

MINUTES OF PLANNING & ZONING COMMISSION
MAY 20, 2004
BUFFALO COUNTY HIGHWAY DEPARTMENT
7:00 P.M.

Chairperson Rick Pope called the meeting to order at 7:01 o'clock P.M. with a quorum present on May 20, 2004 at the Buffalo County Highway Department Building in Kearney, NE.

Agenda for such meeting was regularly posted as required by law. Present were: Francis "Buss" Biehl, Karin Covalt, Gene Jameson, Rick Pope, Craig Wietjes and Loye Wolfe. Absent: Marlin Heiden, Leonard Skov and Paul Steinbrink, Sr. Also attending were Buffalo County Zoning Administrator LeAnn Klein and twenty two members of the public.

The public forum was opened at 7:03 P.M. There was no one present to speak. The public forum closed at 7:03 P.M.

Chairperson Pope opened the public hearing at 7:04 P.M. for a special use permit for The Alaris Group, agents for WWC License, LLC for property located in Section 36, Township 9 North, Range 14 West, Buffalo County Nebraska lying north of highway right-of way.

W. Scott Fetcher, representing The Alaris Group spoke on behalf of the company and Leslie Zwink, the property owner. He stated they want to put an unmanned telecommunications facility for Cellular One at this location. The proposal comprises development of a 50' by 50' leasehold on unimproved agricultural pasture land. This area will be fenced and enclose a guyed antenna tower, 300 feet in height and a 10' x 20' pre-fabricated concrete equipment building containing radios, batteries, ventilation equipment and telephone interconnection apparatus. A gravel-surfaced access road approximately 200' in length will be built along a 12 foot wide easement corridor to connect this site to the public road (Gibbon Road). An electrical feed and a telephone line will be buried adjacent to the access road in the easement corridor. This is located south of Gibbon and north of Interstate 80.

Klein referenced this area on the map and also noted the pictures which she had taken of this area. The closest residential house is that of the Zwink family. Klein commented that this is allowed under the Zoning Regulations 5.14 PERMITTED SPECIAL USES: A building or premises may be used for the following purposes in the "AG" Agriculture District if a special permit for such use has been obtained in accordance with Article 6 of these regulations:

4. Broadcast towers and stations and wind generation systems, including but not limited to Amateur Radio or communication towers of more than 100 feet which in addition to any requirements of the special permit shall comply with all applicable Federal Aviation Administration rules and regulations.

Fetcher stated they had already applied to the Federal Aviation Administration for approval and would supply a copy to the Zoning Administrator.

Pope also questioned the length of this lease which Fetcher said is a 5 year lease with automatic lease renewal.

Biehl questioned the placement of current billboards. Fetcher said guyed wires would be located behind billboards and would not be affected.

Wolfe questioned if neighbors were contacted and Klein said property owners within 300 feet had been sent letters.

There was no one else present to voice their complaint.

Pope closed the hearing at 7:10 P.M.

Moved by Wolfe, seconded by Biehl to recommend approval and forward this application to the County Board for a special use permit for a 300' unmanned telecommunications tower on part of Tract 10 of Linger's Subdivision which is located and laid out in Section 36, Township 9 North, Range 14 West, Buffalo County Nebraska, lying north of the highway right-of-way and that part of Tract Nine of Linger's Subdivision which is located and laid out in Lots 4 and 11 of Section 36, Township 9 North, Range 14 lying north of highway right-of-way, except for a tract more particularly described in Instrument No. 97-824 with the following conditions as set forth previously stated by Mr. Fetcher as follows:

1. This area will be fenced
2. There will be a gravel surfaced access road to Gibbon Road
3. There will be no water service and no sewage
4. Electrical and telephone lines will be buried

Voting yes were Wolfe, Biehl, Covalt, Jameson, Pope, and Wietjes. Voting no: none. Absent: Heiden, Skov and Steinbrink. Motion passed.

Chairperson Pope opened the next hearing at 7:11 P.M. for a change of zoning request filed by John Leland Anderson to rezone property described as a tract of land being part of the SW ¼ in Section 4 Township 9 North, Range 17 West from Agricultural to Agricultural-Residential.

Anderson told the Commission he has had lots of interest in people wanting to buy lots in this area. He wants to be able to retire and wants to parcel off additional lands. He said by selling off smaller pieces he would increase the tax revenue to Amherst School District by 10-30 times what he is paying now. This area is off good roads and only intends to sell edges of his property and people can specify the amount of acres they would like. He intends to have a game preserve in center of property. He said he could sell outlying areas to adjacent farmers but has not contacted the Kenney family at this point. He doesn't want to have to pay a surveyor to do a survey at this point. He wants to give customers what they want to buy, either 10 acres or less. He only intends to sell off five-10 acres pieces.

Klein stated the County Board would require a survey because any changes made to zoning boundaries are filed as a Resolution in the Register of Deeds office with the property. She also

read three letters opposing this re-zoning from Robert & Judy Derr, Dennis & Diane Gewecke and Cheryl Webber.

Bill Storrs, who recently bought a piece of property from Mr. Anderson in the southwest part of this quarter, voiced his opposition. He had been told by Mr. Anderson that there would be no more parcels sold off and that is why he bought at this location. Currently there is lots of wildlife but as more people move in, that will change.

Paul Kenney spoke in opposition. They have a calving operation to the north of this area and ecoli might be a concern if there are lots of people moving into this area. He also stated there is always a chance of cattle getting out of fenced areas and he does not want lots of residential homes in this area. Just recently a neighbor's bull had to be shot after getting out of a fenced area. He voiced his concern about his own cattle getting out into a residential area.

John Gilbert who bought 1 additional acre from Mr. Anderson said the more people that move to a rural area, the more garbage and junked cars there are in the area. He is also opposed to any re-zoning.

Gary Nunns, who is a prospective buyer, spoke in favor of this. He wants to be able to afford an area in the country and raise a family.

Perry Kenney also spoke against this proposal. He thinks it is wrong to keep changing the zoning districts and moving additional people into agricultural areas.

Kent Hubbard and John Boston also spoke in opposition and agree with what has been previously stated. John also questioned the number of additional lots that could be sold.

Pope questioned the number of livestock present in this area and voiced his concern on protecting agricultural interest. Any time houses are moved into an area, this does affect adjoining agricultural land owners. He also said the reason the County adopted zoning regulations was to help protect the interest of farmers.

Bill Riggs also spoke in opposition.

Pope closed the hearing at 7:55 P.M.

Wietjes also voiced his concern and said the reason there is a jog in the AGR line in this area is because of the number of cattle in this area. He also reiterated that a survey would be necessary.

Biehl stated he will abstain since he has a conflict of interest. His son-in-law is an adjacent property owner.

Moved by Wietjes, seconded by Covalt to forward this application to the County Board with a recommendation that this application for a change of zoning for property in part of the Southwest Quarter of Section 4, Township 9 North, Range 17 West of the 6th pm, Buffalo County Nebraska be denied on the basis this area is not residential in nature and there are already three homes on

this section already. Voting yes were Wietjes, Covalt, Pope, and Wolfe. Voting no: none. Abstain: Biehl and Jameson. Absent: Heiden, Skov and Steinbrink. This will be forwarded with no recommendation made to the County Board.

Chairperson Pope opened the last hearing at 8:01 P.M. for a change of zoning request filed by Robert Muirhead to rezone property described as a tract of land being part of West half of the Southeast Quarter (W1/2 SE1/4) of Section 32 Township 10 North, Range 18 West from Agricultural to Agricultural-Residential.

Trenton Snow, who is a surveyor, represented Robert Muirhead and Tom and Tammy Smith. They do not want to develop a subdivision but just wish to put one house on a three acre piece of property that they hope to buy from Robert, who is Tammy's uncle. Trenton said he had just been contacted by Smiths and had just completed the survey, a copy of which he passed out to the Commission. He also said because of the 1000' requirement from a home and a limit of four homes per quarter they could not build a home without rezoning this area.

Klein said the AGR line is located about six miles to the east. Turkey Creek Road runs through the middle of Section 32.

Tammy and Tom Smith said they had been looking for about five years and just were not able to find any property that they could afford. They do not want to impose on anybody but would like to put up a house to raise their children.

Bill Riggs, who owns property directly to the east of this property, voiced his opposition to this being so close to his property. He passed pictures of all the work he had done on his property. He said he had problems in the past with Mr. Muirhead starting a fire and leaving it unattended. The fire got out of control and he did lose some trees which had about 15 years of growth. This rezoning will depreciate his property if there is another home directly next to his property. They had done a lot of work and had bought this location because of no other neighbors.

Mrs. Smith apologized for her uncle and said they would be good neighbors.

Pope questioned if this would be spot zoning.

Biehl questioned if they could built a home with the "relative exception in the backyard" and if that would create additional problems. Biehl said hopefully an alternative solution could be found.

Klein questioned if there would be any other area they could build without being right next door to Mr. Riggs's property.

Pope closed the hearing at 8:20 P.M.

Moved by Biehl, seconded by Wolfe to forward this application to the County Board with a recommendation that this application for a change of zoning be denied on the basis that this

request would be spot zoning. Voting yes were Biehl, Wolfe, Covalt, Pope and Wietjes. Abstain: Jameson. Voting no: none. Absent: Heiden, Skov and Steinbrink. Motion passed.

Old Business: Moved by Biehl, seconded by Jameson to approve the minutes of the March 18, 2004 and April 15, 2004 meeting. Voting yes were Biehl, Jameson, Covalt, Pope, Wietjes and Wolfe. Voting no: none. Absent: Heiden, Skov and Steinbrink. Motion passed.

Wolfe commented that discussion on livestock and livestock waste regulations, subdivision regulations, golf course and recreational reservation consideration and residential setback distance in AG district be tabled until the next meeting when County Attorney Hoffmeister and other members are present.

Klein presented the following three amendments to the Commission for discussion for provisions relating to public utilities in AG and AGR and allowance of a smaller lot size for such uses.

Moved by Wolfe, seconded by Wietjes that 5.16, 5.34 and 5.36 be amended to reads as follows and forward to the Board of Supervisors for a public hearing. Voting yes were Wolfe, Wietjes, Biehl, Covalt, Jameson and Pope. Voting no: none. Absent: Heiden, Skov and Steinbrink. Motion carried.

5.16 MINIMUM LOT REQUIREMENTS

1. The minimum lot area for AG uses shall be three (3) acres. By special permit this lot size may be reduced for Public Uses: Including fire stations, public elementary and high schools, public utilities and utility distribution systems. All improved uses, other than general farming, ranging, pasturing, etc, shall be adjacent to an improved county road (above minimum maintenance road).

2. Single Family Dwelling, Lot Size:

(A) 3 acres, with the placement of a maximum of four single family dwellings per U.S. Government surveyed quarter section, adjacent to an improved road (above minimum maintenance road), at a minimum distance of 1,000 feet between dwellings located in same quarter section. Such 1,000 feet between dwelling requirement and four single family dwelling per quarter section limitation may be relaxed by zoning administrator when such proposed single family dwelling meets all other zoning requirements, and said lot is shown by a recorded plat or deed recorded with the Buffalo County Register of Deeds to have been owned separately and individually from adjoining tracts of land prior to date of adoption of this ordinance.

B) Existing farmsteads of 3 acres or more not previously subdivided as of the date of adoption of the zoning ordinance as defined in the zoning regulations can be subdivided into two parcels, the minimum size of one of said parcels shall not be less than 3 acres. Legally existing parcels which are less than 3 acres, as of the effective date of the zoning

regulations (January 1, 2003) without a residence may have a single family dwelling constructed, but must obtain a zoning permit.

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 (Resolution 5-27-03)
13. Parks and recreational areas owned and/or occupied by private agencies. (Resolution 10-10-03)
14. Airports (Resolution 10-10-03)
15. Public utilities and utility distribution systems

5.36 MINIMUM AREA AND YARD REQUIREMENTS:

1. The minimum lot area for AGR uses shall be 3 acres*. All improved uses, other than general farming, ranching, pasturing, etc, shall be adjacent to an improved county road (above minimum maintenance road).
2. Yard requirements are as follows:

Front Yard: There shall be a minimum front yard of not less than a depth of fifty (50) feet measured from the right-of-way line.

Rear Yard: There shall be a minimum rear yard of fifteen (15) feet or unless abutting an improved county road, state or federal highway, then the minimum rear yard shall be fifty (50) feet.

*When a proposed subdivision utilizes a shared or "community" drinking water and sewage system the minimum lot area may be reduced to one (1) acre subject to review and compliance by the Nebraska Department of Health.

3-acre minimum in a proposed and approved subdivision may be reduced to 70,000 square feet subject to review and compliance by Nebraska Department of Health and approval of County Board.

By special permit this lot size may be reduced for Public Uses: Including fire stations, public elementary and high schools, public utilities and utility distribution systems.

Klein presented the following amendment to the Planning & Zoning Commission that 5.32 be amended as follows to eliminate the relative in the backyard in AGR.

Moved by Wietjes, seconded by Covalt that 5.32 be amended and forward this to the Board of Supervisors for public hearing. Voting yes were Wietjes, Covalt, Biehl, Jameson, Pope and Wolfe. Voting no: none. Absent: Heiden, Skov and Steinbrink. Motion passed.

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. Parks and recreational areas owned and/or occupied by public agencies; (Resolution 10-10-03)
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.

Klein proposed that 11.3 be amended to place conditions on re-zoning.

Moved by Wolfe, seconded by Wietjes that 11.3 be amended to read as follows and forward this to the Board of Supervisors for a public hearing. Voting yes: Wolfe, Wietjes, Biehl, Covalt, Jameson and Pope. Voting no: none. Absent: Heiden, Skov and Steinbrink. Motion passed.

11.3 AMENDMENT CONSIDERATION AND ADOPTION

The procedure for the consideration and adoption of any such proposed amendments shall be in like manner as that required for the consideration and adoption of the resolution except herein before or herein after modified. For action on zoning amendments, a quorum of the Planning Commission is more than one-half (1/2) of all the members. A

vote either for or against an amendment by a majority of all the Planning Commission members present constitutes a recommendation of the commission; whereas a vote either for or against an amendment by less than a majority of the Planning Commission present constitutes a failure to recommend. When amending zoning district boundaries, the Planning Commission and County Board where applicable and authorized may place conditions upon property sought to be re-zoned.

When the Planning Commission submits a recommendation of approval or disapproval of such amendment, the County Board, if it approves such recommendation, may either adopt such recommendation by resolution or take no further action thereof as appropriate. In the event the Planning Commission submits a failure to recommend, the County Board may take such action as it deems appropriate. Upon receipt of a recommendation of the Planning Commission which the County Board disapproves, the said governing body shall return such recommendation to the Planning Commission with a statement specifying the basis for disapproval, and such recommendation shall be considered in like manner as that required for the original recommendation returned to the Planning Commission. If such amendment shall affect the boundaries of any district, the resolution shall define the change or the boundary as amended, shall order the Official Zoning Map(s) to be changed to reflect such amendment, and shall amend the section of the resolution incorporating the same and reincorporate such Map as amended.

The next meeting of the Planning & Zoning Commission will be June 17, 2004 at the Highway Department. The time was discussed and a few of the members thought 8:00 P.M. would be better for them during the summer months.

Motion by Wolfe, seconded by Wietjes to adjourn at 8:47 P.M.