

BUTLER COUNTY PLANNING COMMISSION
Scheduled Meeting
July 7th, 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, July 7th, 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, Kermit Frey, Jim Ralston, Jeremy Sundgren

Members Absent: Andy Jones

Guests: Roger Cutsinger, Warren Porter, Trisha Markus, Bill Markus, Tim Nelson

The meeting was called to order and a quorum was declared

Approval of the July 7th, 2020 Planning Commission Agenda

Motion: Kristi Sullivan

Second: David Greene Jr.

Approved

Approval of the June 2nd, 2019 Planning Commission Meeting Minutes

Motion: David Greene Jr.

Second: Jim Ralston

Approved

Old Business:

None

New Business:

RZ 20-06

Request for Zoning Change from AG40 to RR Zoning District

Jeremy Sundgren abstained from this case

Applicant/Owner: DABO/Tim Nelson

Agent: Roger Cutsinger, Savoy Company P.A.

Location: 18239 SW Prairie Creek Rd., Rose Hill, KS

Discussion: Staff recommends approval

Staff: This is a request to rezone 80 +/- acres from AG 40 to RR which would allow the applicant to develop the tract of land. The surrounding area is a mixture of AG40, RE and RR. The proposed change in zoning may or may not be detrimental to the area. It is Staff opinion that the requested Zoning Classification may or may not have a negative effect on the surrounding area.

Analysis: Section 21-108 - Factors of Consideration in a Proposal for a Rezone

When a proposed amendment would result in a change of the zoning classification of any specific property the recommendation of the Planning Commission, accompanied by a copy of

the record of the hearing, shall contain statements as to the present classification; the classification under the proposed amendment; the reasons for seeking such reclassification; a summary of the facts presented; and a statement of the factors upon which the recommendation of the Planning Commission is based using the following guidelines:

1. Whether the change in classification would be consistent with the intent and purpose of these regulations;

Staff: The intent and purpose of Butler County's zoning regulations is to encourage more intense development to occur in relatively close proximity to existing urban centers or along major paved transportation corridors within the Urban Growth Area (UGA), and maintain the rural character of those areas that do not fit into those categories. The applicants' property is located inside the Urban Growth Area of the County and adjacent to the City Limits of the City of Rose Hill. SW Prairie Creek Rd. is an unpaved Township road. The zoning classification requested (RR) will allow parcels ranging at a minimum of 3 acres and up to 10 acres. With this in mind, it is staffs feeling that the RR classification has been established to allow for semi-dense development inside of the Urban Growth Area. In this particular case, there are not tracts of similar size, unless you factor in the homes located within the City Limits of the City of Rose Hill. As well there are a few tracts of land zoned RR in the area.

2. The character and condition of the surrounding neighborhood and its effect on the proposed change;

Staff: The surrounding area is a mixture of AG-40, RE & RR. The proposed change in zoning may or may not be considered detrimental to the area.

3. Whether the proposed amendment is made necessary because of changed or changing conditions in the area affected and, if so, the nature of such changed or changing conditions;

Staff: There could be perceived changes or changing conditions in the area that could make the proposed rezoning necessary. The request arises from a desire by the applicants to re-zone the 80+/- acres, which would allow them to develop the area into smaller tracts of land.

4. The current zoning and uses of nearby properties, and the effect on existing nearby land uses upon such a change in classification;

Staff: The property within the area and adjacent to the applicant's property is AG-40 & RR but also abuts the city limits of the City of Rose Hill. It is staff's opinion that the zoning classification requested may or may not have a negative effect upon the area since the new tracts are abutting the city limits but considerations must be made for the increase in traffic and water and sewer utilities when future platting is considered. Again, as always, you must also make a determination as to whether this particular area is appropriate for this type of use. Staff feels this requested change in zoning could be appropriate in this area with considerations taken into account for the increase in Traffic and Water and Wastewater.

5. **Whether every use that would be permitted on the property, as reclassified, would be compatible with the uses permitted on other property in the immediate vicinity;**

Staff: The Rural Residential classification would allow more development than what is allowed in the AG-40 zoning classification and in this case, the applicant is proposing to rezone 80+/- acres and potentially plat the area allowing for the building of numerous single-family residences.

6. **The suitability of the applicant's property for the uses to which it has been restricted;**

Staff: The applicant's property contains approximately 80+/- acres and is suitable for agricultural uses. If the 80+/- acres are rezoned it would allow the applicant to plat the 80+/- acres and build numerous single-family residences.

7. **The length of time the subject property has remained vacant or undeveloped as zoned; provided the use of land for agricultural purposes shall be considered as allowing the land to be vacant or undeveloped;**

Staff: The property being requested to be rezoned, has been farmed for years and contains no residences on the property. Thus the request to rezone the 80+/- acres to allow for the platting and developing of the area.

8. **Whether adequate sewer and water facilities and all other needed public services, including transportation exist or can be provided to serve the uses that would be permitted on the property if it were reclassified;**

Staff: The property will have access to Public Water and a Septic or Lagoon Waste System would be required. With proximity to the city limits of the City of Rose Hill, consideration must be taken as to the possibility of connecting to City Sewer. SW Prairie Creek Rd. is an unpaved Township road. Access to the property, if platted, could come off Silknitter Rd. which is paved to the Northwest corner of the property, or off SW Prairie Creek Rd. Electricity is available from Evergy.

9. **The general amount of vacant land that currently has the same zoning classification proposed for the subject property particularly in the vicinity of the subject property, and any special circumstances that make a substantial part of such vacant land available or not available for development;**

Staff: The property is surrounded by AG-40, and adjacent to the city limits of the City of Rose Hill, but there are RR zoned properties within close proximity. It should be noted that the property is located within the Urban Growth Area of the County.

10. **The recommendations of professional staff;**

Staff: As mentioned, this property is inside the Urban Growth Area of the County. The rezoning of this property to the classification requested would allow the applicant to potentially plat the property and develop with numerous single-family residences. With these thoughts in mind, staff would look to the Planning Commission to make the recommendation.

11. Whether the proposed amendment would be in conformance to and further enhance the implementation of the County's Comprehensive Plan;

Staff: The County's Comprehensive Plan would consider this area a "Rural" area that is inside the Urban Growth Area. As mentioned the intent and purpose of the Rural Residential zoning classification is to provide for 3-10 acre tracts of property which could still retain the character of a rural area.

Based upon its location staff feels the request is in conformance to the County's Comprehensive Plan and may or may not be detrimental to the area.

12. Whether the relative gain to the public health, safety, and general welfare outweighs the hardship imposed upon the applicant by not upgrading the value of the property by such reclassification; and

Staff: Staff feels it is improper to suggest that the County imposes a hardship upon an applicant simply by denying a rezoning request. The mere implementation of zoning regulations implies that the County feels there are instances where an individual property owner's wishes and desires are not in the interest of the public good. In addition, it has been previously pointed out by staff that the very nature of zoning regulations implies that there is no inherent right to use a property in any manner desired. This has been challenged in courts, but, for the most part, the ability by a public entity to regulate uses, has been upheld. That being said, staff feels there would be no public gain from denying the request.

13. Such other factors as may be relevant from the facts and evidence presented in the application.

Staff: The 80+/- acres are located adjacent to the city limits of the City of Rose Hill and RR zoned properties are located within the area.

Roger Cutsinger, Savoy Company, El Dorado: I thought this was going to be a request to change the Zoning to RE. Is there a reason why we didn't or couldn't?

Staff: No there is no reason why you can't go to RE. In fact it would probably be a lot more favorable to the neighbors if they wanted to change the request. The application was filed with the request being RR.

Board: What is the difference?

Staff: RE would provide less density than RR since the minimum lot size would go from 3 acre tracts to 5 acre tract up to 39.99 with RE.

Jeremy Sundgren: The Owner of the property does have a contract to sell and is contingent upon rezone to RE not RR.

Trisha Markus, 108 S. Cedarwood Dr.: We have resided at our property for 2 years now. We enjoy the view of the sunrise every morning and would really hate to lose that. When we bought the home we were told that they had lived there for quite some time and they didn't think it would ever be developed. There is ample opportunity to the west and to the north of Rose Hill for development so it would be our wish that this land may not be developed in the future. We aren't trying to impose any kind of hardship on the owner, it's just that we like where we live.

Warren Porter, City Administrator of Rose Hill: The city does have utilities in this area. We have an 8 inch waterline that goes to the final road of Rose Hill and then we also have an 8 inch sewer line long the City Limits line. Those were the only requests that we have had from people representing this property. We provided a map of the Utilities that we have in that area. We cannot serve water to this property at this time because that falls under RWD #3 out of Sedgwick County. It has nothing to do with platting but I wanted to make people aware of that at this time we are not able to provide water but could provide sewer service.

Board: What would it take to get water?

Warren Porter: It would take an agreement between the City and the SG Co RWD and generally that requires some sort of financial contribution to serve that area.

Board: Would that be put up on the City of Rose Hill?

Porter Warren: No, most likely it will be put on the Developer. There are 2 ways, either they will put a Franchise Fee on it. Then there are meter connection fees that will have to be paid as well. Also, it will require permission from the City of Wichita, it is the State Law. It in their certified service area and they have control of that.

Board: Do you have the sewer capacity to handle this?

Porter Warren: We have more than enough sewer capacity, not just this, but also for other developments.

Board: So if that were to become part of the City, would you then be able to provide water?

Porter Warren: It would still have to go through the same process, get permission from the City. It's a State Law and the Law of the Federal Government.

No further questions or comments were made

Motion: Jim Ralston (motion made was with the change of Zoning to RE not RR)

Second: David Greene Jr.

Action: Approved 4-0 (Jeremy Sundgren abstained)

To be heard before the BOCC on July 28th, 2020 @ 9:00am

RZ 20-07

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

Applicant/Owner:

Agent: Roger Cutsinger, Savoy Company P.A.

Location: 1555 SW Butler Rd., Benton, KS

Discussion: Staff recommends approval

Staff: This is a request to rezone 40 +/- acres from AG 40 to RE which would allow to potentially split the Property for a family member. RE does allow for lots in range of 5 acres up to 39.99 acres. This property is located in a semi-dense area that is within the Urban Growth Area. The surrounding area is a mixture of AG40 and RR. The proposed change in zoning may or not be able detrimental to the area. The property does have one residential dwelling on it and also has access to water and a sewer system will be required if I future split was to occur. South Butler Road is a major arterial road that is paved and electricity will be available through Evergy. Staff feels there is no public gain from denying this request.

Roger Cutsinger, Savoy Company: The property owner would like for his son to be able to build a house on this property.

No further questions or comments were made.

Motion: Jeremy Sundgren

Second: Jim Ralston

Action: Approved 5-0

To be heard before the BOCC on July 28th, 2020 @ 9:00am

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