

AUBRY TOWNSHIP ZONING BOARD
KCPL Service Center, 199th Street & Newton
Stilwell, Kansas

MINUTES
Wednesday, June 3, 2009
6:30 p.m.

CALL TO ORDER

A regular meeting of the Aubry Township Zoning Board of Johnson County, Kansas, was convened at 6:30 p.m. on Wednesday, June 3, 2009, and was called to order by Chris Iliff, Vice-Chairman, with the following members present and participating; to-wit: Rod Richardson, Patricia Fischer and Rick Noon. Darrel Dougan was absent. Also in attendance was Paul Greeley and Dean Palos, Johnson County Planning Department.

AGENDA ITEMS

Additions, Deletions, or Revisions to the Agenda:

[none]

Disclosure of Conflicts of Interest:

[none]

Disclosure of External Contacts/Discussions:

[none]

APPROVAL OF MINUTES

Motion by Mr. Richardson, *seconded* by Ms. Fischer, to approve the minutes of the May 6, 2009, meeting. *Motion passed unanimously.*

BOARD REPORTS

Mr. Greeley: At your last meeting you had one item, the Iron Oak plat at 185th and Metcalf, the two-lot subdivision and rezoning. That item is still pending before the Board of County Commissioners and will be decided next week, so we'll give you an update later on that.

The Vice Chairman: Planning Commission Actions: I was out of town last week when the Planning Commission met and had a public hearing with regard to the revision of the floodplain

maps in Johnson County. Mr. Greeley, or perhaps since our commissioner representative is here, do you care to comment on that? Mr. Palos?

Mr. Palos: I was at the meeting, and we did have a public hearing on the adoption of new regulations. Adoption of new regulations are related to a whole new set of maps for the entire county, as well as the unincorporated area. They are far more accurate. The regulations that the Planning Commission recommended for adoption are a little more stringent. There was unanimous support from the Planning Commission as development really hasn't been a problem in the unincorporated areas because, it's mostly been on pretty large lots, and people have been able to avoid the problem of having to build in a floodplain. So, we don't think the new regulations are going to adversely affect the county. In fact, we think it's going to be a great benefit to future development so that the south portions of the county don't experience the flooding problems that they've been experiencing in the northeast.

The Vice Chairman: For the sake of the public and for my zoning board members, the new floodplain maps I think represent a much more realistic view of potential effects of building with regard to floodplain waters and hundred-year floodplain areas. What we know is that as intensive development occurs, floodplains broaden because there is more runoff and there is more impediments to the flow of the water widening the floodplains. These maps just simply more realistically represent to everybody, including landowners and developers, areas that are potentially going to be affected by that. And I think having regulations that create limitations with regard to developing within the floodplain is really in the public interest. I think the County and our Planning Commission really deserves a tremendous amount of praise for developing these much more realistic maps. 50 years ago, we knew what we knew, but we've had 50 years of experience and we know a lot more, and these maps are just much more indicative of real issues than the FEMA maps are.

Mr. Palos: And a lot of that credit actually goes to the Stormwater Management Program, which is funded through the mill levy and spent over the course of, I think it was six years, they spent about \$11.6 million on this. Again, it's countywide, and as Chris said, the detail is far better. It actually resulted in people who had originally been shown to be in the floodplain to no longer be in the floodplain, and some unfortunately have discovered that now they are in the floodplain. But still, it's more realistic.

Ms. Fischer: What kind of comments have you gotten from property owners?

Mr. Palos: We did more than any other community. We've gotten a lot of favorable comments from people who have said, basically, "Well, I didn't know, but at least now I do know." We sent out, I believe it was 1,200 letters to property owners. We had about 100 people come to a meeting where we sat down with them in front of the computer and went through the impact of the floodplain on their property, individually. We had about 90 people come back and talk with David Peel about that subsequently, and he said there was really only one negative comment, somebody who said, "I'm really upset about this."

Ms. Fischer: That's great.

Mr. Palos: It is great. I was at that meeting, and we were surprised, because we thought we were going to get beat up. Surprisingly, people were patient, they waited, and they were very happy to get the information. Most of the people I spoke to said, "I suspected that; I knew I probably had a problem." And like I said, there were some people who were no longer in the floodplain and they said, "I'm going to call my insurance agent tomorrow."

The Vice Chairman: In my opinion, this kind of mapping and this kind of service provided by the county is government planning and regulations at its very best, where it is an incredible public service that is very farsighted. So, I just think that this is good work and I'm glad that the regulations have been recommended for approval, and I assume that the Board of County Commissioners will be looking at them shortly.

David A. Lindstrom, 3rd District Commissioner, appeared before the zoning board and made the following comments:

Comm. Lindstrom: Mr. Vice Chairman, I didn't have anything planned to say about this, but I will tell you that it has been one of the most challenging issues that I've faced from concerned constituents, both in the city and the unincorporated areas, who have had problems. So, I would agree with your comments. I think this is government at its best, and I'm very appreciative of it.

BUSINESS BEFORE THE BOARD

A. Application No. AU-CU-2912 – Conditional Use Permit Renewal – 6735 W. 207th Street

H. Robin Milliken, applicant, and Milliken Farms, LLC, landowners, are requesting Conditional Use Permit renewal for a landscape contractor operation in conjunction with a wholesale nursery, H&R lawn and landscape, on 20 acres, located at 6735 W. 207th Street, in Section 17, Township 15, Range 25, Johnson County, on property zoned RUR, Rural District.

The Vice Chairman: *Explained process for the public hearing.*

The Vice Chairman: Mr. Greeley, what I am most interested in hearing is whether there is any history of complaints with regard to the current conditional use permit, and whether there are any changes from the past usage to the current usage. With that, I will turn it over to staff.

Mr. Greeley: I would like to enter the May 27, 2009, staff report into the record on this application. This is a conditional use permit renewal at 6735 West 207th Street, on about 20 acres. It's Application AU-CU-2912, H&R Lawn and Landscape. This is to continue operation of a lawn and landscape business in conjunction with a wholesale nursery. This is a longstanding use out in the county. It was first approved back in 1988, so 20 years ago. In 1993, there was an amendment to that 1988 conditional use permit to allow for a building to be expanded on the property, and also to add additional land area from a ten-acre tract to a 20-acre tract. No members of the public are here, and the applicant has received a copy of the staff report. I know the zoning board members have that, so I'm not going to go into any detail. I will just note that the operative aspects of this use are listed in the staff report regarding the hours of operation,

types of equipment, types of buildings. There are two existing buildings and two new cold frame hoop houses or greenhouses are planned sometime in the future, so that's something new that they haven't had in the past. It's in the location that's shown on the site plans that were included with the staff report.

A slight change to the entrance off of 207th Street. The County is in the process of paving 207th Street, and in conjunction with that, the applicant has proposed to move their gate back and pave the throat area back from the paved street about 100 feet. That will help with dust and gravel and dirt and other kinds of things, to avoid having that tracked out onto the public street by having that length of pavement that will help transition, while the balance of the property driving surfaces will be gravel as they were in the past.

Another new aspect that the applicants are proposing, they recognize that residential uses are encroaching on them, especially from the east. This board – and most of you will probably remember this – back in 2000, the County approved a residential subdivision of eight ten-acre lots adjacent to the east. There are a couple three, four houses in that subdivision now. So, it's partially developed, and what the applicant has proposed to do is establish a stand of about 40 trees, large, mature trees, that would be placed along the east property line between their business and the residential uses to the east. So, that is something new that isn't out there now. The existing exterior lighting is there, no changes to that.

The only other suggested change is to the term. Again, they were granted a 20-year term 20 years ago. The applicants have asked for a 15 year term. Staff is recommending ten, which is the standard, but as you know, more or less can be granted based on reason, so that's an option for the zoning board.

The other question was about history of complaints. We have no record of complaints on this operation. We've done a site inspection, and as far as we can tell, the operation has been in compliance with the CUP over the life of the CUP, so that's a good thing.

The other thing I just want to mention is, there's five reasons on page five that support our recommendation to approve this renewal of this conditional use permit, so I want to get those in the record. There are 16 stipulations starting on page 6 that generally address the operational aspects and other things related to this business use. So, with that, again, our recommendation is for approval, and I'll be happy to answer any questions.

The Vice Chairman: Are there any questions for Mr. Greeley?

Ms. Fischer: I have one. I assume that shop area is for maintenance of vehicles. I see that there is an oil recycling area on one of the maps. Have you discussed that with the applicant, and has Environmental looked at how they are handling any fuel/oil that results from those operations?

Mr. Greeley: We didn't have anything in the stipulations directly on point regarding your questions, but we did talk to the applicant about that. They are doing maintenance on their vehicles, and their vehicles only. As part of their oil changes, they have a collection and holding system, and then they have a regular pick-up. I don't remember if it's monthly or bi-monthly, we can ask the applicant that, but they come out and pick up that recycled oil and handle that properly.

The Vice Chairman: Any other questions for Mr. Greeley? If not, I'll ask the applicant to make his presentation.

H. Robin Milliken, Applicant, 4605 West 138th Street, Leawood, appeared before the zoning board and made the following comments:

Mr. Milliken: I'm the owner/operator of H&R Lawn and Landscape and Milliken Farms. First, I would like to commend Paul Greeley and the staff for hearing everything that we've discussed throughout the process. I think he has put your information together in a very good package.

To answer specific questions about our oil usage, it is stored in a metal container and picked up by Safety Clean on a quarterly basis. Actually, they pay us now for that, which is good, compared to the old days where you had to pay them to take it. So, that is good.

Really, the only thing I would like to talk about is why I've asked for a 15 year term rather than a ten. Just to give you a little more background, my father started this business some 35 years ago. I started the tree production farm in 2002. Joe Milliken has come with me tonight. He graduated from Kansas State University in nursery production. Our crop is somewhat time sensitive. It takes us anywhere from two to seven years to produce a crop, and that's the main reason I've asked for a lengthier term than the ten, just so we were able to plan and not have any difficulties within a rigid timeframe. I understand that the CUP is a renewable process, but in my thinking, that would just allow us a little more flexibility in growing our crops. I think as you review the plan and our usage, in the past 20 years, it has deviated very little. I think we have improved the area that we occupy. We enjoy being part of the Stilwell-Aubry community. The farmhouse that we still have on the property, it's actually not part of this, but Mrs. Weekly still lives there, and will continue to live there. She takes care of the cafeteria at the Stilwell grocery store, and also the after-care market there. She'll stay there until she retires, so we have no further plans for that.

The cold frame greenhouses that we're asking to add at some time are for protection of the crops that we grow as we move into more severe climate changes in the fall and winter time, where we can house those and be able to protect them. Basically, that's the only difference that I have to add, other than what the staff has put together.

The Vice Chairman: Any questions for Mr. Milliken? Mr. Milliken, it does appear that the first three photographs of your exhibit have been computer enhanced or photo shopped – Am I correct?

Mr. Milliken: You are correct, and I'm glad you brought that up. As you know, we grow trees. We have many large pine trees that really have come to the point that they need to be moved with a large tree spade. We've already made arrangements to have that done and we probably would have a portion of those moved to the east property line by this meeting, but as we all know, the past 90 days with the wet weather, it's not been very conducive. And then, you get to a point in that particular type of tree's life span that you cannot move them. Once those candles harden off – meaning the needles come out – then we can go ahead and move those, and they will be moved within this year, all along the east property line about the first 300 feet or so, which is our main building, the one that fronts 207th Street. We're also going to add some up on the north end, which would be in front of our employee parking lot. We also have about 100 hick-yews, and we're just going to clean it up. Now that we're starting to get our new neighbors, or we've got our new residential neighbors and we're going to have more traffic with the new road in, we like being good neighbors. We want to have good curb appeal. So, we're going to

cover up our employee parking in the front, just make it more appealing. We're going to bring our fence back to the right-of-way line. It's been removed by the County for construction now. We plan to put a split rail type fence in, and then we'll have a good, clean turf area between the ditch line and it, and then landscaping behind it that will really kind of buffer all of our parking. Just make it a little more pleasant to go by, especially during the day when you have all the cars parked there.

The Vice Chairman: Any further questions of Mr. Milliken? If not, we will open this matter up for public hearing. Are there any members of the public that would like to comment on this issue? Hearing none, we will close the public hearing, and we will now open it to discussion of the zoning board members, or open it for a motion.

Mr. Noon: I'd like to make a couple comments. When I read the package, I thought the applicant was very cooperative, moving the gate back, extending the paved section a hundred feet back without being asked about that, planting 40 mature trees. Sometimes we can't get two or three inch trees, and here we've got probably four to six inch trees.

I would like to talk about the CUP. I would like to consider doing it for a longer period of time, maybe 15 or 20 years. Usually I'm one that would shorten a CUP, but I find in this case several compelling factors. One, it's third generation – the applicant mentioned that. It's a business that's been out there in Stilwell for quite some time. It's located in an industrial area, so I think this is a very positive use for an industrial area. It's a very clean environment, nice use, and I'd like to see it continue. I find that things out here are actually slowing down and looking kind of bleak out here in relationship to 199th and Metcalf, with a lot of vacant space now, so I'd like to see the applicant stay, and I'd like to give him the time to grow the trees he wants to grow, which he says takes 15 to 20 years according to his application here. He's been there 21 years; he's had a 20-year CUP in the past. There's been no complaints in 20 years. I don't think anybody really goes down there and bothers them. I don't think there's anybody down there that knows he's there. He's a wholesaler, not a retailer. I just don't see any reason not to grant him a longer permit, so I'd like to talk about either doing a 15 or a 20 year. Also, in the back of my mind, I'm thinking of other nurseries that we have in this area. We have one across the street from the service center here. We have another one down the street on 199th Street, where we've asked, not necessarily nurseries, but the top soil place and other things that we had to fight to get the screening, and they are much more visible locations than what we're talking about here. So, I think 15 to 20 years is more appropriate, but I'm interested in hearing from other people.

Ms. Fischer: What kind of flexibility do we have in what we recommend for a time?

Mr. Palos: You do now have the flexibility as long as you have reasons, and I think the reasons that Mr. Noon just gave would satisfy that, if you concur with them. Justify a recommendation. The final decision is still going to be up to the Board of County Commissioners.

Ms. Fischer: Right. I remember a time when nothing was getting approved and extended, even logical things even like daycare at the school.

Mr. Palos: Chris, you may remember, we (the Planning Commission) went through a process to extend the term limits on conditional use permits, provided there were sufficient reasons for them.

The Vice Chairman: The Planning Commission specifically addressed this, and there is a regulation now that, while ten years is the preferred or recommended length of time, that permit recommendations for longer periods of time, and the Board of County Commissioners can approve that if they see fit. So, I think that Mr. Noon has made very appropriate comments with regard to why we ought to have a longer period of time, and notwithstanding the applicant's rather modest application for 15 years, I personally would support a 20 year conditional use permit for this application.

Mr. Noon: I would, too.

Mr. Richardson: Mr. Chairman, I would join in that, and I would move that the Aubry Township Zoning Board recommend approval to the Board of County Commissioners Application AU-CU-2912, conditional use permit for this property, with the amendment that stipulation 2 be amended to 20 years, and that the other stipulations numbered 1 through 16 be applied as currently written. In support of that, I adopt Mr. Noon's reasons. I think this applicant is a special case to some extent, given the nature of the slow turnover of his produce, if you will. I'm a little concerned, too, what some future annexation, although this is fairly far south, but you never know. I think that would add security to this use. If it becomes something else in the meantime, then 20 years is a long time, but I certainly support the 20. That's my motion.

Mr. Noon: I'll second that motion.

Motion passes unanimously.

Mr. Greeley: One clarification. Sometimes the Board of County Commissioners or other advisors to the Board have other ideas about terms, so I would like to ask you your feelings about having this item come back to you based on the term alone. If for some good reason the Board of County Commissioners feels there needs to be a shorter term or longer term, what's your feeling about having this item come back to you?

The Vice Chairman: I think I can speak on behalf of my fellow members here and say that we don't want to hear the matter again. We'll leave it to the discretion of the Board of County Commissioners.

Mr. Greeley: Thank you for that clarification. We'll take this matter to the Board of County Commissioners on July 9th. That is a Thursday, and the County Commissioners meet at 9:30 a.m. at the County Administration building in Olathe, Third Floor.

OTHER BUSINESS

Mr. Palos: This is related to the Planning Commission discussion. They also last month reaffirmed that a public hearing has been set for the update to CARNP. This is subsequent to a decision that was made by the Board of County Commissioners almost a year ago, when they determined that they wanted to conclude the study of the South Metro Connection project. At the end of that discussion, the Board of County Commissioners concluded the study of the south metro connection, and in addition to that, they directed that the study area on the CARNP map that showed the area between 175th and 199th to Mission be removed as a future study area. They also directed that a Type I connection between Nall and Metcalf along the northern border of Berry Hill Farms 179th Street extended be added. So, that's on for discussion. In addition to that, Public Works has submitted a proposal to the Board of County Commissioners that has been, not officially approved, but it has been generally endorsed by the Board, to put on their five year capital improvements plan a connection of 183rd Street from Nall to Mission. So, we're asking that that also be considered. There may be some other recommendations at that meeting because it's open. We've had discussions with the city of Overland Park. They, on their long-range plan, show a connection of Nall between 167th Street and 175th Street. We've discussed that with them and we may not recommend that, but I think we want to throw that into the mix for discussion. This meeting is June 23rd. As I said, we met with Overland Park, we've notified SMOC, the group that was opposed to the metro connection. We asked them to notify their members of this, so we're expecting that there will be quite a few people there. The recommendations that have been set forth, all of them make sense, and I think there are going to be varying opinions on them. But I think in deference to CARNP, which is ten years old, this is a logical update that needs to be addressed. So, I'm not sure how it's going to come out, I'm not going to predict, but I wanted to make sure you guys were aware of it.

The Vice Chairman: Will we be receiving written notice of that?

Mr. Palos: There's a public notice. You'll receive notice. This is your notice, basically. We've put it in the paper, so we're meeting that requirement. Like I said, I'm kind of relying on the SMOC folks to get out the word. We don't post signs or anything like that. June 23rd, the normal Planning Commission public hearing, it's at 5:45 p.m., at the County Commission hearing room of the County Administration building, the third floor, at 111 South Cherry Street. We're asking people to let other people know about it.

The Vice Chairman: Thank you. Anything else from staff?

Mr. Greeley: I just wanted to update you on the consolidation efforts. I reported to you last time that that action did occur. It's effective June 30th, which is the end of this month. The four members of you that are here tonight have indicated their willingness to serve on the new consolidated zoning board. Those appointments are to be considered by the county commissioners next week, I believe it is, or before the 30th, so we can get that taken care of. So, July 1 will be the first meeting of the consolidated zoning board, and there are two people from the Oxford zoning board that have indicated a willingness – Martin Seem and Vic Mosby – and will be in attendance at that meeting. So, just to prepare your thinking that at that meeting, we'll need to have elections of officers or interim type situation if you're not prepared to do that that night. And then, talk about meeting time, location, those kinds of things. That date is this board's regular meeting date, the first Wednesday of the month. That's certainly an option. So, we'll

need to do some of those things at that first meeting. We do have three hearing items, so we'll have you hit the ground running that evening.

The Vice Chairman: Are any of those items in Oxford?

Mr. Greeley: They're all in Aubry. I just wanted to keep you posted on that. That's all I have.

BUSINESS FROM THE FLOOR [none]

NEW BUSINESS [none]

OLD BUSINESS [none]

The Vice Chairman: I guess that brings us to the conclusion of this meeting, and I think it should not go unremarked – I guess this item falls under both new business and old business. This is the final meeting of the Aubry Township Zoning Board. I have served on this board for over 20 years, and you guys look so familiar that I can't remember how many years you've been here, but a long time for all of you guys as well. I'm pleased that Mr. Ben Brown has joined us here tonight, who has been perhaps the longest serving member of this board ever, and he has come to join us. So, I think we should mark this historic moment of the last meeting. Since we will reconvene at this same place a month from now with a new name and a very small difference in our jurisdiction, I suppose it's not something that requires the popping of champagne, but nevertheless, I would like to express my appreciation for the fine work of all of the members and former members who are here tonight, because it's been just an incredible pleasure to serve with you, and I think we have served the county well.

Mr. Richardson: I would agree with that, and I just join in those remarks. I moved out here in 1989 and was appointed to this board in 1991. So, a lot has changed during that time, a lot has stayed the same, but in all that time, I've always thought, whether we all agreed or not, this board did a remarkably good job in advising the Board of County Commissioners how we felt these things ought to go in light of the character of this community, and I'm quite sure that will continue. It's been a good relationship with the BOCC, and I'd like to comment that Ben Brown was on this board when I started in 1991, and I don't know when Ben got on the board, but Ben served up until fairly recently and always offered some of the most critical comments, critically explored comments on things, and offered points of view that, at least I, and I'm sure others, perhaps hadn't considered that were very helpful. So, a lot of very thoughtful people have served on the board, and it's been a pleasure to serve with them. That's my comment.

ADJOURNMENT

Thereupon, with no further business to come before the Aubry Township Zoning Board, the Vice-Chairman at 7:25 p.m. declared the meeting to be *Adjourned*.



_____, Chairman

ATTEST:

Sherry Cross

Secretary to the Board