

MINUTES

RILEY COUNTY PLANNING BOARD/ BOARD OF ZONING APPEALS

Monday, October 8, 2018
7:30 pm

Courthouse Plaza East
Commission Meeting Room
115 North 4th Street

Members Present: Dr. Tom Taul, Chair
John Wienck
Nathan Larson
Joe Gelroth

Members Absent: Diane Hoobler, Vice-Chair

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

Others Present: Michele Sherraden, Colleen & Gene Lindgren, Bart & Pam Bath and
Ronda Nelson

OPEN PUBLIC COMMENTS

Gene Lindgren, Mill Cove property owner stated he has a meeting with the Riley County Board of Commissioners on October 18, 2018 to discuss a fire road to enhance fire safety, emergency services and to make Road 402 a loop.

CONSENT AGENDA

The minutes of the September 10, 2018 meeting were presented and approved. The Report of Fees for the month of August (\$3,191.00) were presented. Joe Gelroth questioned why there wasn't a construction cost amount provide for Building Permit 18-0075. Lisa Daily explained the permit was still being processed when the report was ran and believed the cost provided afterwards was \$225,000.00. Nathan Larson asked why a permit fee was charged for a structure to house goats. Lisa Daily said this will be discussed with staff to determine if a refund is warranted.

Joe Gelroth moved to approve the consent agenda as presented with the noted changes. John Wienck seconded. Carried 4-0.

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. Nathan Larson seconded. Carried 4-0.

RILEY COUNTY PLANNING BOARD

Schlageck – Residential Use Designator – Country Estate

Chairman Taul asked if there was a motion for the Board to remove from the table the request of Joe Schlageck, petitioner and Joseph G. Schlageck owner, to receive a Residential Use

Designator – Country Estate in Grant Township, Section 3, Township 9 South, Range 7 East and Section 4, Township 9 South, Range 7 East in Riley County, Kansas.

Nathan Larson moved to remove the request from the table. John Wienck seconded. Carried 4-0.

Chairman Taul opened the public hearing.

Gene Lindgren asked why the request was being removed from the table.

Chairman Taul explained that the request was tabled at the August 13, 2018 to the October meeting by recommendation of planning staff, due to the property was required to be platted.

Bob Isaac stated there was not a public hearing held in August for the item because staff had just been made aware days prior to the Planning Board meeting that the property would need to be platted as it is located in different sections and taxing units. He explained this is the public hearing for the Residential Use Designator – County Estate, for an existing home and a separate public hearing would be held for the plat.

Mr. Isaac explained that the subject site consists of the northern half of two contiguous unplatted parcels of land under the ownership of the applicant. Mr. Isaac explained that the residential use designator was being requested for only this portion of the 78-acre parent tract. He said the property is developed with a single family dwelling, which was constructed in April 1999 and added onto in July 2007.

Mr. Isaac reviewed the requirements for the Residential Use Designator - Country Estate and stated that although the subject site is not located within a ¼-mile 20-acre home sites, the site is located within a Designated Growth Area.

Staff recommended that the Board approve the request to receive a Residential Use Designator–Country Estate as it had been determined that it met the minimum requirements of the Riley County Zoning Regulations and Sanitary Code.

Chairman Taul asked if the Applicant wanted to add anything.

Eugene Lindgren stated he was not the property owner.

It was determined that the Applicant nor a Representative were present.

Eugene Lindgren, stated he was representing the Mill Cove Homeowner Association and the property owners in attendance and those not in attendance. He stated they have conditional objections to developing this site other than residential. Mr. Lindgren said they also have a problem with the tracts being opened for development due to an existing road that exits off Mill Cove Addition that was granted by Riley County because the property owner felt his property was land-locked.

He said after reviewing materials 15-years later, it appears they can't block the access of the entrance. He said however, they could limit the usage according to the County's own words; Gold Standard Expressway easement, which limits the entrance to 20 feet. Mr. Lindgren stated that language would restrict it to residential use only and he would like see it stay a single family dwelling, if, in fact, they have to tolerate the entrance.

Mr. Lindgren stated there is the ability of the property owner to have an entrance that is connected to a public road without crossing private property. He said this is the point we are making. He said we don't want see this be dealt with in the future because it will increase the traffic through Mill Cove, which is a township road. He said they are already experiencing a number of tourists traveling into the Mill Cove area because the County doesn't have any regulations against short-term rentals. He stated the single family dwelling is for sale with an occupancy of 10, but the lateral field is for a 2-bedroom home.

Mr. Lindgren said we do need to see in the future about getting the short-term rentals under control in the county so they don't move into residential areas where they are not welcomed. He said residential areas means exactly that: residential; not business. He said they oppose the subdividing the property because the very large home, swimming pool and vineyard, which could be used for a short term rental, winery, is a destination tourist attraction.

Mr. Lindgren stated the existing entrance off Mill Cove is illegal and needs dealt with.

Bob Isaac clarified the subject site is not part of the Mill Cove homeowners association. He explained there was a travel easement that serves the subject property. He said although staff erroneously misread the travel easement document and declared the travel easement was in place across Lot 30 Mill Cove Park, Tim Sloan of SMH Consultants informed planning staff that the recorded travel easement accessed Mill Cove Drive across neighboring property west of the subject property, not across Lot 30.

Mr. Isaac stated that he discussed the possibility of "prescriptive easement" with Deputy County Counselor, Craig Cox, due to the length of time the entrance has been in place and other factors. He read the following into the record from the Deputy County Counselor.

Elements of Prescriptive Easement

Kansas courts use the adverse possession statute, K.S.A. 20-503, to determine if the elements of a prescriptive easement are present.

To obtain an easement for a private way by prescription, the use of such private way must be substantially such a use as would give title to land by adverse possession. The individual claiming the prescriptive easement must prove by clear, convincing, and satisfactory evidence that they have been in open, exclusive, and continuous possession of such easement, either under a claim knowing adverse or under a belief of ownership for a period of 15 years.

"Open" means the title owner must have knowledge of the adverse use. "Exclusive" means that the individual claiming the prescriptive easement must be the only individual using the access. "Continuous" means the individual claiming the prescriptive easement must have repeatedly used the access over the 15 year period. "Claim knowing adverse" means the individual claiming the prescriptive easement knows they do not own the access but uses the access in opposition to the title owner's property right. "Under a belief of ownership" means the individual claiming the prescriptive easement uses the access under the belief, though mistaken, that they actually have the right to use the access.

A prescriptive easement dispute is routinely resolved in court.

Mr. Isaac stated the request me the minimum requirements of the subdivision regulations, as proposed Lot 1 had access to a publicly dedicated road via a travel easement. He said the Environmental Health Specialist has reviewed the request to plat the subject property and found the wastewater disposal system to be adequate, which meets sanitary code. Mr. Isaac clarified that as far as having guests and parties, there is nothing staff can do about that. He stated regarding ability to operate a bed and breakfast or an Air BNB within a residential use designation, staff would have to review the regulations. He said those uses may be permitted or require a conditional use or not permitted at all. He said the same applies to special events.

Mr. Wedel said short term rentals, such as Prairiewood and similar situations, are being considered in the regulation rewrite. He said staff has received a draft from the consultant with ideas for these types of situations. Mr. Wedel stated that at this time staff is only considering if it is single family residence, whether it is rented for one day, one week or one month or a year.

Mr. Isaac said the Country Estate Residential Use Designator is for one house only and that the property is not being rezoned in order to be developed into multiple lots. He stated the request is for what is already there.

Chairman Taul questioned the total number of acres.

Bob Isaac explained there are three (3) unplatted tracts, which will be divided approximately in half, creating proposed Lots 1 and 2. He stated Lot 1 has direct access to Mill Cove Drive via a travel easement, which is allowed in the subdivision regulations. He said Lot 2 has direct access to Harbour Haven Road.

Nathan Larson asked if the house is on two different tracts.

Mr. Isaac replied that the homestead is in two different sections.

Mr. Larson said it would make more sense to have it all on one tract.

Mr. Wedel pointed out that the one tract (furthest east) is already landlocked and the subdivision will be much more efficient.

Eugene Lindgren stated they are concerned about traffic and there is nothing in the regulations that states that house can't be turned into an Airbnb. He asked the Board if they have seen the size of the house. He said we can envision hundreds of people down there; weddings, K-State games, etc. He stated with the regulations in place now, this has the opportunity to get out of control very rapidly. He asked after the property is sold, what guarantee is on the books?

Mr. Wedel said there are things currently in place. He said if it becomes a major conference center, reoccurring wedding venue; that is similar to Prairiewood. He explained that those uses are beyond single family residence and will have to get approval for a Rural Resort and Retreat Conditional Use. He said there is a residence there now and the Residential Use Designator will restrict it even more than it is now.

Eugene Lindgren stated the entrance to the property, he wanted to make a motion to require it have two entrances so if they want to turn it into an event center they can use the other entrance.

Chairman Taul asked him how he suggested doing that.

Mr. Lindgren suggested access off of Harbour Haven. He said the former property owner of Lot 30 was in the process of bringing a lawsuit against Mr. Schlageck for taking down the fence and building the entrance over the lot. He said the property owner died before the process of litigation was completed. He said he then purchased Lot 30. Mr. Lindgren said the County told him the entrance was already documented and there was nothing he could do about it.

Mr. Lindgren stated he had received a memorandum from Deputy County Counselor, Craig Cox stating the Mill Cove entrance was allowed because an expressed easement had been granted, which is the Gold Standard of Easements. He said after researching the easement, he found that the County was in incorrect in informing him that he could not do anything.

Chairman Taul asked if the existing entrance is across Mr. Lindgren's property.

Mr. Lindgren replied yes and that actual travel easement was through the property to west (of the subject property).

Chairman Taul stated as far as the Board is concerned, this is a legal issue and outside of the Board's prevue.

Mr. Lindgren said the Deputy County Counselor steered us wrong and I would like to stand on the record for that.

Chairman Taul said it would be in the record.

Mr. Wedel said it stated in the memorandum from Deputy County Counselor, Craig Cox, the access entrance could be contested in court. He said if the court were to deny the access entrance, then the travel easement to the west property line could be used. Mr. Wedel said staff could request that a blanket easement from Lot 2 be provided by Mr. Schlageck while Mr. Schlageck still owns the property.

Michelle Sherranden stated she owns the property at 7164 Mill Cove Drive since 1985. She said they were there when Mr. Schlageck built the entrance. She said the biggest thing she wanted to say about the second access is that is where they would like a "fire access" road. Ms. Sherranden stated it would absolutely help because she has seen two houses burn down because fire trucks could not get there quick enough. She said she was told if you do not own a swimming pool, there is no way they would have enough water to put out a fire.

Chairman Taul asked for clarification on the second entrance.

Ms. Sherranden said Harbour Heights.

Joe Gelroth replied Harbour Haven.

Mr. Lindgren showed the Board members on aerial where the proposed road should be, extending from Harbour Haven to the where Mr. Schlageck's existing driveway crosses Lot 30 to Mill Cove Drive. Mr. Lindgren admitted it is a two-edge sword because the access road is wonderful idea for the fire safety if it goes all the way through. He said Mill Cove residences didn't want the entrance in the first place, but to complete the 402 Road loop and a fire road is contradictory of what we are requesting from Mr. Schlageck.

Joe Gelroth agreed.

Mr. Lindgren replied this is a conundrum.

Chairman Taul replied you don't want to allow access off Mill Cove Drive but it is okay if it becomes a fire road access.

Mr. Lindgren replied we would like to see it shut down.

Nathan Larson replied but yet you want to have it opened up.

Mr. Lindgren replied we would like to have the entrance shut down but the fire department would have free access through that gate at any time without the owner's permission and this is a big thing.

John Wienck stated he has been on the Fire Board thirty some years in Riley County and he knew a little about this. He said there is a lot of red tape to go through to do that and to be upfront and honest, if you want to do that to Mr. Schlageck, you might as well give him that little piece of Lot 30.

Mr. Wienck said this is not the point of the Country Estate this evening and the fire access road discussion needs to happen somewhere else.

Mr. Wedel told the Board that the plat shouldn't be held hostage over the entrance and fire access road issues.

John Wienck closed the public hearing. Joe Gelroth seconded. Carried 4-0.

Nathan Larson said there really isn't any conflict because there would be the potential for two entrances; existing easement to the west property line and Lot 2 off of Harbour Haven. Mr. Larson said he didn't feel there was need to require a blanket easement.

Chairman Taul asked what was really trying to be achieved with the Country Estate and was the property owner wanting to sell it. He stated he is concerned for the future buyer not knowing for sure where the access to the property will be.

Bob Isaac reminded the Board members the plat request has not been heard yet. He said that at this time, it does meet the minimum requirements of the subdivision regulations. He suggested to make things easier in the future, a travel easement across Lot 2 is a good idea, however, permission from the property owner to get that in place would be necessary.

Chairman Taul said he was inclined to the table the request until these issues could be discussed with the property owner. He said as far as the Country Estate, he doesn't have any problems with it.

John Wienck moved to approve the request for a Residential Use Designator – Country Estate as it has been determined that it meets the requirements of the Riley County Zoning Regulations.

Joe Gelroth seconded. Carried 3-1 with Chairman Taul opposing.

Schlageck – Plat

Chairman Taul opened the public hearing at the request of Joe Schlageck, petitioner and Joseph G. Schlageck owner, to plat three unplatted tracts in two (2) lots in Grant Township, Sections 3, 4 and 9, Township 9 South, Range 7 East in Riley County, Kansas.

Bob Isaac presented the request explaining that the unplatted tracts could not be combined without platting due to the multiple section lines and thus required platting. He said the travel easement to the west property line is noted by book and page reference on the plat.

Staff recommended that the Riley County Planning Board approve the Concurrent Plat of Schlageck Addition, as it had been determined that all requirements of the Riley County Subdivision Regulations, Riley County Zoning Regulations and Sanitary Code had been met.

Mr. Isaac stated there is no proposal to rezone the property or proposed Lot 2 at this time. He said if someone wanted to buy proposed Lot 2 to build a single family residence, they would have to rezone the property or get an agricultural exemption.

Monty Wedel stated he had rethought his decision on the blanket easement. He said the blanket easement is a good idea but there is existing access to both lots if the Mill Cove Drive entrance is denied.

Eugene Lindgren said it needs to be noted that even though this is agricultural and a single family dwelling; there is a way to change by subdividing. He said according to Vision 2025, this is a high growth area and this is a highly desirable property on the lake. Mr. Lindgren said they are just trying to protect themselves.

Chairman Taul stated that Mr. Wedel explained any type of future development would come before the Board.

Joe Gelroth closed the public hearing. John Wienck seconded. Carried 4-0.

Nathan Larson moved to approve the Concurrent Plat of the Schlageck Addition, as it has been determined that it meets the requirements of the Riley County Subdivision Regulations.

John Wienck seconded. Carried 4-0

Mr. Isaac announced that the Board of County Commissioners would hear the request on October 18, 2018, at 9:00 am, in the County Commission Chambers.

Nelson – Residential Use Designator – Extraneous Farmstead & Plat

Chairman Taul opened the public hearing at the request of Ronda Nelson, petitioner and owner, to receive a Residential Use Designator – Extraneous Farmstead and plat a 5-acre tract of land in Center Township, Section 25, Township 6 South, Range 4 East, in Riley County, Kansas.

Bob Isaac presented the request stating the subject property is a 5-acre portion of an approximately 107-acre parent tract. He said the site is developed with a single family dwelling (built approx. 1908), a detached garage and various outbuildings. He said the owner stated that she wishes to split the homestead from the parent tract, in order to sell the home instead of renting it.

Staff recommended the Board approve the request to receive a Residential Use Designator– Extraneous Farmstead, as it had been determined it met the minimum requirements of the Riley County Zoning Regulations. Staff also recommended that the Planning Board approve the concurrent plat of Eggerman Homestead, as it had been determined that all requirements of the Riley County Subdivision Regulations, Zoning Regulations and Sanitary Code have been met.

Mr. Isaac explained that an Agricultural Protection Easement would be required to be filed with the Register of Deeds office along with the plat. He said the existing house was associated with the agricultural operation at one time. He explained that the residential use designator is acknowledging the change of use of the farm house from “agricultural” to a “non-agricultural”. He said this means the house could be occupied by people that are not associated with an agricultural operation. He said that the intent of the easement is to eliminate future conflicts between the residence and surrounding agricultural uses. He explained that the easement allows farmers within a one (1) mile radius air rights from dust, smells etc. over the subject property, hopefully without fear of frivolous lawsuits.

John Wienck closed the public hearing. Joe Gelroth seconded. Carried 4-0.

John Wienck moved to approve the request to receive a Residential Use Designator–Extraneous Farmstead, as it had been determined that it meets the minimum requirements of the Riley County Zoning Regulations and the Concurrent Plat of Eggerman Homestead, as it had been determined that it met the requirements of the Riley County Subdivision Regulations and Sanitary Code.

Joe Gelroth seconded. Carried 4-0

Mr. Isaac announced that the Board of County Commissioners would hear the request on October 18, 2018, at 10:55 am, in the County Commission Chambers.

Update on Zoning and Subdivision Regulations Re-write

Monty Wedel said staff has been working the consultant, Elizabeth Garvin, even though the contract has not been received. She is currently working on Article 3.

John Wienck moved to adjourn. Nathan Larson seconded. Carried 4-0.

The meeting was adjourned at 8:55 P.M.