

BUTLER COUNTY BOARD OF COMMISSIONERS
Tuesday, January 27, 2009

CALL TO ORDER

Commission Chairman Jeff Masterson called the Butler County Board of Commissioners to order at 9:00 a.m. Present were Commissioner Bruce Harris, Commissioner Randy Waldorf, Commissioner Mike Wheeler, Commissioner Dan Woydziak, Administrator Will Johnson, Jr., and Clerk Recorder Tammy Bridges.

ITEM #1 – CONSIDER REQUEST BY DAVID STABLE TO REZONE APPROXIMATELY 25 ACRES FROM AN AG-40 CLASSIFICATION TO AN RR RURAL RESIDENTIAL CLASSIFICATION

Rod Compton, Planning & Zoning Director, came before the Board for approval of a request by David Stables to rezone approximately 25 acres from an AG-40 to an RR Rural Residential. The Andover City Planning Commission recommended approval and the Butler County Planning Commission voted 4-1 to approve this request. Mr. Compton stated that since the City of Andover had no objection to the rezoning, and the County's Comprehensive Plan states that we will try to adhere to a city's plan where applicable, staff also recommends approval.

Commissioner Woydziak motioned to approve the request by David Stable to rezone approximately 25 acres described as: The Northeast Quarter of the Northeast Quarter of Section 4, Township 28 South, Range 3 East of the 6th P.M., Butler County, Kansas, EXCEPT: Beginning at the Northeast Corner of said Northeast Quarter; thence South 1,282.18 feet; thence West 307.86 feet; thence Northwesterly 551.35 feet; thence Northwesterly 320.68 feet; thence Northwesterly 418.33 feet; thence 454.36 feet to the beginning; and EXCEPT Beginning 454.36 feet West of the Northeast Corner of said Northeast Quarter; thence Southeasterly 418.38 feet; thence West 539.65 feet; thence Northerly 99.79 feet; thence Northeasterly 94.34 feet; thence Northerly 261.75 feet; thence East 311.7 feet to the beginning, from an AG-40 classification to an RR Rural Residential classification and hereby authorize the Chairman to sign Resolution No. 09-03 granting such change. Commissioner Masterson seconded the motion. Motion carried 4-1. Commissioner Wheeler voted no.

ITEM #2 – CONSIDER REQUEST BY ROBERT AND CATHERINE CUMMINS TO REZONE APPROXIMATELY 40 ACRES FROM AN AG-40 TO AN RR RURAL RESIDENTIAL ZONING CLASSIFICATION

Rod Compton, Planning & Zoning Director, came before the Board for approval of a request by Robert & Catherine Cummins to rezone approximately 40 acres from an AG-40 to an RR Rural Residential zoning classification. The Butler County Planning Commission recommended approval by a 5-0 vote, and staff is recommending approval.

Commissioner Woydziak motioned to approve the request by Robert and Catherine Cummins to rezone approximately 40 acres described as: Beginning 447.87 feet North of the Southeast corner of the Northeast Quarter of Section 12, Township 29 South, Range 3 East of the 6th P.M., Butler County, Kansas; thence West 1,605.25 feet; thence North 145.64 feet; thence West 488.72 feet; thence North 725.82 feet; thence East 2,095 feet to the beginning from an AG-40 classification to an RR Rural Residential classification and hereby authorize the Chairman to

sign Resolution No. 09-05 granting such change. Commissioner Wheeler seconded the motion. Motion carried 5-0.

ITEM #3 – CONSIDER REQUEST BY MADOWLARK ROAD PROPERTIES, LLC (NICK BELCHER AND TODD FRANKENBERY) TO REZONE APPROXIMATELY 72.5 ACRES FROM AN AG-40 TO A C COMMERCIAL ZONING CLASSIFICATION

Rod Compton, Planning & Zoning Director, came before the Board for approval of a request by Meadowlark Road Properties LLC (Nick Belcher and Todd Frankenbery) to rezone approximately 72.5 acres from an AG-40 to a C Commercial zoning classification. The Benton City Council supports the proposed rezoning. The Butler County Planning Commission recommended approval by a 3-2 vote. Mr. Compton stated that the applicants don't have any particular proposals for development at this time other than the possibility of putting up one or two billboards.

Ken Gile, City of Benton, came before the Board and stated that it was the consensus of the city to allow this request with the understanding that the City controls any kind of future platting and services. He noted that right now, water cannot be provided because they are bound by the rural water district. Mr. Gile said if this was approved, maybe they could de-annex from the water district. He said there would not be any annexing into the city until the public utility services were under control.

Commissioners Waldorf and Wheeler expressed concern about this type of request.

Nick Belcher & Todd Frankenbery came before the Board and stated that they are not trying to take control away from the County and do not intend to ask for rezoning of pieces of the property. Mr. Belcher stated that they want all of the property available for the right developer in the future. He said his purpose for the property is ag and would possibly put up billboards for additional revenue.

Administrator Johnson suggested meeting with KDOT regarding signage and discussing a site planning committee with staff.

Commissioner Masterson motioned to table this request for two weeks. Commissioner Woydziak seconded the motion. Motion carried 5-0.

Rod Compton came before the Board to discuss protest petitions that were received.

RECESS

Commissioner Masterson recessed the Board meeting at 10:14 a.m. for 5 minutes.

RECONVENE

Commissioner Masterson reconvened the Board meeting at 10:20 a.m.

ITEM #4 – CONSIDER APPROVAL OF REQUEST BY CHASE RANCH LP AND WICHITA TOWERS, LLC FOR A CONDITIONAL USE PERMIT FOR A 250 FEET TALL WIRELESS COMMUNICATIONS TOWER IN THE AG-80 ZONING DISTRICT

Rod Compton, Planning & Zoning Director, came before the Board for approval of a request by Chase Ranch, LP for a Conditional Use Permit for a 250' tall Wireless Communications Tower in the AG-80 zoning district. The Butler County Planning Commission recommended approval with

conditions by a 4-1 vote. Staff feels that a tower at this location would be appropriate because it is an underserved area and there are no towers within 3 miles of the site.

The recommendation included the following conditions:

(1) Wichita Towers MUST provide co-location space for at least three (3) additional carriers on the guyed tower, (2) Wichita Towers LP or any future owner shall remove the proposed tower facility within 60 days of the last day of the 12th month in which all use of the tower has ceased, (3) Grant Wichita Towers, LP the right to request an extension for such removal where there is an ongoing negotiation for new or revised leases for existing tower space, (4) Wichita Towers, LP shall file this tower with and shall become part of the FAA database, (5) The applicant shall secure a cash bond with the County to cover the costs of removal. The amount of the bond shall be established at the time of approval based on tower type, height, and associated facilities. The amount shall be the current estimated value for removal plus 50 percent to allow for future inflation, (6) The wireless communication facility shall comply with all federal, state, and local rules and regulations, and (7) Space at the top of the tower shall be reserved for Emergency Communications equipment and transmitters.

Commissioner Harris motioned to approve the request by Chase Ranch LP and Wichita Towers, LLC for a Conditional Use Permit to erect a guy-wire supported telecommunications tower 250 feet in height on property located in the Northwest Quarter of the Northwest Quarter of Section 5, Township 25 South, Range 4 East of the 6th P.M., Butler County, Kansas, subject to the conditions noted above; and authorize the Chairman to sign Resolution No. 09-06. Commissioner Waldorf seconded the motion. Motion carried 5-0.

ITEM #5 – CONSIDER APPROVAL OF AN INCREASE OF \$5,500 TO THE ORIGINAL AMOUNT OF \$4,500 FOR A TOTAL OF \$10,000 TO BE USED AS AN ECONOMIC DEVELOPMENT INCENTIVE FOR IBARRA STEEL

David Alfaro, BCED Director, came before the Board for approval to add \$5,500 to the original amount of \$4,500 for a total of \$10,000 to be used as an Economic Development Incentive for Ibarra Steel. The additional funds would be to help offset an unexpected expense associated with installation of their electric transformer that will cost \$18,000. Mr. Alfaro stated that in visiting with Butler Rural Electric and the City of Rose Hill all parties agreed that it would be in the best interest of all involved that some concession be given to the anchor tenant. Commissioner Woydziak stated that he spoke with Mayor Mark Conway who assured him that the City of Rose Hill will match what the County contributes.

Commissioner Wheeler motioned to approve the request for additional funding to Ibarra Steel in the amount of \$5,500 for a total cash incentive of \$10,000. Commissioner Harris seconded the motion. Motion carried 4-0. Commissioner Woydziak abstained because of his involvement in Rose Hill, Inc.

Mr. Alfaro discussed Pro-Kleen and the overspray issue.

ITEM #6 – CONSIDER APPROVING THE PROPOSED REDUCTION OF THE LETTER OF CREDIT AMOUNT FOR THE COMPLETED NORTHRIDGE SEWER IMPROVEMENT PROJECT

Darryl Lutz, P. E., Director of Public Works, came before the Board for approval of the proposed reduction of the Letter of Credit amount for the completed Northridge sewer improvement project.

The current letter of credit held against Northridge Developers is in the amount of \$248,500. This letter of credit should be reduced to \$239,000 which is 50% of \$478,000 in GO Bonds for which Northridge is liable. Mr. Lutz said that upon completing 3 more homes, an additional reduction can be made, and in the year 2013 (or upon maturity of 50% of the bonds) a 40% reduction in the letter of credit can be made.

Commissioner Waldorf motioned to authorize the Finance Officer for Butler County to secure a reduced letter of credit in the amount of \$239,000 related to the Northridge sewer improvement project and to release the current letter of credit in the amount of \$248,500. Commissioner Woydziak seconded the motion. Motion carried 5-0.

ITEM #7 – CONSIDER APPROVAL OF PURCHASE AND ACCEPTANCE OF RIGHT-OF-WAY DEDICATIONS RELATED TO THE SW 210TH STREET RECONSTRUCTION PROJECT WEST OF DOUGLASS

Darryl Lutz, P. E., Director of Public Works, came before the Board for approval of purchase and acceptance of right-of-way dedications related to the SW 210th St. reconstruction project west of Douglass.

Commissioner Woydziak motioned to approve the purchase and acceptance of right-of-way dedications for tracts of permanent right-of-way as presented for KDOT Project No. 8 C-3687-01, the SW 210th St. road reconstruction project west of Douglass and authorize the Chair to sign the associated documents. Commissioner Waldorf seconded the motion. Motion carried 5-0.

ITEM #8 – CONSIDER APPROVING AN AGREEMENT FOR THE IMPROVEMENT AND SIGNALIZATION OF THE RAILROAD CROSSING NORTH OF WHITEWATER ON NW BUTLER ROAD

Darryl Lutz, P. E., Director of Public Works, came before the Board for approval of an agreement for the improvement and signalization of the railroad crossing North of Whitewater on NW Butler Rd.

Commissioner Waldorf motioned to approve an agreement with KDOT and Union Pacific Railroad to install gates, signals, and other crossing improvements at the Union Pacific railroad crossing on NW Butler Rd. under KDOT Project No. 8 X-2720-01. Commissioner Harris seconded the motion. Motion carried 5-0.

COMMISSION ADDS & ABATES

Commissioner Waldorf motioned to approve Adds & Abates #2379 dated January 27, 2009; Adds in the amount of \$717.58 and Abates in the amount of \$12,364.18. Commissioner Woydziak seconded the motion. Motion carried 5-0.

OTHER ITEMS OF BUSINESS TO COME BEFORE THE BOARD OF COUNTY COMMISSIONERS

Commissioner Wheeler stated that he is concerned about items purchased for the inmate commissary and thinks it could be abused. Administrator Johnson will express Commissioner Wheeler's concerns to the Sheriff Department and will report back to the Board.

Commissioners Wheeler and Harris stated that they will be attending the El Dorado, Inc. Annual Meeting tonight.

Administrator Johnson reviewed the lease agreement with Anthony Speer regarding railroad property and recommended approval by the Board.

Commissioner Woydziak motioned to accept the lease agreement with Anthony Speer for property located at 1614 N. Main, Andover, KS, and allow the Chair to sign. Commissioner Masterson seconded the motion. Motion carried 5-0.

Administrator Johnson presented the Legislative Agenda to the Board for review.

ADJOURNMENT

Commissioner Waldorf motioned to adjourn the meeting of the Board at 11:15 a.m. Commissioner Woydziak seconded the motion. Motion carried 5-0.