

BUTLER COUNTY PLANNING COMMISSION

Scheduled Meeting
August 6th, 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, August 6th, 2019 on the 4th Floor of the Butler County Courthouse located at 205 W. Central in El Dorado, Kansas.

Members Present: Kermit Frey, David Greene Jr., Kristi Sullivan, Jim Ralston and Debbie Logsdon

Members Absent: Jeremy Sundgren, Bryce Flaming, Andy Jones

Guests: Roger Cutsinger, Jesse Newman, Symba Newman, Dan Masterson, Briana House, Joshua House, Steve Ward, Jackie Villameal, Silvia Vargas

The meeting was called to order and a quorum was declared

Approval of the August 6th, 2019 Planning Commission Agenda

Motion: Debbie Logsdon

Second: Kristi Sullivan

Approved

Approval of the July 9th, 2019 Planning Commission Minutes

Motion: David Greene Jr.

Second: Jim Ralston

Approved

Old Business: None

New Business:

PL 19-08

Request for a Mortgage Lot Split with APO Provisions

Applicant/Owner: Joshua House

Agent: Roger Cutsinger, Savoy Company P.A.

Location: 9287 SE Teter Road, Leon, KS

Discussion: Staff recommends approval

Staff: This is a request for a Mortgage Lot Split. The applicant is proposing to split 10 +/- acres and placing an APO on the remaining 30 +/- acres. The property is used for farming activities and meets the criteria.

No further questions or comments were made.

Motion: Debbie Logsdon

Second: Kermit Frey

Action: Approved 5-0

To be heard before the BOCC on August 27th, 2019 @ 9:00am

PL 19-07

Request for a Homestead Lot Split with APO Provisions

Applicant/Owner: Arrington Family Trust

Agent: Roger Cutsinger, Savoy Company P.A.

Location: 4193 SW 220th, Douglass KS

Discussion: Staff recommends approval

Staff: This is a request for a Homestead Lot Split on 150+/- acres. The applicant is proposing to split a 10 +/- acre tract with the placement of an APO on 70 +/- . The property is currently zoned AG 80 and meets the criteria for such a split.

No further questions or comments were made

Motion: Debbie Logsdon

Second: Kristi Sullivan

Action: Approved 5-0

To be heard before the BOCC on August 27th, 2019 @ 9:00am

RZ 19-10

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

Applicant: Jeffrey and Shannon Masterson, Mac and Fonda Masterson and Dan and Marie Masterson

Agent: N/A

Location: 8099 and 8095 SE 30th St., El Dorado, KS

Discussion: Staff recommends approval

Staff: This is a request to rezone the applicants property from AG 80 to AG 40 zoning classification. The request will involve 3 separate tracts of land. There is a larger tract that contains 81 acres, a 1 acre tract and another smaller tract. The applicants are requesting to rezone the 81+/- acres which will allow the applicants to combine the 3 tracts which include an existing home site, and ultimately split into 2-40 acre parcels. The 2-40's will then be placed on the market for sale. The surrounding area is zoned AG 80 with some AG 40 within a mile of the property. The change in zoning may or may not be considered detrimental to the area. There are no changing conditions that would require such a split; this request merely arises from the applicants desire to do so. The property does have rural water as well as a septic system. The property is located on Munson Hill Road and 30th Street which are both Township gravel roads located within the Rosalia Township and also located outside of the Urban Growth Area of the County. Staff feels the request meets the criteria.

Board: The 1 acre has the home on it correct?

Staff: That is correct.

Dan Masterson: We are trying to get it easier to sell since there are 2 homes on the property already.

No further questions or comments were made

Motion: Jim Ralston

Second: Kermit Frey

Action: Approved 5-0

To be heard before the BOCC on August 27th, 2019 @ 9:00am

RZ 19-11

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

Applicant: Greg and JW Johnson, Prairie Rose Ranch LLC

Agent: Roger Cutsinger, Savoy Company P.A.

Location: 15231 SW Parallel Rd, Benton, KS

Discussion: Staff recommends approval

Staff: This is a request for a zoning change on approx. 30 acres from AG 40 to RE (Residential Estates) classification. The applicant owns a total of 77 +/- acres commonly known as the Prairie Rose Supper Club. The surrounding area is a mix of RR, AG 40 and AG 80 but mainly AG 40. The proposed change may or may not be detrimental to the area. There are no changing conditions that would require the rezone; this arises from the applicants desire to sell the 30 acre tract of land. Staff believes that the rezone would not have a negative impact since there are parcels in the area of similar nature. The RE zoning classification would more development than currently is allowed under the AG 40 zoning. The change in zoning could result in 1-30 acre tract with one residence or 2-15 acre tracts with 2 residences. Any additional tracts would require platting for small subdivision plats which the owners have stated they are not interested in. The road the property sits on is a Chip Sealed County Road and will easily accommodate the increase in traffic. The property has been used for AG purposes and activities associated with the Prairie Rose Supper Club. There is a Singelwide Mobile Home on the property with water and a septic system in place and is located inside of the Urban Growth Area.

We did receive a call yesterday from a neighbor that expressed some concern that the possible addition of another house or two it could potentially impact their ability to farm the land and concern about more kids playing in the area. She was unable to make it to the meeting this evening but I assured her that I would express her concerns.

Board: Just to be clear, the road is a Township Road that is maintained by the County?

Staff: Yes that is correct.

Debbie: How would it prevent the neighbor from farming?

Staff: I am not sure but maybe it is concern for kids playing in the field.

Board: I would say that would be a concern if there were more homes to be built but we are talking 1 or 2 additional homes only.

Roger Cutsinger: The building that is there is a church leasing it for services from what I understand.

No further questions or comments were made

Motion: Jim Ralston

Second: David Greene Jr.

Action: Approved 5-0

To be heard before the BOCC on August 27th, 2019 @ 9:00am

CU 19-07

Request for a Conditional Use Permit for a Diesel Mechanic Shop

Applicant: Stand Farms LLC and Jets Diesel

Agent: N/A

Location: 9529 SE Hwy 54, El Dorado, KS

Discussion: Staff recommends approval

Staff: This is a request for a Conditional Use Permit for a Diesel Mechanic Shop. Stand Farms owns a tract of land that contains 197 +/- acres and recently applied for and received a Homestead Lot Split on 5 acres with a 30 acre APO placement on a portion of the property. Stand Farms is now requesting a Conditional Use Permit to use the 5 acres as a Diesel Mechanic Shop. Jet Diesel LLC is owned and operated by Jesse and Symba Newman and is currently operating their business in Marion Kansas. This request is being to allow them to expand their operations for a mobile unit to also include a mechanics shop and parts warehouse on the property. There are several existing buildings on the site. The existing residence would be occupied by the owners of Jet Diesel LLC. Additional improvements to the land would include widening the driveway to provide easier access in and out of the property. Proposed hours of operations are 7am to 7pm Monday through Friday and Saturday from 7am to noon. The Mobile Unit would be operational 24/7.

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 minimal development in rural areas and outside 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 US Highway (Hwy 54) and will create a minimal increase in traffic it may not be a detriment to the area.

The property is located 8 miles east of the city limits of the City of El Dorado and 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 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 lot is currently used as a residence but has farming activities and equipment including Tractor Trailers and large Farm Equipment accessing the property.

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 area and the road serving the area, is a US Highway and Township maintained road. There will be minimal traffic to and from the site 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 use the site as a Diesel Mechanic operation servicing Tractor Trailers and small diesel pickups.

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 create a Diesel Mechanic Service operation 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 Tractor Trailers on a regular basis but no increase in outdoor activity that could impact any neighboring properties.

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 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-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 Truck parking must occur in the designated parking area.
- 2) A Road Maintenance Agreement, with Rosalia Township, must be in place prior to the start of operations, if requested by the Township.
- 3) Hours of Operation will be from 7AM to 7PM Monday thru Friday with Saturday hours to be from 7AM to Noon.

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: N/A

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

Staff visited the site and the impact to any adjoining landowners could be minimal if operated in the manner proposed. With the East boundary of the property lined with trees any noise will/could be muffled from the neighbors across the road to the East.

Board: Did any of the neighbors respond?

Staff: We did not receive any comments from any neighbors.

Jesse Newman: We are just looking to open up a shop out there.

Board: How far off the blacktop is the entrance?

Staff: The first entrance is about a couple of hundred feet.

Board: Just wondering because we have had them come in before asking for the whole mile to be maintained or fixed. Language could be added in that the road agreement will be for a portion of the road up to the first entrance only.

Staff: Yes thank you.

Board: Do any of these recommendations cause any issues with you?

Jesse Newman: No not at all.

Staff: A lot of this came off the site plan and conversations between myself and the Newmans.

Board: When you are talking parts, will there be trucks parked out there for that purpose?

Jesse Newman: No there will be not be any parking of junk trucks for parts. The parts come from a dealer to stock our shelves with.

No further questions or comments were made

Motion: Kermit Frey

Second: Debbie Logsdon

Action: Approved 5-0

To be heard before the BOCC on August 27th, 2019 @ 9:00am

CU 19-06

Request for a Conditional Use Permit

Applicant: Rodney Morgan and AT&T New Cingular Wireless PCS, LLC

Agent: N/A

Location: SE 120th, Beaumont, KS

Discussion: Staff recommends approval

Staff: We did receive a request by Rodney Morgan and AT&T Mobility for the placement of a 350' Communications Tower. The tower would be placed inside a 100'x100' fenced compound for the placement of Communications Equipment such as Antennas, Equipment Shelters and Cabinets. The proposed Wireless Infrastructure is critical to ensure that all citizens have true access to advanced technology and information which ultimately will have economic benefits to the area. This property is zoned AG 80 and consists of 30 +/- acres.

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.

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 outside 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 on a Township maintained road, will create a minimal increase in traffic and meets the 395' Fall Area 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 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.

A Windfarm is located south of the site and a Cell Tower is also located approximately 1.5 miles south of the proposed site. With that being said the placement of the Tower 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 an AG-80 area and the road serving the area, is Township maintained road. 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.

It will be suggested as a Condition for Approval that a Road Maintenance Agreement between the Applicant and Glencoe Township, if requested by Glencoe Township, be in place prior to the start of construction.

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 placement of a Telecommunication Tower to provide accessibility to cellular service to both Beaumont and all travelers on Highway 400 passing through the area.

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 agricultural purposes and it is just the wishes of the owners to provide a place for the placement of the Tower.

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

- 1) No Flashing Strobe lights will be placed on the top of the Tower.
- 2) A Solid Red Strobe Light will be required on the top of the Tower as is currently being proposed.
- 3) A Road Maintenance Agreement between the Applicant and Glencoe Township, if requested by the Township, must be in place prior to the start of construction.

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 viewed the site and felt comfortable that if the Tower were to be placed on the site as proposed it would not impact any neighbors.

It is also imperative that any reasons for denial must be considered “substantial evidence”. If reasons do not have such designation the reasons for denial could result in the Case being taken to District Court and having the Case overturned.

Board: I have a little bit of mixed feelings about not letting them out a white strobe light on the top of this tower to use during daylight hours with the airport being so close. It is a 350’ tower, that’s pretty tall. The traffic pattern is always on the east side of the runway which is a good thing and I’m sure that is to protect the town. I just don’t know if I would want to tie anyone’s hands over a white strobe light if they need one.

Board: I thought staff thought they wouldn’t need one?

Staff: I was comfortable with the red light just due to the potential impact of the white strobe light. There are residents that live there.

Board: I wasn’t talking about the white strobe at night, I am talking daytime. If they fly over on a day that it’s cloudy and they don’t know that tower there, there could be an issue. I think the white strobe light during daytime hours only would be appropriate.

Steve Ward (ATT representative): Any tower over 200’ is required to be lit. The type of lighting is governed by the FAA. Typically these types of towers would have dual intensity strobes which would be the red soft strobe at night and a white strobe during the day. We have to conform to that. There are some other towers in the area but none of them would work for us. The other reason we chose this site is that ATT was awarded a contract by the Federal Government to build a network called “First Net”. This is network for first responders, police, fire, ambulance, nation guard are currently using radios but they don’t really talk real well between themselves. First Net will be a network that you’ll have access to. You don’t have to join us but at you have the opportunity to join. Part of our lease is also that if technology changes, ATT will be required to take the tower down and restore the ground to its original condition.

Board: [inaudible]

Steve Ward: Any time we do a tower it is available for lease to the other carriers. If we build the tower, we build it for ATT First Net and 3 other users.

Board: Will this be 5G or 4G or what will it be?

Steve Ward: This will be a 4G to begin with but 5G is coming which is probably a year or two away.

Staff: I will be sure to include clear notes regarding the lighting of the tower.

No further questions or comments were made

Motion: Debbie Logsdon

Second: Kristi Sullivan

Action: Approved 5-0

To be heard before the BOCC on August 27th, 2019 @ 9:00am

MEETING ADJOURNED