

**BUTLER COUNTY PLANNING COMMISSION**

Scheduled Meeting  
September 1<sup>st</sup>, 2020  
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, September 1<sup>st</sup>, 2020 on the 4<sup>th</sup> 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, Andy Jones, Jeremy Sundgren, Jim Ralston, Kermit Frey, Bryce Flaming

**Members Absent:** NA

**Guests:** Roger Cutsinger, Gerald Dixon, Nick Wilhelm, Rhonda Winters and 2 additional guests that their names were not legible

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

**Approval of the September 1<sup>st</sup>, 2020 Planning Commission Agenda**

**Motion:** unknown

**Second:** unknown

Approved

**Approval of the August 4<sup>th</sup>, 2020 Planning Commission Meeting Minutes**

**Motion:** unknown

**Second:** unknown

Approved

**Old Business:**

None

**New Business:**

**The Chairman announced the absence of David Alfaro due to a family emergency.**

**PL 20-04**

Request for a Homestead Lot Split with APO Provisions

**Applicant/Owner:** Chris Wellbrock

**Agent:** Gerald Dixon of Goedecke Surveying

**Location:** 15065 SW 20<sup>th</sup> Street, Benton, KS

**Discussion:** Staff recommends approval

**Gerald Dixon:** [Inaudible]

Notes from the Staff Report: The applicant is proposing to split a 5 +/- acre tract of land with the placement of a 3.5 +/- acre APO. The overall tract of land contains 65 +/- acres and is primarily used for farming activities.

**James Thompson, 825 Cottonwood Circle:** On the 5 acres he has there now, he built a shop/apartment building which is his current residence. We have seen about 10-15 cars being there so I am not sure if this is a home/business or what they are doing there. I am just here trying to protect my home value not knowing what the plans are for that 5 acres being we are so close to it.

**Jeremy Sundgren:** I would like to mention that an APO would be less appropriate due to the close proximity to town. Also would like to point out that the split they are doing is not to build a residence, they have already done that, it is already there.

**Board:** Is the building that is there now just a building or is it a house?

**Jeremy Sundgren:** It looks as if it is a metal building with living quarters.

**Board:** I can see the concern of the neighbor with lots of cars being there. Do we know what the other building will be used for?

**Board:** I mean if it's for anything other than what they are trying to do, the county will have to go out and investigate that what the extra cars being there is all about.

**Board:** We really need some more information that we have right now as far as that building is concerned.

**Board:** I mean nothing will change, there is 40+ acres there so they can build another building; we have no control over that.

**Board:** Regardless of what they are doing, it has no bearing on whether or not it is appropriate for us to do the lot split because it is not our decision to make what they are doing with that 5 acres.

**Board:** It is zoned AG 40.

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

**Motion:** Jim Ralston

**Second:** Kermit Frey

**Action:** 6-1 approved

**To be heard before the BOCC on September 22<sup>nd</sup>, 2020 @ 9:00am**

#### **PL 20-05**

Request for a Homestead Lot Split with APO Provisions

**Applicant/Owner:** Lynda Varner

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

**Location:** 9284 NW 30<sup>th</sup> Street, Towanda, KS

**Discussion:** Staff recommends approval

**Chairman Jeff Varner stepped down from his position as Chairman for this case and Jeremy Sundgren stepped in his place for this case.**

**Roger Cutsinger:** This is a simple Homestead Lot Split for 5 acres and also placing a 75 acres APO on parts of the remaining property.

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

**Motion:** Andy Jones

**Second:** Bryce Flaming

**Action:** 5-0 approved

**Abstained:**

**To be heard before the BOCC on September 22<sup>nd</sup>, 2020 @ 9:00am**

**RZ 20-10**

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

**Applicant/Owner:** Thomas L. and Kolleen M. Griffin

**Agent:** Gerald Dixon of Goedecke Surveying

**Location:** 4647 SE Turkey Creek, El Dorado, KS

**Discussion:** Staff recommends approval

**Staff Report Note:** The applicant is proposing to rezone 30 +/- acres of their 80 +/- acre tract.

**Gerald Dixon:** They would like to rezone the property so they can then have 2-15 acres tracts and build a house. There is an old house there now that they are going to tear down [inaudible]

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

**Motion:** Jim Ralston

**Second:** Kristy Sullivan

**Action:** 7-0 approved

**To be heard before the BOCC on September 22<sup>nd</sup>, 2020 @ 9:00am**

**RZ 20-12**

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

**Applicant/Owner:** Julie Bachman

**Agent:** NA

**Location:** 0 SW Hunter Road, Augusta, KS

**Discussion:** Staff recommends approval

**Staff Report Note:** The applicant is proposing to rezone 33 +/- acres of their 106 +/- acre tract which would allow her to then potentially sell the 33 +/- acres and allow for the construction of a single family dwelling.

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

**Motion:** Jeremy Sundgren

**Second:** Andy Jones

**Action:** 6-0

**To be heard before the BOCC on September 22<sup>nd</sup>, 2020 @ 9:00am**

**RZ 20-11**

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

**Applicant/Owner:** Nicholas and Brady Wilhelm

**Agent:** NA

**Location:** 0 SW Prairie Creek Road, Benton, KS

**Discussion:** Staff recommends approval

**Staff Report Note:** The applicant is proposing to rezone 35 +/- acres. The property is currently zoned AG 40 and would not be buildable under the current zoning regulation since it does not contain a minimum of 40 acres. The rezoning of the property would then allow Mr. Wilhelm to sell the property.

**Nick Wilhelm, owner and applicant is present to answer any questions**

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

**Motion:** Jim Ralston

**Second:** Bryce Flaming

**Action:** 5-0

**To be heard before the BOCC on September 22<sup>nd</sup>, 2020 @ 9:00am**

**PL 20-06**

Request for a Preliminary Plat Approval on 9 lots

**Applicant/Owner:** Ryan Underhill, RUJH Investments

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

**Location:** SW 40<sup>th</sup> Street and Butler Road, Benton, KS

**Discussion:** Staff recommends approval

**Staff Report Note:** The applicant is proposing to divide the property into 9 lots ranging in size from 5 – 7.57 acres. While the lay out does comply with the Butler County Subdivision Regulations, it should be noted that there is a significant amount of Floodplain that will need to be addressed during the construction of the single family residences as well as the construction of Grass Creek Lane.

**Roger Cutsinger:** I am here with Tim Austin who is with Kaw Valley Engineering and Tim has been doing some of the drainage engineering on this project. It was about 2 years ago that we came before the board to get this property rezoned to RE. As you can see, there would be 9 lots with some of them coming in off of Butler Road, some off of 40<sup>th</sup> and there will also be a new road that would be built along Grass Creek Lane on the west side. A lot of this has to do with some of the floodplain issues that Tim has been working on and at this point I have not heard anything from the County Engineer, so I am not sure if he is reviewing this still or if he doesn't have any comments on it.

**Board:** So this is just the Plat approval correct?

**Roger Cutsinger:** Yes it was rezoned about 2 years ago.

[inaudible]

**Board:** So you have a proposed pond but also an existing pond?

**Roger Cutsinger:** So there is drainage that runs through there to this little pond. They are talking about enhancing this pond. Tim may be able to answer some of the drainage questions better than I could.

**Tim Austin:** That pond will be gone.

**Rhonda Winters:** The drainage would be the biggest issue. That pond is still there but it doesn't hold any water and is pretty much full of silt. I catch a lot of water coming off that property now and I need to

know what they are going to do as far the drainage coming off that property. I would also like to see where the roads will be that are going into the property.

**Tim Austin:** Since we have quite a bit of floodplain, we will be creating a bigger pond by digging this one out. It has been studied by Division of Water Resources (DWR-KDA) and we have been talking with them and they felt like we had a pretty good handle on the drainage. We modeled it and the State did as well and we matched their model.

[inaudible]

**David Gayer:** I live on the east side of Butler Road and some of the water from me drains in to that piece of property. I was curious as to how big these lots are going to be?

**Board:** Approximately 5 acres

**David Gayer:** So that leaves about 6 acres for a pond? Pretty good sized pond but once that pond is full, then it runs down to Rhonda's house. I was here 2 years ago and at that time, they said 2 lots and 2 lots only and I didn't tell you then but I will tell you now, the water runs into those 5 acre lots. It comes under Butler Road and runs right onto those 2-5 acre lots. It was said 2 lots only because the rest of the land was in a floodplain but if it was in a floodplain then, it is in the floodplain today. A pond will not fix it, it isn't going to stop the water. It is going to need more than that, more something like a concrete spillway. Will each of these lots will have a lagoon?

**Board:** Well that's not really up to us.

**David Gayer:** A few years ago, you said lagoons and lagoons only. I mean it doesn't bother me, I have one myself but neither do I have 8 of them close to me. My other concern is that each of these 9 lots can drill their own well and suck each other dry just like what NW of there with the Stone Post Farms Development. I have one well that has to water 300 head of cattle. If it runs dry, I am out of business. I can only drill one well on 40 acres according to state law but with this, there will be 9 on 45 acres.

**Rhonda Winters:** It is my understanding that this floodplain runs quite a bit down on 40<sup>th</sup> so I don't know how they are getting their access road down on the west side of that property. That whole road, 40<sup>th</sup> goes under water, almost to Andover Road on up the hill to the west property line of that property.

**Roger Cutsinger:** We did speak to the Rural Water District about water for these lots and hopefully the pond will help with some of the flooding there on the south side, maybe build a little berm area there to keep the water out of their property.

**Board:** I think it all goes back to if the Proposal our zoning regulations, there is very little we can do about it. Now as far as the issue with the water and stuff, all we can do is listen to what we are being told and make a decision based on that. I know water will go where it wants and most times, it never goes where we want it to go.

**Board:** Do we have an overlay that shows the floodplain?

**Board:** Yes we do.

**Rhonda Winters:** I have been out there for several years and know the water. If they do something with that and it would help me out, I am not opposed to it. We won't know until we get 4 or 5 inches of rain. I grew up in this area and that pond down south of there, it overflows with water and did back then too. So they dammed it up to further divert the water. I just want it on record, it is not going to make any worse for me so if it does make it worse, I am going to have a huge issue.

**David Gayer:** I can tell you this much, I have seen much more water than what is being shown on that map, believe me. There is nothing you are going to do to stop the water from coming in there.

**Board:** Can someone refresh my memory on how we could have possibly allowed this tract to be rezoned knowing it will only be 2 lots in there?

**Board:** I think we made an assumption that 2 lots would be feasible because so much of it is in the floodway. We would have no authority to say it can only be 2 lots with the zoning change; that would be part of the platting process. It looks to me they did a good job to put everything in place. The easements for rural water are there, access is already there with one new road so that looks appropriate.

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

**Motion:** Jim Ralston

**Second:** Andy Jones

**Action:** 4-3 **denied** due to concerns with Floodplain

**Board:** Once the plats meet our requirements, there is very little we do to turn them down.

It was felt that it needed to be on record that when the board was asked if the concern was the floodplain, several board members answered yes.

**Board:** Having been through that, DWR is looking over our shoulders at all times. If this didn't meet the criteria, it is a very strict criteria, we will probably get this overturned. DWR has technology now, they know what the elevation there is. [Inaudible] They can't limit the water but they can retain the water as well as contain it to a smaller area [inaudible]. I just wanted to get on the record what the concern is because if it is turned down, they are going to want to know why.

**Will Johnson:** I also want to check with Daryl; I know there were some concerns with that entrance off of 40<sup>th</sup> and the elevations there.

**Board:** We give a recommendation to the County Commission and it does take a super majority to overturn.

**Board:** I don't think that's right unless there is a protest petition.

**Will Johnson:** Not on a failure, since you turned it down and really, you do not have a motion for anything at the moment. Technically you need a motion to deny at this point before you close the meeting.

**Board:** I listened to what you said and we rushed into that so quickly, that's why I voted no. I had some questions and I think you cleared some things up for me.

**Jim Ralston made a motion to approve this case as presented but with the request the applicant be present at the County Commission meeting to clear up questions about the Stormwater and Floodplain.**

**A discussion took place that it is the motion in front of the board, not as to whether or not this plat addresses all those concerns. A floodplain issue is a floodplain issue just like lagoon vs septic, that it is controlled by the health department just like the floodplain issues are controlled by the Division of Water Resources and that there are also avenues for a neighboring land owner to pursue that if what is being done here, should cause harm to their property, which in this case would be increased flow waters. It was said by a board member that they are pretty confident that DWR would not approve a plan that increases the water [inaudible] prohibits water from coming on or expedites water going off. That is the whole idea of Stormwater retention and detention. There was still concern about this plat potentially causing issues to the land owners to the south by increasing the amount or diverting the water in a different direction. An explanation was given how they control the outflow with the pond in place and that they can't make it worse which is why we see large developments with ponds behind them.**

**Motion:** Jim Ralston

**Second:** Andy Jones

**Action:** 5-2 approved

**To be heard before the BOCC on September 22<sup>nd</sup>, 2020 @ 9:00am**

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