

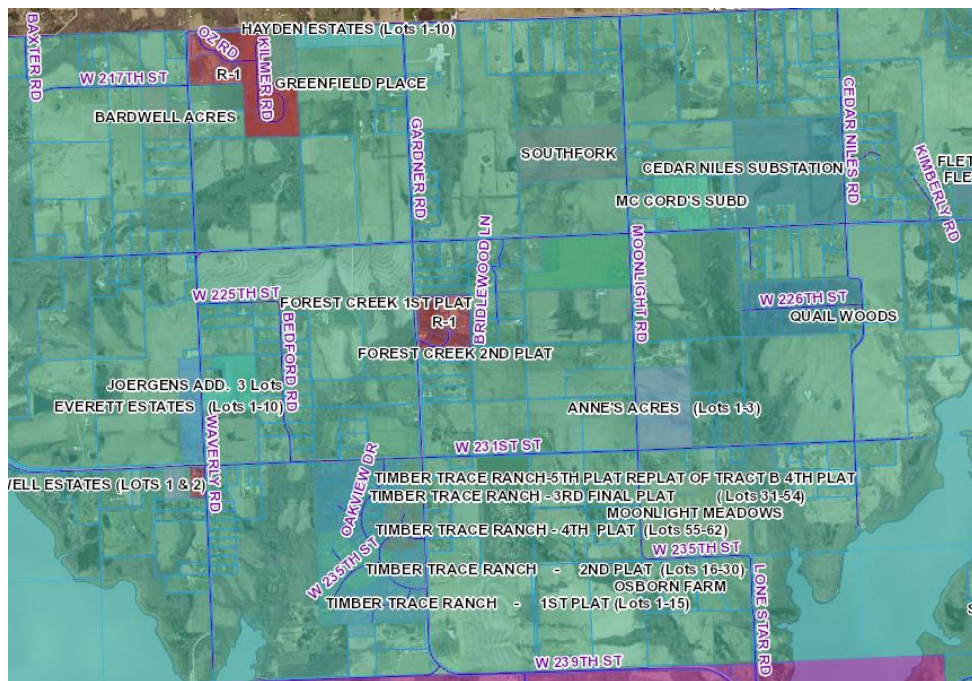
**MIAMI COUNTY PLANNING DEPARTMENT
MEMORANDUM**

DATE: August 18, 2021 Study Session
TO: Board of County Commissioners
FROM: Teresa Reeves, Planning Director
RE: Proposed City of Golden Planning/Zoning Report

This report is the Planning/Zoning Department’s response to the Board of County Commissioners request for expert testimony regarding the Golden Petition to Incorporate. Following are staff’s responses to specific questions asked by legal counsel.

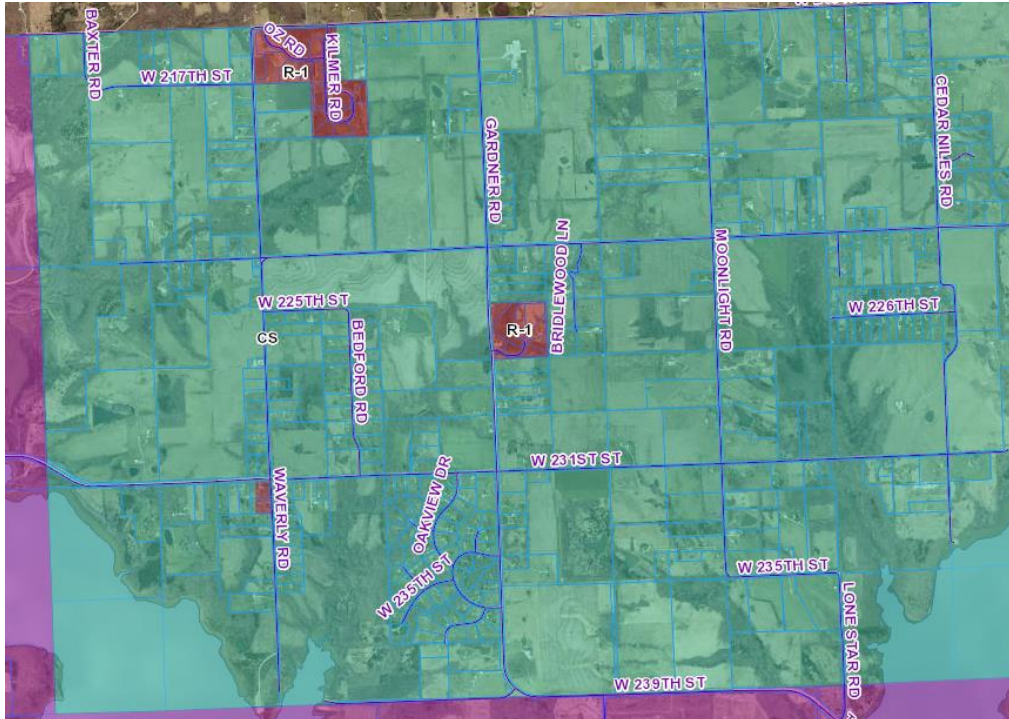
1) How is the current proposed area of Golden currently developed?

This area includes a mixture of large agricultural tracts and subdivisions with smaller lots that were created prior to countywide zoning and into the 90’s when the minimum lot/tract size was 3-acres. In the late 90’s the minimum lot/tract size increased to 20-acres to encourage small lot development in or near the cities where infrastructure such as water, sewer, roads, and utilities were in place to support that type of density. A map of the subdivisions in this area is below. Please keep in mind that this does not include the numerous Certificates of Survey that were created prior to countywide zoning which are not considered subdivision plats.



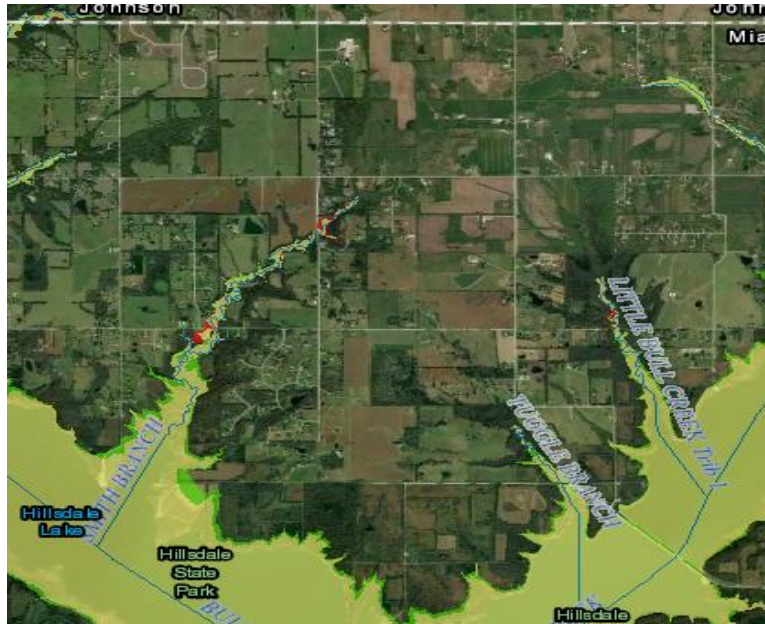
2) What is the zoning in the proposed Golden area? Provide an in-depth description of that zoning classification.

Most of the property located within the proposed Golden area is zoned Countryside (CS). There are two subdivisions that are zoned Rural Residential (R-1) that are shown in red in the map below. Hidden Prairie is a conservation subdivision that contains 17 lots ranging in size from approximately 3 acres to 7.59 acres, with open space tracts totaling approximately 29.83 acres; and Forest Creek is another conservation subdivision that contains 8 lots ranging in size from 2.04 acre to 6 acres and includes 3 open space tracts totaling 11.52 acres.



In the Countryside (CS) zoning district, Single-family residences and agricultural uses are the primary uses in this district. Some other uses that are also allowed in this district include certain home occupations, accessory dwelling units, existing churches, public parks and playgrounds, towers below a certain height, etc. Land division is at 15-acres per tract/lot or based on a 15-acre density with Agricultural Preservation. One other option is the conservation design subdivision using a 10-acre density. The Rural Residential (R-1) district is very similar in allowed uses but does not include Agricultural uses and allows a 5-acre density when subdividing land through conservation design, which is the only division option.

Some areas of Golden are also located in the Floodplain which is currently regulated by Miami County as a partner with the National Flood Insurance Program (NFIP) and FEMA. Floodplain areas encompass the streams that flow into Hillsdale Lake and the properties abutting the lake, which is part of the Hillsdale Lake Watershed.



Osage Custom Watershed - Initial Base Level Engineering (BLE) Floodplain Data
http://gis2.kda.ks.gov/gis/osage_ble/

The entire area of Golden is in the Hillsdale Lake Watershed as displayed on the following map. The watershed encompasses 92,000 acres located in Johnson, Miami, Franklin, and Douglas Counties. Miami makes up 47% of the watershed, Johnson County 46%, Douglas County 5%, Franklin County 2%.

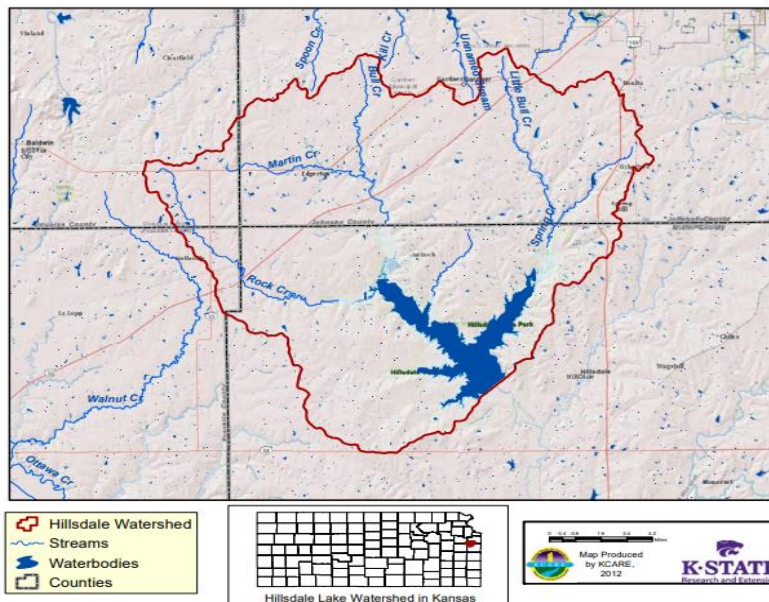


Figure 1. Hillsdale Lake Watershed Map.

Hillsdale Watershed Restoration And Protection Strategy Plan & Summary 2017 (WRAPS)
<https://kswraps.org/wp-content/uploads/2020/10/Hillsdale-Plan-and-Summary.pdf>

3) Do means exist in zoning that would be more suited to protect the proposed citizens of Golden should they be successful in their Petition and don't wish to have warehouses?

First and foremost, it should be noted that KSA 12-524 does not allow a city to annex any other incorporated city, in part or in whole. The incorporation of Golden would prevent the City of Edgerton or any other city from annexing land within the City of Golden. Golden would then need to establish its own government, governing body, and regulations to govern the affairs of the city, including adoption of ordinances such as zoning laws. KSA 12-741, is the Planning and Zoning Enabling Act in the State of Kansas which specifically authorizes cities and counties to adopt zoning laws and regulations for the protection of the public health, safety, and welfare. Various districts would be established to segregate land uses i.e., Residential, Commercial, and Industrial. Warehouses should be in an Industrial zone. The city will need to determine what zoning if any they want, and where they want certain zones located.

The current county zoning districts of Countryside and Rural Residential allow residential and agricultural uses by right and do not allow warehouses. Warehouses should be located in an Industrial zoning district.

4) Do other zoning classifications exist that would be more suited to prevent the building of warehouses if they were not wanted now?

No. As noted above, the current zoning of Countryside and Rural Residential do not allow warehouses. The land would need to be rezoned to an Industrial zone through a public hearing process to allow warehouses.

5) If the petition is granted for incorporation, how do the citizens of Golden go about protecting themselves from warehouses?

Please also refer to Question #3. The city would need to establish a governing body and adopt a zoning ordinance that would segregate uses into certain zoning districts. Until a zoning ordinance is adopted, the city should consider adopting a moratorium on land development within city limits for a specified period to allow time for public hearings and the adoption of a zoning ordinance.

6) Is the current classification of zoning appropriate for warehouses and would the building of warehouses be allowed in the proposed area of Golden if not annexed by the City of Edgerton?

Warehouses are not an appropriate use and are not an allowed use in the Countryside and Rural Residential zoning districts under Miami County Zoning Regulations.

7) Do you feel the current level of staffing in code enforcement is sufficient to enforce current zoning laws and/or code enforcement? If not, what would be your suggestions for staff additions and cost of the same?

The department recently hired a new staff member to fill a vacant position and is also advertising to fill another empty staffing position. That being said, until the department is fully staffed and fully trained, the current level of staffing in the county Planning & Zoning Department is insufficient to keep up with the number of land use permits, inquiries, and applications that are processed daily. The department recently hired a zoning compliance officer who is still in the training phase and there are a multitude of compliance issues that are being processed. The county attempts to seek compliance rather than proceed to court so not many of these cases proceed to the court docket. Once the department is fully staffed and trained, the department should be sufficient to perform all of the duties of the department.

To clarify, code enforcement also includes functions of the Code Services Department which is separate from the Planning/Zoning Department, although the departments work closely together. The Code Services Department is sufficiently staffed under the current conditions and boundaries of the county, so long as no increase in workload.

Information regarding employment costs are being deferred to the Administration and Human Resources Departments.

8) What is the current level of staffing in code enforcement in Miami County and for what area in square miles?

The Planning/Zoning Department currently staffs one Zoning Compliance Officer. The Zoning Compliance Officer investigates complaints as received and reviews conditional use permits, etc. for compliance throughout the unincorporated areas of the county.

The Code Services Department currently staffs four Compliance Officers for building and wastewater. These Compliance Officers are in the field daily to inspect building construction, wastewater systems and nuisance complaints throughout the unincorporated areas of the county.

Miami County is approximately 590 square miles in area. Except for the incorporated areas of Fontana, Louisburg, Osawatomie, Paola and Spring Hill, our departments regulate the remaining areas of the county.

9) Is code enforcement complaint based or proactive?

Code enforcement has been complaint driven due to staffing issues, and as requested by the governing body. Landowners tend to be hesitant to complain against a neighbor and often fear retaliation. A proactive approach is much more effective and less threatening to neighbors.

10) Is it correct that the current zoning of the proposed area of Golden would be defunct or not longer effective in the event of the incorporation of Golden?

Once incorporated, Miami County no longer has regulatory authority inside the city limits. The city will need to establish its own government and regulations.

11) If successful, would the new city be required to create their own zoning and enforcement thereof? Possible costs?

If incorporated, the city would then need to establish a governing body and if regulations if they choose to. An option in the interim would be to adopt the county's current Comprehensive Plan, Zoning and Subdivision Regulations, Building and Sanitation Codes, etc. Costs will depend on their own codes or agreements with the county.

12) Discuss the feasibility of obtaining a conditional use permit to build a warehouse in the proposed area of Golden as it currently stands.

Miami County has adopted what is known as Euclidian or exclusionary zoning which separates different land uses by type of use i.e., residential, commercial, industrial. Only those land uses listed in each district as allowed uses are permitted. Within each zoning district, certain uses that may be incompatible under general conditions, but compatible under specific conditions with other uses permitted in a district may be permitted by conditional use permit, when found to be in the interest of the public health, safety, morals, and general welfare of the community.

In the Countryside zoning district, warehouses are not listed as uses that may be considered for a conditional use permit (CUP). There is a provision for "other uses determined by the Planning Commission to be consistent with the intent and purpose of this zoning district, except for those uses listed as prohibited uses in Article 15". The preamble of the Countryside zoning district expresses the spirit and intent of this district: "

"This district is primarily intended to provide for the development of a rural residential lifestyle with adequate open space that may include equestrian use, but also encourages the clustering of dwellings through conservation subdivisions by allowing an increase in density. This district is also intended to provide for agricultural uses on the larger parcels and encourages the preservation of agricultural lands by allowing agricultural preservation subdivisions."

The Rural Residential zoning district states:

"The purpose of this district is to provide for low density residential development that retains the character of the basically rural area, but also requires the clustering of dwellings through conservation subdivisions in order to protect sensitive land and preserve open space. All new subdivisions should be developed adjacent to planned developments, the existing villages or town sites, or the cities, but may be considered in other areas."

Warehouses are also not listed as allowed uses or uses allowed with the approval of a Conditional Use Permit in the Rural Residential zoning district.

13) If Golden is created, what is your understanding of what occurs regarding the current classification of zoning in that area and the enforcement of the same by the Miami County Planning and Zoning? Is the county responsible for enforcing zoning in the city of Golden if successful?

As noted previously, upon the incorporation of a city, the county's jurisdiction ends and the underlying county zoning and subdivision regulations become void unless there is some type of an agreement in place, such as an interlocal agreement, to adopt the county regulations and enforcement of such with arrangements outlined for the payment of services. Without such an

agreement the county is not responsible for enforcing zoning inside the city limits of Golden, if incorporated.

14) Are you able to state with specificity how much a code enforcement officer or zoning enforcement officer would cost the city of Golden to hire and maintain?

It is unlikely that a city of approximately 700 occupants would need a full-time code enforcement officer. It is possible that the city could contract with a local jurisdiction or private company for services. Those costs would need to be negotiated.

An option that the residents might want to consider is “servitudes”. In land use, a servitude is defined as, “*a right by which something (such as a piece of land) owned by one person is subject to a specified use or enjoyment by another.*” (www.merriam-webster.com/dictionary/servitude) The placement of restrictive covenants, deed restrictions, or conservation easements on their land could restrict certain uses on the property specified from intrusion of unwanted land uses. This should be discussed in depth with legal counsel to fully understand the benefits, burdens, and effectiveness of such. Enforcement would be a civil matter under the jurisdiction of the courts. If done correctly, the restrictive covenant or conservation easement should run with the land.

In closing, it is staff’s understanding that formal approval by the Miami County Board of County Commissioners is not required if the City of Edgerton, or any other city, annexes land in Miami County (or any other county) by consent. If a landowner requests to be annexed into the City of Edgerton and the landowner’s property abuts the city limits, the city has the authority under state law to annex the property, even if it is located in a different county. However, the City of Edgerton may not annex land that is in the corporate boundaries of another city, i.e. Golden.