

***MINUTES OF THE
MIAMI COUNTY PLANNING COMMISSION
MARCH 1, 2022***

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

ATTENDANCE

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

MINUTES

MARCH 1, 2022

MIAMI COUNTY PLANNING COMMISSION

CALL TO ORDER

Chairman John Menefee called the meeting to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE

ROLL CALL

Roll Call was taken and eight (8) members were present, constituting a quorum.

DISCLOSURE OF ANY EX PARTE COMMUNICATIONS OR POTENTIAL CONFLICTS OF INTEREST

None disclosed.

ADOPTION OF THE AGENDA

Menefee announced per staff's email to the Planning Commission earlier today and notification now posted on the County webpage, Public Hearing 21006-Z: Rezone from Countryside (CS) to Heavy Industrial (I-2) (Item VIII.B.1 under New Business) will need to be removed from this evening's Agenda and re-scheduled for the April 5, 2022 Planning Commission meeting, as the posted hearing notice contained an error.

Reeves confirmed and noted there can be no discussion tonight regarding this Item.

Elliott moved to adopt the Agenda, as amended. Oehlert seconded, and the motion passed unanimously, 8-0, via a show of hands.

CONSENT AGENDA

- **February 1, 2022 Planning Commission Minutes**

Ross moved to adopt the Consent Agenda. Elliott seconded, and the motion passed with six (6) in favor and two (2) abstaining (Broers and Oehlert).

With regard to Agenda Item IV.A. Administration of Oath of Office (Kelli Broers) Menefee reported Ms. Broers's oath was taken just prior to this evening's meeting.

REGULAR AGENDA

Old Business:

None.

New Business:

Discuss whether a CUP should continue to be required for concrete plants in the Heavy Industrial (I-2) zoning district (see 11-2.02.5 of the Zoning Regulations) *(Continued from February 1, 2022)*

Jardieu presented the staff report for consideration by the Planning Commission, as requested by the Board of County Commissioners. She reported from her research that a large amount of water is consumed in the process of washing and generating slurry to create various cement mixtures. Therefore, the availability of water to serve a site is extremely important, especially considering some water districts lack the capacity to serve certain areas in the County. With regard to monitoring environmental conditions on a site, Jardieu reported although the Kansas Department of Health and Environment requires annual stormwater and comprehensive site compliance reports KDHE's website notes it has suspended some of its onsite compliance visits due to staffing shortages during the past few years.

Jardieu noted concrete plants may potentially expand the rural economy of the County; and, eliminating the requirement of a conditional use permit would reduce various regulatory burdens on the business owner. However, doing so would also affect the County's ability to regulate noise, pollution, and other negative impacts to the public. Most notably, it does not allow an avenue for proper reclamation of the site in the future.

It is the recommendation of both KDHE and staff that the use continue to be subject to a conditional use permit so that it is may be monitored beyond wastewater and stormwater.

Oehlert asked how many concrete plants exist in the County.

Jardieu answered there is one active plant.

Oehlert asked how many concrete plants are inactive.

Jardieu responded she is aware of one inactive plant, which will soon be reclaimed. She reported the active plants began operating prior to reclamation laws going into effect, so those sites are not required to be reclaimed when operations cease.

Oehlert asked if an applicant could be required to obtain liability insurance for EPA issues as a condition of a CUP.

Jardieu responded she has not seen such a condition for those CUPs in the County.

Oehlert asked if KDHE requires insurance.

Jardieu answered KDHE now requires only a bond for reclamation of a site.

Elliott commented he is struggling to understand why the Planning Commission would even consider eliminating the requirement for a CUP, and asked staff if there is a strong argument for doing so.

Jardieu answered allowing concrete plants as an outright use in the I-2 District would reduce the financial burden on applicants.

Menefee noted he agrees with Elliott in that he struggles to see an overall benefit to the community or to the County if the CUP requirement is eliminated. He expressed this requirement is important in maintaining the integrity of the County and also serves to limit where concrete plants can be placed. He stated he will entertain a motion on this in order to provide direction for the Board of County Commissioners.

Oehlert moved to retain the requirement for concrete plants in the Heavy Industrial (I-2) zoning district, based upon staff's and KDHE's recommendations. Elliott seconded, and the motion passed unanimously, 8-0, via a show of hands.

Discuss whether a CUP should be required for AirBnBs (see 14-2.01.14 of the Zoning Regulations regarding Bed and Breakfast facilities) (Continued from February 1, 2022)

Reeves presented the staff report for consideration by the Planning Commission, as requested by the Board of County Commissioners. She referenced the American Planning Association (APA) memo in the meeting packet, which provides a detailed case study regarding the regulation of short-term rentals in the City of New Orleans (see Page 68). She reported Airbnb and Homeaway resisted supplying information necessary for the City's enforcement of an annual rental cap and some of the councilmembers were not re-elected as a result of that issue. However, the City decided to retain the CUP requirement for those facilities.

Reeves pointed out the City of New Orleans has more infrastructure than does unincorporated Miami County. She explained one of the issues regarding short-term rentals in the County is insufficient water capacity for fire protection. She noted another issue is property owners near short-term rentals have raised concerns about unknown people continually coming and going. Those property owners want assurance that the owner/proprietor of a short-term rental is onsite at all times and will be responsible for what occurs on the property.

Menefee asked if an Airbnb rental in Miami County is currently required to have a conditional use permit (CUP) in order to comply.

Reeves confirmed. She reported there are a few Bed and Breakfast facilities in Miami County with conditional use permits. She explained the Zoning Regulations require that a Bed and Breakfast facility contain a dwelling unit for use by the owner/proprietor, who is required to occupy it as his/her main residence. She noted an interested party is in attendance this evening, who would like that provision to be eliminated or amended because they want to rent out their house while they reside out-of-state during the winter months.

Oehlert noted two important considerations he gleaned from the APA memo: requiring the property owner to carry a minimum amount of liability insurance and requiring that occupancy be less than 30 days.

Reeves responded transient occupancy is not specifically addressed in the Zoning Regulations; however, the Building Code considers occupancy for a period of less than 30 days to be transient occupancy.

Oehlert asked if it would be advisable to include a provision in the Zoning Regulations regarding transient occupancy.

Reeves responded it would be very helpful.

Elliott reasoned provision "L" in Section 14-2.01.13 of the Zoning Regulations concerning minimum development standards for Bed and Breakfast facilities seems to address transient occupancy:

"L. Short-term overnight lodging shall be permitted, however, monthly rentals or leasing shall be prohibited."

Oehlert asked for feedback regarding an insurance requirement. He noted the APA memo recommends short-term rentals carry minimum of \$500K in liability insurance.

With regard to provision "B" in Section 14-2.01.13 of the Zoning Regulations Brown suggested perhaps outside surveillance is one way an owner could operate a short-term rental remotely.

"B. Bed and Breakfast facilities shall contain a dwelling unit for use by the proprietor/owner, which the proprietor/owner is required to occupy as his/her main residence."

Reeves noted the APA memo reported the City of New Orleans had published a registry of all licensed short-term rentals, which also included the contact information for the responsible party. However, this was deemed to be a privacy infringement.

Oehlert asked if the owner could be required to register a property management company to ensure someone is available to respond in case of an emergency or a complaint.

Ross argued if the owner lives locally, he or she would not need to engage a property management company.

Reeves suggested the responsible party could be required to be located within a certain radius of the short-term rental.

Broers commented the benefit of retaining provision "B" as written is that it is a preventative measure. She reasoned if someone with a vested interest in the property is on the premises the likelihood of problems with the guests is far less. She commented a property management company in Overland Park could not quickly respond to a complaint about a party taking place in a short-term rental.

Ross expressed he is concerned there could be so many regulations placed on short-term rentals it could limit a property owner's ability to have one.

Oehlert argued the Planning Commission also has a duty to protect the safety and welfare of the neighbors.

Kitchen suggested short-term rentals should not be allowed then.

Reeves stated this is the whole point of subjecting this use to a conditional use permit. She explained each zoning district allows certain uses by right, with provisions for other uses upon the approval of a CUP. She commented Airbnb rentals and similar short-term rentals can reach the extent they are comparable to a hotel; therefore, this type of use is more appropriate in a commercial zoning district.

Broers noted Airbnb rentals have an impact on property values in that they have the potential of pricing existing residents in the community out of their homes. She suggested this is an issue that should be considered.

Menefee commented the CUP process enables the County to somewhat protect the neighbors and ensure it is in an appropriate location and where it won't have a negative impact on surrounding property owners.

Elliott further reasoned another benefit of requiring a CUP for this use is there is an established review process and a set of parameters that may be addressed based on the particular neighborhood. He added access roads need to be considered, especially when a minimum maintenance road serves a property.

Manchester asked how many Bed and Breakfast facilities exist in the County.

Reeves answered there are currently three operating with a CUP. She is certain there are others operating without a CUP.

Menefee summarized possible changes to the provisions for Bed and Breakfast facilities discussed this evening include specifying an occupancy of less than thirty days, requiring the property owner to carry a specified amount of liability insurance, and possibly requiring the property owner to engage a property management company if the property owner will not be onsite.

Elliott noted according to the staff report Airbnb rentals are currently regulated under the provisions for Bed and Breakfast facilities. He asked whether the Zoning Regulations should more specifically address Airbnb rentals. He reasoned several of the minimum development standards for Bed and Breakfast facilities in Section 14-2.02.13 of the Zoning Regulations do not apply to Airbnb rentals. He then read aloud provision "B":

"B. Bed and Breakfast facilities shall contain a dwelling unit for use by the proprietor/owner, which the proprietor/owner is required to occupy as his/her main residence. There shall be no permanent barriers or lockable doors separating the proprietor/owner dwelling unit from the remainder of the Bed and Breakfast facilities . . ."

Menefee noted Bed and Breakfast facilities and Airbnb rentals differ in that a property is purchased specifically for the purpose of operating a Bed and Breakfast facility, whereas an Airbnb rental typically comes about when extra space becomes available in the home, such as a bedroom when a child leaves for college.

Elliott commented an Airbnb rental is intended to be more transient and guests have access to the entire home in some cases. He added that Airbnb rentals differ from Bed and Breakfast facilities in that the property owner is not necessarily living in an Airbnb rental.

Broers clarified an Airbnb rental could be only a room or could be the entire house. She commented if the Zoning Regulations remain as written, this precludes people from renting out their entire house and stipulates a property owner may rent out only a portion of the house.

Ross agreed with Elliott that provision "B" of the minimum development standards for Bed and Breakfast facilities does not speak to Airbnb rentals.

Oehlert asked whether Elliott is suggesting modifying the minimum development standards for Bed and Breakfast facilities to include Airbnb rentals or drafting separate language for Airbnb rentals.

Elliott answered some distinction needs to be made in the Zoning Regulations between a Bed and Breakfast facility and an Airbnb rental.

Reeves suggested creating provisions in the Zoning Regulations for short-term rentals, and defining the various types of short-term rentals.

Kitchen asked what length of time constitutes a short-term rental.

Menefee answered the occupancy period for short-term rentals is less than 30 days. Anything longer than that falls under a different occupancy category.

Reeves stated one reason why short-term rentals are subject to a higher degree of compliance with the Building Code is the issue of fire protection. She explained short-term guests often wake up disoriented to their surroundings and are more at risk than those who have stayed in the same place longer than 30 days.

Ross commented construction workers arriving to the area may prefer a Bed and Breakfast facility over an Airbnb rental because the Bed and Breakfast facility will offer a meal and may be willing to work out a rental arrangement over a period of two or three months. He is hesitant to limit the occupancy period of a Bed and Breakfast facility to less than 30 days for this reason, although he is in favor of doing so for an Airbnb rental, which essentially takes the place of a motel.

Reeves referenced the APA memo in the meeting packet. She reported the City of New Orleans limited the number of short-term rentals it would allow in a particular neighborhood to avoid pricing the surrounding property owners out of their homes. The City also limited the number of times per month or year a property owner could rent out the property as a short-term rental.

Ross suggested retaining the existing language in the Zoning Regulations for Bed and Breakfast facilities and addressing Airbnb rentals or short-term rentals separately in the Zoning Regulations.

Elliott commented he agrees with Ross except that he questions—from a health, safety, and welfare standpoint—whether Airbnb rentals or similar short-term rentals truly benefit the community or whether the benefit lies primarily with one or two property owners. If the Planning Commission believes this has a benefit to the community he is willing to spend more time amending the Zoning Regulations.

Broers clarified the Planning Commission is being asked specifically whether a conditional use permit should still be required for Airbnb rentals. She noted the inference there is that there is some kind of community interest.

Reeves responded an interested party is present this evening, who would like to rent out their entire house on a short-term basis while residing out-of-state. She explained the Zoning Regulations do not have a provision for this.

Broers reasoned this party would not be prohibited from renting out their house for a period longer than 30 days.

Reeves confirmed.

Menefee commented there are certain times during the year when short-term rentals are of benefit to the County because Paola Inn and Suites is already full. He reasoned there really is no other option locally. However, he is in favor of retaining the requirement for a CUP as this enables the County to evaluate whether the proposed use is appropriate for a particular location.

Ross commented an Airbnb rental, if regulated, would be helpful during the various festivals.

Broers commented if staff were to present to the Planning Commission a new set of regulations for Airbnb or short-term rentals it would take a pretty compelling argument for her to be agreeable to removing the existing requirement that the property owner remain onsite.

Menefee suggested the property owner could utilize the services of a property management company if they do not want to remain onsite.

Elliott expressed he does not want a short-term rental located next door, and indicated the property owner's absence from a short-term rental is a significant concern. He commented it is important to him to have some sort of an established relationship with his neighbor so that he knows who to go to if problems arise. He believes other property owners in Miami County feel the same way.

Broers commented if the owner of a barndominium wants to rent it out to travelers who need a place to stay and board their horses overnight she doesn't have a problem with that. However, she has concerns about transient populations entering an area with no one physically onsite to monitor activities in real time.

Brown argued a short-term rental can be regulated; and he questioned how the County could know whether a property owner is truly onsite.

Broers responded this could be included as a condition of the CUP for a short-term rental.

Kitchen commented a neighbor would likely report an issue with a short-term rental.

Elliott commented he accepts staff's recommendation that short-term rentals should require a CUP regardless of whether short-term rentals are included in the provisions of the Zoning Regulations for Bed and Breakfast facilities or whether they are addressed separately.

Manchester commented although he is aware of Bed and Breakfast facilities within city limits, he is not aware of any in unincorporated Miami County.

Reeves responded she is aware of Casa Somerset Bed & Breakfast, one on 303rd Street (Canaan Oaks Bed & Breakfast), one near Lake Miola, and Spring Valley Bed & Breakfast on K-68 Highway, although she recently spoke with that proprietor and it is her understanding it soon may no longer be utilized as a Bed and Breakfast facility.

Menefee commented a conditional use permit should be required and believes Airbnb and similar short-term rentals should be defined separately in the Zoning Regulations rather than being regulated by the provisions of Bed and Breakfast facilities.

Broers asked about the terminology other jurisdictions are using to describe various short-term rentals.

Menefee asked if any surrounding jurisdictions have specific provisions in their regulations for Airbnb and similar short-term rentals.

Reeves responded she can research Broers's and Menefee's questions.

Menefee suggested a motion be made for the purpose of providing direction for staff and the Board of County Commissioners.

Elliott read aloud the Agenda item, and noted this is not directing the Planning Commission to consider CUPs for Bed and Breakfast facilities:

“Discuss whether a CUP should be required for AirBnBs (see 14-2.01.14 of the Zoning Regulations regarding Bed and Breakfast facilities)”

Menefee clarified Bed and Breakfast facilities are referenced only because this is the closest the Zoning Regulations come to regulating an Airbnb rental.

Reeves confirmed and added she considers Airbnb and similar short-term rentals in the same way in which she considers Bed and Breakfast facilities.

Elliott moved to direct staff to draft an amendment to the Zoning Regulations by creating a separate category for short-term rentals and to continue requiring a CUP for short-term rentals. Oehlert seconded, and the motion passed unanimously, 8-0, via a show of hands.

Broers asked if Reeves has an estimated timeframe for presenting this draft language to the Planning Commission.

Reeves responded it likely will be May or June, as the April meeting Agenda is already quite full.

Discuss requirement for one (1)-year waiting/cooling off period to apply for a CUP that is substantially similar to one denied by the Board of County Commissioners (See 22- 9.01 of the Zoning Regulations) (Continued from February 1, 2022)

Reeves presented the staff report for consideration by the Planning Commission. She reported a particular CUP application was recently denied and the applicant wished to re-apply but was prevented from doing so based on this regulation. She explained this prompted the Board of County Commissioners to seek the input of the Planning Commission regarding whether the one-year period is necessary or whether it should be amended to a shorter timeframe.

Reeves explained the reason for the one-year waiting/cooling off period is to avoid continual resubmission of the same information—which can become harassment or abuse of staff and the County’s boards—as well as to provide some closure to neighboring property owners who oppose an application.

Menefee asked Reeves to clarify whether this regulation applies to those applications the Board of County Commissioners remands to the Planning Commission or whether it applies only to those applications the Board of County Commissioners has denied.

Reeves responded the regulation applies only to denial.

Elliott asked if the concern of the Board of County Commissioners is that a one-year waiting/cooling off period is too long and they want to provide an applicant time to submit modifications, whether the Board could defer an application to the Planning Commission for consideration sometime within the following six months instead of denying the application.

Reeves explained it is for the purposes of public transparency the Zoning Regulations specify that if the Board of County Commissioners remands an application to the Planning Commission it must be considered by the Planning Commission at its next meeting, at which meeting the Planning Commission must make a determination. She further explained if the Planning Commission makes no determination at that meeting its original determination stands, and the application is forwarded to the Board of County Commissioners at their next meeting. Reeves noted the Board of County Commissioners could potentially postpone their decision, citing a need for additional information from the applicant.

Menefee asked if an applicant must wait to re-apply one calendar year from the date the Board of County Commissioners denied the application.

Reeves confirmed.

Oehlert pointed out the regulation states “one substantially similar”.

Menefee asked who determines what qualifies as a substantially similar application. He expressed staff, the Planning Commission, and the Board of County Commissioners all work with CUP applicants and give them multiple opportunities to fix issues and present correct and complete applications.

Brown suggested if the regulation is intended to prevent abuse or harassment from an applicant who is re-applying month after month, the regulation could possibly be amended to allow an applicant to re-apply or make a substantially similar application a maximum of two times in a calendar year.

Menefee reasoned the phrase "one substantially similar" could mean two different applicants.

Reeves answered what is of relevance is whether it applies to the same property and whether it proposes the same use as proposed in the previous application. She then read aloud the following from the Sedgwick County, Kansas Unified Zoning Code (Page 79 of the meeting packet):

"Art. V, Development Review Procedures Sec. V-C, OFFICIAL ZONING MAP AND UNIFIED ZONING CODE TEXT AMENDMENTS

11. Successive applications: . . . a similar application shall not be refiled for one year from the latest advertised public hearing date on said application. The Planning Commission may permit a refiling of said application after six months of the latest advertised public hearing date when it determines that significant physical, economic or land use changes have taken place within the immediate vicinity, or a significant zoning regulation text change has been adopted, or when the reapplication is for a more restrictive change of zoning classification or is significantly different than the original request."

She added the Butler County, Kansas Zoning Regulations and the Johnson County, Kansas Zoning Regulations both require an applicant to wait one year before making the same application or one that is substantially similar.

Oehlert asked for how long this regulation has been in effect.

Reeves answered it has likely existed since the early 1990's.

Oehlert then asked if any issues concerning the one-year waiting/cooling off period have previously been raised.

Reeves answered she cannot recall any other instance when someone has objected to this regulation.

Menefee commented this appears to be a non-issue.

Elliott commented the fees collected when a CUP or rezoning application is submitted do not even begin to compensate the County for the amount of staff time spent performing reviews and preparing presentations to the County's Boards. He reasoned the one-year waiting/cooling off period is a means by which the rest of the County's residents are helping to fund the extra time those fees don't cover. Elliott expressed it is important to prevent this from becoming an abusive situation.

Oehlert commented that multiple re-applications requiring staff's successive reviews takes time away from other applicants.

Broers indicated the same application previously denied by the Board of County Commissioners could be approved by the Board the following year due to membership changes on the Board.

Reeves responded this is a very good point.

Menefee reasoned although this is an interesting point the County Commissioners are on a rotational basis; therefore, the vast majority of that Board would not be lost from one year to the next.

Ross moved to retain the existing language in the Zoning Regulations regarding the one-year waiting/cooling off period to make an application that has been denied by the Board of County Commissioners or one that is substantially similar to one denied by the Board of County Commissioners. Broers seconded the motion, and the motion passed with seven (7) in favor and one (Kitchen) opposed, via a show of hands vote.

"Section 22-9. Limitations on Reapplication for Amendments

22-9.01 Whenever an application has been made under this Article and the application has been denied by the Board of County Commissioners, such application, or one substantially similar, shall not be considered sooner."

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 regarding these possible future amendments to the regulations.

ANNOUNCEMENTS BY STAFF / COMMISSIONERS

Reeves directed the Planning Commissioners to the updated schedule for the Comprehensive Plan update included as a supplement to the meeting packet. She noted she needs the Planning Commissioners' feedback regarding a date for the consultant to hold a work session with the Planning Commission to review the draft Comprehensive Plan.

Menefee asked staff to send a survey to the Planning Commissioners suggesting several options.

Elliott asked if the draft could be sent to the Planning Commission in advance of the work session. He expressed a two-hour work session seems like a very brief period of time for the Planning Commission to digest a draft for the very first time and be expected to provide quality feedback to the consultant.

Reeves responded she is glad to share the draft with the Planning Commission as soon as she receives it from the consultant.

Reeves announced Kevin Collins has resigned from the Planning Commission as he is now employed as a Zoning Compliance Officer in the Planning Department.

Reeves announced an issue has arisen regarding the existing CUP for the public utility authority serving Paola and Louisburg. She reported the clean intake pond is apparently filling much more quickly than anticipated and is having to be dredged, which is quite expensive. Louisburg's city administrator has asked the Planning Department if the slurry may be mounded on the property rather than being disposed of offsite. Reeves noted according to the city administrator, Louisburg has already contacted KDHE and the slurry is clean, has no odor, and contains no chemicals.

Elliott stated the City has previously spread this on the neighboring cattle pastures as a slurry. He reported he lives close by and has witnessed this firsthand. Elliott would like a clarification of the difference between that slurry and the pile. He also questions the claim of no odor.

Menefee asked if there is a long-term plan for these piles.

Reeves answered she is not certain. She added she will provide to the Planning Commissioners a copy of the existing CUP and will request additional information from the City administrator.

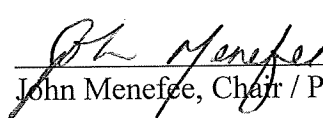
There being no further announcements by staff or the Planning Commissioners, Menefee called for a motion to adjourn.

Elliott moved to adjourn the meeting, Oehlert seconded, and the meeting was adjourned by unanimous vote, 8-0, at 8:11 p.m.

Approved this 5th day of April, 2022.



Casey d'Augereau, PC Secretary



John Menefee, Chair / Phil Elliott, Vice-Chair

Minutes written by Angie Baumann