

MINUTES OF THE REGULAR PLANNING COMMISSION MEETING

**PLANNING COMMISSION/
BOARD OF ZONING APPEALS**

May 16, 2006

Commissioners Present: Cowman, Gage, McLean, L. Smith, Rhodes, M. Minden

Others Present: Brian Faust, Amy Barenklau, Brian McCauley, Kathy Mendenhall, Billie Sloan, George & Diana Norton, Sister Jane Falke, Patti Armstrong, Bernard Armstrong, Judy Estes, Jack Rowlett, Diane Barnett, Crystal Coffman, Jack Coffman, Rita Reynolds, LeAnne Stevenson

Item 1: Consider the minutes for the April 18, 2006 meeting.

Chair Cowman called the meeting to order with the first order of business the consideration of the minutes from April 18, 2006 meeting.

Commissioners Gage and Cowman made a motion to approve the minutes with all Commissioners voting in favor.

Item 2: Election: Election of Chair and Vice Chair for the Paola Planning Commission

Commissioners Gage and Smith made a motion to nominate Commissioner Cowman as Chair and Commissioner McLean as Vice-Chair. All voted in favor.

Item 3: Conditional Use Permit: Consider a Day Care Conditional Use at 31790 Hedge Lane (Public Hearing)

Commissioners Gage and Cowman made a motion to open the public hearing with all Commissioners voting in favor.

Planner Faust presented copies of a letter staff received on May 15, 2006, from the neighbor to the south of the proposed day care who is concerned about the proximity of their bee hives in regards to the fenced play area. They are concerned for the children's safety. Planner Faust then presented the staff brief and recommendations. The city of Paola requires anyone desiring to operate a day care center in the 'D', 'S', 'NC', and 'E' zoning districts to obtain a conditional use permit. The applicant lives in the 'E' zoning district and is in the process of becoming a 'licensed' day care with the State of Kansas – thus the need for the conditional use permit.

Day Care Definitions/Requirements:

Family Day Care: Provides for care of no more than five (5) unrelated children or adults. No CUP required.

Day Care Center: Provides for care of six (6) or more unrelated children or adults. A CUP is required.

The following is the criteria (in bold type), set forth in Section 3.311 "Day Care Centers" of the LDO, for evaluating the day care conditional use permit. Staff's comments follow the criteria.

- A. **Outside play areas shall be fenced.** The area to the west of the home is fenced for a play area.
- B. **The day care provider shall be licensed by the State of Kansas.** The state issued a temporary permit valid for the period 4/26/06 to 7/25/06 (copy in our files). A copy of a 'permanent' license is to be filed with the City of Paola prior to the 7/25/06 expiration.
- C. **The maximum number of children or adults allowed will be determined as part of the CUP. Any increase in the number of children or adults shall require a new CUP.** The day care provider has stated that the maximum number of children will be 9 and the hours of operation will be 6am to 6pm. Staff recommends including this as a condition of approval.
- D. **Prior to the approval of a day care center, location for the center shall be inspected for compliance with any applicable building and/or fire codes. If any deficiencies are found, they shall be corrected prior to the Planning Commission's recommendation to the City Council.**
The applicant's home has been inspected and has met the requirements shown on the Kansas State Fire Marshall's checklist. A copy of this report has been provided to staff.
- E. **The first conditional use permit shall be valid for a maximum of one year from the date of approval. The first renewal of conditional use permit may be approved for three years. Subsequent renewals may be approved for up to five years.**
- F. **Such other conditions, as determined by the Planning Commission, to be necessary to protect the public health, safety, and welfare.**

STAFF RECOMMENDATION

Staff received the letter from the neighbor to the south but has not received any additional comments from the public who were notified of the public hearing.

Staff recommends the approval of Day Care Conditional Use Permit with the following conditions:

- 1> The Day Care may operate under the temporary permit until 7/25/06. A copy of the permanent/final 'license' be provided to the Zoning Administrator prior to operations after 7/25/06.
- 2> Maximum number of children limited to nine (9) at any one time.
- 3> Hours of operation are 6am to 6pm.
- 4> Applicant must seek renewal of the CUP after one year.

Faust stated that after receiving the letter, city staff contacted Wal-Mart Pharmacy to inquire if there were any medicines, either over the counter or prescription, that should be kept on hand for any possible allergic reactions. A Wal-Mart Pharmacist (Jonathan) indicated he would recommend liquid Benadryl and a product called Bee Sting that is available in wipes or liquid form that are both over the counter. He also stated that if a child had a severe allergy, a parent would most likely provide an Epy pin which is for severe reactions.

Billie Sloan stated that she had lived adjacent to the proposed daycare location for two years and had not been aware of the bee hives until the previous day when staff contacted her. She stated she had only seen a couple bees in the area previously. Upon notice she contacted the Health Department and they indicated they did not feel it would be a problem.

Commissioner Gage said it was nice of the neighbors to write the letter informing her of the bees and their location. Faust stated he felt it was a true concern for the safety of the kids, but that as the property is located in the country, there is always a possibility for stings.

There were no additional comments from those in attendance.

Commissioners Gage and McLean made a motion to close the public hearing with all Commissioners voting in favor.

Commissioner Smith stated he was not aware of travel habits of bees, but if the applicant had not seen many around their property, then it probably was not a problem. Planner Faust stated that with the location of the property near the Hospital, he felt she could ask parents and if there was a problem, it is in close proximity.

Commissioners Rhodes and McLean made a motion to approve the Conditional Use Permit with the listed conditions. All Commissioners voted in favor.

Planner Faust told the applicant that the Commission's recommendation would be forwarded to the City Council for their meeting the following Tuesday.

Item 4: 1-Year CUP Review: Heavy Retail & Service usage at 3 – 7 N. Silver Street (Import Auto Service – Original number 05-CUP-03)

Planner Faust stated that the owners were in attendance this evening. He then presented the staff brief and recommendations. George and Diana Norton requested and received a conditional use

permit for Heavy Retail & Service during May 2005. One of the conditions of approval was that the Planning Commission review the CUP after one (1) year to ensure compliance.

The conditions that were placed upon this conditional use are defined below:

- 1) Install a 6' privacy fence around the east section of the building. All vehicles requiring repair shall be stored within this fenced area or internal to the shop after business hours. Fence to be installed prior to operations commencing. *Condition appears to be met.*
- 2) All work shall be completed within an enclosed structure. *Condition appears to be met.*
- 3) Parking lot to the north of this building must be paved. Lot must be paved within 6 months of final CUP approval. *Condition met.*
- 4) Grass must be reestablished on the Piankishaw right-of-way and two (2) street trees installed within 6 months of CUP approval. *Condition met.*
- 5) Hours of operation shall be limited to 7am – 7pm Monday through Friday and 7am – 5pm on Saturday. *Condition appears to be met.*
- 6) The maximum decibel level shall not exceed 70 decibels at the property line. *Condition appears to be met.*
- 7) All oils/fluids shall be disposed of by approved methods and shall not enter the sanitary sewer system. *Condition appears to be met.*
- 8) No overnight parking shall be allowed outside the fenced area except for two (2) after-hours drop-off spaces. *Condition appears to be met.*
- 9) After one year, the conditional use permit shall be reviewed by the Planning Commission to ensure compliance. The property owner shall be responsible for notifying adjoining property owners (as identified by the abstractor's search for the original CUP request) by regular mail two weeks in advance of the Planning Commission's review. If the owner will be requesting an amendment to the CUP, the notification shall follow the same procedures as the original CUP notification. Adjoining property owners will have an opportunity to comment on compliance to the conditions of the CUP. *This is the one-year review.*
- 10) At any time, the City may institute revocation of the conditional use permit for violations of the conditions of approval, expiration, or the reasons specified in Section 21.225 of the Land Development Ordinance. The City shall provide notice to the landowner and public in the same manner as was provided for the establishment of the conditional use permit.

Recommendation:

The City Planner is not aware of any violation of the original conditions of the CUP and recommends that the existing conditions (1 – 8, 10) remain with condition 9 being changed to three (3) years (May 2009).

Commissioner Rhodes stated that the business always appeared neat when he drove by. Several other Commissioners agreed.

Commissioners Cowman and Gage made a motion to approve the Conditional Use Permit Renewal with the conditions as noted. All Commissioners voted in favor.

Item 5: Rezoning: Block 58 of the City of Paola, Miami County, KS. Request from Bob Zoller to rezone from Suburban to NC. (Public Hearing)

Commissioners Cowman and Gage made a motion to open the public hearing with all Commissioners voting in favor.

Planner Faust presented the staff brief and recommendations after clarifying the location of the property for the Commissioners and Public in attendance. The hearing before the Paola Planning Commission is the official Public Hearing.

Mr. Bob Zoller purchased a tract of land located immediately south and west of the Paola Housing Authority (see attached drawings). He has been working with staff over the last several months to determine the best way to develop this property as he desires to create a small neighborhood with traditional style homes overlooking the Bull Creek. While a plan is not finalized, the housing would be similar in those in the older parts of the community with the addition of reduced setbacks to add a new style to Paola's housing choices.

The first issue raised was whether Mr. Zoller needed to rezone the property. As shown on the attached drawings, the property was previously platted with the same lot size that he currently desires. He also would like the option of reducing setbacks on the proposed single-family units to help reproduce a neo-traditional style that is returning to popularity across the country. Neo-traditional homes combine the classic architectural details that generate interest and nostalgia while retaining the efficiency and functionality inherent with new construction. During this process, staff contacted former planner Molly Saunders to obtain her thoughts on this process – *her response is as follows:*

... Mr. Zoller needs to re-zone ... specifically Section 01.120 A, Part 6. If the property is in single ownership and it wasn't developed upon within 5 years of the LDO adoption, it's considered an undivided parcel. I like the idea of developing it into traditional single-family homes, too.

Ms. Saunders also provided her thoughts on the steps/options to reduce setbacks on a future development that would not meet the current lot requirements defined in the LDO. Her comments will be provided when a development plan is submitted.

The exact legal description for the proposed rezoned tract of land is as follows:

All of Block 58, including vacated alley and North ½ of vacated Osage Street along Lots 6-10, Block 58, to the center of Diamond Street, City of Paola, Miami County, Kansas. Containing 1.75 acres of land more or less.

Lot Standard Comparison:

Table 04.110 A. USE AND LOT STANDARDS								
Zoning District & Development Type	District Standards		Site, Lot, and Building Standards					
	Min. OSR/LSR	Sewer	Minimum**					
			Site Area	Lot Area***	Lot Width (ft)	Street Yard (ft)	Side Yard (ft)	Rear Yard (ft)
Suburban (S)								
Single-Family Conventional	0.1	P	12,000 sf.	12,000 s.f.	90	30	10	35
Single-Family Cluster	0.25	P	5 ac.	10,500 sf.	80	25	8	35
NC-R1	0	P	6,000 sf.	6,000 sf.	50	25	6	25

MAP AMENDMENT (REZONING) REVIEW

Property Location: Property is located on the south side of Ottawa (between Diamond and Iron). This block is south of the Housing Authority property.

Current Zoning: Suburban – (Single-family residential – larger lots)

Current Use: Wooded tract with the southwest portion located within the flood plain.

Proposed Zoning: Neighborhood Conservation – R1 (single-family with the size/character of the older/existing neighborhoods).

Proposed Use: Single-family residential.

In evaluating a request for a Zoning Map Amendment, the following standards shall be considered (Section 21.211):

- The proposed change is consistent with the City’s Comprehensive Plan and the purposes of the Land Development Ordinance.** Consistency with the Comprehensive Plan shall be considered to meet the standards B, C, and D below.

- Development principles and policies. The LDO contains “intent and purpose language” that serves as a bridge between the 1983 Comprehensive Plan and the updated Comprehensive Plan that is currently being developed. Most of the language, in Chapter 22 of the Land Development Ordinance, discusses the policies and principles guiding the formation of the LDO. These goals discuss the need to create rational land use patterns that protect natural resources, encourage the appropriate use of each property, and preserve economic development opportunities. Chapter 2 of the LDO defines the districts. *This district protects the residential character of existing neighborhoods or platted subdivisions that were or are being developed under previous zoning regulations.*
 - Future Land Use Map. The land use map currently shows the area around the proposed rezoning as a mix of single and multi-family homes. The proposed zoning change retains this mix.
 - Schools and other public and semi-public uses. This proposed rezoning will increase slightly the number of permitted homes in this one block. With the limitation of construction in the flood plain, the overall density is virtually the same. No burden on such facilities is anticipated.
2. **The proposed change is consistent with the character of the neighborhood:** *This change is consistent with the character of the existing residential areas to the north, east, and west.*
 3. **The extent to which the property is consistent with the zoning and use of nearby properties:** *There are a variety of zoning districts in the area. Within 2 blocks of this area, there is Suburban, NC-R2, NC-R3, and TA zoning.*
 4. **The suitability of the property for the uses to which it has been proposed or restricted.** *This property is ideally suited for construction of a limited number of single-family homes on smaller lots that take advantage of the natural slope of this tract. The property slopes sharply downward to the south and increased density (reduction in setbacks and lot sizes) should make an attractive development with the changing demographics in the current marketplace.*
 5. **The extent to which the proposed use would substantially harm the value of nearby property.** *The property has multi-family (Housing Authority) units on the north and east sides along with existing neighborhoods with similar lot standards in the area. Construction of new single-family homes should not harm (reduce) the value of nearby property. It is staff’s opinion that, if anything, it may increase the value.*
 6. **The length of time a property has remained vacant as zoned, where the zoning is different from nearby developed properties.** *This property has not been developed since the adoption of the LDO in 1997 (or ever).*
 7. **The gain, if any, to the public health, safety and welfare due to denial of the proposed amendment as compared to the hardship imposed upon the landowner, if any, as a result of denial of the proposed amendment.** *If the application is denied, the property owner will be able to construct homes meeting the requirements of the Suburban Zoning District. However, this very ‘limited’ number of homes may not cover the cost of the infrastructure improvements needed and these home types will not maintain the existing residential character found in the older parts of the community. If the*

application is approved, the number of homes will increase slightly, hopefully covering the cost of improvements and the homes will be of a style that will enhance the area.

- 8. Recommendation of staff.** *Staff recommends approval of the rezoning from Suburban (S) to Neighborhood Conservation R1 (NCR1).*

PLANNING COMMISSION ACTION:

Planning Commission shall recommend one of the following:

- 1) Deny the request to rezone Block 58 of the City of Paola, Miami County, Kansas from Suburban to Neighborhood Conservation R1.
- 2) Approve the request to rezone Block 58 of the City of Paola, Miami County, Kansas from Suburban to Neighborhood Conservation R1.

Council Action:

Upon receiving a recommendation from the Planning Commission, the Council shall take action as follows:

1. Adopt such recommendation by ordinance;
2. Override the Planning Commission's recommendation by a 2/3 majority vote of the membership of the Council; or
3. Return such recommendation to the Planning Commission.

There were no additional comments from the people in attendance or the applicant.

Commissioners Gage and McLean made a motion to close the public hearing with all Commissioners voting in favor.

Commissioner Cowman inquired if the flood plain would cause problems in developing the property. Faust stated that five of the proposed dwellings would front Ottawa Street and the remaining structures would front Iron with the southwest corner in the flood area or dropping off. He indicated he felt that it would fit the layout of the land, as well as the area around it.

Commissioner Gage inquired if the green space would be ample to handle the flow of water. Faust stated that approximately 25% of the lot would not be developable.

Commissioners Cowman and Gage made a motion to approve the rezoning with all Commissioners voting in favor.

Faust stated it would be taken to the City Council on the following Tuesday.

- Item 6: Rezoning:** In and around Block 136 of the City of Paola, Miami County, KS. Request from the Ursuline Sisters to rezone their property from Suburban to TA.

(Public Hearing)

Commissioners Gage and McLean made a motion to open the public hearing with all Commissioners voting in favor.

Planner Faust identified the tracts to the Commissioners and those in attendance. Planner Faust then presented the staff brief and recommendations. The hearing before the Paola Planning Commission is the official Public Hearing.

In March of 2006, the Planning Commission discussed the possible rezoning of Monica Hall and made a recommendation that if rezoning occurs, they might be supportive of rezoning Monica Hall and the property that fronts Wea Street. In subsequent discussions with the Ursuline Sisters, they desire to rezone all the property they currently own in the area surrounding the Mother House (see attached map).

A copy of the Ursuline Sisters' rationale is provided below:

URSULINE REQUEST FOR REZONING TO THOROUGHFARE ACCESS

ORIGINAL RATIONALE – We are seeking to rent space in Monica Hall to the Miami County Extension Office and that requires a change from suburban zoning.

OUR VISION – With the presence of the Extension Office, the Trial Gardens, and our own expanding gardens, we expect our campus to be an exciting, educational, peaceful and spiritual place for the public to enjoy. We expect to be a continuing presence at this location. This is evidenced by our renovation of a few years ago and our current driveway project.

RATIONALE FOR THOROUGHFARE ACCESS CHANGE – As the city expands and develops, we Ursuline Sisters want our property to develop in ways that fit our mission of religion, charity, and education as well as service to the Paola community and beyond. We want to be ready to respond to opportunities that come our way. Thoroughfare access would allow for all that.

RESTRICTIONS AND LIMITATION ON USE – We want our convent, gardens, shrines, and cemetery to be in peaceful surroundings, so we plan to control the sale of any property. We also intend to put covenants on the property in order to promote only activities that are compatible with our beliefs and the peaceful atmosphere of our campus.

The exact legal description for the proposed rezoned tract of land is as follows:

<u>Tract No.</u>	<u>Description</u>
1	Tract beginning 667' South of the Northeast Corner of the Southeast Quarter of Section 17/Township 17/Range 23, thence West 657', thence South 200', thence Southwesterly 330', thence South Southwesterly 295', thence Northwesterly 140', thence Southerly 668', thence East 223', thence North 488', thence East 94.44', thence South 488', thence East 267.44', thence North 150', thence East 350', thence North 280.5', thence East 250', thence North 55', thence West 180',

thence North 100', thence East 180', thence North 530' to the Point of Beginning, all in the City of Paola, Miami County, Kansas, less road rights-of-way, containing 22 acres m/l.

- 2 Tract beginning at the Northeast Corner of Lot 5, Block 136, City of Paola, Miami County, Kansas , thence Southeasterly 992', thence South 540', thence Southwesterly 330', thence South Southwesterly 295', thence Northwesterly 140', thence North 140', thence West 396', thence Northeasterly 336', thence Northwesterly 250', thence Northeasterly 128', thence Southeasterly 250', thence Northeasterly 70', thence Northwesterly 250', thence Northeasterly 150', thence Southeasterly 55', thence Northeasterly 127.5' to the Point of Beginning, all in Section 16/Township 17/Range 23, containing 14.5 acres m/l.
- 3 Lot 5, Block 136, City of Paola, Miami County, Kansas.
- 4 The west 24' of Lot 23, Block 2, Fordyce Addition, City of Paola, Miami County, Kansas.
- 5 Tract beginning at the Southwest Corner of Lot 24, Block 2, Fordyce Addition, City of Paola, Miami County, Kansas, thence North 137.5', thence East 455', thence South 58.8', thence East 130', thence South 78.6', thence West 585' to the Point of Beginning, all in Section 16/Township 17/Range 23, containing 1.6 acres m/l.

Lot Standard Comparison:

Table 04.110 A. USE AND LOT STANDARDS								
	District Standards		Site, Lot, and Building Standards					
Zoning District & Development Type	Min. OSR/LSR	Sewer	Minimum**					
			Site Area	Lot Area***	Lot Width (ft)	Street Yard (ft)	Side Yard (ft)	Rear Yard (ft)
Suburban (S)								
Single-Family Conventional	0.1	P	12,000 sf.	12,000 s.f.	90	30	10	35
Single-Family Cluster	0.25	P	5 ac.	10,500 sf.	80	25	8	35
Planned	0.35	P	6 ac.	See Table 04.110 B.				
Manufactured Home Park	0.45	P	15 ac.	See Table 04.110 B.				
Institutional Residential	0	P	5 ac.	5 ac.	300	75	40	75
All Other Uses	0	P	4 ac.	4 ac.	280	100	40	100
Thoroughfare Access (TA)								
Single-Family Conventional	0.12	P	8,500 s.f.	8,500 s.f.	Use Village House Table 04.110 B.			
Single-Family Attached	0.2	P	12,750 s.f.	12,750 s.f.	Use Twin, Atrium, Weak-link, or Town houses			
Planned	0.25	P	4 ac.	See Table 04.110 B.				
Multi-Family	0.2	P	15,000 sf.	15,000 sf.	100	25	12	25
Manufactured Home Park	0.25	P	15 ac.	See Table 04.110 B.				
Institutional Residential	0.2	P	2 ac.	2 ac.	180	75	30	100
Retail	0.2	P	20,000 sf.	20,000 sf.	100	25	10	20
Office	0.2	P	10,000 sf.	10,000 sf.	80	25	10	20
Commercial Lodging	0.2	P	20,000 sf.	20,000 sf.	100	25	20	20
All Other	0.2	P	1 ac.	1 ac.	150	25	20	20

MAP AMENDMENT (REZONING) REVIEW

Property Location: Property is bounded by Wea Street (north), Hospital Drive (east), East Street (west), and Osage (south). This proposed rezoning contains 14.5 acres of Block 136, 1.6 acres of Block 2, and the 22 acre tract located to the southeast.

- Current Zoning: Suburban – (Single-family residential – larger lots)
- Current Use: There are currently several uses on this property. The 22-acre tract is predominately agricultural (pasture/cattle) while Block 136 contains the Ursuline Campus (including Monica Hall, the Paola Cultural Center, and Mother House)
- Proposed Zoning: Thoroughfare Access (permits a variety of usages).
- Proposed Use: At this time, the basic uses would remain unchanged except for the relocation of the KSU Extension Office into Monica Hall. This type of office usage is not permitted in the Suburban Zoning District but is allowed in the TA District.

By rezoning the entire Ursuline property, future residential development will still be permitted, if desired. However, rezoning to TA does permit a large variety of commercial usages.

In evaluating a request for a Zoning Map Amendment, the following standards shall be considered (Section 21.211):

1. **The proposed change is consistent with the City’s Comprehensive Plan and the purposes of the Land Development Ordinance.** Consistency with the Comprehensive Plan shall be considered to meet the standards B, C, and D below.
 - Development principles and policies. The LDO contains “intent and purpose language” that serves as a bridge between the 1983 Comprehensive Plan and the updated Comprehensive Plan that is currently being developed. Most of the language, in Chapter 22 of the Land Development Ordinance, discusses the policies and principals guiding the formation of the LDO. These goals discuss the need to: create rational land use patterns that protect natural resources, encourage the appropriate use of each property, and preserve economic development opportunities. Chapter 2 of the LDO defines the districts:

Thoroughfare Access:

This district provides for high quality, moderate density development with a full range of residential and nonresidential uses.

The design requirements provide a Thoroughfare Access character while encouraging pedestrian and automobile access.

This district's intensity accommodates most community commercial and business activities. These nonresidential uses shall be limited to parcels having access to arterial or collector streets. Interior areas are intended to be residential. *(This statement indicates that commercial should only be allowed along Wea and/or Hospital Drive frontage).*

This district is not intended to promote strip development along all arterials and collectors. In newly developing areas, the minimum parcel depth along an arterial or collector shall be six hundred (600) feet. The minimum area shall be twenty (20) acres. In the older built-up areas where there is in-fill development, this zoning shall not displace residential uses in areas where at least one block of residential exists. New zoning shall have depths and areas equal to or greater than similar uses for four hundred (400) feet on either side. This district shall be used in areas designated Thoroughfare Access in the Comprehensive Plan. Access standards and site plan review shall be used to ensure that adequate access and visibility are retained on regionally important land near interchanges to prevent premature development from foreclosing future development options.

- Future Land Use Map. *The land use map currently shows the areas to the north, west, and south as residential with the area to the east having a mix of commercial and residential usages.*
- Schools and other public and semi-public uses. *This proposed rezoning could increase the demand for some services as the residential standards in the TA district allow for denser development. In addition, commercial services along Wea and Hospital Drive could create additional traffic volumes along these roadways.*

2. **The proposed change is consistent with the character of the neighborhood.** *Maintaining the interior areas for residential (as defined in Section 2 of the LDO (see above)) is in keeping with the residential composition of the surrounding NCR1 properties. The smaller lot sizes allowed in the TA Zoning District are slightly larger than permitted in the NCR1 District.*

Limited commercial development along Hospital Drive would match the existing cross-street zoning and allow office usage in Monica Hall and the Cultural Center. With this said, if the rezoning is approved, any business that meets our developmental standards could locate on this property.

It is important to provide a sense of community in new developments that encourages pedestrian traffic along with a variety of housing types and shopping opportunities with the development. The key is to not adversely impact the surrounding neighborhood.

3. **The extent to which the property is consistent with the zoning and use of nearby properties:** *There is Thoroughfare Access zoning directly across Hospital Drive (to the east) however virtually all properties on the west side of Hospital Drive within several blocks of this property are zoned exclusively residential.*
4. **The suitability of the property for the uses to which it has been proposed or restricted.** *This property is ideally suited for construction of single-family homes. Some possible commercial usage along Hospital Drive does have merit and the reuse of existing structures along Wea (Monica Hall and the Cultural Center) is important to the community.*
5. **The extent to which the proposed use would substantially harm the value of nearby property.** *If new development is carefully planned with commercial usages along*

Hospital Drive and in existing structures while the remainder stays as residential and/or green space, the value of the nearby properties should not be adversely impacted. It is possible that if the property is sold, businesses that might have a negative impact may be permitted.

6. **The length of time a property has remained vacant as zoned, where the zoning is different from nearby developed properties.** *This property has not been developed since the adoption of the LDO in 1997.*
7. **The gain, if any, to the public health, safety and welfare due to denial of the proposed amendment as compared to the hardship imposed upon the landowner, if any, as a result of denial of the proposed amendment.** *If the application is denied, the property owner will be able to construct homes meeting the requirements of the Suburban Zoning District. The downside/hardship for the owner is the inability to utilize Monica Hall for offices along with the inability to sell individual tracts for commercial development.*

It is difficult to determine what gain, or loss, to the public health, safety and welfare would occur due to approval or denial of the proposed rezoning. There could be increased traffic and reduce property values if approved and commercial development is not carefully planned. If denied, Monica Hall and the Cultural Center may fall into disrepair. These are important buildings in the community with widespread support for their continued upkeep and usage.

8. **Recommendation of staff.** *Recommending approval of the rezoning request from Suburban to Thoroughfare Access for all the tracts identified above is difficult for staff. With this said, staff feels the Ursuline Sisters will be excellent stewards of their property and will only permit development that is an asset to the area. Therefore staff recommends approval of the rezoning from Suburban (S) to Thoroughfare Access (TA).*

One item that needs to be pointed out in this discussion is that if the proposed rezoning is approved, those that desire to relocate into the offices at Monica Hall will assume that they can immediately move in. These older buildings must come into compliance with current codes, as much as practical, to ensure life safety issues are addressed.

PLANNING COMMISSION ACTION:

Planning Commission shall recommend one of the following:

- 1) Deny the request to rezone Tracts 1 – 5, defined above, all located in the City of Paola, Miami County, Kansas from Suburban to Thoroughfare Access.
- 2) Approve the request to rezone Tracts 1 – 5, defined above, all located in the City of Paola, Miami County, Kansas from Suburban to Thoroughfare Access.

Council Action:

Upon receiving a recommendation from the Planning Commission, the Council shall take action as follows:

1. Adopt such recommendation by ordinance;
2. Override the Planning Commission's recommendation by a 2/3 majority vote of the membership of the Council; or
3. Return such recommendation to the Planning Commission.

Sister Jane Falke presented a copy of the rationale which explains why they are requesting the rezoning as well as some contact information for those in attendance.

Judy Estes, resident, spoke about why the Ursuline property is special to her. She has concerns about commercial development on the property, as she wants the campus to remain peaceful and serene. She stated she was on the Planning Commission during the adoption of the LDO and this property had been discussed. There was a big desire to maintain it as green space, no one wanted to see it developed commercially. She indicated her desire for the City to help develop the area with walking trails and a fountain in the future.

She would like offices to be allowed without rezoning, and asked they explore other options. She reiterated her concern about the future of the buildings and grounds and her concern for the Sisters and the Community. She felt maybe Jim Kaup could work with the Commission to find a resolution.

Planner Faust stated that he had sat down with Sister Jane in regards to rezoning the whole tract and had discussed the possibility of changes to the LDO to allow certain offices in some of the older buildings.

Rita Reynolds stated she is concerned about more single family homes. She feels there is a need for smaller, single level homes for the older community. She said she did not want to see many more large homes built in this area.

Commissioner Cowman inquired if the Sisters had plans to develop at this time or if the main goal was to get the KSU Extension office into Monica Hall? Sister Jane stated they did not have any plans to develop, the immediate need is for the Extension Office. She said that as the Sisters looked at the bigger picture and what could happen, they felt they needed to look bigger than just the Extension Office. She said as the gardens grow, they may desire to build offices, possibly a shop for mementos and bulbs from those gardens. She stated that they have been approached by several people wanting to develop and made a decision at that time they wanted to keep the green space. They have concerns about the cemetery and keeping the grounds peaceful.

Patti Armstrong, Friends of Ursuline Garden & Botanical Garden invited people to join and be a part of what they are trying to create on the property.

Phil Levitz inquired about commercial access if the land were developed. His concern was if a road could be cut through the center of the existing pasture. Planner Faust indicated that LDO requirements would limit commercial development to Wea and Hospital Streets, and interior streets would be residential use only.

Commissioner Rhodes and Gage made a motion to close the public hearing with all Commissioners voting in favor.

Commissioner Minden inquired about the streets bordering the parcels and Faust clarified. Minden then inquired if Wea is considered a collector street and Faust indicated it is. Minden then inquired as to the depth that could be developed commercially if the entire property was rezoned. Planner Faust said that the LDO states for new development along arterial or collector streets, a 600-foot minimum depth is required, but would like to research to see if that is new developments only, or if it includes existing parcels. Minden inquired if development would be possible on Wea due to the standards.

Commissioner Minden inquired about the possibility of including One Stop Auto in the rezoning, so they would not have to continue renewing their Conditional Use Permit.

Commissioner Gage inquired about options for rezoning certain parcels, not the entire area the Sisters requested. Planner Faust said he understood that the Sisters wanted to rezone their whole property as they felt that would be in their best interest. He stated he had explored modifying the LDO to allow offices in Suburban zoning for limited case scenarios, as well as discussing rezoning just the parcel with Monica Hall.

Commissioner Gage stated he was nervous about all the uses allowed in Thoroughfare Access zoning. He said he felt that the Sisters didn't wish to destroy their beautiful piece of property and that realistically at some point down the line the property will change hands. He would like it to stay the way it is, if at all possible. He has concerns about seeing the Sisters financially protected, but remembers the school and this is a special piece of property in Paola; there is a feeling of pride in the community when it comes to the Ursuline property.

Commissioner Rhodes talked about the ability to balance the community's and the Sisters desires for the property and financial needs. He indicated that it appeared the tract along Wea Street had a low chance for additional development and inquired if there was a middle ground, as in rezoning only part of the parcels.

Commissioner Gage inquired if the Sisters had any idea of the cost to bring the buildings up to code? Sister Jane said that based on conversations with contractors it was around \$300,000 for Monica Hall renovations.

Commissioner Minden stated he was aware that the discussions with the Extension Office had been ongoing for some time, but felt maybe the decision should be tabled to allow City Attorney Tetwiler and/or Mr. Jim Kaup to see if there was a way to allow the use without rezoning the entire property.

Commissioner Rhodes inquired if the Sisters only desired to have the Extension Office occupy space? Sister Jane stated there is the immediate need, but the 22-acre tract will be an issue at some time, there have been inquiries about development, but no action has been taken yet. They have been looking at ways to open up the property for future sales, including covenants that

carry with the property and additional owners in order to have control on what would be developed on the lands. Commissioner Smith felt that the Commissioners would want to look at the covenants when developed before making a decision for rezoning.

Commissioner Gage and Rhodes made a motion to table a decision until another meeting, which would allow staff time to seek legal advice.

Bernard Armstrong, KSU Extension Council Board member told the Commissioners they had been looking at the Ursuline location for some time because their missions mesh really well. More importantly, at their current location, they are concerned about possible health risks for employees and the Board is pressured for time and there is a need to move quickly.

Commissioner Gage stated he was sympathetic to the situation, but did not want the Commissioners to make a bad decision for the Sisters, the community or residents in the area.

Commissioner Rhodes stated he had no hesitancy in allowing the Extension Office to locate there, but he has broader concerns about what could be allowed. Commissioner Minden reiterated that his main concerns were for the Ursuline Sisters and what could be built on this site.

Commissioner Minden inquired about amending the motion to indicate having the additional information by the next meeting.

Commissioner Gage asked if a Temporary Occupancy would be allowed. Planner Faust and Commissioner Cowman stated that since it is not an allowed use, a Temporary could not be issued.

Commissioner Minden inquired if anyone had been in the building to see what needs to be done. Planner Faust indicated that a licensed professional is typically hired and they determine what upgrades, if any, are needed. Sister Jane stated that they have a good idea of what will need to be completed.

Chair Cowman restated the motion and second. All opposed, motion failed.

Rhodes asked if the Commission could receive a concise statement on intent for the tracts in question. Smith inquired if the Sisters had an agreement to assist the Extension Office and if there would be anything that could be done to start the move in motion. Planner Faust stated that staff could look at modifying the LDO to allow the usage. Smith reiterated he felt the Commissioners should do all they could to assist in the process.

Commissioner Cowman inquired if the Sisters would come back for rezoning of Monica Hall if the request was turned down at this time. Sister Jane stated they would most likely entertain that idea at this time. Commissioners Smith and Minden inquired if the Commission had the ability to rezone one tract instead of all tracts as requested.

Faust stated that the tract with 14.5 acres would include the area needed to get Monica Hall rezoned. Rhodes inquired if they had any latitude to restrict commercial development along Wea Street and Faust stated they would not, as long as the standards for development were met. He then stated that if the Commissioners supported rezoning Tract 2 which contains Monica Hall, he would recommend approval of rezoning that tract.

Minden stated that the LDO typically discourages spot zoning, but in this case he did not feel it was a bad decision.

Rhodes inquired about usage if the Academy was still in operation and Faust indicated it would be considered Institutional Residential which is permitted in Suburban Zoning.

Commissioners Minden and Rhodes made a motion to approve rezoning of Tract 2 from Suburban to Thoroughfare Access. All Commissioners voted in favor.

Commissioners Cowman and Gage made a motion to deny the rezoning request for Tracts 1, 3, 4, and 5 to Thoroughfare Access. All Commissioners voted in favor.

Planner Faust stated he would contact Legal Counsel the following day to confirm that there were no concerns that would need to be addressed. Sister Jane asked to be informed of the process as it evolves. Planner Faust stated the Planning Commission's recommendation would be forwarded to the City Council on the following Tuesday.

Bernard Armstrong inquired if the Sisters wanted to rezone the remaining tracts would they have to go through the expense again and Faust stated that since the Commissioners had denied the rezoning request on tracts 1, 3, 4 and 5, if they wanted to rezone, they would have to go through the process again.

Sister Jane Falke thanked the Commissioners for their consideration.

Item 7: LDO Amendments: Modifications to the LDO to separate out Pet Grooming Services. (Public Hearing)

Commissioners Gage and McLean made a motion to open the public hearing with all Commissioners voting in favor.

Planner Faust presented the staff brief and recommendations. During the March 2006 meeting, the Paola Planning Commission heard a request from a business owner regarding 'pet grooming services' in the Downtown Zoning District. At that time, it was staff's position that these 'grooming services' fell under the 'Kennels and Commercial Stables' and was prohibited in the 'D' district. At the conclusion of that discussion, the Planning Commission recommended that a text change amending the Land Development Ordinance be considered. The text change is to separate out 'pet grooming' from 'Kennels and Commercial Stables' and to allow better

definition of where and when this would be an ‘allowed use’, a ‘conditional use, or a ‘prohibited use’.

PROCEDURAL ISSUES:

Section 21.210 of the LDO states that application for an Ordinance text amendment may be proposed by the City Council, Planning Commission, or Zoning Officer. The applicant shall demonstrate findings that an amendment to the Ordinance text meets the following standards (Section 21.212):

The proposed amendment:

- Would implement a new portion of the Comprehensive Plan or amendment.
- Would implement and better achieve the Comprehensive Plan’s goals and objectives that have proved difficult to achieve under the Ordinance’s existing provisions.
- This Ordinance’s provisions were inconsistent or unreasonable in light of standards for similar uses.
- Is necessary to respond to State and/or Federal legislation.
- Provides additional flexibility in meeting this Ordinance’s objectives without lowering the Ordinance’s general standards.
- Addresses a new use(s), changing conditions, and/or clarifies existing language.
- Clarifies the Ordinance or make adjustments to account for interpretations.

PET GROOMING SERVICES:

As stated in Division 23.200 of the LDO, the Standard Industrial Classification (SIC) System is used to define many usages. Pet grooming services fall under the Section 23.210 Agricultural Uses, Subsection F ‘Kennels and Commercial Stables. (SIC 0752). Currently, ‘Table 3.110A General Use Table’ defines Kennels and Commercial Stables as follows:

<u>Land Use</u>	<u>E</u>	<u>S</u>	<u>NC</u>	<u>SC</u>	<u>TA</u>	<u>D</u>	<u>BP</u>	<u>I</u>
Kennels and Commercial Stables	L	N	N	N	Y	N	N	N

To more clearly define pet grooming services, the following changes are being proposed:

- 1> Under definitions, Section 23.210 “Agricultural Uses”, Subsection F ‘Kennels and Commercial Stables’:

Existing: Kennels and Commercial Stables. The boarding, breeding, training, or selling of domestic dogs or cats. This shall include the keeping of more than four (4) dogs or six (6) cats over the age of four (4) months, or the keeping of a total of more than five (5) dogs and cats. Also, the stabling, training, feeding, of horses or the provision of riding facilities for other than the use of the resident of the property (SIC 0752 and 0273 part).

Proposed: Kennels and Commercial Stables. The boarding, breeding, training, or selling of domestic dogs or cats. This shall include the keeping of more than four (4) dogs or six (6) cats

over the age of four (4) months, or the keeping of a total of more than five (5) dogs and cats. Also, the stabling, training, feeding, of horses or the provision of riding facilities for other than the use of the resident of the property - excluding 'Pet Grooming Services (SIC 0752 part and 0273 part).

- 2> Under definitions, Section 23.210 "Agricultural Uses", add Subsection G 'Pet Grooming Services':

Proposed: G. Pet Grooming Services. Establishments primarily engaged in providing 'pet grooming services' where animals are not boarded overnight (SIC 0752 part).

- 3> Under Table 3.110A General Uses, add a new designation under 'Conditional/Miscellaneous Uses' –

	<u>E</u>	<u>S</u>	<u>NC</u>	<u>SC</u>	<u>TA</u>	<u>D</u>	<u>BP</u>	<u>I</u>
Pet Grooming Services	L	N	N	N	Y	C	N	N
	<u>Parking</u>		<u>Loading</u>		<u>Exterior Storage</u>			
	4/1000sf		None		na.			

- 4> Under Table 3.110A General Uses Limited and Conditional Uses, add a new designation under 'special uses' –

	<u>Other</u>
Pet Grooming Services	See Section 3.317

- 5> Add 'Section 03.317 Pet Grooming Services' and include the following conditions:

Pet Grooming Services shall meet the following standards,

- A) Adequate ventilation shall be provided between adjoining structures.
- B) Prior to receiving a permit, the applicant must submit copies of approvals from all regulatory agencies having jurisdiction over pet grooming services.
- C) All pet waste shall be disposed of in an approved manner.

Conditional Uses:

What needs to be clearly understood is that 'conditional uses' can be denied. There are a number of criteria that must be considered when approving a conditional use. The Planning Commission and City Council should determine that 'the proposed use shall be compatible with the character of land in the immediate vicinity' before it is approved. If this is not the case, or if other criteria cannot be satisfied, it is perfectly acceptable to not approve a conditional use.

RECOMMENDATION:

Staff recommends approving the changes as proposed.

Council Action: Upon receiving a recommendation from the Planning Commission, the Council shall take action as follows:

1. Adopt such recommendation by ordinance;
2. Override the Planning Commission's recommendation by a 2/3 majority vote of the membership of the Council; or
3. Return such recommendation to the Planning Commission.

Kathy Mendenhall stated there was a large dumpster outside the building for trash. She is currently planning to open business at 103 ½ North Pearl.

Commissioners Gage and McLean made a motion to close the public hearing with all Commissioners voting in favor.

Commissioner Minden inquired in there should be any additional conditions added for noise levels and detergents. Planner Faust indicated that they could add a requirement for all detergents and chemicals to be bio-degradable.

Commissioner Rhodes inquired if there was a need to add a condition of no overnight stays for the animals or if it should be addressed in the Conditional Use process. Faust said additional conditions could be added in the Conditional Use process.

Commissioners Cowman and Smith made a motion to approve the LDO Amendments with the additional conditions for limit on noise and a requirement for detergents and chemicals to be bio-degradable. All Commissioners voted in favor.

Planner Faust explained that the Commission's recommendation would be forwarded to the City Council on the following Tuesday.

Item 8: Items from Staff

a> Approach to vary lot size/width in the Suburban Zoning District:

Northridge Estates (a Dennis Doherty Development) is looking to restart the Process of seeking approval to move forward. One item that he would like addressed is the possibility of varying the lot sizes (both the area and frontage) for this single-family development. The LDO does allow for a variety of housing types within the development (each type with its own size requirements) however, the developer would like to construct only 'single-family' detached homes.

In discussions with his engineer, Mr. Doherty would like to transition from smaller lots near Rockwood Estates (lots abutting Rockwood would be of similar size) to large lots (in all likelihood exceeding our requirements) near the northeast section of the development.

Staff and the developer is seeking guidance on the correct approach to addressing these issues.

Commissioners Gage, McLean and Cowman stated the varying lot sizes seem like a good idea. Planner Faust stated he would contact Jim Kaup and Wynndee Lee to get their input and guidance.

b> Siding at Lake Miola barn:

The City Manager has requested that the Building Inspector review the condition of the barn and make recommendations, if needed, to shore up the structure. Assuming the barn is structurally sound or could be with minor upgrades, the Public Works Department is still requesting a recommendation from the Planning Commission on whether metal siding will be acceptable. They are receptive to having painted metal similar in color to the existing residential structure to help blend with the area.

Commissioner Cowman expressed concern if the metal would be painted at the factory or if it would be painted after installation by employees.

Mark Holscher, resident, presented pictures of the barn interior and stated he felt the barn needed to much repair work to justify spending money on siding. He felt another barn at the lake should be utilized for storage if it is needed.

The Commissioners all felt it would not be a good fit to put metal siding on the barn at Lake Miola.

Item 9: Items from the Planning Commission

There were no additional items at this time.

Item 10: Adjourn

Commissioners Minden and Rhodes made a motion to adjourn with all Commissioners voting in favor.