

MINUTES OF PLANNING & ZONING COMMISSION  
SEPTEMBER 18, 2003  
BUFFALO COUNTY HIGHWAY DEPARTMENT  
7:00 P.M.

Vice-Chairperson Loye Wolfe called the meeting to order at 7:04 o'clock P.M. with a quorum present on September 18, 2003 at the Buffalo County Highway Department Building in Kearney, Nebraska.

Agenda for such meeting was regularly posted as required by law. Present were: Francis "Buss" Biehl, Carson Fitzgerald, Marlin Heiden, Paul Steinbrink, Sr., Richard Weiss and Loye Wolfe. Absent: Gene Jameson, Craig Nickman and Rick Pope. Also attending were Deputy County Attorney Andrew Hoffmeister, Buffalo County Zoning Administrator LeAnn Klein and fifteen members of the public.

The public forum was opened at 7:05 P.M. There was no public comment. The public forum closed at 7:05 P.M.

Vice-Chairperson Wolfe opened the public hearing at 7:05 P.M. for amendment of zoning regulations for 6.3 #1 filed by Cody Kennedy to allow salvage yards with signed waivers by residents within one mile.

Kennedy presented signatures of the residents within the one mile radius to the Planning & Zoning Commission.

Craig Nickman arrived at 7:10 and Gene Jameson arrived at 7:15 P.M.

Hoffmeister explained the procedures to the Planning & Zoning Commission. As the zoning regulations now state, no salvage yard is permitted within one mile of a residence or agricultural farm residence and a change is needed. With a special use permit, any conditions could be put on the permit. Also the County Board could review the conditions of the salvage yard yearly.

Virgil Wuehler stated he thinks landowners should have a say in this. He is thinking about future development of his property which is located northeast of the proposed salvage yard.

Jan Rodehorst also spoke in opposition to the salvage yard at this location. They are starting a business and have about 800 school children coming to their business this fall. Their property is about 80-100' higher and would look directly down on the proposed salvage yard. She thinks there would be a better location for the salvage yard.

Roy Long said he wouldn't object to neighbors doing what they wanted with their land.

Sid Rodehorst questioned who enforces the zoning laws. Hoffmeister stated there is a \$100.00 fine currently.

John Martin, representing the Buffalo County Farm Bureau, doesn't think this is in the best interest of agriculture.

John Simmon also stated it has taken a long time getting zoning passed and it shouldn't be changed immediately,

Kennedy said Kearney, Lincoln, Broken Bow all have salvage yards directly in the middle of their town or city.

Steinbrink is against this because he feels it is too close to the Wood River. He feels in the event of a flood some of the fuel, oil, antifreeze etc would get into the Wood River. Kennedy said in that event, DEQ would close the site.

The public hearing was closed at 7:30 P.M.

The Planning & Zoning Commissioner discussed getting signatures of residents versus property owners and also what majority would be needed.

Motion made by Heiden, seconded by Fitzgerald to change zoning regulations 6.3 #1 "That the applicant has signed letters of agreement from surface land owners owning land one mile distance from perimeter of property to allow a junkyard". Voting yes were Heiden, Fitzgerald, Biehl, Nickman, Steinbrink, Weiss, and Wolfe. Voting no: Jameson. Absent: Pope. Motion passed.

Vice-Chairperson Wolfe opened the hearing for a special use permit at 7:45 P.M. This was continued from the August 21, 2003 meeting. This application for a special use permit was submitted by Cody Kennedy and Roy W. Long for a salvage yard for a ten acre piece in the North half of the Southwest quarter (N1/2 SW1/4) of Section 6, Township 10 North, Range 17 West of the 6<sup>th</sup> pm. Heiden questioned the disposal of the fluids. Kennedy stated the oil would be re-cycled, gasoline would be run through a re-use burner to heat the building and antifreeze would be given away to customers. He also stated that the State of Nebraska DEQ would be regulating the salvage yard also.

Jameson says he feels this location is still the best access directly off the highway and feels one person should not be able to stop the development of a salvage yard.

Long asked why Kennedy always has to pay a fee each time something is done. Klein stated he had paid \$50.00 for the special use permit plus publication costs and \$75.00 for the amendment of comprehensive plan plus publication costs for a total of \$185.00.

The hearing closed at 7:55 P.M.

Motion was made by Fitzgerald, seconded by Heiden to decline special use permit submitted by Cody Kennedy and Roy W. Long for a salvage yard for a ten acre piece in the North half of the Southwest quarter (N1/2 SW1/4) of Section 6, Township 10 North, Range 17 West of the 6<sup>th</sup> pm. because it is inconsistent with zoning regulations.

Fitzgerald said it is very admiral for Kennedy to attempt to start a salvage yard and hopes Kennedy and the neighbors can agree on a location. Biehl also said the zoning regulations need to be changed. Steinbrink also stated nothing can occur for this special use permit until the change is made to the zoning regulations. Wolfe also stated that if they deny this permit, new fees would again have to be paid and the Planning and Zoning Commission does not want that to happen.

Fitzgerald then withdrew his motion.

A motion was made by Steinbrink, seconded by Biehl to table this special use permit until the November Planning & Zoning Commission meeting and until the County Board decides on the amendment. Voting yes were Steinbrink, Biehl, Fitzgerald, Heiden, Jameson, Nickman, Weiss and Wolfe. Voting no: none. Absent: Pope. Motion passed.

Old Business: Moved by Steinbrink, seconded by Biehl to approve the minutes of the August 21, 2003 minutes. Voting yes were Steinbrink, Biehl, Fitzgerald, Heiden, Jameson, Nickman, Weiss and Wolfe. Voting no: none. Absent: Pope. Motion passed.

Vice-Chairperson Wolfe opened the public hearing for consideration of general amendments to the Buffalo County Zoning Regulations. There were no members of the public present.

The Commission discussed changes of time limitation on zoning permits, special use permits and variance permits.

Moved by Biehl, seconded by Steinbrink that at the request of the County Board, the Buffalo County Planning and Zoning makes the following recommendations and/ suggested amendments as follows:

1. The Commission recommends that Sec. 6.2, regarding Issuance of Special Permits, be amended to read as follows:

## **6.2 PROCEDURES**

Such application shall be in writing filed in the Office of the County Clerk, state the proposed location and use of the property, and such other relevant matters as may be requested by the County. Upon receipt of such application, the Zoning Administrator shall forward the application to the Planning Commission for its recommendation. Upon hearing, the Planning Commission shall forward its recommendation to the County Board, within thirty (30) days. Upon hearing, the County Board may allow or deny the application in whole or in part, or prescribe conditions for such use of the property. In making any decision granting a special use permit, the County Board shall impose such restrictions, terms, time limitations, landscaping, improvement of off-street parking lots, and other appropriate safeguards as required protecting adjoining property. Unless otherwise specifically stated, construction requested on such special permit shall commence within 120 days after authorization and shall be substantially completed two years after commencement. No special use permit shall become effective until after

separate public hearings are held by both the Planning Commission and the County Board in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the purpose, time, and place of such hearing shall be given by publication thereof in a paper of general circulation in the County and in the local newspaper of any county/village/city which has territory within three miles of the property affected by such action of the County Board, one time at least ten days prior to such hearing. (Ref. 23-164 R.S. Neb.).

In addition to the publication of the notice herein prescribed, a notice, in sign form, of the hearing shall be posted in a conspicuous place on or near the property on which such action is pending. The sign shall be placed at least ten (10) days prior to date of each hearing. The sign shall state in conspicuous writing visible from the traveled surface of the nearest public road: the purpose, time, and place of hearing. A notice of the purpose, time, and place of the hearing shall be given in writing to the Chairperson of the County Board, or Planning Commission which has jurisdiction over land within three miles of the property affected by such action. In the absence of a Planning Commission, such notice shall be given to the clerks of units of local government having jurisdiction over land within three miles of the property affected by such action. A written notice of such hearing shall be distributed to record title owners of property located within three hundred (300) feet of the property line of the property requesting the special use permit.

Except as otherwise provided herein, no special use permit shall be granted by the County Board, without an affirmative vote of a majority of all members of the County Board and providing the proposed use is found to comply with the following guidelines:

1. Be compatible with and similar to the use permitted in the district, and
2. Not be a matter which should require re-zoning of the property, and
3. Not be detrimental to adjacent property, and
4. Not tend to depreciate the value of the surrounding structures or property, and
5. Be compatible with the stated intended use of the district, and
6. Not change the character of the district, and
7. Be in accordance with the Comprehensive Plan.

In case of protest against such special use permit filed with County Clerk within seven (7) days following Planning Commission's public hearing considering such special use permit, signed by the owners of twenty percent (20%) or more either of the area of the lots included in such proposed change, or of those immediately adjacent on the side and in the rear thereof extending one hundred (100) feet, therefrom, and of those directly opposite thereto extending one hundred (100) feet from the street frontage of such opposite lots, such special use permit shall not become effective except by the favorable vote of two-thirds of all members of the County Board.

2. The Commission recommends that Sec. 9.33 be amended to read as follows concerning time limits on variances:

9.33 In exercising the above-mentioned powers such Board may, in conformity with the provisions of said sections, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such orders, determine time limitations for commencement and substantial completion of work, unless otherwise specifically stated, construction requested on such variance shall commence within 120 days after authorization and shall be substantially completed two years after commencement, and other requirements, decisions or determinations as shall be proper, and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of four (4) members of the board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such regulation or to effect any variation in such regulation.

3. That Sec. 10.24 be added to existing regulations and its language contain the following concerning issuance of zoning permits issued as a matter of right:

10.24 EXPIRATION OF ZONING OR OTHER GRANTED PERMIT: If the work described in any zoning permit, when issued by use of right has not commenced within 120 days from the date of issuance thereof, said permit shall expire, it shall be cancelled by the County Zoning Administrator with written notice thereof give to the person affected.

If the work described in any zoning permit, when issued by use of right, has not been completed within two years of the date of issuance thereof, said permit shall expire and be cancelled by the County Zoning Administrator, and written notice thereof shall be given to the persons affected, together with notice that further work as described in the cancelled permit shall not proceed unless and until a new zoning permit has been obtained.

Voting yes were Biehl, Steinbrink, Fitzgerald, Heiden, Jameson, Nickman, Weiss and Wolfe.  
Voting no: none. Absent: Pope. Motion passed.

The Commission recommends that Sec. 11.4 be amended to read as follows with typographical error noted. Motion made by Fitzgerald, seconded by Nickman that property owners within 300' of property be notified. The change is as follows:

#### **11.4 PROTEST**

Regardless of whether or not the Planning Commission approves or disapproves a proposed zoning amendment or fails to recommend, if a protest against such amendment be filed in the office of the County Clerk within ~~fourteen (14)~~ seven (7) days after the date of the conclusion of the Planning Commission's public hearing pursuant to said publication notice, duly signed and acknowledged by the owners of twenty percent (20%) or more either of the area of the lots

included in such proposed change, or of those immediately adjacent in the rear thereof extending one hundred (~~90~~ 100) feet therefrom, or of those directly opposite thereto extending one hundred (~~90~~ 100) feet from the street frontage of such opposite lots, such amendments shall not become effective except by the favorable vote of two-thirds (2/3) majority of the County Board.

Voting yes were Fitzgerald, Nickman, Biehl, Heiden, Jameson, Steinbrink, Weiss and Wolfe.  
 Voting no: none. Absent: Pope. Motion passed.

Commercial lot size zoning recommendations were then discussed. After discussion, motion was made by Nickman, seconded by Weiss to amend the commercial lot size as follows:

PROPOSED CHANGES-only to Sec. 5.57, 5.58 and 5.59: The Planning and Zoning Commission recommends that Sec. 5.57, 5.58 and 5.59 be amended to read as follows:

5.57 HEIGHT AND AREAS REGULATIONS: The maximum height and minimum area regulations shall be as follows:

1. General Requirements:

	Lot Area*** (Sq. Ft.)	Lot Width	Required Front Yard	Required Side Yard	Required Rear Yard	Height
Permitted Uses	40,000 <del>7,500</del> ***	<u>150'</u>	Greater of <del>25'</del> <u>50'</u> * or <del>58'</del> <u>83'</u> **	<del>7', 15' or 50'</del> when abutting a road	<del>20' or 50'</del> <u>when abutting</u> <u>a road</u>	none

\* Measured from the abutting road right-of-way line.

\*\* Measured from center line of abutting road right-of-way

\*\*\*Unless more regulated by state or federal authorities. Such minimum lot size is subject to restrictions imposed by Department of Environmental Quality or other agencies with 3 acres being exempt from DEQ restrictions at time of adoption of these regulations.

5.58 PARKING AND LOADING REGULATIONS: Parking and loading within the C Commercial District shall be in conformance with the provisions of Article 7 of these regulations.

5.59 MAXIMUM LOT COVERAGE: In no event shall the area of a lot covered by buildings or roofed areas, excluding allowed projecting eaves, balconies, and similar features exceed 55% of the lot area.

Voting yes were Nickman, Weiss, Biehl, Fitzgerald, Heiden, Jameson, Steinbrink and Wolfe.  
 Voting no: None. Absent: Pope. Motion carried

The next item on the agenda was to change provisions for public and private recreational uses for AGR and C district. Motion was made by Fitzgerald, seconded by Biehl to submit the following change to the County Board:

Commission recommends that Sec. 5.32, 5.33 and 5.34 be amended to read as follows:

5.32 PERMITTED PRINCIPLES USES AND STRUCTURES: The following shall be permitted as uses by right:

1. General farming, including hobby farming or animal raising, excluding any expansion of existing or development of Class III or larger livestock confinement facilities/operations as defined in Section 3.46 and classified in Section 6.4.
2. Single family, ranch, and farm dwellings adjacent to improved road, meaning a road above county minimum maintenance road classification or public street within approved subdivision, including ranch and farm dwellings; and one additional on farm/ranch single/two family dwellings for the purpose of housing relatives or permanent agriculture workers, in addition single family dwellings must be located minimum distances from a livestock confinement facility/operation in conformance with Section 6.4 not of the same property;
3. Irrigation and flood control projects;
4. Child care homes;
5. ~~Public~~ parks and recreational areas owned and/or occupied by public agencies;
6. Community buildings and/or facilities owned and/or occupied by public agencies;
7. Public and/or private schools;
8. Churches, places of worship, and cemeteries; and
9. Bed and Breakfast.

5.33 PERMITTED ACCESSORY USES AND STRUCTURES: The following accessory uses and structures shall be permitted:

1. Accessory uses and structures normally appurtenant to the permitted uses and structures;
2. Home occupations in conformance with Article 8.2; and  
Roadside stands for sale of agricultural produce.

5.34 PERMITTED SPECIAL USES: A building or premises may be used for the following purposes in the AGR Agricultural Residential District if a special permit for such use has been obtained in accordance with Article 6 of these regulations:

1. Agricultural service establishments primarily engaged in performing agricultural, animal husbandry or horticultural services;
2. Cemeteries, crematories, mausoleums and columbarium;
3. Child care center;
4. Radio and television towers and transmitters;
5. Camp grounds;
6. Wind generating systems;
7. Commercial kennels;
8. Public and private charitable institutions;
9. Greenhouses and nurseries;
10. Animal clinics, animal hospitals and veterinarian services; and
11. Mobile home parks.
12. Mini storage facilities<sup>1</sup>

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<sup>1</sup> Effective May 27, 2003.

13. Parks and recreational areas owned and/or occupied by private agencies;

For “C” Commercial District the Commission recommendation that Section 5.54 be amended to read as follows:

5.54 PERMITTED SPECIAL USES: A building or premises may be used for the following purposes in the C Commercial District if a special use permit for such use has been obtained in accordance with Article 6 of these regulations.

1. Airports and Heliports;
2. Private clubs and lodges;
3. Facilities for the commercial storage or sale of fertilizer or toxic or flammable agriculture chemicals;
4. Radio studios, transmitters and antenna;
5. Recycling centers; and
6. Single Family Homes, and
7. Recreational facilities or entertainment facilities and/or areas not owned or operated by public agencies.

Voting yes were Fitzgerald, Biehl, Heiden, Jameson, Nickman, Steinbrink, Weiss and Wolfe.  
Voting no: none. Absent: Pope. Motion passed.

The next item was to allow airports by special use permit in AGR district. Motion was made by Fitzgerald, seconded by Steinbrink to add airports as additional use by special permit in AGR. If combined with proposed amendment in previous amendment, it becomes item #14 in Sec. 5.34.

1. Agricultural service establishments primarily engaged in performing agricultural, animal husbandry or horticultural services.
2. Cemeteries, crematories, mausoleums and columbarium;
3. Child care center
4. Radio and television towers and transmitters;
5. Camp grounds;
6. Wind generating systems;
7. Commercial kennels;
8. Public and private charitable institutions;
9. Greenhouses and nurseries;
10. Animal clinics, animal hospitals and veterinarian services; and
11. Mobile home parks;
12. Mini storage facilities (effective May 27, 2003)
13. Parks and recreational areas owned and/or occupied by private agencies
14. Airports.

Voting yes were Fitzgerald, Steinbrink, Biehl, Heiden, Jameson, Weiss and Wolfe. Voting no: Nickman. Absent: Pope. Motion carried.

Typographical errors will be corrected by acclamation by the Planning & Zoning Commission.  
Error #1: Sec. 5.33(2) should have sub-category #3:

5.33 PERMITTED ACCESSORY USES AND STRUCTURES: The following accessory uses and structures shall be permitted:

1. Accessory uses and structures normally appurtenant to the permitted uses and structures;
2. Home occupations in conformance with Article 8.2; and
3. Roadside stands for sale of agricultural produce.

Error #2: See Sec. 11.4 Typographical error where “90” feet is supposed to be “100” feet. This is corrected by prior suggested amendment.

Moved by Wolfe, seconded by Fitzgerald that 6.4 #1 to amended to read as follows:

“have signed letters of agreement from all surface landowner(s) within below stated radius of the designated perimeter supporting the proposed expansion or development of new livestock confinement facilities/operations.

Voting yes were Wolfe, Fitzgerald, Biehl, Heiden, Jameson, Nickman, Steinbrink, Weiss and Wolfe. Voting no: none: Absent: Pope. Motion passed.

After discussion,it was moved by Biehl, seconded by Fitzgerald to table the discussion of the issues relative to residential housing in AG district.

Voting yes were Biehl, Fitzgerald, Heiden, Jameson, Nickman, Steinbrink, Weiss and Wolfe. Voting no: none. Absent: Pope. Motion passed.

The next meeting of the Planning & Zoning Commission will be October 16, 2003 at 7:00 P.M. at the Buffalo County Highway Department.

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Loye Wolfe, Vice-Chairperson

ATTEST:

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Craig Nickman, Secretary