

**BUTLER COUNTY PLANNING COMMISSION**

Scheduled Meeting

July 9<sup>th</sup>, 2019

Butler County Courthouse-4<sup>th</sup> 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, July 9<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., Kristi Sullivan, Andy Jones, Jim Ralston, Debbie Logsdon and Bryce Flaming

**Members Absent:** Jeremy Sundgren

**Guests:** Roger Cutsinger, DeLynn Fowler, David Fowler, Brian Fowler and Gerald Dixon

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

**Approval of the July 9<sup>th</sup>, 2019 Planning Commission Agenda**

**Motion:** Debbie Logsdon

**Second:** Andy Jones

Approved

**Approval of the June 4<sup>th</sup>, 2018 Planning Commission Minutes**

**Motion:** David Greene Jr.

**Second:** Bryce Flaming

Approved

**Old Business:** None

**New Business:**

**PL 19-06**

Request for a Homestead Lot Split with APO Provisions

**Applicant/Owner:** Gary and Linda Goodson

**Agent:** Gerald Dixon, Goedecke Surveying and Engineering

**Location:** 199 SW Santa Fe Lake Rd, Towanda KS 67144

**Discussion:** Staff recommends approval

**Staff:** This is a Homestead Lot Split for a 7 +/- acres with the placement of a 30 +/- APO on the remaining property. The property is primarily used for farming activities and staff feels it meets the criteria for such a split.

**No further questions or comments were made.**

**Motion:** Debbie Logsdon  
**Second:** Bryce Flaming  
**Action:** Approved 7-0

**To be heard before the BOCC on July 23<sup>rd</sup>, 2019 @ 9:00am**

Prior to hearing RZ 19-06 and PL 19-05 it was agreed upon to hear both cases together but to come up two separate motions.

**RZ 19-07**

Request for a Zoning Change from AG 80 to AG 40 Zoning District

**Applicant/Owner:** Roger Fuller  
**Agent:** Roger Cutsinger, Savoy Company P.A.  
**Location:** 4219 SE 20<sup>th</sup> St, El Dorado KS 67042  
**Discussion:** Staff recommends approval

**Staff:** This is a request to rezone 158 +/- acres from AG 80 to AG 40. This would allow the applicant to survey out 50 acres which also would include the home site so he can sell it to a family member. The owner is proposing to keep the remaining 108 +/- acres. The surrounding area is a mix of AG 40 and AG 80. There are no changes that would require this re-zone, it arises merely from the desire by the applicant to do so. It is Staff opinion that the zoning may not have a negative effect upon the area. The property that is being requested to be re-zoned has been used for AG purposes. The property is located within the Urban Growth Area of the County.

**Roger Cutsinger:** They have a family member that wants the 50 acres and the current owner is planning on keeping the rest of the property for farming.

**Board:** Are we doing the whole 158 acres as AG 40?

**Staff:** That is correct.

**Board:** So he could come back and sell off 2 more 40 acre lots?

**Staff:** Yes

**No further questions or comments were made**

**Motion:** Jim Ralston  
**Second:** Kristi Sullivan  
**Action:** Approved 7-0

**To be heard before the BOCC on July 23<sup>rd</sup>, 2019 @ 9:00am**

**\*\*Debbie Logsdon stepped down for the case RZ 19-09\*\***

**RZ 19-09**

Request for a Zoning Change from AG 80 to AG 40 Zoning District

**Applicant:** Donald and Debbie Logsdon  
**Agent:** Roger Cutsinger, Savoy Company P.A.  
**Location:** SW 230<sup>th</sup> Street, Douglass KS 67039  
**Discussion:** Staff is neutral on a recommendation

**Staff:** This is a request to re-zone 98 +/- acres from AG 80 to AG 40. Applicant is requesting this re-zone to be able to sell the property and creating an option for potential buyers to create 2 tracts of land with a minimum of 40 acres a piece. The surrounding area consists of AG 80. The proposed change may or may not be detrimental to the area. There are no changes or changing condition that would require this request; it is merely due to the desire by the applicant to sell the 98 acres. Staff feels the requested change would be appropriate. The option of being able to create 2 lots would increase the chance of 2 residences instead of none as it currently is. The property has been used for AG purposes and is surrounded by AG 80 and is located outside of the Urban Growth Area of the County. The proposed AG 40 classification could have a negative impact on the area since AG 80 surrounds the site. With those thoughts in mind, staff will remain neutral on the recommendation. The county comp plan would consider this area a rural area since it is located outside of the Growth Area. As mentioned the intent and purpose of the AG 40 classification is to provide for larger tracts of property which would maintain the character of the rural area. Based upon its location, staff feels that the request could be in conformance with the County Comp Plan and may or may not be detrimental to the area. As mentioned, Staff is feels neutral about this request and looks to the direction of the planning commission.

**Board:** There are some small parcels that are adjacent to this. Are these home sites?

**Staff:** Yes. There are some smaller parcels there and they most likely were created prior to the adoption of the zoning codes based upon their size.

**Roger Cutsinger:** About a mile and half or so there is some AG 40 zoned areas. This would just give the applicant a little more flexibility on selling their property.

**Board:** [Inaudible]

**Staff:** We are looking at a minimum of 2-40 acre tracts of land.  
A very brief discussion took place which was inaudible

#### **No further questions or comments were made**

**Motion:** Kermit Frey

**Second:** Jim Ralston

**Action:** 6-0

#### **To be heard before the BOCC on July 23<sup>rd</sup>, 2019 @ 9:00am**

**\*\*Debbie Logsdon stepped down for the case RZ 19-08\*\***

#### **RZ 19-08**

Request for a Zoning Change from AG 80 to RE Zoning District

**Applicant:** David Fowler

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

**Location:** 4353 SW 230<sup>th</sup> St. Douglass KS 67039

**Discussion:** Staff recommends approval

**Staff:** This is a request to rezone 60 +/- acres from an AG 80 classification to RE (Residential Estates). The application is requesting this re-zone so that he can survey out 20 acres which will include the existing home site and then sell the remaining 40 +/- acres to a family member. Surrounding area is all zoned AG 80 and the proposed change may or may not be considered

detrimental to the area. There are no changing conditions in the area; this request is merely because of the desire by the applicant to sell off the 40 acres. It is Staff's opinion that the zoning change may or may not have a negative effect upon the area since it would have parcels that are similar in nature to existing parcels in the area but the RE zoning classification could allow for additional splitting of the acreage into tracts as small as 5 acres. You must also make a determination as to whether or not this particular change in this particular area is appropriate for this type of use. Staff feels that the change may or may not be appropriate for the area. RE classification allow for smaller tracts of land than it would under the AG 80 classification. It is classified as a non-conforming legal lot of record and has approval for AG uses. If the 60 acres are re-zoned it would still allow for farming activities on the property. The property is currently being used for farming activity and does have a single family residence on it. The property is located outside of the Urban Growth Area of the County. This re-zone could have a negative effect on the area when keeping the AG 80 surrounding in mind. Staff is not comfortable making a recommendation either way. The county comp plan would consider this area a rural area since it is located outside of the Growth Area. Based on this location, Staff feels that this request is not in conformance with the Comp Plan and may be detrimental to the area. Staff feels that it is improper to suggest that the County imposes a hardship on the applicant simply by denying this request. There are incidences where an individual property owner's wishes and desires are not in the interest of the public good. There is no inherited right to use a property in any manner desired. Staff feels that there would be no public gain from denying this request. Staff is not comfortable making a recommendation and looks to the members of the Planning Commission to consider the facts and approve or deny based upon the facts presented.

**Roger Cutsinger:** I am here with the Fowler Family this evening. This is as stated a legal non-conforming lot. It is to my understanding that their son would like to build out there and since it is less than AG 80 now we had to go to the RE classification in order to be able to build.

**Board:** Could we not keep it as AG 40 and leave it as a non-conforming legal lot? Wouldn't that accomplish the same thing that it couldn't be further split into several smaller lots?

**Staff:** No, the only way we could anything is since there is an existing residence would be to build a "guesthouse" or "mother in law" house within a certain vicinity of the main house. If I were to allow him a 2<sup>nd</sup> residence there, it would make it an illegal lot of record which I couldn't issue a building permit for it and if they were to build it without it, heaven forbid something were to happen such as a fire, tornado etc. they would not be able to re-build it.

**Board:** Is that the way it is now?

**Staff:** No currently it is a non-conforming legal lot of record and if we make any changes now, they would then lose their "grandfather clause" per say. It would give it that illegal status.

**Board:** We have a legal non-conforming lot now and if we re-zone the 40 not the 20 and make it AG 40, then they would have a legal lot they can build on.

**Staff:** Again, you are changing the legal status of the 20. We had a good conversation on how we could do this and I knew this one would be a tough one.

**Board:** So could it be platted into 2 lots then it would at least have to come back before this board before they can just start selling them?

**Staff:** You can split property once but in this case, again since it is an AG 80 zoning classification, both of those properties would have to have 80 acres and you are losing your grandfather clause.

**Board:** So what about placing an APO on the some of this to prevent additional building other than the one additional residence they are proposing?

**Staff:** I have never seen an APO on anything less than an AG 40. My guess is that there is nothing that says that you couldn't do it. [Inaudible] with the intent to preserve AG property [inaudible] 20 acre and we would still have a good chunk of property that could be used for AG purposes. I don't see any reason why we couldn't do that.

It was noted that Staff did not receive any comments on this case.

**Board:** We do these cases on individual basis and there is nobody here opposing it, I am fine with it.

**Board:** I also see the Floodplain on the property as our APO which also takes away my concern.

**No further questions or comments were made**

**Motion:** David Greene Jr.

**Second:** Jim Ralston

**Action:** 6-0

Staff will be placing a map showing the floodplain into the case file to better show how it played part in the decision making process.

**To be heard before the BOCC on July 23<sup>rd</sup>, 2019 @ 9:00am**

**MEETING ADJOURNED**