MINUTES OF THE
MIAMI COUNTY PLANNING COMMISSION
September 3, 2013

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

ATTENDANCE:

CHAIR: Absent

VICE-CHAIR: David Hayden

PLANNING COMMISSION MEMBERS: Nate Apple, Kimberly DeYoung, Phil Elliott, David Hayden, Mike Martin.

ABSENT MEMBERS: Bill Harris, Randy Kitchen, John McLean, and David Wilson.

EX-OFFicio MEMBERS: None present

PLANNING DIRECTOR: Erik Pollom, AICP

COUNTY COUNSELOR: David Heger

SECRETARY: Teresa Reeves

COUNTY COMMISSION: Jim Wise

PRESS: Allysha Newton
MINUTES
September 3, 2013

MIAMI COUNTY PLANNING COMMISSION

Vice-Chairman Hayden called the meeting to order at 7:00 p.m.

ROLL CALL

Six members were present for roll call, which constituted a quorum. Bill Harris, Randy Kitchen, John McLean and David Wilson were absent.

ADOPTION OF THE AGENDA

Due to the number of people present regarding the K-68 hearing item, Kimberly DeYoung moved to amend the agenda to hear Cummings Hollow application first. Nate Apple seconded. The agenda was adopted as amended.

CONSENT AGENDA

The July 2, 2013 Planning Commission Minutes were approved as written.

REGULAR AGENDA

New Business

13002-SUB: Cummings Hollow – Public Hearing

Erik Pollom presented the staff report to consider the Final Plat (Small Subdivision Plat) of Cummings Hollow, a replat of parts of Blocks 1, 2, 5, 6, 7 & 10, Tracts A & B, & vacated streets and alleys of the Plat of Ten Mile. The proposed replat will vacate this portion of the Plat of Ten Mile, thereby merging all of the lots together as one; vacate all of the streets and alleys identified within its perimeter, except for those parts identified as new right-of-way; and establish new utility easements per Section 3-8 of the Miami County, Kansas Subdivision Regulations. The subject property of approximately 6.35 acres is zoned Countryside and is located in the Southeast Quarter of Section 10, Township 16S, Range 23E, Marysville Township.

Noting that this is an 1868 plat, Vice-Chairman Hayden opened the public hearing.

Calvin Cummings, 25200 Columbia Road, spoke on behalf of the applicants (his sister and brother-in-law), noting that the required road frontage is being dedicated and all they want to do is put a trailer there and live there the rest of their lives. He asked that the replat please be approved.

With no further comments from the public, Vice-Chairman Hayden closed the public hearing.

Mike Martin moved to approve the Final Plat of Cummings Hollow based on the findings listed below, and recommend the Board of County Commissioners vacate the roads and alleys identified on the Plat of Ten Mile that are located within the perimeter boundaries of
Cummings Hollow, and accept the right-of-way for Columbia Road and utility easements as presented on the Final Plat of Cummings Hollow. Phil Elliott seconded. The motion carried unanimously (5-0).

Findings

1. The Planning Commission held a public hearing in accordance with Section 3-8 of the Miami County, Kansas Subdivision Regulations.
2. The replat complies with the low-density, Countryside designation of the Comprehensive Plan.
3. The replat complies with the Miami County, Kansas Zoning Regulations by meeting the standards, spirit and intent of the Countryside zoning district.
4. The replat merges multiple non-conforming size lots into one lot; eliminates multiple unused and unnecessary roads and allies; and corrects the road right-of-way for Columbia Road as now established, thereby making the property more conforming to the comprehensive plan, zoning and subdivision regulations.

This item will be heard by the Board of County Commissioners on September 25, 2013 at 1:00 p.m.

Old Business

13001-TA: Zoning Regulation Amendment Creating the K-68 Corridor Overlay District – Public Hearing

Erik Pollok presented the staff report for consideration of draft amendments to the Zoning Regulations of Miami County creating Article 12B, K-68 Corridor Overlay District. Mr. Pollok noted that the proposed text amendments for the overlay district uphold the county’s commitment for the K-68 Management Plan previously approved. Mr. Pollok clarified that although the overlay district is 2 miles wide (1 mile each side of K-68); the proposed setbacks are only from the proposed right-of-way. The two-mile area is simply a discussion area for any proposals beyond the right-of-way that KDOT should know about that could impact traffic and potentially affect the design of the highway and interchanges. Hardships created by the proposed right-of-way can be heard by the Board of Zoning Appeals for variance consideration as non-conforming structures.

Nate Apple noted that the proposed text amendments have nothing to do with the design of the highway, timelines or impact on what KDOT does along the highway.

Mike Martin noted that he does not have a conflict of interest on the proposed amendments but does live within the 1 mile corridor.

Vice-Chairman Hayden opened the public hearing.

John Anderson is the managing officer and attorney for JAA Farms, a limited partnership with property along the proposed corridor. Mr. Anderson questioned when K-68 will get improved, if ever, similar to the bypass that was proposed around the west side of Johnson County. He agreed the purpose of this district is to offset the cost to the taxpayers but he noted that this also affects taxpayers along the highway. He opined that this is a taking through eminent domain – a taking of right-of-way without paying for it until some time in the future. Mr. Anderson claimed that this keeps property owners along the corridor from using their property, which is taking away a right. He urged the commission to carefully
consider the proposal reiterating that this is not just a zoning issue but a taking. When questioned by Nate Apple as to how this is a taking, Mr. Anderson stated that the proposed right-of-way moves into his property 75 feet. With an additional 50 foot setback from the right-of-way, this takes his ability to build his house on his approximate 3 acre tract as there is no room left to build. This additional right-of-way affects everyone, not just him.

Mr. Apple noted that the corridor is for everyone, not just the people who live in this area and the state is attempting to protect the corridor so the taxpayers don’t have to pay for structures in the future.

Mr. Anderson agreed with Mr. Apple’s statement and added that the state is thanking Miami County for not letting anyone use their property and added that it is inappropriate to not pay for that right now as the constitution requires. KDOT should take the right-of-way now, and pay for it now, not later. He stated that they have the cart before the horse. Mr. Anderson is not opposed to the 50-foot setback from the new “purchased” right-of-way. He commented that KDOT is using Miami County and Franklin County as cannon fodder, trying to get by as cheap as possible.

Delbert Walters, Jr. 23415 K-68 Highway, stated that he paid for building that will now be in the setback and will be non-conforming, which drops the value. They built legally and obtained a conditional use permit and feel exactly how Mr. Anderson explained. People were here when the highway originally was built as a rural residential highway. He commented that this is a taking without payment for it and making legal buildings non-conforming and devalued. They’re not looking at the highway construction anytime soon – it will be down the road. The new setbacks are for a road expansion that could never happen, which is wrong.

Nate Apple asked for documentation that buildings will be devalued that become non-conforming.

Bob Gardner, 28044 Somerset Road, agreed with the previous two speakers. He noted that he knows all of the planning commissioners and not one are affected by this. His property lies at the intersection and KDOT plans to take 100% of the expansion on his side of the highway, and make an access road on my side of the rod. He believes this does affect value. He stated that he wanted to sell his property and had someone interested, he has a beautiful pond which is going to be taken for the highway. This reminds him of the interlocal agreements that took a decade to get out from under. He stated that he doesn’t know where one mile each side comes in. He noted a utility company placing utilities in the proposed right-of-way and it didn’t appear KDOT cared about that expense at all. If they are going to allow the utilities to go in, he questioned why they don’t pay him now for his land? He believes in planning but not if they are not going to be compensated.

Larry Everhart, 27545 Woodland Rd stated that he didn’t understand the one-mile area.

Phil Elliott explained that the one-mile area is only a notification area to KDOT in case someone comes in with a large subdivision or something. This allows KDOT to comment and know if they need to reconsider intersection design, etc.

Mr. Everhart asked about access to fields that are currently located on K-68.

Mr. Elliott noted that they are not discussing access, just setbacks from the proposed right-of-way.
Steve Hinkle asked if this is a 150 foot setback, noting that he doesn’t know how much his property will be affected. He has no maps to reference and suggested that if the county is doing zoning on his property he should know the details. He will consider everything once he sees a map. He stated that if the county would have included maps with the letters they sent to everyone there would be far more people in attendance.

Delbert Walters added that it is one thing to save taxpayers money. The people who have been living in this area have been paying taxes and it’s unfair to be treated this way.

Troy Pinneo, 27983 Osawatomie Rd., questioned whether this would prevent him from building barns on his property.

Phil Elliott stated that he would have to look at a map to see where the structures are proposed to see if they are in the proposed setback.

Mr. Pinneo asked if he comes in to get his permit before the text amendments are approved if he could build in that area. He noted that he has some erosion issues and wants to build in a certain location.

Larry Everhart asked if a precedent had been set for this referencing US 169 in Johnson County. He suggested Miami County look to see what Johnson County did suggesting that they don’t have limited access. He questioned what their zoning is and what they did.

Mr. Pollom noted that Franklin County adopted text amendments in 2009 that recognize 1 mile north and 1 mile south of the corridor with more restrictions than what are being proposed by Miami County.

Mr. Everhart asked if someone’s house burned down if they could rebuild and if they have to repay for the septic. He asked if there would be any funding to help people with these expenses.

Mr. Elliott noted the ability for people to seek variance relief through the Board of Zoning Appeals.

John Anderson asked if there has been any litigation regarding Franklin County's regulations regarding the corridor.

Mr. Pollom was not aware of any litigation in reference to Mr. Anderson’s question.

Bob Gardner noted that Somerset Road was on the 5 year plan many years ago. He asked if the county was going to follow the same concept along every road in the county. He suggested that this plan is very unfair to the people along K-68 Highway.

Pearl Doherty, 27880 Cedar Niles Rd, noted that she has 240 acres within one mile, each side of K-68 that she plans to leave to her kids, and wanted to make sure they could build on thee plots.

David Hayden noted that they would need to observe setback lines.

Nate Apple acknowledged that they should be able to find someplace to build on 240 acres.

Mrs. Doherty noted she has a son who suffers from ALS and the family needs to add a room to their house, which is within ¼ mile of K-68 Highway. She asked if they would be able to build an addition to the house.

Several planning commissioners noted that they should be able to add on to the house assuming everything else meets the setbacks.
Jerry Pretz, 19125 K-68 Highway, has two buildings on his property and the frontage road will come within 25 feet of the buildings. Mr. Pretz stated that KDOT representatives indicated the building(s) could be moved. When he stated that the only has 5 acres and asked if the county would approve that, the representatives indicated the county could make exceptions. He asked if the county would allow exceptions and he also noted that there is a lateral field there that will need to be moved because of the new road. He asked where the laterals could go.

Nate Apple assured Mr. Pretz that the county will take all things into consideration and work with them the best they can, but that nothing can be confirmed without looking at details.

Mr. Pollom offered to look at his property at the counter to get a better idea, as well as anyone else who has questions.

Mr. Pretz noted that he has paid taxes on both residences and asked who he talks to when and where.

Mr. Pollom supplied the address of the Planning Department.

Jerry Huffman, 38919 K-68 Highway shared his concerns about continual government land grabs and felt that the government takes because it can, which is not right.

With no further comments, Vice-Chairman Hayden closed the public hearing.

Mr. Pollom thanked everyone for their comments and attempted to address the main issues that were raised:

- Miami County has no control over where KDOT aligns roads, etc.
- Regarding setbacks and use of property, a taking is more than a diminishment of use. Fifty foot setbacks are already established today, from the ultimate or proposed right-of-way, even on agricultural land. This does not constitute a taking, as the property owner still has use of the land – they can still do everything except build structures within that setback area. This is strongly tied to the interest of the public process.
- Setbacks from the proposed or ultimate right-of-way are currently applied to every road in the county per the 1995 Comprehensive Transportation Plan, as measured from the centerline of the road. We’re recognizing a more modernized plan with the adoption of the K-68 Corridor Management Plan, which has already gone through public hearings and been vetted. State enabling legislation allows this in KSA 12-765 (read), which gives the county direct authority to establish setbacks from the right-of-way. The Board of Zoning Appeals is used for appeal to offer relief if necessary.
- Regarding the question about the T-Works meetings in Paola and Louisburg, someone stated that KDOT is taking property within one mile of the highway. This is not the case. The overlay includes property within one mile each side of the highway as a notification area to KDOT to make sure the agency knows about proposed developments that could potentially affect the design of the highway and intersections. Only the properties along the highway will be directly affected by the increased right-of-way. (Butch Walters interrupted, protesting that this is not what was said.)
• Mr. Pollom apologized for not being able to provide individual maps for each property. He referenced a note at the end of the letter that referenced the ability to obtain a map from staff or obtain information from the website.

• The date the highway will be built is unknown, although some work is currently being done with T-Works funding. Ultimately, the project will be a four-lane highway.

Nate Apple asked if the corridor would be approximately 150 feet each side of the highway.

Mr. Pollom noted that it is a little more complicated than just measuring 150 feet each side of the highway. The proposed right-of-way meanders to the north or south of the highway in certain location to avoid obstacles. The highway is currently identified as an arterial with 120’ right-of-way.

Phil Elliot thanked everyone for their attendance at the meeting noting that this subject has been before the planning commission in various forms over the past 3 years. He shared his concerns with regulations that create legal non-conforming structures. In this case, it appears that approximately 81 structures will be affected, which is significant, but when considered for the distance of the corridor, it is far less than anticipated. Another issue is the value and impact on landowners. It is difficult to compare the cost to K-68 landowners versus the benefit to the entire county to control potential development for future improvements. This room will be packed with people wanting a safer road if traffic problems arise along this highway. Mr. Elliott noted that he had not arrived at a decision yet.

Kimberly DeYoung spoke as someone who developed on property that was within the ten-year plan but the road wasn’t improved within 20 years. When they developed, land was dedicated to the county to help with the improvement. She discussed whether there might be a possible compromise regarding legal non-conforming structures.

David Hayden stated that he would like to see the people with specific questions be able to get answers and questioned whether that was possible to do tonight.

Kimberly DeYoung asked if it would be possible to do an open door meeting.

Mr. Pollom acknowledged that an open door meeting would be possible, but arrangements would need to be made. He also noted the possibility to send out maps via email if anyone would be interested.

Kimberly DeYoung invited the audience to give their name and email address to Mr. Pollom to send a digital map, or make an appointment to come into the office.

Nate Apple felt that there were a lot of people with a lot of questions. He recognized the presence of a retired judge in the meeting who would probably take the county to task and noted the necessity for the county to know their research.

Kimberly DeYoung moved to continue the meeting to November 5th and asked staff to do the following:

1. Contact every single resident who has legal non-conforming structures and talk to them.

2. Contact KDOT for a response from them regarding the purchase of this property now. If people have legal non-conforming structures due to this corridor plan, the state should pay for them now.
3. Verify the legality of this and whether there are any other precedents.
4. Provide maps and information for people who leave their phone number and contact information.

Nate Apple seconded the motion and asked what happens if the county doesn’t adopt this overlay district.

Mr. Pollom wasn’t sure what would happen but reminded the planning commission that the Board of County Commissioners made the commitment to preserve this right-of-way in 2009.

Kimberly DeYoung noted that the planning commission only makes a recommendation. After some discussion amongst members, the motion carried with 4 approving, 1 opposed (Martin).

ANNOUNCEMENTS

ADJOURNMENT

The meeting was adjourned at 8:30 p.m.

Approved this __________ day of __________, 2013.

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Secretary                          Chair, David Wilson /
                                      Vice-Chair, David Hayden

Minutes written by Teresa Reeves