

BUTLER COUNTY BOARD OF COMMISSIONERS
Tuesday, April 26, 2011

CALL TO ORDER

Commission Chairman Bruce Harris called the Butler County Board of Commissioners to order at 9:00 a.m. Present were Commissioner Jeff Masterson, Commissioner Peggy Palmer, Commissioner Mike Wheeler, Commissioner Dan Woydziak, County Administrator Will Johnson, Jr., and Clerk Recorder Paula Stoskopf.

Commission Chairman Bruce Harris led the Board and citizens present in a moment of silence in memory of the Andover Tornado 20 years ago today.

PUBLIC COMMENTS

Robert L. Johnson, 19506 SW Hunter Road, came before the Board to address the special assessment against his property. He stated that through the intervention and motivation of Judge Ward, he had been asked to clean up his property. However, he did not act fast enough to satisfy the members and citizens of the County and the Board of Commissioners. Consequently, the County hired a contractor to do the job to comply with health code for a fee of \$58,470.00. Mr. Johnson noted that he has spent 28 days in jail and put forth an effort to clean his property and feels that he has suffered enough. Mr. Johnson asked the Board to rescind the \$58,470.00 and the \$9,220.00 in penalties and interest which would allow him and the Board to start at square one, owing each other nothing. Commissioner Palmer noted that this land is AG Land and is resistant to nuisance laws. Mr. Johnson stated that he had understood the same. Commissioner Masterson asked Mr. Johnson to bear in mind that the action that has taken place has been a result of going to court because of his lack of compliance. Mr. Masterson noted that it is not the Planning Departments goal to go to court with the citizens of this County. After much discussion and comment, Commissioner Harris noted that there is obviously a lot of information available from both sides of this situation. Mr. Harris stated that none of the current commissioners were seated on the Board when this situation began and time for review is needed. Commissioner Harris commented that the \$58,470.00 resulted from a court order and that the Board cannot overlook that and expect the other taxpayers in the County to have this spread out over them. The Board inquired of Administrator Johnson if the Board even had the authority to forgive this assessment. Administrator Johnson reported that he has contacted Norm Manley, County Counselor, to research this issue to see if the Board can forego or remove a special assessment from the tax roll. Commissioner Palmer asked the neighbors of Mr. Bob Johnson to come before the Board to speak on Mr. Johnson's behalf. The following individuals spoke on behalf of Mr. Johnson - Randy Carr, 19450 SW Hunter Road; Roger Payton, 6119 SW 200th Street; and Cindy Thomas, 20026 SW Hunter Road.

Commissioner Harris thanked Mr. Johnson, and those who came on his behalf, for their time and stated that the Board would take the time to review and consider this matter.

ITEM #1 – CONSIDER APPROVAL OF A CONDITIONAL USE PERMIT (CUP) TO ALLOW BOB BERGKAMP CONSTRUCTION TO ESTABLISH A ROCK QUARRY ON AN 86-ACRE TRACT OF LAND IN THE AG-40 AGRICULTURAL ZONING DISTRICT
Rod Compton, Planning & Zoning Director, came before the Board for approval of a CUP to allow Bob Bergkamp Construction to establish a rock quarry on an 85-acre trace of land in the AG-40 Agricultural Zoning District. In the past, there have been two other quarries in this area,

however; there has been no quarry activity in this area since 2007. This matter was considered by the Butler County Planning Commission on Tuesday, April 5, 2011, and recommended denying this request by a 5 to 1 vote. It was felt that the proposed use would be too close to existing residences in the area, and would adversely affect them. Mr. Compton advised the Board that it would require at least 4 out of 5 votes to overturn the vote of the Planning Commission. Scott Bergkamp, 5500 N. Woodlawn, Kechi, KS, addressed the Board with a brief explanation of how Bergkamp Construction plans to mine this quarry. Commissioner Harris opened the floor for those who would like to address the Board in regards to allowing the quarry. Commissioner Woydziak requested to address the audience before opening the floor. Mr. Woydziak stated that any personal attacks on a person wanting to open a business would heavily sway his vote. He asked that only public safety issues be addressed, not the owner/operator of the proposed mining operation. Commissioner Harris noted that in the interest of time and the number of individuals present wishing to speak; he would allow 2 minutes per person and that they speak on something new and different from those who had already addressed the Board before them. Commissioner Harris noted that he has received a number of e-mails and phone calls regarding this matter with the vast majority being opposed. The following individuals came before the Board to speak in opposition of the rock quarry -

Troy Newman, 10529 SW 30th; Melissa Newman, 10529 SW 30th; Donald L. Richards, 2720 W. 3rd Street, El Dorado; Tim McCormack, 10410 SW 30th; Danny Bushey, 10759 SW 30th; Roger Joyce, 3410 SW Santa Fe Lake Road; Pat McCormack, 10410 SW 30th; and Lowell Lygrisse, 3399 SW Santa Fe Lake Road.

Commissioner Harris thanked the individuals for their time.

Commissioner Harris motioned that the request was not compatible with nearby uses; that it is not consistent with the spirit and intent of the regulations ; and that it would represent an undue burden to transportation and service facilities in the area; and moved to deny the request by John Friend on behalf of Bob Bergkamp Construction for a Conditional Use Permit to establish a rock quarry. Commissioner Palmer seconded the motion. Motion carried 5-0.

RECESS

Commissioner Harris recessed the Board meeting at 10:15 a.m. for 10 minutes.

RECONVENE

Commissioner Harris reconvened the Board meeting at 10:29 a.m.

ITEM #2 – CONSIDER APPROVAL OF CONDITIONAL USE PERMIT TO ALLOW DENA LEATH TO UTILIZE A PROPERTY LOCATED IN THE RR RURAL RESIDENTIAL ZONING DISTRICT TO OPERATE A LANDSCAPE BUSINESS

Rod Compton, Planning & Zoning Director, came before the Board for approval of a CUP to allow Dena Leath to utilize a property located in the RR Rural Residential Zoning District to operate a landscape business. This matter was considered by the Butler County Planning Commission on Tuesday, April 5, 2011, and recommended denying this request by a 6 to 0 vote. It was felt that the proposed use would represent an encroachment of an incompatible commercial use into a primarily residential area, and because the City of Andover had recommended denial. A number of letters and petitions from surrounding property owners were received in protest of this CUP.

Mr. Compton advised the Board that it would require a $\frac{3}{4}$ majority rule to overturn the vote of the Planning Commission. Charlene Adamson, formally Charlene Zuhars, 15931 Plymouth, Wichita,

KS, came before the Board to speak against this proposal. Ms. Adamson is the owner of the property directly south of the property in question. She came on behalf of herself and the surrounding neighbors, stating that this is not an appropriate use for this land in a residential area.

Commissioner Woydziak motioned to find that the request is not compatible with nearby uses; that it is not consistent with the spirit and the intent of the regulations; and that it would represent an undue burden to transportation and service facilities in the area; and moved to deny the request by Reginal and Dena Leath for a Conditional Use Permit to establish a base of operations for a landscaping business on this property. Commissioner Palmer seconded the motion. Motion carried 5-0.

ITEM #3 – CONSIDER APPROVAL OF REQUEST BY KEN MCCLURE FOR A HOMESTEAD LOT SPLIT WITH APO IN ORDER TO SEPARATE AN EXISTING HOMESTEAD AND 5 ACRES FROM A PARCEL CONTAINING APPROXIMATELY 80 ACRES

Rod Compton, Planning & Zoning Director, came before the Board for approval of a request by Ken McClure for a Homestead Lot Split with APO in order to separate an existing homestead and 5 acres from a parcel containing approximately 80 acres. The matter was considered by the Butler County Planning Commission at its meeting on April 5, 2011, and approved this request with a 6 to 0 vote.

Commissioner Woydziak motioned to approve the Homestead Lot Split with APO described as follows, and authorize the Chairman to sign the Easement for Right-of-Way and the Agricultural Protection Overlay Agreement subject to the recording of the APO Agreement and survey of the residential site with the Register of Deeds. The Homestead Lot Split is described as: Beginning at the Southeast Corner of the Southwest Quarter of Section 28, Township 28 South, Range 5 East of the 6th P.M., Butler County, Kansas; thence West 40 feet; thence North 1,090.78 feet; thence 700.85 feet; thence North 235.18 feet; thence East 740.85 feet; thence South 1,326.81 feet to the point of beginning. Commissioner Masterson seconded the motion. Motion carried 5-0.

ITEM #4 – CONSIDER APPROVAL OF REQUEST BY BENITA CRAVENS FOR A HOMESTEAD LOT SPLIT WITH APO IN ORDER TO SEPARATE AN EXISTING HOMESTEAD AND 7 ACRES FROM A PARCEL CONTAINING APPROXIMATELY 40 ACRES

Rod Compton, Planning & Zoning Director, came before the Board for approval of a request by Benita Cravens for a Homestead Lot Split with APO in order to separate an existing homestead and 5 acres from a parcel containing approximately 80 acres. The matter was considered by the Butler County Planning Commission at its meeting on April 5, 2011, and approved this request with a 6 to 0 vote.

Commissioner Wheeler motioned to approve the Homestead Lot Split with APO described as follows, and authorize the Chairman to sign the Easement for Right-of-Way and the Agricultural Protection Overlay Agreement subject to the recording of the APO Agreement and survey of the residential site with the Register of Deeds. The Homestead Lot Split is described as: The South 656 feet of the North 1,477.09 feet of the East 464.82 feet of the Southeast Quarter of Section 11, Township 25 South, Range 4 East of the 6th P.M., Butler County, Kansas. Commissioner Harris seconded the motion. Motion carried 5-0.

ITEM #5 – CONSIDER APPROVAL OF REQUEST BY MICHAEL G. LEIS TO REZONE 37.9 ACRES FROM AN AG-40 ZONING CLASSIFICATION TO AN RR RURAL RESIDENTIAL ZONING CLASSIFICATION

Rod Compton, Planning & Zoning Director, came before the Board for approval of a request by Michael G. Leis to rezone 37.9 acres from AG-40 to RR Rural Residential. The matter was considered by the Butler County Planning Commission at its meeting on April 5, 2011, and approved this request with a 6 to 0 vote.

Commissioner Woydziak motioned to approve the request by Michael and Louise Leis to rezone 37.9 acres described as: Beginning at the Southeast Corner of the Northeast Quarter of Section 17, Township 28 South, Range 3 East of the 6th P.M., Butler County, Kansas; thence West 1,334.5 feet; thence North 1,243.8 feet; thence East 1,293.56 feet; thence South 1,231.5 feet to the beginning from an AG-40 classification to an RR Rural Residential classification because the request is in conformance to the County's Comprehensive Plan and hereby do authorize the Chairman to sign Resolution 11-09 granting such change. Commissioner Masterson seconded the motion. Motion carried 5-0.

ITEM #6 – CONSIDER APPROVAL OF REQUEST BY JAMES AND JACQUELYN ASH TO REZONE 4.38 ACRES IN TWO SEPARATE TRACTS FROM AN AG-40 ZONING CLASSIFICATION TO AN R RESIDENTIAL ZONING CLASSIFICATION

Rod Compton, Planning & Zoning Director, came before the Board for approval of a request by James and Jacquelyn Ash to rezone 4.38 acres in two separate tracts from AG-40 to R Residential. April 5, 2011, and approved this request with a 6 to 0 vote.

Commissioner Masterson motioned to approve the request by James & Jacquelyn Ash to rezone 4.38 acres described as: Beginning 679 feet South of the Northwest Corner of the Northwest Quarter of Section 33, Township 27 South, Range 3 East of the 6th P.M., Butler County, Kansas; thence South 265 feet; thence East 260 feet; thence North 265 feet; thence West 265 feet to the beginning; AND Beginning 156.57 feet East of the Northwest Corner of the Northwest Quarter of said Section 33; thence East 368.9 feet; thence South 354.24 feet; thence West 368.9 feet; thence North 354.24 feet to the beginning from an AG-40 classification to an R Residential classification because the request is in conformance to the County's Comprehensive Plan and waive the paving requirement of the R Residential zoning regulations subject to the applicants signing an agreement with the City of Andover that they will not object to the creation of a paving district at some point in the future and hereby authorize the Chairman to sign Resolution 11-10 granting such change. Commissioner Harris seconded the motion. Motion carried 5-0.

ITEM #7 – CONSIDER APPROVING THE TABLED RECOMMENDATIONS FROM THE STEERING COMMITTEE FOR THE CHANGES IN GRADE AND JOB DESCRIPTION FOR VARIOUS POSITIONS WITHIN THE COUNTY

Will Johnson, County Administrator, came before the Board to consider approving the recommendations from the steering committee for the changes in grade and job description for Grant Coordinator (Adm.), EMS Major (EMS), EMS T (EMS), Building Inspector (P&Z), Sheriff Training Coordinator (Sheriff), Human Resource Coordinator (Adm.), and County Health Administrator (Health). Mr. Johnson noted that these are modifications to existing jobs only. No additional positions have been added. Commissioner Woydziak expressed his opinion regarding

the Sheriff's Training position in that the work required in this position does not justify the higher pay range. Commissioner Palmer expressed her concerns over the higher pay range for the Building Inspector. Commissioner Harris noted that this scale is used to provide "fair and equitable pay" for these positions not an individual's performance. That is a management decision.

Commissioner Harris motioned to approve the recommendation from the steering committee for the changes in grade and job description for Grant Coordinator, EMS Major, EMS T, Building Inspector, Human Resource Coordinator, County Health Administrator; with the exception of the Sheriff Training Coordinator, changing the recommended range from 101 to 100 and from the title of Captain to Lieutenant. Commissioner Woydziak seconded the motion. Motion carried 4-1. Commissioner Palmer voted no.

OTHER ITEMS OF BUSINESS TO COME BEFORE THE BOARD OF COUNTY COMMISSIONERS

Commissioner Harris invited Darryl C. Lutz, P.E., Director of Public Works, to come before the Board with an item that was tabled from yesterday's meeting. Mr. Lutz requested authorization for the Chairman to execute an agreement for engineering services with Poe & Associates, Inc., for preparing a baseline survey of the road and a road damage report for the road repair work to be performed by Keystone TransCanada Pipeline. The proposal is for \$15,000.00 for the baseline survey of the road and \$15,000.00 to prepare the detailed report. This will be paid for initially by Butler County and then the County will be reimbursed by Keystone TransCanada Pipeline LLC. Mr. Lutz stated that this has been submitted to Keystone for their approval and the action requested will be contingent upon Keystone's approval of the \$30,000.00 fee.

Commissioner Harris motioned to authorize the Chair to execute the agreement for engineering services with Poe & Associates, Inc., in the total amount of \$30,000.00 for work to perform a baseline survey of the road and to prepare a detailed road damage report related to the Keystone TransCanada Pipeline project constructed in 2010, contingent upon Keystone's approval. Commissioner Palmer seconded the motion. Motion carried 5-0.

Commissioner Harris invited Mr. Dan Ingalls, Director of Facilities Management, to come before the Board with a request to purchase a needed truck for his department. Mr. Ingalls explained that the maintenance man at the Detention Center has been taken over by him, Director of Facilities Management, to better serve the maintenance needs throughout the County. He will spend the mornings at the Detention Center and the afternoons throughout the rest of the County where needed. In making this change, Mr. Ingalls has surrendered his truck to this employee and has left him without a vehicle. Mr. Ingalls stated that he was loaned a truck from the Sheriff's Department, but it is now no longer available. He contacted all other departments within the County, and there are no other vehicles available to use. After shopping with both the Federal Surplus and John K. Fisher, Fisher's has the truck that is sufficient. It is a plain 2009 pickup with 36,000 miles on it with 100,000 mile warranty on the power train. It was originally \$16,900.00 and Fisher's have offered it for \$13,900.00. This vehicle will be purchased using money available from the jail fund.

Commissioner Woydziak motioned to purchase the 2009 pickup from John K. Fisher in the amount of \$13,900.00 for use by Buildings and Grounds Maintenance Chief; to be purchased from the jail fund. Commissioner Wheeler seconded the motion. Motion carried 5-0.

Mr. Ingalls took the opportunity to inform the Board of the status of the heating and air upgrade that has been ongoing in the Historic Courthouse. He reported that a check in the amount of \$2,700 has been received for returned materials and another check in the amount of \$2,400 will be coming. There is also an additional amount of \$1,800 that has been received from salvage. Mr. Ingalls noted that there are a few loose ends to tie up, but the project is all but completed.

Commissioner Wheeler requested a time line of events that have occurred with Mr. Bob Johnson to clarify to the public and the Board of just what has actually transpired. Administrator Johnson informed the Board that he did receive word from Norm Manley, County Counselor, that the Board does have the authority to abate a special assessment per an Attorney General Opinion in 1993. The Board concurred that the time line of events should be obtained from Rod Compton, Planning & Zoning Director, and Norm Manley, County Counselor, for them to review before making a decision next Tuesday, May 3, 2011. Commissioner Palmer invited Mr. Johnson to return next Tuesday to hear the Board's decision.

COMMISSION ADDS & ABATES

Commissioner Wheeler motioned to approve Adds & Abates #2482 dated April 26, 2011; Adds in the amount of \$1,292.58 and Abates in the amount of \$19,244.82. Commissioner Palmer seconded the motion. Motion carried 5-0.

Administrator Johnson answered questions regarding vouchers from the Board.

Administrator Johnson stated that he and Sheriff Kelly Herzet will be attending the Buckaroo Ball.

Administrator Johnson commended the papers, news media, and Jessica from *The El Dorado Times*, for getting the information out on the swearing in of the new Sheriff, Kelly Herzet. It was a great turnout and a very smooth transition.

Administrator Johnson reported that applications for the positions of Health Administrator and Radio Systems Tech have closed. Mr. Johnson stated that good applications have been received.

Commissioner Bruce Harris reminded the Board of the KCCA Meeting next week.

Commissioner Harris reminded the Board to please submit their evaluation forms to him next week.

ADJOURNMENT

Commissioner Woydziak motioned to adjourn the meeting of the Board at 11:58 a.m. Commissioner Wheeler seconded the motion. Motion carried 5-0.