

MINUTES OF PLANNING & ZONING COMMISSION
OCTOBER 20, 2005
BUFFALO COUNTY HIGHWAY DEPARTMENT
7:00 P.M.

Chairperson Rick Pope called the meeting to order at 7:05 o'clock P.M. with a quorum present on October 20, 2005 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, Rick Pope, Paul Steinbrink and Craig Wietjes. Absent: Marlin Heiden, Willie Keep, Leonard Skov and Loye Wolfe. Also attending were Deputy County Attorney Andrew Hoffmeister, Deputy County Attorney Melodie Bellamy, Zoning Administrator LeAnn Klein and 13 members of the public.

The public forum was opened at 7:05 P.M. Cindy Shultz and Jane Gangwish addressed the Commission with concerns that they hope the Commission can address. They have contacted the County Board many times and have not received any answers with regard to their questions.

Gangwish also stated they had been to the County Board but they have not received any reply from the County Board. She asked about the enforcement of zoning regulations. They have dealt in good faith with both Boards and have not received any responses back. Gangwish asked if changes in the zoning regulations could address some of these issues. They asked about the tree issue that was a stipulation with the special use permit. The trees that they were promised are not there. Hoffmeister stated the County Board made the provisions for the special use permit and they needed to address their concerns to the County Board. Gangwish and Shultz were told they needed to come before the Planning & Zoning Commission. Pope agreed it is very frustrating. The Commission is powerless and concerns need to be addressed to the County Board. Gangwish asked if this was an act of omission. Gangwish asked if the only way to enforce this was by litigation. The public forum closed at 7:30 P.M.

Chairperson Pope opened the public hearing at 7:30 P.M. for a request of zoning map amendment filed by Tim and Leslie Weides for property described as a tract of land being part of West Half of Section 36, Township 11 North, Range 16 West of the 6th P.M., Buffalo County Nebraska containing 11.02 acres, more or less. They wish to rezone this area from Agricultural (A) to Agricultural Residential (AGR) for three single family units.

Tim and Leslie Weides were present and Tim explained they have made an offer to purchase this property from the owner to subdivide for three additional homes. He stated this is directly adjacent to the Prairie Hills Golf Course and directly off Highway 10. There would be one access road off Highway 10 and there would be a private drive on north side of the property for the three lots. Weides said each lot would be over three acre requirements.

Klein stated this would not change the character of the neighborhood since there are homes surrounding the golf course already.

Biehl asked about the turn off Highway 10.

Ercil Phillips stated he owns the golf course and said he has no opposition to the additional homes.

Carol Weber also was present and she lives in the house to the south and she is not in opposition either.

Pope closed the hearing at 7:35 P.M.

Motion was made by Wietjes, seconded by Covalt to recommend an amendment of zoning map from Agricultural to Agricultural Residential for property described as a tract of land located in the West Half (W ½) of Section 36, Township 11 North, Range 16 West of the Sixth Principal Meridian, Buffalo County, Nebraska, more particularly described as follows: Referring to the Northwest Corner of Section 36 and assuming the North line of the West Half of said Section 36 as bearing S 89°45'22" E and all bearings contained herein are relative thereto; thence S 89°45'22" E a distance of 33.0 feet to a point on the East right-of-way line of Nebraska State Highway No. 10; thence S 00°20'18" W and on the East right-of-way line of Nebraska State Highway No. 10 a distance of 1916.19 feet to a point being 33.0 feet easterly from the West line of the Northwest Quarter of said Section 36; thence S 00°13'18" W and continuing on the East right-of-way line of Nebraska State Highway No. 10 a distance of 265.42 feet to the ACTUAL PLACE OF BEGINNING; thence continuing S 00°13'18" W on the aforesaid East line a distance of 472.47 feet to a point on the North line of the Southwest Quarter of said Section 36, said point also being a distance of 34.5 feet easterly from the Northwest Corner of the Southwest Quarter of said Section 36; thence S 00°13'02" W and continuing on the East right-of-way line of Nebraska State Highway No. 10 a distance 205.42 feet; thence leaving said right-of-way line N 89°16'32" E a distance of 45.48 feet; thence N 00°33'40" E a distance 159.0 feet; thence S 67°55'44" E a distance of 106.5 feet; thence S 01°21'11" E a distance 117.7 feet; thence N 89°16'32" E a distance of 204.4 feet; thence N 17°50'17" W a distance of 178.03 feet; thence N 33°23'13" W a distance of 224.76 feet; thence N 75°15'05" E a distance of 610.58 feet; thence N 64°56'55" E a distance 603.34 feet; thence N 09°34'23" W a distance of 140.54 feet; thence S 89°35'04" W a distance of 394.89 feet; thence S 72°17'27" W a distance 684.78 feet; thence S 84°43'19" W a distance of 239.55 feet to the place of beginning. Containing 11.02 acres, more or less and forward this to the County Board with the following stipulations:

1. Only one access drive-way off Highway 10
2. There be only three single residences

They find this is consistent with the surrounding area.

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

Klein said this would be heard before the County Board on November 8 and letters would again be mailed to all adjacent property owners.

Chairperson Pope opened the public hearing at 7:36 P.M. for a request of zoning map amendment filed by H. Dale Sostad for property described as a tract of land being part of Lot 5, Linger's Subdivision and being located in the East half of the Southeast (SE ¼) Section 36,

Township 9 North, Range 14 West of the 6th P.M., Buffalo County Nebraska. He wishes to rezone this area from Agricultural (A) to Agricultural Residential (AGR) for 4 to 7 homes.

Ted Price, business associate of Mr. Sostad, told the Commission they wish to develop this property located about 3/8 mile off the Gibbon I-80 exit. They would have a private drive off 24th Road which is 1/3 mile into the property and develop this area for 9 different homes with a lake and island. He showed a proposed layout to the Commission. There are currently cedar trees that surround this property with I-80 on the north property line.

Pope asked if the lake is already situated on this property and Price said the lake would be created.

Hoffmeister asked the location of Shinn Turkey which would be directly south of this property.

Price says they see Shinn Turkey as a non issue and are not concerned about the odor. He said the cedars help neutralize the odor and the cedar trees buffer the noise from the interstate. Price told the Commission the homes would be upward from \$500,000.

Klein noted this area is about 1/2 mile from a hard-surfaced road and is located in a floodplain. The floodplain issue will need to comply with the Buffalo County Floodplain Regulations.

Biehl asked if the lot sizes would be at least three acres. It seems there is lot of space for the lake and green space.

Pope agreed that the lot sizes would have to be three acre minimum to comply with our zoning requirements.

Sostad asked if the lake could be part of the lot sizes. Hoffmeister replied that it would need to meet Nebraska Department of Environmental Quality requirements. The lots could be 70,000 square feet with DEQ and the County Board's approval.

Sostad replied that they are only looking at between 4-7 homes, not 9 homes.

Biehl also asked if they want the County to take over the roads of which Sostad replied no. Hoffmeister said the roads would need to be 66' in width even if they are privately maintained. The entrance to the area is presently shown as 110' in width.

Wietjes asked if only one entrance into this area might be a concern.

Pope does have concerns with the number of septic tanks in a small area.

Klein commented that currently Sostad can't put a house on his own property because of the 1000' requirement.

Ken Gleaves, manager of Shinn Turkeys II is not opposed to the subdivision but doesn't want a problem down the road. Shinn Turkey tries to be a good neighbor. Sometimes there is odor

from the turkey facility, there are feathers, noise and there is truck traffic. They currently have 110,000 birds and are considered a Class III facility, which require a ½ mile setback. The more homes that are around this area, the more issues he is going to have to deal with. Most of the homes in the subdivision were put in before we had zoning regulations. He wants the Board to consider all these issues because he doesn't want to have any of these become an issue down the road. Occasionally they do stock pile manure during the winter months and apply on the surrounding field during the spring and fall seasons. This is a farming area and is quickly becoming encroached by residences. Gleaves asked about a waiver of nuisance that could address some of these issues. He asked what protection this waiver would give Shinn Turkeys. The waiver might eliminate some problems and buys you some protection but it is not forever.

Pope asked about the distance from the manure piles to the entrance which is about ¼ mile. Pope also asked about the condition of the road. Gleaves said the road is rough but is in good shape and is about ½ mile from a hard surfaced road.

Price feels there is a strong enough buffer of cedar trees around this area so the residents would not be bothered by the noise and dust.

The hearing closed at 8:30 P.M.

Biehl questioned the lot sizes of these lots and questioned the number of residences that will be added. Hoffmeister reiterated that they would have to adhere to the lot sizes according to our zoning regulations requirement.

Pope also has concerns about the number of homes next to a poultry facility. He can also see the advantages with additional tax revenues of these proposed homes.

Hoffmeister read the following to the Commission:

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 (½) 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 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.

Wietjes asked if this should be tabled until the next meeting since we don't have the exact sizes of each individual lot.

Sostad said his intention for this area was not 9 homes but 4-7 homes.

Klein noted that before the subdivision is approved by the County Board, the lots would have to be drawn by a licensed surveyor and also would need the statement from an engineer that proposed development or substantial improvement, when combined with all other existing and reasonably anticipated developments or substantial improvements, will not increase the water surface elevation of the 100-year flood more than (1) foot at any location. They also would need to obtain a development permit for each building or structure.

Moved by Biehl, seconded by Wietjes to recommend an amendment of zoning map from Agricultural to Agricultural Residential, no more than 6 lots be approved and a waiver of nuisance as it concerns the turkey operation for property described as a tract of land being a part of Lot 5, Linger's Subdivision to Buffalo County, Nebraska and being located in the East half of the Southeast ¼ of Section 36, Township 9 North, Range 14 West of the 6th P.M., Buffalo County Nebraska, more particularly described as follows: referring to the Southwest corner of the Southeast ¼ of the Southeast ¼ of Section 36 and assuming the South line of said Southeast ¼ of the Southeast ¼ as bearing East and all bearings contained herein are relative; thence East and on the South line of the Southeast ¼ of the Southeast ¼ of said Section 36 and the South line of said Lot 5, Linger's Subdivision a distance of 638.00 feet to the ACTUAL PLACE OF BEGINNING; thence continuing East and on the south line of the Southeast ¼ of the Southeast ¼ of said Section 36 and on the South line of said Lot 5, Linger's Subdivision a distance of 150.00 feet; thence leaving the aforesaid South line N 00° 02' 26" W a distance of 443.41 feet; thence N 76° 42' 43" E a distance of 550.20 feet to a point on the East line of the Southeast ¼ of the Southeast ¼ of said Section 36 and the East line of said Lot 5, Linger's Subdivision, said point also being a distance of 570.00 feet northerly from the Southeast Corner of the Southeast ¼ of the Southeast ¼ of said Section 36 and the Southeast Corner of said Lot 5, Linger's Subdivision; thence N 00° 03' 36" W and on the East line of the Southeast ¼ of said Section 36 and the East line of said Lot 5, Linger's Subdivision a distance of 1461.73 feet to a point on the southerly right-of-way line of U.S. Interstate Highway No 80; thence leaving the aforesaid the East line S 67° 38' 20" W and on the southerly right-of-way line of U.S. Interstate Highway No. 80 a distance of 876.12 feet; thence continuing on the southerly right-of-way line of U.S. Interstate Highway 80, S 66° 09' 50" W a distance of 558.98 feet to a point on the West line of the Southeast ¼ of the Southeast ¼ of said Section 36, said point also being on the West line of said Lot 5, Linger's Subdivision and also said point being the Northeast Corner of Woodland Acres, being part of Lot 6 of Linger's Subdivision in the Southeast ¼ of Section 36, Township 9 North, Range 14 West of the 6th P.M., Buffalo County, Nebraska; thence S 00° 00' 26" E and on the West line of the Southeast ¼ of the Southeast ¼ of said Section 36 and on the West line of said Lot 5, Linger's Subdivision and also on the East line of said Woodland Acres, a distance of

669.58 feet to a point being 802.80 feet northerly from the Southwest corner of the Southeast ¼ of the Southeast ¼ of said Section 36; thence leaving the West line of the Southeast ¼ of the Southeast ¼ of said Section 36 and the west line of said Lot 5, Linger's Subdivision, East a distance of 637.88 feet; thence S 00° 00' 58" E a distance of 492.80 feet to a point being 310.00 feet northerly of the South line of the Southeast ¼ of said Section and the South line of Lot 5, Linger's Subdivision; thence S 00° 02' 26" E a distance of 310.00 feet to the place of beginning. SUBJECT TO, HOWEVER, rights of ingress and egress over and across the following described tract of land, said tract of land being part of Lot 5, Linger's Subdivision to Buffalo County, Nebraska and being located in the Southeast ¼ of the Southeast ¼ of Section 36, Township 9 North, Range 14 West of the 6th P.M., Buffalo County, Nebraska more particularly described as follows: Referring to the Southwest Corner of the Southeast ¼ of the Southeast ¼ of Section 36 and assuming the South line of said Southeast ¼ of the Southeast ¼ as bearing East and all bearings contained herein are relative thereto; thence East on the South line of the Southeast ¼ of the Southeast ¼ of said section and on the South line of Lot 5, Linger's Subdivision a distance of 638.0 feet to the ACTUAL PLACE OF BEGINNING; thence continuing East on the South line of the Southeast ¼ of the Southeast ¼ and on the South line of Lot 5, Linger's Subdivision, a distance of 66.0 feet; thence N 00° 02' 26" W a distance of 310.0 feet; thence N 00° 00' 58" W a distance of 492.80 feet; thence West a distance of 66.0 feet; thence S 00° 00' 58" E a distance of 492.80 feet to a point being 310.0 feet northerly of the South line of the Southeast ¼ of said Section and the South line of Lot 5, Linger's Subdivision; thence S 00° 02' 26" E a distance of 310.0 feet to the place of beginning.

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

Klein said this would be heard before the County Board on November 8 and letters would again be mailed to all adjacent property owners.

Chairperson Pope opened the next hearing at 8:50 P.M. for a special use permit filed by Dawson Public Power District for property being part of the Northwest ¼ of the Northwest ¼ of Section 10, Township 9 North, Range 15 West of the 6th P.M., Buffalo County Nebraska. Bruce Smith, Attorney for Dawson Public Power District, submitted pictures of the proposed electric substation. He stated this would be fenced, built according to safety and electrical codes. The value would be \$700,000 and would be built according to requirements. It is a big investment and it would be built right. They need to increase power in this area to serve their customers.

Hoffmeister reminded the Commission that there is no specific lot size required for public utilities. He also asked if this area would be lighted, which Smith said it would be.

Klein stated all the adjoining property owners had been notified and there was no one present in opposition.

Chairperson Pope closed the public hearing at 8:55 P.M.

Moved by Covalt, seconded by Steinbrink to forward this application to the County Board with the recommendation that this special use permit received from Dawson Public Power District is

approved for an electric substation on a tract of land in the Northwest Quarter of the Northwest Quarter of Section 10, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska and being more particularly described as follows: Beginning at the Northwest corner of Section 10, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska; thence S 00°05'41" E (an assumed bearing), and along the West line of the Northwest Quarter of said Section 10, a distance of 300.41 feet; thence S 89°32'18" E and parallel to the North line of the Northwest Quarter of said Section 10, a distance of 145.00 feet; thence N 00°05'41" W and parallel to the West line of the Northwest Quarter of said Section 10, a distance of 300.41 feet to a point on the North line of the Northwest Quarter of said Section 10; thence N 89°32'18" W and along the North line of the Northwest Quarter of said Section 10, a distance of 145.00 feet to the place of beginning, and containing 1.00 acres, more or less, which includes 0.23 acres, more or less of County road right-of-way.

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

Chairperson Pope opened the public hearing for the consideration of general amendments to Zoning Regulations at 8:56 P.M.

Hoffmeister explained to the Commission the changes in Section 12.2 to amend this from a Class V to a Class III, to add Section 6.5 for the appeals for a special use permit, and change Section 2.41 on floodplain regulations.

There was no one present to voice their concerns.

Chairperson Pope closed the hearing at 9:00 P.M.

Moved by Wietjes, seconded by Biehl that the Buffalo County Zoning Regulations Section 12.2, 6.5 and 2.41 as previously adopted be amended to read as follows and forward to the Buffalo County Board of Supervisors for a public hearing.

Amend Sec. 12.2 to read as follows:

12.2 PENALTIES

The owner or agent of a building or premises in or upon which a violation of any provisions of this resolution has been committed or shall exist or lessee or tenant of an entire building or entire premises in or upon which such violation shall exist, shall be guilty of a Class ~~V~~ III misdemeanor. Each and every day that such violation continues after notification shall constitute a separate offense.

Nothing herein contained shall prevent the County from taking such other lawful action as is necessary to prevent or remedy any violation

Add Sec. 6.5 to read as follows:

6.5 Appeals Special Use Permit

An appeal of a decision by the County Board of Supervisors regarding a special use shall be made to the district court.

Amend Sec. 2.41 to read as follows:

2.41 FLOODPLAIN STRUCTURAL REQUIREMENTS

~~No structure or structural member of such structure shall be placed at, below, and/or less than one (1) foot above the high water mark of waterways in any tract of land, as identified by the Flood Insurance Rate Map (FIRM) dated 3/1/1990 as Special Flood Hazard Areas unless the lowest structural member thereof, including basements, is elevated to a minimum of one (1) foot above such high water mark or such structure or structural member is~~ All changes in use allowed by zoning permits shall be in compliance with any permit required by floodplain administrator- floodplain regulations adopted by Buffalo County. Floodplain administration is the duty of the Buffalo County Floodplain Administrator and not the duty of the zoning administrator. The zoning permit form shall include a provision for review of such permit by the floodplain administrator.

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

Old Business: Moved by Steinbrink, seconded by Covalt to approve the minutes of the September 15, 2005 meeting as mailed. Voting yes were, Steinbrink, Covalt, Biehl, Pope, and Wietjes. Voting no: none. Absent: Heiden, Keep, Skov and Wolfe. Motion passed.

The Commission discussed other proposed changes for the zoning regulations.

New Business: Klein reported that the County Board held a public forum with the City of Kearney for the proposed well fields.

The next meeting of the Planning & Zoning Commission will be November 17, 2005 at 7:00 P.M. at the Highway Department. Motion was made by Biehl, seconded by Covalt to adjourn at 9:20 P.M.