

BUTLER COUNTY PLANNING COMMISSION

Scheduled Meeting

May 14th, 2019

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, May 14th, 2019 on the 4th Floor of the Butler County Courthouse located at 205 W. Central in El Dorado, Kansas.

Members Present: Kermit Frey, Bryce Flaming, Jeff Varner, Kristi Sullivan, Andy Jones and David Greene Jr.

Members Absent: Jeremy Sundgren, Debbie Logsdon and Jim Ralston

Guests: Roger Cutsinger, Brian Vogt, Jeremy McDonald, Zac Sundgren, Tod Duggins and Troy Smith

The meeting was called to order and a quorum was declared

Approval of the May 14th, 2019 Planning Commission Agenda

Motion:

Second:

Approved

Approval of the April 2nd, 2018 Planning Commission Minutes

Motion:

Second:

Approved

Old Business: None

New Business:

CU 19-05

Request for a Conditional Use Permit for a Vehicle Storage Facility

Applicant/Owner: Jeff Coulson

Agent: N/A

Location: 520 S. Pleasantview Drive, Andover, KS 67002

Discussion: Staff recommends approval

Staff: This is a request for a Conditional Use Permit for the storage of towed vehicles for a possible impound yard. The applicant is seeking approval to create an impound yard at 520 S. Pleasantview Drive where vehicles would be stored and rotated out as the owners claim them

after being impounded. It will be required that the property will be fenced with a privacy fence and that it will be kept locked at all times. Several conditions that we will need to consider and the first one being whether the approval of the Conditional Use will be consistent with the intent and purpose of the zoning regulations.

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

Staff: The property is zoned Residential. The intent and purpose of the zoning regulations as they apply to Residential zoning classification is to allow for certain single family & two family and multi-family residential development inside Urban Growth Area (UGA). It could be suitable in rural locations outside the UGA where adequate public roads 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 may not necessarily be consistent with the intent and purpose of the regulations but given the project is located across the road from an RV and Sheet Metal operation it may not be any more intrusive to the neighborhood than what is already there.

The property is located 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 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 or State of KS requirements, its impact upon the surrounding properties would be minimal.

An RV and Sheet Metal operation are located across the road to the west so it should not negatively impact the area.

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 a Residential zoned area and the road serving the area, is a Bruno Township maintained road. There will be minimal traffic to and from the site and it should not impact the neighbors accessing their property. In fact the only residence on that stretch of Pleasantview Rd. is located approximately 300' south of the site.

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 for the storage of Towed Vehicles and rotate them in and out as they are reclaimed.

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 vacant since the platting of the area and it is just the wishes of the owners to request the use of the site as Vehicle Storage or Impound Yard.

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

Staff: It is felt the property could be suitable for the proposed use. 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 in this location.

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.

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

10. 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.

11. 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 could adversely affect the property in the surrounding area and is therefore proposing the following Condition.

A 6' Privacy Fence will be required to hide the vehicles from the neighbors and surrounding businesses. Staff would also like to propose that, due to the type of storage it is, outside of a

gravel parking area, something more permanent, a concrete area would be sufficient or something of asphalt nature since some of the vehicles may be there for a long time and could possibly leak fluids. This would be to prevent the possibility of contamination of water wells in the area.

Staff did view the site and it is felt that if proper fencing is installed, this would not be intrusive to the neighbors. There are several businesses in the area since Highway 54 is planned for commercial growth within that corridor.

Jeremy McDonald, Representative for the application: I have nothing else to add, this pretty much explains it all.

Staff: I do want to add that Mr. McDonald is proposing the purchase the property from Mr. Colson contingent upon the Conditional Use being approved. He is also representing Mr. Colson as well.

Board: Outside storage and no buildings?

Jeremy McDonald: No buildings

INDAUBIDLE

Staff: Property is approximately 140' by 75'.

INAUDIBLE

Ty Smith, 619 S. Kingsway Road: I live right down the road and I have a couple of concerns. Is 75' enough with vehicles and a storage lot to turn around a tow truck? I don't think it will be and with a privacy fence around the area, how are they going to get in and out of there without clogging up the traffic on the road? Another concern is the increased traffic, with it being an impound yard, people get their vehicles towed for numerous reasons, criminally or otherwise. Would this endanger us or make it easier for people to come in and steal stuff. I have had my house broken into several times and had stuff stolen. I am also concerned with the contamination of ground water. I and several other people's property are on strictly well water because it is too expensive to get rural water out there. There are just a lot of concerns that I have.

Todd Duggins: I am here more or less for the farm house that sits directly south [inaudible] he passed away and his daughters live out of town. Their concerns are; they own adjacent lots or lots in that area. I have lived out here for more than 40 years and to do anything out there you had to have over an acre. Here we go storage sheds, anything else, what's fair? People have taken the time to put 5 lots together, the element of having cars parked there; there is a commercial business right across the street and they don't maintain the fence, they don't help the esthetics of the neighborhood but to propose one lot when everybody else had to put over an acre together on a minimum, I just don't feel that's right.

Staff: I can address the 1 lot issue. The reason we do not allow the 1 lot issue is because a residential structure has so many set-backs. The one particular lot does not allow for a house to be built and meet the set-backs and that's why we require a combination of 2, 3 or 4 lots or however many I may needs to be. I also want to state that I did receive an email for Paula Horsch, whom lives in Oklahoma City. She is representing the lot that Mr. Duggins was talking about earlier. The email reads:

“Jeff Coulson owns empty lot #3, which is next to your dad's lots 4 and 5 and closer to Kellogg. Address of lot 3 is 520 S. Pleasantview Drive. Looks like that's all he owns in your dad's neighborhood. He lives a couple of miles east of your dad's place on 10 acres, so I doubt he is hurting for room to store cars.”

I think it needs to be clear that Mr. Coulson is just the applicant. Jeremy is the one that is proposing to use that tract of land for the conditional use of storing vehicles there. What I took away from this email is that she is against the request.

Jane Davis, 2610 E. Hwy 54: I live across the highway there and we have lived there for 20 years. My concerns are safety and increased crimes. I feel like there are other options available for him other than this location. I would just prefer another onsite business, a business where someone is actually there creating money and currency for the county and promoting what is going on along the highway. My concern is with the 6 ft. fence that it will draw in unnecessary attention. There are enough properties in the area that have been either abandoned or are un-kept, let's not add to it.

Jeremy McDonald: we operate in tight lots all the time. We go into salvage yards where there are 100's cars of sitting around. As far as the traffic in and out of the area, it seems not bad but I do not live there. I understand the concerns with things being stolen.

Board: Are those Impound lots regulated by KDHE at all?

Nobody really knew

Board: I would say it would need some sort of a hard surface to keep the vegetation from growing.

Jeremy McDonald: that is exactly what we were going to do, put asphalt millings down if that was okay.

Staff: I think the biggest concern is that maybe it would turn into a salvage yard, not speaking for the neighbors by any means.

Board: what is your cut off for when someone can no longer come and get their car? What is your turn over rate?

Jeremy McDonald: They have 30 days from the time we get the car. The state requires us to send a letter to find out who the rightful owner is to notify them that we have their car. If they do not come and get it, it will then go to auction.

Board: where are you parking cars now?

Jeremy McDonald: We currently are not doing impound service; that is something additional we would like to do to help us grow.

Board: Is this for Law Enforcement and wrecks?

Jeremy McDonald: We can't even do it until we have a lot which is why we are trying to get it. No we do not; we work for insurance companies that offer roadside assistance.

Board: Customers would be able to come and claim their car:

Jeremy McDonald: Yes they would be able to and this is also something that we could work out where we could meet somewhere else so they do not have to come down that road.

Board: Besides the fencing, have you thought more about additional security?

Jeremy McDonald: At some point we would like to get power in there to be able to put lights up [inaudible] but as you can see our fence wouldn't be a chain link fence but rather a privacy fence. We will work with anybody but our thought was [inaudible]

Board: How often will someone be there to check on things?

Jeremy McDonald: As far as somebody being there; the most we would be there would be when we take a car there or the customer is coming to pick up a car.

Board: Any chance that this could become a salvage yard at any time?

Jeremy McDonald: I do not think the lot is big enough to be a salvage yard so [inaudible].

Staff: If I may add, if that were to happen, that request would have to come back to the Planning Commission to change the Conditional Use.

Chairman: Also a Conditional Use Permit goes with the Property so if it was to be sold down the road, then the next person would be able to park cars there for impound.

Board: When you are doing roadside assistance, you could be going to the lot at pretty much any time, am I correct?

Jeremy McDonald: Not for roadside assistance but more so with an Impound [inaudible].

Inaudible conversation

Board: There is a commercial business across the street with the same lot configuration [inaudible].

Board: Can we set a stipulation that it has to be operable cars that go in there?

Staff: I do believe he made the comment that everything he picked up on the roadside service side of it was not going to the Impound Lot.

Inaudible

Board: what would the availability be as far as electricity?

Staff: I believe [inaudible] but we can make that one of the conditions [inaudible].

A motion to approve under the conditions of installing a hard surface on the lot, security lighting, no entry unless it's towing company personal and a hour to cut off operations for retrieving cars. This motion also received a second but was denied 2-3

Then a motion to deny the conditional use permit was made and voted on 3-2.

No further questions or comments were made.

Motion: David Greene Jr.

Second: Bryce Flaming

Action: Denied 3-2

To be heard before the BOCC on May 28th, 2019 @ 9:00am

PL 19-03

Request for a Mortgage Lot Split with APO Provisions

Applicant/Owner: Anthony and Angel Clark

Agent: Roger Cutsinger, Savoy Company P.A.

Location: 2339 SW 80th Street, Augusta, KS 67010

Discussion: Staff recommends approval

Staff: This is a request for a Mortgage Lot Split on 269 +/- acres. The applicant is proposing to split a 5 +/- acre tract of land and placing an APO on 35 +/- acre portion of the remaining property. Staff feels the the placement of the APO is appropriate. We did receive a couple of calls asking what this case was all about and once they knew, they had no objections.

Roger Cutsinger: This is pretty much a routine Mortgage Lot Split.

No further questions or comments were made

Motion: Andy Jones

Second: Bryce Flaming

Action: Approve 5-0

To be heard before the BOCC on May 28th, 2019 @ 9:00am

PL 19-03

Request for a Zoning Change

Applicant: Brian and Denise Vogt

Agent: N/A

Location: 1813 SE Sunflower Road, El Dorado, KS 67042

Discussion: Staff recommends approval

Staff: This is a request to rezone this property from AG40 to RE classification. The applicant is requesting this change to correct an error that was made when they split out a 5 acre lot for a family member. There is rural water in place as well as a lagoon and the property is located on a township gravel road. Property is surrounded by AG40 and AG80. We did not receive any comments of objection to this zoning change.

Brian Vogt: The reason for the RE is that at the AG 40 [inaudible]

Staff: What changing the zoning classification does is that the lot currently is considered an illegal lot of record and this change will make it legal. Should something ever happen with the property, they wouldn't be able to rebuild with it not being of legal record. By changing it, should there ever be a house fire, they will then be able to rebuild their house.

Board: Who's mistake was this?

Staff: I have no idea.

No further questions or comments were made

Motion: Kermit Frey

Second: Andy Jones

Action: Approved 5-0

To be heard before the BOCC on May 28th, 2019 @ 9:00am

****MEETING ADJOURNED**