

**MINUTES OF THE
MIAMI COUNTY PLANNING COMMISSION
JULY 2, 2019**

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

ATTENDANCE

CHAIR: John Menefee

VICE-CHAIR: Mark Oehlert

PLANNING COMMISSION MEMBERS: Joshua Brown, Chris Dyer, Mike Guetterman¹
Bret Manchester, Mark Ross

ABSENT MEMBERS: Steve Jensen

EX-OFFICIO MEMBERS: None present

PLANNING DIRECTOR: Teresa Reeves

COUNTY COUNSELOR: David Heger

PLANNER: Kenneth Cook

PC SECRETARY: Angie Baumann

ECONOMIC DEVELOPMENT Not Present

COUNTY COMMISSION: None Present

COUNTY CLERK: Not Present

PRESS: Not Present

¹ Mike Guetterman in attendance, but not present during Roll Call

MINUTES

JULY 2, 2019

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

Roll Call was taken and six (6) members were present, constituting a quorum. Guetterman² and Jensen 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, Manchester seconded, and the motion passed, 6-0.

CONSENT AGENDA

Minutes: Approval of the May 7, 2019 Planning Commission Minutes

19002-SUB: Consideration of the Final Plat of Jayhawk Place, a Replat of Lot 1 of Cedar Ridge, dividing approximately 42.28 acres into 2 lots utilizing the Agricultural Preservation standards in the Countryside zoning district. The subject property, addressed as 32495 W. 379th St and also identified as Lot 1, Cedar Ridge Subdivision, is located on the south side of W. 379th St, approximately ½ mile west of Plum Creek Rd, in the SE ¼ of Section 34, Township 18, Range 22, Mound Twp. Submitted by Theodore Jones, Kathryn Jones, and Seth Jones, property owners of record.

Oehlert moved to adopt the Consent Agenda as presented. Manchester seconded, and the motion passed, 6-0.

² Mike Guetterman in attendance, but not present during Roll Call

REGULAR AGENDA

Old Business:

Living Proof Church – Annual Review of Ballfields

Cook presented the staff report. He reported that he had visited the site on June 11th and observed that the area east of the ballfields had been regraded. He noted that grass seed is growing on a fair amount of the site, and he believes the amount of growth should help limit erosion. Cook also reported that he observed that the property owner had placed matting on the ground in those especially troublesome areas, in an effort to establish the seed and stop some of the erosion. He stated that as of June 11th, everything looked good with regard to the property owner's erosion measures, and that staff will continue to monitor the situation and work with the property owner in this regard. He explained that no action is needed by the Planning Commission because staff is simply providing an update on the property owner's erosion control measures, as previously requested by the Planning Commission. Cook added that the annual review of the existing Conditional Use Permit (CUP) has been continued to February 2020.

Menefee thanked Cook.

New Business:

Public Hearing 19001-Z: Living Proof Ministries, Inc. – Rezone from Countryside (CS) to Commercial (C-2)

Cook presented the staff report for consideration of a request to rezone approximately 15.75 acres from Countryside (CS) to Commercial (C-2) in accordance with Section 22 of the Miami County, Kansas Zoning Regulations. The subject property is located at the Northeast corner of Harmony Rd, in the Southwest Quarter of Section 28, Township 17 South, Range 23 East, and addressed as 32401 Harmony Road. Submitted by Bo Gerken, on behalf of Living Proof Ministries, Inc., property owner of record.

He pointed out that according to the Zoning Regulations and court cases the Planning Commission should consider all of the *Golden Criteria* when determining whether to approve or deny a rezoning request. With regard to use of the subject property, he explained that what is most relevant is the uses that would be permitted if the rezoning request is approved. He added that the Planning Commission needs to consider whether the requested zoning is appropriate for this location at this time.

Cook then highlighted several of the *Golden Criteria*:

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

Cook commented that staff is concerned about rezoning a property to a use significantly more intense than what is currently permitted. He pointed out that the staff report includes the sections of the Zoning Regulations, which describe all of the possible uses permitted by right in the C-2 District. He noted that he believes the Applicant's desire is to no longer be subject to the CUP, and explained if the subject property is rezoned to C-2 the use of a church would become a use

permitted by right. He explained, however, that the operation of ballfields in the C-2 District would still require a CUP. He also noted that the Applicant had previously proposed the operation of a daycare as part of the original CUP, which was later retracted from the application, but that a daycare would be a use permitted by right in the C-2 District.

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

Cook stated that the Applicant's reason for the rezoning request does not, in staff's opinion, constitute a hardship. He explained that the subject property is currently in the CS District and has a CUP, which allows the operation of a church. He added that the operation of a church will still be permitted regardless of whether the property is zoned CS or C-2. He noted that one of the requirements of the existing CUP is that the Planning Commission and Board of County Commissioners must review the CUP every 10 years for compliance with the conditions. He added that this particular requirement was relaxed from the original CUP approval, which stipulated that the CUP *expired* in 10 years, and which would have required the Applicant to reapply for a completely new CUP.

Cook stated that the C-2 District is intended to be located along major streets. He added that the Miami County Subdivision Design Standards also require increased standards for the types of streets that are adjacent to properties allowed to be rezoned to Commercial. He noted that this would be a "Type 'B' Collector Road Standard". Cook referenced the following, which was submitted by Road & Bridge Director J.R. McMahon with regard to the Type "B" standard:

"Collector Road Standard which is a 27 foot wide pavement (standard allows for a chip a seal surface) with 6 inches of AB-3 base with modified subgrade. In addition to the standard calls for 8 foot gravel shoulders and an 80 foot minimum right of way."

Cook explained that Harmony Road currently has an average improved road surface width of 20'-22', with a chip seal base, but does not have shoulders, and does not meet the width requirements for a Type "B" Collector Road.

9. The conformance of the requested rezoning to the adopted Miami County Comprehensive Plan.

Cook stated that the Comprehensive Plan Map shows the subject property as "Rural Residential", which harmonizes with CS zoning, in that the primary uses in the Rural Residential land use category include agriculture and low-density (10-15 acre) residential development. He added that the Rural Residential land use category provides for limited areas of other types of uses where adequate road infrastructure is provided and where the proposed use will not conflict with the primary uses of this category.

He stated that the Comprehensive Plan designates the interchange at 327th Street and US-169 Highway, which is southwest of the subject property, as an "Area of Regional Significance" with short-term development potential. Cook went on to state that there are other parcels nearby that the Comprehensive Plan anticipates will have commercial or industrial uses. He explained, however, that the Comprehensive Plan notes that some of these sites may lack important infrastructure, such as sewer and water, and will remain dormant until such services are provided

to these areas. He explained that if those services are provided it becomes more appropriate for nearby properties to be rezoned for more intense uses.

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

Cook noted that a concern about “spot zoning” has been brought up. He then read aloud the definition of “spot zoning” from *The Latest Illustrated Book of Development Definitions*:

“Rezoning of a lot or parcel of land to benefit an owner for a use that is incompatible with surrounding land uses and that does not further the comprehensive zoning plan.”

Cook explained that when considering the following factors, staff takes the stance that approval of the rezoning request could be considered “spot zoning”: 1) the C-2 District needs to be located along major roads; 2) the Comprehensive Plan Map shows the area as Rural Residential; 3) the Miami County Subdivision Design Standards require that a commercial property be located adjacent to a more substantial “Category 5” road; and, 4) the uses and zoning of the surrounding properties. He added that there is no other Commercial zoning directly adjacent to the subject property.

Cook stated that there are more commercial and industrial uses in this area compared to most other areas of the County. He then referenced the table of surrounding uses in the staff report and pointed out two (2) commercial / industrial uses located east of US-169 Highway: 1) the Elizabeth Layton Center, located at the interchange and zoned Low Intensity Commercial (C-1); and 2) the Paola waste water treatment facility and ponds, located 0.6-0.7 miles northeast of the subject property and zoned Business Park (BP). He noted that all other commercial / industrial uses found near this intersection are located west of US-169 Highway, along Old Kansas City Road and along County roads west of US-169 Highway.

Cook noted that the Comprehensive Transportation Plan describes the road east of US-169 Highway as a local road as well as Harmony Road, whereas Old Kansas City Road west of US-169 Highway is considered to be an arterial. He added that most of the permitted commercial or industrial uses front arterials, as opposed to fronting local roads.

He concluded by stating that staff’s recommendation is denial of the request.

Menefee invited the Applicant to speak.

Bo Gerken (22360 W. 303rd St., Paola) stated that Living Proof Church does not intend to do anything differently than it is currently doing, other than being out of the CUP. He expressed that the church does not feel it is a good idea to be subject to a CUP, and explained that if a member of the Planning Commission or Board of County Commissioners does not like the church, they could potentially revoke the CUP when the CUP is up for review. Pastor stated that the Living Proof Church family has invested thousands of dollars—up to \$1M—in this property; the church has invested in advertising its location; and, on a weekly basis upwards of 500-600 people consider Living Proof Church to be their church home. He noted that he thinks it has been proven that people don’t mind attending church in this location.

Pastor Gerken asserted that when they previously met with Road & Bridge Director J.R. McMahon regarding rezoning, they were under the impression and were told that 327th Street, all the way east to the County building (the Road & Bridge facility)—a property which he believes is zoned C-2 / Commercial—has been changed by the State of Kansas to a higher-traffic road. He added that he could be wrong about this, and that McMahon is not present to answer this question. Pastor Gerken noted that Cook had stated in his presentation that the other side of the highway (west of US-169 Highway) is the only one that had changed, but that the church was told both sides had changed because of the County moving all of its trucks back and forth.

Pastor Gerken expressed that is not the intention of Living Proof Church to hurt any of its neighbors and it is doing its best to reach people for the cause of Christ. He reported that the tax records for all of the surrounding properties have increased since the church has been in this location; therefore, he doesn't know why there is concern about decreasing property values due to the church. He added that, historically, towns used to be built around churches. He expressed that he understands if they have upset some people, but the church believes it is doing everything it can to appease the neighbors. He then explained how the church disconnected one of its lights, even though the lighting was approved by the County, because a neighbor had complained about it.

Menefee then opened the public hearing.

Don Bucher (32585 Harmony Rd., Paola) remarked that Pastor Gerken's previous comment about surrounding property values increasing since the church has been in this location is like the rooster taking credit for the sunrise. Mr. Bucher then stated that property values have increased because the recession is over; and property values are increasing countywide, statewide, and nationwide. Mr. Bucher asserted that this application is premature and hypothetical, in that the application narrative suggests that the church may, in the future, outgrow its existing facilities; and, if so, will want to sell the property, which may be difficult to sell unless it is zoned C-2. He noted that this is all hypothetical and it is unknown if, when, or to whom the property would be sold. He stated that if the property were zoned C-2, the property could be sold to any of a number of permitted users, and the surrounding property owners could not prevent this from happening. Mr. Bucher noted that among the possible permitted uses are taverns and adult entertainment businesses, and the entire neighborhood would be subjected to this threat if the church were to sell and move.

Mr. Bucher explained that the CUP is subject to a review at the end of the 10-year term, which is just that—a review, not an expiration of the CUP. He expressed that the surrounding property owners do not dislike a church being in this location and that the property owners' only concern is what will happen if the rezoning application is approved and the church decides to sell the property to someone else, in which case surrounding property owners will have no control. He then stated that the church is legally operating within the confines of its recently applied-for amended CUP. He pointed out that during the long, difficult, and painful process of amending its CUP, the church did not express any interest in rezoning, and is now stirring up hard feelings in the neighborhood with this rezoning application.

With regard to "spot zoning", Mr. Bucher remarked that not only is it anathema to zoning among zoning professionals, but according to the Supreme Court of Kansas "spot zoning" is unlawful unless it can be proved that there is a public benefit. He added that this rezoning request is textbook "spot zoning". He then read aloud the definition of "spot zoning" provided in the staff

report and explained that a single parcel (the Living Proof Church property) is being singled out and that the use of the parcel would be different than the surrounding area, which area is low-density residential and agriculture. He further remarked that the application does not even pretend to benefit the public, and that the benefit of the public is an absolute requirement for obtaining a rezoning.

Referencing the *Golden Criteria*, Mr. Bucher noted that this application does not meet any of the criteria. He then asked the Planning Commission to recommend rejection of this request in order to send a message to the Board of County Commissioners that our Zoning Regulations deserve to be enforced.

Ron Fritts (32466 Reno Rd., Paola) expressed that he does not understand why Living Proof Church wants to rezone its property to Commercial. He remarked that he would have thought that the church, when establishing its site on this property, would have looked at all of the “what-ifs”. He asked what will happen if the church sells the property to someone else, and who that will be. He commented that this will affect the neighborhood. He noted that he is fine with use of the ballfields for church activities, but that he does not want tournaments, loud speakers, lights and disruption. Mr. Fritts reported that he asked the Gerkens if the noise level could be toned down a bit, as he can hear the music on Sundays and Wednesdays in his garage, but this has not occurred. Mr. Fritts commented that he would hate to see this property rezoned to C-2 because it is unknown who will move in if the property were to be resold. He concluded by stating that this is a good, peaceful neighborhood with good neighbors.

Gary Gerken (1008 E. Osage St., Paola) stated that one reason for the rezoning request is it seems each time a neighbor complains to the County, the County immediately contacts the church, which then has to spend money to remedy it. He noted that on Mother’s Day a funeral for a biker from Kansas City was held at the church, and the church had opened its doors at no cost to the family and had provided a meal. He reported that the family and those attending the funeral had expressed that this is a great “community”. Mr. Gerken added that the church was representing the community. He reported that the very next day a neighbor complained about the noise from the motorcycles at the funeral.

Mr. Gerken went on to describe another complaint from a neighbor, who had taken pictures on Easter Sunday of vehicles illegally parked on the road. Mr. Gerken stated that Easter Sunday is perhaps the biggest church day of the year, and that Living Proof Church had a huge crowd that day. He noted that the basis of the neighbor’s complaint was a safety concern over emergency vehicle access. He reported that County staff sent an e-mail the very next day, suggesting that perhaps the building is over-occupancy and that there isn’t enough parking. Mr. Gerken remarked that the church’s obligation is to have “No Parking” signs on that road, which has been done. He added that if this is truly an issue of safety, he would like to know how many other places are being evaluated with regard to parking in fire lanes or in “No Parking” zones. He concluded his comments by stating that the church feels it is being singled out.

There being no further public comment, Menefee closed the public hearing and invited the Applicant to respond.

With regard to parking, Pastor Gerken remarked that two people from the police department and the Sheriff’s department were on the church’s parking team on Easter Sunday morning. He

added that the first responders were actually parking the vehicles that morning. He again stated that the church does not intend to hurt anybody and is trying to do its best.

Oehlert asked Pastor Gerken if there weren't enough parking spaces on the property itself.

Pastor Gerken responded that every nook and cranny was parked and that the church bused people who had parked at the Elizabeth Layton Center (with the Center's permission) to the church site. He added that many people who attended did not have any passengers in their vehicles.

Oehlert then asked how much growth the church can handle at this location, if the church is currently outgrowing its facility, and if the church is ready to relocate somewhere else. Pastor Gerken responded that the church has no intentions of relocating and that this is a perfect location. He added that the church is currently looking at possible solutions for parking such as busing people in from different areas and extending the parking.

Oehlert asked if the church is at capacity in its current sanctuary. Pastor Gerken answered, "No, sir—not steadily". Pastor Gerken then noted that the building was at capacity on Easter Sunday.

Oehlert asked what Pastor Gerken estimates to be the current capacity. Pastor Gerken replied that he would estimate 70-75% capacity, and added that the church has grown faster than they can afford to build.

Oehlert remarked that the application narrative is hard to follow and is outdated. He commented that he would like to see an updated projection of growth in order to gauge if this would be a more intense use than what it is today. Pastor Gerken responded that the church is doing well financially and is paying extra in an attempt to pay off debt. He further commented that he could attempt to project future growth, but it would be a complete guess. Oehlert suggested that the growth projection could be based off of past growth.

Oehlert then asked Pastor Gerken if the uses are expected to change or increase in the event the rezoning request is granted. Pastor Gerken answered that the church does not anticipate that its uses will change. Oehlert then asked how the ballfields will be utilized. Pastor Gerken responded that the ballfields would be for church use and would not be leased to the public. He then expressed that there seems to be a misconception about the ballfields and clarified that the church is building nice ballfields for the purpose of outreach. He explained that a team of 10-year-old boys from the church practices on the ballfields on Wednesdays during youth group, in addition to having prayer and a Bible lesson. He added that the ballfields are not making the church any money.

Brown asked if the church has prepared for any costs associated with improvements to Harmony Road.

Pastor Gerken responded that J.R. McMahon had made them aware that this could be a possibility, but the church has not yet explored costs as it is waiting to see if rezoning is even a possibility. Pastor Gerken remarked that he doesn't know how many of the roads in the County are ready for commercial growth. He pointed out that Debrick Truck Line and A-Z Mobile RV Repair are located on a dead-end road (Lone Star Road), with housing near their properties. He noted that he doesn't think Lone Star Road likely meets the criteria.

Pastor Gerken then remarked that it is not as though Living Proof Church is in the middle of nowhere, and that the corner of the property hits US-169 Highway. He asserted that areas off of the highway are significant areas for future growth and the County must decide if it wants growth in those areas. Pastor Gerken suggested the unlikelihood of a church that is zoned C-2 becoming an adult entertainment center, especially considering the size of this facility. He added that such a scenario is also hypothetical.

Menefee referenced the table of surrounding zoning/uses in the staff report, which shows nearby properties that are zoned Commercial or Industrial, and asked why the zoning for those properties isn't considered to be "spot zoning".

Reeves noted that those properties are grandfathered.

Cook added that many of those uses existed prior to the adoption of the Zoning Regulations. He suggested that some of those properties may have once been located within a Community Growth Area, but the cities have since given them back to the County. Cook explained that if a comprehensive plan shows that a particular area is going to be commercial, that is a factor that may be considered; however, the County's Comprehensive Plan Map shows the subject property as being in the Rural Residential land use category, with an Area of Regional Significance nearby. He noted, however, that when the County adopted its Comprehensive Plan it did not define the Areas of Regional Significance. He added that the County's primary consideration at the time was the infrastructure, as the infrastructure needs to be in place for rezoning to occur.

Oehlert remarked that what makes this a hard problem to solve is that the Area of Regional Significance is not clearly defined.

Menefee reasoned that people will not invest in infrastructure without first knowing there will be something there to use it.

Cook reported that Reeves had researched the various properties in the County being used as churches and found that nearly all were zoned Agricultural (AG) or CS. Cook noted that he recalls one of the properties being zoned Commercial, but he believes it may have been C-1. He explained in the case of that particular property, the church had sold the property to someone who operated a business there, and the property was later resold and once again utilized as a church.

Oehlert asked about the zoning designation for Trinity Lutheran Church in Block.

Menefee stated that the majority of churches in the County existed prior to the adoption of Zoning Regulations. Staff agreed.

Cook reminded the Planning Commissioners that the zoning designations and uses of church properties within the unincorporated areas of the County cannot be compared to those within city limits.

Oehlert asked Cook to comment on County Administrator Shane Krull's memo on this matter.

Cook responded that the Comprehensive Plan Map indeed shows a dot at this interchange, indicating an Area of Regional Significance. He added that there are uses in that location that

are more intense and it is somewhat of an area of transition, but the table of surrounding uses in the staff report demonstrates that most of the uses are on the west side of the US-169 Highway, where most of the arterials are, and that on the east side of U.S.-169 Highway, the roads are considered to be local according to the Comprehensive Transportation Plan. With regard to the Public Works building east of US-169 Highway, Cook suggested this use also existed prior to the adoption of the Zoning Regulations. He added, however, that the Areas of Regional Significance are not defined, so it is unknown whether the area extends ¼ mile, ½ mile, 1 mile, or 2 miles from the dot shown on the Comprehensive Plan Map.

Cook also noted that the commercial and industrial properties in that area are located at the interchange or west of it, whereas, east of the interchange is currently a Rural Residential land use.

Oehlert pointed out the residence next to A-Z RV Repair and other residences across from Lang Chevrolet.

Cook replied that there will always be a transition at some point. He commented that in the future—dependent upon what happens around this interchange—this area may be completely different than it is today. He also noted that the residential properties adjacent to some of the commercial and industrial sites appear to be farm sites or home sites on acreages. He further explained that this area is not really a platted subdivision, but was developed more as smaller residential lots, rather than just one lot made originally on a larger tract of land.

Reeves clarified that the Elizabeth Layton Center property was formerly an engraving business that was grandfathered in, which she believes had Industrial zoning. She explained that the property was later down-zoned to C-1 in order to bring in the Elizabeth Layton Center. She added that most of the nearby businesses / uses existed prior to Countywide zoning.

Manchester commented that the success of Living Proof Church can't be argued. He noted that staff has done a lot of research and staff's recommendation is for denial. Manchester stated that he has considered staff's determination that there is no hardship on the Applicant; that Harmony Road does not meet the road standards; the rezoning does not meet the requirements of the Zoning Regulations or the Comprehensive Plan; and written comments submitted by neighbors as well as the neighbors' comments heard this evening. Manchester then moved to deny the rezoning request, based upon all of these considerations.

The motion died due to lack of a second.

Menefee asked the Planning Commissioners if they are considering approving the rezoning request.

Oehlert answered that he would like to send this back for further study. He then read aloud the following from Kansas Supreme Court case *Coughlin v. City of Topeka*, a case referenced in the staff report:

““Spot zoning” is a descriptive term rather than a legal term and spot zoning as such is not necessarily invalid.”

Oehlert specified that he would like 1) a better clarification of “spot zoning” and would like the County Counselor to provide an opinion on “spot zoning”; 2) specific information on the road improvement requirements, including what this entails and the projected cost; and 3) the traffic impact.

Oehlert remarked that it is difficult for him to reconcile that the church presents a hardship to the area.

Menefee commented that the CUP must be reviewed every 10 years and he questions what would happen if, in 10 or 20 years, there is a completely different Planning Commission or County staff that are not in favor of allowing this use to continue.

Cook asked the Planning Commissioners if there was not yet a church existing on this property, if they would have considered it appropriate to rezone directly from CS to C-2. He reasoned that when the original application was made to put a church on this location it was known that this was in the CS District and it was known that such a use would be permitted only upon the approval of a CUP.

Oehlert replied that this is not a fair question because “this” Planning Commission was not paneled at that time. He then asked Cook if Areas of Regional Significance had been brought up to the Planning Commission at that time. Cook confirmed that they had been.

Oehlert remarked that the Planning Commissioners must instead consider the information before them today.

Cook replied that the information that is before the Planning Commission today is that in the CS District, the operation of the church is allowed with the existing CUP.

Oehlert then referenced Page 30 of the Comprehensive Plan, and noted that the Comprehensive Plan allows for some commercial uses in Areas of Regional Significance, and it should be determined how far this Area of Regional Significance expands.

Guetterman asked how many CUP’s have been revoked since the adoption of the Zoning Regulations. Reeves answered that she is aware of only one (1) that has been revoked since 1991 or 1992. She explained that it was grandfathered, but continued to expand beyond its legal description, so it was revoked.

Guetterman reasoned that there shouldn’t be a fear that the CUP will be revoked.

Brown asked what staff would recommend if they were asked where a proper location for a church would be.

Cook answered that the Comprehensive Plan provides that the primary location of commercial, industrial, and higher impact facilities should be in municipalities that have the available road infrastructure, sewer, and water. He added that the Comprehensive Plan does provide that there are other locations that might be acceptable dependent upon the infrastructure available.

Cook added that the concern about road infrastructure was addressed during the Applicant’s CUP amendment process, and it was specifically discussed that they were requesting to expand

the size of the church when there was already concern about the traffic on Harmony Road—a road that was minimally meeting the standard.

Cook noted that when recommending a proper location for a church site, he would also refer to the Comprehensive Transportation Plan and recommend a location along a paved, major road, preferably in or adjacent to a municipality or perhaps one of the town sites.

Brown asked if the Applicant were to upgrade Harmony Road to meet the standard, as noted in McMahon's commentary, if that would resolve the road infrastructure issue.

Cook answered that there would likely still be some question of how to transition from a heavier commercial use to a residential use and whether the commercial use is appropriate at that location, but with regard to safety it becomes a little bit better.

Cook noted that the waterline servicing the property is a 2" line and is likely not sufficient for any type of fire suppression. He reported that Paola's Fire Chief had previously expressed concern that the County was considering granting exceptions to the requirement for a fire suppression system. He added that the Applicant ultimately provided extra exits and additional alarms as safety measures. He noted that concerns regarding road infrastructure also came up during these discussions.

Dyer asked if any conditions could be placed on the rezoning.

Cook answered that you cannot typically condition a rezoning. He explained that when you typically hear condition it involves someone proposing to grant a rezoning but that the property can only be used for a specific use. Usually the request to rezone to C-2 is granted, or, the request is denied and the zoning remains as it is currently.

Dyer asked if the County could require the Applicant to upgrade Harmony Road prior to the County approving the rezoning.

Reeves responded that this would be a question for the County Counselor to answer, but that she does not see how the County could condition the rezoning. She added, as discussed previously, that there are infrastructure upgrades that would be required, such as water infrastructure and road infrastructure.

Dyer commented that they are already permitted to occupy their building, using the water infrastructure that is in place, and if they want to expand the building, they will need to install a 6" waterline and fire hydrants. He added that it seems the primary thing at this time is the roadways, especially if they reach their capacity.

Cook noted that with regard to the infrastructure, if the property is successfully rezoned to C-2 and if the property ownership changes or different uses are added, the County cannot then require upgrades. He explained that the County would be reviewing the proposal for compliance with the Zoning Regulations.

Guetterman expressed that he completely understands that the Applicant wants to ensure that their CUP is secure, but that the County is never going to pull the CUP.

Guetterman then moved to deny the request to rezone to C-2. Manchester seconded.

Brown commented that this Planning Commission voted to revoke a CUP two meetings ago, and it was ultimately not revoked.

Menefee commented that he would like more information before making a decision.

Oehlert asked for clarification regarding the motion on the floor, and stated that if denying the approval (denying the request to rezone to C-2) is a finality, he is not in favor of a finality at this point.

Cook clarified that there is a motion on the floor to deny the request to rezone to C-2, but if the motion fails, another motion can subsequently be made.

The Planning Commission then voted on the motion on the floor with two (Guetterman and Manchester) voting in favor of denying the request for rezoning to C-2, four (Brown, Dyer, Oehlert, and Ross) voting against the motion and one (Menefee) abstaining. The motion failed.

Menefee asked the Planning Commissioners if they would like to postpone or move forward with an approval of the rezoning.

Oehlert commented that he would like to defer the decision until more information is gathered, including the following: 1) our interpretation of the Comprehensive Plan with regard to Areas of Regional Significance; 2) a definitive, legal opinion on “spot zoning”; 3) specific information on the road improvement requirements, including what this entails and the projected cost; and 4) the church’s operational goals or plans, and their intentions.

Reeves warned that the church’s goals or plans cannot be factored in because this is a request for rezoning.

Menefee agreed and added that the request is not for an amendment to the CUP.

Oehlert remarked that the church’s goals or plans are relevant because of the impact to the surrounding area.

Reeves clarified that impact to the surrounding area is relevant to the existing CUP. She explained that the request before the Planning Commission is a request to rezone to C-2; therefore, the Planning Commission must consider all of the possible C-2 uses that would be permitted, and whether or not this is an appropriate location for those uses.

Oehlert reasoned that the impact of the rezoning on the surrounding area must be considered in order to determine whether it is reasonable to rezone this area.

Reeves responded that people and churches cannot be zoned; rather, land is zoned. She added that zoning remains with the land, and explained that the next property owner has the option of any of the uses allowed by right in that particular zoning district. Reeves further explained that the Planning Commission is not considering the pros and cons of Living Proof Church, but rather, whether this location is appropriate for C-2 zoning. She also provided history for when the use of churches in this district were changed from a use that was permitted to requiring a CUP.

Oehlert asked if it would be beneficial to study the impact of the existing use on the surrounding area.

Reeves responded that the rezoning must be considered separately from the existing use.

Menefee expressed his appreciation for staff's work on this application. He then asked staff how much time they need to do more research.

Reeves answered that this can be accomplished in time for next month's Planning Commission meeting. She also expressed that she wants to be fair to the Applicant and not delay giving them an answer.

Oehlert moved to postpone Item 19001-Z: Living Proof Ministries, Inc. – Rezone from Countryside (CS) to Commercial (C-2) to the August Planning Commission meeting, Dyer seconded, and the motion carried unanimously, 7-0.

ANNOUNCEMENTS BY STAFF / COMMISSIONERS

None.

GENERAL DISCUSSION

None.

Oehlert moved to adjourn the meeting. Manchester seconded, and the meeting was adjourned by unanimous vote (7-0) at 8:31 p.m.

Approved this _____ day of _____, 2019.

Angie Baumann, PC Secretary

Chair, John Menefee / Vice-Chair, Mark Oehlert

Minutes taken by Angie Baumann