

BOARD OF COUNTY COMMISSIONERS STUDY SESSION AGENDA

Wednesday, April 7, 2021 | 10:00 a.m.



-
1. General Discussion.
 2. Discuss portable radios for Linn Valley Fire Department with Mark Whelan.
 3. Discuss upgrading existing Fire District No. 1 Kenwood radios with Mark Whelan.
 4. Discuss text amendments for billboard signs with Kenneth Cook. Item was tabled from March 24th meeting.
 5. Discuss considering building permit fee waiver for RWD No.2 with Shane Krull.

MIAMI COUNTY STAFF REQUEST FOR COMMISSION ACTION

SUBMITTED BY: Mark Whelan	REQUESTED MEETING DATE: Wednesday, April 7, 2021
DEPARTMENT: Fire District #1	REQUESTED MEETING: <input checked="" type="checkbox"/> STUDY SESSION <input checked="" type="checkbox"/> REGULAR MEETING
CONTACT INFORMATION: mwhelan@micosheriff.org	PROJECT / REFERENCE NUMBER: Linn Valley Radio's

AGENDA ITEM / SUBJECT: Portable radio's for Linn Valley FD
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ITEM BACKGROUND / DESCRIPTION: Linn Valley FD currently has no radio communications with Miami County dispatch or Louisburg and Fontana FD. Linn County Sheriff has refused the request to radio dispatch Linn Valley units into Miami County. They are currently dispatched by phone app with cell phone confirmation of calls. Having no radio communication is problematic as responders cannot receive updated information or track vehicles and run times. Chief Rittinghouse attempted to obtain donated radios however those radios are no longer supported by Motorola.

REQUESTED ACTION / STAFF RECOMMENDATION: Request permission to purchase 5 Motorola APX 6000 portable radios for use at Linn Valley. This will allow direct communication with Miami County Dispatch and other responding units. This is not a budget item for Fire District #1 or the current radio project.
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BUDGET IMPACT: \$20,522.00

BUDGET AUTHORITY: \$	REMAINING BUDGET ALLOCATION: \$
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FUND / LINE ITEM: ### ##-###	FUNDS BUDGETED: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	CAPITAL PROJECT: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
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Mark Whelan

March 29, 2021

SUBMITTER'S SIGNATURE:

DATE:

FISCAL REVIEW

Comments: _____

SIGNATURE: _____ DATE: _____

LEGAL REVIEW

Comments: _____

SIGNATURE: _____ DATE: _____

ADMINISTRATOR REVIEW

Comments: _____

SIGNATURE: _____ DATE: _____

COUNTY CLERK'S OFFICE USE

Commission Action Taken:

- Accepted Denied Postponed Acknowledged

Date Action Taken: _____

Required Follow-up Date: _____

Publication Required:

- Yes No

Submitted to Publication By: _____

NPG Account Number: _____

Mail Distribution Required:

- Yes No

Mailed By: _____

MIAMI COUNTY STAFF REQUEST FOR COMMISSION ACTION

SUBMITTED BY: Mark Whelan	REQUESTED MEETING DATE: Wednesday, April 7, 2021
DEPARTMENT: Miami County Fire District #1	REQUESTED MEETING: <input checked="" type="checkbox"/> STUDY SESSION <input checked="" type="checkbox"/> REGULAR MEETING
CONTACT INFORMATION: mwhelan@micosheriff.org	PROJECT / REFERENCE NUMBER: Fire District #1 Kenwood Radio's

AGENDA ITEM / SUBJECT: Upgrade to existing Fire District #1 Kenwood radios.
ITEM BACKGROUND / DESCRIPTION: Appx. 101 portable radios and 32 mobile 800 radios were purchased in 2018 were purchased by Miami County Fire District #1. The radio specifications did not include the needed software to allow for use of encryption. The radio's need to have the encryption added to allow for use of those talk groups for both the Miami County radio system and the MARRS (MARC) regional radio system.
REQUESTED ACTION / STAFF RECOMMENDATION: Ka-Comm will upgrade the radios for \$450.00 per radio and is doing so at cost. Total cost \$59,850.00

BUDGET IMPACT: The cost of this upgrade is not in the Fire District #1 nor the radio project budget.		
BUDGET AUTHORITY: \$	REMAINING BUDGET ALLOCATION: \$	
FUND / LINE ITEM: ###-###-####	FUNDS BUDGETED: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	CAPITAL PROJECT: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO

Mark Whelan

March 26, 2021

SUBMITTER'S SIGNATURE:

DATE:

FISCAL REVIEW

Comments: _____

SIGNATURE: _____ DATE: _____

LEGAL REVIEW

Comments: _____

SIGNATURE: _____ DATE: _____

ADMINISTRATOR REVIEW

Comments: _____

SIGNATURE: _____ DATE: _____

COUNTY CLERK'S OFFICE USE

Commission Action Taken:

Accepted Denied Postponed Acknowledged

Date Action Taken: _____ **Required Follow-up Date:** _____

Publication Required: **Submitted to Publication By:** _____

Yes No

NPG Account Number: _____

Mail Distribution Required: **Mailed By:** _____

Yes No

MIAMI COUNTY

STAFF REQUEST FOR COMMISSION ACTION

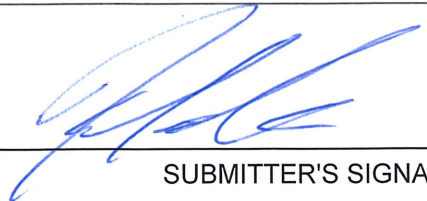
SUBMITTED BY: Kenneth Cook	REQUESTED MEETING DATE: April 7, 2021
DEPARTMENT: Planning	REQUESTED MEETING: <input checked="" type="checkbox"/> STUDY SESSION <input checked="" type="checkbox"/> REGULAR MEETING
CONTACT INFORMATION: 913-294-9553	PROJECT / REFERENCE NUMBER: 20002-TA: Billboard Sign Text Amendments

AGENDA ITEM / SUBJECT:
Proposed Text Amendments for Billboard Signs (Off-Premises Outdoor)

ITEM BACKGROUND / DESCRIPTION:
Consider the Planning Commission recommendation to amend the Zoning Regulations pertaining to Billboard Signs (Off-Premises Outdoor). Specifically, Article 2 – Definitions; and Article 18 – Signs.

REQUESTED ACTION / STAFF RECOMMENDATION:
Accept the recommendation of the Planning Commission and sign the attached Resolution to approve the proposed text amendments as presented.

BUDGET IMPACT:		
BUDGET AUTHORITY:	REMAINING BUDGET ALLOCATION:	
FUND / LINE ITEM:	FUNDS BUDGETED: <input type="checkbox"/> YES <input type="checkbox"/> NO	CAPITAL PROJECT: <input type="checkbox"/> YES <input type="checkbox"/> NO



SUBMITTER'S SIGNATURE:

3/18/21

DATE:

FISCAL REVIEW

Steve Symon
SIGNATURE:

4/1/2021
DATE:

Comments:

LEGAL REVIEW

SIGNATURE:

DATE:

Comments:

ADMINISTRATOR REVIEW

SIGNATURE:

DATE:

Comments:

COUNTY CLERK'S OFFICE USE

Commission Action Taken:

Accepted

Denied

Postponed

Acknowledged

Date Action Taken:

Required Follow-up Date:

Publication Required:

Submitted to Publication By:

Yes No

NPG Account Number:

102898

Mail Distribution Required:

Mailed By:

Yes No

**MIAMI COUNTY PLANNING DEPARTMENT
MEMORANDUM**

DATE: March 24, 2021 - County Commission Meeting

TO: Miami County Commission

FROM: Kenneth A. Cook, AICP, CFM, Planner

RE: **20002-TA: Zoning Regulations Amendments (Billboard Signs)**
Proposed text amendments to the Miami County Zoning Regulations pertaining to Billboard Signs (Off-Premises Outdoor), as recommended by the Miami County Planning Commission. Specifically, Article 2 – Definitions; and Article 18 – Signs.

Background

September 23, 2020

Mr. Fed Wingert, Wingert Sign Company, and Attorney Darcey Domoney, his legal counsel, met with Miami County Planning Staff regarding possible changes to the Miami County Zoning Regulations relating to billboard signs and requested that the Planning Commission consider his proposed amendments.

October 6, 2020

Planning Staff provided Mr. Wingert's proposal to the Planning Commission at their October Planning Commission meeting and asked the Planning Commission if they would be willing to place this item on a future Agenda for a public hearing or as an item for discussion. The Planning Commission approved for this item to be added as a discussion item to a future Agenda.

November 10, 2020

The Miami County Planning Commission held general discussion on possible future billboard sign amendments, including a presentation by Mr. Wingert detailing the changes that he would propose for consideration. The Planning Commission directed staff to schedule a public hearing and prepare possible text amendments pertaining to billboard signs for January 5, 2021.

January 5, 2021

The Miami County Planning Commission held a Public Hearing for proposed Zoning Regulation Amendment pertaining to the billboard sign regulations. The Planning Commission provided feedback to staff regarding the proposed amendments, requested staff provide additional

information to assist in making their recommendation on the proposed changes and continued the Public Hearing until the February 2, 2021 Planning Commission meeting.

February 2, 2021

The Planning Commission held the Public Hearing, which had been continued from the January 5, 2021 meeting and provided additional direction to staff for final proposed changes. The Planning Commission continued the Public Hearing until the March 2, 2021 Planning Commission meeting, in order that a final version of the draft amendments would be presented and considered.

March 2, 2021

The Planning Commission held the Public Hearing, which had been continued from February, 2, 2021 meeting and voted 6-0 to recommend approval of the proposed text amendment.

Discussion

In the last few years, Miami County has received applications for a number of billboard signs that also involved requests for variances by the Board of Zoning Appeals due to conditions that were unique to the properties and also requesting relief from portions of the current Zoning Regulations for billboard signs. Fred Wingert, Wingert Sign Company, asked the Planning Commission if they would be willing to consider possible changes to the regulations. The amendment Mr. Wingert proposed the Planning Commission to consider included:

1. Reduction in the setback of billboards from the edge of the highway right-of-way from 50 feet to 15 feet.
2. Change the maximum height of billboard signs as being measured from the average grade as measured at the location of the billboard sign to being measured from the average grade of the highway adjacent to the billboard.
3. Change the maximum sign area allowed for a billboard sign from 750 square feet (per sign structure) to 378 square feet per sign face. He also proposed a maximum of 4 faces per sign structure with no more than two per side.
4. Reduction in the maximum height and width of a sign from 15-feet by 50-feet to 11 feet by 36 feet.
5. Reduction in the minimum spacing requirements from 1,000 feet to 500 feet between billboards that are located on the same side of the road.

Planning Staff reviewed the State of Kansas “Highway Beautification Highway Advertising Control Act of 1972 – Revised 2006” and billboard sign regulations from other nearby counties in order to compare Miami County’s Regulations to those of other entities. While Miami County’s current regulations for billboard signs are generally more restrictive than the State of Kansas minimum requirements, they would appear to fall in the middle when compared to other counties. A couple of jurisdictions (Leavenworth and Douglas Counties) do not permit the placement of billboards within their jurisdictions.

In drafting amendments to the billboard regulations staff proposed additional changes to make portions of the regulations more concise and to address items that have had conflicting interpretations. A primary focus was to make sure any updates to the regulations follow the purpose of the sign regulations as specified in Section 18-1.01, which include the following:

1. To protect the general public from damage and injury which may be caused by the faulty and unregulated construction of signs.
2. To prevent the obstruction of traffic visibility and confusion with traffic control devices resulting from improperly placed and designed signs.
3. To ensure the visual quality of signs and preserve and promote the aesthetic quality of Miami County by reducing visual clutter.
4. To control the magnitude, placement and number of signs in the County, recognizing that signs in the County generally tend to be highly visible because of low-density development patterns and few, if any, development features or other signs which compete visually for attention, thereby necessitating controls to protect the visual integrity of the unincorporated portion of the County. (Res. R15-11-033 (Exh. A))

While the final amendments proposed for approval by the Planning Commission are not the exact text proposed by Mr. Wingert, the amendments do allow for four of the five proposed changes. Mr. Wingert's proposed reduction in the minimum spacing requirements being the only item not recommended for approval as the Planning Commission found that it did not meet the purpose of the sign regulations relating to aesthetics and rural lifestyle.

The staff report for the March 2, 2021 Planning Commission meeting and draft amendments are attached. The draft amendments show additions being highlighted in yellow and items to be removed struck through. Some highlights of the proposed language include:

1. New definitions for billboard sign face, billboard sign display, billboard sign structure, free-standing sign and V-shaped sign;
2. Clarification that billboard signs are not allowed within 300 feet of any property zoned for residential purposes;
3. Reduced the setback for billboards from highway ROW;
4. Provided a minimum setback for billboards from property lines or county ROW;
5. Changed sign height to be measured from edge of the adjacent road grade;
6. Increased the maximum sign area to 756 square feet per sign facing with two sign facings per sign structure;
7. Provided the maximum height and width of a billboard sign face are determined by all displays facing the same direction on the same structure;
8. Referenced shielding requirements for lighting and requirements for electronic (LED) signs to sections of the sign code that already address these items;
9. Provided that billboard signs permitted under Section 18-9.01.5 also must comply with 1,000 foot spacing requirement;
10. Remove the requirement that billboard signs be located at least 1,000 from other configurations of signs (such as pole, monument or wall signs for a business)

Recommendation

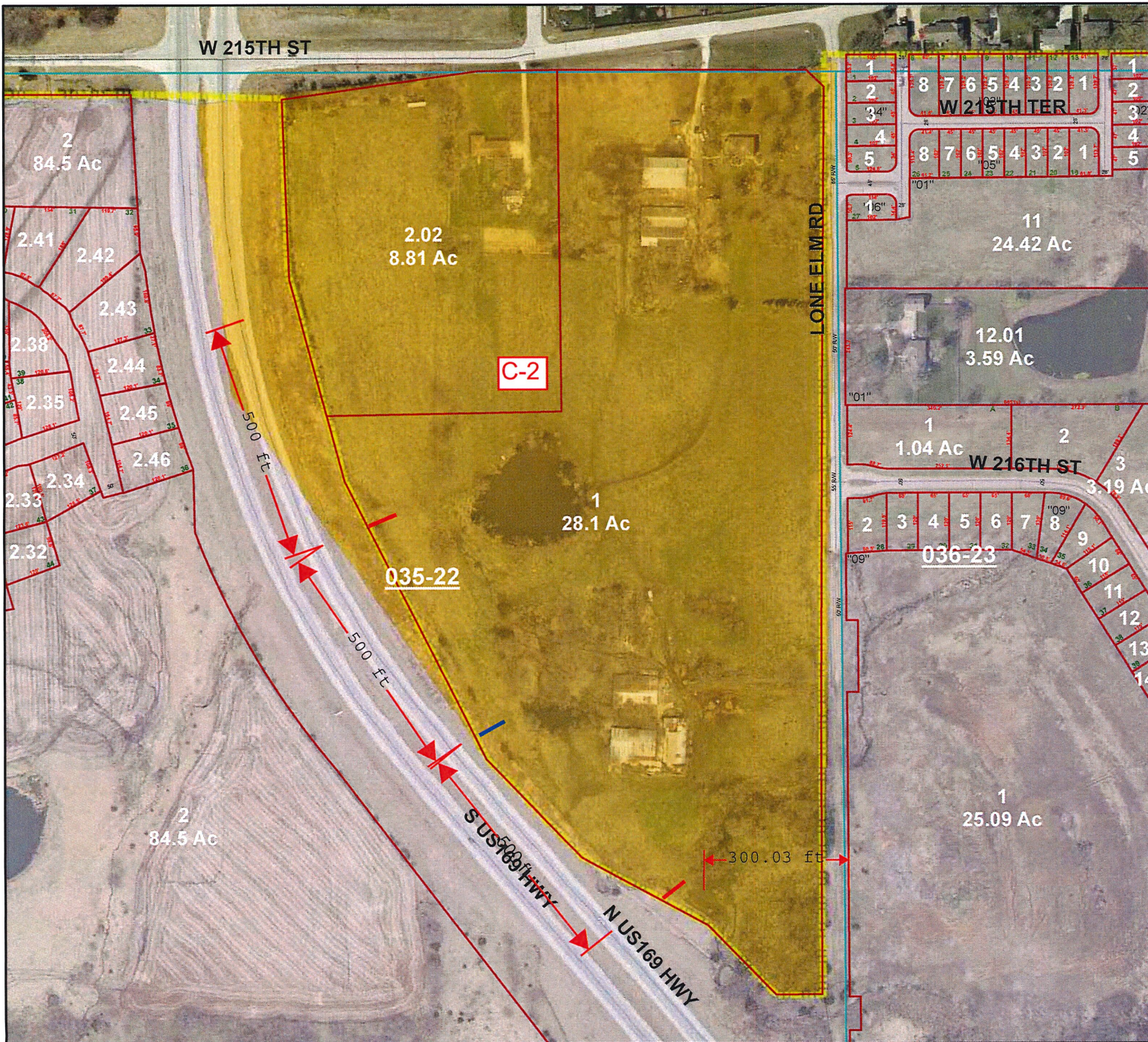
Staff believes these proposed revisions support the regulations' purpose to promote the safety, morals, order and general welfare of the citizens of Miami County and the purpose of the sign regulations as listed in Section 18-1.01 of the Zoning Regulations. Staff recommends that the County Commission sign the attached resolution to adopt the proposed text amendments as recommended by the Planning Commission.

Board of County Commissioner Options:



1. Approve the proposed revisions as recommended by the Planning Commission.
2. Override the Planning Commission's recommendation by a 2/3 vote of the BOCC, including denying the revisions or approving the revisions with changes.
3. Return the Planning Commission's recommendation to the Planning Commission with a statement specifying the basis for the BOCC's failure to approve or disapprove.
4. Defer for further study.

Attachments: Resolution for Approval including proposed revisions attached as Exhibit A
Planning Commission Minutes of November 10, 2020; January 5, 2021; February 2, 2021; and March 2, 2021
Staff Report for March 2, 2021 Planning Commission Meeting

Miami County GIS



Legend

-  Parcels - Jan 2021
-  Lot Lines

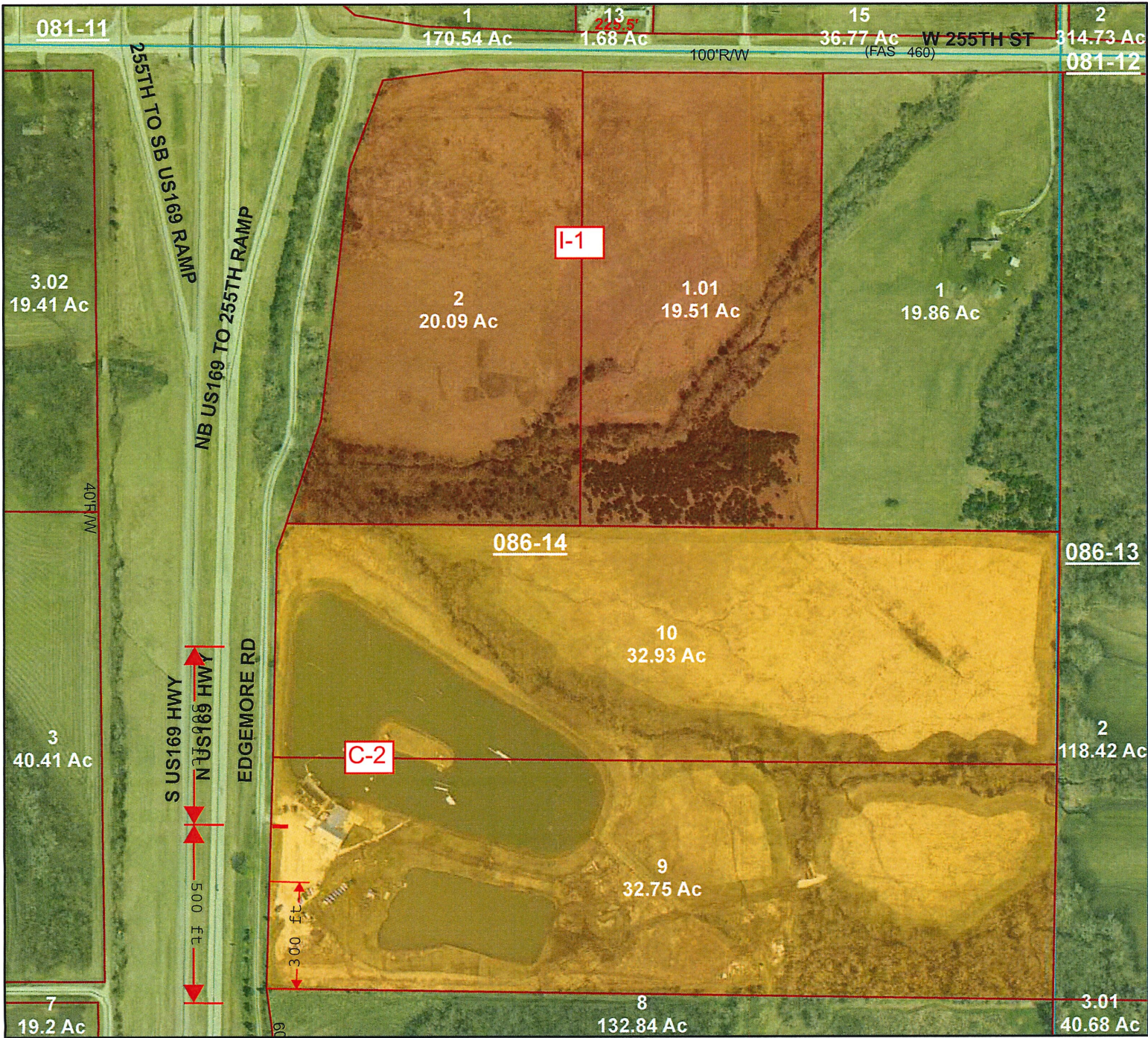


1 inch = 300 feet

Parcel Data Date:
Jan 2021

This property ownership map is for tax purposes only. It is not intended for conveyances, nor is it a legal survey.

Miami County GIS



Legend

- Parcels - Jan 2021
- - - Lot Lines

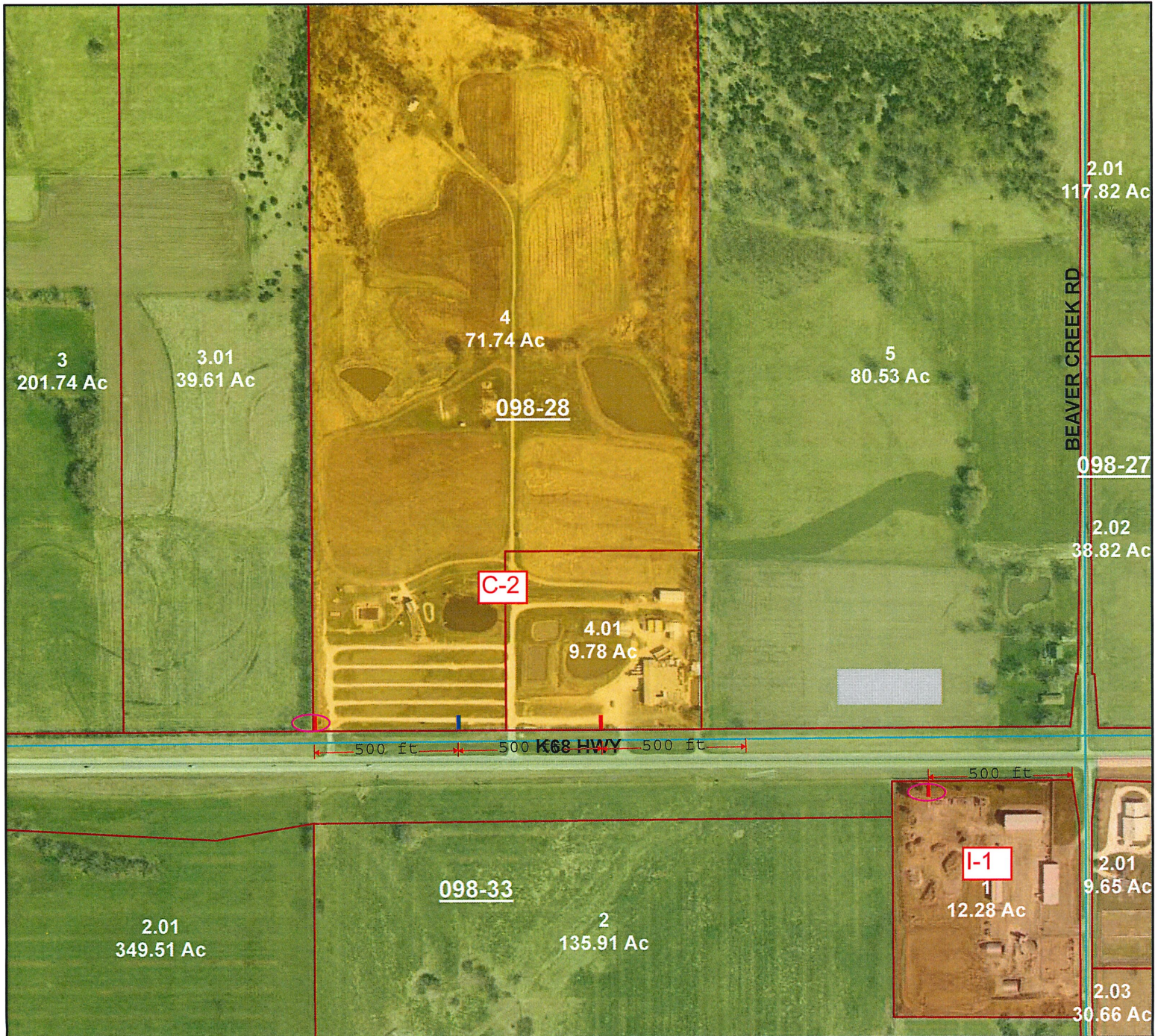


1 inch = 400 feet

Parcel Data Date:
Jan 2021

This property ownership map is for tax purposes only. It is not intended for conveyances, nor is it a legal survey.

Miami County GIS



Legend

Parcels - Jan 2021

- - - Lot Lines

Designates Signs that would not meet 300' separation from residential district

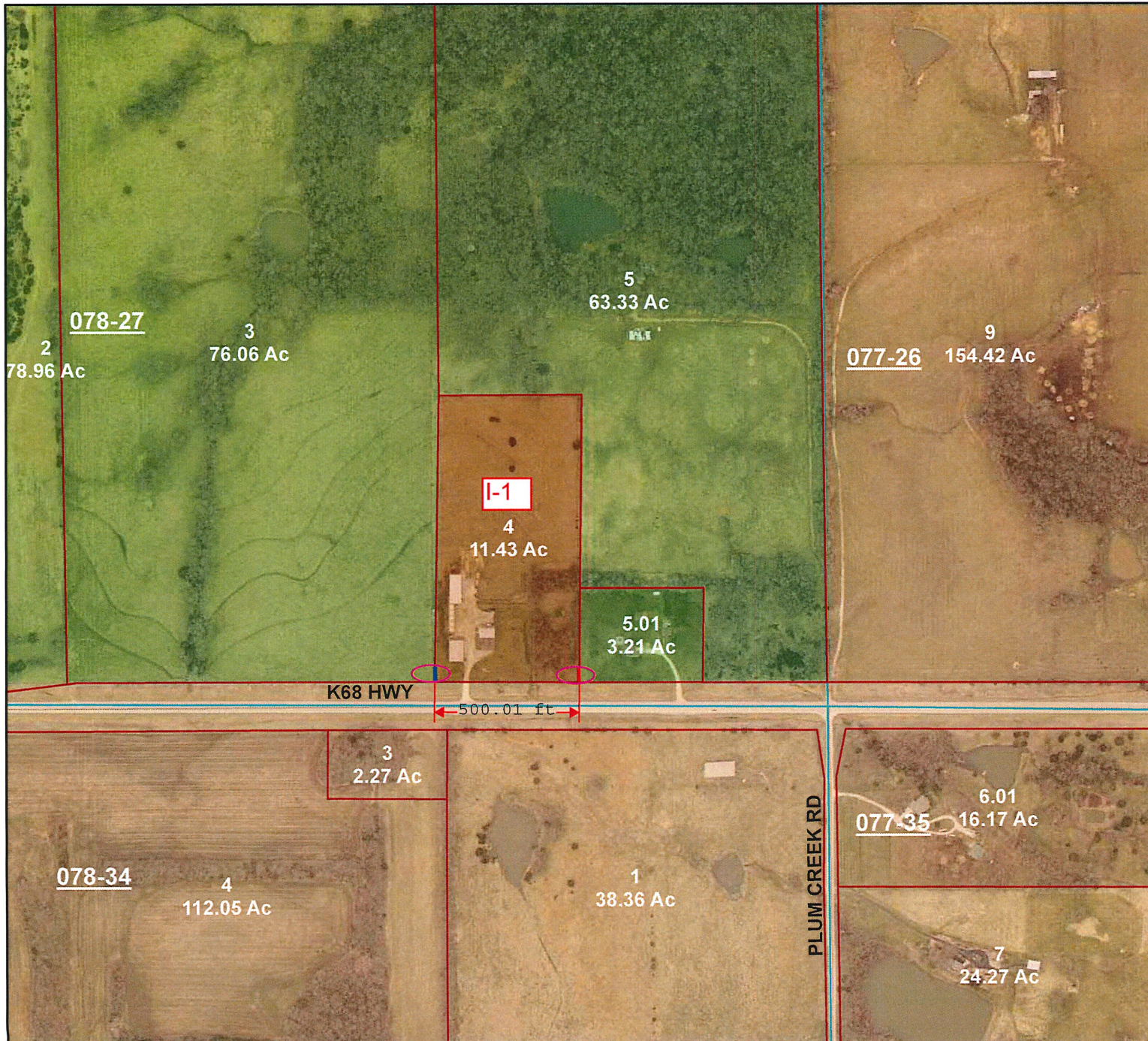


1 inch = 500 feet

Parcel Data Date:
Jan 2021

This property ownership map is for tax purposes only. It is not intended for conveyances, nor is it a legal survey.


Miami County GIS



Legend

 Parcels - Jan 2021

 Lot Lines

 Designates Signs that would not meet 300' separation from residential district



1 inch = 500 feet

Parcel Data Date:
Jan 2021

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Miami County GIS



Legend

Parcels - Jan 2021

- - - Lot Lines

Designates Signs that would not meet 300' separation from residential district

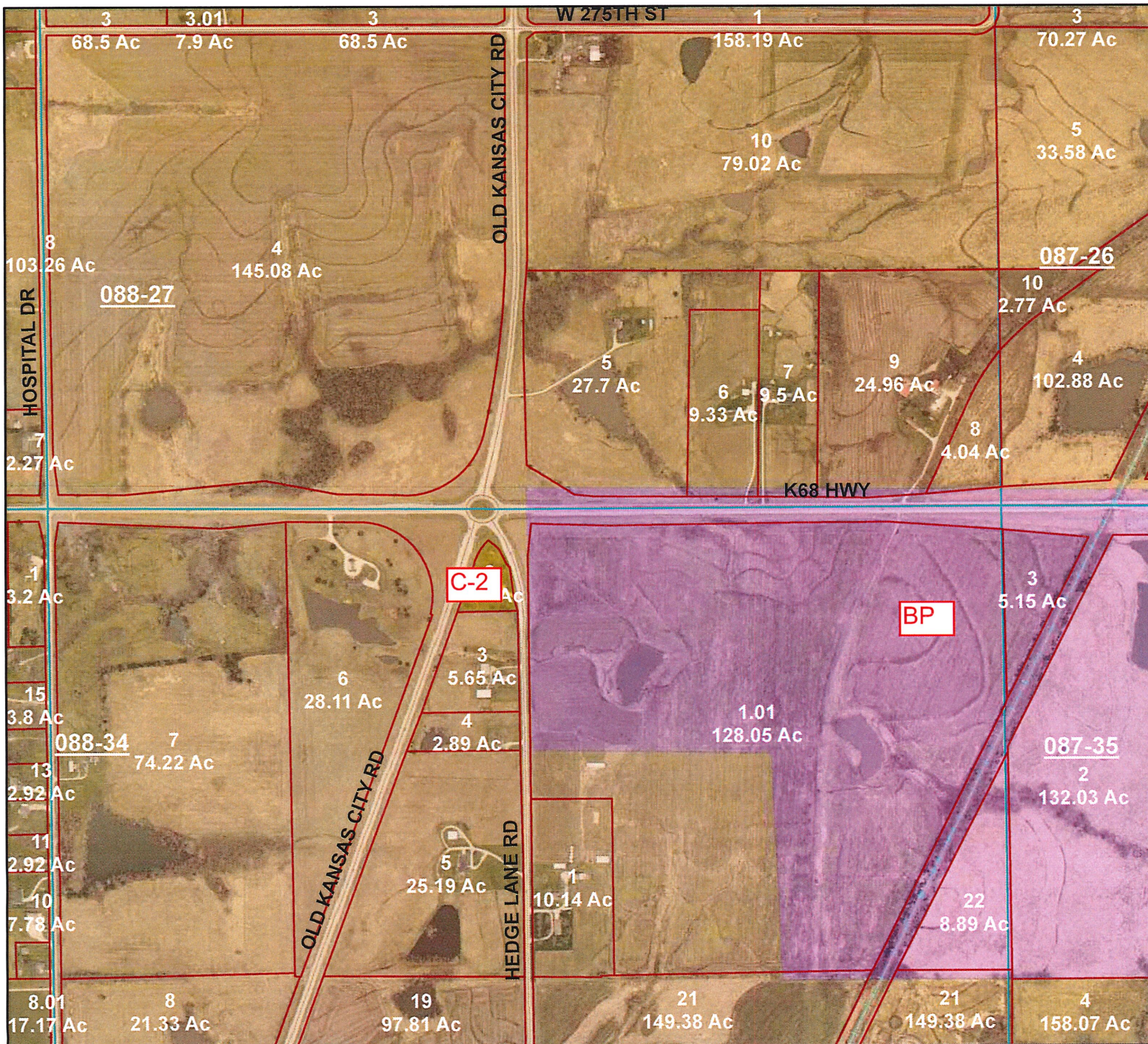


1 inch = 800 feet

Parcel Data Date:
Jan 2021

This property ownership map is for tax purposes only. It is not intended for conveyances, nor is it a legal survey.

Miami County GIS



Legend

- Parcels - Jan 2021
- Lot Lines



1 inch = 800 feet

Parcel Data Date:
Jan 2021

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Miami County GIS



Legend

- Parcels - Jan 2021
- Lot Lines
- Designates Signs that would not meet 300' separation from residential district

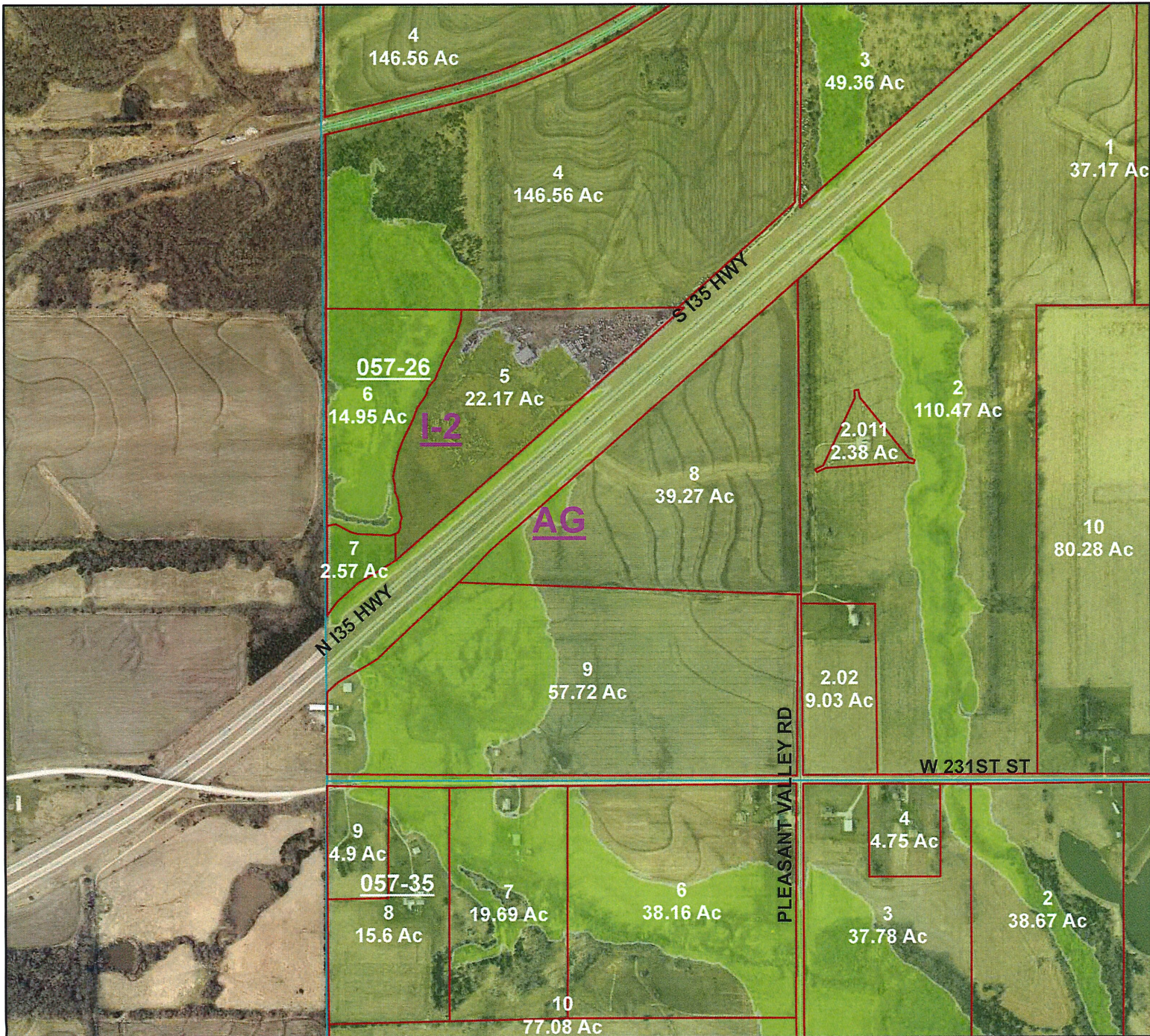


1 inch = 800 feet

Parcel Data Date:
Jan 2021

This property ownership map is for tax purposes only. It is not intended for conveyances, nor is it a legal survey.

Miami County GIS



Legend

Parcels - March 2021

- - - Lot Lines

Flood - Jan 2014

FLD_ZONE

.2 PCT ANNUAL

A

AE



1 inch = 800 feet

Parcel Data Date:
March 2021

This property ownership map is for tax purposes only. It is not intended for conveyances, nor is it a legal survey.

**MIAMI COUNTY PLANNING DEPARTMENT
MEMORANDUM**

DATE: March 2, 2021
TO: Miami County Planning Commission
FROM: Kenneth A. Cook, AICP, CFM, Planner
RE: **Zoning Regulations Amendments (Billboard Signs)**

Background

February 2, 2021

The Planning Commission held a public hearing for proposed amendments to the Miami County Zoning Regulations regarding billboard signs. The Planning Commission directed staff to make several modifications to the proposed amendments and continued the public hearing to the March 2, 2021 Planning Commission meeting.

Discussion

Staff has updated the draft amendments to the sign regulations based upon direction received at the February 2, 2021 Planning Commission meeting. The updated proposed amendments are attached, and the following is a summary of the changes:

1. All references to sign “facing” were updated to “face” to provide consistency in the use of terms in the sign regulations. Use of “faces” (plural) and “faced” (as in double-faced sign) have been continued in the regulations.
2. The definition of Billboard Sign Structure (Article 2 – Definitions) was modified to provide that a billboard sign structure shall be mounted on a single ground pole.
3. A sentence was added to Section 18-4.01.5 (general sign requirements) specifying that “the 300-foot spacing requirement shall not be required for signs listed in Section 18-3. – Signs Not Requiring Permits”. This modification is intended to clarify that agricultural signs—and other signs that do not required permits—are not required to comply with the 300-foot spacing requirement.
4. Section 18-5.02 (b) – Location was reformatted to be more concise. In addition, staff had noted at the last Planning Commission meeting that “No part of” should be added to the beginning of the final sentence.

5. Upon the direction of the Planning Commission, the current maximum height requirement (Section 18-5.03 – Maximum Height) was replaced with the optional amendment provided by staff, which provides that height is measured from the adjacent edge of the road grade of the main traveled way.
6. Section 18-5.05 - Lighting was modified to cross-reference shielding requirements in Section 18-4.01.9.

Attachment

Excerpt of the November 10, 2020 Planning Commission Minutes

Request for Consideration of Future Billboard Sign Amendments

Reeves reported that the owner of a local sign company has approached staff and has requested making modifications to the Zoning Regulations for billboard signs. She added that this individual is present this evening, together with his legal counsel.

Reeves explained that this individual copied the current Zoning Regulations for billboard signs and highlighted, in green, his proposed changes. She noted that one of the proposed amendments reduces the maximum sign area of the billboard sign face, which would allow for a double-stacked billboard sign. Reeves noted that the two billboard signs located along US-169 Highway, between Paola and Osawatomie, were constructed by this sign company and are a model of what he is proposing.

Reeves commented that staff is not opposed to the proposed changes, which, she noted, would help businesses construct their signs more economically. She explained that this is currently just a discussion item, and is being brought to the Planning Commissioners to consider whether or not they want the item to proceed as a text amendment in the future.

Menefee asked Reeves to confirm that any proposed text amendments would require a public hearing.

Reeves confirmed, and added that the Planning Commissioners may choose to continue discussing this item; or, if the Planning Commissioners believe there has already been enough discussion, they can proceed to schedule a public hearing on the item.

Reeves reported that staff would like to work with the industry as a whole, and is seeking feedback from other sign companies with regard to the proposed changes. She added that any of the proposed changes must be in compliance with State and federal law.

Cook reported that staff has received one preliminary response from a sign company representative, who had no substantial concerns with the proposed changes. He further reported that the representative is in favor of double-stacked billboard signs, but had cautioned against reducing the minimum spacing requirements between billboard signs, and had reasoned that it could result in a proliferation of signs. Cook pointed out that although the proposed changes comply with State law with regard to minimum spacing requirements, the County has the authority to require greater separation between billboard signs than is required by the State.

Oehlert invited the interested party in the audience to speak.

Fred Wingert of Wingert Sign Company (20836 W. 91st Terrace, Lenexa) approached the podium. He explained that in 2018 his billboard sign company purchased two billboard signs along US-169 Highway and rebuilt them. He reported that his company worked with Planning staff and came

before the Board (Board of Zoning Appeals) and received approval.¹ He added that his company rebuilt the signs, using steel structures and moved the signs closer (in proximity to each other and closer in proximity to the US-169 Highway right-of-way). Mr. Wingert reported success with the two billboard signs.

Wingert stated that during the past six to nine months other businesses in Miami County have expressed interest in billboard signage on northbound and southbound US-169 Highway, so he has submitted these proposed changes to the regulations. He then described his proposed changes to Section 18-5 of the Zoning Regulations for billboard signs (*proposed changes are highlighted in green*):

18-5.02 Location:

1. Billboard signs shall not be located within 300 feet of any property zoned Planned Development, Rural Residential, Countryside, or Agricultural.
2. Billboard signs shall not be located within 50 feet **change to 15 feet** of any state or federal highway, to be measured from the edge of the right-of-way.

Mr. Wingert reported that the current setback from the US-169 Highway right-of-way is 50', from which his company received a variance for those two billboard signs on US-169 Highway. He commented that the 50' setback from the KDOT right-of-way doesn't serve a purpose. He reasoned that the property owners don't like the 50' setback because it means the sign will need to be constructed farther onto their commercial—and therefore, more valuable—property. He also reasoned that the 50' setback requirement results in the billboard sign not being as visible, which is illogical because billboard signs exist to be seen by the traveling public. Mr. Wingert stated that no part of the billboard sign would be over the right-of-way. He added that a 15' setback is a reasonable distance for trucks to access and service a billboard sign.

18-5.03 Maximum Height: Maximum Height: The top edge of any one (1) billboard sign shall not exceed 50 feet above average grade **of highway**. (Res. R15-11-033 (Exh. A))

Mr. Wingert stated that average grade varies significantly, and he gave the example of how a highway's grade increases as it crosses over a creek. He explained that he is not proposing to increase the maximum height of a sign; rather, he is proposing to allow a billboard to sit 50' above the grade of the highway. He reasoned that as the Regulations are currently written, a variance would have to be requested to increase the maximum height of a billboard sign.

18-5.04 Maximum Sign Area:

¹**Staff Note:** In 2018, the Board of Zoning Appeals granted several variances to Wingert Sign Company, two of which allowed a reduction in the minimum spacing requirement (separation) between signs to 500', instead of 1,000' and allowed a reduced setback from the US-169 Highway right-of-way.

1. The maximum sign area of any billboard sign face shall not exceed a total of 378 square feet. The maximum number of faces per billboard sign is 4 faces. The maximum number of faces per side is two.

Staff Note: In the first sentence above, “sign” was highlighted in green; however, “face” is the word that was added to this sentence. The existing regulations state: “The maximum sign area of any billboard sign shall not exceed a total of 378 square feet.”

2. The maximum height or vertical dimension shall not exceed 11 (proposed to be 4 feet smaller). The maximum width or horizontal dimension of any one (1) billboard sign face shall not exceed 36 (14 feet shorter).

Staff Note: In the first sentence above, the word “feet” should be added after “11”. In the second sentence above, the word “feet” should be added after “36”.

3. For purposes of this subsection, each face of a billboard sign, whether double-faced, V-shaped, or some other configuration, shall be considered a separate sign. (Res. R15-11-033 (Exh. A))

Mr. Wingert stated that his proposed change to No. 1 above decreases the area of the billboard sign face, and allows double-stacked signs. He explained that the amount a billboard sign company would need to charge for advertising space on a double-sided—but not double-stacked—billboard sign in order to get a return on that investment would be much greater and would be somewhat cost prohibitive to advertisers, resulting in a bad investment for the sign company.

With regard to his proposed change to No. 2 above, Mr. Wingert reported that the faces of most billboard signs in the Kansas City area are 14’ H x 48’ W. He further reported that the billboard signs have varying heights, with most ranging from 50’ to 75’ to 100’. He also noted that there are three double-stacked billboard signs south of Kansas City that measure 10’ H x 20’ W, while the two double-stacked billboard signs along US-169 Highway (between Paola and Osawatomie) measure 10-1/2’ H x 36’ W. Mr. Wingert stated that he is asking for a smaller face size, with the allowance of a double-stacked sign.

18-5.06 Minimum Spacing Requirements: No billboard sign hereafter erected shall be less than 1,000 feet Change to 500 feet from any other existing billboard sign or allowed configuration of signs on the same side of the street. Such minimum spacing distance shall be measured along the center line of the frontage street, trafficway or interstate highway from a point opposite any edge of a billboard sign and perpendicular to the center line of each street, trafficway or interstate highway. (Res. R15-11-033 (Exh. A))

Mr. Wingert reported that in 2018 his company sought approval from the County for a shorter separation distance between the two billboard signs along US-169 Highway. He noted that the State allows for a distance of 500’. He argued, with regard to any concern about the proliferation of billboard signs, that there is a reasonable limit to the amount of billboard signage needed by a community, and that at some point there aren’t any more viable advertisers. He acknowledged that a proliferation of billboard signs is possible, but he does not anticipate this result.

Mr. Wingert commented that his company tries to operate as a community partner and does not want to create “eyesores”. He noted that he is not asking for anything unusual, and explained that the two billboard signs along US-169 Highway are exactly the same as two billboard signs outside of Iola. He added that there are two billboard signs outside of Ottawa that are this same size and have this same spacing.

Kitchen agreed that reducing the minimum spacing requirement from 1,000 feet to 500 feet is reasonable, and would be a benefit to those sign companies that want to work with the same landowner. He explained that it is difficult to find a 1,000’ stretch of property along the right-of-way.

Mr. Wingert agreed, and added that the property must also be zoned Commercial or Industrial.

Ross commented that the billboard signs along US-169 Highway, which are spaced 500’ apart, do not bother him. He asked Mr. Wingert if the separation distance between those two signs is the same as what is allowed by the State.

Mr. Wingert confirmed, and added that the State allows for a 500’ separation distance between billboard signs along a highway; however, the State defers to the County, and the majority of the billboard signs in Kansas are governed by local regulations.

Ross commented that he has no issues with the proposed changes.

Elliott recalled a previous period of time when the Planning Commission discussed amendments to the sign regulations. He pointed out that the Article in the Zoning Regulations that addresses signage is 12 pages in length; therefore, he is hesitant to consider amendments to only a portion of that Article. He cautioned that once the Planning Commission entertains a request from an applicant to amend the Zoning Regulations to meet that applicant’s specific need, the Planning Commission will receive an onslaught of such requests. He commented that he does not have a concern about the proposed changes; rather, he is concerned about the process being taken to make those changes.

With regard to this evening’s General Discussion, Item B. 2. (possible future amendments to the sign regulations) Menefee asked Reeves to clarify which portion of the sign regulations staff intended to discuss

Reeves answered that the sign regulations, as a whole, are outdated.

Menefee suggested that rather than proceeding to set a public hearing for these possible amendments to the Zoning Regulations for billboard signs, the Planning Commission could instead spend some time looking at all of the sign regulations.

Reeves commented that there is not enough time to dedicate to the entire set of sign regulations, which is why she had contacted two consulting firms to get estimates for updating the sign regulations and telecommunications regulations. She reported that the cost for updating just those

two sets of regulations was estimated to be \$60,000 to \$80,000. She explained that the cost is high because these two sets of regulations are incredibly complicated and have constitutional implications. Reeves added that now that the Comprehensive Plan update is underway, we are much closer to re-writing the Zoning Regulations; therefore, she would recommend waiting to amend the sign regulations until that time.

Oehlert asked how we can continue to use outdated sign regulations.

Reeves explained that staff defers to State and federal regulations. She added that staff does not currently have the time to dedicate to updating the entire set of sign regulations. She commented that it does not make sense to re-write the sign regulations and telecommunication regulations when all of the Zoning Regulations will have to be re-written to comply with the new Comprehensive Plan.

Elliott commented that he is concerned about the interconnectivity between items, and he does not like the idea of modifying only a portion of the sign regulations without looking at the big picture.

Oehlert asked Reeves if this request from Mr. Wingert is urgent.

Reeves responded that she assumes Mr. Wingert has billboard signs that he would like to construct in the near future. She added that staff would like the entire set of sign regulations to be updated, but it would be incredibly expensive to engage a consultant, and staff does not have the time to dedicate to such a project. She noted that the Zoning Regulations are not supposed to be amended to appease one individual; rather, they should be amended with the community's best interests in mind.

Ross commented that the two billboard signs along US-169 Highway between Osawatomie and Paola are representative of what Mr. Wingert is proposing. He added that if Mr. Wingert were to request approval of new billboard signs with the same setbacks, spacing between signs, etc., he would likely receive approval.

Reeves clarified that the Mr. Wingert had to go before the Board of Zoning Appeals and get variances for the two billboard signs along US-169 Highway. She reminded the Planning Commission that each variance request that comes before the Board of Zoning Appeals is unique; however, if the same types of requests are repeatedly being made, it is an indication that the Zoning Regulations need to be amended.

Menefee commented that if text amendments could be approved to make this process less time-consuming for staff and for applicants, then that seems to be the logical solution.

With regard to the timing of a complete re-write of the Zoning Regulations, Reeves noted that the new Comprehensive Plan should be adopted in 2021.

Broers asked if the League of Municipalities or the Kansas Association of Counties have model regulations that could be utilized.

Oehlert suggested that Mid-America Regional Counsel may have model regulations.

Cook noted that the International Sign Code Association has some model regulations. He explained, however, that the difficulty we run into is the level to which cities regulate signage versus less regulation of signage in more rural areas.

Broers commented that she would be in favor of proceeding with text amendments to this portion of the sign regulations because it has been acknowledged that all of the sign regulations need to be updated; and, this is a means of doing so. She added that these seem to be simple changes; and there is no indication that the regulations specific to billboard signs are in need of a complete re-write.

Broers moved that a public hearing be scheduled to consider text amendments to Section 18-5 of the Zoning Regulations pertaining to billboard signs. Menefee seconded the motion, and the motion passed, 8-1, by a roll call vote (Elliott voted "No").

Reeves announced that the earliest date the public hearing could be scheduled is January 5, 2021.

Excerpt of the January 5, 2021 Planning Commission Minutes

Public Hearing 20002-TA: Zoning Regulations Amendments (Billboard Signs)

Cook presented the staff report for consideration of draft amendments to the Zoning Regulations of Miami County, Kansas, pertaining to Billboard Signs (Off-Premises Outdoor). Affected regulations include Article 2 (Definitions); and Article 18 (Signs).

Cook reminded the Planning Commission that signage is considered a form of speech. Therefore, content of signage cannot be discussed. Permissible discussion includes time, place, and manner restrictions of signage, such as size, lighting, and separation distance.

Staff's recommendation is that the Planning Commission discuss the existing billboard regulations and proposed changes to provide additional feedback to staff. Staff would suggest that the public hearing for amendments to the billboard signage regulation be continued until the February 2, 2021 meeting to allow staff to make additional changes based upon the feedback received from the Planning Commission.

Cook referenced a table included in the meeting packet, which compares sign regulations of other counties in Kansas. He noted that after staff prepared this comparison table, it was discovered that Douglas County now prohibits billboard signage.

Regarding Mr. Wingert's proposed amendments to Section 18-5.03 – Maximum Height, Cook noted that the height of all signs is currently measured from the average grade to the top of the sign. Conversely, the State bases its 50' maximum height requirement off the adjacent roadway elevation. Cook noted that most of the jurisdictions he researched calculate a sign's height in the same manner as Miami County. Staff suggests that the maximum height of billboard signs should continue to be measured in the same manner as all other signs. Staff's concern with changing how maximum height is calculated is that this could result in billboard signs that are significantly taller than 50' located near a road right-of-way or a property line.

Elliott argued that the opposite would be true in the case of a roadway with an average grade that is lower than the grade of the adjacent highway. He gave the example of southbound US-169 Highway, near Miola Lake, and the roadway that is lower than the adjacent property, and explained that if a 50' tall billboard were to be constructed on either side of US-169 it will look like a monster when viewed from the roadway.

Cook agreed and explained that this provision ensures that the maximum height of a sign structure is 50'.

Ross commented that he likes the State's regulations regarding billboard height.

Cook suggested that if the Planning Commission should choose to amend how the maximum height of billboard signs is measured, adding a setback requirement from property lines, structures, or roads would be one way of preventing a 70' tall sign, for example, from being located 40' from the centerline of an adjacent County road or adjacent property line.

With regard to Maximum Sign Area, Elliott pointed out that, as currently proposed, Section 18-

5.04.1, which states that a billboard sign “shall not exceed a total of 756 square feet per sign facing . . .”, conflicts with Section 18-5.04.2, which contains height and width dimensions that would limit maximum sign area to 672 square feet:

“18-5.04 Maximum Sign Area:

1. The maximum sign area of any billboard sign shall not exceed a total of 756 square feet per sign facing with a maximum of two (2) facings. When a billboard structure includes two sign displays per facing (double decked sign), the maximum area of each display shall not exceed 378 square feet, or a total of 756 square feet per sign facing. A billboard sign may be constructed as a single faced, double-faced or V-type sign structure.

2. The maximum height or vertical dimension shall not exceed ~~fifteen (15)~~ fourteen (14) feet. The maximum width or horizontal dimension of any one (1) billboard sign shall not exceed ~~fifty (50)~~ 48 feet.

3. For purposes of this subsection, each face of a billboard sign, whether double-faced, V-shaped, or some other configuration, shall be considered a separate sign. (Res. R15-11-033 (Exh. A))”

Cook explained that these provisions, as proposed, are intended to allow a maximum sign area of 756 square feet, regardless of the size of the sign.

Elliott argued that with regard to sign facings, a V-shaped sign cannot possibly have a sign area 756 square feet on each side, based upon the provisions in Section 18-5.04.2.

Cook agreed that a V-shaped sign or any single sign could not have a maximum sign area of 756 square feet. He clarified that the maximum sign area of 756 square feet is with regard to a double-stacked sign.

Menefee asked if Section 18-5.04.1 is intended for a double-stacked sign and if Section 18-5.04.2 is intended for a single sign.

Cook agreed.

Menefee suggested that staff clarify Sections 18-5.04.1 and 18-5.04.2 in the upcoming draft amendments.

Elliott noted that it is not clear to him how Sections 18-5.04.1 and 18-5.04.2 work together. He added that if there is concern about the overall size of a sign and a sign’s ability to obstruct view or cause a distraction, then the number of signs—whether a single sign or a double-stacked sign—is irrelevant because it still poses as an obstruction or distraction.

Regarding Section 18-5.02.1 – Location, Elliott asked Cook if billboards are allowed in industrial and commercial areas only.

“18-5.02 Location:

1. Billboard signs shall not be located within 300 feet of any property zoned Planned Development, Rural Residential, Countryside, ~~or~~ Agricultural or any other property zoned for residential purpose.”

Cook confirmed and clarified that based upon the Kansas Highway Advertising Control Act, billboard signs along State and federal highways are allowed only on commercial and industrial zoned properties. The Miami County Zoning Regulations allow billboard signs on properties zoned industrial (I-1 or I-2) or commercial (C-2). He added that billboards are not allowed in the C-1 district or in obsolete zoning districts.

Regarding Section 18-5.02.2, Elliott asked how the County benefits from the proposed additional 15’ setback, especially if there is already an established right-of-way.

“2. Billboard signs shall not be located within 50 fifteen (15) feet of any state or federal highway, to be measured from the edge of the right-of-way. Billboard signs shall not be located within fifteen (15) feet of a side property line or the ultimate right-of-way of any road, street, or highway as designated by the County’s Comprehensive Transportation Plan. No billboard sign may be installed to encroach over an existing utility improvement or easement.”

Cook explained that, according to the current sign regulations, any sign must be placed outside of the ultimate right-of-way width, which is slightly greater than the current right-of-way. As a result, there is a possibility that a 50’ tall billboard sign may be located 40’ from the centerline of an adjacent County road.

Elliott argued that this could occur only in limited zoning districts.

Cook agreed, and reasoned that other structures are subject to minimum setback requirements from property lines. He noted that due to their height, billboard signs perhaps warrant additional separation from an adjoining property or from a right-of-way.

Cook added, however, that both the State and the Count require a 500’ separation from the edge of the on-ramps at an interchange. He noted that most commercial and industrial property along the highway will most likely be located at an interchange, which would provide greater separation from an adjacent County road.

Elliott commented that if the State does not impose additional setbacks from the right-of-way; and, if billboard signs can be placed along only State or federal highways, then he does not understand how the additional 15’ setback benefits the County. He added that he’s trying to simplify the Regulations.

Menefee agreed.

Broers asked how setbacks are measured.

Cook answered that setbacks are measured from the nearest point of the sign structure.

Manchester commented that he agrees with Elliott and Menefee. He reasoned that an additional setback from the right-of-way would result in a billboard sign being constructed farther onto a

property—such as a hayfield—rendering that portion of the property unusable. He added, however, that a minimum setback from adjacent property lines is a good idea.

Collins commented that shielded lighting should be required if there are no additional setbacks imposed. He reasoned that an additional 15' setback will further protect the roadway from lighting.

Cook noted that all sign lighting is required to be shielded. He added that this provision may be found in the general sign requirements.

Collins replied that he reviewed the general sign requirements, which state that the lighting cannot interfere with the roadway, but do not specifically require shielded lighting.

Cook suggested that the lighting provisions can be modified to address this concern more specifically.

Elliott agreed with Collins and added that the County currently allows for indirect illumination on billboard signs, but does not require shielded lighting. He reasoned that an additional 15' setback will have an impact on roadway safety, with regard to lighting.

Collins pointed out that the State and Jefferson County both require shielded lighting because there is no additional setback from the right-of-way.

Elliott commented that there appears to be inconsistency between Item No. 5, under Section 18-4.01 – General Sign Requirements and Section 18-5.06 – Minimum Spacing Requirements for billboard signs:

“Section 18-4. General Sign Requirements

18-4.01 The following general sign requirements shall apply to all signs in all zoning districts:

5. Unless otherwise provided for in these Regulations, no sign hereafter erected shall be less than 300 feet from any other existing sign or allowed configuration of signs on the same property.”

“Section 18-5. Billboard Signs (Off-Premises Outdoor)

18-5.06 Minimum Spacing Requirements:

No billboard sign hereafter erected shall be less than 1,000 feet from any other existing billboard sign ~~or allowed configuration of signs~~ on the same side of the street. Such minimum spacing distance shall be measured along the center line of the frontage street, trafficway or interstate highway from a point opposite any edge of a billboard sign and perpendicular to the center line of each street, trafficway or interstate highway. (Res. R15-11-033 (Exh. A))”

Elliott asked how to distinguish the difference between a sign that advertises a business on that same property and a billboard sign. He posed the scenario of a commercial or industrial business along the highway that wants to increase the height of their existing sign, which is not a billboard sign, which would appear to result in that sign now being considered to be a billboard sign.

Cook answered that billboard signs are intended to mean off-premises outdoor advertising. In other words, a billboard sign is advertising something that is not occurring on the property where the billboard sign is located.

Elliott asked how large a business's sign can be before it may be considered a billboard sign. He reasoned that according to Sections 18-4.01 and 18-5.06, a commercial or industrial business along the highway wanting an on-premises billboard sign advertising their business may be prohibited from doing so if the adjacent property owner has a billboard sign near the shared property line.

Cook answered that staff is proposing to strike "or allowed configuration of signs" from Section 18-5.06 because it is confusing and would appear to prevent a business owner from erecting a billboard sign if there is already a sign on that property. In addition, it would appear to prohibit a business sign from being placed on a property that has a billboard sign.

Elliott noted that he is concerned that whoever constructs a sign first has the advantage. He then reasoned that if a property has a billboard sign near the adjacent property line, this will prohibit the adjacent property from having a business sign (such as a monument sign).

Cook explained that if there is an existing billboard sign placed on a property and a business comes in and wants to install a monument sign for the business, then there needs to be a 300' separation from those two signs on that same property. He also explained that the 1,000' separation distance is only with regard to the distance between billboards signs—whether they're on the same property or on separate properties. The 300' separation is with regard to any signs on the same property.

There being no further questions for staff, Oehlert opened the public hearing.

Fred Wingert of Wingert Sign Company (20836 W. 91st Terrace, Lenexa) approached the podium, and thanked Planning staff for their work on the proposed amendments. He added that although sign content cannot be discussed, the billboard signs that his company owns and operates do not and will not advertise adult content. Mr. Wingert reported that his company owns and operates four billboard signs in Miami County—two that he recently purchased along US-69 Highway, and two along US-169 Highway. He stated that other businesses have expressed interest in advertising on billboard signs, so his company approached the Planning Department with proposed amendments to the regulations.

Mr. Wingert briefly outlined his proposed changes to the Zoning Regulations for billboard signs. Regarding Section 18-5.02.2, he believes some sort of required setback is appropriate, and a 15' setback from the right-of-way is more than enough room to service the billboard sign. With regard to Section 18-5.03 – Maximum Height, Mr. Wingert noted that his request is that this measurement be based upon the average grade of the highway. He reasoned that his company would not construct a sign that is so high that it is not visible to motorists. He commented that nobody wants to see a billboard sign that is 60', 70', or 80' in the air. With regard to Section 18-5.04 – Maximum Sign Area, Mr. Wingert commented that he is in agreement, for the most part, with staff's proposal. He stated that his company is requesting a 10-1/2' x 36' double-stacked sign (378 square feet, per sign facing) or 11' x 36'. With regard to Section 18-5.06 - Minimum Spacing Requirement, Mr.

Wingert explained that his company is requesting a 500' separation between billboard signs, which matches the State's requirements. He referenced the Planning Commission's discussion regarding highway interchanges and explained that a billboard sign cannot be located within 500' of the point where the pavement begins to widen at an exit or within 500' of the end of an on-ramp. He specified that this results in an area spanning 2,500' to 3,000' where billboard signs cannot be constructed. He reasoned, therefore, that this existing regulation further prevents proliferation of billboard signs in commercial and industrial areas along the highway. He added that there are relatively few areas along the highway that are zoned commercial or industrial.

There being no public comments, Oehlert asked for a motion to continue the public hearing. Menefee moved to continue the public hearing to the February 2, 2021 meeting, Broers seconded, and the motion carried via a roll call vote of 7-0¹.

Cook asked the Planning Commission if they have any strong preferences regarding maximum sign area, separation distance between billboard signs, or setback requirements.

Elliott asked if staff could provide for the Planning Commission a map of the County, which marks out all areas where a billboard sign could be permitted.

Cook indicated that staff can provide such a map.

Ross and Elliott commented that Section 18-5.04.2 needs to be clarified, as it is confusing, especially how it relates to 18-5.04.1.

¹ Josh Brown left the meeting at 8:00 p.m., bringing the total number of Planning Commissioners to seven (7). The two Planning Commissioners who initiated and seconded the motion (Menefee and Broers) were not queried for their votes.

Excerpt of the February 2, 2021 Planning Commission Minutes

Continued Public Hearing 20002-TA: Zoning Regulations Amendments (Billboard Signs)

Cook announced that Mr. Fred Wingert (of Wingert Sign Company) submitted his response to the staff report, copies of which have been provided this evening to the Planning Commissioners. Cook then presented the staff report for consideration of draft amendments to the Zoning Regulations of Miami County, Kansas, pertaining to Billboard Signs (Off-Premises Outdoor). Affected regulations include Article 2 (Definitions); and Article 18 (Signs).

Cook pointed out that pursuant to a request made at last month's meeting staff has added additional language to Section 18-5.05, which is based upon KDOT's regulations, and which specifies that all lighting for billboard signs must be shielded:

(Note: Proposed text is highlighted in yellow. Text that is proposed to be deleted is struck through.)

“18-5.05 Lighting: Billboard signs may be indirectly illuminated, but shall not cast glare upon any adjacent highway so as to pose a hazard to vehicular traffic. This shall include that all lighting must be effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of any highway or county road and are of such intensity or brilliance as to cause glare or to impair the vision of the driver or any motor vehicle or to otherwise interfere with any driver's operation of a motor vehicle. Electronic (LED) signs must comply with Section 18-11, Electronic Sign Regulations ~~display a static image for a minimum of eight (8) seconds, and have an interval change time of two (2) seconds or less.~~ Only sign structures that are classified legal conforming may be modified to LED signs. (Res. R15-11-033 (Exh. A))”

He noted, however, that Section 18-4.01.9 (in the general sign requirements) provides that all indirectly illuminated signs “shall have lighting fixtures or luminaries that are fully shielded;” therefore, staff believes Section 18-4.01.9 sufficiently addresses this concern.

Elliott suggested that, in lieu of duplicating regulations, staff could simply cross-reference Section 18-4.01.9 in Section 18-5.05. He explained that this would ensure that if the provisions in Section 18-4.01.9 are amended in the future, the same will apply to Section 18-5.05.

Menefee agreed.

Cook requested the Planning Commission's input regarding the existing regulation, which requires a minimum spacing of 1,000' between any billboard signs (Section 18-5.06. Minimum Spacing Requirements). He reported that Mr. Wingert has requested reducing that minimum requirement to 500' but staff is recommending that the Planning Commission keep the existing 1,000' minimum spacing requirement.

Oehlert asked if there is a reason why the minimum spacing requirement is specifically 1,000'.

Cook answered that it is his understanding that the County wanted a greater separation than that

required by KDOT. He reported that nearly all the nearby counties he has reviewed have minimum spacing requirements greater than 500'; and, some that are greater than 1,000'.

He then directed the Planning Commission to the maps in the meeting packet, and explained that the maps demonstrate where future billboard signs could possibly be located on those properties adjacent to highways, which are zoned C-2, I-1, or I-2. He further explained that the maps take into consideration 500' and 1,000' separation distances between billboard signs as well as 300' separation distance from any properties zoned for residential use.

Cook noted that the spacing of the billboard signs depicted on the maps is also based upon the State's minimum setback requirement from an interchange or intersection. He has contacted KDOT to verify that he is interpreting KDOT's sign regulations accurately—especially regarding measurement of separation distance from an interchange or intersection—but has not yet received a response. Cook explained that he measured the separation distance from interchanges, beginning at the point where the pavement begins widening at an entrance, and measuring 500' from that point.

Cook pointed out that the location of a billboard sign on one property may impact whether another billboard may be placed on that same property or on an adjacent property, which is due to the current 1,000' minimum spacing requirement between billboard signs; and, the required 300' minimum spacing between billboard signs and properties zoned for residential use. He noted that there are not many industrially or commercially zoned properties in the County located adjacent to the highways so there wouldn't be a proliferation of signs throughout the entire County. However, if the 1,000' minimum spacing requirement between billboard signs was reduced, there are a few areas of the County that could see an increase in the number of billboard signs. He acknowledged that properties adjacent to the highways could possibly be rezoned in the future, resulting in additional opportunities for billboard signs.

Cook then referenced staff's suggestion (on Page 4 of 9 of the meeting packet) to modify Section 18-4.01.5 (in the general sign requirements) to specify a general minimum separation of 300' for all free-standing signs. He clarified that the purpose of this suggested amendment is to confirm that only on-premises signs detached from a structure—and not wall signs—are subject to the 300' minimum spacing requirement. Cook pointed out Page 7 of 9 of the meeting packet, which provides several scenarios demonstrating when and how the 300' minimum spacing requirement applies. He explained that if one property has a billboard sign and an adjacent property has a business sign (an on-premises sign), the 300' minimum spacing requirement would not apply because the signs are located on separate properties. However, if a property has an existing billboard sign, and a business sign (an on-premises sign) is later constructed on that same property, the 300' minimum spacing requirement would be applicable.

Cook reported that Mr. Wingert's February 1st response to the staff report expresses concern "with the ADDED REQUIREMENT on 300 feet spacing between all signs you are proposing on Page 4 of 9." Cook clarified that the *current* Regulations require a minimum 300' separation between a new sign and *any* other existing signs on the same property. Moreover, the current Regulations for billboard signs provide that any new billboard sign allowed under Section 18-5 must be located a minimum of 1,000' from "any other existing billboard sign or allowed configuration of signs on

the same side of the street.” Cook explained that the proposed removal of the phrase “or allowed configuration of signs” from the billboard sign requirements (Section 18-5.06) provides greater flexibility because the 300’ minimum spacing requirement would then be applicable between any signs—billboard signs or on-premises signs (located on the same property and on the same side of the street).

Cook then referenced Mr. Wingert’s request to add the following to Section 18-5.01:

“If the Kansas Secretary of Transportation designates US-69 as other than a scenic byway, the proposed regulation in this section would apply to US-69.”

Staff recommends retaining the existing language regarding US-69 in Section 18-5.01 and making no modifications at this time. Cook added that if the State ever decides that US-69 will no longer be designated as a scenic byway, the County can, at such time, amend the sign regulations to permit billboard signs along US-69.

Manchester referenced the following provision in Mr. Wingert’s response letter:

“The maximum height of a billboard would be measured from the road grade to match the State of Kansas Requirements and not to exceed 70 feet.”

Manchester asked about the State’s maximum height requirement for billboard signs.

Cook answered that the State calculates height based upon the grade of the adjacent roadway. He explained that the State’s maximum height requirement for billboard sign structures is 50’, as measured vertically from the edge of the pavement to the top of the sign. Cook’s understanding is that Mr. Wingert is requesting that the height of billboard signs be calculated in the same manner as the State—in other words, 50’ vertically from the pavement—but no taller than 70’, which would allow for a taller sign in those locations where the ground falls away from the roadway.

Oehlert then opened the public hearing.

Attorney Darcy Domoney of Domoney & Domoney (18 E. Wea St., Paola) approached the podium and stated that his client’s reasons for requesting amendments to the billboard sign regulations are primarily to avoid having to request variances from the County for various billboard locations that he may want to explore; and, to provide for more affordable billboard advertising for primarily Miami County businesses. He reiterated that very few locations along the highways in Miami County are zoned to allow billboard signs; and, for those locations, his client is requesting that the County’s billboard sign regulations match those of the State. Attorney Domoney commented that there does not seem to be a huge justification for the County’s current minimum spacing requirement. He assumes that the State has good reason for its 500’ minimum spacing requirement. Attorney Domoney stated that his client is requesting that 1) the minimum spacing requirement between billboard signs be reduced from 1,000’ to 500’; and 2) the height of billboards signs be measured from the road grade. He concluded that the requested amendments to the billboard sign regulations would allow for more billboards in the few areas in the County where the zoning allows for billboards.

Mr. Fred Wingert (20920 Walmer Rd., Stillwell) approached the podium, and stated that the main idea behind his request is to allow for additional billboards in locations where there are existing billboards. He explained that by doing so, it is more affordable to run power underground. He expressed that running power underground for 1,000' is very expensive, and his company is trying to build some billboard signs that are reasonably priced. With regard to maximum height, Mr. Wingert commented that although it may be unlikely that a billboard sign would need to be 70' tall it is helpful to have this flexibility in those locations where the highway rises up from the surrounding ground because of a bridge or some other reason. He further commented that there is no reason to build a billboard too tall. Mr. Wingert clarified that many, if not most, of the potential locations for future billboard signs, as shown on the maps in the meeting packet, would not be suitable locations, due to easements, rock, and lack of electricity.

Kitchen asked Mr. Wingert if any billboard signs are being constructed with solar powered lighting.

Mr. Wingert answered that he is utilizing this option in a couple of locations; however, the lifespan is only seven to ten years.

Glenn Alpert (15163 W. 323rd St., Paola) approached the podium and referenced the following proposed amendment to Section 18-5.04.3, as found shown on Page 3 of 9 of the meeting packet. (*Note: Proposed text is highlighted in yellow. Text that is proposed to be deleted is struck through.*)

~~3. For purposes of this subsection, each face of a billboard sign, whether double-faced, V-shaped, or some other configuration, shall be considered a separate sign. (Res. R15-11-033 (Exh. A))~~

“3. Each billboard sign structure shall be mounted on a single ground pole.”

Mr. Alpert stated that this does not seem to match the following proposed definition for Free-Standing Sign:

“Free-Standing Sign: A sign principally supported by one or more columns, poles, or braces placed in or upon the ground. (May also be referred to as a ground, monument, pole, or billboard sign.”

He asked if a free-standing sign has a single pole or multiple poles. He then pointed out that the word “king” in the definition for Billboard Sign Structure should be replaced with the word “kind” so that it reads “. . . and other materials of every kind and nature . . .” Mr. Alpert also asked if there are any provisions in the Regulations regarding whether a billboard sign may be placed on a building.

Elliott answered that the proposed definition for Free-Standing Sign may be found in the general sign requirements and is not exclusive to billboard signs.

Regarding whether a billboard sign may be placed on a building, Elliott added that the maximum sign area for wall signs is limited to a certain percentage of the surface area of a building's façade.

Mr. Alpert then asked if the intent is to have a single pole billboard sign.

Cook confirmed this to be the intent of the current Regulations.

Broers commented that the draft amendments, as currently proposed, appear very much to be a working draft. She asked for clarification regarding whether the public will be given another opportunity to comment on the proposed draft amendments before the Planning Commission votes upon them.

Mr. Alpert again approached the podium. Regarding the 1,000' minimum spacing requirement, he commented that if there is good reason to be more restrictive than the State then that is fine. However, if the State's 500' minimum spacing requirement is acceptable, then he suggests matching the State's requirement.

Elliott moved to continue the public hearing until next month's meeting, at which time the final version of draft amendments will be presented. Ross seconded.

Kitchen asked why the County's requirements differ from the State's.

Cook answered that he has reviewed the minutes of past meetings when the sign regulations were being discussed but was not able to find any specific reasoning for the 1,000' minimum spacing requirement. He expects that the Planning Commission's decision may have been for reasons of aesthetics, and not regarding safety.

Kitchen asked if it was previously staff's opinion that the minimum spacing requirement should be 1,000'.

Cook responded that the Planning Commission adopted this regulation, which was also adopted by the Board of County Commissioners. He explained that even if staff had suggested this requirement, staff's suggestions are often based upon direction received from the Planning Commission or the Board of County Commissioners.

Reeves recalled discussions from previous Planning Commission meetings, during which it was the Board's desire to have a 1,000' minimum spacing requirement as opposed to a lesser separation. Reeves also recalled previous Planning Commission discussions regarding maximum height. She noted that although this was the desire several years ago, the Planning Commission may change this requirement if it would like to do so. Reeves explained that the State allows counties and local jurisdictions to be more restrictive; however, the County cannot have a minimum spacing requirement that is less than the State's, nor a maximum height requirement that exceeds the State's. She agreed that previous meeting minutes indicate that the 1,000' minimum spacing requirement was determined not because of any safety studies conducted, but rather aesthetics—based upon the local community's desires. Reeves believes the State's requirements

are based upon safety studies. She also believes, especially regarding electronic signage, that the 1,000' minimum spacing requirement should be retained to avoid driver distraction.

Cook recalled from his review of previous years' meeting minutes that staff had pointed out to the Planning Commissioners that the 1,000' minimum spacing requirement did not match the State's requirement and had asked them whether they wanted to instead use the State's requirement. Cook reported that the Planning Commission directed staff to retain the 1,000' minimum.

Regarding variances for billboard signs, Cook pointed out that any variance must meet the variance standards listed in the State Statute. He then referenced the variances granted for the two (2) billboard signs along US-169, south of Paola (Wingert Sign Company), which replaced the former (2) billboard signs at that location, and reported that the variances were granted because unique conditions existed on the subject property. Had those unique conditions not been present, he assumes the variance from the 1,000' minimum spacing requirement would not have been granted. He explained that the unique conditions existing on that particular property included a number of pipelines running through the middle of the property; two existing billboard signs adjacent to one another; and the location of the highway entrance. He further explained that had one of those existing billboard signs been torn down, a new billboard sign would not have been permitted because the current billboard sign regulations would have allowed only one sign. Cook reported that the Board of Zoning Appeals took into consideration those unique conditions present on the property, and decided to grant the variances, thus allowing two new billboard signs with a reduced setback from the highway right-of-way (and a separation distance that is less than the 1,000' minimum spacing requirement).

The Planning Commission then voted upon the motion on the floor, via roll call vote. The motion carried with eight (8)¹ in favor and one (1) against (Menefee). Oehlert announced that the public hearing will be continued to the March 2nd meeting.

The Planning Commission began deliberating the proposed text amendments: (*Note: Proposed text is highlighted in yellow. Text that is proposed to be deleted is struck through.*)

Article 2 Definitions

“Billboard Sign Structure: Means and includes all components of a billboard sign, which may include poles, bracing, lateral supports, displays, and other materials of every kind and nature used to support a facing or facings on which advertising is placed.”

With regard to Article 2 – Definitions, Cook reminded the Planning Commissioners that the word “king”, which appears in the definition of Billboard Sign Structure, should be replaced with “kind”.

¹ The two Planning Commissioners who initiated and seconded the motion (Elliott and Ross) were not queried for their votes.

Broers commented that she would like the proposed definitions to be tighter. She noted that the definition of Billboard Sign Structure contains the word “poles” (plural), but the text later specifies a “single ground pole” (in Section 18.5.04.3):

Section 18-5.04 Maximum Sign Area:

“3. Each billboard sign structure shall be mounted on a single ground pole.”

Broers also noted inconsistencies throughout the proposed amendments in use of the words “sign facing” and “sign face”. She pointed out that “face” is used in Section 18-4.01.4.

“Section 18-4.01.5 Unless otherwise provided for in these Regulations, no free-standing sign (such as a ground, monument, pole, or billboard sign) hereafter erected shall be less than 300 feet from any other existing free-standing sign or allowed configuration of signs on the same property.”

Regarding Section 18-4.01.5 Menefee commented that the 300’ separation between all signs is good and protects small businesses in the County. He asked if farm signs are included in this requirement, as farm signs do not require a permit.

Reeves answered that agricultural signs are exempt. She suggested that it would be a good idea to clarify this.

Oehlert agreed.

Menefee suggested also clarifying any exempt signage.

Elliott suggested language such as “any other existing free-standing *permitted* sign”, to avoid having to identify every type of exempt sign.

Section 18-5 – Billboard Signs (off-Premises Outdoor)

“18-5.01 Off-premises outdoor billboard signs greater than 64 square feet and equal to or less than ~~750~~ 756 square feet shall be permitted only in the C-2, I-1 and I-2 Districts, and only within 660 feet of the rights-of-way of I-35, K-68 and US-169, with advertising being directed only toward said rights-of-way. Billboard signs visible from US-69 and erected with the purpose of their message being read from US-69 shall be prohibited since US-69 is a scenic byway. All provisions of the Kansas Highway Advertising and Control Act must be met for any sign located within 660 feet of the rights-of-way of the above listed state and federal highways. (Res. R15-11-033 (Exh. A))”

There were no comments made regarding Section 18-5.01.

“18-5.02 Location:

- a. Billboard signs shall not be located within 300 feet of any property

zoned Planned Development, Rural Residential, Countryside, or Agricultural or any other property zoned for residential purpose, and which is located on the same side of the highway.”

Regarding the latter part of the highlighted clause in Section 18-5.02 (a): “and which is located on the same side of the highway” Broers asked if it would be contrary to the intent of these Regulations to construct a billboard sign on one side of the highway, opposite a residential zoning district, which is less than 300’ away.

Cook responded that the intent is to exclude from this consideration property that is on the opposite side of the road / highway, as the road / highway itself creates some separation.

b. Billboard signs shall not be located within 50 fifteen (15) feet of any state or federal highway, to be measured from the edge of the right-of-way. Billboard signs shall not be located within fifteen (15) feet of a side or rear property line or the ultimate right-of-way of any road, street, or highway as designated by the County’s Comprehensive Transportation Plan. No billboard sign may be installed to encroach over an existing utility improvement or easement.

With regard to the last part of the highlighted clause in Section 18-5.02 (b): “No billboard sign may be installed to encroach over an existing utility improvement or easement” Broers asked if easements are typically large enough to ensure that a utility company’s access to the easement will not be impacted in the event that a billboard sign is hanging over the easement. She asked if a setback from the easement should be considered.

Elliott commented that it should be the responsibility of the utility provider to acquire enough easement.

Cook explained that the word “improvement” was added to that clause to address those instances where an existing utility line—such as a main sewer line or old electrical line—is not within an easement. He added that staff recommends adding to that same clause “*part of a*” so that it reads: “No part of a billboard sign may be installed to encroach over an existing utility improvement or easement.”

18-5.03 Maximum Height: The top edge of any one (1) billboard sign shall not exceed 50 feet above average grade. (Res. R15-11-033 (Exh. A))

Regarding Section 18-5.03 – Maximum Height Elliott expressed that he would like to see maximum height calculated from the road grade instead of the average grade. He explained that the sight line intention is based on the roadway; and, calculating height from the road grade offers greater flexibility, especially considering the limited number of locations where billboard signs can be permitted.

Menefee agreed.

Cook noted that he included on Page 5 of 9 of the meeting packet an optional amendment for Section 18-5.03, most of which he derived from the State's regulation:

Section 18-5.03 Maximum Height: The height of any portion of the sign structure as measured vertically from the adjacent edge of the road grade of the main traveled way shall not exceed 50 feet.

Ross commented that he likes the optional amendment for Section 18-5.03, as it specifies "road grade".

Menefee commented that the proposed optional amendment also specifies the "main traveled way", which takes into consideration divided highways.

Ross asked if the maximum height should be 50' or 70'.

Elliott commented that the maximum height should be 50'. He then asked if the State regulation provides for a maximum height of 70' based upon the road grade.

Cook clarified that the State specifies a maximum height of 50' as measured from the road grade.

Section 18-5.04 Maximum Sign Area:

3. Each billboard sign structure shall be mounted on a single ground pole.

Broers commented that Section 18-5.04.3 – Maximum Sign Area seems a bit prescriptive regarding the requirement for a single pole.

Elliott commented that he believes this should be addressed from an aesthetics standpoint. He would like to know what the Planning Commission would like to see as the standard. He added that he does not necessarily have a preference regarding whether a billboard sign is mounted on several poles or a single pole.

Ross commented that he is seeing increasingly more of the single-pole billboard signs, which he thinks look much better.

Oehlert asked the Planning Commissioners if they agree with proposed Section 18-5.04.3.

Broers suggested that this particular provision would be more appropriate in the Definitions section.

Elliott and Menefee agreed.

Elliott suggested that the provision be relocated to be included in the definition for Billboard Sign Structure.

There were no objections.

18-5.05 Lighting: Billboard signs may be indirectly illuminated, but shall not cast glare upon any adjacent highway so as to pose a hazard to vehicular traffic. This shall include that all lighting must be effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of any highway or county road and are of such intensity or brilliance as to cause glare or to impair the vision of the driver or any motor vehicle or to otherwise interfere with any driver's operation of a motor vehicle. Electronic (LED) signs must comply with Section 18-11, Electronic Sign Regulations display a static image for a minimum of eight (8) seconds, and have an interval change time of two (2) seconds or less. Only sign structures that are classified legal conforming may be modified to LED signs. (Res. R15-11-033 (Exh. A))

Elliott recommended that rather than adding the proposed language to Section 18-5.05 – Lighting, this provision could instead just cross-reference the provisions of Section 18-4.01.9 (in the general sign requirements). He commented that he agrees with the proposed amendments pertaining to LED signs.

There were no objections to Elliott's suggestion.

18-5.06 Minimum Spacing Requirements: No billboard sign (including billboard signs, as provided in Section 18-9.01.5 of these regulations) hereafter erected shall be less than 1,000 feet from any other existing billboard sign or allowed configuration of signs on the same side of the street. Such minimum spacing distance shall be measured along the center line of the frontage street, trafficway or interstate highway from a point opposite any edge of a billboard sign and perpendicular to the center line of each street, trafficway or interstate highway. (Res. R15-11-033 (Exh. A))

Regarding Section 18-5.06 – Minimum Spacing Requirements Elliott commented that he prefers to retain the 1,000' minimum. He provided the example of three billboard signs on the east side of US-169, south of 191st, and noted that they are spaced 1,000' apart according to *Google Earth*. If the billboard signs were spaced 500' apart, it would allow for two additional signs in that location. He expressed that five signs in that location would just be too busy.

Menefee commented that it is much easier to retain the 1,000' minimum, which, in the future could possibly be reduced to 500' if the need arises. He added that once the minimum is reduced to 500', we can't go back to 1,000'.

Elliott commented that the Planning Commission is tasked with creating Zoning Regulations for three reasons: health, safety, and welfare; and, the State Statute specifies that it is for those three reasons that the Planning Commission and the Zoning Regulations exist. Elliott noted that although he agrees that there is some welfare benefit, he does not know what portion of the people we serve will benefit. He expressed that aesthetics and rural lifestyle are a greater benefit. Elliott reported that some of the results received from the Comprehensive Plan survey speak to these very things. It is his opinion that discussions regarding the 1,000' minimum spacing requirement that have been on the books up to this point were specific to help maintain some of that rural character.

He expressed that he would hate to go away from that, especially before finishing the Comprehensive Plan.

Broers concurred.

There were no additional comments regarding Section 18-5.06.

18-5.07 Distance from Intersection: No sign shall be located adjacent to or within 500 feet of an interchange, intersection at grade or a safety rest area, with such distance measured along the freeway or interstate highway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the freeway or interstate highway. (Res. R15-11-033 (Exh. A))

Regarding Section 18-5.07 – Distance from Intersection, Cook noted that this regulation matches the State's.

The Planning Commission had no changes to Section 18-5.07.

The Planning Commission had no changes to Section 18-9.01.5 – Light Industrial (I-1) and Heavy Industrial (I-2) Sign Regulations.

RESOLUTION

NO. _____

**ADOPTION OF AMENDMENTS TO THE
MIAMI COUNTY, KANSAS ZONING REGULATIONS**

WHEREAS, Miami County, Kansas is authorized, pursuant to K.S.A. 12-753 *et seq.*, to adopt Zoning Regulations and amendments thereto; and

WHEREAS, Miami County did adopt comprehensive Zoning Regulations for Miami County, Kansas on September 5, 1991, and has since amended said regulations periodically; and

WHEREAS, the Miami County Planning Commission is authorized to recommend amendments to the Miami County Zoning Regulations pursuant to KSA 12-753; and

WHEREAS, County staff had recommended proposed amendments to the County's Zoning Regulations pertaining to Billboard Sign (Off-Premises Outdoor) regulations; and

WHEREAS, the Planning Commission held a public hearing regarding the proposed amendments on January 5, 2021 and continued the hearing to February 2, 2021, directing staff to provide additional information in order to assist the Planning Commission in making its recommendation and to adjust proposed language; and, the Planning Commission subsequently continued the public hearing to March 2, 2021 to ensure that the language was correct. Said public hearings were noticed in accordance with state statute, and a record and written summary of the public hearings were made; and

WHEREAS, the Planning Commission voted, by an affirmative vote of the majority present (6-0) at aforesaid March 2, 2021 hearing, to recommend that the Board of Commissioners of Miami County, Kansas approve the proposed amendments to the Miami County, KS Zoning Regulations pertaining to Billboard Signs (Off-Premises Outdoor); and

WHEREAS, the County Commission considered, at its regularly scheduled meeting on March 24, 2021, the recommendation of the Planning Commission to approve the proposed text amendments and continued the consideration of the amendments until April 7, 2021 in order to allow time for additional discussion; and,

WHEREAS, the County Commission considered the recommendation of the Planning Commission to approve the proposed text amendments on April 7, 2021 at a regularly scheduled commission meeting; and

WHEREAS, the County Commission, having reviewed aforesaid proposed regulations and having considered comments of staff and the public, finds the proposed amendments to the regulations governing Billboard Signs (Off-Premises Outdoor) to be in the public interest and welfare, pursuant to the following findings:

FINDINGS:

The amended regulations for Billboard Signs (Off-Premises Outdoor):

1. Relax the current regulations to allow property owners more flexibility and provide opportunity for business to be able to advertise.
2. Support the purpose of the sign regulations by: a) ensuring the visual quality of signs and preserving and promoting the aesthetic quality of Miami County by reducing visual clutter; and, b) by controlling the magnitude, placement and number of signs in the County, recognizing that signs in the County generally tend to be highly visible because of low-density development patterns and few, if any development features or other signs which compete visually for attention, thereby necessitating controls to protect the visual integrity of the unincorporated portion of the County.
3. Support the purpose of the Zoning Regulations to promote the safety, health and general welfare of the citizens of Miami County.

NOW, THEREFORE BE IT RESOLVED BY THE COUNTY COMMISSION OF MIAMI COUNTY, KANSAS, pursuant to K.S.A. 12-753 et seq., that the proposed amendments to the Miami County, Kansas Zoning Regulations, as shown in Exhibit "A", are hereby approved and that copies of aforesaid documents shall be maintained in the office of the County Clerk.

IT IS FURTHER RESOLVED BY ABOVE SAID COMMISSION that aforesaid regulations shall become effective upon publication of this Resolution in the official County newspaper.

ADOPTED ON THIS 7th DAY OF APRIL, 2021.

BOARD OF COUNTY COMMISSIONERS
MIAMI COUNTY, KANSAS

BONNIE "ROB" ROBERTS, Chairman

TYLER VAUGHAN, Chairman Pro-tem

PHIL DIXON, Commissioner

GEORGE PRETZ, Commissioner

DANIEL GALLAGHER, Commissioner

ATTEST

JANET WHITE, County Clerk

Approved as to form and legality on _____ by _____.

EXHIBIT "A"

Article 2-1 Definitions (sign definitions)

Billboard Sign Face: Means and includes a billboard sign display or displays at the same location and facing the same direction.

Billboard Sign Display: Means a single panel or part of a billboard sign, including trim and background, which contains a message or messages.

Billboard Sign Structure: Means and includes all components of a billboard sign, which may include a pole, bracing, lateral supports, displays, and other materials of every kind and nature used to support a face or faces on which advertising is placed. Each billboard sign structure shall be mounted on a single ground pole.

Free-Standing Sign: A sign principally supported by one or more columns, poles, or braces placed in or upon the ground. (May also be referred to as a ground, monument, pole, or billboard sign).

V-Shaped Sign: A sign structure containing two (2) faces of approximately equal size, erected upon a common structure, and positioned in a “V” shape with an interior angle between faces of not more than forty-five degrees (45°) with the distance between the sign faces not exceeding five feet (5’) at their closest point.

AMENDMENTS TO ARTICLE 18 SIGN REGULATIONS:

Section 18-4. – General Sign Requirements

(Proposed amendments to Section 18-4.01.4 and Section 18-4.01.5 pertaining to General Sign Requirements.)

Section 18-4.01.4. Unless otherwise provided for in these Regulations, sign area shall include the entire surface area within a single perimeter enclosing the outside limits or boundaries of such sign. Where the perimeter boundaries are irregular or are not parallel, the sign area shall be the surface of the regular geometric shape which most nearly closes the outside limits or boundaries. Only one (1) face of a ground or pole sign designed as a double-faced sign, with both faces parallel and no more than 1 foot between structures or faces, shall be considered in determining the sign area.

Section 18-4.01.5 Unless otherwise provided for in these Regulations, no free-standing sign (such as a ground, monument, pole, or billboard sign) hereafter erected shall be less than 300 feet from any other existing free-standing sign or allowed configuration of signs on the same property. The 300-foot spacing requirement shall not be required for signs listed in Section 18-3. Signs Not Requiring Permits.

Section 18-5. – Billboard Signs (Off-Premises Outdoor)

(Proposed amendments to Section 18-5 pertaining to Billboard Signs (Off-Premises Outdoor).)

18-5.01 Off-premises outdoor billboard signs greater than 64 square feet and equal to or less than 756 square feet shall be permitted only in the C-2, I-1 and I-2 Districts, and only within 660 feet of the rights-of-way of I-35, K-68 and US-169, with advertising being directed only toward said rights-of-way. Billboard signs visible from US-69 and erected with the purpose of their message being read from US-69 shall be prohibited since US-69 is a scenic byway. All provisions of the Kansas Highway Advertising and Control Act must be met for any sign located within 660 feet of the rights-of-way of the above listed state and federal highways. (Res. R15-11-033 (Exh. A))

18-5.02 Location:

a. Billboard signs shall not be located within 300 feet of any property that is zoned Planned Development, Rural Residential, Countryside, or Agricultural, or that is zoned for residential purposes, and which property is located on the same side of the highway.

b. Billboard signs shall not be located within fifteen (15) feet of any of the following: (1) a state or federal highway right-of-way; (2) a side or rear property line; or (3) the ultimate right-of-way of any road, street or highway as designated by the County's Comprehensive Transportation Plan. This distance shall be measured from the nearest point of a billboard sign structure to the edge of said right-of-way or property line. No part of a billboard sign shall encroach over an existing utility improvement or easement.

c. Billboard signs shall not be attached to the roof or wall of any building.

d. Billboard signs shall not be located within a stream or drainage channel. (Res. R15-11-033 (Exh. A))

18-5.03 Maximum Height: The height of any portion of the sign structure, as measured vertically from the adjacent edge of the road grade of the main traveled way, shall not exceed 50 feet.

18-5.04 Maximum Sign Area:

1. The maximum sign area of any billboard sign structure shall not exceed a total of seven hundred fifty-six (756) square feet per sign face with a maximum of two (2) faces. A billboard sign structure shall include no more than two sign displays per face (double-decked sign). A billboard sign may be constructed as a single-faced, double-faced or V-shaped sign structure. A double-faced sign shall have no more than 15 feet between sign faces.

2. The maximum height or vertical dimension of a billboard sign face shall not exceed thirty (30) feet. The maximum width or horizontal dimension of any billboard sign face shall not exceed sixty 60 feet.

18-5.05 Lighting: Billboard signs may be indirectly illuminated, but shall not cast glare upon any adjacent highway so as to pose a hazard to vehicular traffic (refer to Section 18-4.01.9 for shielding requirements). Electronic (LED) signs shall comply with Section 18-11, Electronic Sign Regulations. Only sign structures that are classified legal conforming may be modified to LED signs. (Res. R15-11-033 (Exh. A))

18-5.06 Minimum Spacing Requirements: No billboard sign hereafter erected (including billboard signs, as provided in Section 18-9.01.5 of these regulations) shall be less than 1,000 feet from any other existing billboard sign on the same side of the street. Such minimum spacing distance shall be measured along the center line of the frontage street, trafficway or interstate highway from a point opposite any edge of a billboard sign and perpendicular to the center line of each street, trafficway or interstate highway. (Res. R15-11-033 (Exh. A))

18-5.07 Distance from Intersection: No sign shall be located adjacent to or within 500 feet of an interchange, intersection at grade or a safety rest area, with such distance measured along the freeway or interstate highway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the freeway or interstate highway. (Res. R15-11-033 (Exh. A))



MEMORANDUM

TO: Board of County Commissioners

FROM: Shane Krull, County Administrator

DATE: March 25, 2021

SUBJECT: Building Permit Fee Waiver Consideration

Miami County Rural Water District No. 2 (RWD) recently asked the Board of County Commissioners (BOCC) to consider waiver of Conditional Use Permit (CUP) and building permit fees associated with the water plant expansion project. A copy of Chairman James P. Dycus' letter officially asking for said waiver is included for your review.

Currently, Miami County does not have a formal policy for determining land use related application fees or building permit fees waivers. The BOCC directed staff to review the possibility of building permit fee waivers.

A copy of the building permit fee regulations within the Miami County Code (Code) is included for your review. Article 3. FEES, outline the various activities generating fees, schedules outlining how fees are calculated, penalties, refunds, etc.

An example of a building permit fee waiver policy is included for your review. The City of Paola (City), Ordinance No. 3014, in part, allows for a 50 percent building permit fee reduction and requires payment of all other fees. Miami County has benefited from the City's fee reduction for required building permits in the past.

Staff is supportive of developing a building permit fee waiver exemption to be contained within Article 3. FEES, section of the Code. Entities having the ability to levy local property taxes would be eligible for the building permit fee waiver. Additionally, rural water districts serving Miami County would also be included in the building permit fee waiver program. An excerpt from *Kansas Local Government Law*, Sixth Edition, 2018 is included for your review. The document briefly outlines the formation, function, and importance of rural water districts serving citizens. The aforementioned entities would still be required to pay for plan review and/or special inspections as required by the Code. The rationale for this practice is due to the necessity to outsource plan reviews and/or special inspections. Expense is incurred when said items are outsourced.

If the BOCC is supportive of implementing a building permit fee waiver, staff will include such language in Article 3. FEES contained within the Code. The amended Code would be included on an upcoming BOCC Agenda for formal consideration.

RWD #2

MIAMI COUNTY

March 1, 2021

Board of County Commissioners
Miami County
201 S. Pearl, Suite 200
Paola, KS 66071

RW: Fees Waiver Request

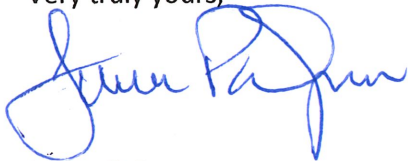
Dear Commissioners,

On behalf of Miami County Rural Water District No. 2, we request consideration for waiver of all CUP and inspection fees related to our water treatment plant upgrade project Phases 1, 2 and 3.

The water district is a non-profit public utility borrowing approximately \$32 million in KDHE SRF Funds for this project. The Miami County Commissioners previously waived all fees related to our 1999 plant upgrade project where we upgraded the treatment plant from 2 million gallons per day capacity to our current 6.6 million gallons per day. We are requesting the same consideration on our 2021 project intended to upgrade to an eventual 12 million gallons per day of treatment ability.

Thank you for your time and consideration of this request.

Very truly yours,



James P. Dycus
Chairman
Miami County Rural Water District No. 2

ARTICLE 3. FEES (R01-05-047; R07-03-019)

9-301. FEES

(A) GENERAL. Fees shall be assessed in accordance with the provisions of this section or shall be as set forth in the fee schedule adopted by the County of Miami County, Kansas.

(1) SEVERABILITY. It is hereby declared the intention of the Board of County Commissioners that the articles, sections, paragraphs, sentences, clauses and phrases contained within these regulations are to be severable, and should any article, section or provision of these regulations be declared unconstitutional or otherwise ruled to be invalid by any court of competent jurisdiction in a valid judgment or decree, then such decision or ruling shall not affect the validity of the regulations as a whole or any part of them other than the specific part declared to be unconstitutional or ruled to be invalid.

(B) PERMIT FEES. The fee for each permit shall be as set forth in this section. Where a code has been adopted by Miami County, Kansas for which no fee schedule is shown in this code, the fee required shall be in accordance with the schedule established by the Board of County Commissioners of the County of Miami County, Kansas.

(1) The determination of value or valuation under any of the provisions of these codes shall be made by the code official. Value or valuation, as applied to a building and/or its building service equipment for the purpose of establishing permit fees, shall be the estimated cost to replace the building and its building service equipment in kind, based on current replacement costs as established by the Building Valuation Data Table published by the International Code Council (ICC) or any other method deemed acceptable by the code official. The Building Valuation Data Table shall be revised periodically by action of the Board of County Commissioners to incorporate the first Building Valuation Data Table available for the year from ICC.

(2) The basis to be used in computing the building permit and building plan review fees shall be as set forth in Table 1-A and the fee schedule for work or services specified in Table 1-B.

(3) All fees shall be rounded off to the next whole dollar amount. Fees may be waived at the discretion of the code official during times of declared emergency.

(C) PLAN REVIEW FEES. When submittal documents are required by the Miami County Building Code, a plan review fee shall be paid at the time of submitting the submittal documents for plans review. Said plan review fee shall be the amount established by Table 1-B of this document. The code official may waive the plan review fee if it is determined that the work being performed is minor in nature and can be approved during field inspection of the work being performed.

(1) When submittal documents are incomplete or changed requiring additional plan review or when the project involves deferred submittal items as defined in the Miami County Building Code, additional plan review and permit fees may be charged.

(D) WORK COMMENCING BEFORE PERMIT ISSUANCE. Whenever work for which a permit is required by the Miami County Building Code has been commenced without first obtaining a permit, a special investigation shall be made before a permit may be issued for such work.

(1) INVESTIGATION FEE. An investigation fee, in addition to the permit fee, shall be collected whether or not a permit is then or subsequently issued. The investigation fee shall be equal to the amount of the permit fee required by this code. The minimum investigation fee shall be the same as the minimum fee set forth in Table 1-A and the fee schedule for work or services specified in Table 1-B. The payment of such investigation fee shall not exempt an applicant from compliance with all other provisions of any building code or regulation that has been adopted by Miami County nor from the penalty prescribed by law.

(2) EXCEPTIONS:

a) In cases of emergency, the person or other entity doing the work or causing work to be done may proceed with the work and file application for a permit within seventy-two (72) hours after commencement of emergency work. Emergency shall be considered to exist only in those situations wherein life, health and safety would be adversely affected if work were not commenced immediately, and the burden shall be upon the person claiming such emergency to exist to prove the existence of such emergency by clear and convincing evidence.

b) In cases where the work is being done at a one-family dwelling by the person who owns and occupies such dwelling and application for permit is made within three (3) working days (seventy-two (72) hours) following notification that such work requires a permit the investigation fee may be waived by the code official.

(3) COMPLIANCE OF WORK PERFORMED PRIOR TO ISSUANCE OF PERMIT. The person responsible for the work that was completed prior to a building permit being issued shall be responsible to provide access for inspection of all work requiring inspection by the Miami County Building Code or shall be responsible at their expense to retain the services of a licensed professional to verify that the work that was performed prior to the issuance of a permit is in full compliance with the provisions of all applicable codes and ordinances of Miami County in a manner acceptable to the code official.

(E) RE-INSPECTION FEES. A re-inspection fee may be assessed for each inspection or re-inspection when such portion of work for which inspection is called is not complete, when corrections called for are not made, when approved plans are not provided for inspections or when access is not provided when inspections have been requested.

(1) This section is not to be interpreted as requiring re-inspection fees the first time a job is rejected for failure to comply with the requirements of the Miami County Building Code, but as controlling the practice of calling for inspections before the job is ready for such inspection or re-inspection.

(2) Re-inspection fees may be assessed for the following conditions:

a) When work for which an inspection was requested by the permittee or an agent of the permittee is not ready for inspection;

b) When corrections called for are not made;

c) Failure to provide access on the date for which inspection is requested;

- d) Failure to provide the approved plans for the job when required for inspection purposes;
- e) For deviating from approved plans requiring the approval of the code official;
- f) For failure to post the address or identify the premises resulting in an inspector being unable to find the location of the requested inspection.

(3) To obtain a re-inspection when a re-inspection fee has been assessed, the applicant shall pay the re-inspection fee in accordance with the fee schedule adopted by this jurisdiction. In instances where re-inspection fees have been assessed, additional inspection of the work will not be performed until the required fees have been paid. Work requiring approval shall not be concealed until approval has been obtained.

(F) REFUNDS. The code official may authorize refunding of a fee that was erroneously paid or collected.

(1) The code official may authorize refunding of not more than 80% of the permit fee paid when no work has been done under a permit issued in accordance with this code. The code official may authorize refunding of not more than 80% of the plan review fee paid when an application for permit for which a plan review fee has been paid is withdrawn or canceled before any examination time has been expended.

(2) The code official shall not authorize the refunding of any fee paid except upon written application filed by the original permittee not later than one hundred eighty (180) days after the date of fee payment.

(G) RELATED FEES. The payment of the fee for the construction, alteration, removal or demolition of work done in connection with or concurrently with the work authorized by a building permit shall not relieve the applicant or holder of the permit from the payment of other fees that are prescribed by law.

(H) UNPAID FEES. Unpaid fees that have been assessed and remain unpaid at the completion of a project shall be reported to the county clerk and the county clerk shall, at the time of certifying other county taxes, certify the unpaid fees and extend the same on the county's tax roll.

TABLE 1-A

MIAMI COUNTY, KANSAS

PERMIT FEE SCHEDULE (R11-04-012)

Includes all buildings and building service equipment

Total Valuation	Fee
\$1.00 to \$500.00	\$23.50
\$501.00 to \$2,000.00	\$23.50 for the first \$500.00 plus \$3.05 for each additional \$100.00 or fraction thereof, to and including \$2,000.00

TABLE 1-A
MIAMI COUNTY, KANSAS
PERMIT FEE SCHEDULE (R11-04-012)

Includes all buildings and building service equipment

Total Valuation	Fee
\$2,001.00 to \$25,000.00	\$69.25 for the first \$2,000.00 plus \$14.00 for each additional \$1,000.00 or fraction thereof, to and including \$25,000.00
\$25,001.00 to \$50,000.00	\$391.75 for the first \$25,000.00 plus \$10.10 for each additional \$1,000.00 or fraction thereof, to and including \$50,000.00
\$50,001.00 to \$100,000.00	\$643.75 for the first \$50,000.00 plus \$7.00 for each additional \$1,000.00 or fraction thereof, to and including \$100,000.00
\$100,001.00 to \$500,000.00	\$993.75 for the first \$100,000.00 plus \$5.60 for each additional \$1,000.00 or fraction thereof, to and including \$500,000.00
\$500,001.00 to \$1,000,000.00	\$3,233.75 for the first \$500,000.00 plus \$4.75 for each additional \$1,000.00 or fraction thereof, to and including \$1,000,000.00
\$1,000,001.00 and up	\$5,608.75 for the first \$1,000,000.00 plus \$3.65 for each additional \$1,000.00 or fraction thereof

(1) EXCEPTIONS TO TABLE 1-A:

- a) The fee for agricultural buildings as defined by the Miami County Zoning Regulations and determined by the director of planning or their designated representative shall be \$50.00. Electrical, plumbing or mechanical permit fees associated with agricultural buildings shall be based upon the valuation of the work being performed or other provisions of this code. (Revised 2011/04/20 Resolution R11-04-012)
- b) The fee for manufactured homes shall be based upon one-half the valuation required of a new site constructed building.

TABLE 1-B
SCHEDULE FOR OTHER SERVICES

1) Partial and supplemental permit fees

- a) Partial permits \$50.00 minimum

When a permit for the construction of part of a building, structure, or building service equipment is requested by the applicant, fees shall be determined in accordance with Section 101.2 of this code based on the valuation of work to be performed as separate permit fees and not as supplemental permits.

b) Supplemental permits \$35.00 minimum

The fee for a supplementary permit to cover any additional value of work not included in the original permit shall be based upon the valuation of the work that was not included in the original permit.

c) Operational Permits \$100.00

For an operational permit to allow an applicant to conduct a business or operation for which a permit is required by Section 105.6 of the International Fire Code.

Exception: There shall be no fee required for an open burning operational permit.

d) Permit Extensions

The fee for a permit extension as allowed by Section 105.5.1 of the International Building Code shall be subject to the fee specified by Table 1-A based upon the valuation of work remaining to be completed as determined by the code official based upon an evaluation inspection.

2) Plan review fees (plan review fees required by Section 101.3 of this code shall be as follows)

a) Single Family Dwellings \$50.00

The plan review for single family dwellings may be waived by the code official if the plans and specifications for a single family dwelling have been sealed by an Architect or Engineer that is Registered by the State of Kansas.

b) Commercial and Industrial 25% of the permit fee required by Table 107-A

c) Additional plan review \$50.00 per hour

When additional plan review is required due to changes, revisions or additions to approved plans. The required fee shall be calculated on a per hour basis with a minimum one-half hour charge assessed.

d) For use of outside consultants Actual cost**

e) Re-submittal plan review fees \$50.00 per hour

When previously identified deficiencies remain uncorrected on subsequent submittals, a re-submittal plan review fee shall be paid. The required fee shall be calculated on a per hour basis with a minimum one-half hour charge assessed.

f) Stamping of additional sets of plans \$25.00 per hour

One set of approved plans shall be provided to the applicant upon permit issuance. Stamping of additional sets of plans at the applicant's request shall be assessed the specified fee. The required fee shall be calculated on per hour basis with a minimum one-half hour charge assessed.

g) Re-review and stamping of lost plans \$25.00 per hour

Re-review and stamping of lost plans to replace an applicant's approved field set of plans shall be assessed the required fee. The required fee shall be calculated on a per hour basis with a minimum one-half hour charge assessed.

3) Re-inspection fees \$50.00 per hour
Re-inspection fees assessed under provisions of Section 101.5 of this code. There shall be a minimum one-hour charge assessed.

4) Inspections outside of normal business hours \$50.00 per hour
There shall be a minimum charge of two (2) hours.

5) Other inspections and Administration. \$50.00 per hour
Inspections for which no fee is specifically indicated. There shall be a minimum charge of two (2) hours. The actual cost to the County shall be assessed for the use of outside consultants for inspections or testing.

a) Administrative costs \$25.00 per hour
Costs associated with the administration of files associated with the abatement of nuisance or dangerous building violations.

6) Temporary Certificate of Occupancy

a) For the first temporary certificate of occupancy No Charge

b) Each additional temporary certificate of occupancy \$50.00

For each additional temporary certificate of occupancy required to extend the time period required to complete construction.

7) Certificate of Occupancy \$150.00

Where a certificate of occupancy is required for a change of occupancy or for reasons other than in connection with work that is authorized by a building permit.

8) Code Modification Requests \$50.00* per hour

Code modification requests submitted pursuant to Section 104.10 of the International Building Code. The required fee is based upon the time required to research the request and determine if the request is acceptable. The required fee shall be calculated on a per hour basis with a minimum one-half hour charge being assessed.

9) Sign Permits

a) To and including the 25 square feet of sign area or fraction thereof \$50.00

b) Each additional 25 square feet of sign area or fraction thereof \$20.00

10) Temporary Permits

a) Permits for Temporary Construction Offices \$250.00

b) Temporary Hardship Manufactured Home \$150.00

11) Moved Buildings and Demolition (R02-03-021)

a) Pre-move Evaluation \$150.00

Fees for foundation construction repair, alteration, improvement or addition to a moved building after the placement on a new site shall be charged based upon the valuation of the work and in accordance with the fee required by Table 1-A.

b) Demolition

Single Family Dwellings \$50.00

Agricultural and Detached Accessory Structures \$0.00

All other uses – Based upon 10% of valuation for new construction of building with same occupancy group and type of construction.

Item 11 of Table 1-B of the Miami County Permit Fee Schedule was amended by Resolution R02-03-021, March 4, 2002

12) Fees for Reproduction of Plans and Documents

Fee charged per page reproduced. Fee includes all material, equipment and administrative costs.

8.5 X 11 \$0.50

8.5 X 14 \$0.75

11 X 17 \$1.00

24 Wide \$3.00

36 Wide \$5.00

* Or the total hourly cost to the jurisdiction, whichever is the greatest. This cost shall include supervision, overhead, equipment, hourly wages and fringe benefits of the employees involved.

** Actual costs include administrative costs.

13) Cell and communication towers

a) New towers and associated buildings and equipment enclosures \$1,500.00

b) Replacement or addition of antenna on existing towers \$500.00

NOTE: Permit fee includes basic plan review fees. Additional plan review or inspection fees may be charged based upon actual cost if third party services are needed.

14) Unit Fees for Installation of Building Service Equipment not associated with a permit for new construction in Single Family Dwellings, single family accessory buildings and agricultural buildings. Item 13 of the Miami County Permit Fee Schedule was added by Resolution R02-03-021, March 4, 2002 (R02-03-021)

a) Electrical Systems

Services up to two hundred ampere \$50.00

Services up to four hundred ampere \$75.00

Services exceeding four hundred ampere \$200.00

The unit fee specified may be used to establish permit fees for new electrical equipment in residential accessory and agricultural buildings.

Photovoltaic or Wind Generator Systems \$400.00

b) New HVAC and water heater installations

Furnace \$50.00

Water heater \$50.00

Central Air conditioning unit \$50.00

Replacement of existing Furnaces, Water Heaters or Central Air Conditioning Units serving a Single Family Dwelling \$25.00

Combination of any two or more appliances \$50 for the First Appliance plus \$25 for each additional appliance.

The unit fee specified may be used to establish permit fees for new fixtures in residential accessory and agricultural buildings.

c) New Plumbing fixture installations

Any single fixture \$50.00

Each additional fixture \$15.00

Underground water piping with hydrant \$35.00

The unit fee specified may be used to establish permit fees for new fixtures in residential accessory and agricultural buildings.

d) Single Family Swimming Pools

In-ground \$200.00

Above-ground \$100.00

e) Decks and porches

Decks or porches \$25.00

Roof Structure Covering Porch or Deck \$25.00

f) Re-roofing of Residential Use Buildings \$25.00

(Res. R16-03-006)



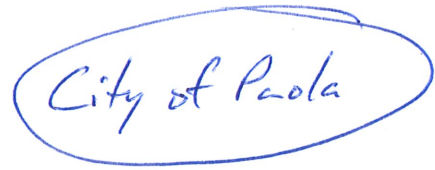
The Miami County Code is current through Ordinance R19-04-013, passed April 3, 2019.

Disclaimer: The clerk of the board's office has the official version of the Miami County Code. Users should contact the clerk of the board's office for ordinances passed subsequent to the ordinance cited above.

County Website: <http://www.miamicountyks.org/>

County Telephone: (913) 294-9500

Code Publishing Company



Ordinance Summary published in the Miami County Republic on October 19, 2016 and the full text of the Ordinance made available at www.cityofpaola.com for a minimum of 1 week from the date of publication.

Ordinance No. 3104 Summary

On October 11, 2016, the City of Paola, Kansas, adopted Ordinance No. 3104, amending Section 500.310, Fees, of the Code of the City of Paola, Kansas, 2009, by correcting typing and grammatical errors; and adding Section 500.315, Reduced Fees For Building Permits, of the Code of the City of Paola, Kansas, 2009, which allows for a 50% reduction in certain fees for entities that have statutory authority to levy local property taxes (these entities shall not include the State of Kansas or the U.S. Federal Government) and; entities that are primarily (more than 50%) funded by entities that have statutory authority to levy local property taxes and; individual projects for public recreation facilities that are not located on property owned by the City of Paola. A complete copy of this ordinance may be obtained or viewed free of charge at the Office of the City Clerk at City Hall, 19 E Peoria Street or at www.cityofpaola.com. This summary is certified by Lee H. Tetwiler, Paola City Attorney pursuant to K.S.A. 12-3001, et seq.

ORDINANCE NO 3104

AN ORDINANCE AMENDING SECTION 500.310, FEES, AND ADDING SECTION 500.315, REDUCED FEES FOR BUILDING PERMITS, OF THE CODE OF THE CITY OF PAOLA, KANSAS, 2009.

Be it Ordained by the Governing Body of the City of Paola, Kansas:

SECTION 1. That Section 500.310. Fees, of the Code of the City of Paola, Kansas, 2009, is hereby amended to read as follows:

“Section 500.310. Fees.

- A. *General.* Fees shall be assessed in accordance with the provisions of this Section or shall be as set forth in the fee schedule adopted by the City of Paola.
 - 1. *Severability.* It is hereby declared the intention of the City of Paola that the Sections, Subsections, paragraphs, sentences, clauses and phrases contained within these regulations are to be severable and should any Section, Subsection or provision of these regulations be declared unconstitutional or otherwise ruled to be invalid by any court of competent jurisdiction in a valid judgment or decree, then such decision or ruling shall not affect the validity of the regulations as a whole or any part of them other than the specific part declared to be unconstitutional or ruled to be invalid.
- B. *Permit Fees.* The fee for each permit shall be as set forth in this Section. Where a code has been adopted by the City of Paola and the Community Growth Area, for which no fee schedule is shown in this Code, the fee required shall be in accordance with the schedule established by the City of Paola.

The determination of value or valuation under any of the provisions of these codes shall be made by the Code Official. Value or valuation, as applied to a building and/or its building service equipment for the purpose of establishing permit fees, shall be the estimated cost to replace the building and its building service equipment in kind, based on current replacement costs as established by the Building Valuation Data Unit Cost Table provided in Exhibit 1 of this Section or any other method deemed acceptable by the Code Official. The Building Valuation Data Unit Cost Table shall be revised annually to reflect the rate of inflation established by the U.S. Department of Labor, Bureau of Labor Statistics in the annual December to December Consumer Price Index (CPI).

The basis to be used in computing the building permit and building plan review fees shall be as set forth in Table 1-A and the fee schedule for work or services specified in Table 1-B.

All fees shall be rounded off to the next whole dollar amount. Fees may be waived at the discretion of the City of Paola during times of declared emergency.

- C. *Plan Review Fees.* When submittal documents are required by the City of Paola Building Code, a plan review fee shall be paid at the time of submitting the submittal documents for plan review. Said plan review fee shall be the amount established by Table 1-B of this document. The Code Official may waive the plan review fee if it is determined that the work being performed is minor in nature and can be approved during field inspection of the work being performed.

When submittal documents are incomplete or changed so as to require additional plan review or when the project involves deferred submittal items as defined in the City of Paola Building Code, additional plan review and permit fees may be charged.

- D. *Work Commencing Before Permit Issuance.* Whenever work for which a permit is required by the City of Paola and the Community Growth Area Building Code has been commenced without first obtaining a permit, a special investigation shall be made before a permit may be issued for such work.

1. *Investigation fee.* An investigation fee, in addition to the permit fee, shall be collected whether or not a permit is then or subsequently issued. The investigation fee shall be equal to the amount of the permit fee required by this code. The minimum investigation fee shall be the same as the minimum fee set forth in Table 1-A and the fee schedule for work or services specified in Table 1-B. The payment of such investigation fee shall not exempt an applicant from compliance with all other provisions of any Building Code or regulation that has been adopted by City of Paola nor from the penalty prescribed by law.

EXCEPTIONS:

- a. In cases of emergency, the person or other entity doing the work or causing work to be done may proceed with the work and file application for a permit by the close of business the next business day, after commencement of emergency work. Emergency shall be considered to exist only in those situations wherein life, health and safety would be adversely affected if work were not commenced immediately and the burden shall be upon the person claiming such emergency

to exist to prove the existence of such emergency by clear and convincing evidence.

b. In cases where the work is being done at a one-family dwelling by the person who owns and occupies such dwelling and application for permit is made within one (1) working day (twenty-four (24) hours) following notification that such work requires a permit, the investigation fee may be waived by the Code Official.

2. *Compliance of work performed prior to issuance of permit.* The person responsible for the work that was completed prior to a building permit being issued shall be responsible to provide access for inspection of all work requiring inspection by the City of Paola Building Code or shall be responsible, at their expense, to retain the services of a licensed professional to verify that the work that was performed prior to the issuance of a permit is in full compliance with the provisions of all applicable codes and ordinances of City of Paola in a manner acceptable to the Code Official.

E. *Re-inspection Fees.* A re-inspection fee may be assessed for each inspection or re-inspection when such portion of work for which inspection is called is not complete, when corrections called for are not made, when approved plans are not provided for inspections or when access is not provided when inspections have been requested.

This Section is not to be interpreted as requiring re-inspection fees the first (1st) time a job is rejected for failure to comply with the requirements of the City of Paola Building Code, but as controlling the practice of calling for inspections before the job is ready for such inspection or re-inspection.

Re-inspection fees may be assessed for the following conditions:

1. When work for which an inspection was requested by the permittee or an agent of the permittee is not ready for inspection;
2. When corrections called for are not made;
3. Failure to provide access on the date for which inspection is requested;
4. Failure to provide the approved plans for the job when required for inspection purposes;
5. For deviating from approved plans requiring the approval of the Code Official;
6. For failure to post the address or identify the premises resulting in an inspector being unable to find the location of the requested inspection.

To obtain a re-inspection when a re-inspection fee has been assessed, the applicant shall pay the re-inspection fee in accordance with the fee schedule adopted by this jurisdiction. In instances where re-inspection fees have been assessed, additional inspection of the work will not be performed until the required fees have been paid. Work requiring approval shall not be concealed until approval has been obtained.

F. *Refunds.* The Code Official may authorize refunding of a fee that was erroneously paid or collected.

The Code Official may authorize refunding of not more than eighty percent (80%) of the permit fee paid when no work has been done under a permit issued in accordance with this Code.

The Code Official may authorize refunding of not more than eighty percent (80%) of the plan review fee paid when an application for permit for which a plan review fee has been paid is withdrawn or canceled before any examination time has been expended.

The Code Official shall not authorize the refunding of any fee paid except upon written application filed by the original permittee not later than one hundred eighty (180) days after the date of fee payment.

- G. *Related Fees.* The payment of the fee for the construction, alteration, removal or demolition of work done in connection with or concurrently with the work authorized by a building permit shall not relieve the applicant or holder of the permit from the payment of other fees that are prescribed by law.
- H. *Unpaid Fees.* Unpaid fees that have been assessed and remain unpaid at the completion of a project shall be reported to the City Clerk and the City Clerk shall, at the time of certifying other taxes, certify the unpaid fees and extend the same on the tax role.

Table 1-A
Building Permit Fee Schedule
Includes all buildings and building service equipment

<u>Total Valuation</u>	<u>Fee</u>
\$1.00 to \$500.00	\$23.50
\$501.00 to \$2,000.00	\$23.50 for the first \$500.00 plus \$3.05 for each additional \$100.00 or fraction thereof, to and including \$2,000.00
\$2,001.00 to \$25,000.00	\$69.25 for the first \$2,000.00 plus \$14.00 for each additional \$1,000.00 or fraction thereof, to and including \$25,000.00
\$25,001.00 to \$50,000.00	\$391.75 for the first \$25,000.00 plus \$10.10 for each additional \$1,000.00 or fraction thereof, to and including \$50,000.00
\$50,001.00 to \$100,000.00	\$643.75 for the first \$50,000.00 plus \$7.00 for each additional \$1,000.00 or fraction thereof, to and including \$100,000.00
\$100,001.00 to \$500,000.00	\$993.75 for the first \$100,000.00 plus \$5.60 for each additional \$1,000.00 or fraction thereof, to and including \$500,000.00
\$500,001.00 to \$1,000,000.00	\$3,233.75 for the first \$500,000.00 plus \$4.75 for each additional \$1,000.00 or fraction thereof, to and including \$1,000,000.00
\$1,000,001.00 and up.	\$5,608.75 for the first \$1,000,000.00 plus \$3.65 for each additional \$1,000.00 or fraction thereof

EXCEPTIONS to Table 1-A:

- * The fee for manufactured homes shall be based upon one-half the valuation required of a new site constructed building.

Table 1-B
Fee Schedule for other work or services

1. *Permit extensions.* The fee for a permit extension as allowed by Section 105.5.1 of the International Building Code shall be subject to the fee specified by Table 1-A based upon the valuation of work remaining to be completed as determined by the Code Official based upon an evaluation inspection.

2. *Plan review fees.* Plan review fees required by Section 101.3 of this code shall be as follows:

- a. Single-family dwellings: 35% of permit fee.
- b. Commercial and industrial: 65% of permit fee.
- c. Use of outside consultants: Actual cost.

3. *Re-inspection fees:* \$75.00 per hour.

Re-inspection fees assessed under provisions of Section 101.5 of this code. There shall be a minimum two (2) hour charge assessed.

4. *Inspections outside of normal business hours:* \$75.00 per hour.

There shall be a minimum charge of two (2) hours and the request shall be received no less than one (1) whole business day prior to the requested inspection date.

5. *Other inspections and administration:* \$50.00 per hour.

Inspections for which no fee is specifically indicated. There shall be a minimum charge of two (2) hours. The actual cost to the City shall be assessed for the use of outside consultants for inspections or testing.

6. *Temporary certificate of occupancy.*

Residential:

- a. For the first (1st) temporary certificate of occupancy: No Charge
Maximum number of days allowed— 30 days
- b. For the first (1st) additional temporary certificate of occupancy: \$50.00
Maximum number of days allowed— 30 days
- c. For an additional temporary certificate of occupancy: \$100.00
Maximum number of days allowed— 30 days

* The only exception to maximum number of days allowed is for landscaping and shall not exceed one hundred eighty (180) days.

** No additional permits shall be issued to the general contractor until a temporary certificate of occupancy has been completed and a permanent certificate of occupancy has been issued.

Commercial:

\$750.00 with \$350.00 refunded upon completion of items found incomplete.

* Shall be issued with a completion date not to exceed sixty (60) days. If not completed by said date, no refund will be made. Additional funds shall be necessary before additional inspections will be performed.

7. *Code modification requests:* \$50.00 or actual costs (at discretion of Code Official).

Code modification requests submitted pursuant to Section 104.10 of the International Building Code. The fee is for the time required to research the request and determine if the request is acceptable.

8. *Sign permits:* \$25.00/sign.

Shall meet requirements of the City of Paola land development ordinance.

9. *Temporary permits.*

Permits for temporary construction offices: \$250.00
(\$125.00 refunded when office is removed)

Permits for temporary hardship manufactured home: \$150.00

Permits for government supplied temporary hardship manufactured home: None

10. *Moved buildings and demolition.*

a. Pre-move evaluation and moving permit (within City of Paola or Paola growth area): \$150.00.

b. Pre-move evaluation and moving permit outside jurisdiction: \$150.00 plus mileage rate and other expenses incurred.

Fees for foundation construction repair, alteration, improvement or addition to a moved building after the placement on a new site will be charged based upon the valuation of the work and in accordance with the fee required in Table 1-A.

c. Demolition.

Single-family dwellings and ag/accessory structures over five hundred (500) square feet: \$50.00.

Agricultural and detached accessory structures under five hundred (500) square feet: \$30.00.

Commercial or industrial: \$100.00.

11. *Fees for reproduction of plans and documents.* Fee charged per page reproduced. Fee includes all material, equipment and administrative costs, not included in permit fees.

8.5 x 11	\$0.50
8.5 x 14	\$0.75
11 x 17	\$1.00

24 wide	\$8.00
36 wide	\$8.00

12. Unit fees for installation of building service equipment not associated with a permit for new construction in single-family dwellings, single-family accessory buildings and commercial buildings.

a. *Electrical services.*

Up to two hundred ampere: \$50.00.

Up to four hundred ampere: \$75.00.

Exceeding four hundred ampere: Based upon installation cost.

The unit fee specified may be used to establish permit fees for new electrical equipment in residential accessory and agricultural buildings.

b. *New HVAC and water heater installations.*

Furnace: \$50.00.

Water heater: \$50.00.

Central air-conditioning unit: \$50.00.

Replacement of existing furnaces, water heaters or central air-conditioning units serving a single-family dwelling: \$25.00.

Combination of any two (2) or more appliances — \$50.00 for the first (1st) appliance, plus \$25.00 for each additional appliance.

The unit fee specified may be used to establish permit fees for new fixtures in residential accessory and agricultural buildings.

c. *New plumbing fixture installations.*

New residential installation: \$50.00.

Commercial installation — any single fixture: \$50.00.

Commercial each additional fixture: \$15.00.

Underground water piping with hydrant: \$35.00.

Sewer/water line repairs: \$30.00.

Sprinkler installation: \$50.00.

d. *Single-family swimming pools.*

In-ground: \$200.00

Above ground — permanent hard-sided (includes electrical permit): \$100.00.

Above ground — temporary soft-sided: no cost.

e. *Hot tubs/lap pools/hydrotherapy appliances:* \$50.00 minimum plus valuation

f. *Other Fees*

Reroofing of residential use buildings	Based on Value – See Table 1-A
Reroofing of commercial use buildings	Based on Value – See Table 1-A
Permanently Installed fountains and water gardens	\$15.00
Trash Enclosures	\$15.00
Fence	\$25.00
Satellite dish (more than 36” in diameter)	\$25.00
Sheds under 120 square feet	\$30.00
Sheds 121 square feet to 200 square feet	\$50.00
Sheds over 200 square feet	Based on Value – See Table 1-A
Docks – new	\$50.00
Docks – repairs/remodel requiring building permit	\$30.00
Consultation – change of use	\$100.00
Consultation – no change of use	\$50.00
Siding	\$50.00

Exhibit 1— Building Valuation Data Unit Costs							
Occupancy and Use	Type of Construction						
	1 or 2 FR	2-A	2-B	3-A	3-B	5-A	5-B
New dwellings	n/a	n/a	n/a	n/a	n/a	n/a	84.41
Unfinished basements	n/a	n/a	n/a	n/a	n/a	n/a	16.17
Finished basements	n/a	n/a	n/a	n/a	n/a	n/a	21.20
Garages (attached or detached)	n/a	n/a	n/a	n/a	n/a	n/a	22.20
Detached accessory buildings	n/a	n/a	n/a	n/a	n/a	n/a	11.00
Apartment houses	109.20	109.20	99.20	88.70	n/a	88.70	92.40
Type 1 basement garage	37.40	n/a	n/a	n/a	n/a	n/a	n/a
Auditoriums	104.80	75.90	71.80	75.70	76.30	76.30	71.20
Banks	148.10	109.10	105.60	120.40	116.10	109.10	104.50
Bowling alleys	n/a	51.00	47.60	55.50	51.90	37.40	n/a
Churches	99.20	74.50	70.80	81.00	77.40	75.70	71.20
Convalescent hospitals	139.20	96.60	n/a	99.00	n/a	93.30	n/a

Fire stations	114.40	75.30	71.00	82.40	78.90	77.30	73.30
Homes for the elderly	103.70	84.20	80.60	87.70	84.10	84.70	81.80
Hospitals	163.20	n/a	n/a	135.10	n/a	128.90	n/a
Hotels and motels	101.00	n/a	n/a	87.50	83.40	76.20	74.70
Industrial plants	56.90	39.60	36.40	43.60	41.10	41.10	37.60
Jails	159.10	n/a	n/a	145.50	n/a	109.10	n/a
Libraries	116.40	85.20	81.00	90.00	85.50	84.50	81.00
Medical offices	119.50	92.20	87.60	100.00	93.10	90.20	87.00
Offices	106.80	71.50	68.10	77.20	73.80	72.30	68.10
Public buildings	123.40	100.00	95.60	103.80	100.20	95.00	91.60
Public garages	48.90	36.70	28.00	37.00	32.90	33.70	n/a
Restaurants	n/a	n/a	n/a	97.40	94.10	89.20	85.70
Schools	111.20	75.90	n/a	81.20	78.10	76.10	72.60
Service stations	n/a	n/a	67.20	70.10	n/a	59.70	n/a
Canopies	n/a	n/a	n/a	n/a	n/a	n/a	28.00
Stores	82.40	50.40	49.30	61.30	57.50	51.60	47.70
Theaters	109.80	n/a	n/a	80.00	76.20	75.30	71.20
Warehouses	49.40	29.30	27.50	33.20	31.60	29.30	27.50
Sprinkler systems	2.60	2.60	2.60	2.60	2.60	2.60	2.60

SECTION 2. That Section 500.315. Reduced Fees for Building Permits, of the Code of the City of Paola, Kansas, 2009, is hereby added and shall read as follows:

“Section 500.315. Reduced Fees for Building Permits.

As a gesture of goodwill and intergovernmental cooperation, The City of Paola offers reduced fees for building permits as follows:

- A. Reduced fees will be considered for the following applicants only:
 - 1. Entities that have statutory authority to levy local property taxes (these entities shall not include the State of Kansas or the U.S. Federal Government).
 - 2. Entities that are primarily (more than 50%) funded by entities that have statutory authority to levy local property taxes.
 - 3. Individual projects for public recreation facilities that are not located on property owned by the City of Paola.

- B. Fees for building permits as detailed in Table 1-A in Section 500.310 of this Code shall be reduced by 50%. All other fees, including those listed in Table 1-B in Section 500.310 of this Code shall be paid at the rate as stated therein.

- C. To qualify for the reduced building permit fee, qualifying applicants must provide the following at the time that the building permit is applied for:
1. Pay all other associated fees in connection with the building permit.
 2. Documentation that the applicant is primarily funded by an entity that has statutory authority to levy local property taxes (if requested).”

SECTION 3. That this ordinance shall become effective after its passage, approval and publication in the official city newspaper pursuant to KSA 12-3001, et seq.

PASSED AND APPROVED by the Governing Body this 11th day of October, 2016.
APPROVED by the Mayor this 11th day of October, 2016.

Artie Stuteville, Mayor

ATTEST: [seal]

Daniel G. Droste, City Clerk

improvements for water works systems owned by Water District No. 1 in Johnson County. See K.S.A. 12-6a02. Also in 1998, Water District No. 1 was authorized to enter into financing leases and lease-purchase agreements for goods used by the district. See K.S.A. 19-3516(e).

A case involving the water district arose when the Mission Hills Country Club sought a cheaper water supply source for its golf course. The club entered into an agreement with Kansas City, Missouri to provide water for its greens and fairways and had a water meter installed on the Missouri side of State Line Road with a private pipeline constructed under the road to pipe water to the golf course. The club planned to continue to have domestic water from Water District No. 1 and also to rely on district water for fire service. The water district board adopted a rule providing that it had the exclusive right and duty to supply water to all users within the district and filed a declaratory judgment action in district court to seek a ruling on this issue. The Kansas Supreme Court in *Water District No. 1 and Johnson county v Mission Hills Country Club*, 265 Kan. 355, 960 P.2d 239 (1998), agreed with the water district that it had the exclusive right to supply water by pipeline within its boundaries. The court said provisions of K.S.A. 19-3501 must be construed together *in pari materia*. The court noted the statute did not specifically state that the district had an exclusive right to provide water service but agreed that the existence of a boundary for the district implied that there was a protected service area as did the word "district" which means jurisdiction. The court said the country club was basically seeking conditional deannexation and that the statute did not provide for deannexation. The court also rejected the country club's argument that there was a violation of the commerce clause of the *United States Constitution* since the district was a quasi-municipal corporation providing a governmental service.

Districts are authorized to contract with the state and political subdivisions for the purpose of supplying water. Districts also have the power to set water rates; to issue revenue bonds and no-fund warrants for startup costs; and to levy a tax for the payment of the warrants prior to the issuance of the revenue bonds and to provide chlorination and fluoridation of the water supply. See K.S.A. 19-3502, 19-3508, 19-3511, 19-3515, and 19-3521a.

The court, in a case which had potential application to other municipal utilities held in *In the Matter of the Appeal of Water District No. 1 of Johnson County*, 26 K.A. 2d 371, 988 P. 2d 267 (1999), that electricity purchased by the water district to power its pumping stations which pressurized the water, was exempt from state sales and compensating use taxes. The court held that the integrated plant theory applied which allows an exemption from sales and use taxes where equipment and machinery perform an essential or indispensable function in the manufacturing process regardless of whether a physical change is actually made in the raw materials and that the exemption was permitted under K.S.A. 79-3606. The court held that pressurization of water was an integral part of the water production process.

Note: the 2000 Legislature's reaction to the case was to eliminate sales and use tax refunds based upon provisions of K.S.A. 79-3606, except for refunds claimed by Water District No. 1.

See Op. Att'y Gen. 92 (1989), which said the water district governing body must hold discussion of offers received in reference to the acquisition of a water utility during an open public meeting.

Water districts formed under K.S.A.19-3501 *et seq.* may change rules and regulations to allow cost negotiation between the applicant for water service and the contractor who will build the water extension for projects under \$25,000 but the water district must be a party to the contract. Prequalification of bidders when the contract amount is under \$25,000 is not permitted under the law requiring competitive bids. See Op. Att'y Gen. 45 (1992).

The practice of letting all contracts to one contractor in an annual contract was said to be permitted by the Attorney General if it could be demonstrated that this resulted in the lowest responsible bidder standard being upheld. See Op. Att'y Gen. 45 (1992). The Home Builders Association of Greater Kansas City filed suit for declaratory judgement and an injunction against Water District No. 1, challenging this practice. See *Home Builders Association of Greater Kansas City v Johnson County Water District No. 1*, 22 K.A. 2d 161, 914 P.2d 956 (1995). The Home Builders argued that the one contract per year policy violated bid requirements in the law and resulted in substantially higher costs being passed on to the patrons of the district. The court interpreted the words "contracts for any construction" in K.S.A. 19-3516(d) to permit aggregation of several projects and held the bid requirement applied to both district initiated and developer initiated contracts. Further the court held the words "cost" and "costs" as used in K.S.A. 19-3514 included both material and labor in regard to the requirement that the applicant for water service reimburse "costs" of construction. The court said that a public bid was not needed in regard to stockpiling material purchases.

A performance bond required under K.S.A. 19-3516 and K.S.A. 19-214 regarding repairs and improvements for the system and a public works bond required under K.S.A. 60-1111 are two separate and distinct obligations of a surety company. See Op. Att'y Gen. 43 (1996).

E. Rural Water Districts
K.S.A. 82a-601 et seq.
K.S.A. 82a-612 et seq.



§13.22 1. Background and Organization

Rural water districts have been among the fastest growing special districts in Kansas. The 135 districts formed by 1967 rose to 289 by 2017 according to the Kansas Rural Water Association.

Rural water districts, according to the court in *Dedeke v Rural Water Dist. No. 5*, 229 Kan. 242, 249, 623 P.2d 1324 (1981), are in law and in fact a public utility subject to state

regulation and control and the owner of a benefit unit certificate is the owner of a property right protected by the requirements of due process. *Dedeke* also held that water service cannot be terminated without giving the resident user adequate notice and an opportunity to contest the grounds for termination.

Rural water districts are often associated with suburban growth near cities both large and small. Friction between cities and rural water districts sometimes occurs. K.S.A. 12-539 through 12-542 establishes the procedures which must be followed if a city decides to provide water service to newly annexed areas. See Chapter 2 where this law is discussed in more detail.

§13.23 2. Creation of Districts

Rural water districts may be created under two general acts. The first, K.S.A. 82a-601 *et seq.*, allows any two or more owners of adjacent lands within a county to petition the board of county commissioners for incorporation as a rural water-supply district. A hearing before the county board must be set and notice given to the chief engineer of the Division of Water Resources. See K.S.A. 82a-603. If the board of county commissioners determines at the public hearing that the petition is sufficient and the proposal will promote the public health, then the board must incorporate the rural water-supply district as a quasi-municipal corporation. See K.S.A. 82a-604. The district can be dissolved whenever 75% of the landowners petition to the county board for dissolution and it is found by the board that the district owns no property, that all its debts are paid, and that no meetings of the district have been held for more than a year. See K.S.A. 82a-611.

Under the second more widely used act, K.S.A. 82a-612 *et seq.*, the procedures for the incorporation of "rural water districts" are similar but include the following exceptions. Only 50% of the landowners within the proposed district need to petition for incorporation to the county board. In addition, districts formed under this act may cross county lines. The petition in these cases is made to the county where the largest portion of the district will be located. See K.S.A. 82a-612(c) and 82a-614. Dissolution procedures are contained in K.S.A. 82a-629. A 1991 amendment clarified that remaining property of the dissolving district must be distributed to an adjoining water district or to any other political subdivision. An Internal Revenue Service ruling said the prior law which provided for disposition of remaining property to subscribers of benefit units disqualified water districts from being treated as government entities under the internal revenue code thus jeopardizing the tax exempt status of water district revenue bonds.

§13.24 3. Addition or Deletion of Territory

Several procedures exist for the addition or deletion of territory in rural water districts and for the consolidation of rural water districts. Note that K.S.A. 82a-614a requires a water district to get the approval of an improvement district

or an industrial district before including territory of such districts within the water district. Note also that board of county commissioners approval must meet the extraordinary vote requirements of K.S.A. 19-270. The Attorney General, in Op. Att'y Gen. 80 (1981), said that rural water districts may annex noncontiguous territory.

Additional lands may be added to rural water district under provisions of K.S.A. 82a-622 *et seq.*, dissolution of a rural water district may be implemented under K.S.A. 82a-629 *et seq.*; consolidation of rural water districts may be accomplished under K.S.A. 82a-639 *et seq.*; lands may be released from a rural water district under K.S.A. 82a-646 or K.S.A. 82a-647; and a rural water district adjoining a city may agree to be acquired by the city under K.S.A. 82a-649.

§13.25 4. Governing Body — Elected

All land owners within the district constitute a board of directors for rural water-supply districts formed under K.S.A. 82a-601 *et seq.* The board of directors of rural water districts formed under K.S.A. 82a-612 *et seq.* may include up to nine members elected by participating members for three-year staggered terms at annual meetings of the district. See K.S.A. 82a-617. The board of directors elects a chairman, vice-chairman, secretary and treasurer for one-year terms. The chairman is responsible for the operation and repair of the district and is entitled to compensation as determined by the board of directors.

A participating member of a rural water district created under K.S.A. 82a-612 *et seq.*, may serve as a director. Such member is defined as an individual, firm, partnership association or corporation which owns land within the district and has subscribed to one or more benefit units of the district or which is charged a franchise fee for water service which is paid, either directly or indirectly through another water provider to such district. The organization which meets this definition must designate an officer or agent as an eligible voter at district meetings. The designee may serve on the board of directors of the district in the same manner as any other member. See Op. Att'y Gen. 88 (1993). Note that a water district must release the names of water district members not using water to a person inquiring under the Kansas Open Records Act who was interested in purchasing the water benefit units. See Op. Att'y Gen. 68 (1996).

The Attorney General has said in Op. Att'y Gen. 136 (1985), that a participating member must be the person holding fee simple title to the land. See also the discussion of benefit unit in *Shawnee Hills Mobile Homes Inc. v Rural Water District No. 6*, 217 Kan. 421 537 P. 2d 210 (1975).

See K.S.A. 82a-648 which provides any election of a rural water district formed under K.S.A. 82a-612 *et seq.* may be conducted by mail ballot.

§13.26 5. Scope of Powers

A rural water-supply district may construct, install, maintain and operate dams, reservoirs, pipelines, wells and other works as necessary; enter into contracts; sue and be sued; and buy, hold or receive property. See K.S.A. 82a-606.

Rural water district powers under K.S.A. 82a-619 are more extensive. For example, these districts may: exercise the power of eminent domain; cooperate and enter into agreements with or accept financial aid or other aid from the U.S. Secretary of Agriculture; acquire loans; and enter into contracts for the purchase or sale of water. The Attorney General has stated that rural water districts have an implied power to sell property even though there is no explicit grant of such power. See Op. Att'y Gen. 146 (1987). The Attorney General also has recommended rural water districts establish competitive bidding practices for construction contracts. See Op. Att'y Gen. 45 (1988).

Rural water districts have the power to contract with cities or counties, or both, to operate and maintain state-permitted wastewater treatment works, systems, and other facilities relating to the treatment of wastewater.

Rural water-supply districts may issue bonds and levy taxes and levy special assessments to retire the bonds. See K.S.A. 82a-606. Rural water districts may levy special assessments, issue revenue bonds and acquire loans for the financing of up to 95% of the construction cost or purchase price of any project. See K.S.A. 82a-619. Revenue bonds of rural water districts may be used as security for public funds deposits by banks if the district has been in existence for three or more years. See Op. Att'y Gen. 127 (1984).

Water districts are able to obtain community development block grant (CDBG) moneys from the Kansas Department of Commerce (grants and loans) are also available from rural development. The Kansas public water supply loan fund is administered by the Kansas Department of Health and Environment and makes loans available for rural water development. Further, the Kansas Rural Water Finance Authority assists cities and rural water districts in funding options.

Plans, specifications, the proposed operating budget, the schedule of fees and benefit units and the estimated costs of any proposed improvement must be filed with the Chief Engineer and the secretary of the district. See K.S.A. 82a-621.

Rural water districts are required to comply with laws governing deposit of public moneys. See Op. Att'y Gen. 157 (1987).

The Attorney General has said that rural water districts are covered by the Kansas Tort Claims Act (Op. Att'y Gen. 31 (1986)), and bound by the Kansas Open Meetings Act (Op. Att'y Gen. 97 (1998)).

The court in *In Re Application of Riverton Water Company for Tax Exemption*, 23 K.A.2d 496, 932 P.2d 452 (1997), held that in order to receive an ad valorem property tax exemption under K.S.A. 79-201aThird, a rural water district must be organized under K.S.A. 82a-612 *et seq.* The water district had been organized as a private not for profit corporation in 1992 but had not been organized as a statutory rural water district until 1995. The court held the district did not qualify for the exemption until the 1995 date.

A rural water district may recoup the costs of relocating water lines which cross a state funded highway project even

if it cooperates in the formation of a public wholesale water supply district with other entities which are not eligible for reimbursement as long as the district retains ownership of the water lines. See Op. Att'y Gen. 53 (1996).

A township may not use its money to purchase fire hydrants to give or to loan to a rural water district. See Op. Att'y Gen. 78 (1992).

See *Rural Water Districts in Kansas 1994* published in 1994 by the Kansas Rural Water Association, the Kansas Water Office and the Kansas Department of Health and Environment. The publication contains maps of water districts by county and general information about each district.

§13.27 6. Federal Presumption: City Water Service Versus Rural Water Service

Federal law can also play a part in the provision of water service by a water district when there is a dispute with a city regarding who serves a particular customer or group of customers. Federal law (7 U.S.C.A. § 1926), authorizes the Secretary of Agriculture through the Farm Home Administration to issue loans to rural water districts. Subsection (b) of 7 U.S.C.A. § 1926 provides:

"The service provided or made available through any such association shall not be curtailed or limited by inclusion of the area served by such association within the boundaries of any municipal corporation or other public body, or by the granting of any private franchise for similar service within such area during the term of such loan; nor shall the happening of any such event be the basis of requiring such association to secure any franchise, license, or permit as a condition to continuing to serve the area served by the association at the time of the occurrence of such event."

The court in *Rural Water, Ellsworth County v City of Wilson*, 29 F. Supp. 2d 1238, 1245, (D. Kan. 1998), noted that Section 1926(b) serves two principal purposes as follows:

"(1) it encourages rural water development by expanding the number of potential users, resulting in a lower cost per user; and (2) it safeguards the viability of associations and FmHA loans, protecting both from the expansion of nearby towns and cities. *Scioto County Reg. Water Dist. 1 v Scioto Water Inc.*, 103 F. 3d 38 (6th Cir. 1996), *cert. Denied*, 521 U.S. 1111, 117 S. Ct. 2497, 138 L.Ed.2d 1003 (1997). The courts have held that § 1926(b) should be liberally interpreted to protect