

MINUTES OF PLANNING & ZONING COMMISSION
MAY 19, 2005
BUFFALO COUNTY HIGHWAY DEPARTMENT
7:00 P.M.

Chairperson Rick Pope called the meeting to order at 7:00 o'clock P.M. with a quorum present on May 19, 2005 at the Buffalo County Highway Department Building in Kearney, NE.

Agenda for such meeting was regularly posted as required by law. Present were: Marlin Heiden, Rick Pope, Leonard Skov, Paul Steinbrink, Sr., Craig Wietjes and Loye Wolfe. Absent: Francis "Buss" Biehl, Karin Covalt and Willy Keep. Also attending were Deputy County Attorney Andrew Hoffmeister, Deputy County Attorney Melodie Bellamy, Buffalo County Zoning Administrator LeAnn Klein and twelve members of the public.

The public forum was opened at 7:01 P.M. There was no one present to speak. The public forum closed at 7:01 P.M.

Chairperson Pope opened the public hearing at 7:01 P.M. for a special use permit for Shane Roach for a concrete plant for property located in part of the Northeast Quarter of the Northwest Quarter and part of Government Lot 1, located in Section 30, Township 9 North, Range 14 West, Buffalo County Nebraska.

Shane Roach made the following statements to the Commission:

1. Has 4 concrete trucks
2. Has nice equipment
3. Has met all State regulations
4. NRD has granted well permit
5. This plant will be a nice place
6. He has re-filed special use permit to make sure he does it right this time

Attorney Mandi Schweitzer, representing Shane Roach, was present. She made the following statements:

1. Air & water permits are on file in Lincoln at NDEQ.

Hoffmeister questioned who owns this parcel of land. Mr. Roach stated he did. He also asked Roach what the size of the Gibbon location was and how big the piece of property was along Highway 30. Roach said the Gibbon site where the temporary plant is located is 1.1 acres and the Hwy 30 location is 5.73 acres.

Hoffmeister explained to the audience the process of the procedure according to Section 6.2 of the Buffalo County Zoning Regulations. The Planning & Zoning Commission makes a recommendation to the County Board and the County Board makes the final decision. He also explained the process of protest according to Section 11.4 of the Buffalo County Zoning Regulations.

Klein stated she had spoken to Michael Crisco, Program Specialist with Nebraska Department of Environmental Quality and had received an email which stated that they “do not show a National Pollution Discharge Elimination System (NPDES) discharge authorized Concrete Batch Plant permitted at the following location: NW ¼ of N ½ of Section 30, Township 9 North, Range 14 West.” DEQ stated they do have permits for the Gibbon location. Klein also gave a letter to Pope which had just been received.

Pope read a letter from Thomas and Judith Hayes, adjoining property owners, in opposition to the concrete batch plants. They stated the following:

1. The plant would have an adverse affect on the value of the property. It will restrict our future use of the land, and depress its value, and cause us a financial loss.
2. It will create an extremely high volume of truck traffic.
3. The storage of raw materials used to produce concrete will be unsightly and will create air pollution by being blown on to the surrounding properties.
4. The constant roar of heavy trucks in this area will produce noise and air pollution.
5. I have observed concrete plants in the past and they are poorly maintained and create an eyesore.
6. Their rights as a land owner have been ignored. Telephone lines have been run through their property without any easements. Piles of dirt and earth moving equipment from the proposed concrete ready mix plant were illegally stored on their property. A culvert which redirected water from the plant site on to their property was called to the attention of the Buffalo County Supervisors.

Roach stated that he has hired Miller & Associates to do necessary permitting for Gibbon site. He said DEQ will not approve any permits until the County approves a special use permit. He has a temporary permit for the City of Gibbon and won't apply for a permit until the special use permit is granted. He also said it was very cost prohibitive to have to apply for another permit at the Hwy 30 location until he knows if this special use permit will be approved.

Schweitzer said if something is not done correctly, DEQ will not issue a permit. He will simply have to comply before a permit is issued. They will look at his plans and make sure everything is done correctly. He doesn't want to spend another \$6,000 to get DEQ permitting if this special use permit is not approved. They will look at his plans to make sure there is no air pollution or water pollution.

Skov questioned the sequence of DEQ permitting. Roach said DEQ wants the special use permit first. Skov said he is troubled with this process because there are surface water issues and other issues involved which needs to be addressed first. He also suggested that Roach furnish a map to the Commission to show exact location of proposed concrete plant. Skov said until we have some of the answers they cannot make a sound decision.

Skov stated it is much easier to avoid a mistake than what it is to correct it. If ground water is contaminated, the effects linger for hundreds of years.

Heiden stated that nobody knows what is going on. The neighbors are also concerned.

Wolfe asked about the wastewaters from the trucks. Roach replied he is required to have a holding pond so no storm water runs off on other property.

Pope has concerns with Section 6.2:

He referred to 6.2 #1-7

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.

He asked what had changed which would eliminate some of the problems.

Roach said the character of the neighborhood is a matter of opinion.

Wolfe questioned what the uses to the surrounding properties are.

Schweitzer said north was agricultural, west is agricultural, east is commercial, south is also agricultural.

Pope questioned how it would affect the residents and if it would depreciate adjoining properties.

Schweitzer said there was no evidence that it would depreciate adjoining properties. She also stated it would be far enough from residents and as far as noise from trucks, there already is noise from trains and traffic on Highway 30. Roach would only have four trucks and it wouldn't contribute to the noise.

Heiden asked about the Spaulding plant which Roach said is his Father's plant. He also asked about the vibrators on the trucks. He questioned the noise of cement trucks which sounds like an air hammer when cement trucks are started.

Pope brought up the letters from real estate agents and appraisers which addressed the area of concern to property values.

Klein stated there is now a greenhouse north of Neil Koster's property and the owners had concerns with dust and the possible contamination of the water because the water is used to water their plants.

Schweitzer said Mr. Roach intends to build a house in the future next to the concrete plant. If he thought it would be a bad place, he wouldn't want to build a home.

Heiden asked about future screening in this area.

Neil Koster explained that permits need the chain of command and sometimes an owner needs to start at the bottom and have County approve permits before you go to the State and he also disputed Tom Hays letter. He said there are already 138 trains now and additional noise from cement trucks would not be a problem. He said he wanted to re zone this area to Commercial last year but the County Board wanted special use permits instead. He said he has three more lots that possibly might be sold and will be before the Commission next month. He said we need smaller business in Buffalo County He also addressed the tree issue. Right now he does not want trees. He has a pending contract right now and they want to be next to Roach's property and he does not want trees. He doesn't think there is any pollution from gravel trucks.

Cynthia Shultz, one of the homeowners, addressed the Commission. She expressed the following concerns:

1. One valid issue that has been expressed is that nothing has changed but the name on the special use permit.
2. She has done a lot of research and cement dust is a carcinogen and there will be dust.
3. You can have regulations but they can't predict if a mistake happens and something could affect the ground water her children drink.
4. She submitted many letters from appraisers, realtors and banks to the Commission stating the adverse affect on her property value.
5. She submitted a letter from DEQ regarding the safety of ground water in this area.
6. She submitted pictures of area concrete plants to show the unsightly areas.
7. This plant belongs in an industrial area, not an agricultural area.

She also referred to 6.2 #1-7. This would be a detriment to their property and would depreciate the value of their property.

Monty Shultz said they wanted to show what concrete plants look like after they have been in business.

Shultz reiterated that the footings had been poured before any permits were obtained. She also said that they had been promised that trees would be planted and no tree was ever planted. She is reluctant to trust promises that have been made.

Heiden asked if they had only taken pictures of the bad area. That is the reason why they want a proposed lay out so they know the placement of everything.

Rod Gangwish and family own the property to the north of the proposed concrete plant. His son lives in house directly north off Keystone Road. He made the following statements:

1. According to the soil maps in the Comprehensive Plan, this area has well drained soil which means the sand is very close to surface.
2. DEQ will not insure that there won't be any contamination in this area. Once the water is contaminated, it is very hard to clean up.
3. Traffic is also a concern.
4. Don't know what the affect of dust from a concrete plant would have on his crops.
5. Would feel that this would depreciate his property values.
6. Doesn't feel this fits in the agricultural area.

Jane Gangwish also spoke in opposition to this concrete plant. She feels zoning should preserve agricultural land and protect what we value. History keeps repeating itself. The County does not have any way to enforce zoning regulations. They were promised a screening and no trees had been planted. The green house is agricultural related.

Koster said the concrete plant is a service to agricultural. He also said he had planted trees and the Board had not specified how many trees or the size of trees.

Hoffmeister asked if the three people who had shown interest in this area had executed contracts. Koster said they were waiting to see what happened to the concrete plant. Hoffmeister asked if it would change the character of neighborhood. There are businesses that want to develop in this area. Koster said they would ask to have this area changed to Commercial. Hoffmeister said that concrete plants are not allowed in Commercial. Concrete plants are only allowed in industrial area or with a special use permit in Agricultural.

Skov questioned whether GMC would be considered an agricultural business just because they sold trucks to farmers.

Roach stated the following:

1. There is already traffic in this area.
2. He can't see affect on crops.
3. He doesn't think concrete plants in an agricultural area are an issue.
4. He doesn't think concrete has anything harmful in its properties.
5. He said DEQ would address any concerns.
6. Does not think piece of ground was viable farm ground.
7. DEQ is concerned about ground water in the entire state.
8. Pictures of concrete plant is not his plant, it's his Father's plant.

Pope asked if he was part of Roach and Son in Spaulding, NE. Roach said he was.

Skov reiterated that we must be concerned with air pollution and water pollution.

Heiden asked how many gallons of water he would use to wash down the trucks. They do not wash the trucks down after each trip.

Shultz presented the following to the Commission:

1. Major Constituents of Portland cement
2. Material safety data sheet for Portland cement

Schweitzer said her client would be willing to submit a plan for the proposed concrete plant.

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

Wietjes has concern about the footings being poured prior to any permits being issued and not submitting any site plans.

Skov stated if we needed to vote on it tonight his only option would be to vote no. We need to take away as many variables as possible.

Steinbrink reiterated we need to see a site plan.

Wolfe asked to see a plot plan to see where the residences are located. She also questioned if the road on this property was a County road. Klein said these roads are not a public road since they never have been dedicated to the public. A visual plan would be helpful.

Pope agrees with what has been said. He also has concerns when the footings were put in. He again referred to Section 6.2.

Moved by Skov, seconded by Heiden to table and continue this hearing until June 16, 2005 until more information is received such as a site plan and operational plan and until some of these issues are addressed for the property described as follows: tract of land being part of the Northeast Quarter of the Northwest Quarter and part of Government Lot 1, located in Section 30, Township 9 North, Range 14 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: Referring to the Northwest Corner of Government Lot 1 in Section 30, and assuming the West line of Government Lot 1 as bearing S00°09'34" W and all bearings contained herein are relative thereto; then S 00°09'34" W and on the West line of said Government Lot 1, a distance of 372.85 feet; thence S 89°29'20" E and parallel with the North line of said Government Lot 1 a distance of 1102.02 feet to the ACTUAL PLACE OF BEGINNING; thence continuing S 89°29'20" E and parallel with the North line of said Government Lot 1, a distance of 150.18 feet; thence N 00°09'34" E and parallel with the West line of said Government Lot 1 a distance of 96.91 feet; thence S 89°29'20" E and parallel with the North line of said Government Lot 1 a distance of 373.17 feet; thence S 04°30' E a distance of 11.73 feet to a point being N 04°30' W a distance of 313.5 feet from the North line of the Union Pacific Company's Right-of-Way'; thence S 89°05'44" E a distance of 323.0 feet to a point being N 04°30' W a distance of 214.5 feet from the North line of the Union Pacific Railroad Company's Right-of-Way'; thence N 04°30' W a distance of 290.95 feet to a point on the North line of the Northwest Quarter of said Section 30, said point also being westerly a distance of 670.23 feet from the Northeast Corner of the Northwest Quarter of said Section 30; thence N 89°29'20" W and on the North line of said Northwest Quarter a distance of 653.67 feet to the Northwest Quarter of the Northeast Quarter of the Northwest Quarter of said Section 30, said point also being the Northeast Corner of Government Lot 1 in said Section 30; thence N 89°29'20" W and on the North line of said Government Lot 1 a distance of 171.08 feet; thence S 00°09'34" W and parallel with the West line of said Government Lot 1, a distance of 372.84 feet to the place of beginning.

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

Old Business: Moved by Wolfe, seconded by Heiden to approve the minutes of the April 21, 2005 as mailed. Voting yes were Wolfe, Heiden, Pope, Skov, Steinbrink and Wietjes. Voting no: none. Absent: Biehl, Covalt and Keep. Motion passed.

Klein passed out livestock friendly information and the Commission will look at this and discuss at a future meeting.

Klein also reported to the Commission on the action that was taken at the last County Board meeting.

The next meeting of the Planning & Zoning Commission will be June 16, 2005 at the Highway Department. Motion by Wietjes, seconded by Skov to adjourn at 9:15 P.M.