

MINUTES

RILEY COUNTY PLANNING BOARD/ BOARD OF ZONING APPEALS

Monday, March 13, 2017
7:30 pm

Courthouse Plaza East
Commission Meeting Room
115 North 4th Street

Members Present: Lorn Clement, Jr., Chair
Dr. Tom Taul, Vice-Chair
Diane Hoobler
John Wienck
John Osarczuk

Members Absent: None

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

Others Present: Mike Kearns, Carolyn Hoard, Dennis Hoard, Mike Renfro, Bernard Irvine,
Craig Cox, Nancy Parker, David Parker, Frank Hagenmaier, Larry Larson,
David Miller, Leon Hobson, Jeff Black and Drew Vennum

OPEN PUBLIC COMMENTS

None

CONSENT AGENDA

The minutes of the February 13, 2017 meeting were presented and approved. The Report of Fees the month of February (\$3,002.00) were presented and approved with correction in the year from 2016 to 2017.

John Wienck moved to adjourn the joint meeting of the Riley County Planning Board/Board of Zoning Appeals and reconvene as the Board of Zoning Appeals. Diane Hoobler seconded. Carried 4-0.

BOARD OF ZONING APPEALS

Parker – Reconsideration of Zoning Appeal

Chairman Clement opened the public hearing at the request of David & Nancy Parker, petitioners and owners, for a reconsideration of the Riley County Board of Zoning Appeals January 9, 2017 decision, which affirmed the denied request for an agricultural exemption to allow for an additional house on a developed tract of land in the "AG" (Agricultural District) zoning designation.

Monty Wedel provided a brief synopsis of the memo he provided to the Board explaining that David and Nancy Parker retained an attorney to consider other courses of action. Mr. Wedel and

Craig Cox, Deputy County Counselor met with the Parkers and their attorney, Bernard Irvine, to discuss possible options. Mr. Wedel said that at the meeting, staff presented a potential resolution of the matter to the Parkers and Mr. Irvine: an agreement to file an Agricultural Protection Easement and to not request any additional agricultural exemptions in exchange for not having to plat. Mr. Wedel explained that as a result of the meeting, the Parkers agreed to sign the agreement and Bernard Irvine agreed to write a legal description for the tract surrounding the non-agricultural residence for the Agricultural Protection Easement that the Parkers agreed to file with the Register of Deeds.

Mr. Wedel explained the only thing that would not be accomplished by not requiring a Residential Use Designator would be a plat, which establish formal property lines filed with the Register of Deeds. He said if they choose to sell, something the Parkers have stated having no intentions of doing, a plat would be required at that time.

Mr. Wedel stated we agreed this was a very reasonable solution and staff recommended the Board approve the Agricultural Exemption with the caveat that the agreement be signed. Mr. Wedel said the Parkers have signed the agreement.

Diane Hoobler stated she felt this provides what is needed.

Monty Wedel agreed and indicated it is a unique circumstance where the owner doesn't want to divide the property out.

Tom Taul asked about what would happen when the next person comes along and wants to do something similar.

Monty Wedel said it could happen again, but each circumstance would have to be evaluated on its own merits.

Tom Taul replied he felt there needed to be something uniform that would consistently apply to everyone and thought that was accomplished with Vision 2025. He said it looked like the Board was doing something special just because the applicant didn't want to plat. Mr. Taul stated he didn't understand why they couldn't play by the same rules as everybody else and, once this was allowed, everybody else would want to request exemption from platting. He said he didn't think the Board would have any choice but to allow it. Mr. Taul said quite a few Extraneous Farmsteads have been approved and he needed to be convinced why the Board should approve a special loop hole for this circumstance.

Craig Cox stated that Dr. Taul expressed concern that a precedent would be created from this request. He explained the action to be taken by the Board of Zoning Appeals was not a precedential action. Mr. Cox stated in a factual situation, a remedy was created that was not binding on any decisions in the future. He explained similar situations could come along and the Board of Zoning Appeals would not necessarily have to do the exact same thing. Mr. Cox emphasized the Board's decision doesn't have precedential value and it doesn't bind the Board in the future. He stated this is a fact-specific case and because of that creates the non-precedential value.

Monty Wedel replied to Mr. Taul that the standard process will be to obtain a designator lot and plat; if they want to appeal they can, just like the Parkers did. He explained the process will remain the same.

Bernard Irvine, stated he was representing David and Nancy Parker. He said they appreciated the work that had been done, the packet that has been put together on their behalf and were asking that it be approved. Mr. Irvine stated he appreciated Dr. Tauls' questions and the key that was stated by both Mr. Cox and Mr. Wedel was the role as the Board of Zoning Appeals was to look at each situation with its unique facts and circumstances. He stated they believe this is unique because of the existing dwelling and the way it is used. There is no intention to part ways with it and sell it. He said in fact they want to use it as part of their income on the farm in addition to the other things they are doing. Mr. Irvine stated this allows the County to accomplish their objectives within the 2025 program which they support.

Tom Taul stated he was not convinced this was such a unique situation. He said we aren't telling them they can't build a house, all they have to do is make the existing house an Extraneous Farmstead like everyone else has done.

Bernard Irvine said it would be under the same ownership and they really don't want to subdivide the property, but keep it a single tract. He stated in their opinion, it does fall within the requirements set forth in the zoning ordinance.

Tom Taul said he tries to look to the future and knows their plan today, but things change.

Bernard Irvine said if the plans did change to sell the house, they would have to subdivide the property.

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

John Wienck moved to close the public hearing. Tom Taul seconded. Motion carried 4-0.

Tom Taul stated he would like to hear input from the other Board members and said that he is not necessarily opposed.

John Wienck stated when he first reviewed the request he thought why couldn't they just do the residential use designator. He said Mr. Irvine answered his question that if something happens down the road, it would have to be platted. Mr. Wienck said he understood Dr. Tauls concerns but he was okay with the request.

At 7:47 p.m., Board member, John Osarczuk, entered the meeting.

Diane Hoobler said she didn't understand why Vision 2025 didn't work and why they were opposed to platting. She stated they would still retain ownership but wasn't worth a war either and she was willing to compromise.

Chairman Clement stated he felt the same way in terms of the timing, if something comes to pass and it is split up that it would have to be platted. He stated he thought Monty had done a good job, along with the attorneys, to reach a pretty reasonable compromise. Chairman Clement said he understood Dr. Taul's position that approving the request could put the Board in a difficult position in the future because similarities may be apparent to people, but they would just have to stand their ground and explain the facts are different. He stated it is a large tract of land, its agriculture and good citizens involved.

Tom Taul asked what would be those factors that would be different if we allowed this request.

Monty Wedel said the typical situation is they don't want the old farmstead, doesn't meet their needs anymore or they're moving to town and want to sell it off. He explained in this situation, the Parkers want to keep the house and they were upfront that it is a rental and not related to agriculture.

Tom Taul stated that made sense to him and that most people want to sell it off.

Monty Wedel said every case from here on will have to be reviewed for its specific facts.

Diane Hoobler asked for her own personal information what it would cost to plat this property.

Monty Wedel said he contacted a surveyor and was told, based on the average extraneous farmstead of that size, \$1,500 to \$2,000. He did say, however, it would depend on the difficulty of the survey such as locating pins and topography.

Chairman Clement asked John Osarczuk to abstain from voting.

Diane Hoobler moved to approve Petition #17-01 the appeal of David and Nancy Parker for the reasons indicated in the staff report (memo) with the requirement that the Parkers sign the agreement. John Wienck seconded. Carried 4-0 (John Osarczuk abstained from voting)

Diane Hoobler moved to adjourn the Board of Zoning Appeals meeting and reconvene as the Riley County Planning Board. John Wienck seconded. Motion carried 5-0.

RILEY COUNTY PLANNING BOARD

Vennum – Rezoning

Chairman Clement asked for a motion to take from the table the request of Drew Vennum, petitioner, and Drew and Amber Vennum, owners, to rezone two unplatted tracts of land from "AG" (Agricultural District) to "C-PUD" (Commercial Planned Unit Development) Section 26, Township 7 South, Range 6 and Section 35, Township 7 South, Range 6 East, Jackson and Sherman Townships in Riley County, Kansas.

Tom Taul moved to remove the item from the table for discussion. John Wienck seconded. Carried 5-0.

Monty Wedel stated the Board tabled the request because of issues with traffic on Secrest Road and requested more information on the speed limit and funding for dust control. Mr. Wedel said he provided information on the amount of taxes the site would generate and what the Township would actually receive, which wasn't very much. He said he understood the Township's concern with the cost of ongoing maintenance.

Mr. Wedel directed the Board's attention to the memo included in their packets listing the options to address the concerns of Secrest Road.

Mr. Wedel explained that Payment In Lieu of Taxes (PILT) had been mentioned at the previous meeting. He explained that the County receives a certain amount of money as compensation from the federal government for the loss of tax revenue on land owned by the federal government; land taken out of the County's tax base. Mr. Wedel said that money goes directly into the general fund and is not specifically used for roads or any particular road impacts. He said it was concluded these funds couldn't be redirected or used for a specific road problem.

Mr. Wedel said he looked into a TDD (Transportation Development District) but explained that this option is used more for a situation where a road is going to be paved and a bond would be issued to pay for the expense. He explained in that situation, the sales tax could be used as a one-time improvement, but dust control would be a recurring expense; therefore, the TDD was not a realistic option.

Wedel stated options were reviewed. He stated that Leon Hobson, Director of Riley County Public Works/County Engineer was present at the meeting to provide his expertise on dust control and other measures. He said the status quo is not sustainable and that staff agreed that over time there would be a need for dust control, etc.

Mr. Wedel said the developer has agreed to pay half the cost of two (2) treatments, per year, upon commencement of construction of the event center, which would be the trigger to create more traffic. He said a federal grant was originally used to improve Secrest Road. Mr. Wedel stated he was not sure how depending on a grant would work for dust control, since it would be recurring and a grant is issued one time. He said it probably isn't going to work, but that staff would continue to explore this option.

Mr. Wedel explained that in order to lower a speed limit, there is a process that must be followed based on an analysis. He said the request for the analysis has to be initiated by the Township, which has already begun. He said in addition, the Township has already requested warning/advisory signs be posted on the curves along Secrest road, an action which did not require an analysis. Mr. Wedel said the signs may already be erected, along with markers for the edge of the road at various points.

Mr. Wedel said the County Commissioners would have to make the decision whether or not Secrest Road would qualify to become a county road. He explained there is a scoring system that includes many other factors than just daily traffic counts (e.g. is it a school bus route), which have to be analyzed. Mr. Wedel said the results will be given to the County Commissioners to make the decision as to whether or not it becomes a county road. If they decide to accept it as a county road, it increases the possibility of the provision of, or partnership to provide, dust control.

He said staff recommends that the Riley County Planning Board move the request onto the Board of County Commissioners, as they will be making the decision on the speed limit and whether or not the County should take over Secrest Road.

Chairman Clement asked if taking the item from the table actually opened the public hearing. Monty Wedel said if the public hearing was closed at the last meeting, the hearing would have to be reopened. He said he wanted to reemphasize the reason for tabling the request was for those two road situations and hoped the Board would not get into all the other issues again. Chairman Clement stated he was inclined not to reopen the public hearing because the Board had heard both sides from the previous meeting and to make a recommendation based on the information provided by staff that evening. The Board then proceeded with discussion on the additional information presented by staff.

John Wienck asked Mr. Hobson if Secrest Road was changed to a county road, would the taxpayers be paying for the dust control measures just like on Wildcat Creek Road.

Mr. Hobson replied yes.

John Wienck stated he had a hard time with Wildcat Creek becoming a county road because the taxpayers are paying for the dust control and now this is the same situation.

Diane Hoobler asked if Secrest Road does become a county road, will the developer be released from paying half of the cost for the dust control.

Mr. Wedel replied no.

Mr. Hobson stated if it should become a county maintained road, that doesn't mean it would automatically qualify for the county dust reduction policy. He said Secrest Road would still have to meet the criteria for the County to put the money toward dust control for that road. Mr. Hobson said with increased traffic and other things, it probably would; but again, that would be a final decision by the County Commissioners.

Mr. Hobson said they took a look at the crash data for the road and found two (2) in the last five (5) years. He stated, granted, there are times when the ORV Park has a lot of traffic at one time and creates a lot of dust; but if you look at the traffic situation over the course of the whole week, the whole year and to only have two reported accidents, there is not a cause for dust control, in his opinion. Mr. Hobson said with the addition of the event center, likely increasing the number of traffic conflicts, he sees a potential need for dust control in the future. He stated it will be based on things that can be empirically measured, not just because someone said they almost got hit, because those incidents are tough to design on.

Tom Taul asked when during the year the dust control applications get applied to roads.

Leon Hobson replied it depends a lot on the weather, but said they just made a switch to put it on in June this year and it usually lasts through October. He explained the more times you put it on, the more residual build-up occurs. Mr. Hobson explained it is a reduction not an elimination and you will still get some dust but it is drastically reduced.

Tom Taul stated the reason he asked the question was when reviewing the traffic counts for the ORV Park, he found it interesting that the only month that took a giant leap was last year in August. He said everything else was up and down but there really hadn't been a whole lot of change in the total traffic in the four years.

Mr. Hobson said if a second dust control application would be needed it would probably be in August. He explained that if it gets too late in the year, it can actually create a problem because it attracts moisture.

Chairman Clement said his inclination was to go with what staff had recommended.

John Osarczuk stated he felt staff addressed the two concerns.

Diane Hoobler said the speed concern was being addressed and it bothered her that people get to go into the ORV Park from a four (4) state area and we can't get any compensation from them for the road.

John Wienck stated that he drove down Secrest Road prior to the meeting that evening. He said there was a 35 mph speed limit sign before a curve and wanted to know if this was the speed limit for the whole road or just for that curve.

Leon Hobson replied it is just for the curve. He said his personal feeling was, curve signs with speed advisories, do more for slowing traffic down than a speed limit sign. Mr. Hobson explained that speed limit signs don't always work because if the driver doesn't feel comfortable driving that slow, they will drive whatever speed they feel comfortable at. Mr. Hobson said the sign at the curve indicates to them there is a geometric change in the roadway and naturally they will slow down, especially if it says 35 mph.

Mr. Hobson stated speed advisory signs will be posted at five (5) curves along Secrest Road and it was discussed to install an OM3 or hazard markers at the culvert area.

John Osarczuk moved to recommend approval of the request to rezone the subject property from "AG" (Agricultural District) to "C-PUD" (Commercial Planned Unit Development) for the reasons listed in the staff report for Petition #17-07 and with the following conditions:

1. The developer signs a Development Agreement to pay for half the cost of dust control measures on the entire length of Secrest Road, if deemed necessary by the County Engineer, for a maximum of two treatments per year and to begin payments upon issuance of the building permit for the events center.
2. Jackson Township initiates a request for a traffic safety study to determine the appropriate speed limit for Secrest Road. Jackson Township assumes responsibility for the installation and maintenance of all signs required as a result of the study.

Tom Taul seconded. Motion carried 4-1 (John Wienck dissented).

Mr. Isaac announced that the Board of County Commissioners would hear the request to rezone the property on April 3, 2017, at 10:15 am, in the County Commission Chambers.

Amend the Manhattan Urban Area Comprehensive Plan by adopting by and incorporating the proposed Big Blue and Kansas Rivers Floodplain Management Plan

Lorn Clement opened the public hearing to amend the Manhattan Urban Area Comprehensive Plan, dated March 2015 by adopting and incorporating the proposed Big Blue and Kansas Rivers Floodplain Management Plan, dated November 2016 as a part of the Manhattan Urban Area Comprehensive Plan.

Monty Wedel said a very small area of this plan is within the Riley County Planning Board jurisdiction. He explained that the Manhattan Urban Area Planning Board and the City Commissioners have already finalized and approved the Plan.

Mr. Wedel said a lot of the discussion at the public meetings were on the areas within the City of Manhattan where houses are already below the base flood elevation and the cost of flood insurance will increase substantially due to changes in the Natural Flood Insurance Program. He said a lot of energy was spent looking into options to raise, remove or buy out those properties and other methods to mitigate their expenses. Mr. Wedel said there wasn't a lot of issues with this Floodplain Management Plan for rural portions of Riley County.

Mr. Wedel reviewed the Action Plan with the board and said the County plans to meet with the City every year to look at implementation and coordination issues, develop modeling and make sure this Floodplain Management Plan gets into the Hazard Mitigation Plan for potential funding for buyouts.

John Wienck moved to close the public hearing. John Osarczuk seconded. Motion carried 5-0.

Diane Hoobler moved to forward a recommendation of approval to amend the Manhattan Urban Area Comprehensive Plan by adopting and incorporating the proposed Big Blue and Kansas Rivers Floodplain Management Plan, dated November 2016 as a part of the Manhattan Urban Area Comprehensive Plan.

John Wienck seconded. Motion carried 5-0.

Annual Report

Diane Hoobler asked about her Planning Board term.

John Wienck asked about the excavation licenses that were issued on Green-Randolph Road.

Monty Wedel replied both were for road projects. He directed the Board to Page 7, Total Residential Building Permits 2016. He pointed out the number of Designator Lots, In-fills and that there have not been any building permits issued as a result of rezoning. Mr. Wedel said the designator lots are working so people don't have to go through the whole rezoning process.

John Wienck asked what the term "in-fill" was.

Monty Wedel replied that in-fill is building on vacant lots that have already been platted. He also stated that Lots of Record are the 20-acre tracts established prior to Vision 2025 or that were legally created by previous regulation.

John Wienck said he had a visit with Bob Isaac and doesn't understand why tracts that have never changed ownership are not considered Lots of Record.

Monty Wedel said in the Vision 2025 discussion it was decided that if every tract over 20 acres from the beginning of time was going to be grandfathered, then everybody was going to be able to build a house anyway and we weren't accomplishing anything. He explained to be fair to property owners that were required to purchase 20-acre tracts under the 20-acre rule from 1980 to May 2012, those tracts are considered Lots of Record.

Mr. Wedel stated if the property has been an agricultural tract forever and they don't qualify for an agricultural exemption, then they will have to look at the designator lot options or rezoning.

Diane Hoobler asked what happens if someone wants to split up a 20-acre Lot of Record.

Monty Wedel replied the tract loses its Lot of Record status.

Update on Zoning and Subdivision Regulations re-write

Monty Wedel said Elizabeth Garvin depends on staff to review the drafts and that it is going slowly due to work load. He explained that the department has also received a lot of applications recently. He said staff has been reviewing, in detail, the use regulation districts, use table and the use specific standards.

Update on Fort Riley Joint Land Use Study

Monty Wedel said he believes there will be another round of informational meetings in April and he heard that there have been more stakeholder interviews and a stakeholder meeting held in Riley.

State of Kansas Agritourism Task Force

Monty Wedel said he received an email that there will be no more meetings. He said he believes it is because they are in the legislative session dealing with budget issues and other matters and agritourism is not a priority right now.

The Religious Land Use and Institutionalized Persons Act

Craig Cox, Deputy County Counselor stated that in the past, Riley County has dealt with the religious land use portion of this federal code - The Religious Land Use and Institutionalized Persons Act (RLUIPA). He explained the U.S. Attorney's office emailed the letter to the Kansas Association of Counties asking to forward it to all county members, entities and organizations to provide education on the impact of RLUIPA.

Mr. Cox said there are five (5) subsections of the act that deal with different standards that determine whether or not zoning regulations themselves or the actual implementation of the zoning regulations will adversely impact the exercise of religion. He said the actual purpose of RLUIPA is to protect religious individuals, institutions and assemblies from burdensome, unreasonable or discriminatory zoning, land marking or land use regulations.

Mr. Cox said Section 2(a) is called the substantial burdens test, which means zoning regulations themselves, as written or implemented, can't impose upon religious individuals, entities or people practicing religion or institutions a substantial burden that would be different from those burdens placed upon other individuals under the zoning code or other institutions. He said an exception to a burden being placed upon a religious person or entity is the compelling governmental interest to be pursued; which can be done in regards to religion, as long as it is done by the least restrictive means.

Mr. Cox said the definition of compelling governmental interest is, interest of a high order. He said in this day and age, a high order could be security, security of public, entities or agencies. Mr. Cox said all of those standards usually come into play in the zoning area in regards to construction of buildings or locations for the construction of buildings for religious purposes. He explained the substantial burden standard is different than the other four (4) standards in that the substantial burden can be applied to individuals in addition to institutions and entities. Mr. Cox said all the other standards apply to organized religion to the institutions and the assemblies.

Craig Cox said that Section 2(b)(1) is known as the equal terms provisions in regards to zoning for religious assemblies and institutions. He explained they have to be treated at least as well as other assemblies and institutions. He said examples of other types would be lodges, union halls, night-clubs, meeting halls, theaters and business districts. Mr. Cox said if there are zoning regulations on how those entities can apply for a location or a building, you have to treat an application for a building or location of religious entity in the same way or as least as well.

Monty Wedel said as the regulations are being rewritten, the term “religion” is being taken out entirely. He said we will not be listing churches, but listing assembly. He explained if you are gathering people together (“assembly”) like a lodge, theater or whatever, they all will be treated exactly the same. Mr. Wedel said schools will be treated the same as places of assembly.

Tom Taul replied all event centers are related to religion, aren't they.

Monty Wedel said a point we want to get to is that we have to be careful because of this law. He said if someone declares or makes a claim that they are a religious entity, they file papers and they show a mission statement, we have to accept it.

Mr. Wedel said prior to changing the regulations, churches were permitted in the AG District. He explained that once Vision 2025 amendments were approved, a church now requires a conditional use.

Craig Cox said in reference to schools, in regards to the equal terms provisions it also ties into a later standard which is to prevent discrimination against religions or denominations within religions. He said there are a lot of religious schools and you can't look at the religious part of it. You have to regulate it just like any other school.

Mr. Cox replied in regard to an event center, how many churches have a big hall that kids can play basketball in or can have weddings. He said probably any church of any structural size has an event center. Mr. Cox said according to RLUIPA, you regulate as an event center; the controlling entity being religion is not really a factor. He explained that the whole push behind RLUIPA is that you have to treat zoning issues for religious entities and institutions the same way you treat non-religious entities. He said because if you don't, you will be discriminating against the exercise of religion and that is one of the constitutional rights we have which is to worship according to our own consciences.

Mr. Cox stated he already mentioned religious or denominational discrimination. He explained you can't regulate Catholic churches in ways different than Jewish temples. Mr. Cox said you can't regulate an orthodox Jewish structure in a way that is different from a Hasidic Jewish structure as that would be denominational discrimination. He said it is that same principle that you have to regulate it for the use and not for the religion.

Mr. Cox said the total exclusion of religious assemblies and the unreasonable limitation of religious assemblies is not allowing religious entities to actually have a structure anywhere. These two basically have the same principle but a little different definitions. Mr. Cox stated that it all boils down to having to regulate the use not the entity or organization promoting the use.

John Wienck moved to adjourn. Tom Taul seconded. Carried 5-0.

The meeting was adjourned at 8:58 P.M.