

**BUTLER COUNTY PLANNING COMMISSION**

March 5<sup>th</sup>, 2019  
Butler County Courthouse-4<sup>th</sup> Floor  
205 W. Central  
El Dorado, Kansas 67042

**MINUTES**

The rescheduled meeting of the Butler County Planning Commission began at 7:00 p.m., on Tuesday, March 5<sup>th</sup>, 2019 on the 4<sup>th</sup> Floor of the Butler County Courthouse located at 205 W. Central in El Dorado, Kansas.

**Members Present:** Kermit Frey, David Greene Jr., Kristie Sullivan, Andy Jones, Jeff Varner and Debbie Logsdon

**Members Absent:** Jeremy Sundgren and Jim Ralston

**Guests:** Roger Cutsinger, Doyle Creek Land and Cattle Company, Mark Russell, Caroline Moeder, Aaron Moeder, Alan Wyss, Mike Moeder, Maggie Highbarger, Jorja Highbarger, Mike Cooper, Vicky Cooper, Terry Lowmaster, Robert King, Blake Johnson, Patrick Pelstring, Jesse Hopkins-Hoel, Mike Duntz, Matthew Spinder as well as additional guests however their names were not legible.

**The meeting was called to order and a quorum was declared**

**Approval of the March 5<sup>th</sup>, 2019 Planning Commission Agenda**

**Motion:** Debbie Logsdon

**Second:** Andy Jones

Approved

**Approval of the February 12<sup>th</sup>, 2018 Planning Commission Minutes**

**Motion:** Kermit Frey

**Second:** Kristie Sullivan

Approved

**Old Business:** None

**New Business:**

**RZ 19-02**

Request for a Zoning Change from AG 40 to Residential Estates (RE)

**Applicant/Owner:** Aaron and Caroline Moeder

**Agent:** Roger Cutsinger, Savoy Company P.A.

**Location:** 14622 SW 190<sup>th</sup> Street, Rose Hill, KS 67133

**Discussion:** Staff recommends approval

**Staff:** The applicant is requesting to rezone the 75+/- acres from AG 40 to RE zoning classification which will allow them to potentially split the property into 3 tracts as part of their Family Estate Planning. The surrounding area is a mixture of AG40, RE and RR. The proposed zoning may or may not be considered detrimental to the area. There may be changes or changing conditions in the area that would call for such a split however this request is merely due to the applicant's desire to do so. The change in zoning classification would allow for more development that it would in an AG 40 classification. Property has rural water and a septic system in place for the existing residence and electricity is being provided by either Butler Rural or Westar. 190<sup>th</sup> is a township gravel road and sits inside of the Urban Growth Area.

**Roger Cutsinger:** By getting this rezoned, it will allow them to meet their family estate planning.

**Board:** If there are going to be 3 lots in there, are they going to have a public roadway to some of them?

**Roger Cutsinger:** Right now there are 2 property lines, so depending on how the county wants us to do that, there may be an ingress – egress easement.

**Staff:** we will have to address that issue.

**No further questions or comments were made**

**Motion:** Debbie Logsdon

**Second:** Kermit Frey

**Action:** 5-0

*To be heard before the BOCC on March 26<sup>th</sup>, 2018 @ 9:00am*

**RZ 19-03**

Request for a Zoning Change from AG 40 to Residential Estates (RE)

**Applicant/Owner:** Richard and LeAnn Hamilton

**Agent:** Roger Cutsinger, Savoy Company P.A.

**Location:** ¼ South of SW 190<sup>th</sup> St. on SW Meadowlark Rd. Rose Hill, KS 67133

**Discussion:** Staff recommends approval

**Staff:** The applicants, Richard & Leann Hamilton, are proposing to rezone approximately 52+/- acres from an AG-40 Agricultural classification to a Residential Estates (RE) classification. The surrounding area is a mixture of AG40, RR and RE. There may be changes or changing conditions in the area that would call for such a split however this request is merely due to the applicant's desire to do so in order to be able to split the property in to 2 tracts. RE classification allows for more development than AG 40 zoning. If the 52 acres are rezoned, it would still allow for farming activities. There is no water well or septic system in place so both would need to put in place so a residence can be constructed on the property. SW Meadowlark is a gravel township road. Electricity would be provided by either Butler Rural or Westar. This property is located inside of the Urban Growth Area of the County.

**Colt Mahland, 13669 SW 190<sup>th</sup> St.:** We are looking to split this for 1 residential home site on SW Meadowlark and the other would be left to be hayed and as family land.

**Staff:** I do want to mention that adjacent to the north, there is a property with RE zoning classification.

**No further questions or comments were made**

**Motion:** Debbie Logdson

**Second:** Andy Jones

**Action:** 5-0

*To be heard before the BOCC on March 26<sup>th</sup>, 2018 @ 9:00am*

**CU 19-03**

Request for a Conditional Use Permit for a 345 kV Substation

**Applicant/Owner:** Harvey Eric Buller and Expedition Wind LLC

**Agent:** Troy Bushman, Project Developer

**Location:** NW Hwy. 77 & NW 130<sup>th</sup> Street, Burns, KS 66840

**Discussion:** Staff recommends approval

**Staff:** I want to let everyone that the acting agent in this case, Troy Bushman, was not able to attend the meeting this evening.

The applicant and Expedition Wind LLC are proposing to construct a 345 kV Substation inside a 390x390 foot fenced compound located between SW 140<sup>th</sup> and SW 130<sup>th</sup> Street and adjacent to NW Hwy 77 in Burns. This fenced compound will also serve to store any necessary equipment.

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-80. The intent and purpose of the zoning regulations as they apply to AG-80 zoning classification is to allow for limited development in rural areas. The

construction of an Electric Switching Station can be suitable in rural locations where adequate public roads are available during the construction phase of the project as once the construction is complete minimal traffic will be accessing the site.

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 may not necessarily be consistent with the intent and purpose of the regulations but since the project is located on a State Highway, in an area that has virtually no residences within the immediate area and will create a minimal increase in traffic it may not be a detriment to the area.

The property is located outside 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 it could be compatible with the current use in the surrounding area. That area of the county is used for either farming or cattle activities. The operation of a Switching Station will bring little activity to the area once the construction is complete. Its impact upon the surrounding properties would be minimal.

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-80 area and the road serving the area is a State Highway. There will be minimal traffic to and from the site, after the construction is completed, and 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 allow the use of the site for the placement of an Electric Switching Station.

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 been used for farming activities for years and the majority of the site will still allow for farming activities after the project is complete.

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 will not change significantly as there will be minimal traffic to the site and virtually no increase in outdoor activity that would impact the majority of the adjacent properties.

7. The recommendations of professional staff:

Staff: Staff feels the proposed use would be appropriate once the project is completed and all construction activities are complete. Electrical Switching Stations are crucial to the infrastructure that provides electricity to our homes. Therefore the site recommended would be suitable for this activity.

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 outside the Urban Growth Area of the County as noted in the Butler County Comprehensive Plan.

The Comprehensive Plan stipulates that the property is outside the UGA. Many uses, even with an AG-80 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 any and 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 will not adversely affect the property in the surrounding area and in this particular case is proposing that no Conditions be placed upon the property.

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 viewed the site and felt comfortable that if the Switching Station were to be placed on the site as proposed it would not impact any neighbors within the immediate area.

A memo was sent to all of the area of the Lincoln Township

The following responses are to address questions raised by Mike Cooper and Lincoln Township

- 1) Why would they (Expedition Wind LLC) locate a substation in Butler County, rather than Marion County? **1 Switching Station will actually be located on the same footprint as the Wind Farm in Marion Co. and the 2<sup>nd</sup> is being located in Butler Co. where it will provide an interconnection to the Electric Grid and its connection to WESTAR.**
- 2) Why was the information requested only made available to a small group of people? **KS State Statutes require notification to any and all landowners within a 1,000' radius of a project site. That was notice was sent out as required by law. The only information requests I received was from a member of the Planning Commission, an Attorney representing the landowner directly across the highway to the East and Mr. Mike Cooper. In my discussion with Mr. Cooper I provided him copies of everything that I had as it related to the Project. In fact Mr. Cooper then went to the Co. Clerk's Office and stated that I did NOT give him all the information related to the project and the only way any one can get that information is if you are a friend of mine.**

**I have been in either City or County government for 34 years and have NEVER been accused of withholding information and for Mr. Cooper to question my integrity like that really upsets me.**

- 3) What tax revenue would be made available to Butler County from this project? **The State of Kansas would be the agency that would assess the project and at this time I have no idea how much tax revenue Butler County would receive.**
- 4) What would keep this company from putting a Wind Farm in Butler County in the future, since the substation is already in existence? **Former Gov. Brownback placed a Moratorium on the construction of Wind Farms in the Flint Hills and since the majority of Butler County is located in the Flint Hills the chances of a project coming to or being approved is very slim!**

**And as stated above the Switching Station will provide an interconnection with Westar and therefore another Wind Farm would not be able to connect to it.**

- 5) Will this project require the installation of the large, rusty power poles along our property/roads? **In speaking with Troy Bushman, with Expedition Wind, that piece of the project has not been engineered yet.**
- 6) What is the time schedule for the proposed project? **The earliest date to begin construction would be either July or August of 2019 with a go live date of approx. the end of 2020.**
- 7) Will this substation be the “first foot in the door” in getting a Wind Farm in Butler County? **Will say it again, the Gov. put a moratorium on Wind Farms in the Flint Hills so the chances are slim.**

And as for the comment “it just smells fishy”, again I take offense to the comment and the allegation that I or anyone associated with this office is hiding any information.

**Jesse Hopkins-Hoel, VP of National Renewable Solutions, Developer for Expedition Winds:**

I have our project manager here with me, Mark Russell. Yes we are looking for a CUP for the installation and construction of a tapping station. The travel is along Hwy 77 to the point of inter-connection. The reason our point of inter-connection is located where it is, is because that is where the existing line and infrastructure occurs with Westar. The projected construction for this project is approximately 9 months.

In reference to the concerns of building a Wind Project in Butler County, I want to be clear that this project is occurring in Marion County. We purchased assets that in Marion County only as well as all of our leases. The Tallgrass Heartland runs East of Highway 77 and South of Highway 50 and excludes any of that in our project. Additionally about poles, these will be weathered galvanized steel poles.

**Mark Russell:** To answer the question about the poles, they will be weathered rustic poles are rusted which is a design criteria a firm will make upon approval. The purpose of the rusted pole is to better blend with the landscape. Then there was another question about after the substation is built, there will be traffic going in during construction but once we turn that station over to Westar, it will be their maintenance crew traveling to the station twice a month to perform required checks and maintenance. The only time that would change is if there was a fault within the substation.

**Board:** So construction will be 9 months or was it 4 or 5?

**Mark Russell:** Construction will be around 9 months.

**Board:** What kind of traffic will there be during that time?

**Mark Russell:** With the pad being 390x390 feet, a lot of the equipment will be there and stay there during construction so you will have about 40-45 different construction members traveling to the site once in the morning from maybe about 7am and then again once about 7 or 8 at night to leave and that could be up to 6 to 7 days a week.

Staff pointed out that the area has very limited number of residential properties.

Board: So we know about how many residences there are in that area and how many did you hear back from?

Staff: I heard from one planning commission member and, well 3. One of them is Mr. Cooper, who is part of the township. We notified 9 properties within 1000 feet, which is what the law requires, and one of them was Lincoln Township.

Mark Russell: I do want to add that as a requirement by Westar, we looked for any historical and environmental concerns and all of that came back clear.

Board: So there is access from Highway 77?

Mark Russell: Yes there is access via an existing approach which we will utilize. Further in we will then have a gate.

Board: So this is the only access you will have then?

Mark Russell: Yes it will be.

**Mr. Cooper, Lincoln Township Board Member** expressed his non approval of the substation and raised concerns about the visual pollution as well as it being a possible economic issue.

**Max Honeywell, NW Hwy.77:** I would just like to know how this project got started? Why are they building? Did KG&E start it or was it REC?

**Staff:** This has nothing to do with Butler REC, this is merely an inter-connect with Westar Energy and again, it is important to remember that this project started in Marion County.

**Margret Highbarger, NW 110<sup>th</sup> St.:** Will there be any run-off that we need to be concerned with as far as our drinking water?

**Staff:** Only about half of the proposed 10 acres will be converted into an aggregate cover for the substation meaning there will be about only 5 acres that may have some type of gravel cover on it.

**Margret Highbarger:** Are there storage cells?

**Board:** The way I understand this is that it is a tapping center meaning lines will tap into lines so the transformer which I think you are looking for, will all be in Marion County. There will be nothing here on that line at all.

**Margret Highbarger:** So what happens in the event of a lighting storm?

Staff: This is a substation just as you see in other areas.

A gentleman came up to speak after Margret Highbarger but the words were inaudible however staff answer was that it is tying into Westar. Where that power ends up, I have no idea. That same gentleman then made additional comments which were also inaudible.

One of the board members made comments about the Tower in the City of Derby but it was also inaudible but the project rep answered those questions. The project purpose is to put electricity on the line as a supply feed to local communities.

There was a short discussion but not enough of it was audible.

**No further questions or comments were made**

**Motion:** Andy Jones

**Second:** David Greene Jr.

**Action:** 5-0

Staff addressed the Chairman about the Telecommunication Tower and made the comment that the case went in front of the BOCC and was remanded back for further discussion so you will be hearing that again in the April meeting.

*To be heard before the BOCC on March 26<sup>th</sup>, 2018 @ 9:00am*

**\*\*\*MEETING ADJOURNED\*\*\***