

MINUTES

RILEY COUNTY PLANNING BOARD/ BOARD OF ZONING APPEALS

Monday, December 14, 2015
7:30 pm

Courthouse Plaza East
Commission Meeting Room
115 North 4th Street

Members Present: Lorn Clement, Chairman
Julie Henton
John Wienck

Members Absent: Dr. Tom Taul, Vice-Chair
Diane Hoobler

Staff Present: Monty Wedel – Director, Bob Isaac – Planner and Lisa Daily -
Administrative Assistant

Others Present: Andy Thurlow, Carmen Thurlow, Lewis Thompson, Russ Simons, Kaye
Blodgett, Warren Blodgett, Jeff Smith, Tom Abbott, Tom Lehmann, Susan
Lehmann, Darrell Westervelt, Ben Wilson, Gloria Freeland, and Art
Vaughn.

OPEN PUBLIC COMMENTS

None.

CONSENT AGENDA

The minutes of the November 9, 2015 meeting were presented and approved. The Report of Fees for the month of November (\$1,516.50) was presented and approved.

Julie Henton moved to adjourn the joint meeting of the Riley County Planning Board/Board of Zoning Appeals and, due to the lack of agenda items for the Board of Zoning Appeals, moved to reconvene as the Riley County Planning Board. John Wienck seconded. Carried 3-0.

RILEY COUNTY PLANNING BOARD

D&T Investments, LLC – Plat & Rezone

Lorn Clement opened the public hearing at the request of D&T Investments, LLC - Tom Abbott Member, and petitioner, and D&T Investments, LLC, owner, to rezone a tract of land from "AG" (Agricultural District) & "SF-4" (Single Family Residential) to "R-PUD" (Residential Planned Unit Development) and plat the aforementioned tract of land into three (3) lots, all in Wildcat Township, Section 36, Township 9 South, Range 6 East, in Riley County, Kansas.

Bob Isaac presented the request. Mr. Isaac explained that a portion of the property was rezoned from "G-1" (General Agricultural) to "A-4" (Single Family Residential) in 1976 for the placement of a mobile home on a permanent foundation. He said that the rezoning was done without subdividing or platting the property, which resulted in a legal zoning lot. Mr. Isaac

pointed out that the portion of the subject site that is zoned Single Family Residential could be developed at this time without further action, such as platting or rezoning.

Mr. Isaac stated that a portion of the subject site is situated in the unnumbered 1% annual chance flood hazard area, due to Kitten Creek transecting the eastern portion of the tract. He explained that Kitten Creek is a direct tributary to Wildcat Creek; thus, a Stormwater Drainage Study was completed that included design and construction recommendations to mitigate any increase of the rate of runoff from post-development, and also measures to protect the stream during construction.

Mr. Isaac stated that the Directorate of Public Works for the Environmental Division for the Fort Riley Military Base reviewed the request. He said the subject site is located within Noise Zone II, which is considered incompatible with residential uses, churches, schools, places of assembly and medical facilities. Mr. Isaac stated that the Planned Unit Development will require that a Fort Riley, Kansas Area of Military Impact Real Estate Disclosure Form be filed along with the plat with the Register of Deeds. He explained that this will provide full disclosure to subsequent owners of the lots, specifically regarding the potential impacts of neighboring Fort Riley.

Mr. Isaac reviewed the preliminary development plan/preliminary plat. He stated that proposed Lot 1 will consist of the existing home, which is currently served by an on-site individual septic system and lateral field. He said proposed Lots 2 and 3 each will be served by an on-site wastewater lagoon. He added that all proposed lots will be served by Rural Water District #1. He stated that Lots 2 and 3 will each be developed with a single family dwelling.

Mr. Isaac explained that the Residential Planned Unit Development (R-PUD) zoning designation was strongly recommended because the property is located within the Fort Riley Noise Zone II and was also within close proximity to a direct tributary of Wildcat Creek. He said that in order to address those concerns, this specialized zoning designation provides for:

- the mandatory filing of the Fort Riley, Kansas Area of Military Impact Real Estate Disclosure Form;
- restrictions as to the type of housing that will be allowed; and
- protection of Kitten Creek by controlling post-development and stormwater runoff.

Mr. Isaac explained that the plat includes an approximately 275-foot cul-de-sac, with the proposed name of Angelia's Way. He said that the road and detention facilities will need to be built to Riley County standards and inspected/approved by the County Engineer prior to the plat being filed. He said that it is anticipated that the new street and a certain portion along the east line of Kitten Creek Road will be dedicated to the public, while the aforementioned detention facilities will be granted to the public.

Mr. Isaac explained that a 100-foot wide, two-zone riparian buffer has been established on the preliminary development plan and Final Plat, in accordance with the Riley County Zoning Regulations that runs horizontally and perpendicularly from the west bank of Kitten Creek (a third order stream).

Chairman Clement asked for clarification of the riparian buffer on the final plat.

Mr. Isaac explained that the dashed line represents the floodplain and not all of the riparian area is actually within the floodplain. He said the riparian area extends west of the floodplain as well.

Chairman Clement asked if the dash indicated the centerline of the stream.

Mr. Isaac stated the riparian area is measured from the actual bank of the stream and if the bank happens to expand, the riparian buffer will move with it.

Mr. Isaac said due to the size of Lot 1, the R-PUD will reference the permitted uses/use limitations/density requirements of the “SF-1” (Single Family Residential) zoning district, which does not allow livestock. He said there shall be no mobile homes or manufactured homes.

Mr. Isaac explained that the current “SF-4” (Single Family Residential) allows for a mobile home or manufactured home to be moved in at any time with no review of stormwater drainage or noise disclosure.

Mr. Isaac explained that a note was added to the Final Plat, tying it to the Final Development Plan, so that any proposed replatting of any of the lots would require a formal amendment to the final development plan. Mr. Isaac said future subdividing is very unlikely due to the size of the lots and compliance with the Sanitary Code.

Mr. Isaac reviewed the Schedule of Improvements, as submitted by the Applicant, stating that the construction of the proposed street, detention/drainage facilities, rural water and development are to begin in the spring of 2016.

Mr. Isaac reminded the Board that a portion of the site has been developed for years as a home site. He said if approved, the request will essentially allow for an increase of one (1) additional house over what is currently permitted. He explained that unlike the current zoning, the R-PUD includes:

- improved control of existing and proposed post-development runoff and stormwater drainage;
- affords protection for the riparian area including Kitten Creek;
- a Fort Riley, Kansas Area of Military Impact Real Estate Disclosure Form; and
- an Agricultural Protection Easement be filed for the entire property.

Staff recommended that the Planning Board forward a recommendation of approval to the Board of County Commissioners of the request to rezone the subject property from “AG” (Agricultural District) and “SF-4” (Single Family Residential) to “R-PUD” (Residential Planned Unit Development) for the following reasons:

- The proposed development is generally in conformance with Vision 2025: A Comprehensive Plan for Riley County, Kansas.
- Measures have been incorporated into the R-PUD Final Development Plan which will require the filing of a Fort Riley, Kansas Area of Military Impact Real Estate Disclosure Form along with the Final Plat, as per the recommendations of the Flint Hills Joint Land Use Study. As opposed to the current residential zoning of the subject property, future development and subsequent ownership of the additional lots will be accompanied with full disclosure of the potential impacts of neighboring Fort Riley.
- The riparian area along Kitten Creek that transects the property will be subject to the requirements of Section 21C – Development Standards.

Staff also recommended the Board approve the Final Plat of Perry Addition as it was determined the request meets the minimum requirements of the Riley County Subdivision and Zoning Regulations and Sanitary Code.

Chairman Clement asked if the Applicant wanted to speak.

The Applicant, Tom Abbott, stated that Mr. Isaac did a good job presenting his position. He said since the petition was filed he has decided to remove the shed located near the proposed Angelia's Way.

Chairman Clement asked if there were any proponents. There were none.

Chairman Clement asked if there were any opponents within 1,000 feet of the site.

Carmen Thurlow stated she lives at 3320 Kitten Creek Rd, directly next to the proposed site. She said she spoke with Bob Isaac a while back and he mentioned there were concerns with the habitat of the creek, especially special fish, of which she said wasn't discussed tonight. She said that she would like to know what is going to be done to address this concern.

Mrs. Thurlow also stated they just recently experienced a lot flooding on their property. She pointed out that the subject site slopes and that she would like to see how construction will mitigate any impact. Mrs. Thurlow said she was told the site must be at least three (3) acres in order to have a lagoon. She said she wanted to know how the creek area could be counted as qualifying land, while also trying to protect the fish. She said that it was way too close.

Mrs. Thurlow stated Kitten Creek Road is a gravel road and they have to deal with dust coming from the west and south. She said that if the development is approved, the dust will become an issue from the north and east. She said part of the impact of the development will be more traffic all around their house and increase in noise level. She stated they have no plans on moving from their home and wanted to be away from the city. She said they really enjoy the rural character of Keats; it is like a little piece of heaven.

Chairman Clement said (in regard to the Topeka Shiner habitat and protecting the stream) we (the Board) are concerned with protecting water quality, as well as agricultural land. He explained that the drawing shows a detention pond and pipe that will control the flow of the drainage coming off of Angelia's Way and nearby property, which will address the issue of increased stormwater flow into the Kitten Creek and down into Wildcat Creek.

Carmen Thurlow asked if the wet area is being counted for the lagoons.

Mr. Isaac clarified what the environmental concern to the Topeka Shiner was land disturbance too close to a stream, causing silt to fall into the water. He said the silt muddies the water, which prevents the fish from breathing resulting in death. Mr. Isaac reminded the Board that there is a note on the development plan requiring the installation of silt fencing during any construction.

Mr. Isaac responded to an earlier question stating that the sanitary code area requirement for a lagoon is a 3-acre minimum and doesn't specify that streams, ditches, hills or deep ravines should be excluded from the calculated area. He added that, however, setbacks are established from property lines and wells, which have to be taken into account during lot design.

Chairman Clement pointed out the lighter area left of the hatched zone is really the only buildable area for a home and lagoon and might address the concern about future subdivision as there won't be enough buildable area.

Carmen Thurlow stated it is a concern because she moved to the country for peace and has small animals. She asked will issues arise because the animals make too much noise. She said the placement of the lagoon will be right in my back yard, which will be lovely in the mornings when I am sipping coffee. Mrs. Thurlow stated her concerns are noise control, smell, and if a fence will be built.

Julie Henton pointed out that Mrs. Thurlow is referring to a detention pond, not a lagoon and there will not be a smell from it.

Andy Thurlow stated the community of Keats has a very large problem of very small lots with insufficient room for septic systems. He said there are high nitrates in the water, which created the need for rural water. He said that if the buildable area is restricted, it seems like you are creating more of the same situation that already exists.

Lewis Thompson lives at 3402 Kitten Creek Road and his biggest concern is the road. He said the entrance to the proposed Angelia's Way is 50 feet past the curve. He said usually drivers are traveling between 45-50 mph by the time they reach the curve, which is a safety concern.

Jeff Smith stated he lives in the former school house south of the property. He asked the Board if KDHE has setback requirements for lagoons. He said it didn't sound like there was any clarity to what the requirements would be for a house placed on these lots in relation to the wastewater lagoons.

Bob Isaac stated Riley County has setback requirements, not necessarily from the floodplain, but the lagoons can't be located in a floodplain. He also stated that the lagoons would be permitted by the County, not KDHE.

Jeff Smith asked if a lagoon is placed on the edge of the floodplain without any setback requirements and there is future erosion there would be real problems, right?

Mr. Isaac asked him for further clarification.

Mr. Smith stated there is concern that there will be future erosion and with the lagoon being located near the waterway.

Mr. Isaac replied there is a 100-foot riparian setback where the lagoon will not go nor the house or anything for that matter.

Mr. Smith replied you answered my question and going forward we know there won't be an erosion problems.

Mr. Isaac replied that he couldn't guarantee that but if there is a wastewater lagoon in jeopardy of failing because of a situation similar to this, then most likely the property owner will take it upon themselves to move it.

Mr. Smith replied or the County will make them do it, right? How many lagoons do we have in Keats?

Mr. Isaac replied not many because of the 3-acre minimum requirement and the lots are not large enough. He explained that a profile hole must be dug, the soil analyzed through a percolation test. If the soil doesn't pass, a wastewater lagoon must be installed. Mr. Isaac said if built correctly, lagoons should last an average of thirty (30) years and are inspected.

Chairman Clement asked that the focus remain on the current request and the questions, to some degree, have some relevance, not how many lagoons there are in the area.

Mr. Smith said he is concerned as a property owner with small children and that they could wander off and fall into a lagoon.

Chairman Clement stated lagoons are required to be fenced.

Mr. Smith replied he was not aware and that he is a property owner asking questions. Mr. Smith stated that his point was if there are not setbacks, you as a Board are not clear about the setback requirements, the lagoon slides into the creek at some point; I would ask how you could have approved the request if you didn't know exactly what the requirements were.

Chairman Clement replied the setbacks are listed on the drawing.

Kaye Blodgett stated she and her husband own the farm that all the water runs on and into. She said the back lot is full of brush, trees, garbage, tin cans. She said the water doesn't just come from Kitten Creek, but also from the hill clear to the west. She said this ends up being a lot of water and their field gets flooded from it. Mrs. Blodgett said you can't say the proposed development, with all that gravel and yards, won't cause flooding, because it won't soak in like good old farm ground does. She said there will be a lot more flooding right down through Keats down through Wildcat Creek and you are trying to keep Wildcat from flooding.

Chairman Clement stated he is concerned with the cumulative effects of development but is also concerned with private property rights and people are legally entitled to do with their property. He said we have to balance the interest of regulations for the public good against and with private property rights.

Darrell Westervelt stated he is the trustee for Wildcat Township and has real concern about having more roads to maintain. He said the county engineer approved a narrower right-of-way for Angelia's Way than what is standard. He said the township sometimes has to clean the ditches and if there isn't sufficient room from private property, it may create issues.

Mr. Westervelt said he couldn't remember the amount or the type gravel to be put on the road. He said that Wildcat Township has unwritten rules about the kind of gravel they use on their roads and would like to consult with the developer about what he intends to use to ensure the township will be satisfied.

Bob Isaac said he met with Benesch, the County Engineer and Assistant County Engineer to discuss the proposed street. He said that both the County Engineer and Assistant County Engineer reminded him that the 60-foot right-of-way for local roads, which was the standard for years, had changed the previous December to 80 feet. He said that the County Engineer did not feel the increase in right-of-way was necessary in this case and waived the standard requirement.

Andy Thurlow said the whole idea of this request is for a gentleman to make money off of this property. He said that this isn't a dad peeling off some land to sell to his son to build a house. He said that the concern for the whole neighborhood is the developer isn't concerned with anything other than making money in the end off of this land. He said that was a very big scary issue for him, being a landowner next to this development. He said that if this was a property owner dividing half to sell to his son and would maintain his half really nice, wouldn't be a problem as much as it would be somebody that is just trying to develop the land to turn a dollar.

Tom Abbott said when they started looking at this project, they knew they could build another house without going through any of this process. He said that they would not have to worry about building a road, but put in a single ownership road. He said they decided to do something and do it right. He said that they were obviously concerned about the run-off, so it was decided to include a detention pond. He said that a detention pond does not mean we will not let any more water off the site after it's developed. He said that they can't solve the flood problems up the creek or any of that. He said as Mrs. Thurlow said, if one person could have a slice of heaven, why couldn't two more have a slice of heaven. He address Mrs. Thurlow and said your comment was you built to live there, but Mr. Thurlow tried to sell his property to me before any development plans were even initiated.

Mr. Abbott said this development wasn't taken lightly and thinks it will be a nice project. He said he hopes to make money, but if he doesn't make money then that is just the risk you take. He said that they won't cut corners and will build everything to county standard; the lagoons will be inspected annually by the County and if there are any issues, they will be required to fix it or whomever the houses are sold. He said it isn't going to wash down into the creek.

Carmen Thurlow said that her husband did approach Mr. Abbott with thoughts of selling their property because they found out that he was going to develop his land. She said they were looking for something further in the country, away from Keats and wouldn't have close neighbors.

Bob Isaac stated he would like to make it clear what the purpose of the detention pond is. He explained that the function of a detention pond is not to capture all the stormwater and completely eliminate flooding or stormwater drainage into the creek. He said that detention means to "detain" not "retain", with the function of slowing the rate of stormwater run-off into Kitten Creek. He explained that the purpose of constructing the detention pond is to maintain the current rate of run-off rate post-development or improve it. He said that according to the study, the placement of the pond, the size and the design will improve the current rate of run-off.

Julie Henton moved to close the public hearing. John Wienck seconded. Carried 3-0.

Chairman Clement said a lot of good concerns have come forward, such as concerns for safety regarding the proposed road intersection being so close to the curve along Kitten Creek Road; however, it is just a few lots at the end of the cul-de-sac. He said Angelia's Way will operate more like a driveway than a serious public road intersecting with another public road. He said this is very small scale increase of traffic, noise and dust and if people don't respect the speed limit, there isn't much the Board can do.

John Wienck stated he drove by the site coming from the north and the curve does catch up on you.

Monty Wedel asked if the County Engineer, Leon Hobson, evaluated the site distance for the cul-de-sac and the speed limits.

Bob Isaac replied yes. If a vehicle would be on the proposed Angelia's Way, turning onto Kitten Creek Road, if a vehicle was approaching from the north, they would be able to see it.

Lewis Thompson asked have you pulled out from one of those driveways where someone is coming up that road at 45 mph with a cattle trailer.

Bob Isaac replied no.

Tom Lehmann stated you ought to try it.

Lewis Thompson replied we have.

Chairman Clement re-opened the public hearing due to the nature of the safety concerns.

Carmen Thurlow said after a lot of effort she was able to get the speed reduce from 45 mph to 30 mph. She said that since then, she has actually witnessed four (4) accidents right in front of her property. She said it is a very dangerous curve.

Chairman Clement stated he failed to take this request item from the table when he originally opened the public hearing. He apologized for the oversight.

Julie Henton moved to take the request from the table. John Wienck seconded. Carried 3-0.

Julie Henton moved to close the public hearing. John Wienck seconded. Carried 3-0.

John Wienck moved to recommend approval of Petition #15-19 & #15-20 (rezonings) for reasons listed in the staff report and moved that the Board approve Petition #15-21 (plat). Julie Henton seconded. Motion carried 3-0.

Mr. Isaac announced that the Board of County Commissioners would hear the request to plat and rezone the property on January 4, 2016, at 10:00 am, in the County Commission Chambers.

Simons – Plat & Rezone

Lorn Clement opened the public hearing at the request of Russell M. Simons, petitioner, and Russell M. & Karla Simons, owners, to vacate and rezone a portion of Lot 1, Simons Subdivision, from “SF-5” (Single Family Residential) to “AG” (Agricultural District) and replat the remainder of Lot 1 into two (2) lots all in Madison Township, Section 35, Township 8 South, Range 5 East, in Riley County, Kansas.

Bob Isaac stated that the 16 ½-acre tract was platted and rezoned from “AG” (Agricultural District) to “SF-5” (Single Family Residential) in February 2010 which became Lot 1 and Lot 2 of Simons Subdivision. He said that in order to minimize the number of entrances onto Falcon Road, a common entrance was created between Lot 1 and 2. He explained that a stream runs north and south through the entire length of the subdivision. He said that due to the span of the floodway and floodplain, trying to develop the western portion of the lots, which abuts farmland, has been cost prohibitive.

Mr. Isaac said the Applicant believes that developing that portion of Lot 1 next to the road would be more affordable. Mr. Isaac said that the Applicant wishes to vacate the western portion of Lot 1, which is currently being farmed by the adjacent property owner, rezone it back AG (Agricultural District) and return it to the agricultural use.

Mr. Isaac said all utility releases were received with the exception of Century Link. He stated that a stormwater drainage study was completed which recommended stormwater detention areas will be constructed on each lot. He said that it is proposed that each lot will be served by a well, however, a Shared Well Agreement will allow proposed new Lot 1 to share the existing well serving Lot 2 of Simons Subdivision. He stated that each lot will be served by individual wastewater lagoons.

Staff recommended that the Board forward a recommendation of approval to the Board of County Commissioners of the request to rezone the subject property from “SF-5” (Single Family Residential) to “AG” (Agricultural District) for the following reasons:

- The proposed development is generally in conformance with Vision 2025: A Comprehensive Plan for Riley County, Kansas.
- This action is to accommodate new development within a designated growth area, while simultaneously returning several acres of platted land back to agricultural use and agricultural zoning.
- Although this request allows for an increase of residential density for the property (from one to two homes), the improvement also requires the recordation of an Agricultural Protection Easement and Fort Riley, Kansas Area of Military Impact Real Estate Disclosure Form along with the Final Plat.

Staff also recommended the Planning Board approve the Final Plat of Simons Subdivision Unit Two, as it was determined to meet the minimum requirements of the Riley County Subdivision and Zoning Regulations and Sanitary Code.

John Wienck asked about access to proposed Lot 2.

Bob Isaac said that he suggested to the Applicant prior to the start of this project that he should contact the Kansas Department of Transportation (KDOT) for approval of another entrance along Falcon Road. He said that KDOT did not have any problem issuing an entrance permit.

Chairman Clement asked if the Applicant wanted to speak. The Applicant had no comment.

There were no proponents or opponents.

John Wienck moved to close the public hearing. Julie Henton seconded. Carried 3-0.

Chairman Clement stated it is nice to see land being return to agriculture.

Julie Henton agreed.

John Wienck moved to recommend approval of Petition #15-24 (rezoning) for reasons listed in the staff report and moved that the Board approve Petition #15-25 (plat). Julie Henton seconded. Motion carried 3-0.

Mr. Isaac announced that the Board of County Commissioners would hear the request on January 4, 2016, at 10:15 am, in the County Commission Chambers.

Monty Wedel, Chairman Clement and John Wienck thanked Julie Henton for her contributions and service to the Riley County Planning Board/Board of Zoning Appeals.

Julie Henton moved to adjourned. John Wienck seconded. Carried 3-0.

The meeting was adjourned at 9:18 P.M.