

**THE MINUTES OF THE REGULAR MEETING
OF THE BOARD OF COMMISSIONERS
OF MIAMI COUNTY, KANSAS**

The Board of Miami County Commissioners met in regular session, in the Commissioners' Meeting Room, Miami County Administration Building, Paola, Kansas, on March 27, 2019. Those present were:

Phil Dixon, Chairman	Shane Krull, County Administrator
Rob Roberts, Pro-Tem	David Heger, County Counselor
George Pretz, Commissioner	Janet White, County Clerk
Tyler Vaughan, Commissioner	Amanda Curnutte, Executive Secretary
Danny Gallagher, Commissioner	

Members of the Press: Brian McCauley and Doug Carder, Miami County Republic

Visitors: Mike Heptig, Joe Vitale, Jackie Stahl, Ashely Tillman, Jason & Becky King, Kathryn Puvogel, John Terry, Bobbie Debrick, Keith Crawford, Shawn Swisher

CALL TO ORDER

Chairman Dixon called the meeting to order at 1:00 p.m.

CONSENT AGENDA

Commissioner Roberts moved to approve the Consent Agenda, with one addition, as follows:

- Minutes of the County Commission meeting of March 20, 2019
- Vouchers
- Addition: Correction of March 6, 2019 BOCC minutes regarding the purchase of a Cummins generator for a corrected price of \$36,440.00

Commissioner Gallagher seconded; the vote was unanimous.

NEW BUSINESS

Kenneth Cook, of Planning & Zoning, requested the board to consider amending the Miami County, Kansas Zoning Regulation to make a provision for the conversion of Cargo Containers for use as residential and non-residential structures. The Planning Commission recommended denial of the text amendment with a 4-2 vote, as well as tabling the issue for one year. He stated both Franklin County and Johnson County allow such cargo containers to be used as building material, as long as they meet their building code requirements.

Commissioner Vaughan stated he did not support the suggestion to table any issue for one year. Commissioner Pretz reiterated that if cargo containers are used as building material, they would be required to follow the same building codes Miami County already enforces. Commissioner Roberts moved to override the Planning Commission's recommendation, to allow cargo containers to be used as building material with the

understanding the current or future building codes have to be met and Commissioner Gallagher seconded. Commissioner Roberts clarified to allow the stacking of such containers, regarding residential construction, as long as the safety codes are all met and such items as the color of paint will not be restricted. With the motion and second on the floor, the vote was unanimous.

Commissioner Roberts stated he does not support the Planning Commission's request to not hear any requests regarding any issue for one year. He stated Miami County residents should be able to address any appropriate board with concerns or requests.

Teresa Reeves, Director of Planning & Zoning, requested the board to consider modifying or revoking the "grandfathered" conditional use permit, Z-180, for the operation of a contractor's shop / yard addressed as 23224 Cedar Niles Road in a countryside zoning district. The Planning Commission recommended revoking the conditional use permit, with a 5-1 vote. A second vote, of 6-0, allows 18-months for Vitale Properties, LLC to remove the business from this property with a limit of business hours from 7:00 a.m. to 6:00 p.m.

Commissioner Roberts asked what the complaints from the neighbors are.

Mrs. Reeves stated issues such as noise, increase of traffic, and more activity are being brought forward from most of the surrounding neighbors. She explained the "grandfathered" C.U.P. on the property did not have any conditions in detail or time limit of the C.U.P.

Commissioner Gallagher mentioned the building permit that was granted to the previous owner in 2005, stating the barn that was to be built was to store agricultural equipment, separate from the business. Mrs. Reeves stated the current owner is not using the structure for agricultural purposes but to repair business equipment.

When the current owner was notified of the complaints, last year, and was wanting to expand his business, he relocated equipment, planted an extensive row of evergreen trees to help as a noise barrier, and applied for a new C.U.P in order to expand. On July 11, 2018, the County Commission denied the new C.U.P.

Mike Heptig, the Attorney representing Vitale Properties, LLC, presented the board with a letter submitted by Marilyn Stahl, the previous owner, outlining how the business was ran in the 1990's and 2000's.

Mr. Heptig stated his client purchased the property in 2017 because it had an operating contractor's shop established. His client was not aware of any restrictions regarding the use of the barn in 2005.

Becky and Todd King, neighbors of the contractor's shop, explained that Mrs. King is the daughter of the previous owners. They have previously submitted a number of photos to the Planning Commission showing the property before the current owners and after. Mrs. King stated her father's business did not store equipment on the property and did not have delivery trucks traveling the road. Mrs. King expected the business would get

smaller but instead, from her point of view, has grown. Mr. King spoke of the increased traffic and noise levels. He stated when the traffic study was done on the road, the business purposely slowed traffic down.

Mr. Heptig explained his client did not have any more notice of the traffic study than the neighbors did. He expressed Mr. Vitale has continued to try to be a good neighbor by lessening the noise as much as safely possible, dimmed and lowered lights, provided more dust control on the road than required, and planted a number of trees. Mr. Heptig stated his client has not been told to stop business or to relocate. The client has property rights until those rights have been taken away, they will continue to operate. The equipment is occasionally stored at this location for maintenance or seasonal.

The board reviewed aerial photography of the property, beginning in 1991 through 2018.

Commissioner Vaughan expressed his concern regarding the 2005 building permit that was issued and that the "grandfathered" C.U.P. was not reviewed at that time.

Mrs. Reeves stated the "grandfathered" C.U.P. was not reviewed when the previous owner applied for a building permit in 2005 because the property was also zoned as Agricultural. The affidavit that was signed by Mr. Stahl, the previous owner, at the time stated the new structure would be for ag-purposes. She explained this process does not require the staff to review the "grandfathered" C.U.P. because it is a separate issue.

Commissioner Roberts stated he did not feel comfortable forcing an operating business out of Miami County.

Commissioner Roberts moved to override the Planning Commission's recommendation to revoke the "grandfathered" C.U.P. and give an 18-month time frame to remove the business from the property. In his motion, he would like to include conditions such as time of business, noise concerns, and operations on the property in order to understand what the business is doing. Within the conditions, he would like the portion of the road in front of the property to be the property owner's responsibility so surrounding neighbors can travel safely. Commissioner Roberts would like to see these conditions within the next two weeks to be considered as a part of a resolution. Commissioner Gallagher seconded the motion, as presented.

Commissioner Vaughan clarified he is concerned about the business plans for the next three years; will the current issues surrounding the business encourage the company to continue to look at relocating or will the future conditions possibly put in place force out the growing business?

Mr. Heptig stated his clients do not desire to move from the area but are looking at other locations due to the Planning Commission's recommendation. Should this board approve the Planning Commission's recommendation, the business would need somewhere else to move to. There is currently nothing under contract.

Commissioner Vaughan wanted to reiterate he is very pro-business and a property rights advocate for all of Miami County.

Commissioner Roberts stated he would like to add a condition of any C.U.P. to be null and void if the current owners were to sell the property.

Commissioner Vaughan wanted clarification on should a building permit application come in on a piece of property with a "grandfathered" C.U.P., would the C.U.P. be reviewed by staff?

Shane Krull, Miami County Administrator, stated if the application is for agricultural intent, it is exempt from zoning. Because an applicant would be signing an affidavit of intent, staff will take the applicant at their word.

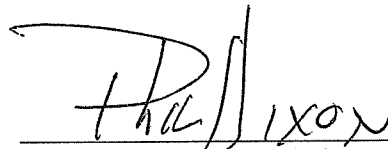
Commissioner Gallagher stated he would like to see a time limit be added to all future C.U.P.'s for staff review.

With a motion and a second on the floor, Commissioner Vaughan voted no. Commissioner Robert's motion passed with a 4-1 vote.

ADJOURNMENT

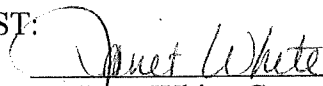
The meeting was adjourned at 2:35 p.m.





Phil Dixon, Chairman

ATTEST:



Janet White, County Clerk