



Meeting of the  
**MIAMI COUNTY PLANNING COMMISSION**

April 3, 2018 | 7:00 p.m.  
Miami County Administration Building

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**AGENDA**

**I. CALL TO ORDER**

**II. PLEDGE OF ALLEGIANCE**

**III. ADOPTION OF THE AGENDA**

**IV. CONSENT AGENDA**

- A. Minutes:** Approval of the March 6, 2018 Planning Commission Minutes.

**V. REGULAR AGENDA**

**A. Old Business**

**a. Continued Public Hearing - 18002-TA: Zoning and Subdivision Regulations**

The Planning Commission will discuss potential text amendments to Articles 2, 4, 4A, 5 and 6 of the Zoning Regulations, and Article 1 of the Subdivision Regulations of Miami County, Kansas to clarify the definition of a government lot, aliquot or fractional section of land, and its intended density for development, and net area for each lot.

**B. New Business**

**VI. ANNOUNCEMENTS BY STAFF/COMMISSIONERS**

**A. 18001-CUP: Vitale Properties, LLC**

**B. Training**

**VII. GENERAL DISCUSSION**

**A. Accessory structures in open space**

**B. Land division and soil types**

**VIII. ADJOURNMENT**

## **Hearing Procedure**

1. Chairman announces agenda item.
2. Members describe what, if any, communication they have had with applicant or interested party regarding the case; indicating the nature of the communication and whom it was with.
3. Members describe what, if any, conflicts of interest they may have and recuse themselves from the hearing room for the duration of the hearing.
4. Staff presents the application with staff's recommendations on the request.
5. Chairman opens the public hearing.
6. Applicant or agent of the applicant makes brief presentation of the case or request.
7. Members ask for any needed clarification of the applicant or agent.
8. Chairman solicits comments from the audience.
9. Members ask for any further clarification from the public, applicant or staff.
10. Chairman closes the public hearing.
11. Members deliberate on the request and take action if able to do so. Members should present findings to substantiate the action taken.
12. Staff announces when the request will be heard by the BOCC.
13. 14-day Protest Period begins after the Public Hearing is closed.\*

\* **Protest Petitions:** Any protest petition must be filed in the Office of the County Clerk within 14 days from the conclusion of the public hearing held by the Planning Commission.

**MINUTES OF THE  
MIAMI COUNTY PLANNING COMMISSION  
March 6, 2018**

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

**ATTENDANCE**

**CHAIR:** John Menefee

**VICE-CHAIR:** Phil Elliott

**PLANNING COMMISSION MEMBERS:** Kimberly DeYoung, Steve Jensen, Bret Manchester, Mark Oehlert, Mark Ross and Larry Smith

**ABSENT MEMBERS:** Tina Walker

**EX-OFFICIO MEMBERS:** None present

**PLANNING DIRECTOR:** Teresa Reeves

**COUNTY COUNSELOR:** David Heger

**PLANNER/PC SECRETARY:** Kenneth Cook

**ECONOMIC DEVELOPMENT:** Janet McRae

**COUNTY COMMISSION:** Not Present

**PRESS:** Not Present

## **MINUTES**

**March 6, 2018**

### **MIAMI COUNTY PLANNING COMMISSION**

#### **CALL TO ORDER**

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

#### **PLEDGE OF ALLEGIANCE**

#### **ROLL CALL**

Eight members were present, which constituted a quorum. Walker was absent.

#### **ADOPTION OF THE AGENDA**

DeYoung made a motion to move Old Business item b., Continued Public Hearing – 18002-TA: Zoning and Subdivision Regulations to follow New Business item b., Public Hearing 18002-CUP: H & R Lawn and Landscape. Larry Smith Seconded. The motion passed unanimously, 8-0.

Elliott moved to adopt the agenda. DeYoung seconded. The motion passed unanimously, 8-0.

#### **CONSENT AGENDA**

**Minutes:** Approval of the February 6, 2018 Planning Commission Minutes.

Ross moved to adopt the consent agenda. DeYoung seconded. Without further discussion, the motion passed unanimously, 8-0.

#### **REGULAR AGENDA**

##### **Old Business:**

##### **Public Hearing: Annual Review of the Miami County Comprehensive Plan**

Reeves stated that the Public Hearing was continued from the previous meeting to allow time for additional cities to make presentations to the Planning Commission and for Janet McRae to also attend. Reeves informed the Planning Commission that representatives from the City of Spring Hill and City of Osawatomie and McRae were present for the meeting and would provide presentations to the Planning Commission.

Reeves introduced Jim Hendershot with the City of Spring Hill.

Jim Hendershot, Assistant City Administrator, City of Spring Hill, presented information in regards to current trends/projects for the City of Spring Hill, provided information on the City's current Comprehensive Plan and stated that Spring Hill intends to move forward with a full review of their Comprehensive Plan in 2019. Hendershot mentioned one of the primary items they are currently working on is to fill in the existing "donut holes" that are located throughout Spring Hill. Hendershot mentioned with the growth areas being removed a few years ago on the Miami County side of Spring Hill, they have moved more into the county contacting cities when something is occurring within areas of interest. He stated that he feels that this has worked really well and has brought this up as an idea on the Johnson County side as well. Hendershot stated that there has been recent conversation in regards to the possible development of 5-acre lots around the City of Spring Hill and that this would have an impact on the ability of Spring Hill to grow, but that they would look at these requests individually on their own merits. He also stated that the lack of ability to extend sewers in certain areas may make this idea appropriate in some locations so that some properties can be developed as large lots with private wastewater systems.

Menefee thanked Mr. Hendershot for his presentation.

Reeves introduced Don Cawby with the City of Spring Osawatomie.

Don Cawby, City Administrator, City of Osawatomie presented information in regards to current trends/projects for the City of Osawatomie, provided information on the City's current Comprehensive Plan, that the City is currently in the process of updating the Comprehensive Plan and discussed some of the challenges that the City has faced over the last few years. Cawby specified their primary growth area is in their Northland area. He stated there is a challenge that they face with extending services past some of the smaller lots that have been developed in this area. Cawby also stated that the City of Osawatomie is trying to do more things regionally rather than trying to compete with each other.

Menefee thanked Mr. Cawby for his presentation.

Reeves stated that Janet McRae met with her advisory committee and the staff report includes information being proposed in regards to Areas of Regional Significance. Reeves discussed the recommendations which focused on Areas of Regional Significance adjacent to cities and also removing some other areas around the county that might not have the necessary infrastructure. McRae stated she does not have anything to add but would be willing to answer questions.

Elliott asked McRae if as she looks at the Comprehensive Plan or the Zoning Regulations, are there any areas that the Planning Commission needs to target or review that would help with economic development. McRae stated that Reeves and her have this conversation regularly and the type of development that is typically being looked at in the unincorporated areas as compared to the cities is all about the experiences, such as the lake, winery or farm.

Elliott asked if it would be safe to say that there needed to be some flexibility in some of the activity centers.

Meneffe asked if we would hear from Paola. Reeves replied that we had extended an invitation to Paola but did not hear back.

Meneffe opened the Public Hearing. There being no comment Meneffe closed the public hearing.

Elliott moved to accept staff recommended changes below. Ross seconded. Without further discussion, the motion passed unanimously, 8-0.

#### Comprehensive Plan:

- Pg 27, Goals 1, Objective bullet 1, add sentence at the end of paragraph: *Other areas may be considered only if adequate infrastructure is provided.*
- Pg 46, Areas of Regional Significance, add 2 sentences to the end of the 1<sup>st</sup> paragraph: *Recognizing the importance of economic development in the cities, sites at key intersections located adjacent to, or in close proximity to the corporate boundaries of the four major cities with the county are included in this Plan. Development at these locations will be primarily driven by city planning but will need to be closely coordinated between county and city for harmonious planning and development of these sites.*

#### Future Land Use Map:

- *Remove the Areas of Regional Significance located at K-68 and Pressonville Rd, and 359<sup>th</sup> and US 69 Highway.*
- *Identify K-68 & Osawatomie Rd, and 311<sup>th</sup> & 69 Highway as Short-term ARS rather than Long-term ARS.*
- *Add 223<sup>rd</sup> & US 169 as a Short-term ARS (City Defined)*

#### **New Business:**

##### **Public Hearing: 18001-CUP: Concrete Strategies**

Reeves presented the staff report for consideration of a request for a Conditional Use Permit 18001-CUP for a contractor's shop and/or yard, in accordance with Sections 5-2.02.7 & 14-2.01.1 of the Miami County, Kansas Zoning Regulations. The subject property of approximately 14 acres is located on the West side of Cedar Niles Rd, approximately ¼ mile south of 231st St., in the Northeast Quarter of Section 31, Township 15 South, Range 23 East, Marysville Township and addressed as 23224 Cedar Niles Rd. Submitted by Concrete Strategies on behalf of Vitale Properties, LLC.

Reeves stated that a copy of the staff report was sent to the applicant prior to the meeting but later than normal, and requested that the applicant provide additional information. A response had not been received.

Elliott asked for clarification on the surfacing of Cedar Niles Road. Reeves stated that it is gravel in front of the property and changes into a chip and seal road further north at the curve in the road.

Jensen asked when it appeared that the property had been cleaned up between 2006 and 2008 if this was because of some county actions. Reeves stated this was based upon looking at Google Earth aerial photography and there appeared to be fewer vehicles. Reeves showed the historic aerial photography.

Jensen stated that he saw a residential permit was issued in 1995 and asked if anyone was living there now. Reeves stated that she did not know and that these questions still remain unanswered and were provided to the applicant at a late hour. Jensen then asked about the 2005 permit for an agricultural barn that was applied for to “park tractors in the barn”. The permit stated that this was for personal use for tractors and a bush hog. When they were asked if this was for equipment for a contractors business they said no. Reeves stated that this was correct. Jensen stated that it would appear that the permit for the barn was gained under false pretenses. DeYoung stated that maybe there was not a shop. Elliott pointed out that this was also under the prior landowner.

Jensen asked when it was purchased by the current property owner. Reeves stated during the past year. Jensen asked what was on the property at the time of transfer. Reeves showed Google Earth Aerial photography that was dated as June of 2017 and stated the transfer occurred on March 31, 2017. Reeves also showed Google Earth Aerial photography that was dated March of 2016. Jensen asked if it was purchased contingent upon there being a certain use for the property and that the current property owner might be able to help on these questions. Reeves stated that she would assume so, but that she was not certain about that. Jensen asked if there was a CUP applied for at the time of purchase. Reeves stated that there was not but the current owners had checked on this and the county did recognize there was grandfathering for a CUP on the property. Jensen asked what was recognized. Reeves stated it would be the exact structure(s) and exact use that was present in 1991. Jensen asked what it was being used for. Reeves stated the use was based upon articles of incorporation found for Stahl Excavating. Reeves stated that we do not have a lot of information and that is where we have been looking at the Google Earth aerial photography. Jensen then stated that Stahl Excavating had not been in operation based upon articles of incorporation since 2001. Reeves stated that is what it appears. Reeves stated that it appears the Bruce Stahl may have picked up and taken over, we just do not have any paperwork. Jensen asked if they did not apply for anything in 2001. Reeves stated that was correct. Reeves stated what the county has to look at is what was there in 1991, if it has changed in size, number, or if the use has changed. Jensen asked if we had a picture from 1991. Reeves brought up the Google Earth image from 1991 and stated this was as far back as it goes.

Jensen asked about the underground storage constructed without a permit, who put it in and when. Reeves stated this is a question that needs to be asked of the applicant but she is assuming it is the current applicant based on photos that have been received from neighbors.

Ross asked if they could be shown the current aerial photography. Reeves showed the current aerial photography. Ross then asked if they could go back one more to see that the concrete pad was not shown on the prior aerial photography.

Elliott stated he would like to hear from the applicant.

Menefee asked if anyone has had any contact with the applicant they need to disclose. There was none. Menefee invited the applicant to come up and make their presentation.

Joe Vitale, owner of the property, stated he first became aware of this property when he asked Jackie (O'Connor Stahl) if she knew of any commercial ground that was available and she mentioned that her dad had some. Mr. Vitale stated that they went and looked at the property and there was a lot of equipment there and they also talked with Thorr at Miami County and he gave them a Conditional Use Permit number for the property. They bought the ground because it was their understanding it had a conditional use. About a month ago they came up to get a building addition permit and Reeves informed them they would need to go through the Conditional Use Permit process and also informed him that the County had received complaints from a number of the neighbors. Mr. Vitale stated that he went around to the neighbors and worked on making changes to the site to help with the complaints that had been made.

Mr. Vitale stated he does not believe he has any more employees and equipment and they are willing to do whatever they need to do. He does not believe they are doing anything different than the previous owners and does not believe they are heavy industrial. Vitale mentioned that this is not their main shop and they use this one just to fix equipment. A lot more stuff is currently on the site because it is their downtime. Mr. Vitale mentioned that Bruce Stahl is still leasing some of the ground for his use. Mr. Vitale also mentioned his employee, Luke Budnik, is currently residing on the property.

Mr. Vitale stated he is no attorney, but he believes they have rights and if they are doing exactly what the person was doing before, they should not just be thrown out. Mr. Vitale stated he does not want to do anything different than what Bruce did and he is willing to do anything that the county wants.

Luke Budnik, project engineer for Concrete Strategies, passed out copies of the Google Earth aerial photography and offered to answer any questions.

Ross asked if they are not necessarily storing all of their equipment on this property but just using it as a mechanic shop. Mr. Vitale agreed. He specified that they do have trailers that do have their concrete blankets, but he is willing to do whatever they need to do.

Ross asked what kind of equipment is being talking about. Mr. Vitale listed types of equipment including: generator, ride-on trowel machine, backhoes, biggest piece of equipment being a motor grader and also laser screeds. Ross asked if there would not be any large trucks. Mr. Vitale stated that there would be large trucks to bring the equipment to the site. He is also willing to cut the number of trips down. Ross asked if they would not have 10 large trucks going in and out. Mr. Vitale stated that they only have one tractor trailer and one driver and they do get UPS deliveries.

Menefee asked about the new building that was constructed without permits. Mr. Budnik stated that it was a well house that goes over the cistern. Bruce Stahl came up to the microphone to help answer the question. Mr. Vitale stated that when Mr. Budnik moved to the property that he

had concern in regards to the water as he has a little baby and tried to fix the well. Mr. Stahl stated it is just a small square box around the well. Mr. Budnik estimated the building was probably around 10' x 10'. Mr. Stahl stated they used to store canned goods and stuff in there.

Jensen asked the applicant if he checked the zoning on the property before he purchased it. Mr. Vitale stated he was told by Jackie O'Connor Stahl that it was zoned with a Conditional Use Permit with a grandfathered clause. Mr. Stahl stated this was his sister-in-law. Jensen asked if anyone provided proof of that. Mr. Vitale stated Mrs. O'Conner Stahl called the county on speaker phone and they talked with Thorr and he provided them with a number. Jensen asked if they asked what the Conditional Use was for and what was authorized and what was not. Mr. Vitale stated they had told the County they were going to do the same thing as the previous owner. Jensen stated that according the application (building permit) was a barn for a tractor and mower. Mr. Vitale stated they had a lot of construction equipment on the property.

Mr. Stahl stated his father started a business on the property in 1972 and about 19 years ago he bought his father out. He leased the building and the equipment from his father and turned it into an incorporation and continued the business. He stated it had never been an issue since it was grandfathered in. Jensen asked if he is the one that went out of business in 2001. Mr. Stahl specified that it has never been out of business and he is still in business. Mr. Stahl stated he has a business license in Miami County for last year and has another business license for this year. Jensen asked if Mr. Stahl knew what the forfeiture date was for Stahl Excavating with the Secretary of State's Office. Mr. Stahl stated he incorporated and his dad was an LLC and he had to change the name to Bruce Stahl Excavating. Mr. Stahl said the ground was never his, he just leased the ground and buildings from his father.

Becky King, sister of Bruce Stahl and neighbor located at 23300 Cedar Niles Rd, approached the microphone to assist. Mrs. King stated she wanted to help everyone understand that she lived there all her life and this was their home and not just Stahl Excavating. They also farmed here. The reason why it is said that the one barn had tractors is because dad had antique tractors. She stated they farmed, did cattle, and chickens. It was not just an excavating company it was a family farm and her father also did excavating as part of it. The barn was not ran for excavating. It was part of their family farm. The house is where she grew up and it was not part of excavating business. It was because this is where her dad kept his machinery and he ran the business out of the house. It was a family business. It was not a huge business that millions of people went in and out of. Bruce took over and it was her family that ran it. They had a few people that came and helped them run it when they needed help. But it was not this big huge business with people running up and down the street all day long and it is not something that it is now. Mrs. King stated to the applicant she has nothing against them at all, she is just trying to help everyone understand what this was. That it was not fair. This was their family farm and her dad worked hard until he passed away and they had to sell it. This is what happened. It was sold to a company instead of a farmer. Mrs. King stated she was told that the company was going to just work on a few trucks like her dad did. Mrs. King stated her dad had two semis. Mr. Stahl stated two semis and five dump trucks. Jensen asked how many employees they had. Mrs. King stated that was it.

Chairman Menefee asked Mrs. King to have a seat and wait until public comment so the Planning Commission could finish talking with the applicant.

Jensen asked Mr. Stahl how many employees they had. Mr. Stahl approached Jensen and appeared to provide a response that was not loud enough for others to hear.

Chairman Menefee stated that we need to keep everything centralized so that we can have an accurate record and so we are not having side conversations.

Mr. Stahl stated at one point they got up to 17 employees but most of the time was 4 or 5 and was dependent upon the work load. They normally had two semi-trucks and 5 dump trucks. The operation has been there since 1972.

Menefee asked if there were any additional questions for the applicants.

Jensen asked if the applicant had heard of due diligence clause as part of a contract. Mr. Vitale stated that with Jackie's family owning the property and following the phone call they had with Thorr and being provided with a number for the Conditional Use Permit, it was his understanding that as long as they were using it in the same way they were good. Jensen asked if he received anything in writing, anything that says you can use it for what you are trying to use it for. Mr. Vitale specified Thorr gave Jackie a number.

Mr. Vitale specified he would prove he is not doing anything different than the previous owner and he will do whatever he needs to. Just wanting to put some agricultural looking buildings up to put our equipment in so you will not even see it.

Ross asked who put the concrete pad in. Mr. Vitale specified they put that in.

Jensen asked Reeves if there are any notes in the file. Reeves discussed the history of the property and the information showing Stahl Excavating was located on the property prior to the adoption of regulations and the recognition of the existence of a CUP for the property. As far as the date of January 1, 1992, any expansion since this date, change in use...

Jensen asked if the CUP goes with the land. Reeves replied that CUP's travel with the land. Jensen asked if it could go in perpetuity. Reeves replied yes, unless it was restricted otherwise. DeYoung specified that the Planning Commission has begun doing this.

Jensen asked what the use was that was granted on this property. Reeves stated it was Stahl Excavating and so the excavating part of it. Jensen asked if it says what they are limited to, like what equipment, how many pieces or how many employees. Reeves specified this is why we have been linking it to what was out there in 1991. Reeves further specified the applicant did call and verify zoning information and that is what we had told him.

Jensen asked if no application for a CUP was made before the purchase. Reeves answered no, because it was grandfathered in and it was not a necessity. Menefee asked if there was still a CUP with the property. Reeves responded that this was correct. As long as the use didn't

change and as long as it didn't expand they would be fine. What staff heard from the neighbors and why we were looking into it from the aerial photos was that we were being told it had expanded. This is when we encouraged Mr. Vitale to come in for a CUP.

Jensen asked what if the use decreases. Reeves replied that it is not a problem for it to decrease. Jensen asked what if it decreased for five years. Reeves stated that if the use does not function for 365 consecutive days it is null and void. Jensen asked about the picture from 2008 that appeared to show most of the site cleaned up. Reeves replied that it is a question staff tried to include in the report. Oehlert specified the trucks could just be out working. Reeves went on to specify some of the items that can be seen on the aerial photography could be farm equipment, but it is difficult to tell.

Elliott mentioned aerial photography is just a snapshot in time. Busy season and all of the equipment is gone it might look cleaned up. Menefee mentioned this does not necessarily document that it was gone for 365 days.

Menefee stated Mr. Budnik could show his slide show. Mr. Budnik showed a slideshow of historic aerial photography for the site and pointed out equipment that can be seen in many of the photos.

Jensen asked if someone could inform the Planning Commission what all of the material is that is shown to the back of the site. Mr. Budnik stated he did not know. Mr. Stahl specified that it included miscellaneous construction equipment, old tractors, farm equipment, left over pipe, and stuff like that. Mrs. King specified a lot of it was farm equipment as this is where they lived, and cars and old trucks. Mr. Stahl specified it took them about three months to get ready for the sale.

Mr. Vitale stated he believes that his use is similar to the use that was there and that they are not making anything there. All they are doing is fixing equipment.

Menefee opened the public hearing and asked people to come up and state their name, address, direct all comments to the commissioners and not towards the applicant or anyone else in the audience and please be brief. If someone said something before, you can reiterate your support.

Darcy Domoney, attorney spoke on behalf of Angela and Frank Carter, whom he was representing this evening. Carters own the second 10 acre tract coming west on 231<sup>st</sup> and Cedar Niles, which is directly north of the applicants property and directly impacted. They strongly disagree that the applicant is using the property the same way it was used previously. Mr. Domoney represented the Carters when this transaction occurred and they were very concerned there would be a much more intense use and their concerns occurred. Mr. Domoney stated when he meet with county staff he was told they would need to look for increased activity, expansion of use, but you have to wait for it to happen. The use is much more intense than the Stahl use. His clients view the previous use as more of a graveyard for equipment. It was being stored there but was not being used. There was very little activity. Some repair but not much. Mr. Domoney stated he feels as though the applicants are just using the property as a dumping ground. Storing cargo containers. Using the property for a staging area. Mr. Domoney stated it appeared Teresa had a lot of good questions that are still not answered. Mr. Domoney stated it appears the

applicant has done whatever he wanted to do without meeting the county's requirements. He also asked if as part of applying for a new Conditional Use Permit are they abandoning their existing permit or is it revoked? What the Carters are asking for is the existing Conditional Use Permit, the grandfathered one, to be revoked and the current application be denied. Mr. Domoney then discussed the impact on the Carters including noise, lights, visual negative. Mr. Domoney handed out two pictures that were taken last weekend by his client and the fence shown is his fence. It shows equipment that is not small and it has not been moved 100 feet back. There are safety concerns regarding semi-trucks on Cedar Niles Road, deterioration of the road and dust clouds. Property value concerns with an area that is primary residential. Mr. Domoney stated one thing of concern to him is that Bruce is still storing equipment on the property and now this new applicant is also using the property and it appears that two companies are using the property. Mr. Domoney stated the applicant appears to be an experienced businessman who knew what he was getting into. This is a different use. Much more intense. They are in agreement with staff's recommendation and analysis of this situation. Mr. Domoney also voiced concern in regards to the additional growth and buildings that might happen in the future.

Mr. Vitale approached the podium to speak and Menefee suggested it would be best for him to wait until the end.

Mr. Vitale asked if he could ask Mr. Cook one question? Cook reiterated he would suggest waiting until the end. Mr. Vitale stated he had asked Mr. Cook if he should get an attorney and he said that I probably would not need to. Mr. Vitale thought they were just going to come to talk and that there would not be a decision made tonight. Elliott specified that the Planning Commission does not make a decision but makes a recommendation to the County Commissioners.

Mr. Domoney came back up and provided his clients address for the record. 26601 W. 231<sup>st</sup> Street. Frank and Angela Carter.

Edward Spencer Williams, 23142 S Cedar Niles. Showed on the map that his property is immediately to the North of the applicant's property. Mr. Williams passed out pictures taken from his property. They acquired their property on Labor Day weekend of 2015. When they purchased the property they judged the business that was occurring on this property as being a very low intensity business. He contacted Teresa when he heard about the acquisition of the property and has been working to educate himself on the issues. Mr. Williams specified the applicants started modifying the property in June and at times there have been large numbers of concrete trucks coming down the road. Over a period of time, they have seen an increase in the amount of equipment stored on the site. They have seen a number of cement trucks being worked on at the building. They had a company party on the property in September including a food truck, amplified music and a bonfire. There also appeared to be shooting in the back area of the property. On October 30<sup>th</sup> of last year they did see run-off from the applicant's property and material that was transported onto their property. He showed pictures from February 21 that shows different type of equipment on the site. Mr. Williams expressed his concern with how this use could affect his ability to sell his property. Mr. Williams expressed when they purchased the property you would come over the hill and see a little bit of dilapidated farm equipment but it is

a completely different view today. Mr. Williams stated his desire for the request is for it to be denied.

Dan Strong, 22750 W 183<sup>rd</sup> Street, Olathe, owns the historic farm which is where Herald Strasser developed his Limousine operation off of and which a great portion was purchased when Hillsdale Lake was developed. The property starts at 231<sup>st</sup> and Cedar Niles and goes all the way to 223<sup>rd</sup>. Mr. Strong incorporated the property into a registered Angus seed stock operation and has liquidated his holdings a year ago. He currently has the property for sale. He stated that he purchased the property for its scenic attributes and historic sentiment. He stated his concern about the possible diminution of the value of the property. Mr. Strong specified he has been a farmer and small business owner, specifically a contractor for most of his adult life. He owned heavy industrial zoned property along with farm and residential properties and has a great deal of appreciation for the significance and importance of due diligence. He was not sure if he has ever had a real-estate transaction where due diligence wasn't the most significant criteria. Mr. Strong point to what Janet (McRae) stated earlier in the meeting of the value of experience being extremely important in this part of our region and he could not agree more. He specified that Zoning is designed to ensure homogeneous use and this subject is not a homogeneous use for the area. Mr. Strong specified his ability to divide his property is highly dependent upon a quality road and pointed to the staff report which appeared to state that portions of the road are too narrow and not sufficient to have long term surface quality when used by heavy equipment. Mr. Strong stated he agrees with denying the request and termination of the use.

Todd King, 23300 Cedar Niles Road, which is the last house on the road before Hillsdale reservoir area. He built the house in 1992. Mr. King stated the use for the last year has been more than what it was for the previous 10 years. He expressed his concern with the road. Mr. King passed out photos to the Planning Commission. He stated the pasture is now scraped off and is just dirt. Mr. King stated he does not know what has happened with the wildlife but he works from home and looks out over 160 acres of natural prairie. He stated 6-months ago he would see deer every day, multiple time a day. Has not seen a deer in 6 months.

Jensen asked for clarification that Becky King was the sister of Bruce Stahl. Mrs. King stated yes and that Todd King was her husband and they live directly next to the applicant's property.

Menefee stated we have a person up front for the public comment.

Helen Hecke, 701 W. South, Spring Hill, Kansas, moved to Spring Hill in 1961. She stated she owns the property to the Southeast of 231<sup>st</sup> Street and Cedar Niles. They had a dairy farm until Hillsdale Lake came in and acquired most of their property. Mrs. Hecke expressed her concern with this being across the road and the noise and dust that is created. Mrs. Hecke specified she was never contacted. She has been trying to sell the property but when people come to look at it they say it is too noisy. She specified she does not see this type of business going in a farming community. She was here when Stahl was operating and it was not a big issue. They came in the morning and left, and in the evening they came home. It was not daytime noise all of the time. Mrs. Hecke specified she does not currently live here where all of the noise is at. She stated that it is not a good combination. That it is a business being stuffed into a residential area. It is in the wrong place.

Cescilie Smith, 26709 231<sup>st</sup> Street, lives just to the West of the Carters and just wanted to concur with what everyone has said. She agrees with all of the comments that have been made. She stated they do not have the same visual but they have lived in their house since 1997. She is familiar with how things were when the Stahl's were operating their family farm and their business. Equipment would go out in the morning and then come back in the evening. Occasionally you would hear something happening like fixing equipment. There has been a significant change.

Menefee asked if there were any other public comments. Menefee asked Mr. Vitale if he would like a chance to make closing comments.

Mr. Vitale stated he was surprised after listening to all of the neighbors speak. He apologized if he overstepped his bounds and stated he just wants to do what Bruce had done. If he needs to downsize, they will downsize. The buildings were just to get the stuff out of the weather. Mr. Vitale offered that if there was anything they need to do they would do it.

Menefee asked if any of the Commissioners had questions for Teresa or the applicant. Elliott specified that if there were no further public comments he would suggest closing the Public Hearing. Menefee asked if there were any other public comments.

Becky King, 23300 Cedar Niles Road, specified another concern she has is there are future buildings that are also being proposed and the applicant has only been here a few months and already building a structure and questioned how many more buildings would be constructed.

Jensen asked, since she had grown up there, if she could provide more information on the types of equipment and material that were stored on the site as it was difficult to determine based upon the aerial photography. He stated that from the discussion it sounded as if this included a lot of agricultural items such as old tractors, combines or farm stuff. Mrs. King answered this was correct. Mrs. King stated her dad had also owned a lot of ground around Parker, Kansas, and was a rancher and had cattle. He also had many tractors. There were tractors in the back field and parts for tractors as he rebuilt antique tractors. There were also parts for construction equipment.

Jensen asked if she knew what the date of the sale of the property. Mrs. King stated March of 2017. Jensen asked if Mrs. King could describe what the use was at the time of sale as compared to what the use is now. She mentioned that Bruce Stahl excavating took over the company. She stated that when her dad passed away he could not handle doing that anymore. The death of their father was unforeseen. She stated that Bruce stated he could not do this without their dad here. He still runs the business to the best he can by himself. Mrs. King stated she does not believe Mr. Stahl has anyone working with him anymore. Maybe one person when he needs someone. This has been the way it has been since her father passed away.

Jensen asked what the use was on the day of the sale as compared to what it is today. Mrs. King stated there was no activity in the shops or barn at all for three years since her father passed away. So there was no use of any construction. Mrs. King stated her understanding is that Bruce

would have a job once every three or four months. These jobs would be going and digging a pond and would not be around the house at all. She also stated they had sold quite a few of the bulldozers and stuff when their father had gotten older and could not run the place anymore. Bruce had downgraded quite a bit and did not have nearly all of the property around. Mrs. King stated most of the items you see are not working property. The only things that ran were the items in front of the barn.

Menefee asked if there was any additional public comments.

Mr. Vitale asked to make one more comment. He specified when he came through to look at the property Mr. Stahl had a backhoe he was working on in one of the buildings and he had all types of tools in the building. Mr. Vitale specified if this is different than what they had they would go back to what was there.

Ashley Tillman, works for Concrete Strategies. She specified her opinion was that we needed to focus on what was the use when the original Conditional Use Permit was granted for the property.

Dan Hecke, 21690 S Moonlight Rd, stated his mom owns the property to the East. He requested if the Planning Commission considers approval of this Conditional Use Permit, they need to blacktop the road. He stated he has instructed his kids to not drive down Cedar Niles because he has been required to pull over for the semis going to this site because they do not slow down and they take the right-of-way. He stated there have been several wrecks on the curves over the years. Mr. Hecke also stated he agrees with everyone else that the request should be denied.

Menefee asked if there were any other public comments. As there were no additional public comments the hearing was closed to allow the Planning Commission to deliberate.

Menefee asked Reeves about page 4 of the staff report were it was mentioned clarification questions had been given to the applicant a little late in the process. He asked if she knew when we might have answers to those. Reeves stated this would be a question for the applicant. Jensen asked how long the applicant had the questions. Reeves stated before the weekend.

Jensen asked the applicant about the dirt that has been moved. Mr. Vitale stated there were a bunch of weeds over there and the neighbors were complaining about the weeds. They knocked the weeds down and were planning to plant grass there.

There was talking from the audience and Menefee reminded that the public hearing was closed.

Oehlert made a motion that the Planning Commission recommend to the Board of County Commissioners denial of the Conditional Use Permit based upon staff recommendation including the findings listed in the staff report.

Jensen offered an amendment to the motion that it should be clarified that the existing Conditional Use Permit should be revoked and deny the application for the Conditional Use Permit.

Elliott asked for clarification as he was not sure revoking the CUP was in the Planning Commissions control at this time. Menefee asked if Reeves could comment on this. Reeves stated that this is duty for this body. Mr. Heger, County Counsel, made a statement that the item on the agenda should be dealt with at this time and other items should be handled in the future. Reeves agreed as the revocation of the existing Conditional Use Permit was not on the agenda, it should not be considered at this time.

Jensen stated if you are asking for a new Conditional Use Permit, are you not vacating the one that is there. Reeves stated in a since yes. Jensen asked why we don't clarify it and make sure there is no longer a Conditional Use Permit on this property. Elliott stated he would be comfortable for this as an agenda item for a future meeting but is not comfortable adding it to this item.

Menefee asked if there was a second to Mr. Jensen's motion. The motion died for lack of a second.

Menefee restated the motion currently being considered.

Jensen asked if this is all that we vote on tonight, when he leaves here today, what are we telling him that he has the authority to do on his property? Reeves stated that would be the existing use that was out there with Mr. Stahl. Jensen stated he does not think we know this and this is why we need to clarify this tonight. Are we allowing him to store stuff on the property or not?

Menefee stated that he sees Mr. Jensen's point.

Oehlert asked if the Planning Commission could do something other than what the Planning Commission has recommended. Elliott stated the Planning Commission can. Reeves also agreed. The Planning Commission had discussion on the possible process of revoking the existing Conditional Use Permit.

Reeves referred to Section 14-3.01.3 of the Zoning Regulations and discussed the process to revoke a Conditional Use Permit.

Menefee stated this appears to show we cannot consider the revocation of the existing CUP at this time as a hearing has not been posted for the revocation of the CUP. Elliott agreed and even thought it would most likely be the same comments that they hear today, but they cannot consider it until a hearing is posted for the revocation.

Menefee stated the original motion is still on the table. Menefee asked if there was other discussion. Without further discussion, the motion passed unanimously (8-0) based on the finding below:

## **Findings**

1. The request includes a heavy industrial use and does not conform to the Rural Residential designation of the Miami County Comprehensive Plan.
2. The quantity and type of traffic generated from the use exceeds the limit of what the County has established for gravel roads. The heavy truck traffic associated with this use has the potential to strain the resources of the Road and Bridge Department by requiring more frequent maintenance of the gravel road. This use is better suited to a paved road constructed to the Type "B" standard.
3. The requested use will create detrimental effects for neighboring properties due to increased dust, noise, light and intensity of use that would not otherwise be produced in the Countryside district on a consistent basis. The use may also create a negative impact on the Hillsdale Lake Watershed.
4. The request is not consistent with the purpose and intent of the zoning regulations, as the contractor shop and storage yard exceeds the scope of a typical home-based contractor shop and would be more consistent with the regulations if located in an industrially zoned site.

There was further discussion about the process to vacate the existing CUP. Mr. Heger, specified this is a due process issue and each item needs to be considered separately. Menefee stated if the Board of County Commissioners overruled their recommendation tonight, then it is a moot point anyway. DeYoung stated to be fair to the applicant, she would want to be able to have his attorney at that time.

**Public Hearing: 18002-CUP: H & R Lawn and Landscape**

Cook presented the staff report for consideration of a request for a conditional use permit for a contractor's shop and/or yard per Section 5-2.02.7 of the Miami County Zoning Regulations. The subject properties are approximately 15 acres is zoned Countryside (CS) and is located on the South side 239th Street, approximately 450 feet West of Switzer, commonly known as 10585 239th Street, Bucyrus, KS, in the NE ¼ of Section 1, Township 16, Range 24, Ten Mile Twp.

Menefee asked staff about the garage that was converted into a second dwelling and if this is an issue that needs to be dealt with. Cook stated this is still an issue that has not been corrected but it is no longer being used as a dwelling.

DeYoung asked why a 20 year requirement was included in the conditions. She stated she thought that the Planning Commission had moved away from this and more towards the Conditional Use Permit being tied more to the person requesting it. Cook stated the condition was included because it was part of the narrative and what the applicants had proposed.

Elliott stated that on some of the previous requests a condition has been included that a review is required when a change of ownership occurs.

Manchester brought up concerns he has with an operation that is occurring on a property near him in which dumping of debris is occurring.

Menefee asked the applicant to come forward and make their presentation.

Joe Milliken, 10585 W 239<sup>th</sup> Street. Mr. Milliken stated that if they bring debris back to the site from a job, it gets placed in one of the bins shown on the site plan. When they get a full load it is hauled over to Belton, Missouri where they have a company that handles this material. They do not burn anything.

Jensen asked if they own both of the pieces of property and if this would be strictly on the 10 acre property. Mr. Milliken stated this was correct and eventually they would like to build a home site on the 10 acre piece as well.

Jensen asked if they had any problem with tearing the dwelling portion out of the accessory building if they grant this. Mr. Milliken stated that their intent was that the 4 acre parcel would not have anything to do with the CUP application. Jensen asked if they grant it with the condition that they tear that out, will you tear it out. Mr. Milliken replied they would.

Menefee stated he should have asked this before the applicant came up, but has anyone had any contact with the applicant. Oehlert specified he used to business with them.

Ross asked if the garage could be turned back into a garage. Menefee asked if they would have to turn it back into a garage. Cook agreed and stated this would typically include the removal of the kitchen.

Elliott asked Cook to clarify what portion of the application included that 4 acres. Cook stated both deeds were submitted as part of the application. Elliott asked what part of this application directly affects the house. Cook stated nothing really does. Menefee stated the residential garage is not really part of the CUP. Cook answered this was correct.

Jensen asked about the condition dealing with noise and hours of operation and where these times came from. Cook stated those came out of the conditional use requirements. Jensen stated this seems pretty late in the night. Jensen asked if the applicant was asking for different times. Cook stated the application had included their normal operating hours as 8 AM to 5 PM, Monday through Friday.

Menefee asked if there were any other questions for the applicant.

Menefee opened the public hearing. Being no comments, Menefee closed the public hearing.

Elliott asked if the only negative comment was the one included in the packet. Cook stated this was correct. Elliott asked how many adjoining property owners were notified. Cook stated 7 adjoining property owners but some property owners owned multiple properties.

Jensen made a motion to recommend approval of the Conditional Use Permit based on the findings and recommended conditions in the staff report except that the times in condition #7 be limited to those the applicant is requesting, which is 8 AM to 5 PM. Seconded by DeYoung.

Ross mentioned he would maybe give a little more than 5 PM. Elliott stated it does say that except in emergencies. Menefee stated he might show up at 7:30 and start hooking trailers up. Mr. Milliken specified that sun-up to sun-down or 6 AM until 8 PM.

Jensen stated he would be willing to modify his motion to allow for operation from 6 AM until 8 PM. DeYoung also agreed with the modified motion.

Elliott specified that a condition should also be added to the approval to require the applicant to participate in the County's dust control program and that the direction of travel to and from the site would be along Switzer Rd. Elliott moved to amend the motion to add a 12<sup>th</sup> condition to the approval of the request that the applicant participate in the county dust control program and designate the path of travel to and from the business. Jensen seconded. The amendment to the original motion was approved 7-0 with Oehlert abstaining.

### **Findings**

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.

### **Conditions**

1. Except as amended by these conditions, the property shall be developed according to the submitted site plan.
2. Except as amended by these conditions, the property shall be developed and operated according to the applicant's narrative report.
3. Per the applicant's request, the term of this conditional use permit shall be twenty years commencing from the date of County Commission approval. 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.
4. All open storage areas shall be adequately screened from rights-of-ways and all adjoining properties with fencing and/or landscaping.
5. All open storage areas shall be a minimum of 100 feet from all property lines.
6. Transport and dumping, burning, and/or burial of offsite yard waste is prohibited. All offsite yard waste materials shall be properly disposed of at a landfill approved for such waste.
7. Except in emergencies, activities that cause noise, odor, smoke, illumination, heat, vibration or similar effects shall not occur earlier than ~~5:30 a.m., nor later than 10:30 p.m.~~ *6:00 a.m., nor later than 8:00 p.m.*
8. Development shall comply with all sanitary, building, fire and other applicable county and state codes and permit requirements.

9. Prior to the issuance of any building permits a stormwater management plan that meets Miami County Standards, prepared by a Kansas licensed Professional Engineer must be submitted and approved by the County:
10. No signage is approved without first obtaining required sign permits.
11. Any illumination associated with parking or outdoor activities shall be shielded so that the light source (bulb) is not visible from, and so that it does not cast light upon, adjacent properties or rights-of-way. Any lighting for the parking areas or other portions of the site shall not exceed twenty-five (25) feet in height, and shall adhere to standards for parking lot lighting outlined in the zoning regulations.
12. *The applicant will participate in the County's dust control program and will designate the route of travel to and from the site as being from the site East along 239<sup>th</sup> Street to Switzer and North along Switzer to 223<sup>rd</sup> Street.*

Menefee called for a vote for the motion as amended. The motion was approved 7-0 with Oehlert abstaining.

**Public Hearing: 18002-TA: Zoning and Subdivision Regulations**

Consideration of potential text amendments to Articles 2, 4, 4A, 5 and 6 of the Zoning Regulations, and Article 1 of the Subdivision Regulations of Miami County, Kansas to clarify the definition of a government lot, aliquot or fractional section of land, and its intended density for development, and net area for each lot.

Menefee opened the Public Hearing.

Elliott asked to verify what exactly the Planning Commission was looking at.

Jensen asked about having the discussion about development dependent upon soil types and if that would be included. Elliott replied the Planning Commission could have discussion on that at any time, they just cannot approve anything without the Public Hearing.

DeYoung made a motion to table until the March 6, 2018 Planning Commission meeting. Elliott seconded. The Motion carried unanimously (8-0).

**ANNOUNCEMENTS**

None

**GENERAL DISCUSSION**

None.

**ADJOURNMENT**

DeYoung moved to adjourn the meeting. Jensen seconded. The meeting was adjourned by unanimous vote (8-0) at 10:30 p.m.

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

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Kenneth A. Cook, PC Secretary

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Chair, John Menefee / Vice-Chair, Phil Elliott

Minutes written by Kenneth A. Cook

DRAFT

**MIAMI COUNTY PLANNING DEPARTMENT  
MEMORANDUM**

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**DATE:** April 3, 2018

**TO:** Miami County Planning Commission

**FROM:** Teresa Reeves, Planning Director

**RE:** **Continued Public Hearing - 18002-TA: Zoning Regulation – Fractional Lots**  
The Planning Commission will discuss potential text amendments to Articles 2, 4, 4A, 5 and 6 of the Zoning Regulations, and Article 1 of the Subdivision Regulations of Miami County, Kansas to clarify the definition of a government lot, aliquot or fractional section of land, and its intended density for development, and net area for each lot.

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**Background:**

The Planning Commission briefly discussed the proposed text amendments regarding aliquot divisions of land at the February 6, 2018 meeting. The hearing was continued to allow staff an opportunity to revise the proposed amendments to include a definition of Aliquot Part, and to simplify the subdivision language. The item was again continued from the March meeting due to the late hour of the meeting.

**Proposed Text Amendments:** Strikethroughs indicate current language being deleted while italicized text is proposed. Staff also highlighted changes for quick reference.

**Zoning Regulations**

**Article 2 Definitions**

***Aliquot Part** - The standard subdivisions of a section, such as a half section, quarter section, or quarter-quarter section. A division of land into equal fractional parts, down to as small as 40 acres more or less, which does not leave an odd remainder.*

**Note:** The following correction is being made to the minimum lot size in the Rural Residential district. Staff believes 1 acre is a typographical error as the minimum lot size is 2 acres to accommodate a private onsite wastewater system. The Planned Development District allows a density of 1 du per acre.

**4A Rural Residential**

**4A-5.06** Lot Area: Every dwelling or residence established shall be located on a lot that shall have frontage on a dedicated public street that meets Miami County access requirements. Lot area and required conservation subdivision standards are as follows:

With an overall density of one (1) dwelling per five (5) acres of gross land area, including any rights-of-way, an individual lot shall be a minimum of ~~one (1)~~ *two acres*. A minimum of thirty percent (30%) of the land area of the subdivision, excluding any proposed or required on-site or off-site rights-of-way, shall be set aside for permanent open space. Most or all of the open space should be sensitive land, which shall always take priority over non-sensitive land for meeting the open space requirement. Permanent open space may be in the form of, but not limited to, wetlands, floodways, slopes exceeding twenty-five percent (25%), agricultural fields, parks, trails, recreational fields, or undisturbed natural areas. All sensitive lands of an area proposed for a conservation subdivision shall be identified and prioritized as to their level of sensitivity first, and then the subdivision shall be designed around those sensitive lands. The permanent open space shall either be held in common by all property owners within the subdivision, be dedicated to the County or other public entity for recreational use in the form of public parks and/or public trail corridors or be granted to a public land trust as a conservation/open space easement. Solid, view-obscuring fences or walls shall not enclose the permanent open space.

## **Article 6 Agricultural District**

**6-5.02** In the Agricultural District, the minimum lot area, dimensions of lots and yards shall be as follows:

1. Lot Area: Every dwelling or residence established shall be located on a lot that shall have frontage on a street that meets Miami County access requirements. Lot area shall be according to the following types of subdivisions:

A. Standard Subdivisions: With an overall density of one (1) dwelling per twenty (20) acres of gross land area, including any rights-of-way, an individual lot shall maintain a minimum gross lot area of 20 acres, *or aliquot equivalent*.

## **Subdivision Regulations**

### **Section 1-5. Exemptions**

**1-5.01** The following specific transactions shall be exempt from compliance with either the overall provisions of these Subdivision Regulations, or the stated provisions of these Subdivision Regulations, if so stated:

7. The division or further division of land into *aliquot parts of a section* ~~tracts of forty (40) acres or more~~ when such divisions do not involve or result in the creation of new streets, easements of access or other dedications, ~~and when such legal descriptions can be described as fractional section divisions of land,~~ and when such divisions have direct access to a publicly dedicated right-of-way. Typical examples of what are acceptable descriptions of *aliquot section* divisions of land as they apply to this exemption include, “the N1/2 of Section...,” “the NE¼ of Section...,” “the W1/2 of the NE¼ of Section...,” “the NE¼ of the NE¼ of Section...,” and other such *aliquot*

~~fractional~~ section combinations. Exceptions stated in the descriptions of divisions of land in ~~fractional~~ *aliquot* ~~fractional~~ sections shall only apply to rights-of-way to qualify for this exemption. It is understood that *aliquot* ~~fractional~~ section divisions of land described as quarter ( $\frac{1}{4}$ ) quarter ( $\frac{1}{4}$ ) sections may be more or less than forty (40) acres ~~(long or short sections established by the government due to the curvature of the earth)~~ and still qualify for this exemption.

Staff recommends the Planning Commission recommend the County Commission approve the proposed text amendments as presented.