

**ANDOVER CITY PLANNING COMMISSION /  
BOARD OF ZONING APPEALS**  
**Tuesday, May 15, 2018**  
**Minutes**

**1. Call to order.** **00:00:00**

Chairman Lindebak called the meeting to order at 7:02p.m.

**2. Roll call.** **00:00:16**

Planning Commission members in attendance: Chairman Brian Lindebak, Lynn Heath, Gary Israel, Alex Zarchan and Stephanie Gillespie. Members William Schnauber, Erik Pederson and Brandon Russell were not in attendance. Brandon Russell submitted his resignation.

Staff in attendance: Director of Public Works Les Mangus, City Administrator Mark Detter, Building Official and City Engineer Steve Anderson and Stormwater/GIS/Planning Technician Lance Onstott.

A/V: WAV Services

**3. Approval of the minutes of the April 17, 2018 meeting.** **00:00:29**

*A motion was made by Gary Israel, seconded by Lynn Heath to approve the minutes of the April 17, 2018 meeting. Motion carried 4/0/1. Stephanie Gillespie abstained.*

**4. Communications** **00:01:11**

- A. Committee and Staff Report.**
- B. Potential Residential Development Report.**

**5. Z-2018-02- Public Hearing on an application for a change in zoning district classification from the present R-1 Single-Family Residential District to the R-3 Multiple-Family Residential District on property located at 610 S. Ruth, Andover, Kansas.**

**00:01:38**

Les Mangus explained that this property is currently a platted lot, but the requested zoning, and added traffic it will bring does necessitate further discussion regarding potential street improvements. Because of this, the recommendation for a replatting condition attached to the zoning change has been made.

Chairman Lindebak asked if the current sanitary sewer is along Ruth Ave.

Les Mangus confirmed the sewer is in the road.

Jim Ackerman, applicant and property owner, was present. Mr. Ackerman handed the Commission and staff an exhibit showing the concept of what he is proposing to build on the property.

Chairman Lindebak reminded the Commission that their responsibility was to consider the merits of the zoning case and they are not voting on the style of the structure itself.

Mr. Ackerman explained that the building he is proposing to put on this site will be similar to the duplex units north of US-54 along W. Onewood Pl. (Green Valley Green 12<sup>th</sup> Addition). He had no comments or objections regarding the proposed condition of replatting the property.

Alex Zarchan asked how many total dwellings are being proposed on the property.

Mr. Ackerman stated two total buildings for a total of four total dwellings are planned.

Alex Zarchan indicated he was attempting to figure out how the proposed dwellings would have access to Ruth Ave.

Les Mangus advised that the dwellings will be under the same ownership, so shared access to Ruth Ave. is a possibility. He also advised that this Commission's responsibility is to make a recommendation for the zoning only – not debate the proposed structures.

Mike Payne, 615 S. Ruth Ave., commented that south of W. Clyde St. has traditionally been single-family residences. He reports that houses are being improved in the neighborhood currently. Mr. Payne indicated that during the annexation of the neighborhood it was assured to residents that south of W. Clyde St. would remain single-family residences, although there may be a proliferation of multi-family areas north of W. Clyde St. He indicated that the US-54 Corridor Study available via the internet also indicates south of W. Clyde St. as remaining single-family in the future. He relayed his concerns regarding the transient nature of individuals living in apartments. He also has concerns regarding the increased traffic along the gravel road and the dust it produces. 610 S. Ruth Ave., the application address, has been dilapidated and an eye-sore for a long time. He is concerned that if this application is approved, it will be the start of more multi-family properties within the neighborhood. He is concerned with parking along the road.

Gary Israel asked Mr. Payne if he knows how many single-family homes are in the area.

Mr. Payne responded that the entire street is full of single-family homes, although he cannot give an exact number.

Linda Ferris, 642 S. Ruth Ave., stated that she moved into the neighborhood because it was single-family homes and wishes to see it remain that way. She believes there are approximately 20 single-family homes in the neighborhood.

Rick Stevenson, 620 S. Ruth Ave., stated that he would rather see the eye-sore remain than see duplexes built. He stated duplexes will bring more problems, including thievery and negative impact to his property value.

Gary Israel asked Mr. Stevenson is he lives north or south of the subject property.

Mr. Stevenson responded that he lives just south of the property.

Kathy Stevenson, 620 S. Ruth Ave., asked for clarification on what replatting entails.

Chairman Lindebak responded that it is essentially resetting the ownership boundaries along with the entitlements that come along – easements, setbacks, right of way dedications, etc. He indicated that the applicant cannot assume anyone else's property through the platting process.

Linda Ferris asked for clarification regarding the required notice as indicated in the official notice she received prior to this meeting.

Chairman Lindebak indicated that the Planning Commission does not officially approve or deny zoning requests, and that the ultimate decisions rests with the City Council. He will inform the attendees of optional steps they may take based on the Planning Commission's recommendation before they move to the next item.

Ms. Ferris indicated that she also has concerns regarding the parking, and if approved, would like to see a plan to widen the street payed for by the applicant.

Stormwater/GIS/Planning Technician Lance Onstott read written communication received from Gordon Buller, 737 S. Ruth Ave. Mr. Buller expressed concerns regarding the transient nature of populations served by multi-family rental dwellings.

Chairman Lindebak summarized the concerns presented by the public: the requested change does not comply with the current zoning on the rest of the neighborhood, parking along the road and the transient nature of multi-family properties.

Gary Israel asked staff if there are any plans to improve Ruth Ave.

Les Mangus responded that there are not currently any plans included in the Capital Improvement Program (CIP). He indicated that the City informed the residents upon annexation over 10 years ago that the City would be open to a petition to improve the road but has not received any interest.

Chairman Lindebak asked how this property fits into the US-54 Corridor Study.

Les Mangus indicated that the US-54 Corridor Study represents east of Ruth Ave. as multi-family and west of Ruth Ave. as single-family.

Mike Payne asked for clarification of how the area is depicted in the US-54 Corridor Study, and whether he may have looked at a different version since he interpreted it to show both sides of Ruth Ave. as single-family.

Les Mangus indicated that he currently has the plan open and it shows the east of Ruth Ave. as multi-family.

ANDOVER CITY PLANNING COMMISSION      Agenda Item No. 5

## REZONING REPORT \*

CASE NUMBER: Z-2018-02

APPLICANT/AGENT: Eagle Investments, LLC / Jim Ackerman

REQUEST: Proposed change of zoning district classification from the present R-1 Single-Family Residential District to the R-3 Multiple-Family Residential District.

## CASE HISTORY:

LOCATION: 610 S. Ruth, Andover, Kansas

SITE SIZE: ±.55 acres

PROPOSED USE: Allow development of two duplex units.

### ADJACENT ZONING AND EXISTING LAND USE:

North: R-1 Single-Family Residential District

South: R-1 Single-Family Residential District

East: A-1 Agricultural Transition District

## West: R-1 Single-Family Residential District

### Background Information:

The subject property is an existing single family dwelling on a large lot on a gravel street. The applicant desires to demolish the existing dwelling and build two two-family dwellings.

\* Note: This report is to assist the Planning Commission to determine their findings from the evidence presented at the hearing so as to base their rezoning recommendation on the required 17 factors found in Section 11-100 H of the Zoning Regulations. The responses provided need to be evaluated with the evidence and reworded as necessary to reflect the Planning Commission's considered opinion. Sample motions are provided to ensure the accuracy of the motion and facilitate the summary of the hearing.

for the minutes. Conditions attached to the motion, if any, should be carefully worded to provide instructions to the applicant and facilitate enforcement by the Zoning Administrator.

(As per Article 11, Section 100 of the City of Andover Zoning Regulation – 1993)

H. Amendments to Change Zoning Districts. When a proposed amendment would result in a change of the zoning district classification of any specific property, the report of the Planning Commission, accompanied by a summary of the hearing, shall contain statements as to (1) the present and proposed district classifications, (2) the applicant's reasons for seeking such reclassification, and (3) a statement of the factors where relevant upon which the recommendation of the Commission is based using the following factors as guidelines:

**FACTORS AND FINDINGS:**

1. What are the existing uses and their character and condition on the subject property and in the surrounding neighborhood? (See Adjacent Existing Land Uses on page 1 of 4)

YES   NO

STAFF:

PLANNING:  
 COUNCIL:

2. What is the current zoning of the subject property and that of the surrounding neighborhood in relationship to the requested change? (See Adjacent Zoning on page 1 of 4)

YES   NO

STAFF:

PLANNING:  
 COUNCIL:

3. Is the length of time that the subject property has remained undeveloped or vacant as zoned a factor in the consideration?

YES   NO

STAFF:

PLANNING:  
 COUNCIL:

4. Would the request correct an error in the application of these regulations?

YES   NO

STAFF:

PLANNING:  
 COUNCIL:

5. Is the request caused by changed or changing conditions in the area of the subject property and, if so, what is the nature and significance of such changed or changing conditions?

YES    NO

STAFF:  
 PLANNING:  
 COUNCIL:

6. Do adequate sewage disposal and water supply and all other necessary public facilities including street access exist or can they be provided to serve the uses that would be permitted on the subject property?

YES    NO

STAFF:    Public water and sewer are available. The gravel street is in poor condition because of the traffic volume and poor drainage.

PLANNING:  
 COUNCIL:

7. Would the subject property need to be platted or replatted in lieu of dedications made for rights-of-way, easements access control or building setback lines?

YES    NO

STAFF:    Dedication of 32' half street right of way in lieu of platting.  
 PLANNING:  
 COUNCIL:

8. Would a screening plan be necessary for existing and/or potential uses of the subject property?

YES    NO

STAFF:  
 PLANNING:  
 COUNCIL:

9. Are suitable vacant lands or buildings available or not available for development that currently has the same zoning as is requested?

YES    NO

STAFF:    None in the area.  
 PLANNING:  
 COUNCIL:

10. If the request is for business or industrial uses, are such uses needed to provide more services or employment opportunities?

YES NO

STAFF: N.A.

PLANNING: N.A.

COUNCIL:

11. Is the subject property suitable for the current zoning to which it has been restricted?

YES NO

X STAFF:

X PLANNING:

COUNCIL:

12. To what extent would removal of the restrictions, i.e., the approval of the zoning request detrimentally affect other property in the neighborhood?

YES NO

STAFF: Increased activity and traffic.

PLANNING: Same.

COUNCIL:

13. Would the request be consistent with the purpose of the zoning district classification and the intent and purpose of these regulations?

YES NO

X STAFF:

X PLANNING:

COUNCIL:

14. Is the request in conformance with the Comprehensive Plan and does it further enhance the implementation of the Plan?

YES NO

X STAFF: The Comp Plan supports a variety of housing choices.

X PLANNING:

COUNCIL:

15. What is the nature of the support or opposition to the request?

YES NO

STAFF: Adjacent neighbors are concerned with increased activity, traffic, and parking.

PLANNING: Activity, traffic, parking and non-conformity with remainder of neighborhood's current zoning.

COUNCIL:

16. Are there any informational materials or recommendations available from knowledgeable persons or experts which would be helpful in its evaluation?

YES   NO

STAFF:      Staff is concerned with the burden created by the four dwelling units of the 30-40 traffic trips on the gravel road.

PLANNING: Same.

COUNCIL:

17. By comparison, does the relative gain to the public health, safety and general welfare outweigh the loss in property value or the hardship imposed upon the applicant by not approving the request?

YES   NO

STAFF:

PLANNING:

COUNCIL:

Gary Israel asked how soon staff believes the area will develop according to the US-54 Corridor Study.

Les Mangus responded that as far as staff knows KDOT has the freeway project included on their long-range plans for 2029-2030.

Gary Israel asked if the applicant can make later application if request is disapproved this time.

Les Mangus responded that there are no restrictions in regards to future zoning change applications.

Chairman Lindebak asked whether R-2 Single-Family District zoning was discussed with the applicant.

Les Mangus replied that this wasn't discussed. He did indicate that there is enough room for two single-family residences, with a minimum lot size of 10,000 sq. ft. on the lot owned by the applicant.

*Having considered the evidence at the hearing and the factors to evaluate the rezoning application, I, Gary Israel, move that we recommend to the Governing Body that Case No. Z-2018-02 be disapproved to change the zoning district classification from the R-1 Single-Family Residential District to the R-3 Multiple-Family Residential District based on the findings 6, 11, 12, 15 and 16 of the Planning Commission as recorded in the summary of this hearing. Motion seconded by Lynn Heath. Motion carried 5/0.*

Closing remarks by Chairman Lindebak:

This case will be forwarded to the Governing Body with the Planning Commission's recommendation and a written summary of the hearing for consideration at their regular meeting of June 12, 2018 which begins at 7:00 p.m. in the Council's meeting room in City Hall. (The video recording of this hearing will be retained for at least 60 days after the final determination is completed on this case.)

Protest petitions against the change in zoning and/or special use, but not directed at the Planning Commission's recommendations as such, may be received by the City Clerk for 14 days after tonight, i.e. May 29, 2018 at 4:30 p.m. If there are properly signed and notarized protest petitions with accurate legal descriptions from the (owners of record of 20% or more of any real property proposed to be rezoned) (or) (owners of record of 20% or more of the total real property within the official area of notification) both inside and outside the City not counting public street rights-of-way, then such a change shall not be passed except by a three-fourths vote of all the members of the Governing Body. (See Section 11-103.)

**6. Recommendation to the Governing Body for the intent to annex an unplattd tract located at the southeast corner of West 13<sup>th</sup> Avenue and 159<sup>th</sup> Street East in Butler County, Kansas.**

**00:44:40**

Chairman Lindebak indicated that the Commission's task is to make a recommendation to the Governing Body regarding the petition for annexation submitted by USD 385 in order to build a new elementary school. All infrastructure and utilities are readily available to the site. The Planning Commission has been made aware of an adjacent property owner who has submitted an unrecorded claim of ownership interest in a portion of the property with district court. He stated that there may or may not be an adjustment of the property line at a future time, but that it will not affect the recommendation of the Planning Commission.

Paul Swartz, 1111 W. 13<sup>th</sup> Ave., indicated that the legal description included on the petition is inaccurate. The area in question is a 23-foot portion along the petition property's east boundary, which is the common boundary with his property. He stated that annexation cannot be completed on a property consisting over 21+ acres, and the description as written would violate this protection. His property is over 40 acres and agricultural in use, thus preventing the unilateral annexation by the City. He is requesting a survey be completed showing the tree row as the boundary.

Chairman Lindebak asked if the boundary dispute has been going on for some time.

Mr. Swartz indicated that adverse possession entails that no claim can be made for a property that has been held in open, continuous, exclusive possession for more than 15 years. He is claiming the piece of the petitioning property has been held by his property since 1968.

Chairman Lindebak stated that the property boundary dispute is a subject for a different meeting, and the purpose of this hearing is to make a recommendation to the Governing Body regarding the acceptance of a petition for annexation.

Chairman Lindebak asked Mr. Swartz if he was able to provide a survey of the properties that represents the boundaries as he deems appropriate.

Mr. Swartz responded that he didn't need to, as the current trees are the boundary.

Mark Detter asked Mr. Swartz if he is claiming the legal description set forth by the petition does not match the title the owner received when they purchased the property.

Mr. Swartz stated that the title policy received by the owner indicated that it does not ensure against possession of those of which would not be disclosed by a survey. He is of the opinion the owner knows of the disparity of the common boundary.

Mark Detter asked Mr. Swartz if the legal description included in the petition for annexation matched the legal description resulting from the owner's title search.

Mr. Swartz indicated that he does not know what legal description was included on the petition for annexation.

Mark Detter asked Les Mangus if the legal description included in the petition for annexation matched the legal description resulting from the owner's title search.

Les Mangus stated that the legal description provided by a surveyor and included in the petition for annexation substantially complies with the records of Butler County, Kansas. This dispute is a civil dispute between two property owners.

Mark Detter stated that the annexation is being requested by the property owner, thus the acreage limitation quoted by Mr. Swartz in earlier comments applies only in cases of unilateral annexation is not applicable in this case.

Mr. Swartz requested that the hearing be continued until the lawsuit is completed.

Tim Connell, attorney representing the petitioner, stated that the owner first learned of Mr. Swartz's claims in a letter dated May 7, 2018. He states the current owner has a deed provided by the previous owner that describes the property as included in the petition. He is requesting that the annexation process continue, while the boundary dispute is handled elsewhere.

Chairman Lindebak asked whether the surveyor of the property had anything to share regarding the boundary.

Phil Meyer, Baughman Company, responded that the legal included on the petition for annexation came from the deed received by the owner once they purchased the property. The current fence does not match the description set forth on the deed, and is the crux of the dispute.

*I, Gary Israel, move that we recommend to the Governing Body that the intent to annex an un-platted tract located at the southeast corner of West 13<sup>th</sup> Avenue and 159<sup>th</sup> Street East in Butler County, Kansas be approved. Motion seconded by Lynn Heath. Motion carried 5/0.*

**7. Z-2018-03- Public hearing on an application for a change in zoning district classification from the present Butler County AG-40 to the R-2 Single-Family Residential District on property located at 1315 W. 13<sup>th</sup> St., Andover, Kansas.**

01:04:20

Mr. Swartz, 1111 W. 13<sup>th</sup> Ave., stated that the legal description is incorrect thus ineligible for City zoning via both City regulations and State statutes. He is claiming the legal description includes 23 feet of his property that he is claiming via adverse possession. He has filed the claim with district court. According to K.S.A. 12-715b states that cities cannot apply zoning regulations to property within 3 miles of its incorporated limits if the County has zoned the property. The applicant property is currently zoned by Butler County and cannot be zoned by the City until it is annexed. If zoning is to be decided, he would like to request that the proposed zoning be changed from R-2 Single-Family Residential to R-1 Single-Family Residential. He also is opposed to the inclusion of any public park on the property and would like this permitted use removed from this particular property. He is opposed to the school building on this particular site based on his understanding that all Meadowlark Elementary students are required to live south of Central Ave. and this site in north of Central Ave.

Mark Detter confirmed with Les Mangus that the proposed zoning would not take effect until the annexation is completed.

Les Mangus confirmed that so long as the annexation ordinance is approved by the Governing Body before the associated zoning case is heard, the City has jurisdiction.

Mr. Swartz accepted this fact, but stated that he still believes the City is getting ahead of itself.

Steve Anderson, City Engineer, asked the applicant if he could produce any evidence of written title to the contested strip of property.

Mr. Swartz responded that the claim of ownership is completely unwritten and understands the dispute must be settled in district court.

Steve Anderson asked Mr. Swartz if the essence of his claim was that the adjoining property owner failed to eject him from their property within the time specified via State statute and thus have the district court award him the disputed property.

Mr. Swartz responded that his claim is that the current property owner has no basis for claiming the disputed property based on the statute of limitations set forth in State statutes.

Steve Anderson stated that the property owner has written title to the property and that claims of adverse possession by another party does not automatically transfer ownership. The actual transfer of ownership must be determined by district court. Until that time, the owner with written title is the proper owner.

Phil Meyer, Baughman Company, indicated R-2 Single-Family Residential was selected as the zoning district because it is the standard residential zoning district in the City. The only difference between the R-2 and R-1 is the square feet of the lot and that 10,000 sq. ft. lots included in R-2 is right for an urban development. He states that he sees no issue with compatibility between a school and a public park. He made the distinction between land use and school boundaries, and made the argument that school boundaries should not factor into land use decisions.

Brett White, USD 385 Superintendent, detailed the current school boundaries, which include multiple areas north of Central Ave. that will feed into this proposed site.

Tim Connell stated the importance of accepting that the two owners in dispute both have deeds encompassing their properties. These deeds match up, and that Mr. Swartz is claiming more property than is what described on his deed. This claim is unresolved, and he is requesting that the zoning process proceed.

## ANDOVER CITY PLANNING COMMISSION

## Agenda Item No. 7

## REZONING REPORT \*

CASE NUMBER: Z-2018-03

APPLICANT/AGENT: USD #385 / Baughman Company P.A., Phil Meyer

REQUEST: Proposed change of zoning district classification from the present Butler County AG-40 to the R-2 Single-Family Residential District.

## CASE HISTORY:

LOCATION: 1315 W. 13<sup>th</sup> St.

SITE SIZE: ±49.1 acres

PROPOSED USE: Public elementary school.

## ADJACENT ZONING AND EXISTING LAND USE:

North: A-1 Agricultural District

## South: R-2 Single-Family Residential District

East: AG-40 Agricultural District 40 (Butler County)

West: SF-20 Single-Family: 20,000 SF District (Wichita-Sedgwick County)

Background Information:

\* Note: This report is to assist the Planning Commission to determine their findings from the evidence presented at the hearing so as to base their rezoning recommendation on the required 17 factors found in Section 11-100 H of the Zoning Regulations. The responses provided need to be evaluated with the evidence and reworded as necessary to reflect the Planning Commission's considered opinion. Sample motions are provided to ensure the accuracy of the motion and facilitate the summary of the hearing for the minutes. Conditions attached to the motion, if any, should be carefully worded to provide instructions to the applicant and facilitate enforcement by the Zoning Administrator.

(As per Article 11, Section 100 of the City of Andover Zoning Regulation – 1993)

H. Amendments to Change Zoning Districts. When a proposed amendment would result in a change of the zoning district classification of any specific property, the report of the Planning Commission, accompanied by a summary of the hearing, shall contain statements as to (1) the present and proposed district classifications, (2) the applicant's reasons for seeking such reclassification, and (3) a statement of the factors where relevant upon which the recommendation of the Commission is based using the following factors as guidelines:

FACTORS AND FINDINGS:

1. What are the existing uses and their character and condition on the subject property and in the surrounding neighborhood? (See Adjacent Existing Land Uses on page 1 of 4)

YES    NO

STAFF:

X

PLANNING:

COUNCIL:

2. What is the current zoning of the subject property and that of the surrounding neighborhood in relationship to the requested change? (See Adjacent Zoning on page 1 of 4)

YES    NO

STAFF:

X

PLANNING:

COUNCIL:

3. Is the length of time that the subject property has remained undeveloped or vacant as zoned a factor in the consideration?

YES NO

STAFF:  
 PLANNING:  
 COUNCIL:

4. Would the request correct an error in the application of these regulations?

YES NO

STAFF:  
 PLANNING:  
 COUNCIL:

5. Is the request caused by changed or changing conditions in the area of the subject property and, if so, what is the nature and significance of such changed or changing conditions?

YES NO

STAFF:  
 PLANNING: School is anticipated to be built on this site.  
 COUNCIL:

6. Do adequate sewage disposal and water supply and all other necessary public facilities including street access exist or can they be provided to serve the uses that would be permitted on the subject property?

YES NO

STAFF: Public sewer and water can be extended to the site and adequate public streets are in place.  
 PLANNING:  
 COUNCIL:

7. Would the subject property need to be platted or replatted in lieu of dedications made for rights-of-way, easements access control or building setback lines?

YES NO

STAFF:  
 PLANNING:  
 COUNCIL:

8. Would a screening plan be necessary for existing and/or potential uses of the subject property?

YES NO

STAFF: Site plan review will be required for the proposed elementary school site.

PLANNING:  
COUNCIL:

9. Are suitable vacant lands or buildings available or not available for development that currently has the same zoning as is requested?

YES NO

STAFF: N.A.

PLANNING: N.A.

COUNCIL:

10. If the request is for business or industrial uses, are such uses needed to provide more services or employment opportunities?

YES NO

STAFF: N.A.

PLANNING: N.A.

COUNCIL:

11. Is the subject property suitable for the current zoning to which it has been restricted?

YES NO

STAFF:

PLANNING:

COUNCIL:

12. To what extent would removal of the restrictions, i.e., the approval of the zoning request detrimentally affect other property in the neighborhood?

YES NO

STAFF: Increased activity and traffic.

PLANNING: Same.

COUNCIL:

13. Would the request be consistent with the purpose of the zoning district classification and the intent and purpose of these regulations?

YES NO

STAFF:

PLANNING:

COUNCIL:

14. Is the request in conformance with the Comprehensive Plan and does it further enhance the implementation of the Plan?

YES NO

STAFF: The Comp Plan suggests the utilization on infill development.

PLANNING:  
COUNCIL:

15. What is the nature of the support or opposition to the request?

YES NO

STAFF: None at this time.

PLANNING: Park restrictions and lot size.

COUNCIL:

16. Are there any informational materials or recommendations available from knowledgeable persons or experts which would be helpful in its evaluation?

YES NO

STAFF: Approval conditioned on annexation and platting.

PLANNING:  
COUNCIL:

17. By comparison, does the relative gain to the public health, safety and general welfare outweigh the loss in property value or the hardship imposed upon the applicant by not approving the request?

YES NO

STAFF:

PLANNING:  
COUNCIL:

*As the Commission received notice of an unrecorded claim of an ownership interest in a portion of the property that is the subject of this zoning change by persons other than the applicant, the Commission has proceeded on the basis of the record title ownership of the subject property. Having considered the evidence at the hearing and the factors to evaluate the rezoning application, I, Gary Israel, move that we recommend to the Governing Body that Case No. Z-2018-03 be approved to change the zoning district classification from the present Butler County AG-40 to the R-2 Single-Family Residential District to the extent such zoning change shall affect the portion of the subject property upon which ownership has been disputed before the Commission, the change with respect to such portion shall nonetheless take effect unless and until ownership contrary to the public record is established by (1) final order of a court of competent jurisdiction, or (2) by final agreement of the disputing parties by deed. The recommendation to approve is based on the findings 5, 7, 14 and 17 of*

*the Planning Commission as recorded in the summary of this hearing, and that all of the property be platted and recorded within one year from the date of Governing Body approval or the case be considered disapproved and closed, and that the Ordinance effectuating the zone change not be published by the City Clerk until the final plat has been recorded with the Register of Deeds during the period stated above. Motion seconded by Lynn Heath. Motion carried 5/0.*

Closing remarks by Chairman Lindebak:

This case will be forwarded to the Governing Body with the Planning Commission's recommendation and a written summary of the hearing for consideration at their regular meeting of June 12, 2018 which begins at 7:00 p.m. in the Council's meeting room in City Hall. (The video recording of this hearing will be retained for at least 60 days after the final determination is completed on this case.)

Protest petitions against the change in zoning and/or special use, but not directed at the Planning Commission's recommendations as such, may be received by the City Clerk for 14 days after tonight, i.e. May 29, 2018 at 4:30 p.m. If there are properly signed and notarized protest petitions with accurate legal descriptions from the (owners of record of 20% or more of any real property proposed to be rezoned) (or) (owners of record of 20% or more of the total real property within the official area of notification) both inside and outside the City not counting public street rights-of-way, then such a change shall not be passed except by a three-fourths vote of all the members of the Governing Body. (See Section 11-103.)

**8. SU-2018-01- Public hearing on an application for a Special Use request to establish a family event center and riding arena in the A-1 Agricultural Transition District on property located at 1650 S. 159<sup>th</sup> St. E., Wichita, Kansas.**

**01:45:15**

Les Mangus explained the applicant property is an existing horse farm and has been for many years. The property is largely bounded on the East, South and West by floodplain which somewhat restricts future development. The applicant purchased the property a few months ago and has already made several improvements. This application is to construct a riding arena which is allowed in the A-1 Agricultural Transition District through a Special Use.

Gary Israel asked how big the planned arena is.

Dawson Grimsley, 608 Flint Hills Parkway, stated the arena dimensions are 150 ft. by 60 ft. and is strictly for family use.

Alex Zarchan asked if lights will be on the arena.

Mr. Grimsley stated that the interior will have lights – none outside.

Gary Israel asked if the family event center is separate from the riding arena.

Mr. Grimsley indicated it will be a separate building and will be strictly for family use.

ANDOVER CITY PLANNING COMMISSION      Agenda Item No. 8

**SPECIAL USE REPORT \***

CASE NUMBER: SU-2018-01

APPLICANT/AGENT: G. Dawson Grimsley Living Trust

REQUEST: Special Use requested to establish a family event center and riding arena on property in the A-1 Agricultural Transition District.

## CASE HISTORY:

LOCATION: 1650 S. 159<sup>th</sup> St. E, Wichita, Kansas

SITE SIZE: ±16.7 acres

PROPOSED USE: Family event center and riding arena

## ADJACENT ZONING AND EXISTING LAND USE:

North: AG-40 Agricultural District – 40 (Butler County)

### South: A-1 Agricultural Transition District

East: A-1 Agricultural Transition District

West: SF-5 Single Family: 5,000 SF District (Wichita-Sedgwick County)

### Background Information:

The subject property has been operated as a private horse farm for many years. The applicant desires to develop a riding arena and recreation amenities for personal use.

\* Note: This report is to assist the Planning Commission to determine their findings from the evidence presented at the hearing so as to base their special use recommendation on the required 17 factors found in Section 11-100 H of the Zoning Regulations. The responses initially provided need to be evaluated with the evidence and reworded as necessary to reflect the Commission's considered opinion. Conditions attached to the motion, if any, should be carefully worded to provide instructions to the applicant and facilitate enforcement by the Zoning Administrator. A copy of the report should be provided to the applicant before the hearing. The completed report can be included within the minutes following the statutory required summary of the hearing or attached thereto. The minutes and report should be forwarded to the Governing Body within 14 days to serve as a basis for their decision.

H. Amendments to Change Zoning Districts. When a proposed amendment would result in a change of the zoning district classification of any specific property, the report of the Planning Commission, accompanied by a summary of the hearing, shall contain statements as to (1) the present and proposed district classifications, (2) the applicant's reasons for seeking such reclassification, and (3) a statement of the factors where relevant upon which the recommendation of the Commission is based using the following factors as guidelines:

**FACTORS AND FINDINGS:**

1. What are the existing uses and their character and condition on the subject property and in the surrounding neighborhood? (See Adjacent Existing Land Uses on page 1 of 4)

YES    NO

STAFF:

PLANNING:

COUNCIL:

2. What is the current zoning of the subject property and that of the surrounding neighborhood in relationship to the requested change? (See Adjacent Zoning on page 1 of 4)

YES    NO

STAFF:

PLANNING:

COUNCIL:

3. Is the length of time that the subject property has remained undeveloped or vacant as zoned a factor in the consideration?

YES    NO

STAFF:      N.A.

PLANNING: N.A.

COUNCIL:

4. Would the request correct an error in the application of these regulations?

YES    NO

STAFF:

PLANNING:

COUNCIL:

5. Is the request caused by changed or changing conditions in the area of the subject property and, if so, what is the nature and significance of such changed or changing conditions?

YES NO

STAFF:  
 PLANNING:  
 COUNCIL:

6. Do adequate sewage disposal and water supply and all other necessary public facilities including street access exist or can they be provided to serve the uses that would be permitted on the subject property?

YES NO

STAFF: Public water and adequate public streets are available. There is no public sewer available in the area. The applicant proposes to use a private sewage disposal system.  
 PLANNING:  
 COUNCIL:

7. Would the subject property need to be platted or replatted in lieu of dedications made for rights of way, easements access control or building setback lines?

YES NO

STAFF: Road dedications are already in place.  
 PLANNING:  
 COUNCIL:

8. Would a screening plan be necessary for existing and/or potential uses of the subject property?

YES NO

STAFF:  
 PLANNING:  
 COUNCIL:

9. Are suitable vacant lands or buildings available or not available for development that currently has the same zoning as is requested?

YES NO

STAFF: N.A.  
PLANNING: N.A  
COUNCIL:

10. If the request is for business or industrial uses, are such uses needed to provide more services or employment opportunities?

YES NO

STAFF: N.A.

PLANNING: N.A.

COUNCIL:

11. Is the subject property suitable for the current zoning to which it has been restricted?

YES NO

X STAFF:

X PLANNING:

COUNCIL:

12. To what extent would removal of the restrictions, i.e., the approval of the zoning request detrimentally affect other property in the neighborhood?

YES NO

STAFF: Increased activities.

PLANNING: Same – limited to family and family members.

COUNCIL:

13. Would the request be consistent with the purpose of the zoning district classification and the intent and purpose of these regulations?

YES NO

X STAFF:

X PLANNING:

COUNCIL:

14. Is the request in conformance with the Comprehensive Plan and does it further enhance the implementation of the Plan?

YES NO

STAFF: The plan recognizes agricultural transitions at the urban area fringes.

PLANNING: Same.

COUNCIL:

15. What is the nature of the support or opposition to the request?

YES NO

STAFF: None at this time.

PLANNING: Same.

COUNCIL:

16. Are there any informational materials or recommendations available from knowledgeable persons or experts which would be helpful in its evaluation?

YES   NO

STAFF:      Approval as applied for.

PLANNING: Same.

COUNCIL:

17. By comparison, does the relative gain to the public health, safety and general welfare outweigh the loss in property value or the hardship imposed upon the applicant by not approving the request?

YES   NO

STAFF:

PLANNING:

COUNCIL:

*Having considered the evidence at the hearing and the factors to evaluate the special use application, I, Gary Israel, move that we recommend to the Governing Body that Case No. SU-2018-01 be approved for the establishment of a family event center and riding arena in the A-1 Agricultural Transition District based on the findings 11, 13, 14 and 15 of the Planning Commission as recorded in the summary of this hearing. Motion seconded by Alex Zarchan. Motion carried 5/0.*

Closing remarks by Chairman Lindebak:

This case will be forwarded to the Governing Body with the Planning Commission's recommendation and a written summary of the hearing for consideration at their regular meeting of June 12, 2018 which begins at 7:00 p.m. in the Council's meeting room in City Hall. (The video recording of this hearing will be retained for at least 60 days after the final determination is completed on this case.)

Protest petitions against the change in zoning and/or special use, but not directed at the Planning Commission's recommendations as such, may be received by the City Clerk for 14 days after tonight, i.e. May 29, 2018 at 4:30 p.m. If there are properly signed and notarized protest petitions with accurate legal descriptions from the (owners of record of 20% or more of any real property proposed to be rezoned) (or) (owners of record of 20% or more of the total real property within the official area of notification) both inside and outside the City not counting public street rights-of-way, then such a change shall not be passed except by a three-fourths vote of all the members of the Governing Body. (See Section 11-103.)

## **9.      Foster Design Associates Update on the Unified Development Manual.**

**02:03:20**

David Foster, Foster Design Associates, advised the next presentation will be the Unified Development Manual (UDM) as a whole. This presentation will concentrate on changes to the

zoning regulations only. The goal of the UDM is to consolidate, simplify and update the information in City regulations. Sixteen ordinances dating back to the 1970's have been merged into a single development ordinance. Plain English is used instead of the more complex language used in current regulations. Tables, illustrations, web access and links are used to make the manual user-friendly. Existing zoning district boundaries are not changed. Some zone names and designations have changed. Three zones eliminated: R-6 (never used), MH-2 (never used) and FP (replaced with Floodplain Management Regulations). Two new zones added: MXN (Neighborhood Transition/Mixed Use) and ATO (Arterial Transition Overlay). Both new districts were recommendations within the adopted Comprehensive Plan. Subtle changes to zoning district names have also been proposed, primarily to clarify and simplify. The new manual will be able to deal with new types of operations, recent court cases and incorporates other City planning efforts/documents.

Gary Israel asked how long this new document may be good for.

David Foster indicated that the beauty of this document is the way it is setup, and it is setup to be very easy to update and changed to account for trends/changes that are not anticipated today.

Les Mangus stated that regulations such as floodplain and stormwater management may be amended by ordinance, zoning regulations will still need to go through the traditional process.

Chairman Lindebak asked if an administrative adjustment process was included in the changes.

David Foster asked the Commission if they would be comfortable with the Zoning Administrator making adjustments to regulations at a to-be-determined threshold.

Les Mangus indicated that after review of 20-30 sets of regulations from other communities, the general threshold is between 5-10% allowance for a Zoning Administrator to adjust regulations.

Chairman Lindebak indicated that he agrees from a site-specific standpoint, but would like the Zoning Administrator inform the Commission when adjustments are made and/or considered.

Chairman Lindebak asked about making some of the longer tables more user-friendly through categorization.

Debra Foster, Foster Design Associates, indicated she would develop some category options and possibly bring back to a future meeting.

Chairman Lindebak stated that once these regulations are adopted, all properties within the City will be subject to them.

Les Mangus emphasized that no properties will be rezoned through the adoption of these regulations. All conditions from previous ordinances will also remain.

**10. Member items.**

**02:38:00**

None

**11. Adjourn.**

**02:38:40**

*A motion was made by Lynn Heath, seconded by Alex Zarchan, to adjourn at 9:41 p.m. Motion carried 5/0.*

Respectfully Submitted by,

Lance A. Onstott

Stormwater/GIS/Planning Technician

Approved this 22<sup>nd</sup> day of June, 2018 by the Andover City Planning Commission/Board of Zoning Appeals, City of Andover.