

**MINUTES OF THE  
MIAMI COUNTY PLANNING COMMISSION  
MARCH 3, 2020**

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

**ATTENDANCE**

**CHAIR:** Mark Oehlert

**VICE-CHAIR:** John Menefee

**PLANNING COMMISSION MEMBERS:** Kelli Broers, Joshua Brown, Kevin Collins, Phil Elliott, Bret Manchester, Mark Ross

**ABSENT MEMBERS:** Randy Kitchen

**EX-OFFICIO MEMBERS:** None present

**PLANNING DIRECTOR:** Absent

**COUNTY COUNSELOR:** David Heger

**PLANNER:** Kenneth Cook

**PC SECRETARY:** Angie Baumann

**ECONOMIC DEVELOPMENT** None Present

**COUNTY COMMISSION:** None Present

**COUNTY CLERK:** Not Present

**PRESS:** Not Present

## MINUTES

MARCH 3, 2020

### MIAMI COUNTY PLANNING COMMISSION

#### CALL TO ORDER

Chair Mark Oehlert called the meeting to order at 7:00 p.m.

#### PLEDGE OF ALLEGIANCE

#### ROLL CALL

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

#### DISCLOSURE OF ANY EX PARTE COMMUNICATIONS OR POTENTIAL CONFLICTS OF INTEREST

None disclosed.

#### ADOPTION OF THE AGENDA

Ross moved to adopt the Agenda as presented. Menefee seconded, and the motion passed unanimously, 8-0.

#### CONSENT AGENDA

- **February 4, 2020** Planning Commission Minutes.
- **19004-SUB: Club Estates No. 3** (continued from February 4, 2020)  
Consideration of the Final Plat of Club Estates No. 3, a Replat of Lots 7 and 8, Block 1, Club Estates No. 2, and also a portion of land in the SW ¼ of Section 5, Township 17S, Range 25E, lying west of Lot 8 of Club Estates No. 2, to merge the properties together to create one Lot containing 1.24 acres +/- . Although the proposed lot is non-conforming in size to the current zoning regulations, the proposed plat makes the lot more conforming in size. The subject property is located at the Northwest corner of the cul-de-sac of Ridge Line Dr, lying north of 295th St, in the SE ¼ of Section 5, Township 17S, Range 25E, Middle Creek Twp. Submitted by property owners of record Aaron and Kelly Stohs, and David Welch, on behalf of Hogan-Ann-Nicklaus, LLC.

- **20001-SUB: Club of the Country No. 3**

Consideration of the Final Plat of Club of the Country No. 3, a Replat of Lot 6, Club of the Country Addition No. 1, and also the tract of land lying north of Lots 1-6, Club of the Country Addition No. 1, to merge the properties together to create one Lot containing 1.54 acres +/- . Although the proposed lot is non-conforming in size to the current zoning regulations, the proposed plat makes the lot more conforming in size. The subject property is located 1,000-feet east of the intersection of Rockville Rd and 295th St, lying north of 295th St, in the SW ¼ of Section 4, Township 17S, Range 25E, Middle Creek Twp. Submitted by property owners of record Kim and Deborah Myers, and David Welch, on behalf of Hogan-Ann-Nicklaus, LLC.

Menefee moved to adopt the Consent Agenda as presented. Collins seconded, and the motion passed unanimously, 8-0.

## **REGULAR AGENDA**

### **Old Business:**

None.

### **New Business:**

#### **Public Hearing: 16005-CUP: Sign - Free Spirit Kennels (Clark)**

Kenneth Cook presented the staff report, on behalf of the Planning Director, for consideration of a request to construct a 5' x 7' (35 sq. ft.) externally illuminated sign, per Article 18 (Signs) of the Miami County Zoning Regulations, on property associated with an approved conditional use permit for a dog boarding and training kennel facility. The subject property of approximately 13 acres is zoned Countryside (CS) and is located approximately 850 feet north of 391st St. on the west side of Plum Creek Rd., lying east of the railroad tracks, in the Southeast ¼ of Section 3, Township 19S, Range 22E, Mound Twp. Submitted by Kathleen Clark, property owner of record.

Cook explained that the Applicant has requested changes to the sign originally proposed as part of the CUP, including an increase in the size of the sign and a different type of sign. He further explained that the Planning Commission determined at the February 4, 2020 meeting that the changes proposed are significant enough to warrant a public hearing before the Planning Commission to consider amending the existing CUP.

Cook stated that the Countryside (CS) District allows for two types of signs: a monument sign, which may be illuminated and a maximum height of 5'; and, a non-illuminated wall sign, which may not exceed ten percent (10%) of the total surface area of the façade it is placed upon.

With regard to the placement of the proposed sign, Cook explained that the existing fence runs adjacent to the existing right-of-way, and is in the ultimate right-of-way; and, because the Zoning Regulations require all signs to be placed outside of the ultimate right-of-way, the sign would therefore need to be located approximately 10' behind the existing fence. He added that a monument sign in such a location is not easily visible to drivers.

Cook noted that pole signs are not permitted in the CS District; however, the sign regulations pertaining to CUP's provide that the Planning Commission may make some considerations for signs. He then read aloud the following from the Zoning Regulations:

“18-10.02 Where appropriate, the sign regulations of the underlying zoning district or the most analogous zoning district shall be followed.”

Cook explained that this provision gives the Planning Commission an opportunity to consider specific characteristics of the site. He noted that this particular scenario involves a business operation that was approved as a CUP, which retains its existing CS zoning designation.

Cook then read aloud the following criteria the Planning Commission should consider, as listed in Section 18-10.01 of the Zoning Regulations:

- “1. The use of the facility.
2. The height of the building.
3. The surrounding land uses and zoning districts.”

With regard to use of the facility, Cook noted that use is for a kennel operation that was approved as part of the CUP application process. He added that a single-family residence and agricultural structures also exist on the property.

Cook noted that the height of the building is not especially applicable in this situation. He explained that the kennel building is relatively small, which is the reason why a wall sign is not practical, as it will be too small to be seen from the road.

With regard to surrounding land uses and zoning districts, Cook reported that the subject property is north of the townsite of Beagle and is in an area of mixed land uses, including Commercial and Industrial zoned properties and uses. He also pointed out railroad tracks directly behind (west of) the subject property, and the highway in the front (directly east).

Cook then highlighted several of the *Golden Criteria*:

- 1. *Character of the neighborhood.***
- 2. *The zoning and uses of property nearby.***

Cook noted that they are a number of Commercial and Industrial uses in the vicinity of the subject property, as well as the highway and railroad rights-of-way adjacent to the site.

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

Cook stated that although the proposed sign is a blend of what is allowed in the CS and Commercial zoning districts, staff is of the opinion that it will have no detrimental effect on nearby properties based upon the characteristics of the neighborhood.

***7. Whether the proposed conditional use permit would be consistent with the intent and purpose of the Zoning Regulations.***

Cook reported that the CUP for the dog kennel operation was previously approved by the Planning Commission and the Board of County Commissioners, and staff would consider that both boards have found the dog kennel operation to be consistent with the intent and purpose of the Zoning Regulations. He added that as the kennel is a quasi-commercial use, staff believes the proposed sign would be in keeping with the intent and purpose of the Zoning Regulations.

Cook concluded that staff recommends approval of this request for the sign as proposed. He explained that if approved, the sign would be allowed on the property as long as the kennel is operating on the subject property, and as long as there is compliance with the CUP requirements. He added that if the kennel is no longer operating on the property or if the CUP expires, the sign would need to be removed at that time.

Cook announced that the Applicant is present this evening, and available to answer questions.

Oehlert invited the Applicant to speak.

Kathy Clark (38910 Plum Creek Rd.) approached the podium, and introduced herself as the owner and operator of Free Spirit Kennels. She reported that the kennels have been in operation since her CUP was approved, and that the kennel operation has been doing very well. She noted that she has been told that she cannot zip-tie a banner to her existing fence. She explained that due to the unique way in which her property is situated—with a highway to the east, and railroad tracks to the west—it is difficult to put up buildings or signs. Ms. Clark stated that she would like to construct a 5' x 7' pole sign, externally illuminated with solar lighting. She noted that an engineer has already drawn up the sign plan.

Oehlert opened the public hearing. There being no public comment, Oehlert then closed the public hearing.

Elliott asked Cook to clarify the difference between recommended Condition Nos. 3 and 6. Cook answered that they are very similar to each other, and he believes this is a mistake.

Elliott asked if staff prefers one of those Conditions over the other. Cook recommended keeping Condition No. 3, and striking Condition No. 6.

Broers asked if Condition No. 1 would serve to prohibit any other advertising from being displayed on this sign. Cook answered that the sign regulations would not allow the sign to be used as a billboard for offsite advertising and that the sign would have to be for this business operation. He noted that if the property was sold and a different business began operating on the property Condition No. 3 would be applicable, and the sign would need to be removed. He explained that sign content cannot be regulated, but the sign would be approved for the kennel operation.

Broers read aloud the following portion of Condition No. 1: “. . . as shown on the Sign Plan . . .”. She asked if what is being approved is that which is currently shown on the Sign Plan. She also asked if the owner would be allowed, under this CUP, to advertise something else on the sign, while still operating the kennel.

Menefee noted that the CUP is for the kennel operation itself. Cook agreed.

Menefee stated that if the sign is attached to the CUP, then the sign goes with the kennel.

Cook clarified that court cases have demonstrated that content cannot be regulated, therefore we cannot dictate exactly what may appear on the sign. He noted, however, that there is a precedent with regard to not allowing the sign to be used for offsite advertising. Cook commented that it is his understanding that because the sign is proposed as part of the kennel operation, the sign would be tied to that operation.

There were no further questions.

Manchester moved to approve the sign as requested.

Oehlert asked Manchester if he would make the motion with specific findings.

Menefee noted that Condition No. 6 should be struck.

Manchester amended his motion to approve the sign as requested, based on the findings and conditions in the staff report, with the exception of Condition No. 6, which shall be struck. Elliott seconded, and the motion carried unanimously, 8-0.

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## **Findings**

1. The proposed sign is compatible with the surrounding mixed zoning and uses in the neighborhood.
2. The proposed sign area, lighting, and height is the minimum necessary to make the sign visible and legible to passersby.

## **Conditions**

1. A sign permit and building permit shall be obtained for the proposed sign, as shown on the Sign Plan, attached hereto as Exhibit “A”.
2. The location of the sign shall be construction staked, and a Site Plan shall be signed/sealed by a licensed surveyor and submitted to the Planning Department to verify that the sign is located outside of the ultimate right-of-way of Plum Creek Road (K-7 Highway).
3. The sign shall be removed once the kennel is no longer operational and/or once the CUP expires and is not renewed.
4. Lighting shall be permitted on the sign, provided however, that the reflectors shall have proper lenses that concentrate the illumination on the sign area so as to prevent glare upon the street or adjacent property. It shall be unlawful for any person or entity to have any sign,

which is wholly or partially illuminated so as to interfere with the vision of pedestrian or vehicular traffic.

5. The sign shall be maintained so as to be structurally sound and in a safe condition, and shall be kept in a state of undeteriorated appearance by means of painting, sealing or coating and repair or replacement of damaged parts, panels or lights.

6. ~~The sign shall be removed by the permittee or property owner once the kennel is no longer active and/or the CUP expires and is not renewed.~~

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### **Public Hearing 20001-CUP: K-9 Acres (Sutherland)**

Cook presented the staff report, on behalf of the Planning Director, for consideration of an application for Conditional Use Permit for a multi-acre canine boarding kennel and daycare facility in accordance with Section 5-2.02.18 of the Miami County Zoning Regulations. The subject property contains approximately 73.87 acres and is located on the North side of W. 223rd St, approximately 2,000 feet east of Ridgeview Rd, Spring Hill, KS, in the SW ¼ of Section 19, Twp 15, Range 24E, Ten Mile Twp. Submitted by Danette and Brandon Sutherland, property owners of record, in partnership with David Caton, owner of KC Elite Dog Training.

He noted that according to the Zoning Regulations, a kennel operation is allowed in the Countryside (CS) zoning district, if minimum development standards are met. He highlighted several details of the proposal.

Cook pointed out that the staff report states that the dog play areas are proposed to be located 150' east of the eastern property line, which should have instead stated 150' west of the eastern property line. He added that the dog play areas are proposed to be located approximately 250' north of the three-acre tract at the southeast corner of the property. Cook noted that the kennel building will be 56' x 172' x 12' (9,632 sf), the interior of which will be spray foam insulated to reduce noise. He explained that the Applicant's original Site Plan showed the proposed location of the kennel building and dog play areas as being 150' from adjacent property owners, but that the amended Site Plan shows a distance of 250' from the property to the southeast.

Cook noted that the Applicant proposes to construct a future residence more toward the back of the property, approximately 750' northwest of the proposed kennel building.

Cook then addressed a number of key points pertaining to the application.

He pointed out that the kennel will be manned 24/7; therefore, the Applicant is proposing sleeping quarters onsite for the individual working overnight. Cook explained; however, that the Applicant does not want this to impact their ability to build a residence on the site, as two dwellings are not allowed on a property. Cook commented that if the CUP is approved, there would be a condition specifying that sleeping quarters would be allowed and would not be considered to be an actual dwelling; but, if the kennel operations cease, then the sleeping quarters would be required to be removed.

With regard to animal waste, Cook noted that additional items need to be addressed, including how urine will be cleaned up and where the wastewater from washing will go. He noted that staff is recommending that a waste management plan be submitted, which deals more specifically with these issues.

Cook reported that the Applicant has specified there will be no group training activities or classes open to the public, nor will there be any events related to the business. He also reported that the Applicant estimates 150 round trips per day being generated from this facility; and the Applicant plans to transport the majority of the daycare dogs via a company bus/vehicle.

Cook pointed out that some landscaping is shown on the conceptual Site Plan, but more detailed information is needed with regard to the specific landscaping proposed. He commented that he suspects additional landscaping will be needed in order to comply with the minimum development standards in the Zoning Regulations.

Cook reported that lighting, stormwater management, and sign plans have not yet been submitted. He noted that if the CUP is approved, staff would like to have the ability to administratively approve the signage, as long as it complies with the requirements specified in the Zoning Regulations for signage in the CS district.

Cook then highlighted the following *Golden Criteria*:

**2. *The zoning and uses of property nearby.***

Cook noted that all of the surrounding property is zoned CS with mostly large agricultural tracts, as well as some residential lots ranging in size from 3-20 acres, which are located along the western boundary of the subject property. He pointed out that it appears the neighboring property to the southwest is being utilized for commercial landscaping or some other business operation; however, staff has not found any zoning entitlement for that use. He added that the nearest residence appears to be located approximately 500' southeast of the proposed kennel building.

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

Cook listed a number of factors, including odor, flies, traffic, and the noise of barking dogs, all of which have the ability to create some kind of detrimental effect. He noted that odor and flies would likely be a localized issue on the property if a proper waste management plan were implemented. He also pointed out that the dog play areas are located within a drainage area to the neighbor's pond. With regard to traffic generated from this proposed use, Cook noted that it is a significant increase over the current use; therefore, staff is recommending a Traffic Impact Study to determine whether the existing road width and surface is adequate, and whether turn lanes should be installed. With regard to the noise of barking dogs, he read aloud the following minimum development standards for kennels from Article 14, Section 2.01.10.B. and C. of the Zoning Regulations:

“B. No kennel building or runs shall be located nearer than one hundred fifty (150) feet to any property line.

C. All kennel runs or open areas shall be screened around such areas or at the property lines to prevent the distraction or excitement of the animals.”

Cook reported that the current application meets and exceeds standard “B”; but, the landscaping proposed is likely not enough to fully screen the dog play areas. In addition, he noted that staff is of the opinion that the kennel and play areas should be located farther north on the property to create a greater buffer from the neighbors.

**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 staff anticipates no measurable gain to the health, safety and welfare of the public; however, there exists the possibility of significant impacts to nearby properties, so great care should be taken to mitigate negative impacts associated with this type of use.

**7. *Whether the proposed conditional use permit would be consistent with the intent and purpose of the Zoning Regulations.***

Cook outlined the following minimum development standards for certain uses, including dog kennels:

- A. The kennel shall occupy a minimum lot size of five (5) acres.
- B. No kennel building or runs shall be located nearer than one hundred fifty (150) feet to any property line.
- C. All kennel runs or open areas shall be screened around such areas or at the property lines to prevent the distraction or excitement of the animals.
- D. The kennel shall have adequate measures to prevent odor, dust, noise or drainage from becoming objectionable to uses on other properties. No incineration of animal refuse shall be permitted.

He reported that the application meets standard “A” and exceeds standard “B”. With regard to standard “C”, he reiterated that staff suggests more screening needs to be added to prevent undue noise and odors from becoming a nuisance to the neighbors. With regard to standard “D”, he further reiterated that a waste management plan is needed to address how outdoor waste will be dealt with as well as how the indoor runs will be cleaned and where this liquid waste will go.

**8. *The recommendations of the County’s permanent or professional staff.***

Cook reported that staff recommends that a Traffic Impact Study be conducted to determine the adequacy of the existing road system in relation to the increase in traffic; and, review of a waste management plan. He added that staff also recommends that the proposed kennel and play areas be located farther north and west, away from the closest neighbor’s house.

**9. *The conformance of the requested conditional use permit to the adopted Miami County Comprehensive Plan.***

Cook noted that the Comprehensive Plan designates this site as Rural Residential, and is silent on individual uses such as this. He advised that the Planning Commission needs to determine if the negative impacts from this proposal can be mitigated sufficiently to be compatible with the allowed uses in the underlying zoning district.

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

Cook noted that 223rd Street, which accesses the subject property, is a paved arterial. He pointed out, however, that the road surface is narrow for an arterial paved road, and the road has no shoulders or turn lanes. He explained that staff believes a Traffic Impact Study should be obtained to determine if the existing road is sufficient to meet the need and to determine what, if any, road improvements are needed for this operation to occur.

He added that although the proposal complies with the minimum setback of 150' from the property lines, considering the number of dogs proposed to be at this facility staff believes it would be best if additional setback is provided.

Cook stated that staff has questions concerning whether negative impacts can be mitigated sufficiently such that the merits of having such a facility at this location outweigh negative impacts. He commented that this is a more intense kennel operation than what has been considered in the past. He also reported that staff has discussed the proposal with the Road & Bridge Department; and, based upon the Applicant's revised narrative report, Road & Bridge Director J.R. McMahon agreed that the increase in trips per day was significant enough to warrant a Traffic Impact Study.

Cook concluded that staff recommends that the Planning Commission defer its decision on this request until a Traffic Impact Study has been completed to determine whether 223<sup>rd</sup> Street is adequate for the anticipated traffic volume or whether improvements are warranted.

He announced that the Applicant is present this evening.

Oehlert invited the Applicant to speak.

Jason Meier (15245 Metcalf Ave., Overland Park) approached the podium and introduced himself as a landscape architect with Meier Landscape Architecture. He stated that he has known the Applicant for a long time and can speak to their character. He expressed that staff has done an excellent job explaining the project, and noted that he would like to address some of what has been presented this evening.

Mr. Meier referenced the wildflower/native grass areas denoted on the conceptual Site Plan, and stated that many things are being done to beautify this very large property.

He also noted that the one (1) acre grass play areas proposed are unheard of in this industry, and are likely larger than any other facility in the Kansas City area. Mr. Meier explained that the play areas are extremely large so that the dogs do not destroy the grass. He further explained that there are three (3) play areas, which will be rotated on different days. He stated that the dogs will be in the play areas from 8:00 a.m. to 5:00 p.m. only, and will not be outside at night.

With regard to traffic, he clarified that they anticipate 75 cars per day dropping off the dogs and picking them back up. He stated that it was reported this evening that there would be 150 cars per day.

Mr. Meier suggested that if there is concern about seeing the dogs, then black felt could be added to the chain-link fencing surrounding the play areas to help provide further screening. He added that even though the required minimum distance from the property line is 150', the kennel

building has been moved farther away from the property owner to the southeast, and is now proposed to be 250' away. He noted that the fencing is also located 250' away from that property. He added that they have already proposed a lot of landscaping, but are open to adding more.

With regard to staff's recommendation for a Traffic Impact Study, Mr. Meier expressed that this comes as a surprise, and was not discussed during the pre-application meeting with staff. He stated that 223<sup>rd</sup> Street is an arterial road, which carries quite a bit of traffic. He added that an off-ramp is not far from this location, and that Spring Hill is very close. He reported that during the pre-application meeting, they discussed installing a very wide commercial entrance with concrete to prevent dust or gravel from being kicked up onto 223<sup>rd</sup> Street. He commented that widening the road and adding turn lanes is unexpected and would be a very expensive ordeal. He welcomed the Planning Commissioners' thoughts on this matter.

Mr. Meier explained that prior to incurring expenses associated with additional studies, they first wanted to know if the CUP would even be approved. He reasoned that it does not make sense to engineer everything, design the parking lot, and design landscape plans without even knowing if the CUP will be approved. He stated that they will move forward with all of the additional things the County is asking for, but first want to complete this approval step.

Mr. Meier noted that the property owners and their son are present this evening to answer questions. He also noted that David Caton, who runs an amazing business in Kansas City, and who will be helping run this entire facility, is also present. Mr. Meier concluded that this is a very professionally planned operation; and he asked the Planning Commission for its approval of this request.

Oehlert then opened the public hearing.

Frank Moley (22412 S. Lackman Rd.) approached the podium and stated that he lives approximately 1-1/2 to 2 miles from the subject property. Mr. Moley stated that he likely has more frontage along the subject property than anyone else, and explained that Moley's Real Estate Corporation owns property on the east side of the subject property; his farm is on the north side of the subject property; and the Marie Moley Trust owns the property that touches the northeast corner of the subject property.

He reported that everyone who lives in that Section is present this evening.

Mr. Moley reported that when he found out about this process he called the Planning Department and spoke at length with staff to better understand what was being proposed.

He stated that he is a licensed contractor in Johnson County; and, with regard to the (spray foam) insulation proposed to be installed in the kennel building, he does not know how many feet of insulation would be needed to calm 150 or 100 dogs. He stated that he is not an expert on this subject, and is not especially concerned about it. He suggested that perhaps someone has an answer for how much insulation there will be.

Mr. Moley expressed that he is upset how close in proximity this will be to one of the residences. He further commented that although it meets minimum distance requirements he certainly would not want this next to his house.

He stated that he would be curious to know what the largest kennel in Miami County is. He reasoned that any small kennel he has driven past is loud. He suggested that those small kennels are much smaller than what is currently being proposed.

He commented that he has a lot of questions, and he knows the Planning Commission will do the right thing.

Mr. Moley then stated that he has cattle in three different locations and drives past the subject property four or five times a day. He added that he knows what 223<sup>rd</sup> Street is like, and that he watched a young man lose his life after he had fallen off of a motorcycle. Mr. Moley stated that this street is not level by any means and that the traffic flies down it. He stated that he has lived in the community for 30 years, where he once drove down the street on his tractor and everyone waved, and where he now receives a one-finger wave because everyone is in a hurry. He added that what has not been presented this evening is that the driveway on the subject property is located at the top of a hill; so, from either direction you cannot see what's on the other side.

Mr. Moley stated that his biggest concern is that we do the right thing and install a third lane. He expressed that he would like to see this examined more closely. He added that the Planning Commission needs to take into account that everyone who lives in that Section—except for one individual who couldn't be here because he is working out of town—is present this evening.

Mr. Moley concluded his commentary by informing the Planning Commission that the property to the west of the subject property has a special use permit, but they're not doing anything on the property that is permitted by that special use permit. He reported that he had notified staff of this, and staff asked him to file a complaint; however, he doesn't want to file a complaint regarding his neighbor. He stated that the time to do the right thing is now. He thanked the Planning Commission.

Lola Slyter (17512 W. 223<sup>rd</sup> St.) approached the podium and stated that she and her husband live on the tiny parcel that will be most affected by this proposal. She commented that she is present this evening to object to the CUP for several reasons, the first reason being noise.

Mrs. Slyter stated that the subject property and surrounding properties are Residential and Agricultural; and she chose this area to build her home 30 years ago because it was a quiet area. She reported that according to Community and Environmental Defense Services noise levels in animal shelters regularly exceed 100 decibels; and, according to Industrial Safety and Hygiene News the outside noise level for one barking dog can reach 90 decibels. Mrs. Slyter further reported that the Tontechnik-Rechner calculator for determining increase in decibels as sound source increases indicates that a boarding facility of 150 canines could reach a noise level of 112 decibels. She explained that noise declines an average of six (6) decibels for every doubling of distance; so, if the noise level is 100 decibels at a distance of 50' from an outside dog run, the noise level would be 81 decibels outside of a home 400' away, and 74 decibels 1,000' away.

Mrs. Slyter noted that the proposed kennel is planned to be located 150' away from her property and approximately 400' from her home. She added that a vacuum cleaner produces noise at a level of 60 to 85 decibels, a coffee grinder at 70 decibels, a car horn at 110 decibels, and a football game at 117 decibels.

Mrs. Slyter then identified decreased property value as the second reason she is objecting to the CUP. She explained that when barking is loud enough to be disturbing it can affect the amount a prospective home buyer is willing to pay. She commented that there is ample research showing that excessive noise reduces property value, and noted that her letter of objection provides sources for three studies conducted on the topic.

Mrs. Slyter next identified offensive odors as the third reason for her objection to the CUP. She commented that the odor created from potentially 150 dogs doing their business on three acres of outside dog runs will be horrendous. She added that the odors, together with the noise, will greatly reduce the ability to enjoy any outside activities on their property.

She stated that she has heard this evening that there does not appear to be a clear plan for runoff or sewage.

She concluded her commentary, stating that she and her husband formally object to this proposal to build and operate a 150-dog boarding facility next to their property, as it would reduce their property value and their ability to enjoy any outside activities due to the excessive noise and offensive odors. She added that it is their desire that the request be denied.

Dr. Paul Slyter (17512 W. 223<sup>rd</sup> St.) approached the podium and stated he has a kennel at his office; that he inspects kennels; and he knows what kennels are. He commented that if the kennel is constructed this closely to their property, their property line will be very offensive. He asked that the request be denied, and thanked the Planning Commission.

Larry McSpadden (21695 S. Ridgeview Rd.) approached the podium and stated that he has lived at this location since 1983. He noted that he raised his family here and hopes to remain here after he retires. He commented that he moved to this location for the tranquil peace and quiet provided by a country setting. He stated that he is present this evening to protect the rural setting, and to protect the value of his and nearby homeowners' property values.

Mr. McSpadden reasoned that there is no way a commercial mega dog kennel—with the noise and smell that comes with this type of operation—would enhance or increase the value of anyone's property. He argued that it will instead make it more difficult for anyone within earshot of the operation to sell their property; and, it will undoubtedly cause property values to decline. He added that he has known of several kennels in rural Miami County that fell short of promises made to surrounding landowners with regard to the noise and smell of the kennels.

With regard to traffic, Mr. McSpadden noted that the anticipated 75 cars per day can be assumed to be making a round trip, which would total 150 cars per day entering and exiting the driveway. He described 223<sup>rd</sup> Street as being laced with hills and deep ditches, and added that that the road has a high center and a low shoulder. Mr. McSpadden reported that many wrecks and fatalities have occurred on this road over the years, including numerous deer strikes between Woodland Road and Ridgeview Road in the fall season, and vehicles in the ditches during winter weather.

He reasoned that when considering the 175+ cars per day as well as the doggie bus entering the property twice per day, it would seem that an increasingly unsafe traffic problem is forming. He asserted that a traffic survey is not needed to prove this. He further reasoned that the only safe manner in which traffic may enter the mega dog kennel is via a designated turn lane installed in front of the property; and, to install a warning light on the hill east of Ridgeview Road or a three-way light at Ridgeview Road. He noted that the financial impact of these improvements should be the burden of the mega dog kennel owners.

Mr. McSpadden commented that he is relying on the County to make the right decision for all of the established homeowners who will be affected by this. He asserted that this can have only a negative effect on the country living they currently enjoy as well as their property values. He expressed that he is certain that nobody serving on the Planning Commission or on the Board of Zoning Appeals would want this in their back yard.

Mr. McSpadden concluded his commentary, stating that he is opposed to the CUP. He thanked the Planning Commission.

Cathy Heilman (21933 S. Ridgeview Rd.) approached the podium, and stated that her property abuts the west side of the subject property. Ms. Heilman noted that she and her neighbors are outside between the hours of 8:00 a.m. and 5:00 p.m., when the dogs' outdoor play is taking place. She expressed that this is a quiet neighborhood, and they would like it to remain that way. She commented that the buffers and wildflowers sound nice, but it won't take care of all of the noise. She reported that a spotlight on the back of the existing building on the subject property is causing a lot of light pollution. Ms. Heilman commented that she would prefer horses. She thanked the Planning Commission.

Bill Heilman (21933 S. Ridgeview Rd.) approached the podium, and stated that he had previously submitted a letter. (Oehlert confirmed that the letter was received.) Mr. Heilman noted that the Applicant has incorrectly assumed nobody will be around 8:00 a.m. to 5:00 p.m. to hear the noise from outdoor play. He reported that firearms were discharged quite frequently on the subject property last summer, and again this past weekend, and he doesn't know whether or not this is in conjunction with canine training. Mr. Heilman commented that they live in a quiet and placid neighborhood, and are not at all in favor of this CUP.

Tom Boehm (18185 W. 215<sup>th</sup> St.) approached the podium, and stated that he lives on the very north side of this Section, at the top of the hill; therefore, he can hear any amount of noise. He noted that he can hear the high school band, which is one or two miles north of his property. With regard to planting trees to block the noise, he commented that coon hunters will attest that coon hounds can be heard through the trees. He suggested that a berm would be more effective in blocking the noise.

Mr. Boehm also noted that traffic is a major issue in that area, and even 215<sup>th</sup> Street is very busy because everyone is trying to avoid 223<sup>rd</sup>. He described 223<sup>rd</sup> Street as a racetrack, and suggested that if the Planning Commission approves the CUP, they need to require that a turn lane be installed. He expressed that he is against the CUP at this time.

Charlie Boston (22141 Ridgeview Rd.) approached the podium, and stated that he lives adjacent to the subject property. He noted that several things have been said tonight, but they don't have answers. He stated that the Applicant does not know how they will address runoff. He also stated that it is his understanding that it is against the law to have living quarters in a metal shed. Mr. Boston added that the Applicants do not have septic tank approval, do not have a State license, do not have stormwater approval, and do not know about the detriment to property values. He commented that he is concerned about property values.

Mr. Boston further commented that he is concerned about the runoff. He stated that he owns a four-acre lake; and the runoff will go onto his property. Mr. Boston expressed that he had hoped the outdoor play area would be concrete because concrete can at least be cleaned off and the runoff can be directed; however, runoff cannot be controlled on grass.

Mr. Boston noted that the Applicant's agent has stated that the positives outweigh the negatives, to which Mr. Boston raises the question: "In whose world?" He expressed that he doesn't get anything positive out of this, and that all he sees is the negative. He stated that their property values will not increase. He then commented that he believes the spirit of the laws in Miami County is that agriculture remains agriculture, and is not replaced with commercial.

With regard to the public comment regarding the discharge of firearms on the subject property, Mr. Boston asked if police dogs will be trained on the property—he hopes not. He concluded that he is against the CUP, and thanked the Planning Commission.

Lori O'Leary (17143 W. 215<sup>th</sup> St.) approached the podium, and stated that she and her husband are against the CUP. She noted that they have owned their house for 30 years, and that many of her neighbors on the north side of this Section have owned their properties for 30 years. Mrs. O'Leary commented that this CUP presents concerns regarding the decrease in property values as well as the smell and the noise. She noted that although landscaping may help keep the closest neighbors from seeing the operation, it will not help the noise or the smell.

Mrs. O'Leary stated that traffic is another concern and explained that there is a big hill when turning from Ridgeview Road onto 223<sup>rd</sup> Street. She expressed that it is already bad; and she cannot imagine how bad it will be with additional traffic on 223<sup>rd</sup> Street. She asked that the Planning Commission take this into consideration. She thanked the Planning Commission.

Timothy Wilburn (21985 S. Ridgeview Rd.) approached the podium, and stated that he has been a Kansas resident most of his life and is a very good steward of the land. He added that he hand-picks all of his noxious weeds and thistles. He stated that he purchased his land nearly 40 years ago with the intention of operating a vegetable farm, but could not get the help he needed; he now grows hay on it.

Mr. Wilburn expressed that he was somewhat shocked that this type of operation is being considered. He noted that the subject property is in his backyard; and, he has noticed that the Applicants, who have been there for about a year, have had total disregard for their neighbors. He reported that they are discharging firearms at various times on the weekends. He also reported that they put up a big barn with an extremely bright light—which could light up half of a stadium—which remains lit for three days, and is obnoxious.

Mr. Wilburn questions what the operation could become in the future or whether it could expand to include other types of animals. He noted that the smell is his main concern, and he explained that bottle flies love dog manure. He commented that he wouldn't mind cattle or hogs, but that dog and poultry operations are very obnoxious and stinky; and in the summertime, the hot, dry winds will blow in his direction.

He expressed that he is also concerned about the dogs escaping when they're getting in and out of vehicles. He suggested installing fencing that dogs cannot dig underneath.

Mr. Wilburn reported that currently he can hear trains and also noise from the stadium, but commented that this is just human activity. He stated that he realizes in a rural area you can do a certain amount of things—such as fireworks—that you can't do inside city limits.

He expressed concern that the operation could expand from 150 dogs to 300 or 500 dogs. He asked that the Planning Commission place more restrictions on the CUP.

With regard to traffic, Mr. Wilburn noted that the speed limit on 223<sup>rd</sup> Street was reduced from 55 mph to 45 mph, due to the number of wrecks. He added that traffic generated from the intermodal is also traveling on this road.

Mr. Wilburn concluded that his main concerns are the smell, flies, noise and the lighting. He thanked the Planning Commission.

Cook noted for the record that three comment letters were submitted and are included in the meeting packet.

Oehlert invited the Applicant to address the comments heard this evening.

Mr. Meier returned to the podium and commented that the neighbors have very valid concerns. He expressed that they are trying to do everything they can to address many of the concerns.

With regard to noise concerns, Mr. Meier explained that the dogs will be in the building almost the entire time they are on the property. He noted that the building will be soundproofed with spray-in insulation; and, he knows from experience how sound-deadening that material is. He added, however, that he does not know from experience how effective the insulation is with regard to dogs inside a space.

With regard to proximity to the property line, Mr. Meier stated that they are open to adjusting the distance if needed. He added that they have 75 acres to work with.

Mr. Meier stated that with regard to sight distance for traffic exiting the subject property, it is safer to have the driveway located at the top of the hill so that drivers exiting the subject property can see in both directions. He added that this is something the County had wanted as well.

Mr. Meier commented that the concerns about odor is interesting, and explained that the dog handlers will be spending most of their time picking up the waste. He further explained that dog owners do not want messes getting on their dogs' feet.

With regard to concerns about runoff, Mr. Meier explained that the play areas are laid out in such a way that they will drain to one location. He noted that if needed they can easily put in a small pond just downstream of the play areas to collect runoff before it could ever exit the property. Mr. Meier stated that they will not allow runoff from the property.

Mr. Meier clarified that this is a boarding facility, and there will be no training onsite.

He also noted that Mr. Sutherland just informed him that the lighting on the barn was accidentally left on, and is not on all of the time. He noted that Mr. Sutherland is going to turn off the lighting.

David Caton (16425 S. Lawson St., Olathe) approached the podium and introduced himself as the owner of KC Elite Dog Training. He expressed that he just wants a proper place in Kansas for dogs to go where they can really be dogs. He explained that all he has seen in his nine years of dog training is dogs being thrown into a building, where they have to go to the bathroom on concrete.

Mr. Caton reported that their biggest competition is The Pet Ranch, located north of the airport in Olathe, which is surrounded by houses and buildings. He commented that they are totally fine and are able to run their operation from that location. He also noted that The Pet Ranch has, at most, 200 dogs onsite at all times as well as a dog park that is open to the public and surrounded by homes and residential.

With regard to concerns about odor, Mr. Caton expressed that he does not understand how the smell will be any different from farmland or cattle, especially considering that the dog waste will be picked up immediately.

Mr. Caton stated that KC Elite wants to provide an experience for their clients and for Kansas City citizens to have some place in Kansas City to take their dogs, where the dogs won't have to go to the bathroom inside of a building and where they can be in a real natural environment.

He thanked the Planning Commission.

Elliott read aloud for Mr. Caton the following statement in the Applicant's narrative report: "*It is possible to have group training sessions between 5-10 dogs in the evenings or weekends. This is not an immediate plan.*" Mr. Caton responded that this is not an immediate plan, and is not anything they would consider doing within the first three to five years. He stated that they intend this to be a canine boarding and daycare facility within the first three to five years; and training will not be considered in the beginning.

Elliott asked Mr. Caton if there would be a problem if the Planning Commission makes a condition, which provides that the facility is not a training facility. Mr. Caton answered that it would not.

Broers noted that Mr. Caton and Mr. Meier had mentioned that this will be a boarding facility, but also mentioned that there are only certain hours of the day in which it will be operational.

She further noted that there is a difference in the plan for boarding and daycare. She asked Mr. Caton if boarding will be overnight. Mr. Caton answered that customers will be able to board their dogs at the facility while they are traveling, so boarding will happen overnight. He clarified, however, that no dogs will be outside overnight so as not to disrupt anyone's sleep. Mr. Caton added that they are willing to limit the dogs' time outside. He explained that they just want to be able to provide an experience where dogs do not have to go to the bathroom inside of a building.

Ross asked how many dogs are anticipated to be outside at any one time; and, if the dogs will be using all three play areas at once. He commented that the dogs obviously can't be taken outside one at a time. For the purpose of comparison, Mr. Caton described "Bar K", a brand new facility in downtown Kansas City, which has 400 dogs on a three-acre lot. He then explained that they plan to open the doors of the building and release all of the dogs to go to the bathroom outside, and then the dogs will then be brought back inside. He reiterated that the dogs do not have to be outside all day. He also suggested that the dogs could be released in groups, instead of all at once.

Oehlert then closed the public hearing.

Menefee commented that traffic appears to be one of the biggest issues that does not currently have an answer, which is why staff has recommended that Planning Commission defer its decision. He suggested a motion to defer the decision until more information is gathered to avoid having a lengthy discussion twice.

Elliott commented that he's not certain it is reasonable to ask the Applicant to generate a significant amount of content if the general feeling is that it wouldn't be approved anyway. He expressed that the Planning Commission owes the Applicant at least a temperature gauge to determine whether this is worth their investment of time and money.

Menefee stated that the surrounding property owners deserve an answer sooner rather than later.

Manchester commented that there are several items the Applicant has said they are not proceeding with, such as the waste management plan and the State license, and that these items will cost money. He further commented that too many neighbors are against this proposal, and he believes their concerns about property values and noise are legitimate. Manchester noted that the area is agricultural, where one would expect to see cattle, farm machinery, and the like. He also noted that one dog can make a lot of noise. Manchester expressed that although the Applicant could spend more money on more studies, he cannot support this request.

Manchester then moved to deny the request, noting that too many neighbors are against this proposal. The motion died for lack of a second.

Elliott suggested listing the topics, for which additional information is needed.

Oehlert agreed and noted that it is worth bringing up the concerns to determine if they can be addressed. He added that he doesn't believe he can say "yes" or "no" at this point when there are so many questions.

Elliott noted that he would like to know if having more data on each of the topics would make a difference to the Planning Commissioners. He then listed the concerns heard during public comment this evening, for which the Planning Commission needs answers: traffic, noise, smell, and wastewater.

He added that he would like additional conditions or information regarding stormwater, which is different than wastewater. He stated that having a retention pond for the waste to go into addresses about 25% of the issue, and explained that if the retention pond is downhill, this is the same direction in which the stormwater will travel and flood out the retention pond.

Elliott also noted that although the activities are identified in several places in the meeting packet, he still does not have a good sense of what those activities are. He would like to know the long-term plan for the subject property, such as the future residence and the activities proposed to occur onsite. He expressed that it would be important to separate some of the activities occurring on the property, such as the gunfire, from the business that is being proposed. He also commented that clarification is needed regarding what the specific activities are.

Elliott then summarized the topics he would like more information on, including: traffic, stormwater, wastewater, noise, specific activities, and odor, which he noted is an issue that goes hand-in-hand with a waste management plan.

Menefee asked what the Planning Commission expects the Applicant to bring back to the Board.

Oehlert noted that he would like to better understand the waste clean-up process and KDHE's requirements for running such an operation.

Collins noted that he has been to The Pet Ranch and knows where it is located. He commented that he would like to know if the Applicant has researched the various requirements The Pet Ranch is subject to with regard to odor and noise.

Oehlert commented that he believes this would be a very good comparison and should be added to the list of topics to further research.

Broers added that her biggest concern is density. She explained that the proposal doesn't involve 150 dogs per 75 acres, but rather 150 dogs per three (3) acres and this small building. She noted that although The Pet Ranch and Bar K have been mentioned as examples this evening, she needs much more information with regard to density before she would feel comfortable considering approval of this request.

Elliott asked the Planning Commissioners if they believe, once answers are received to these questions, that the answers would change their minds from the gut feeling they likely have. He added that if answers would not change their minds, then there should probably be a motion for denial. He noted that if the Board believes the answers could change their minds and appease the neighborhood, then he believes the Board should move forward in requesting the information.

Oehlert suggested that the Board needs to hear from the Applicant with regard to whether or not they are willing to do the extra research.

Elliott noted that he would like to know, based upon what they have heard this evening, if the Applicant believes they can mitigate the neighbors' concerns.

Oehlert pondered how to quantify an acceptable noise level.

Elliott stated that the Regulations do not contain specific provisions for noise. He noted that a common standard that has been used is 60 dB at the property line. Cook added that 70 dB has been used as well.

Menefee commented that his gut feeling from the neighbors isn't good, but he doesn't know whether additional information will change his mind until he has that information.

Oehlert noted that he does not know how to quantify an acceptable noise or odor level. He added that density is a good question as well, and he wonders what KDHE's requirements are.

Broers reminded the Applicant that there was mentioned a possible incompatibility with the living quarters and a single family residence in the future.

Cook responded that it is his understanding that as part of a business operation we have allowed accommodations on a property for a watchman or the like, and it is not necessarily considered a dwelling. He explained that this could be tied in with the conditions for the kennel operation. He further explained that if the CUP is approved and the accommodations are installed, and the operations later cease to continue then there would be a condition requiring removal of the accommodations. He stated that it is possible to have an after-hours caretaker of the facility. It is his understanding that this is not an apartment, and is not where someone would be residing. He explained that it would be an employee who is staying overnight to take care of the dogs.

Oehlert asked the Planning Commissioners to indicate, by a show of hands, whether they believe obtaining additional information is worthy of the time and effort being spent by staff and the Applicant and could change their minds. Menefee, Broers, and Collins raised their hands.

Oehlert noted that it appears that no amount of additional information would sway the Planning Commission to approve this.

Brown asked the Applicant if they have considered what it will be like to be bordered on all sides by neighbors, who are adamantly against the operation, and who will most likely be calling all of the time to complain. He asked the Applicant if they have a plan for making peace with their neighbors.

Brandon Sutherland (14665 S. Caenen Ln., Olathe) approached the podium and stated that they have given 100% consideration to the neighbors in every aspect of this proposal. He commented that they wholeheartedly want to deal with and work out the noise level objection with all of their neighbors. With regard to property values, he commented that they will be building a \$1M+ house on the same property, 300 feet from the operation. He stated that he has been in business for 20 years, has had 12,000 employees, sold his business, and now wants to move to the property to run the operation and work with everyone in the area in the best way he can. He expressed that he wholeheartedly wants to do whatever he can to make it work. He stated that he is a man of his word and would do whatever he could to satisfy all of the neighbors.

Cook reminded the Planning Commissioners to consider and weigh the *Golden Criteria* when determining whether or not to approve the request.

Elliott commented that there is a tremendous amount of potential for a solution like this. He then referenced the following *Golden Criteria*: the character of the neighborhood being agricultural; the zoning; the property's current use; the potential for a change in zoning via a CUP to have a detrimental impact to neighboring properties; and the Comprehensive Plan's specific designation of the site as Rural Residential. He commented that a concentrated dog kennel really does not fit into this kind of character; and, based upon the *Golden Criteria* he just enumerated he moved to deny the request. Manchester seconded the motion; and three (3) voted to deny the request (Elliott, Manchester, and Oehlert). The motion failed due to lack of a majority.

Broers moved to defer the Planning Commission's decision in order to give the Applicant additional time to provide more information to the Planning Commission to make a better-informed decision.

Menefee asked what information needs to be provided. Broers clarified that it is the list that was previously enumerated.

Menefee seconded the motion. Five (5) voted in favor of the motion (Broers, Brown, Collins, Menefee, and Ross), and the motion carried.

Oehlert clarified that this item will be continued to the next Planning Commission meeting (April 7, 2020); and, if the information requested is not yet available by that meeting, then the item would be tabled to the following month's meeting.

Cook noted that staff will work with the Applicant to obtain the information requested.

*The Planning Commission took a brief recess at 8:46 p.m., and reconvened at 8:50 p.m.*

## **ANNOUNCEMENTS BY STAFF / COMMISSIONERS**

### **Comprehensive Plan Update**

Cook announced that the Board of County Commissioners has approved funding for the Comprehensive Plan update. He believes the consultant will schedule four (4) public meetings to be held in different regions of the County: Osawatomie, Paola, Louisburg, and Spring Hill.

There was general discussion about collecting data from individuals who are unable to attend the public meetings. Cook reported that there are plans to engage the public online, and that there had been a lot of discussion regarding how to collect information from those in the County who do not have internet access. Cook added that a steering committee will be formed, which will consist of individuals representing various interests within the community.

Elliott warned against limiting meetings to only one certain time of the evening or to just one certain day of the week, and explained that the standard work schedule for many people is not necessarily 8:00 a.m. to 5:00 p.m. Elliott also noted that many people commute out of the area to work. He expressed that he would like the County to receive a full range of input from its residents.

Cook encouraged the Planning Commission to get the word out and to encourage people to participate in this process.

Elliott asked about the role of the Planning Commission in the Comprehensive Plan update process. Cook responded that the Planning Commission will be reviewing plans from the public meetings; and, there will be joint work sessions with the Board of County Commissioners to discuss responses received.

**96011-CUP: City of Gardner Water Treatment Plant Expansion – Follow-Up**

Elliott asked if Lesley Rigney, District Manager of the Miami County Conservation District, had any suggestions to provide to the Board of County Commissioners. Cook responded that he and Ms. Rigney had visited a couple of the neighboring properties. He added that a KDHE representative also visited the neighboring properties. Cook reported that there were definitely some concerns; and, his understanding is that water had been discharged once from a pond onto a neighbor’s property, but that it hasn’t occurred since.

Cook also reported that the City of Gardner has made changes to the stream channel. He explained, however, that the stream channel is not located in a floodplain, so a permit from the Corps of Engineers is not required; and, the City was within its rights to do this.

He reported that Ms. Rigney is working with the neighbors to implement testing programs to measure for fluctuations in the stream flow, and to track whether materials are being discharged into the stream, which should not be. Cook also reported that the water in the stream was clear on the day they visited. He noted that KDHE tests water discharged from the Water Treatment Plant, and has not had any issues.

He reported that the Board of County Commissioners approved the expansion of the Water Treatment Plant, with an additional condition regarding compliance with all Federal, State, and Local permit requirements for water quality and volume, and no discharge onto neighboring properties.

**GENERAL DISCUSSION**

Oehlert asked if the Planning Commission would like to proceed with the discussion of Accessory Dwelling Units this evening or continue it to next month’s meeting. There was a general consensus to table the discussion to next month’s meeting. Oehlert encouraged the Planning Commissioners to read Article 18 of Johnson County’s zoning regulations (Accessory Structures, Buildings and Uses) in the interim.

There being no further general discussion, Ross moved to adjourn the meeting. Collins seconded, and the meeting was adjourned by unanimous vote, 8-0, at 9:02 p.m.

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Angie Baumann, PC Secretary

\_\_\_\_\_  
Chair, Mark Oehlert / Vice-Chair, John Menefee

Minutes taken by Angie Baumann