

BUTLER COUNTY PLANNING COMMISSION

Scheduled Meeting
February 4th, 2020
Butler County Courthouse-4th Floor
205 W. Central
El Dorado, Kansas 67042

MINUTES

The scheduled meeting of the Butler County Planning Commission began at 7:00 p.m. on Tuesday, February 4th, 2020 on the 4th Floor of the Butler County Courthouse located at 205 W. Central in El Dorado, Kansas.

Chairman: Jeff Varner

Members Present: David Greene Jr., Kristi Sullivan, Andy Jones, Jeremy Sundgren, Jim Ralston

Members Absent: Kermit Frey

Guests: Julie Brandt, Kenny Wagoner, Zach Lewis, Kelsey Lewis, Pamela Johnson, Bob Johnson, Susan Thompson, Mike Thompson, Abby Phillips, Cody Phillips, James McMichael, Trinity McMichael, Gerald Dixon, Mark Schrag

The meeting was called to order and a quorum was declared

Approval of the February 4th, 2020 Planning Commission Agenda

Motion: Jim Ralston

Second: David Greene Jr.

Approved

Approval of the January 7th, 2020 Planning Commission Meeting Minutes

Motion: Jeremy Sundgren

Second: Andy Jones

Approved

Old Business:

None

New Business:

PL 20-01

Request for a Mortgage Lot Split with APO Provisions

The Board Chairman stepped down for this case

Applicant/Owner: Rosemarie Richard

Agent: Gerald Dixon of Goedecke Surveying

Location: SW Adams Rd and SW 30th Street, Towanda, KS

Discussion: Staff recommends approval

Staff: This is a request for a Mortgage Lot Split on 147 +/- acres with the placement of a 30+/- APO on a portion of the remaining property. The property is primarily used for farming activities and staff feels the request meets the criteria for such a split as well as the placement of the 30 acre APO.

No further questions or comments were made

Motion: Andy Jones

Second: Jeremy Sundgren

Action: 4-0

To be heard before the BOCC on February 24th, 2020 @ 9:00am

PL 20-02

Request for a Homestead Lot Split with APO Provisions

Applicant/Owner: Bruce and Linda Koehn

Agent: Gerald Dixon of Goedecke Surveying

Location: 2080 NW 160th Street, Burns, KS

Discussion: Staff recommends approval

Staff: This is a request for a Homestead Lot Split on 155 +/- acres currently zoned as AG 80. They are proposing a 5 acre split with the placement of a 75 acre APO on a portion of the remaining property. Property is primarily being used for farming activities and staff feels the request meets the criteria for such a split as well as the placement of the 75 acre APO.

No further questions or comments were made.

Motion: Andy Jones

Second: Jeremy Sundgren

Action: 5-0

To be heard before the BOCC on February 24th, 2020 @ 9:00am

CU 20-01

Request for a Conditional Use Permit for an Event Venue

Applicant/Owner: Zach Lewis

Agent: Roger Cutsinger, Savoy Company P.A.

Location: 15499 SW 140th Street, Rose Hill, KS

Discussion: Staff recommends approval

Staff: This is a request for a Conditional Use Permit for the operation of an Event Center. Mr. Lewis owns a tract of land that contains 27 +/- acres. It is primarily used for farm related activities. In July of 2018, Zach and his family started a business commonly known as Lewis Family, Morning Grit Farms LLC. Morning Grit is an event center that hosts friends, family and 4-H meetings on the property. Due to the number of attendees, they realized they needed to pursue a Conditional Use Permit to allow the business to grow. Morning Grit Farms provides

children and families an opportunity to learn and connect with farm animals and nature in general. The highlight of the year was when they hosted the Envision Blind Beep Baseball Team for their annual celebration. They loved it so much that they are scheduled to return in the upcoming spring. One important part of their mission is to cater to children with disabilities. In fact their mission statement reads “Our family strives to provide an entertaining venue where you family and friends can enjoy some country farm fun. A place where kids and adults can free range, enjoy the fresh sunshine, interact with farm animals and perhaps forget about technology for a few hours.”

There is an existing building in the site where the parking will take place. Proposed hours of operation will be Saturdays between the hours of 10 AM and 6 PM and parties are 2 hours in duration. The applicant will continue to live there as the business continues to operate.

Article 7-AG-40 Zoning District:

Section 22-109-Factors to be considered in an application for a Conditional Use Permit

Because of particular conditions associated with their activities, certain uses which might have an adverse effect upon nearby properties or upon the character and future development of a district are not permitted outright in districts, but are permitted as Conditional Uses when their proposed location is supplemented by additional requirements; so as to make the use requested compatible with the surrounding property, the neighborhood, and the zoning jurisdiction.

In approving a Conditional Use the minimum requirements of approval for all similar types of permitted uses, in the same district, must be met unless otherwise reduced by specific reference in the recommendation of the Planning Commission or the approval of the Board of County Commissioners. The requirements may be made more stringent if there are potentially injurious effects; which may be anticipated upon other property and the neighborhood or contrary to the welfare and convenience of the public.

The Planning Commission may recommend approval of a Conditional Use and the Board of County Commissioners may approve such Conditional Use using the following factors as guidelines:

- 1) Whether approval of the Conditional Use would be consistent with the intent and purpose of these regulations:

Staff: The property is zoned AG-40. The intent and purpose of the zoning regulations as they apply to AG-40 zoning classification is to allow for some development in rural areas and inside the Urban Growth Area (UGA). It is suitable in rural locations inside the UGA where adequate public roads and public serves are available.

It is not necessarily whether the proposed use is consistent with the intent and purpose of the zoning regulations, but rather, whether the proposed use is appropriate for the area in which it is located.

In this instance, staff feels the use proposed would not necessarily be consistent with the intent and purpose of the regulations but since the project is located just off a paved county arterial road, along a chip sealed SW 140th St, and will create a minimal increase in traffic it may not be a detriment to the area.

The property is located approximately 1/2 mile east of Butler Road, on SW 140th, and inside the Urban Growth Area of the County.

- 2) Whether the location of the proposed use is compatible to other land uses in the surrounding neighborhood:

Staff: Based upon the type of use proposed, parties associated with the increased knowledge of farm animals and nature, it could be compatible with the current use in the surrounding area if operated in the manner proposed by the applicant, and if operated in accordance with any other conditions that might be placed upon it. Its impact upon the surrounding properties would be minimal.

The land is currently used as a residence but has farming activities occurring on the property. The activities associated with the parties should not bring a huge increase in traffic as the parties will only be 2 hours in nature.

- 3) Whether the proposed use places an undue burden on the existing transportation and service facilities in the area affected and, if so, whether such additional transportation and service facilities can be provided:

Staff: As mentioned the property is located in an AG-40 zoned area, with numerous tracts of RR zoned property within the area, and the road serving the area is a Chip Sealed county maintained road. There will be some traffic to and from the site but it should not impact the neighbors accessing their property.

- 4) Whether the proposed use is made necessary or desirable because of changed or changing conditions in the area affected:

Staff: There are no changed or changing conditions in the area. The applicant is merely proposing to use the site as an Event Venue catering to parties associated with farm animals and nature.

- 5) The length of time the subject property has remained vacant or undeveloped as zoned; (the use of land for agricultural purposes shall be considered as viable use of the land and not be considered as allowing the land to be vacant or undeveloped):

Staff: The property has had a residential structural on site and farm operations for many years now and it is the wishes of the applicant to begin hosting parties on site.

- 6) Whether the applicant's property is suitable for the proposed use:

Staff: It is felt the property is suitable for the proposed use. The nature of the use of the land could change as there will be additional traffic to the site but no significant increase in outdoor activity that could impact any neighboring properties.

The applicant has provided aerial photos depicting the distances from SW 140th and the neighboring residences.

- 7) The recommendations of professional staff:

Staff: Staff feels the proposed use could be appropriate if certain conditions are met and recommends approval.

- 8) Whether the proposed Conditional Use would be in conformance to and further enhance the implementation of the county's Comprehensive Plan:

Staff: This particular site is inside the Urban Growth Area of the County as noted in the Butler County Comprehensive Plan.

The Comprehensive Plan stipulates that the property is inside the UGA. Many uses, even with an AG-40 designation, could be considered a commercial use therefore staff feels the use proposed could be considered to be in conformance with the Comprehensive Plan.

- 9) Whether the relative gain to the public health, safety, and general welfare outweighs the hardship imposed on the applicant by not upgrading the value of the property by approving the proposed Conditional Use:

Staff: Staff feels the hardship issue is irrelevant in this case. Zoning Regulations have been upheld in Courts for a long period of time. The very nature of zoning regulations implies that the public good is served by not allowing certain uses in certain locations. To imply that they serve as a hardship by not allowing a certain use on any particular property is incorrect. When a person buys property, he/she is not guaranteed a use of that property other than what is allowed at the time they buy it.

- 10) Whether the proposed Conditional Use, if it complies with all the conditions upon which the approval is made contingent, will not adversely affect the property in the area:

Staff: It is felt the proposed use would not adversely affect the property in the surrounding area and is therefore proposing the following Conditions:

- 1) All parties will be hosted on either Friday evenings or Saturday between the hours of 10-AM & 6PM as proposed.
- 2) All parking will be onsite with no parking allowed on SW 140th.

11) For uses as solid waste disposal facilities, including sanitary landfills, construction and demolition landfills and transfer stations, whether the proposed Conditional Use is consistent with the Comprehensive Solid Waste Management Plan for Butler County, and amendments thereto:

Staff: N/A

12) Such other factors as may be relevant from the facts and evidence presented in the application:

Staff: Staff visited the site and the impact to any adjoining landowners would be minimal if operated in the manner proposed.

Board: The hours for Saturday are very specific but as far as Friday evenings, is there something more specific?

Zach Lewis: Friday evening after school lets out, 5 PM to 7 PM. We prefer Saturdays because we are up early feeding the animals.

Board: I am concerned because the hours are very limited right now, what if someone wants something on a Sunday afternoon or evening? [inaudible]

Kelsey Lewis: [inaudible] especially in the summer time, I guess it could go past 6 o'clock if they want that evening option. We can adjust the time. It wouldn't be past 9pm because we are morning people, not late evening people. Most families with kids prefer to be done by 8pm in the summer time due to bedtime.

Board: Just something to think about in case you get busier than you're expecting.

Kelsey Lewis: That's what we are expecting. So we could to like 10.

Board: Will there be any music, amplification, wedding type events or such?

Kelsey Lewis: We are not looking to do weddings. We do have a sound system in our barn for kid's dances and in fact, we have a father-daughter dance coming up but it can be managed especially knowing how far the neighbors are.

Board: So no Sunday events?

Kelsey Lewis: We try not to do any Sunday events just because we like to keep it as a family/church day for us. We don't state that we do Sundays but it has been requested before.

Mark Schrag: What I have heard here sounds pretty reasonable however I have also heard a lot of noise coming from there, later in the evening. I was suspecting that when I got the notice in the mail. My question is will there be alcohol involved with these events? I also heard Friday and Saturday afternoons but at the same time also evenings, 9 or 10 o'clock. So is it going to be until

later, 10, 11 or 12 o'clock? If there is music, I hope there some kind of control with it. Those are my only concerns.

Kelsey Lewis: We do not have a license for alcohol and we do have signs posted that state no pets, no glass bottles, no alcohol and no smoking as well.

One of the Board Members was asked if he wanted to further talk about the hours of operations

Board: If this should move on for approval, how specific does it get as far as the hours of operation? Will there be set hours?

Staff: The Board of County Commissioners is going to look at the hours, start and end.

Board: The way I read it is Friday evening and Saturday 10 to 6. It doesn't mention Sunday. I just think it sounds a little lose and if there will be a Conditional Use Permit, it will need to be a little bit more specific.

Board: Maybe there should be like Friday from 5-9pm, Saturday maybe 10am – 9pm and on Sunday 1 – 6pm. It will give some flexibility to them and will give the neighbors an idea.

Board: Considering that usually we are talking 10pm or even midnight, I would say these are pretty good hours in my opinion. I would also say that all music and amplification has to be indoors.

Staff: When the motion is made, we will need to state what the hours will be.

No further questions or comments were made.

Motion: Jim Ralston (motion was made with the hours being Friday 5-9pm, Saturday 10am-6pm and Sunday 1-6pm)

Second: Kristi Sullivan

Action: 5-0

To be heard before the BOCC on February 24th, 2020 @ 9:00am

***** MEETING ADJOURNED*****

The Board of Zoning Appeals opened for Case VA 20-01, request to vacate a right of way, to be heard by the Board of Zoning Appeals Board.

PL 20-02

Road Vacate

Applicant/Owner: Cody and Abby Phillips and Robert and Pamela Johnson

Agent: Roger Cutsinger, Savoy Company P.A.

Location: Northern Most 400 feet of SW Rolling Hills Road, Augusta, KS

Discussion: Final Decision

Staff: This is a request for the vacation of the most northern 400 feet of SW Rolling Hills Road. The request was received on November 27th, 2019. Rolling Hills Road is part of Rolling Hill

Estates which is west of Hopkins Switch Road and to the south of SW 120th. Several utilities are in the area that could impact the decision making progress. One is Butler Rural Water District #4, they have a waterline on the west side of Rolling Hills Road and just to the north of Mr. Johnsons driveway. A representative of RWD #4 did state that the vacation of the right of way would not impact them at all. The other utility would be Butler Rural Electric, an electric provider. I did reach out to them and did not hear back, nor did we receive any comments or any feedback at all. SW Rolling Hills Road is located in the Spring Township and after visiting with Kathy McDowell – township trustee, the Township supports the road vacation as well. The Phillips and Johnsons are requesting to vacate the most northern 400 feet which also eliminates access to the land to the north. They feel the landowner has enough adequate frontage off of SW Hopkins Switch to install a driveway providing access to the south half of the property. This information came from a letter that Mrs. Phillips provided to staff as part of this application. In the attached Letter requesting Vacation, it states that allowing an access point to the property to the North would traverse through both the Phillips & Johnsons property. That in fact is not an accurate statement. The 400' is a platted Road Right of Way and due to it not being improved to a road status, the petitioners are using it as their own, which I understand.

During my review of the possible Vacation the property owner to the north, Ms. Julie Brandt, contacted our office and stated that they would need the extension of Rolling Hills Rd. as they continue their discussion of the possible development of their 75+/- acres.

The Phillips filed a petition, the County has met the requirement with sufficient Public Notification, notice of date, time and place of public hearing. Spring Township, Butler Rural Water District #4 and Butler Rural Electric are not protesting the request for the road vacation. Because Spring Township does not maintain the affected road, the Township recommends approval for the proposed vacation. The public could suffer a loss or be inconvenienced by this act. RWD#4 has utilities in the area, private rights could be injured by the vacation and the prayer of said petition for a vacation should not be granted as determined by this board. With that, the Board of Zoning Appeals should take questions and information from the applicants as well as from the party to the north.

Board: It is not an improved road?

Staff: That is correct. It is basically a paper road, it has never been through the process and as you can see, it stops at the cul-de-sac.

Board: What are those multiple lines on our map?

Staff: They show the right of way, it is a 75 feet right of way.

Board: It looks like the lines are not where the actual road is.

Staff: These lines are not accurate. They just give you the concept.

Cody Phillips: I am here with my wife Abby Phillips, also here is Bob and Pam Johnson, the co-applicants, also my neighbor to the south James McMichael is also here in support of this application. All those highlights on that plat, Mrs. Johnson could probably better speak to this since she was involved with the planning on this neighborhood, that plat was prepared according to County standards. There is always a standard exit, you will see a temporary easement granted there which is our current cul-de-sac, if there is any changes to the status and the roads were to be extended, the cul-de-sac would have to be remediated and a new cul-de-sac or a 3 way would have to be provided to the north side. I would like to state that the news of developing the land to

the north is totally new to me. I spoke with Ms. Brandt, I am a member of the trustees of Spring Township so I excused myself from the meeting, but at the time that we spoke, the explanation that was given to me that during the high water situation in May, they had one cow that they were unable to access for some time which was the reason for proposing the private drive on the public roadway so that stirred up a little bit of a concern to me. This is a very close community, not much traffic, at the most here is maybe 10 houses in the area.

With respect to the Butler Rural Electric Co-op, their lines runs from Hopkins Switch along the property line and then straight north of my house, it cuts over to the south to service me. All my neighbors to the south, their lines come in way south of me. Butler Rural was in the area trimming trees, they accessed my line through my pasture from my driveway, and the remainder of the work was done off Hopkins Switch which is where I proposed a gate for their entry way if they would like to put in their private drive. They didn't have any issues with that. There were also skidsteers in there doing clean up directly to the north and that equipment had no problems getting in and out of that area. I just don't see any reason why this road would need to be opened up due to development, that has all changed in November and I would argue that it's probably pre-text.

Board: Is there a ravine going through there?

Cody Phillips: I have not been on their property, it is not my property but I would say that when we get these heavy rain events, my entire yard floods with a couple of feet of water during the run off period, so any road that will go in to the north there will need extensive build up, culverts, I mean I handle this on a monthly basis; I just don't see where the public would be harmed by this. This road has been like this for 45 years and nothing has changed. Right now there is no grant money from the public to extend this road to Ms. Brandt's property and I find it very unlikely that that would happen.

Board: Is there any kind of gate or access to the property of the north to there?

Cody Phillips: There is a solid fence at the end of the cul-de-sac, my property and the Johnsons property meet, their property is fenced and our joint fence line runs all the way down to that right of way. They have never used it, I have never had a request for access.

Board: Is there a floodplain or a floodway that runs along that tree line?

Cody Phillips: I contacted the Army Corps of Engineers and was told there is not. In fact, there is plenty of access points to the Brandt property besides this one.

Julie Brandt and Kenny Wagoner: My request is that you do not vacate that right of way please. My family, all the way back to my grandparents, have resided in Butler County. Unfortunately she has become ill and was hospitalized with a brain bleed. So last year, the land was deeded to my brother and I so we can take over her financial situation and health issues. She continues to reside in the house but I am afraid that will not be much longer. Unfortunately financially we are going to have to do something. To help my mother over the years, about 3 years ago we did cut out more trees so we could have a few more cattle and the McClure's family the land for her which is part of her income. We never burned those tree and they are still there which is due to where they are at and the difficulty to get to that area due to the access. We will have to develop that land and sell part of it so my mother can go to a more long term setting. So in the future, that area will have to be developed just like Rolling Hills addition was at one point. We will have to divide that land and with that we will need that access. There are close to 80 acres and maybe only sub divide 40 acres of it on the south side. My brother has a house on the north side there so going to the south side is the only way to do that since he will continue to live there. We are looking to divide this into 4-10 acre plots and we have contacted a surveyor

who is working with us to accomplish that. Whoever platted out the development years ago would had some foresight to know that probably that land that this would eventually be subdivided and developed in the future so we request that it not be vacated.

[inaudible recording time]

Kenny Wagoner: [inaudible] 3 years ago when we didn't have a lot of rain. There is a ravine back there and actually another ravine along the tree line. Then right back there at the north side and to the west, that is usually pretty swampy and it drains back to the wooded area just east of Hopkins Switch. It is very hard to access during the rainy season.

Board: [inaudible] access to that but you never accessed it from where the road is?

Kenny Wagoner: No because there is no way in there since there are no gates. When I looked at the map and saw the platting, I called the Economic Development Department and asked them what the process was and that is when I was told to fill out the paperwork with the County and the Township would come and look at it to see if can gain access on that side and that is how it all began.

Julie Brandt: That was to get access for the farmer but also having in mind the development of that part of the land. She needs the income coming from these lots to supplement her social security. It would really just be an extension of the Rolling Hills Subdivision.

Board: That 50 plus years that your family has owned this property, can you be more exact?

Julie Brandt: In the yearly 70's they built a house there and before that our [inaudible]

Board: But it has been in the family well before Rolling Hills was developed?

Julie Brandt: Oh yes most definitely. My mother wouldn't want to sell any of this if she didn't have to.

Kenny Wagoner: Also the access that Mr. Phillips was talking about, south of the house off of Hopkins Switch, that is very limited access since that field is nothing but limestone sticking out about 2 feet. You would have to bust all of that out just to get some kind of access.

[inaudible recording time]

Kenny Wagoner: Have you ever driven 110th between Hopkins Switch and Purity Springs? It is pretty lowly maintained [inaudible]

Cody Phillips: East of my house there is a 15 feet deep elevation change and a draw that runs through there. It catches run off from this whole section and when it's raining, that draw is flooded. In order to develop that land, it would need at least a 10 feet elevation. The south half of that land cannot conceivably be developed. It seems very strange to me to want to develop the south half when the north half has a much higher elevation. I also want to point out that Joyce Brandt no longer owns this property, I am very sorry she is very ill. The land is now owned by Julie and her brother so to the extent that they are talking about developing that land for her, this is not the only 80 acres they have available to sell for cash. The idea of trying to develop that ground, even now, it is so wet and we haven't had any rain, you need boots to walk through there since it is completely saturated and it stays that way. It is not a feasible project. With respect of accessing it from 110th, of course the owner could always grant access there.

Bob Johnson: I am hearing about future development. My wife and I bought the property in 1980 with the understanding that the cul-de-sac would be where it is. It has been that way for 40 years. I decided to develop that lot in 1989 [inaudible] had to say, thank you.

It was announced by the Board Chairman that this is a final decision meeting, meaning this case will not go to the Butler County Commission Board.

Staff announced that there is a 14 day appeals process

No further comments or questions were made by the public

Board (Jim Ralston): This plot was done in 1978 before we had any zoning and the mind set at that time was to just put houses everywhere. We have done a 180 since then and I really think that, it is a little hard to say without some engineering, but I cannot see that we would approve a plat that would continue through that low water spot.

Board: There is a 70 feet right of way which back then was usually 35 feet. If they aren't worried about them building next to them, then why not leave it as is?

Board (Jim Ralston): I think that is probably right but I also think that if we did remove that right of way, I think we would have to convert that temporary easement to a permanent easement at the cul-de-sac. We can't just have a dead end road, we have to have a place for people to turn around. The permanent easement has to be made a permanent easement where that cul-de-sac is.

Board (Jeremy Sundgren): I agree with Jim from the standpoint that I think it would be a hard look as to whether a board like would approve rezoning that land for development and I agree with Mr. Phillips that it is probably not feasible, it's probably not cost effective and probably not the highest investment for that land to develop it however when you have a situation like this where you have an unclosed public road that goes to a property, I think you need all of the landowners around there to be in agreeance that they want to shut that road down and we do not have that here. That is my opinion.

Board: It is strictly my opinion but I think the reason they are trying to close it is to make sure there is no traffic going through that development.

Board (Jeremy Sundgren): Right but whether they develop that or not, that is an access point to the property. I do not think it is developable, I do not think that would be the highest investment for the property or the Brandt family. I think it would be in their best interest to market that property in a manner other than development for their bottom line but again, shutting off that legal point of access, I don't think is appropriate unless they would want it shut down.

Board (Kristi Sullivan): There are 3 houses up there that would ever be [inaudible] the only ones that are impacted.

Board (Jeremy Sundgren): That is not correct, the land to the north is impacted, the Brandt's property. That is why I am saying, everyone impacted by vacating this road, should be in agreeance that they want it closed. Otherwise, there is a reason why that is there, we don't know what the reason is but that gave access to the Brandt's down Rolling Hills Road. It is not good access but it is legal access. That is my opinion.

Board: [inaudible] as far as to whether or not [inaudible] County standard road [inaudible]

Board: That is correct, as long as they are on the right of way they could track down through there [inaudible]

Board (Jeremy Sundgren): That is correct because it is a legal road and I believe it would be classified as a minimal maintenance road, I assume.

Board (Jim Ralston): I don't agree with that. If they use that road, it will have to be brought up [inaudible]

Board (Jeremy Sungren): Well who will have to bring it up to standards?

Staff: I was speaking with the County Engineer Mr. Lutz and it would be at the expense of the property owner to the north.

Board (Jim Ralston): I don't think you could [inaudible] if you are going to use it [inaudible] public, then it is a public road [inaudible]

Board (Jeremy Sundgren): I can show you just the example throughout the county of minimal maintenance roads that people have to go down frequently because that is the only access to their property. Now these people do not have to access their property down Rolling Hills Road, they have other options but there are a lot of situations that people are going down roads that are not meeting county standards.

Board (Jim Ralston): I agree with that but my point is that they would be doing it now, not 40 years ago, things certainly have changed [inaudible]

Board (Chairman): Then again, it all comes down to that they can still have access from that road if it is something like this but if it is a development issue, then that changes the entire ballgame. The ones developing then would have to bring the road up to County standards.

Board (Jeremy Sundgren): So you are telling me they couldn't require those fences to be moved to where they don't cut off their access coming down Rolling Hills Road. They couldn't require that, the Brandt's couldn't and they could not drive a Kawasaki Mule down that road to access their property. Could they not require that to happen?

Staff: I do not know who would be, I don't know if it would have to go to the Township since it is a Township Road but again, technically it is not their property.

Board (Jeremy Sundgren): So someone, not sure whether it is the Brandt's or the County, I would assume could require the Phillip's and the Johnson's to correct their fences due to it being an unclosed road. Someone could require them to put their fences in the correct location to allow someone to drive down Rolling Hills Road to access that property.

Staff: Again, I do not know whether it would be the County or the Township. If it is platted, it is a Township Road.

Board (Jim Ralston): I would think that would have be a process [audible] clearly a temporary easement. Think back to the mentally when this was platted, in mind for future development and that is why it is there. We have completely changes our philosophy in how we develop the County and now days, this would not be likely. If we were doing this today, we would not require what they did back in 1978 but that is what we have today.

Board (Jeremy Sundgren): Right, today it would have a cul-de-sac there and the road would not keep going through. It would stop where the cul-de-sac is and the Johnson's and the Phillip's would own up to where their fences are to the north where it meets Brandt's. Certainly if it was done correctly is hard to say. Maybe back then they envisioned it becoming a development to the north. I just have a hard time taking away someone's legal access to their property in hindsight.

Board (Chairman): I think the way this will be looked at is all parties involved to vacate.

Board (Jeremy Sundgren): I think the matter of whether or not it is developable is irrelevant. It has always my understanding that in order to shut down a public road, you need everyone to be in agreement to do it.

[inaudible recording time]

Board (Chairman): But then again, it boils back to fences that aren't in the right place. [inaudible] fences should have been back 70 feet.

Board (Jeremy Sundgren): Based on the description, they are not in the right place.

Jim Ralston made the motion to deny the request for VA 20-01

Votes were as follows:

Jim Ralston – Made and Approved the motion to deny the request

Jeremy Sundgren – Approved the motion to deny the request

Andy Jones – Approved to deny the request

Kristi Sullivan – against the motion to deny

David Greene Jr. – Approved to deny the request

This decision is final