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County zoning OKs land deal, then says it was a mistake, now two land owners are out thousands of dollars and unable to build

By ROBERT PIERCE • Leader & Times The future of some real estate in northwest Seward County has a few landowners worried about the conditions of their property located in the adjacent area. The concern arose on Dec. 13 when the Seward County Planning and Zoning Commission hosted a public hearing regarding a zoning application submitted by Don and Nancy Parsons, Emma Patrick and Luis Ortega.

At Monday's county commission meeting, planning and zoning officer Marcie Weatherly explained the property in question is about 80 acres, and it is located in the northwest corner of the intersection of Kansas Highway 51 and County Road H. Weatherly said the application was made in order to request a change in zoning from agricultural to agricultural residential.

"The current agricultural zone requires a minimum of 40 acres for each parcel," she said. "The agricultural residential zone requires a minimum of 10 acres and no more than 40 acres."

Weatherly said uses allowed in the ag residential district include single family dwellings, above ground facilities for distribution, transmission or temporary storage of oil and natural gas, oil and/or gas wells drilling operations and railroad rights of way.

"The additional uses allowed in agricultural are agricultural purposes, grain storage structures and splitting of the additional three lots without rezoning, so long as those lots conform to our regulations, which allow the corners and irrigation circles to be split," she said.

While the rezoning would change the allowable usage as indicated in the zoning regulations, Weatherly said it would not change the requirements for platting of split lots.

"Existing parcels created after the current regulations were adopted in 2008 would have to be platted before building permits could be issued," she said.

Weatherly said proper notification was made, and the Parsons had a survey completed and filed with the register of deeds' office showing four parcels in March of 2008.

"However, this was after the current regulations were adopted in February of 2008, so they must conform to the current regulations," she said.

Weatherly said a 20-acre parcel was sold to Ortega in June of 2009, and a letter informing Ortega and the Parsons that the plat split was done in accordance with zoning regs and that no building permits would be issued for the lots was sent on June 30, 2009.

"A second letter mistakenly informing them that the lots were created in compliance with the regulations was sent about a month later on July 28, 2009," Weatherly said.

Weatherly said this is why the Parsons continued with the sale of the other parcel.

"Miss Patrick purchased a lot from the Parsons in late August of 2010, with the deed being filed Nov. 10, 2010," Weatherly said. "Miss Patrick has purchased a modular home to be built on this lot that she purchased."

Weatherly said on Nov. 9, D & H Homes of Garden City had applied for a building permit for Patrick's home.

"The building permit was denied because the lot split was not done in conformance with the zoning regulations," she said. "In an attempt to correct the situation and allow Miss Patrick to proceed with building her home, an application was made to rezone the property, and a plat application has been filed and would be reviewed if the rezoning was approved."

Weatherly said many neighboring landowners attended the Dec. 13 hearing who were opposed to the change. Some of those same individuals were at Monday's commission meeting.

Weatherly said while it is the staff's recommendation to approve the request to rezone, the planning commission voted 3 to 2 with one abstention and one absence to deny the application.

Following comments Monday, the county commission voted 4-0, with commissioner Jim Rice abstaining, to accept the zoning board's recommendation to deny the rezone and keep the land as agricultural.

Prior to the vote, commission chairman Joyce Hibler allowed the landowners to speak. Before that, however, Nancy Parsons said she and Don were given a letter, along with Ortega, that was signed by the zoning commission that said the property was in compliance with county regulations.

"They had originally sent us a letter saying we were out of compliance, and after doing some more research, we were given the letter that we were in compliance to go ahead and proceed,"

Nancy said. "We had no intention of doing anything out of compliance. We were there simply to try to make home sites available for those homes that we had sold lots to."

Remmick Strickland, who owns property about 300 yards north of the property in question, said he was against the rezone for two reasons.

"The first being the fact that I am very much opposed to the idea of having four new landowners directly to the south of me who have absolutely no experience in Seward County sand land stewardship," he said. "We all know what happens in this part of the country when you start running livestock, when you start construction, when you start moving around that grass and sagebrush that's barely hanging on in the climate that we have. You end up with sand dunes, and I end up, because of those prevailing southwest winds, with those sand dunes in my house."

Strickland said while he was sympathetic to the letter being a mistake, he said it was still a mistake.

"The rules didn't change," he said. "Had the rules been properly researched, this would've never came up. It would've been against the rules all along."

Strickland said the second reason he had against the rezoning was precedent.

"We hear a lot of discussion in this particular situation about 20-acre lots," he said. "The fact of the matter is rezoning this allows for as small as 10-acre plots. If we rezone this particular parcel, set the precedent to allow it, pretty soon, the quarter (section) of grass right across the road, it's zoned at 10-acre plots."

Strickland said this would lead to not just four new houses, but as many as 18 new houses for landowners to deal with.

"I hate to see that situation arise in another place in the county, and I think that rezoning on this particular issue sets a bad precedent," he said.

Weatherly clarified the regs by stating that rezoning allows for smaller lots, but it does not create them.

"In order to have the lots, it still has to be platted, and the plat has to be approved by the board of county commissioners," she explained. "At that time is when you would approve what size the lots actually are."

Just before the final vote, county commissioners separately aired their thoughts, and commissioner Steve "Ike" Eisenhower said the regulations for this type of situation need to be better defined.

"It says they are in compliance with everything, and they're just asking for it to be rezoned," he said referring to the letter the Parsons and Ortega received. "Everything I have heard in

opposition to it is what may happen. The people that move out there may get the sand blowing. They may put in the most beautiful place in Seward County. I would hope that maybe there's some recourse for the Parsons through the courts or something. I hope they can get this more clearly defined."

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