Applicant would have a better argument for hardship. He expressed he doesn't like Rule Exceptions, and is not certain how to move forward in general. He added every Rule Exception the Planning Commission grants is one more nail in the coffin to prevent the Planning Commission from denying one in the future.

Reeves responded each Rule Exception request should be considered individually. She warned, however, the Planning Commission risks setting a precedent if it does not make good Findings when granting a Rule Exception.

Elliott expressed part of his concern is the staff report does not include a recommended Finding for granting the Rule Exception.

Mr. Phillips asked to address the Planning Commission. He then noted the large trees in front of the house are at least 50 years old, and cannot be removed easily.

Elliott asked how the Planning Commission should provide its reasons for granting the Rule Exception, so they are clearly stated.

Jardieu advised the Planning Commission would need to provide an alternate Finding and add a Condition, which specifies the common access easement is to be removed from the Final Plat.

Elliott asked whether the common access easement is currently shown on the Final Plat.

Jardieu confirmed it is shown, and explained staff's recommended Findings and Conditions reflect keeping the common access requirement.

Menefee asked if the common access easement is located directly on the shared property line (between proposed Lots 2 and 3).

Jardieu responded the common access easement extends 25' on either side of the property line.

Reeves recommended—if the Planning Commission denies the Rule Exception—the Final Plat be amended to relocate the utility easements to go around the common access easement and to require the subdivider to pay for the installation of that common access before the Final Plat may be recorded. She explained doing so prevents power poles and utility appurtenances from being installed in the middle of the access easement, which creates problems at the time the entrance is being installed.

Elliott asked staff to confirm his understanding that Option "A" (denying the Rule Exception) entails adding a Condition, which requires the utility easements to be located around the common access easement; and Option "B" entails granting the Rule Exception and removing the common access easement.

Reeves added that denying the Rule Exception means the subdivider must pay for installation of the common access.

Elliott asked if the Planning Commission would need to include as a Finding for granting the Rule Exception that the location of the existing driveway serving existing structures, the distance between the existing house and the common access easement, and the mature landscaping are factors that create a hardship.

Reeves suggested the Finding also include the proximity of the existing house to the right-of-way as well as the age/size of the trees as factors.

Elliott then asked staff about their conversations with those applicants who are asking staff to come up with something that doesn't meet the Regulations.

Reeves remarked these conversations are very difficult. She explained staff reviews each request for a Rule Exception to determine whether a hardship exists. She noted most of the time staff tries to firmly adhere to the regulations. However, the regulations provide applicants the opportunity to request a Rule Exception for consideration by the Planning Commission to determine whether there truly is a hardship.

Reeves then displayed Section 7-1.01 of the Subdivision Regulations:

"A Rule Exception shall not be granted unless all of the following apply:

1. Strict application of these Regulations will create an undue hardship upon the subdivider;

2. The proposed rule exception is in harmony with the intended purpose of these Regulations; and,
3. The public health, safety and welfare will be protected.”

Elliott commented according to Nos. 2 and 3 of the requirements for granting a Rule Exception, this particular request is not in harmony with the intended purpose of the regulations and does not, in any way, protect public safety. He noted the welfare of the landowner would potentially be protected; however, the Planning Commission’s job is to protect all landowners and residents of the County.

Manchester moved to deny the request for a Rule Exception. The motion died due to lack of a second.

Elliott then moved to accept staff’s recommendations, with the addition of two Conditions requiring utility easements to be relocated to go around the common access easement, as Condition No. 5; and requiring the subdivider to pay for the installation of the common access before the Final Plat is recorded, as Condition No. 6.

Menefee restated Elliott’s motion.

Ross seconded the motion.

Reeves asked if the Planning Commissioners need to take a separate action to approve or deny the request for a Rule Exception.

Menefee responded it his understanding staff’s recommendation is based upon keeping the common access easement.

Reeves noted staff’s recommendation simply states, “Approval of the proposed Final Plat . . .”.

Elliott pointed out the Final Plat, as currently proposed, includes the common access easement; and the Rule Exception was not part of staff’s recommendation. Therefore, the recommended Findings and the recommended Conditions, with two Conditions added, will be fine.

The motion passed with four (4) in favor and one (1) opposed (Menefee).

Reeves announced the Final Plat will go before the Board of County Commissioners on October 20th.

Findings

1. The subdivision complies with the Goals and Objectives of the Comprehensive Plan for Agricultural Districts.
2. The subdivision complies with the Zoning Regulations for the Agricultural District regarding lot area, lot dimensions, and the Agricultural Preservation standards.
3. The subdivision complies with the Subdivision Regulations.

Conditions

1. Prior to recordation of the Final Plat, the pending Boundary Line Adjustment shall be recorded.
 2. The Owner's Certificate on the Final Plat shall reflect both Trusts as the property owners, as well as the name(s) of the Trustee(s) who will be signing.
 3. The signature block for the County Treasurer shall be included on the Final Plat.
 4. Access for Lot 1 shall be from Bethel Church Road.
 5. *Utility easements shall be relocated to go around the common access easement.*
 6. *The subdivider shall pay for the installation of the common access before the Final Plat is recorded.*
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Public Hearing 21002-CUP: Lexington Hall Stables

Reeves presented the staff report for consideration of a request for a conditional use permit for an Equine Boarding Facility, per Section 6-2.02-15 of the Miami County, Kansas Zoning Regulations. The subject property of approximately 100 acres, which is addressed as 32461 Block Road, is located on the east side of Block Road, approximately ½ mile south of 319th Street, in the Southwest Quarter of Section 30, Township 17S, Range 24E, Valley Township. The request is submitted by Shane and Hannah Rockers, the property owners of record.

Reeves clarified Condition No. 5 incorrectly references a maximum of "12" horses; but should have referenced a maximum of 22 horses allowed to be boarded on the property for commercial purposes. She also explained although this is a small operation, the number of horses proposed to be boarded commercially exceeds what is allowed by right; therefore, a conditional use permit is required.

She then addressed each of the *Golden Criteria* to be considered by the Planning Commission when making Findings to approve or deny the request. With regard to Criterion No. 10, she noted a Stormwater Management Plan is required for all conditional use permits. However, staff would ask the Planning Commission to consider an exemption from this requirement due to the large amount of acreage, most of which is open pastureland, and the fact that less than one acre is proposed to be improved.

Staff recommends approval of the request for a conditional use permit for commercial stables, based on the Findings, and subject to the Conditions in the staff report, including that Condition No. 5 should be amended to read "22" horses, instead of "12" horses.

Menefee asked if an exemption to the requirement for a Stormwater Management Plan would need to be included as a Condition of approval if the Planning Commission so desires.

Reeves confirmed.

Manchester asked if a map is available, which shows the eight 8' x 10' buildings proposed.

Reeves displayed the Site Plan.

Manchester asked if the Applicants' neighbors will be able to see the proposed buildings. He commented a certain property in Miami County has a large home with eight or ten tiny buildings all around it that do not look right. He reported the buildings are very noticeable from the highway, and people have asked him whether the County allows this.

Reeves explained the subject property slopes down. The 8' x 10' buildings proposed are only three-sided and will be interspersed throughout about 30 acres.

Manchester commented a horse barn with stalls inside is more typical.

Reeves responded the horses will be able to access the 8' x 10' walk-in horse shelters. She added the Applicants are also proposing one 20' x 40' storage shed.

There being no further questions for staff, Menefee invited the Applicants to speak.

Mr. Shane Rockers (32461 Block Road, Paola) approached the podium and noted on the Site Plan where the land on Tract 1 slopes significantly downward to the east, so any structures in that area cannot be seen from the road. He explained the only buildings that can be seen from the road would be two smaller buildings (future 8' x 10' walk-in horse shelters). Mr. Rockers assured the Planning Commission there will not be a hodgepodge of buildings clustered in a small area.

There were no questions for the Applicants.

Menefee then opened the public hearing and invited public comment. There being no comments, he closed the public hearing.

As an example, Menefee noted that the old Sanders Ranch located north of Louisburg has multiple walk-in horse shelters that look very nice and paddocks that are well-maintained. He reported he drives past the Applicants' property on his way to work, and the top of the house can barely be seen from the road. He commented it is a beautiful property, and concluded this property is very well-suited for the proposed use.

Elliott moved to approve the request for a conditional use permit, based on staff's recommended Findings and subject to staff's recommended Conditions, except that Condition No. 5 shall be amended by striking "12" and replacing it with "22"; and, a new Condition shall be added as Condition No. 7, which provides: "Due to the minimal site improvements and the intended use, a Stormwater Management Plan is not required."

Collins seconded the motion.

Menefee restated the motion, and the motion passed unanimously (5-0).

Reeves announced this will go before the Board of County Commissioners on October 27th at 1:00 p.m.

Findings

1. The requested use, as conditioned, will be compatible with the surrounding large-lot residential and agricultural character of the neighborhood.
2. The Agricultural zoning district permits commercial stables with a conditional use permit when appropriately sited. The requested use is small in nature, has minimal impacts; and, as conditioned, will be consistent with the surrounding Agricultural zoning of the neighborhood.
3. There is no evidence to suggest that the requested use, as conditioned, will detrimentally affect nearby properties or property values.
4. The anticipated vehicle trips generated by the proposed use will not impact the traffic or conditions of the road.

Conditions

1. Except as amended by these Conditions, the property shall be developed according to the Site Plan, attached hereto as Exhibit "A".
2. Except as amended by these Conditions, the property shall be developed according to the Applicants' Narrative, attached hereto as Exhibit "B".
3. The term of this Conditional Use Permit shall be ten (10) years, commencing from the date of County Commission approval.
4. Development shall comply with all sanitary, building, fire and other applicable County codes and permit requirements.
5. The number of horses boarded on the combined 99-acre property for commercial purposes shall be limited to 42. The number of horses owned by the Applicants and housed on the property shall not be limited.
6. A minimum of \$1,000,000 liability insurance on the property shall be maintained at all times.
7. *Due to the minimal site improvements and the intended use, a Stormwater Management Plan is not required.*

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 reminded the Planning Commissioners of Mid-America Regional Council's free webinar on October 12th designed for planning commissioners dealing with development and housing-related issues.

She reported the hearings are coming to a close regarding the Petition for Incorporation of the proposed City of Golden. Attorney Jim Kaup will present a summary to the Board of County Commissioners. Reeves anticipates the County Commission will make its decision before the end of October.

Reeves then announced there will be a public meeting on October 14th regarding the Miami County K-68 Expansion Project. The meeting will be held in the Louisburg High School auditorium from 5:30 p.m. and 7:30 p.m. and will be held virtually at the same time. A link to the State's project website is posted on the County Planning Department's homepage.

Reeves announced there are no items for the November 2nd Planning Commission Agenda. She asked the Planning Commissioners if they would prefer not to have a meeting or to meet for training.

Manchester asked about the volume of building permits being processed. Reeves responded there seems to be a very slight decline; however, there it continues to be an incredibly high volume.

Elliott recommended there be no November 2nd Planning Commission meeting. There was consensus among the Planning Commissioners.

Reeves reported the Board of County Commissioners denied the request by Living Proof Ministries for an expansion of existing conditional use permit #17005-CUP. She explained after the Planning Commission's approval and prior to the Board of County Commissioners meeting, it was discovered the current architect had altered, without permission, the original architect's Site Plan. The Applicant refused to submit a new Site Plan; and, as the regulations require a Site Plan, the Board of County Commissioners did not have an alternative.

Reeves also reported the Board of Zoning Appeals recently heard a request for a variance from the 1,000' minimum spacing requirement between billboard signs. The applicant wanted to reduce the spacing to 850', and the Board of Zoning Appeals denied the requested variance.

Reeves reported the County Treasurer has submitted her resignation. The precinct committee members for that party will be meeting to vote on a recommendation for a new County Treasurer.

There being no further announcements, Elliott moved to adjourn the meeting, Ross seconded, and the meeting was adjourned by unanimous vote, 5-0, at 7:57 p.m.

Approved this 7th day of December, 2021.



Angie Baumann, PC Secretary



Chair, Mark Oehlert / Vice-Chair, John Menefee

Minutes written by Angie Baumann