JOHNSON COUNTY PLANNING COMMISSION

Johnson County Administration Building
Board of County Commissioners Hearing Room, Third Floor
111 South Cherry Street
Olathe, Kansas

MINUTES OF REGULAR MEETING

June 27, 2017
5:45 p.m.

A. CALL TO ORDER

A meeting of the Planning Commission of Johnson County, Kansas, was convened at 5:46 p.m. on Tuesday, June 27, 2017, and was called to order by Chris Iliff, Chairman, with the following members present and participating; to-wit: Dennis Bollin, Pete Opperman, Marc Huggins, Jason Meier, George Lund, Teri Atwell, Randy Hutchins, Jim Neese. Absent were Roxanne Morse and Roger Mason. Also present were Brian Pietig, Paul Greeley and Karen Miller, Johnson County Planning Department, County Commissioner Ron Shaffer, Penny Postoak Ferguson, Johnson County Manager’s Office, and Don Jarrett, Johnson County Legal Department.

Chairman Iliff: I'll call the June 27th meeting of the Johnson County Planning Commission to order.

B. APPROVAL OF AGENDA

Chairman Iliff: Any changes to the agenda? [None.]

C. CONSIDER MINUTES OF PREVIOUS PLANNING COMMISSION MEETING

Motion by Mr. Neese, seconded by Mr. Lund, to approve the minutes of the May 23, 2017, Planning Commission meeting.

Motion passed unanimously.

D. PUBLIC COMMENTS

This is an opportunity for members of the public to address the Planning Commission on an item which does not appear on the agenda. Comments are limited to five (5) minutes.

Katie Hoffman, 8532 Mauer Road, Apt. 118, Lenexa, Kansas, appeared before the Planning Commission and made the following comments:

Ms. Hoffman: I lived in the unincorporated area until last fall, so I'm still very interested in happenings in the unincorporated area of Johnson County. I'd first like to speak to the zoning board consolidation. I will say off the bat that I am opposed to that. I think those zoning boards will lose a lot of anonymity. Because of where we live, you are aware of some of the issues and what happens in your zoning area. You are not as interested in another zoning board and their actions. So, I think human nature is like, well, that's in the southeast part of the county, it doesn't affect me, so I'm not going to go. So, we lose some continuity there. So, if the zoning board wants
to be consolidated, that’s fine. But, if the zoning board doesn’t, then I think they shouldn’t have to. I don’t quite understand why this came about. I would object to that.

I know agricultural and agritourism has been discussed for a long time and opinions still vary. I think the definitions maybe aren’t quite as we keep reading them. The state says one thing, the County says another thing. Who serves who in this instance? So, I think everyone should be treated fairly, and even if you’ve been in existence for five or six years, you should have to meet the same standards as someone who comes in. I think there needs to be equality, and whatever is required of one should be required of another. Thank you.

[There being no one else to speak, Chairman Iliff moved on to the next item.]

E. REVIEW PROPOSAL TO ATTACH LANDS TO RURAL WATER DISTRICT NO. 7

Ms. Miller: Before you is a petition that has been received by Rural Water District No. 7, proposing to expand their service boundaries to include a 50-acre parcel of land at the northeast corner of Edgerton Road and 103rd Street. This is a half mile from the city of De Soto and a half mile from the interchange at K-10 and 95th Street. It is across the street from Sunflower Nature Park and the Sunflower Army Ammunition Plant. Additionally, there is a 12-inch water main that runs along the frontage of the subject parcel, along Edgerton Road, as opposed to the closest City of De Soto water main, which is about a half to 3/4 miles east. This parcel abuts the Water 7 service area along its west and north sides and is contiguous with the Water 7 service area.

The reason this proposal is before you is because of its close proximity to the city of De Soto and because it’s a half mile from city limits in the fringe area of the city. State statute directs the County’s Planning Commission and the associated zoning board to review and make a recommendation to the Board of County Commissioners on any incompatibilities between the proposed expansion and any adopted land use or comprehensive plans. After tonight, the board will receive the Planning Commission and zoning board recommendations and decide whether to approve the attachment request. And, for your information, the Northwest Consolidated Zoning Board has already considered this and recommended approval. They found there are no inconsistencies with the Comprehensive Plan.

So, in view of this charge to see if there are any incompatibilities, Planning staff has looked at the City of De Soto and the County’s Comprehensive Plan. We have found no incompatibilities. Also attached in your packet is a letter from the City of De Soto. To paraphrase, the City intends to pursue a service territory agreement with Water District No. 7 to ensure adequate and cost-effective water supply to their growth area. In the interim, while discussions are ongoing, the City understands the Water District’s desire to be responsive to the individual property owner, and in turn, does not object to the proposed attachment.

So, because there is no incompatibility with the future land use plans of the City of De Soto or the County, and because there’s good coordination between the City and the utility, Planning staff recommends approval of the 50-acre land attachment to Water District No. 7, for the reasons that there’s no known incompatibilities between the attachment and the County and City of De Soto comprehensive plans. There is a suggested motion in the middle of page 4, if you choose to make it. Thank you. The property owner, Mr. Schanze, and Allan Soetaert, the manager of Water District No. 7, are here if you have any questions.

Chairman Iliff: Do the property owner or the representative from Water District No. 7 want to make any comments?
Bryan Schanke, 13006 West 116th Street, appeared before the Planning Commission and made the following comments:

Mr. Schanke: I have a building permit, I have a house under construction. The permit that was issued was with Water No. 6, which was sold, and the understanding was that Water District No. 7 was going to serve me. The house is about ready to be sheet rocked and it is imperative that I get water out there. Thank you.

Chairman Iliff: Any questions? [None.] Do I hear a motion?

Comm. Meier: I would move to recommend approval of the proposed 50-acre land attachment to Water District No. 7, for the reason that there are no known incompatibilities between the attachment and the County and the City of De Soto comprehensive plans.


Motion passes unanimously.

Ms. Miller: This will go to the Board of County Commissioners on Thursday, June 29th, at the Board of County Commissioners' hearing room, which is this room. The meeting starts at 9:30 a.m.

F. ZONING BOARD CONSOLIDATION

Mr. Pietig: You might recall that a month or so ago, we talked about zoning board consolidation. Since that time, we have talked to all the other zoning boards, and we wanted to report back. The objective of tonight's discussion is to get a recommendation from the Planning Commission.

We do recommend consolidating the four zoning boards into two. That would be the Northwest and the Southwest, combining those into one, as well as the South-Central and the Aubry-Oxford zoning boards. Consolidation has been part of the zoning boards since they were created back in 1984. There have been six consolidations. The last one was Aubry-Oxford back in 2009. I'll show you a brief history of the county and why it's important that we look at this from time to time. So, 1984 is when the zoning boards were created. I have a snapshot here, showing the incorporated areas of the county, and I'll talk you through these. You'll see 1988, 1994, 1999, 2004, 2009. And then, 2014. If I had a map of 2017, you'd see significant areas being annexed in the areas of Olathe, Spring Hill, etc. Annexation and the loss of the unincorporated jurisdiction is the natural evolution of the county. We're still gaining about 8,000 to 10,000 citizens a year, and that's been going on for decades.

So, we're looking at that for various reasons. We find that as these zoning board areas shrink, it's harder to find members. If you haven't served on a zoning board it's a lot of work. You get packets of information you have to review, and I know some of you have served on zoning boards. And to find people willing to put that type of effort in is not easy to find. As these jurisdictions continue to shrink, we have trouble with quorums. Sometimes we have trouble with people having to abstain because they are too close to the applicant. Consolidating the zoning boards will allow them to meet on a regular basis, and they will have a familiarity with the regulations. We know how complicated sometimes our regulations are. It takes a group of people working with it consistently to understand what the regulations are saying and what our purpose and our goals are. It also allows staff and the zoning boards to develop a relationship.

So, in talking with the zoning boards, they were, by far, against the consolidation. There are two comments that we heard regularly from the zoning boards: (1) Zoning boards know their jurisdictional areas and they feel comfortable with that, and they wouldn't feel comfortable with a
combined area that is bigger than what they currently are now. (2) Obviously, there would be an increased workload. The workload that is now split amongst four would be put into two. A couple folks did like the consolidation idea and reiterated a lot of the same thoughts that staff is stating as reasons for the consolidation.

Here is a graph that looks at the number of applications that were submitted by the public to these zoning boards over the last couple of years. So, it is an increase. You go from 15 and 4 in Aubry and South-Central in 2015, which is 19 combined. And then, in 2016, it was 17 and 8, for a total of 25. And similar numbers for the Southwest/Northwest – 12 and 8 in 2015, for a total of 20; 4 and 16 in 2016, for a total of 20.

So, I will stop there and let the Planning Commission discuss. There are several options. We have a recommended motion in your packet. There are four options: The Planning Commission can forward a recommendation to the Board of County Commissioners to consolidate. The Planning Commission can put a recommendation forward not to consolidate. You can make no recommendation. Or, you can ask for more time or more information. I'll stop there and take any comments you might have. Again, we're looking for a recommendation from this group.

Comm. Huggins: It's my understanding that the main impetus for this change was the lack of quorums on these boards. Or, has there been a problem filling four boards?

Mr. Pietig: All the reasons I stated are why we're looking at it. Quorum is one of the issues. It's the continuation of the annexation and expanding of the incorporated areas, is why we're looking at it. That's one of the reasons we think it's a good idea.

Comm. Huggins: I guess I see no reason to consolidate if they can function properly as four separate units. If there is a demonstrated need. Do we have records of the number of meetings that were not held because of lack of quorum?

Mr. Pietig: Last year, there were two at the Aubry-Oxford and one at the Southwest Consolidated boards that I recall, during the last year.

Comm. Huggins: The reason I bring that up is because I've experienced that myself. I think that would be justification if they're not functioning. If they are, we need to fix it, and one of the best ways to fix it is to try and consolidate. That would be my reason to keep it.

Comm. Atwell: I'm with Southwest Consolidated. I have a bunch of my board members here. I would tell you that we have not had an issue with filling a quorum. I believe there was one time, but there were circumstances because Ms. Hoffman moved out of the district. But, that is the only time. We had a full sitting board. Our board has discussed this at several zoning board meetings. Darren Shaffer is our chairman. Our board is totally against consolidating. If the other three want to consolidate together, but we want to stay as a separate zoning board.

Comm. Neese: I live on the northwest, originally with Olathe and consolidated with Monticello and Lexington. I believe the reasons for that consolidation was because of the territorial changes with the cities coming into that area. I think I've been on the board since 1983 or 1984, and I cannot recall a meeting where we didn't have a quorum. I know there were a couple times that we had appointed members and there was a change in that personnel area, and it maybe took a little bit to find one board member. But, I don't recall us having a long period of time without people. Our board is very well attended. I don't know about other areas; I can only speak for ours. If that's the reason to do it from the Northwest, or that's not a reason that pertains to that board.
One question I do have, is there a feeling in some of the other areas of being squeezed out territorially? And that’s why there is a pressing issue? For example, Northwest. Like I said, it consolidated because of the lack of territory. Is that the reason? Because I’m asking if that’s more appropriate, for one zoning board to consolidate with another one as we did.

Mr. Pietig: Annexation is one of the reasons that we’re looking at that. In the southwest area, there is the Burlington Northern, Edgerton and Gardner, and they’ll continue to expand fairly rapidly. So, we see that area in the next five years would be annexed quite a bit by those two entities. Spring Hill, too, more than the south-central area. And then, both South-Central and Aubry-Oxford are seeing Overland Park and Olathe and more annexation. So, this is one of the reasons we think it’s time to consider consolidation.

Comm. Neese: There might be a couple existing zoning boards that don’t have that pressure on them right now. Time may take care of the fact that they’re being pressured because of the annexations. Right now in the Northwest – and maybe a couple others – there’s really not a big pressure for annexation. We have to take that into account.

Comm. Hutchins: Brian, based on the feedback that your department has received, was there any feedback in favor of consolidation?

Mr. Pietig: A couple zoning board members did say they saw the logic behind staff’s recommendation, and agreed with it. But again, the vast majority of folks on the zoning boards were stating these very reasons for not supporting that.

Comm. Hutchins: Okay. I don’t see an option on there that we recommend to the Board of County Commissioners to leave it as is. I think that should be an option 5 that should be considered by this board tonight.

Chairman Iliff: I would take that into account. Point taken, Mr. Hutchins.

Mr. Pietig: Number 2 would be where I would see that, as well – Discuss and forward a recommendation to the BOCC to consolidate zoning boards other than that as suggested by staff. Which could be to not consolidate.

Chairman Iliff: I will weigh in. All told, I served on Aubry and then Aubry-Oxford Township Zoning Board and the Planning Commission for about 30 years. I remember when Aubry and Oxford were consolidated. Oxford had been taken down to a few hundred acres at the time, and as a consequence, there was very little purpose for the existence of a separate zoning board for them, and almost impossible to get enough volunteers. I think the people from Aubry Township – and I was one of them – agreed to that consolidation. I thought it was timely, it made sense, plus because all of us drove north through Aubry Township every day, we really felt like there was a deep relationship there. So, I had no opposition on that, and I had no comment on any of the other previous consolidations. I would suggest two things have happened. One, annexation has slowed down, at least in regards to Overland Park. I think it’s going to be a while before Overland Park takes any more of Aubry Township into its fold, other than through voluntary annexations, such as they have most recently. And the relationship between Aubry Township and the South-Central Township is not one that has a natural affinity between the two. They are very different in their make-up and their style, their composition and their housing, traffic patterns, and everything else.

I have had a few calls on this from people out in the Aubry Township, and the feedback that I’m getting is not that it shouldn’t be done, but that it’s premature. And I think the same could probably be said for the other one. I think the work that staff has done and the report that they have prepared is excellent, and I would say to keep this on ice. My recommendation to the Board of
County Commissioners would be to delay action until there is further annexation, making it obvious that you either cannot get quorums, or you don’t have enough projects to look at. I know Aubry Township looks at a lot fewer applications now than they did 10 years ago, but it’s kind of held steady for the last two or three years. That’s my thoughts. I’m open to a motion.

Mrs. Atwell: I’ll make a motion, unless you want input from my zoning board. But, I’m good with it. I recommend that the BOCC leaves the four existing Johnson County zoning boards as four boards.


Chairman Iliff: It’s been moved and seconded that the zoning boards remain as is for the time being.

Motion passed unanimously.

Mr. Pietig: I will be taking this as an item for the Board to consider, and I will advise you of the day. It will probably be early August. We will convey the recommendations of the Planning Commission and your comments. Thank you for considering it.

G. ANNUAL COMPREHENSIVE PLAN REVIEW

Mr. Greeley: Pursuant to Kansas statute, the Planning Commission regularly reviews the Comprehensive Plan. Over the years, that has typically occurred in the first quarter of each year. The Planning Commission has conducted those annual reviews and determined that the Comprehensive Plan remains current, finding that no portions are obsolete. That finding is typically forwarded to the Board of County Commissioners, who are not required to take action on this through a formal public hearing or anything like that. So, attached to this memo is information relevant to the review. The primary information in here is about annexations that could change the County’s plan. The information on annexation shows that since April 2016, about 600 acres – or about 1 square mile – has been annexed. That was spread over five different fringe cities. At your places I printed a map that I did not have available for the mail-out, and it shows those spots of annexation. You can see they’re spread out from east to west across the fringe area. That’s not a lot of land area in the big scheme of things, and it’s staff’s position that it does not warrant a map amendment. We did do a map amendment back in 2015, which was the culmination of several years of annexation, where the map really needed to be updated. So, that’s what we’re anticipating here, is that in a couple years, we’ll take a look at it and see if the map needs to be updated.

Also, nothing has occurred to warrant change in the text of the plan over the last year. Just to remind you, in 2015, the policy area map was updated. We added language about the Johnson County Park District’s Legacy Plan in 2015, and in 2013, we updated the plan for the Stilwell community area. So, those are some recent updates that are fairly significant, but nothing like that occurring right now. So, on the back page of the memo is our suggested motion for the Planning Commission, to state that we have completed the review, and it remains current and is not obsolete. We will forward this to the Board of County Commissioners at a date in the future.

Chairman Iliff: The Overland Park proposed annexation at the southeast area of their map, do you know what the timeframe is for that?

Mr. Greeley: You’re looking at a map that says “proposed?”

Chairman Iliff: Yes. Is this the right one?
Mr. Greeley: Yes. I missed that part of it. I don’t know that that would reflect “proposed.” That was to reflect what happened in the last year, or since 2016. So, disregard that. There are no annexations that I am aware of.

Chairman Iliff: I just happen to live in that area so I have a special interest. Do I hear a recommendation for the Board of County Commissioners?

Comm. Huggins: I move that the Planning Commission has completed its 2017 annual review of the Rural Comprehensive Plan and determined that it remains current and is not obsolete, and forward these findings to the Board of County Commissioners.


Motion passes unanimously.

H. COMMENTS FROM THE LEGAL DEPARTMENT

Mr. Jarrett: I am chief legal counsel for the Board of County Commissioners. I’m glad to be back here. We had a previous discussion, and I’m not going to try to repeat everything that we covered last time. However, I will go over the highlights to make sure that everyone is fully conversant. If you have questions, we can answer those.

To start with, we’re going to primarily be talking about agricultural land uses, but we’re going to put it in the context of how it relates to what we call a traditional farm, which includes growing of crops, harvesting of crops, and the husbandry of animals, and how it applies to this bigger question of agritourism. That is, activities that would bring people to the farm for the purpose of experiencing what activities go on. From our perspective, they are not one and the same. They are two very distinct things arising from some different relationships in the law.

Now, I’m not going to try to provide you with a lengthy legal argument. I’m not going to hand out briefs or cases. Certainly, you planning commissioners need to have a familiarity with what the legal principles are that apply to some of the things that you have to opine. And certainly, if you have questions about legal issues, you should be able to ask them, either of us, the staff, or some other type of assistance from others. And certainly, you should be able to hear from the property owners and the folks who are covered by our regulations on what they perceive to be issues, whether they be legal or otherwise. What you should not feel compelled to do, however, is sit as a court and actually reach a conclusion that this is what the law is. So, while we will talk about legal issues, I don’t want you to feel compelled to make this conclusion, that because of this case or that case, or some argument that either the property owners make or I make, that this is what is actually decided. Those issues, particularly in Kansas and related to agricultural, are most uniformly case-by-case decided, and most of the time they’re going to be decided by a court. When we get those decisions, we would go back and say this is what the court said, and here is how we think it applies.

So, my intent in talking through this is to just give you some guidance, because your charge is to make policy recommendations, whether something is covered this way or that way in the law, it does not necessarily proscribe you from saying, “This is what our policy recommendation is.” Simply because we can regulate something doesn’t mean we have to, and simply because we can’t doesn’t mean we don’t have recommendations that something that needs to be dealt with on this or that type of an issue. So, your role is to find those recommendations, not to reach a legal conclusion. I’m not going to ask you to do that tonight, or at any other time. And we will freely provide you with whatever answers, documents, extra things that you may want to help you as you look at some of these issues.
Let's talk first about agricultural uses and agricultural uses in Kansas. There's no question that Kansas is an agricultural state. Many states have a preference in their laws for traditional farming and agricultural uses because those are the roots of what we have in many of the states, and Kansas is one of those. Now, you should understand that Kansas does have a favored status, if you will, for what we refer to as agricultural uses. The question is: What is an agricultural use? And, how much coverage the, the legal concepts applicable to agricultural uses apply to many of the things that can and do go on and around farming types of operations. Now, Kansas has a fairly good body of law that we can look at, where there have been cases decided that talk about what it is we look for when we're trying to determine if something is or is not a particular agricultural use. Many of those have been cited to you with written things; many of them that you have received copies of – Again, I'm not going to ask you to go through those and decide what it was that the court actually said.

What I want to talk to you about is if we take that body of law and look at those cases, we can, in fact, come down to some fairly basic things that exist in each one of those cases, and that do, in fact, guide some of our thinking when we're talking about agricultural uses, as it relates to what municipalities or local governments can do for zoning regulations. There are other bodies of law that apply to many other aspects of farming operations. I'm not going to go there. What we're talking about are those that may be impacted in one way or another by a municipality or local government doing zoning. And in the briefing that I provided, I clipped a quote from one of the cases that generally summarizes what that body of law is, to the extent you want to look at those. And again, I'm not here to say, "Read this case for yourself." What I'm going to tell you is that there are some basic pieces in those cases that we can look at.

For example, the VanGundy case is the one where the farmer was digging a pond, and in the process of digging the pond, had to excavate some rock. And in excavating the rock, being a fairly entrepreneurial person, he said, "Hey, this is not useful to me, to keep this rock. I ought to sell it." So, they began selling the rock to those who might want it. And the County took exception to that and tried to say that the gentleman was operating a quarry on his property, and that he was not allowed to do that. That case went through the court system. Now, what the court found was not the quarry is an agricultural use. What the court found was that the property owner was simply using the property for an agricultural purpose, and a part of what served that agricultural purpose was a pond. And ponds are fairly traditional with farms. And once the farmer dug the pond, he was entitled to dispose of the waste that came out of the pond. And if he wanted to do that by selling it as opposed to hauling it off, he could do so. The court did not say a quarry is an agricultural use. What the court said was that the farmer was making an agricultural use of his property by digging a pond. Had he been continuously running an activity which over and over quarried rock that did not contribute to his farming operation, I'm convinced the court would have said that is not an agricultural; that's a quarry use. But the court recognized that in the process of doing his farming, he dug a pond. And whether it was dirt or rock, or whatever, he had a right to get rid of the soils. And that's what he did. That did not convert his use to something else, and he could not make continuing use of the taking of the rock.

Another case you probably heard about is the Svoboda case. That's the one with the airstrip in Miami County. And you probably heard that what that case decided was that an air strip was an agricultural use. That's not what the court decided. What the court decided was the property was being used for traditional farming operations; that is, the raising of crops. But the farmer was utilizing an airplane for the purpose of dusting his crops. And that in doing that, he had a place on his property where he could take off and land. And the court said that's an agricultural use because all he's doing is using the plane as an implement in his farming. The court did not say
an air strip or an airport would be an agricultural use. Again, I would say, and I believe I'm correct, that had he been running a courier service or a passenger service out of that air strip, the court would have made a different conclusion. But the court was very specific that under these facts, the farmer is using the air strip to land and take off for the purpose of dusting his crops. No different than if you had a road going out into your fields that your tractor had to go on. Doesn't mean the road is a road. It means that you have to be able to get your tractor to the field. He had to be able to get his plane, which he was using, under the facts of the case, only for the purpose of dusting his crops. And the court concluded that that was an agricultural purpose. It wasn't that the air strip was. It was that his use of the land was agricultural.

Another case that I'm sure you've heard of is the Corbett case out of Shawnee County. In that case, a property owner maintained a large acreage and planted certain types of grasses and crops for the purpose of attracting wild birds to roost on the property. And then, he had individuals come to his property, who would then pay him to wander through the field and shoot the birds. Shawnee County took exception and challenged the lady and gentleman who were part of that operation and went to court. The county primarily objected to, not the raising of the grasses to attract the birds, nor the harvesting of the birds, but the fact that the couple charged people to come onto their ground and essentially hunt. And the court concluded that the harvesting, if you will, of birds is no different than raising them yourself, and that is an agricultural type purpose, if the mechanism you choose to harvest those is not to run around and catch them yourself, but to have someone else come to the property for the purpose of harvesting the bird crop, if you will, that that was an acceptable agricultural use. And the fact that the farmer charged for it didn't change it from an agricultural use. It was entitled to charge people to come and do that harvesting, similar to someone who comes to an orchard and wants to pick apples. You don't have to give them the apples. You don't have to let them come on your property and pick apples for nothing. You can charge them for the apples, and that's what the court concluded, that they can do that. The difficulty in the Corbett case was that the county did not actually object to any of the activities of the hunting and the harvesting. They objected charging for it. And the court said it's a permitted use whether you charge or not. So, it dismissed fairly quickly the discussion as to what it was that might constitute the agricultural or not agricultural purposes.

Now, there were a couple other questions raised in the case, one of them being the county believed that there was a snack bar, and the court made a very quick decision on that, basically saying there was no snack bar because they did not charge anybody for any food. But, they provided coffee from a thermos and some snacks for those who were hunting. They also objected to the couple allowing the hunters to utilize hunting dogs that the couple would provide. The court made quick decision on that by saying that was nothing more than helping people go out to harvest. No different than if you take folks down and show them where the apple trees are. They could utilize the dogs to find the birds that are ready to harvest.

The third thing they objected to was that they would allow the hunters, at no extra cost, to do some practice skeet shooting before they went out to harvest the birds. And the court basically said that doesn't change anything. All they're allowing them to do is to practice before they go harvest. It's like picking apples and someone showing you the best way to pick the apples. So, the court said those things did not change the essential use. The court did not say that it was an appropriate extra use for any of those things. They said it was part and parcel to the actual underlying agricultural use of the property.

So, if we take this group of cases, and there are a few others that have the same kind of conclusions, what the court looks for is, is the purpose for which the property is being put to use
one of those that is related to the traditional acts of farming? That is, are we growing and
harvesting crops? Are we doing husbandry of animals? If yes, then we’re going to define the
agricultural use according to that part of the traditional relation to farming. When you drift from
that, the courts have found it an agricultural use, and I made reference to a couple of them,
where the court has basically said raising greyhounds to race is not an agricultural use. Training
and boarding of other people’s horses is not an agricultural use. And training of horses for racing
is not an agricultural use. And the rationale behind that was those are not related to the traditional
acts of farming, or what we call other agricultural uses, whether it’s ranching or those types of
things.

Chairman Liift: Let me interrupt you. You’ve made a legal argument here that is coherent and cites
all the development cases and state law. I think the board appreciates that. We have a case that
is pending in the county right now involving Kansas City Wine Company, where the County has
essentially taken the position that you’ve just outlined with regard to the activities on that property,
and has cited them for a couple violations. That’s pending, as I understand it right now, in the
district court. Your point is very well taken. We are not a court, judges, or a jury. We are a policy-
making body, which means that we have to go with the clearest understanding of what the law is.
And I would have to say that the reading of the cases that you’ve given us would allow for an
argument for a different conclusion than the County has with regard to the Kansas City Wine
Company. I can’t talk about other hypothetical situations. So, as I understand it, motions to dismiss
have been filed, briefs have been filed by the attorney general and the Department of Agriculture
in support of KC Wine Company, and that’s all pending in front of a court, and I don’t just feel
competent to make any comments on that while that’s pending. Although I think your position is
very well taken, and we have received from members of the public and various sources a number
of copies of those cases and that sort of thing. So, I think those of us who were paying attention
and reading the materials are advised with regard to what the argument is. I just don’t know what
the court is going to rule. I feel like we have to wait until the court rules on that, or the court of
appeals rules, for that matter. Or the state supreme court. I don’t know who is going to be the final
arbiter of this, but it’s not going to be this body, I can assure you of that.

So, as I understand it, the matter is set for trial sometime in August, but that there could be rulings
before that time, either to dismiss the cases or to let them proceed to trial. I just feel like it is very
important for this board to know what the court thinks of this case before we proceed. That’s my
thought.

Comm. Neese: Mr. Chairman, that may be well and good, but what I’m hearing from this is that
we’ve had a lot of input from the zoning boards and specific groups about cases. So, by his
explaining his overall picture of the thing, I don’t see how that hampers us hearing the rest of his
presentation.

Chairman Liift: Well, I was hoping we could wind it up because I know there are people here who
are going to want to comment. I didn’t mean to terminate the conversation. I wanted to let you
know where I thought the board needed to be, and really, with your advice. And I think we will
follow your advice.

Mr. Jarrett: And you have another agenda item later that’s probably more directly related to that
topic. We are not trying to litigate the winery case here. What we’re trying to recognize is that
there are proposals for what we will refer to as agritourism-type operations, whether they be u-
pick type of things, whether they be event-type things, whether it be this winery, or other wineries.
And that there are some principles that we are presenting to the Planning Commission sometime

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later this summer that would have some regulations on how we better understand how we're intending to pursue those kinds of activities in our unincorporated area. At that time, you will open your hearings and do those kinds of things and make decisions. We may have a conclusion from the court on this one case, or we may not. By then, we may have more than one case; we may not. I don't know.

But, to briefly highlight what staff sees as questions related to agricultural uses and the intended activities go with them, I would like to address that a little further. Before I jump there, I want to be sure we understand that the agricultural exemption from zoning is not absolute. We talked about that last time because it basically says that as long as the property is used for agricultural purposes and not otherwise — and we can all debate, and us lawyers will debate, what that clause “or otherwise” means, but it is in the statute. So, it does have to mean something. So, what I want to be sure we understand is that just because someone says they've got an agricultural use, it does not mean that they are beyond any form of regulation. We have to look at those circumstances, and you as the Planning Commission have to be able to set some policy with respect to those that we may, in fact, be able to regulate. As we talked last time, the County, up to this point, based on your predecessor Planning Commission and the will of the Board of County Commissioners and staff’s recommendation, has opted not to regulate land uses where somebody is doing traditional farming and has their house on there, even though legally we may be able to do so. The policy decision has been made that we’re not doing that, and the only place that we do is with respect to ruminant cattle that we talked about briefly last time. But I want to make it clear that simply because we say we can does not mean we’re urging you to do, and in fact, historically, your predecessors, the Board of County Commissioners, planning staff, and the unincorporated area have been adamant that we’re not getting into regulating traditional farming activities. So, we’re not urging any of that.

Now, with respect to this idea of agritourism, I want to be sure that you understand that when we use that term, it arises from a totally different legislative act than what we’re talking about in zoning. It’s the agritourism act that was adopted in 2004. So, when I tell you that there are no cases, or those we’ve discussed here defined as agricultural do not discuss agritourism, primarily because all those cases came before the agritourism statute.

So, what was the purpose of the agritourism statute? I quoted it for you in my short paper there what the legislature says is the purpose, and that is to promote rural tourism and rural economic development, encouraging owners and operators of farms and ranches and rural tracts of historic and cultural and natural attractions to invite members of the public out to their property to — and it’s important to hear this part of the language — to view, observe and participate in such operations and attractions. So, what the act is intending to do is say we want you to let the public come and experience what goes on the farms. Now, the act itself doesn’t mention zoning. It doesn’t talk about any exemption from zoning. It doesn’t talk about local authority at all with respect to agritourism. That’s not the purpose of the act. The purpose of the act was to limit the liability of those operating a licensed agritourism business when they invite the public out. Because if you’re a farmer and you invite people to come out to see how you farm, and they decide to trip over a hay bale, or whatever, you don’t want to be sued. So, you’re not prudent if you’re inviting public members out there. You’re not going to do those things that lawyers would be telling you, you have to clean up this, you have to put a sidewalk in here so they don’t trip, and all those good things to minimize your liability. The legislature said we don’t want that type of approach. We want people to be able to experience the rural lifestyle. And we want farmers to be able to do that. That was the purpose of the agritourism act.
Comm. Hutchins: I have a question. When was that act put into place?

Mr. Jarrett: It was adopted in 2004. It was after quite a lengthy discussion from a number of farmers, and the legislature needed to do something if they wanted folks to come out and visit the family farm. And a number of states have similar things. What I want you to appreciate is it has a totally different purpose than what we deal with when we're talking about land use and land use applications, and the legislature did not put any provisions that said, oh, by the way, it's going to be exempt under the zoning-type statute. So, what we have with the agri-tourism uses is how do we approach looking at the scope of an agricultural use, and at the same time, serve the purpose of the statute in attempting to get people to come and experience. And as we looked at it, if, in fact, people are there to view and participate and take part in the agricultural activity itself, we don't have a problem with that. And we believe that's what the legislature intended.

Where the questions arise is when you begin adding some types of activities and things of the nature of food trucks, concerts, weddings, and other things that we would not say are traditional to experiencing the farm or agricultural activity. Now, with that said, it's not that we don't understand that those are, in fact, very meaningful activities for different people, and that there are ways in which those activities can be beneficial. What we're saying is they're not exempt from zoning regulation. They need to be viewed as to what can and should be regulated, and to what extent, and just like other business activities in the unincorporated area, including those that are, at times, operated on agricultural-type properties. If they're not agricultural-related, they need a conditional use permit or some other type of zoning action. So, what we're looking at is how to prepare a set of regulations that can, in fact, serve the policy provision of, these are activities that might be acceptable in certain areas, be it on location, roads, sanitation, and those kinds of things, and which ones we need more regulatory aspects to look at. That's the process that we've been going through in attempting to draft the regulations.

Now, I know you've heard and there's lots of questions about, what's wrong with having, if it's occurring on agricultural property and somehow economically benefits that operation, why shouldn't we have it? Such as concerts, food service, those kinds of things. And the difficulty we look at is, when you start talking about those events, the question becomes, where do you stop? Where is it that you've reached an event or activity that everyone in this room would say it is not agricultural-related? Now, clearly, there are some, when you get to a u-pick type of operation, for example, that folks are going to say, hey, why can't I have people come here and get a basket and go pick my strawberries, grapes, whatever it is that I'm growing there? And we would look at it and say that it seems to be an agricultural activity. Sure, you ought to be able to do that. Then the question becomes, well, can I sell them related products? And the question becomes, okay, how related are the products? How about I sell them the strawberries or the apples? Sure, you can do that. What if I serve them juice? You could probably do that. What if I bake them in a cake? What if I turn them into another product or ingredient? At what point do I cross the line from being within the scope of agricultural use to being beyond it? And what we're concerned with is if you say any of those activities that somebody believes is best for their operation are acceptable, you have no way you can draw the line. And there's nothing you can stop having. I can take somebody who raises beef and build a McDonald's. And I can argue to you that that promotes my ability to raise cattle, to sell the cattle, to use the cattle to benefit my farming operation, and you can't stop me from having a McDonald's on my property. I think we would all conclude that is not the purpose of an agricultural use or exemption, nor is it the purpose of agri-tourism. What we're saying is that there are some activities that clearly relate, and we ought to recognize them. There are some activities that aren't. And it's finding that line to draw that we're looking for, and we would like to do it in concert with good policy-generating procedures, is why we're taking time to draft these, to
give you something that you can then take to the property owners, the various people who operate these kinds of establishments. We can look at other types of circumstances, and we can have public hearings. And we do know from some that are currently in our pipeline that there are other agricultural users who object. We know that there are other folks who think they are good. And that means we’ve got to have that open discussion, and we have to deal with what is the policy we want to recommend, and where do we balance the interests and draw the line? And you’re going to be a very important part of that process from a policy perspective. What we’re going to have to do, with the help of the operators and the property owners, is let you know where those lines are and when they begin to be an issue. So, if the operator tells you, hey, if I can’t do X, that is infringing too much on my ability to do something, and we’re going to have to tell you, yeah, but if you let them do too much of X, then that’s going to create these kind of land use problems, and thus, we’re going to have to balance where that line goes from a policy perspective. Because that’s the only approach that would reasonably work.

Chairman Iliff: Mr. Jarrett, for the sake of expediency and out of the fairness to the people who are here and want to talk, we encourage you to wind it up, please.

Mr. Jarrett: Will do. So, I think we start, whenever we’re dealing with one of these questions, with how we define the underlying agricultural use. Then we define from that agricultural use what is the scope of things that are related to it. Once we have that, we find out what it is, the events and activities, that someone wants to propose be a part of that agricultural use. Then we have to have a discussion of, this one requires something else, and that one doesn’t. Again, those are policy questions, and you’re going to have to review the policy. You’re going to have the folks who say I think it falls within, and those that think it falls without, and we’re going to have to have ways to resolve those differences. Are there any questions?

Comm. Hutchins: Have there been any amendments to the original 2004 statute that was put in place?

Mr. Jarrett: Yes. In 2012, there were some refinements made to the statute primarily around the assumption of liability and insurance requirements. But none related to the purpose for, the aspects for what we discussed. Most of them deal with how you register with the state, what that entitles you to insurance-wise, and the assumption of risk for the folks that come out to visit.

Comm. Huggins: Do you feel like the need to establish a limit on liability indicates any expansion of the definition of agriculture, or expansion of what is acceptable as agriculture?

Mr. Jarrett: I don’t think it changes the scope of what is agriculture. I think what it does is help assist agricultural operators, farmers or ranchers, to make different use of their property. But I don’t think, if you’re talking about somebody coming out here and picking my apples, or someone’s u-pick operation actually expands from the definition of agriculture, you know, people come for hay rides and other types of interactions on farms, I don’t think it expands that. I think it just makes it easier for the farmer economically to do that. I think once you get beyond what the standard or traditional farming operations are, you still get the limited liability, but it doesn’t arise strictly from the fact that you’re running an agricultural operation. It extends from the fact that you are a licensed tourism business by the state of Kansas. Even the definition of agritourism includes other activities beyond simply the agricultural aspect.

Comm. Huggins: And do you feel like we have the right to regulate those activities, agritourism?

Mr. Jarrett: I think we not only have the right to regulate things that go outside the scope of traditional agriculturally-related activities, I think it’s a responsibility to put in place the check and
balance so that other folks, the farmer that’s across the road, has an understanding of what it is that may or may not be done on neighboring property. I think those who run similar types of businesses but not doing it on their agricultural property have a right to have folks try to meet the same types of business standards that they have to meet.

Comm. Hutchins: Does it not seem counterintuitive that Robin Jennison, who is actually the head of the state Department of Wildlife, Parks and Tourism, has a very different take from what you just described here? If I could summarize, what you’re saying is that tourism and the act that was put in by the state is nothing more than to protect the agricultural community from liability. And yet, when I read what Robin has put in this letter of October 27, 2016, it clearly states that it’s trying to promote additional revenue, both for the agricultural community, and it’s clear that it’s trying to promote revenue for the state, as well. Can you provide us why you think there’s such a large gap in what the head of the state department of tourism has here versus what you’re telling us today?

Mr. Jarrett: I don’t know that there’s as large a gap as what you’re looking at. I think if you look at what he’s talking about, it’s how do we, as a state, promote our agricultural uses? And what we want you to do as local government is have, within reasonable guidelines, what it is that are agricultural uses. I don’t think you see anything in that letter that says whatever events or activities that people want to conduct on their property, you have to accept. I think what it’s saying is, agricultural uses need to be respected. If they’re exempt, I want you to identify that. This is the prima facie case, which is another type of issue, but it basically says if they’re licensed agritourism, it’s prima facie that they’re agricultural. But it doesn’t go on say that, therefore, you have to accept everything and anything they do. Otherwise, there would be no consideration. It’s a matter of recognizing they’re agritourism, so somewhere in here, there should be some recognition that it’s an agricultural use. And if that’s the case, we want you to give them the benefit of the doubt. But nowhere in his letter does he say all kinds of events and activities are acceptable as a part of that activity. And I haven’t talked to the gentleman personally, and my guess is that he would not put that in a letter to you.

Comm. Hutchins: I actually met Robin Jennison and we talked about this six years ago. Robin’s intent is to promote revenue for the farmers who are struggling to meet ends, as well as they’re trying to figure how the rev up the state’s economy, and increase tourism in the state of Kansas. So, I know specifically that Robin is obviously in favor of promoting agritourism and does not want to regulate or have agritourism regulated. I think he mentions in here, as well, that, you know, it should be liberally construed in the property owners’ favor. I think that’s also found in the state’s wording, as well. So, I know for a fact that Robin is trying to promote this, and it goes well beyond liability. It’s trying to promote revenue for the farmers in the state of Kansas. So, it appears that there is a large gap. So, my question is, how do we collectively close that gap between what the state is saying and what the county is saying today? I don’t know that I have the answer, but I think that’s one of the questions that we have to start solving.

Chairman Jiff: I don’t think we’re going to solve this tonight, and since the County has taken it upon itself to file charges against an agritourism activity that they feel requires a conditional use permit, and it’s pending in front of a judge here in the County, and there is a motion to dismiss on file. Today, I saw a brief filed by the attorney general of the state of Kansas and the Department of Agriculture, taking the position that this is an agricultural use, and therefore, the charges should be dismissed. I’m not saying they’re right. The attorney general is just another attorney with an opinion. But, it appears to me that between whatever department is in charge of tourism and the Department of Agriculture and the state attorney general, that they feel that it should be the policy
of this state that agritourism activities that are closely related to agricultural use should not be regulated. But, I think there’s a line to be drawn there. I don’t know where that line is there, and I’m not prepared to draw that line tonight. And I think we need the advice of a judge who is maybe going to give us some definite line where we can say, this you can regulate, this you cannot. Or, it may just simply be some dimmer line that says, well, I find for the KC Winery in this case for the following reasons, but doesn’t really give us broad guidance with regard to broader and more extensive activities. I think we’ve certainly heard the regulatory side of it tonight.

Comm. Atwell: For you, Randy, I have done a lot of research and called different counties. At Miami County, I talked to a gentleman named Thor in their planning department, and they put out Miami County’s definition of agriculture. Number 14 on that list is operating a farm winery as defined by state statute. And in my conversation with him about that, I asked him how they were perceiving activities and how they were going to regulate them. He told me that it’s their position that operating that farm winery as defined by state statute, that they can have activities if they are incidental to the agricultural operation. They took the position, according to the Corbett case, that activities were part and parcel, so they were allowing them.

I also talked to Dale Miller at Sedgwick County. He provided me with their agenda, and they’ve passed extremely liberal agritourism definitions to promote farmers, help them with income. So, I can make copies for everyone.

Comm. Hutchins: I apologize. I’m new to the board, so I want to make sure I understand. Are you all saying that Johnson County filed suit against another company in Johnson County? Yes? [No audible response.] Okay. Who approves that?

Mr. Jarrett: That is basically approved through our code enforcement operation, from Planning, to Legal, on through. It was discussed with county commissioners. We cited them with a code violation for conducting an event which was not permitted, in our opinion, on their property.

Comm. Hutchins: Was this board consulted ahead of that being filed?

Chairman Iliff: It was not. That’s not our job. We are a policy-making body, and this was the codes enforcement and the legal department’s job. Now, I’m eager to have resolution of this case because I think it will give us some very strong guidance with regard to what we can do. And as Mr. Jarrett said – and I have to agree with him on this – meaning that because we can do something doesn’t mean that we should do something. I might quibble with some of the finer parts of your arguments tonight, but I think in broad terms, you’ve simply stated what the law is. But, Johnson County has had the right to zone since 1926, when the United States Supreme Court said that communities have the right to zone. We’ve done that for close to a century. But, zoning laws must be construed liberally in favor of the landowner. That is very much a part of that same body of law. And we know that agricultural uses are exempt, and the Kansas attorney general has said that a farm winery is an agricultural use. He has not opined specifically with regard to what can take place in addition to that. You know, can you do events? Serve food, wine, and that sort of thing? That’s being contested in the court right now, and I think we’re going to get an answer to that.

I also think that it is clearly the policy of this state, both by statute and by the elected and appointed officials, that agritourism is to be strongly promoted. Which means that even if we found we had the right to regulate something, we would want to tread extremely lightly.

Comm. Hutchins: So, why do we file a lawsuit? Who made that decision? Why would we file a lawsuit?
Mr. Jarrett: It's a citation for violating our regulations for what they can do on their property.

Comm. Hutchins: Well, we are sitting here as a board today, trying to define it. That's our challenge. And you superseded this organization and filed a lawsuit. That's what I don't understand.

The other thing I don't understand is this: The zoning board, as well as this organization here, recommended that we not consolidate the districts. And what did we hear? We heard that staff still continued to make a recommendation to the Board of County Commissioners of consolidation.

Chairman Iliff: I don't mean to correct you, but I didn't hear that.

Comm. Hutchins: Did I not understand? Is that not what we -? My question is this: Isn't the responsibility that you put upon us here is to basically come to us and ask us for guidance, of which you follow that guidance and carry forward jointly to the Board of County Commissioners, for their approval? So, what I'm hearing is we're all saying one thing, and you guys are going to do your own thing. And I'm trying to understand what our role is. Are we simply window-dressing here? Or, are we, as our voice in what we're determining here, really going to be taken to heart? And we're all united in what we're wanting to accomplish here.

Chairman Iliff: Let me speak to that because I've been chairman of this board more years than I can remember. We work very closely with staff, and I have never had a circumstance where the staff did something in opposition to or in contravention of a vote that we took here. That is not what staff does. Staff comes with suggestions, and they ask for our opinion, and we give them our opinion. Tonight, with regard to our consolidation, we gave them an opinion. I anticipate that that will be reported to the Board of County Commissioners.

Comm. Hutchins: Well, what I read - and maybe I'm wrong - was that there was a recommendation by staff and legal that, one, there was going to be consolidation. The other thing that I read was that in the last meeting, we agreed to put the farm wineries as an exception, and what I read here today is, it says staff and legal recommend not to. So, help me understand. Am I wrong? And I'm simply asking for clarification. What is our role if staff is going to go completely against what we sit here and decide here today? I feel like we're having an identity crisis.

Chairman Iliff: Well, I'm not of the same mind.

Comm. Neese: I have a question of staff. When you make your presentation to the county commissioners, is your recommendation still going to be to consolidate, however, everybody else doesn't want to do that? The question is, if you're recommendation is still consolidate, then it meets his point. So, at what point in time does staff quit recommending what they want to do and take the preponderance of what everyone else wants to do and make that recommendation? And the way I understand it in the past, that's what happens. It still goes that you're recommending consolidation, but you gave your presentation here. All the others felt the people on the zoning board didn't want to consolidate. See? So, at what point do you trip over and become a representative of what the boards want to do?

Mr. Pietig: I do see the Planning Commission as the recommending body for policy to the Board of County Commissioners, and it's also our responsibility as staff to bring forward those recommendations that we believe are appropriate. I don't know how the board will decide on something like that, but I don't see the Planning Commission as window dressing, by any means. They follow, to a large extent, what the Planning Commission and the zoning boards bring forward. That's gone on here at the County for years. We have a different opinion on different things. I think it's a natural process that we move through these types of issues.
Comm. Hutchins: So, again, what you’re saying is you will recommend for consolidation when you carry it forward to the Board of County Commissioners.

Mr. Pietig: I will. I will also strongly voice the opinions that we’ve heard from the Planning Commission and the zoning boards. And ultimately, the Board of County Commissioners will weigh those recommendations and make a decision.

Comm. Hutchins: I think that’s a fundamental issue that we need to work through.

Chairman Iliff: We’ve been at this for 94 minutes. We’re going to take a five-minute break.

[Break.]

Chairman Iliff: I’m calling the meeting back to order. At this point, I’m moving to item I.

I. GENERAL DISCUSSION REGARDING AGRICULTURE AND AGRITOURISM

Chairman Iliff: This is an opportunity to hear from members of the public. This is not a public hearing in the sense that we are required by law, but it is an issue that I would like to hear what people have to say. Please keep your comments succinct if you can, but I’m not going to put any time limits on you tonight.

Sue Stringer, Kansas Department of Wildlife, Parks and Tourism, appeared before the Planning Commission and made the following comments:

Ms. Stringer: I manage the Kansas agritourism program, and I am very proud of it. I’ve been here before and did a presentation on Kansas agritourism. I am a Franklin County farm girl, born and raised. We still own 200 acres of my family’s farm, which has been in my family for over 100 years. All my family did was farm, so I know the industry. I am familiar with the need for extra income. My dad used to say that we’re the only farm family where one of the partners does not work on the farm to make a living. We had five kids. We did not have the luxuries of life, but we had slides that we could slide down, we had a hay mound that we could climb; we had ice that we could skate on in the wintertime. We did those various farm activities that many of these agritourism businesses have. We had apple and cherry trees. The city kids would come out and enjoy those activities, and never thought of charging for it. That was just part of our experience, which we wanted to share. Had my dad known that it was an opportunity for extra income, I still don’t know that he would have because he had the pride of a farmer, and he wanted to be able to share what he had with others, and I know how important it was to the heart and soul of that farmer.

Therein lies my love for agritourism. I see it as an opportunity for people who are farm families, rural communities, to grow through tourism efforts, bringing people to the farm, charging for their business to share that rural country lifestyle. Like I said last time, the difference between a wedding at a hotel in Olathe or a wedding on a farm is that you don’t get the same touch, feel, taste, smell, here that you get on a farm. It is a different atmosphere. My husband and I are blessed that we live in the country. It’s a different feeling. I know not all of you are farmers, but the ones of you that are can understand the different feeling, urban as opposed to rural.

Weddings are a huge industry in the state of Kansas right now and they want to have them on the farm. We have people coming from all over the world to attend country weddings in Kansas. It is a source of income to help diversify the farm. I would ask that you look at all of those things, realize the economic impact. Robin Jennison is very supportive of the agritourism industry. We have sat on a taskforce to try and help the counties come up with some sort of consensus. We were very happy when we saw what Sedgwick County did. It’s something I do day-in and day-out to help people. I would stand for question.
Chairman lliff: With regard to agritourism, I think staff is struggling with the limits. The one side says if we’re a registered agritourism activity, then the County can’t regulate us at all. The County is taking a position that is pretty much opposite of that. Do you see a happy medium here, where people could have weddings, but subject to time limits, hours of operation, noise limits, traffic limits, and things like that that conditional use permits often try to put in?

Ms. Stringer: I have seen it applied in other counties using tracks. If you’re this, then you can go down this way if you’re this. I’ve seen it applied by number of events, by decibel readings. I have seen it used in other ways across the state like that, but I’m not going to be the judge or jury here tonight.

Chairman lliff: We’re just asking for your wisdom.

Ms. Stringer: My wisdom? I think the idea that there’s going to be a McDonald’s sitting on a farm where cattle are raised is absurd. It’s not going to get to something like that. I think it would lose the integrity for the people who are in the agritourism industry in Kansas, and they know what their limits could and should be. I know that they see, say, Hermann, Missouri, getting a lot of the people from Kansas over there to enjoy their wineries and vineyards and events in Hermann, Missouri. From my standpoint, we have the same quality in Kansas. Why should we not be able to do that here? They can do it in most other counties in the state. I think Miami County was brought up, and I think they had times when they had to shut down some of the music. I can’t quote all 105 counties and what they have. There are 51 that are zoned and 50 that are not, so some people don’t even have this issue. And the population is different. I have to agree with that. But I think your population wants to go to things like that or we wouldn’t have businesses that have over 30,000 visitors per year to their pumpkin patches.

Comm. Huggins: This may be too difficult of a question, or unfair. I don’t know. Do you feel like from the state’s perspective, or your agency’s perspective, that the advent of agritourism has changed, defines different activities from what the state would consider agriculture?

Ms. Stringer: No, I don’t believe so. There have been weddings, keg parties, all kinds of events held on farms over the years. I think the opportunity to be able to charge for that is probably a newer thing, and probably the people from the farm, and wanting to have that experience with the fire and sitting around a fire, being in a relaxed atmosphere has changed, because the city folks don’t know about that experience. So, I don’t think the type of agritourism has changed at all. Is that what you’re asking? I mean, we didn’t have farm wineries. I think it’s wonderful that we found out we can grow grapes in Kansas again.

Comm. Huggins: I’m no expert, but it seems like the state of Kansas and Johnson County have always felt there were inherent rights in being a farmer or being involved in agriculture. And if those inherent rights haven’t change, it seems like our regulations are in order. If those rights have changed, then we need to change with them if we accept those changes. I’m not sure we’ve done anything along those lines yet. If certain uses are the property owners’ rights based on agritourism that were not rights before, we may need to adjust our requirements.

Comm. Hutchins: You mentioned you were here a few years ago -?

Ms. Stringer: About two.

Comm. Hutchins: What Mr. Jarrett mentioned was that the County only knows of agritourism as a means of limiting liability. Two years ago, were you discussing things of agritourism such as weddings, events on the farm that exceeded just how you limited liability to the ag community?
Ms. Stringer: My job is to promote tourism in this state through agritourism and the Kansas Byways program. I'm going to promote agritourism as a viable industry in the state. And if limited liability is part of that, is the statute, and it is what's provided the farmers the level of comfort, it's not a pay-out policy, it's a level of limited liability protection by statute. That is the law. As you said earlier, Robin Jennison's intent is to promote tourism within the state.

Comm. Hutchins: The follow-up question would be, in your opinion, obviously you work for the state of Kansas, so, does the legislature that is currently in place today allow for agritourism to expand beyond limited liability? In other words, what is in place today, from your perspective and Robin Jennison's perspective, is there legislation already in place that supports agritourism activity today?

Ms. Stringer: Yes. That's the Agritourism Promotion act.

Comm. Hutchins: So it goes beyond limited liability.

Ms. Stringer: Yes. It talks about limited liability, but it says historical, cultural, farm-related activities. Activities that take place on the farm.

Comm. Hutchins: In that legislation.

Ms. Stringer: Yes, the legislation addresses those types of activities and has to be widely construed.

Comm. Hutchins: This is a question for staff. Paul, does the County have a position on hosting weddings at a farm today?

Mr. Greeley: Right now, our regulations say event venues are a commercial activity and require commercial zoning and they are not a permitted use in the rural district. That's why the ticket was written, because we believed it was an event venue activity without commercial zoning. That's the way regulations are written right now, and that's been for 24 years.

Comm. Hutchins: So, the bottom line is, today, the County's position is you cannot host a wedding at a farm facility.

Mr. Greeley: That's what the regulations say, yes.

Comm. Hutchins: The next question I have is, does the County have a wedding facility today?

Mr. Greeley: Could you restate your question?

Comm. Hutchins: Does the County have a wedding facility today?

Mr. Greeley: Does Johnson County have a wedding facility?

Comm. Hutchins: Correct. Does Johnson County own and host weddings in Johnson County?

Mr. Greeley: Johnson County government generally does not. Johnson County Parks District has a facility.

Comm. Hutchins: Johnson County has a facility that hosts weddings.

Mr. Greeley: Johnson County Parks District owns the facility.

Comm. Hutchins: What's the name of that facility?

Mr. Greeley: Are you referring to Mildale Farms? I feel like I'm being cross-examined here. What's your point?
Comm. Hutchins: So, Mr. Jarrett, in your professional opinion, do you think it creates a conflict of interest for the County to be determining that a farm can host a wedding when the County actually has a wedding facility that they operate today?

Mr. Jarrett: I do not see it as a conflict, no. Parks conducts a lot of different activities that you can't do on your property because they're a farm. So, we have athletic fields. Are you saying that if you're a farmer, you get to have an athletic field, soccer field, lights? We have those in our Parks places. And I don't believe there is a conflict between the Parks District having a ball field, having a venue that hosts different types of activities, and saying what we want is a conditional use permit for folks who have other type of properties. So, that's the way we have to look at it.

Comm. Hutchins: Well, I'll go on record as saying I think it is a conflict of interest for the County to be determining whether or not you can host weddings at a farm when you have a farm in which you're hosting weddings today, under the County name.

Mr. Jarrett: We do not have a farm under which we're hosting weddings. What we have is a park facility that we do have weddings. We have park facilities that host gymnastics. We have park facilities for softball, and a lot of other activities. And in my opinion, we do not allow those on agricultural property.

Comm. Atwell: I fully agree with you, Randy. I have an issue with Mildale Farms being able to host. It's kind of like you're picking and choosing a winner or loser based on allowing one entity to have it without a CUP, and requiring -

Chairman Lillic: It's true. Mr. Greeley or Mr. Pietig, do you know how the parkland at Mildale Farm is zoned?

Mr. Greeley: Rural District.

Comm. Neese: I'm on a zoning board, and over the last couple of months, we have had some requests for piano key lots. I'm going to define those as narrow, long lots off the street. And in this last request that we had, the attorney for the requesting party gave us a list of many, many long and narrow lots in and around western Olathe. My question is this. If I own a lot in the middle of an 80-acre piece of property that has been split into eight piano key lots, and it's agricultural, can I call the state up and say my property is zoned agriculture, I would like to have agritourism as an authority for that property? Is it just a request that I make?

Ms. Stringer: No, it would be an application process.

Comm. Neese: So, let's say on 10 acres, I raise hay and some fruit trees. I'm zoned agricultural, and I fill out an application with the state. Am I automatically granted?

Ms. Stringer: No. We have a review process with the tourism staff and board. There are eight of us that review the applications and decide what type of experience we feel it is, and what the space is for agricultural and tourism. We make that decision. Linda Craighead, the assistant secretary, is in on that. If approved, I would make up a certificate. Secretary Jennison would look at the file, review it, and either sign it or not sign it. He generally goes along with what our staff has approved. We would want to see pictures, see a website, what type of experience you're providing. I'm not familiar with piano -?

Comm. Neese: It's a small lot. And what I'm trying to get at is, we have a lot of small plots of property that are rural. It sounds to me, if you have a new business, you don't have a website, but for $200 you can get a website established. It sounds like to me that any one of those folks, if they wanted to, could be agritourism approved. My point is, everybody keeps talking about the
“family farm.” We have lots of people in my area who live on very small plots, who have moved out into the country. They’re not farmers. They’re not a family farm. They are zoned agriculture. And I have a feeling that, especially for some people who have covered for them, or, for example, the lawyer for the Cattleman’s Association - - It was my understanding at one time that it was, like 10 acres, and had a lot of grass on it, so that ought to be agritourism. So, my question is, do you have a sense that there are certain areas where activities other than raising grapes, or trees, or whatever, having weddings -- Everybody talks about weddings. There are lots of different things that can happen other than keg parties. How can we be sensitive to those folks that live right next to those people who want to have keg parties on their 10 acres because they’re agricultural?

Ms. Stringer: I probably shouldn’t have used the term “keg parties.” That was from my childhood. Sorry. [Laughter.] We are sensitive to it, but on 10 acres, there are a lot of agricultural products that we can grow. I know that in the city, there are lots that have gardens. If you have a garden and you want to allow people to come out and till, tend to that garden, are they raising a ruckus by gardening? Probably not. If it was a keg party, probably yes. We do look at the circumstances. We are pretty familiar with the state, and I’ve probably said it a few times, that we are sensitive to the area. Our bottom line is, will it provide an experience for the visitor that we think is worthy for agritourism registration? We would not allow a keg party. We would not approve 10 acres that wanted people to come out and have a keg party. If that’s what they put as their experience. That’s the only way we can approve it, is to have the information that you put down. And we have to figure that they are honest. If we are not comfortable with it, we do site visits.

Comm. Huggins: My concern would be that someone creates a legitimate agri-business – let’s just say a winery – and does really well, and that business develops to the point where they can have warehouses, trucks, distribution, etc. How can that be controlled if it’s an inherent use? I mean, that’s something I wouldn’t want in my neighborhood.

Ms. Stringer: One thing that I have learned by being on the Agritourism Advisory Council, and the chairman of that council is a planning and zoning official from Leavenworth County, and we’ve been at it back and forth a little bit with how necessary planning and zoning is, and how unnecessary it is. And he used a for-instance of a company that hauls rock, that maybe starts out small with just a couple of trucks. Then, all of a sudden, they grow, and they become a fleet, and they have CUPs that are available every 10 years or so for review when that company has outgrown the area. Now, I don’t think any agritourism business that wants to draw visitors to their places are going to take up the space that they want their visitors to be with warehouses. I know some that have taken warehouse usage to another facility. I don’t think that that is the primary source that you’re going to see in building of the warehouse to stock all of their stuff within it. I can’t say that I don’t think that there isn’t some necessity in zoning after listening to Mr. Schwimm, our Advisory Council president. But, I think that sometimes we have gotten the impression that Johnson County is not in favor of it at all. So, your folks are the folks that come out and enjoy it.

Chairman Liff: Any other questions? [None.] Thank you, Ms. Stringer.

Kirk Berggren, 11917 Gillette Street, Overland Park, appeared before the Planning Commission and made the following comments:

Mr. Berggren: I’m going to make this quick because I’m tired, too, and a lot of this we’ve heard ad nauseam. I promise I’m not citing any case law but one today. You know what the laws are, and the question is, are people following the law? And what we want you to do is make some policy that is within the law. So, let me make a couple of statements about Mr. Jarrett’s briefing.
On the VanGundy case, which was the rock quarry question, it seemed like it was being said that the guy blew up some rocks to make a pond, and then, sold those rocks. That wasn’t the case completely. He brought in blasters, crushers, trucks. It was a big operation, probably bigger than his farming operation, which was simply to just irrigate crops and feed some cattle. And the state still said, because we have very little agricultural law, the end result is he’s getting this pond built, but it’s not just a couple rocks here. He had a big operation. And the state said he could do that.

In the Svoboda case, there’s no crop dusting involved at all. And it wasn’t traditional farming, as we seem to want to bring up. And I don’t know what “traditional” farming is. I guess that’s only when you grow corn, wheat, milo. I don’t know if milo is considered “traditional” anymore. But, I guess those are “traditional” crops. The Svoboda case, he was simply growing grass. He was a sod farmer. And he was using his field and his air strip for going and checking on his competition. He was going to get parts, going to conferences, and everything else. There was no crop dusting involved in it. He was not in the crop dusting business. He was simply using that as an implementation to farm, and the County said, well, it’s not a truck, not a tractor, not “traditional” farming equipment, so, we’re going to cite you. So, just want you to know that it wasn’t quite as simple as crop dusting.

On the Corbett case, I couldn’t agree more with Mr. Jarrett. With what Mr. Corbett did — and unfortunately, he’s not here tonight or we would have asked him to come and speak — he simply raised some corn, let it fall over so birds would come in. Now he charged an admission, charged for coffee and donuts. He charged them to shoot clays. He charged them to rent his dogs, and he charged them to lodge at his farm while they went hunting. So, just the bird part of it, where he was allowed to charge an admission, was a small part of it. And the state, which is very liberal in ag exemption use, said that was fine. And if you change Corbett to Berggren or KC Wine Co., it’s very similar.

So, I loved everything right up until the conclusion. One of the things I also wanted to say, Mr. Jarrett said that the County has opted not to regulate agriculture, although they can. So, if any of you have more than 10 acres, the County, in its benevolence, has decided not to regulate you, but that option is always there, according to them. The “and not otherwise” that they refer to means that you’re not masking a residential use with the ag exemption. That’s from court cases that I don’t want to go into. So, that’s where the “and not otherwise” as the state has seen. If you have residential property, you have commercial property, you have business property, if you are farming that, you have the ag exemption. It does not matter what it is zoned. It doesn’t have to be zoned RUR, and it doesn’t have to be strictly agriculture. And the County said because a lot of you do other stuff on your farm, that we can regulate you. They can’t. You’re exempt. If you’re farming, you are exempt, whether it’s residential rural, or what-have-you.

Mildale Farm is a park in name, but not in use. Twice a year, it is open to the public, once in the spring, and once, ironically enough, in the fall, when they host a pumpkin festival in direct competition to me. We had to get a CUP to do that, and they don’t. It is a wedding facility. You are correct. You can only rent it. You could not go there tomorrow and hang out. You can’t go there on Friday and Saturday and hang out. You can’t go fishing, you can’t go walking. In fact, part of Mildale Farm is now becoming my direct competition because they are putting in slides, and what’s called a spider web, which is basically ropes. They’re basically making a pumpkin patch to compete against me, and they don’t have the conditional use permit. So, these are the kinds of things that we need you to protect us from.

The Jennison letter that you mentioned. This is the last thing I’ll bring out, and then, I’ll state what I want from you. He is allowed to make policy. He is, by state statute, the agency in charge of
interpreting the legislation, writing the rules and regulations and policy that pertains to them. So, that policy letter? They should be listening to it. It pulls the weight of the law. If you read 77602, and if you read through that, you'll see that he does have the authority. The problem we have is that they decided to ignore it. So, me, I get cited for any of these other gentlemen out there that have agricultural businesses, and they're getting cited for that, and I have to decide, do I want to spend the hundreds of thousands of dollars to win a case that I know I'm going to win by right? And most people aren't going to do it, and I am. Okay?

So, what do we want from you? We ask that farm wineries — This is me. Frank is going to get up and speak about agriourism, and the horse people can speak about what they want to. I want simply to take that phrase that I asked, just as Miami County has, that farm wineries are covered by state statute and policy. If you want to take "policy" out of there, that's fine, because that's inherent in there. So, if you want to say by state statute, because state statute allows me to do everything I'm doing. Just like the Corbett case could charge people to come in; I charge people to buy wine. All those things. If you don't write those kinds of policies, if you pass that phrase that I want, they are required to push that up to the Board of County Commissioners. Like what happened two meetings ago when a lot of you weren't here and we asked that to be implemented, they didn't want it, so they didn't put it in. And I had to wait until the last meeting to have that statement put in. And then, we have the lawyers come in here and make my case for me, right up until the conclusion.

So, I ask that you put that statement in for farm wineries, and that will keep them from bullying me, because now, it is codified what the state statute or reg allows me to do. Any questions? [None.] Thank you.

Comm. Atwell: I have one for you. I've never seen a list — and this is going to for Paul, too — is there a list, and have you ever been provided a list, of approved activities out at the winery?

Mr. Berggren: Yes. And I can't remember — Basically, I can crush — In opposition to state statute, I can crush my own grapes, I can make them into wine, I can let people taste it, but it has to be grown on premise, only my grapes that are grown on premises, which is in opposition to state statute. Any marketing, anything else, you know, having somebody play a little music — I suppose they can get me for turning on my radio to have people listen to, that it would be an ancillary thing.

Chairman Liff: Thank you, Mr. Berggren.

Sharon Tunakan, 17703 West 84th Terrace, Lenexa, appeared before the Planning Commission and made the following comments:

Ms. Tunakan: I love to drink wine. Just going to put that out there. My question is why there doesn't seem to be consistency. There is a place called Hickory Creek that is allowed to have weddings, and it's a winery. So, why is one winery allowed? Maybe they have a conditional use permit; I don't know.

Chairman Liff: Where is the Hickory Creek?

Ms. Tunakan: It's in Johnson County. I don't know exactly where it is.

Unidentified: Lackman and 190th.

Ms. Berggren: And it's not a winery.

Ms. Sloan: We're not a winery. We're a horse ranch. I'll speak to that.
Ms. Tunakan: Okay. And then, I was at another winery at College and Renner, and they do a lot of music. It was inside, but we sat outside, and we were able to sit on the lawn and enjoy a glass of wine and listen to music. They seemed to have permission to do that.

Chairman Liif: That’s the city of Overland Park. Can’t really speak to that.

Cassandra Sloan, Hickory Creek Ranch, 20220 South Lackman Road, Spring Hill, appeared before the Planning Commission and made the following comments:

Ms. Sloan: We’re the owners of Hickory Creek Ranch. We are not a winery. We don’t have any grapes. We are a horse ranch, and I am a fourth-generation horse person that has been working with Johnson County to get permission to have weddings and to have kid birthday parties and things like that. For the past eight years we’ve owned this property, we have 15 horses, and for this time period, I have done these different activities with 110 percent being present there. My horses cannot be left alone. No interaction with the public whatsoever without myself being there. That being said, with the agritourism act in place, I believed I was doing everything legally. I didn’t know that I needed special uses because our conditional use permit with the pumpkin patch three years ago, I think maybe we were the first ones to come forward with that. We planned all the activities, listed the activities in the original paperwork, and we went through that process with the County, knowing what we were doing and where they were located at on our farm, and where our neighbors were from the location of our farm, as well as with noise, etc. So, I want to put this on the record by saying that the whole purpose of this agritourism act is obviously to promote the farm. Three hundred and sixty-five days out of the year, I’m outside with the horses, taking care of them. They’re not like cows or crops. I can’t leave them alone. So, it’s a 24-hour-a-day job. No holidays. We have documentation over all of these years that I get these folks, both adults, men, women and children, who come and say that this is the neatest thing ever. We get people from everywhere. And to be able to come out to a ranch and have interaction with the horses and the pony, whether it’s a birthday party, or boarding a horse, or my lesson people asked if they can get married at my farm, and I’m like, why would you get married at a farm with horses? That seems odd to me. But, these people want different experiences. They’re passionate about whatever their hobbies are, whether they’ve gone to K-State and majored in agricultural, or they’ve grown up dreaming about horses or ponies in their wedding, or with their kid birthday parties. That’s why we got involved in doing these different activities, because I’m so passionate about it. And it’s really cool when we did the pumpkin patch and we had the kids come over, and I gave them different facts about the horses and the ponies, and they came back for a birthday party, and I asked them about those same facts – Tell me how many teeth a horse has. How long do they live? All kinds of things they didn’t know before. And they didn’t know that the land across from me has been in his family for 100 years, and he has a stagecoach from his family, and how he got that stagecoach to town was by a horse. Now he chases his cows with a four-wheeler, but once, they used horses.

I think a couple of times it’s been questioned whether or not horses are agricultural, and I’m not quite sure, if they’re not agricultural, where in the world would I have a horse? Not in the middle of Overland Park. So, with the horses, I share information and history of what they brought to us as we have evolved. That’s what we do at our horse ranch. And I can give you documentation of people who have thanked us for letting them have this opportunity there at our ranch with our animals. Does anyone have any questions?

Comm. Atwell: I do. Are you still doing your pumpkin patch?
Ms. Sloan: That’s a great question. Because I am working with you guys, because I do want to do a few weddings a year, and it’s not going to be a lot because we don’t have air conditioning or heat in our barn. There aren’t going to be a ton of people who want to come out to our farm and do a wedding with horses and interaction with that. They may want to go to a hotel. They may want to go to Mildale, which has no animals whatsoever. So, I can’t do both because I’m working on a farm from 7:00 a.m. until 11:00 p.m. We will not have a pumpkin patch if we go through this process and end up doing weddings and things like that. We’re still growing pumpkins. We still grow hay.

Comm. Atwell: When was the last time you did the pumpkin patch?

Ms. Sloan: The year before last. In 2015.

Comm. Atwell: Okay. And then, how long have you been doing weddings and parties? The whole time you’ve done your pumpkin patch?

Ms. Sloan: No, no. Last year, we did three or four.

Comm. Atwell: Okay, so, 2016 was the first year you did them.

Ms. Sloan: Yes.

Comm. Atwell: Okay. And when did you apply for your CUP to do those?

Ms. Sloan: I believe it was this past January, when we started our paperwork on that.

Comm. Atwell: Okay, so January 2017?

Ms. Sloan: Right.

Comm. Atwell: And then, have you ever been cited by Codes for having a wedding?

Ms. Sloan: Not yet, but I have been warned.

Comm. Atwell: Okay. That’s all I needed to know. Thank you.

Chairman Iiff: Any other questions? [None.] Thank you.

Frank Geiringer, 39675 West 183rd Street, appeared before the Planning Commission and made the following comments:

Mr. Geiringer: There’s not a lot I want to add tonight. It’s getting late, I’m tired, and I think we’ve covered a lot. One thing I did want to comment on is it seems that the County legal staff has wanted to put a tremendous amount of weight on this “not otherwise” phrase they are using. If the use for ag purposes is “not otherwise.” Well, I guess that’s the first time I’ve been made aware of that statement. But, after reading this, the very next sentence says, “...once the property is used for another primary purpose.” So, “primary” means that it’s no longer primarily agriculture. So, if I put up a warehouse, that’s obviously not “primarily” agriculture. But, if I have people on my property to pick berries, which we’re currently picking, and I’m selling them food. We have berry donuts, matching the berries that we’re picking. I’m only open the days that I pick berries. It’s an ancillary use. It’s not the primary use of my farm. I certainly don’t have people saying, “Let’s go out to Frank’s and eat dinner.” I’m merely selling a drink or food item that is incorporated. So, it’s not a primary use. I didn’t open a restaurant on my property. It’s only open when I have an activity, which is selling my produce from the farm. So, I think we’re trying to make more out of that than what should be made out of it, especially, you know, we traditionally row crop farm, too, and I have a house on my farm. So, it seems off base to say that since I live on my farm, I have a house
there, that they can regulate the agricultural activities, especially when you look back at one of the cases that was cited by the County, who ruled that the gentleman did not even need a building permit to build his house because it was ag related, and he had a purpose to live on the farm, in order to take care of his farming activities.

One other thing I wanted to touch on. Mr. Neese brought up piano key lots. And I understand. I want to be a good neighbor, and I hope my neighbors grasp that. I think I get along well with all of my neighbors. But the thing that has irritated me for a long time is that this county allows piano key zoning, and it's a problem. In my opinion, a lot of the small parcels that are around us seem to have rapid turnover. Everybody likes the romance of buying a little piece of the country that's nice and quiet. And then, they find out they can't go anywhere because they're married to their yard, they're out there, mowing their five-acre yard. They're taking care of a horse. And within a year or two, I see a for-sale sign up on these properties. They just constantly rotate. But as soon as these people move in, they always want to look over the fence and see what I'm doing, and telling me, boy, we don't think you ought to be doing that. It's creating dust, it's noisy, etc. Everything about farming is unpleasant at times. It's noisy, it's dirty, it smells. Now we're saying that I have to appease the neighbor because he built a house right across the road from me, right on the road, and I have to have this huge setback for my activities because of his house there. And nobody had a public hearing, nobody asked me my opinion of a guy building right across from me. So, that's one thing. I don't know how you address that because the box has already been opened and we have a ton of nuisance tracts throughout the county. I just want to comment on that. I know Mr. Neese is concerned about the neighbors next door, and I am, too. It's just one of those things that goes both ways. Thank you.

Comm. Neese: If I could comment on that. You know, in our zoning board, we have Forest View, which was 400 acres three years ago, and now there's 400 houses there. And that's in the city. Across the street is 1800 acres or 1200 acres of County park ground. And then, for the next mile, let's say, it's a rural residential. It's a transition area. And you've got Mr. Moll, who farms lots of ground. So, 25 years from now, it's all going to be houses, but in the meantime, what do we do when a guy owns 80 acres, he just died, his son takes the property, and it's right on that fringe. And he comes and wants to take 60 acres and make it five lots. Okay? And his argument is that he wants five lots; the County staff doesn't want to do that because there are three driveways on Moonlight Road and 127th Street, which are dead-end streets. Okay? Guy's son takes over the property, and he would rather have five or six houses on that 60 acres than three houses per acre. So, the guy builds a $300,000 house, another guy builds a $300,000 house, and another guy doesn't live there, he owns 10 acres, and he wants to put 16 head of bucking bulls on it. Okay? And my personal problem with agritourism is that it's too general. We have to somehow identify what a family farm is. Because a lot of areas in my district that could become agritourism are not family farms. They're little pieces of property that people want to make some money on. The County makes money; the state makes money off of it. So, the difficulty is trying to figure out — And I don't know if the County lawyers can do it — is come up with some kind of reasonable definition between the family farm and four acres with bucking bulls on it. And your place, which is obviously a farm.

So, that's my dilemma. I'm not against wineries. I'm not against pumpkin patches. But, it's not defined. And I hope that the lawsuit ends up defining it for us, and if they don't, then we're going to have to come up with something. And that's the difficulty. And the lady from the state says — That's what really got me. Her feeling is we're against agritourism, and I don't think anybody that I've ever talked to is against real agritourism. But the definition of what agriculture is in this county is different than my friends who own ranches in Riley County. Or the counties out where you live.
That's where I'm coming from. That may be decided by the courts. And I don't think we should be afraid if it goes to a court, because we on this board should stand up for what we believe, one way or the other, and if the courts rule against us, or favors what staff comes up with, so be it. But I don't think we should be afraid to have this thing go to court to really define it. And then there won't be any question.

Chairman Iliff: Any other questions for Mr. Geiringer? [None.] Thank you. Anyone else?

Comm. Bollin: I have some questions on the inequity between Johnson County and the rest of the state. The people of the state get about 75 to 80 percent of its income from farming, agriculture, and yet, Johnson County has probably got 75 percent to 80 percent of its income from other aspects. You know, housing, automobiles, or whatever. And yet, we don't want to help the little bit of agitourism we have here. I feel that we need to try to save the little bit of agitourism that we've got, instead of trying to tread on it all the time. That's just my opinion. I'm stating it now.

Chairman Iliff: Any other member of the public?

Brice Wiswell, 39440 West 191st Street, Edgerton, appeared before the Planning Commission and made the following comments:

Mr. Wiswell: The term “family farm,” I’m obviously family with the Gieringer’s, but I’m also Wiswell. Grew up around Spring Hill. The term “family farm” is kind of a sore subject for me because of my grandpa, who could be losing his farm because of sewers going through his property. There’s no choice. It’s just the City moving that way. But the term “family farm” is kind of a joke because, let’s say I went to school for agriculture and I wanted to farm. I grew up in town. You know, if I have to be a family farm to be able to do these types of things, or I have to be in this category you’re trying to put me in, you know, if I didn’t have that opportunity, you would be putting me in a different category, right?

Chairman Iliff: I don’t know the answer to your question.

Mr. Wiswell: You know what I mean, though. All I’m saying is that if I was a young kid and bought 10 acres and wanted to do that, and it’s not a family farm or, you know, I came from, came from town and wanted to do this. I’m being viewed differently and I don’t think that’s fair.

Chairman Iliff: I don’t want to get into an argument with you, but if it’s an agricultural use in the rural area, nobody can regulate you. Period. Now, there is this area that we’re talking about with regard to agitourism, which has related activities. That’s the sticking point.

Mr. Wiswell: So, if I want to farm row crops, do you know how much it costs to buy all the equipment related to row crops? Maybe Randy Hutchins can touch on that. I mean, you came into farming from something else. It’s expensive. Somebody like me can’t just go out and get a line of credit for $300,000 to farm row crops.


Mr. Wiswell: Exactly. My point is, if I want to plant an acre of strawberries for $20,000, I can plant an acre of strawberries, and I can make more money than you make on a hundred acres, two hundred acres of row crops. I say that because somebody like me doesn’t have the equipment to do it. I can do this on less, but yet, I’m being told that that’s not okay. Or that that’s viewed differently, I guess. It’s different agriculture. In Georgia, that’s normal. In North Carolina, that’s normal. Here? It’s not. So, I just kind of want to open your eyes. Just because it’s not corn, soybeans, wheat, milo. Think about it.
Chairman Iliff: Point taken. Thank you. Any other member of the public? [None.] Okay, I’m going to close the public hearing at this point and ask if there are any other comments from members of the board. Also, I need to remind you, I was told by our secretary to have everyone sign in. So, on your way out, if you haven’t signed in, please do. If there are no other comments, we’ll move on.

J. ZONING REGULATION CHANGES

Ms. Miller: Submitted to you are minor regulation clarification and revisions, with comments and clarifications from legal and planning staff. I’ll make the note that I submitted Part 2 that we’ve been working on; I have not submitted Part 1. There’s only one change to that, and that’s to return a suggested change by staff to the original language. So, when and if a public hearing is heard, that change will be reflected. Also, when the public hearing is scheduled, I will combine parts 1 and 2.

Chairman Iliff: Is staff wanting to have a public hearing on this next month?

Ms. Miller: If it seems reasonable to Planning Commission members and if the Planning Commission thinks they can have a quorum.

Chairman Iliff: I don’t have a strong opinion about this one way or the other. Our meeting next month is scheduled for July 25th, and if we’re going to have a public hearing, we need to have a quorum present. Anybody know that they’re not going to be here on the 25th?

Unidentified: I won’t be here.

Chairman Iliff: One of us? Okay. Anyone on the board have an objection to having a public hearing next month on these? And we can review them one more time at the public hearing, too, and make changes if we want. Do I hear a motion for public hearing on the regulation changes for next month?

Comm. Atwell: I have a quick question. On page 12, Article 23, number 3, where you say clarify that boarding and training stables. Is that horse boarding and horse training stables, or is that any form of animal boarding?

Ms. Miller: The definition has horses in it. So, for instance, a boarding stable is defined as a structure and related premise use for feeding, housing and exercise of horses not owned by the owner of the premise.

Comm. Atwell: Okay. Just as long as that’s clarified and it’s not open-ended for any type of animal boarding.

Ms. Miller: I’m looking at the proposed definition of training stable, which is a structure and related premise where instruction in riding, jumping or showing may be offered or provided. So, I should add “horses” to clarify that.

Chairman Iliff: Still waiting for a motion for a public hearing next month.

Comm. Neese: So moved. We need one.

Chairman Iliff: Well, I don’t want to force us into it. If you’re not ready, we should wait another month.

Comm. Neese: We’ll have a month to look at it.

Chairman Iliff: All right. Mr. Neese has moved for a hearing. Do I hear a second?

Motion passes unanimously.

K. UPDATES/OTHER BUSINESS

Chairman Iliff: Anything else?

Comm. Atwell: I have one question. Can you guys tell me when you’re slated specifically to go to the Board on these code violations?

Mr. Pietig: You’re referring to KC Winery?

Comm. Atwell: Yes.

Mr. Pietig: We’ll get back to you on that date.

Comm. Atwell: Okay. I didn’t know if there was one already set.

Mr. Pietig: We’ll find out.

Comm. Atwell: Okay. Please let me know. Thank you.

ADJOURNMENT

The next regularly scheduled Planning Commission meeting will be Tuesday, July 25, 2017, at 5:45 p.m.

Chris Iliff, Chairman

ATTEST:

[Signature]

Secretary to the Board