

**FINAL**

**RESCHEDULED MEETING  
MCPHERSON COUNTY PLANNING COMMISSION MINUTES  
January 8, 2024, Rescheduled to January 10, 2024, due to Extreme Weather Event**

Meeting was held at the 1<sup>st</sup> Floor, McPherson County Bank Building, 122 W. Marlin St, McPherson, KS.

At 7:05 pm **Chairperson Kathy Nicholson** called the meeting to order and welcomed those in attendance. She asked that the audience members sign in and reminded everyone to silence their phones during the meeting.

**Kathy Nicholson** called on Recording Secretary, Carissa McCuen to take roll call. **Members present:** Lori Bower, Chris Goodson, Kathy Nicholson, Christina Reynolds, Shelby Shaw, Glenda Taylor, and Raymond Williams. **Members absent:** Jeff Smith, Jim VanGoethem. **Jeff Smith** was in route and would be late due to a traffic accident he encountered but did not make roll call.

**Jon Kinsey**, Board Secretary and **Carissa McCuen**, Recording Secretary, were also in attendance.

**Guests in Attendance**

Matt Buller  
Rebecca Buller  
Felice Goering  
Dietrich Bergen  
Nanette Bergen  
Tiffani Floyd

**Kathy Nicholson** called for a motion to approve the agenda. **Kathy Nicholson** called for a motion to approve the agenda. **Raymond Williams** made a motion to approve the agenda. **Lori Bower** seconded the motion. **All voted aye. Motion carried.**

**Kathy Nicholson** called for a motion to approve the **November 14<sup>th</sup>, 2023**, minutes as presented. **Chris Goodson** made a motion to approve the minutes as presented. **Glenda Taylor** seconded. **All voted aye. Motion carried.**

**Kathy Nicholson** stated there was no Old Business on the Planning Board docket and called for the first item of New Business on the Planning Board Docket, election of officers for Chairperson, Vice Chairperson, and Board Secretary. **Jon Kinsey** explained that they could use the written ballots provided or call the nominations out verbally. **Kathy Nicholson** opened the floor to nominations for **Board Chairperson**. **Glenda Taylor** nominated **Kathy Nicholson**. **Lori Bower** seconded the nomination. No other nominations were presented. **All voted aye. Kathy Nicholson was named Chairperson.**

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**Kathy Nicholson** opened the floor to nominations for **Board Vice Chairperson**. **Glenda Taylor** nominated **Lori Bower**. No other nominations were presented. **All voted aye. Lori Bower was named Vice Chairperson.**

**Kathy Nicholson** opened the floor to nominations for **Board Secretary**. **Kathy Nicholson** nominated **Jon Kinsey**; **Glenda Taylor** seconded. **All voted aye. Jon Kinsey was named Board Secretary.**

**Kathy Nicholson** called for the Zoning Administrators report at this time. **Jon Kinsey** provided department statistics for 2023. **Mr. Kinsey** also announced the passing of Mr. Bickley Foster of Foster & Associates who has been a consultant for McPherson County. **Mr. Kinsey** explained that David Foster is continuing with Foster & Associates consulting. **Mr. Kinsey** discussed enforcement in the County moving forward and utilizing the regulation subcommittee for these types of issues. **Mr. Kinsey** also gave an update on the GovBuilt platform and its abilities to track cases, and online payment options. **Kathy Nicholson** thanked **Mr. Kinsey** but also asked that she would like to see department statistics monthly and compared to the previous year. **Mr. Kinsey** also updated the board on a possible subdivision sketch plan to be presented to the subdivision subcommittee.

**Jeff Smith** arrived at **7:24 P.M.**, he was delayed in traffic.

**Kathy Nicholson** called the **Board of Zoning Appeals** to order and read the Ground Rules for Public Hearings.

**Kathy Nicholson** called for **VAR23-02, Buller Variance** under New Business.

**Kathy Nicholson** asked the board members if any of them intend to disqualify themselves. **No board members disqualified themselves.**

**Kathy Nicholson** stated according to the Secretary's Report notices were sent to the applicant, and real property owners **December 13<sup>th</sup>, 2023**. **Kathy Nicholson declared proper notification was given.**

**Kathy Nicholson** asked the board members if there had been any ex parte communications on the case. **There was none.**

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**Kathy Nicholson** called on **Administrator, Jon Kinsey**, to provide the background on the case. **Jon Kinsey** provided information on how the case was brought forward, and a timeline thereof. **Mr. Kinsey** stated that after researching the address of the property it was determined another Variance case was associated to this address, that case was **VAR2015-01**. This variance was to allow for an accessory structure not larger than 1,000 square feet to be constructed on the property. **VAR2015-01** also had a list of conditions and was recorded January 28<sup>th</sup>, 2015. In researching this matter staff found that the **Bullers** were not the applicant in **VAR2015-01**, but Dave & Brenda Hammar were the applicants in that case, then there was a transfer of the property to the Bullers a month or two after the original **VAR2015-01** case. **Mr. Kinsey** gave background on mapping and when the different accessory structures were constructed. **Mr. Kinsey** stated we had no permits on these structures and discussed the issue of these structures not meeting proper setbacks. **Mr. Kinsey** explained he could not accept a permit on the second accessory structure without being in violation of the original **VAR2015-01** case conditions and regulations. He then asked this information to be presented to the Board of Zoning Appeals. **Kathy Nicholson** asked if any board members had any questions for **Mr. Kinsey**, there were none. **Kathy Nicholson** also wanted to point out a typo, that the February 10, 1987, Deed of Transfer should be 1997.

**Kathy Nicholson** called on the applicant to make their presentation. **Matt & Rebecca Buller-1842 Cherokee Road**, approached. **Mrs. Buller** began by presenting an easement for the sewer line location that was signed and notarized by both parties. **Tiffani Floyd** of Four Seasons Realtors approached to present information to the board on behalf of her clients, the Bullers. **Tiffani Floyd** pointed out that the 2015 Variance paperwork was not passed onto the Bullers, but they were verbally told they could build 1,000 square foot building on the property, but that restriction was due to Sanitation reasons, they were unaware of the extent of the conditions of the original **VAR2015-01** case. **Tiffani Floyd** stated the 1,700 square foot building does have the proper setback, and no floor drain other than in the bathroom, and that the bathroom is tied into the existing wastewater system (lagoon). **Christin Reynolds** asked about the possibility of removal of the smaller accessory lean-to, **Rebecca Buller** replied that they offered to do so if necessary but were told they did not need to, **Kathy Nicholson** stated that was correct she did not feel inclined to make them remove the structure, but that is not her decision, **Christina Reynolds** directed to **Kathy Nicholson** if that was an option that could still be on the table, and **Kathy Nicholson** said that anything is on the table. **Mr. Kinsey** at this time added that the house was built in 1981, and that under the 1978 regulations the property only needed 0.92 acres and that it is 1.05 acres, he stated he did not have a permit on file for the house but that it was built on the correct acreage at that time, and the board may want to take that into consideration when applying conditions. **Kathy Nicholson** directed a question to the applicants; she asked if the applicant and her husband were aware that McPherson County is a zoned county. **Rebecca Buller** replied they were unaware that permits are needed in the County, and this was all very informative, **Kathy Nicholson** went onto explain there are no building codes in the County, but you do need zoning permits. **Kathy Nicholson** asked the board if they had any other questions for the applicant at this time. **There were none.**

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**Kathy Nicholson** opened the public comment portion of the hearing at this time. **Dietrich and Nanette Bergen-1840 Cherokee Road, Moundridge** approached at this time. The Bergens read their letter aloud and it is inserted into the minutes (page 4).

Dietrich and Nanette Bergen  
1840 Cherokee Rd  
Moundridge, KS 67107  
January 2, 2024

McPherson County Board of Zoning Appeals  
1115 W Avenue A  
McPherson, KS 67460

Dear Members of the McPherson County Board of Zoning Appeals,

We appreciate the opportunity to provide input on Case No. VAR23-02, the property variance request for 1842 Cherokee Road in Moundridge. We request that you carefully consider the implications of granting a variance.

We are conflicted with the current situation at 1842 Cherokee Road. While we understand granting a variance to the home, as we have not found any concerning issues regarding it, we express deep concerns regarding the variance request submitted by our neighbors. Specifically, one additional structure has been constructed on their property.

Prior to the Butlers' ownership, the McPherson County Board of Zoning Appeals held a meeting on January 19 2015 regarding VAR2015-01. It is our understanding that as a result of the granting of this variance six conditions were placed on the property. We believe one condition allowed one additional building not to exceed 1000 square feet. As the current property sale information states, the recently constructed shop is 36 by 48 feet totaling 1728 square feet.

We feel that the few feet of distance from the corner of the new building in the L-shaped corner bordering our property is dangerously close, as we operate heavy farm equipment on our crop-producing field. I personally feel exceedingly uncomfortable knowing that equipment fails without warning. In fact, we had such an incident on June 25, 2020 when our combine caught fire and totally burned up, setting the field on fire as well. Undoubtedly this is a safety hazard to all parties.

As stated in the sales information, there is a half bathroom in said building. We find that occupation in so close proximity is terrifying and not acceptable. The operation of heavy equipment demands concentration and with debris in the air it is difficult to see objects on the ground while operating our equipment. We are worried for the safety of people and pets this close to our fields. Just imagine a youngster running in front of the combine.

It is every owner's responsibility to know where their ownership begins and ends, as every property is legally surveyed, described and markers are placed.

We believe that adherence to zoning regulations is crucial to maintaining the integrity and character of our community and that of the zoning officials. It is disconcerting to learn that the structures in question were built without the necessary approvals, as this raises questions about the transparency and fairness of the construction process.

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Granting a variance for these structures without addressing the lack of proper permits would set a concerning precedent for our neighborhood and the county. It is essential that all residents follow established procedures and obtain the required approvals before undertaking

construction projects. Allowing variances for structures built in violation of zoning regulations could undermine the credibility of our local zoning system and erode the trust of law-abiding citizens who diligently follow the established procedures and seek permission rather than forgiveness.

We kindly request that the McPherson County Board of Zoning Appeals thoroughly investigate the circumstances surrounding the construction of these structures and carefully consider the potential impact on the community and us before making any decisions regarding the variance request. It is crucial that the zoning regulations are upheld to maintain the well-being, safety, and aesthetic appeal of our neighborhood.

Thank you for your attention to this matter, and we trust that the Board will prioritize the best interests of the community when deliberating on this variance request.

Sincerely,

   
Sincerely,

Dietrich and Nanette Bergen

**Felice Goering-1906 Iris Village, Moundridge** (owner of land across from property in question). **Ms. Goering** stated she is bothered by the status of the county where instead of asking permission, it is now a culture of doing what you want but asking for forgiveness after. **Ms. Goering** went onto discuss issues in the county regarding knowing where your property lines are located and issues that arise from that. Her suggestion was that if there are rules in the county and not respected, then something needs to be done to make sure that enforcement of those rules is upheld.

**Kathy Nicholson** asked **Mr. Kinsey** if there had been any verbal, written, or digital communications of petitions received for this this case. **Mr. Kinsey** stated the statement from **Dietrick and Nannette Bergen** was the only communication by email, and it was read into the minutes.

**Kathy Nicholson** called on the applicant or their representative to respond to the public comments. **Tiffani Floyd** approached, she responded that applicant was here to respect the rules, and they were trying to rectify the situation, and that the applicant did not do any development with malicious intent. **Tiffani Floyd** wanted to point out that **Mr. Matt Buller**, even though he is employed by a construction company, was never a part of the permitting processes, and they weren't trying to get away with anything. **Tiffani Floyd** also wanted to point out that **Dietrich and Nannette's** family were the original subdividers of the **1842 Cherokee Road** property. **Tiffani Floyd** displayed a map showing what the **Buller's** offered to purchase from the **Bergen's**, and they were unwilling to sell any of their land. **Mr. Kinsey** offered that the sewer line easement was

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for ingress and egress only. **Kathy Nicholson** asked if the **Bergen's** would like to respond. **Mr. Bergen** pointed out that when entering McPherson County, there are signs that state that McPherson County is zoned. **Mr. Bergen** did want to point out that the sewer line easement is only for the operation of the sewer line, if that sewer line ever becomes inoperable and needs repair it will need to be moved to the **1842 Cherokee Road** parcel. **Kathy Nicholson** asked **Mr.**

**Bergen** about the history of the property, **Nannette Bergen** approached to explain the history. **Kathy Nicholson** went onto discuss the year the home was built, and where it sits on the parcel regarding setbacks. **Kathy Nicholson** went onto state that throughout the history of the property it does not appear to have ever been in conformance. **Kathy Nicholson** also pointed out that the reason for the hearing was to bring the property into conformance, not to let people do whatever they want. **Christina Reynolds** asked about the intent of the **Bergen's** regarding now knowing where their property line is. **Mr. Bergen** went onto state he would be farming all his land. **Shelby Shaw** stated asked if the information discussed would be communicated clearly to any buyers of this property. **Tiffani Floyd** responded that the recorded variance information, and the survey would be shared with a potential buyer, and if the markers stay in place the buyer will be able to see where the property line is. **Kathy Nicholson** wanted to mention that the Zoning Administrator, **Jon Kinsey** is having conversations with realtors, title companies, and banks about putting safeguards in place to address issues like the ones in this case.

**Kathy Nicholson** closed the public portion of the hearing and proceeded to deliberations. **Jeff Smith** asked if the new buildings setbacks were correct, there was discussion from all parties about this. **Mr. Kinsey** stated the house does not meet the setbacks, and he wanted to also point out that the original variance **2015-01** allowed for one additional building, which was built without a permit, then a second building was built in addition to that. The Board looked at case pictures showing when the two accessory structures were built through a timeline. **Kathy Nicholson** stated the issues at hand. **Kathy Nicholson** stated possible options the board can implement moving forward. **Lori Bower** discussed what needs to be looked at by the board and how to rectify the issues at hand. **Kathy Nicholson** stated that due diligence is needed as the owner of the property to read your title work. **Kathy Nicholson** and **Lori Bower** discussed the possibilities of conditions. **Jeff Smith** asked if the original variance could be amended, **Kathy Nicholson** replied that a new variance needed to be passed. **Raymond Williams** discussed a fence on the property line, and maybe tear down building #1. **Kathy Nicholson** proceeded onto the instances for granting a variance. **Chris Goodson**, **Lori Bower**, and **Kathy Nicholson** discussed these instances and standards. **Jon Kinsey** read the standards portion of the case report. **Kathy Nicholson** read the Conditions to Grant a Variance. **Kathy Nicholson** asked if the board agrees with the findings of fact or do any of them need to be re-worded, **none they were board approved**. The following conditions were added to this **VAR23-02**:

1. The property may not be reduced below the current lot area (excluding road right-of-way) as described in Deed Book 661, Pages 2206-2207 and may not be further divided.
2. If the property comes under the same ownership as an adjoining property, the entire area will be under single ownership and considered one Zoning Lot. Any future divisions or boundary line adjustment of the single ownership contiguous Zoning Lot must fully comply with all current

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and effective Zoning, Subdivision, and Sanitation Regulations, including Bulk Regulations of the district which it is located within and Setbacks without waivers.


3. The property shall be prohibited from construction of any new structures on the property and no alterations to existing structures that would expand their footprint in size.
4. If, in the future, public water and wastewater systems are made available and it is reasonable to connect the properties systems to these public sources the property owner will do so.
5. The existing wastewater system (lagoon) must be maintained to County Sanitation Codes, except for the required setback from property boundaries.
6. Current use of all structures on the property will be for residential use only. No home occupations will be authorized without submission of the case to the Board of Planning and approval of the case by the Governing Body.
7. Zoning permits for the principal structure and both accessory structures must be filed within 30 days of the variance approval date.
8. The zoning permit fee for accessory structure one will be \$150.00 and for accessory structure two will be \$300.00.
9. The easement for the Sanitary Sewer line shall be filed by the applicant with the McPherson County Register of Deeds Office.
10. A copy of the Resolution approving the Variance shall be filed by the applicant with the McPherson County Register of Deeds Office.

**Kathy Nicholson** called for a motion. **Christina Reynolds** motioned to approve **VAR23-02**, **Jeff Smith** seconded the motion. **All voted aye. Motion carried.**

**Chairperson Nicholson** called for a motion to adjourn the regular meeting.

**Lori Bower** made a motion to adjourn the meeting. **Christina Reynolds** seconded. **All voted aye. Motion carried.**

  
\_\_\_\_\_  
Chairman  
2-12-2024  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Secretary  
-