

MINUTES OF PLANNING & ZONING COMMISSION  
NOVEMBER 15, 2007  
BUFFALO COUNTY EXTENSION CENTER MEETING ROOM  
7:00 P.M.

Vice Chairperson Buss Biehl called the meeting to order in the absence of Chairperson Rick Pope at 7:05 o'clock P.M. with a quorum present on November 15, 2007 at the Buffalo County Extension Center meeting room at 1400 E 34<sup>th</sup> St., Kearney, NE.

Vice Chairperson Biehl turned the meeting over to Planning & Zoning member Leonard Skov.

Skov announced there was a copy of the open meetings act posted.

Agenda for such meeting was regularly posted as required by law. Present were: Francis "Buss" Biehl, Karin Covalt, Marlin Heiden, Willie Keep, Leonard Skov, Paul Steinbrink, Sr., Craig Wietjes and Loye Wolfe. Absent: Rick Pope. Also attending were Deputy County Attorney Andrew Hoffmeister, Zoning Administrator LeAnn Klein and 134 members of the public.

The public forum was opened at 7:06 P.M. There was no one that spoke at this time. The public forum closed at 7:06 P.M.

Skov opened the public hearing at 7:06 P.M for an amendment to a special use permit for Cargill Ag Horizons for property being part of the Southwest Quarter of the Southwest Quarter of Section 14, Township 12 North, Range 14 West of the 6<sup>th</sup> p.m., Buffalo County Nebraska.

No one was present from Cargill to address the Commission.

Zoning Administrator Klein told the Commission they are asking for an amendment to the original special use permit that was approved by the County Board on June 12, 2007. Klein said the original application showed one 500,000 gallon storage tank, one 300,000 gallon storage tank and five 21,000 gallon storage tanks, all in a lined containment dike. They are requesting five 30,000 gallon tanks instead of the five 21,000 gallon tanks originally planned. They are also requesting two additional 500,000 gallon storage tanks to be constructed in the dike within the next five years. These tanks are shown on the original plan and labeled as future tanks. The containment dike is sized to include these additional tanks.

Deputy County Attorney Hoffmeister told the Commission this board is only an advisory board and the final decision will be made by the County Board. Hoffmeister referred to Section 6.2

## **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. (Resolution 10-10-03)

There was no comment from the audience.

Wolfe asked if the entrances were still the same. Klein replied they were as shown on the original application.

Skov closed the public hearing at 7:10 P.M.

Moved by Wietjes, seconded by Covalt to recommend forwarding this special use permit with the following amendment filed by Cargill Ag Horizons with the recommendation of approval to the County Board on the following described legal description a tract of land located in the Southwest Quarter of the Southwest Quarter of Section 14, Township 12 North, Range 14 West of the 6<sup>th</sup> p.m., Buffalo County, Nebraska, described as follows: Commencing at the Southwest corner of Section 14, Township 12 North, Range 14 West of the 6<sup>th</sup> p.m., Buffalo County, Nebraska; thence N 00° 38' 09" W on the west line of the Southwest Quarter of said Section 14, 487.30' to the point of beginning; thence N 00° 38' 09" W on said west line 213.73'; thence N 89° 48' 36" E parallel with the south line of said Southwest Quarter 833'; thence S 00° 38' 09" E and parallel with said west line 600' to a point on the north line of State Highway No. 2; thence N 88° 05' 02" W on said north line 590.58'; thence N 74° 57' 10" W on said north line 196.03'; thence N 10° 27' 42" W on said north line 318.13' to the point of beginning containing 10.83 acres more or less with the following amendment:

- To allow five 30,000 gallon tanks instead of the five 21,000 gallon tanks originally listed in County Board of Supervisor's Resolution 2007-19 dated June 12, 2007.

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

Skov opened the public hearing at 7:15 P.M for three special use permits filed by Woitaszewski Brothers for a closed loop feedlot and dairy for Section 13, Township 12 North, Range 14 West of the 6<sup>th</sup> p.m., the West Half of Section 18, Township 12 North, Range 13, for a closed loop feedlot and dairy for part of the Southwest Quarter of the Northwest Quarter and part of the West Half of the Southwest Quarter all located in Section 12, Township 12 North, Range 14 West of the 6<sup>th</sup> p.m. and a feedlot in Section 13, Township 12 North, Range 14 West of the 6<sup>th</sup> p.m., the West Half of Section 18, Township 12 North, Range 13 and part of the Southwest Quarter of the Northwest Quarter and part of the West Half of the Southwest Quarter all located in Section 12, Township 12 North, Range 14 West of the 6<sup>th</sup> p.m., Buffalo County, Nebraska. This was continued from the September 20, 2007 meeting.

Deputy County Attorney asked if these three applications could be consolidated into one hearing.

Willy Skala was present representing the Woitaszewski Brothers. Also present on their behalf was Attorney Denise Myers, Dave Bailey with Dawson Public Power District, Danny Kluthe and Wayne Goedken with the Weihs Group via telephone. Skala also told the audience he had brought samples of compost that he had gotten from the digester. He noted people could pick this up with their hands and it resembles potting soil. He also told the people to take some home.

Dave Bailey from Dawson Public Power District presented a power point presentation marked as Exhibit #10. This showed residences that were metered as well as the proposed dairy site and the one-mile radius. Dawson Public Power District is interested in this project because they are in the energy business. The dairy would utilize the digesting system. The benefits of utilizing methane digester were as follows:

- Methane gas could be marketed to Abengoa or for generating electricity that would be marketed through NPPD
- A nearly odorless manure by-product
- Dairy barns would alleviate any dust concern
- Marketing methane as a renewable energy source would qualify for energy/green tags, considered very environmentally friendly

Danny Kluthe from Dodge County Nebraska presented a power point presentation marked as Exhibit # 11. He has an 8,000 head hog confinement in Colfax County. He explained the process of the construction of the anaerobic digester and stressed there is no odor because this digester takes care of the odor. The construction of this project took three years to build and he explained at length the construction process of this project. He stressed he wants to be neighbor friendly and there is no odor at his facility. This process also takes care of the larva so you won't have the fly problem. Raw manure has to be broken down before the soil can absorb this but this manure is in an ortho-form and ready to use. He also stated he sells the methane to NPPD. We need livestock but people don't want the smell associated with the livestock industry. He has run this business for three years.

There were questions and other comments from the audience but no one identified themselves so these comments will not be put into the minutes.

Skov stressed we are here to learn about the system and not about the economics of the operation.

Wayne Goedken with The Weihs Group called via telephone and a power point presentation was shown marked as Exhibit #12. He has ownership in a 6,000 head dairy in Harlan, IA and is a prospective owner in this dairy. The Weihs Group wants to create opportunities for rural families and communities by developing profitable agricultural businesses and diversified investment strategies.

Their buildings are 408' x 1350' and house 5,000 head of dairy, completely enclosed. Sand is used where the cattle lie and this sand is re-cycled. His facility does not have a digester because of the sand bedding.

He listed some of the advantages for a dairy in this location as follows:

- feed impacts
- milk output to Leprino
- energy output

They haven't come to any agreement yet with the Woitaszewski Brothers but he listed some of the advantages as a secure site, secure renewable energy and secure marketing. They do not have an open feedlot at the Harlan location since the baby calves are raised elsewhere. A feasibility study at this site would need to be done before anything is started. The people in the audience questioned the cost and water usage. Cows do consume 20-30 gallons of water per day and there is a large amount of water in the milk product. It's not much different than the amount that a pivot would use. The audience questioned the amount of water usage 365 days per year.

Skov again reminded the audience to focus questions on important issues that relate to zoning. The economics are not an issue.

Again comments not made in an orderly fashion are not included in these minutes.

Wolfe questioned how many acres would be required to handle the effluent of 7500 head of dairy. Goedken replied it would depend on the amount of nitrogen required for the land. At Harlan for 6000 head of dairy cattle, they currently have 4500 acres under contract. He thought for 7500 head of dairy cattle it might be about 5200 acres, but again that would depend on the amount of nitrogen required. The question was asked how far this was from the nearest town. It's about 2 miles from Kirkman and northeast of Harlan, Iowa. Goedken told the Commission they have approximately 80 employees at their facility. He also commented the Title 130 requirements from DEQ look similar to the State of Iowa requirements. Construction would take approximately 12 months. There also would be 6-10 months until the facility was full.

Skov reminded everyone the process before the Planning & Zoning Commission is to see if this proposal is consistent with Buffalo County regulations.

Hoffmeister reminded the audience that the setbacks would be at least one mile from the nearest residence.

Kevin Lockhorn asked what protects Buffalo County from this project when there is no plan.

Skov told everyone not to clap and to address their questions to the Commission.

Harlan Schafer, a member of the task force from the City of Ravenna, addressed the Commission and submitted Exhibit #13.

Hoffmeister said the two maps from Dawson Public Power District are Exhibit #14, prepared at the request of the Buffalo County Zoning office. The question before the Planning & Zoning Commission is to look at the regulations and the proposal and see if this is in harmony with our regulations. Exhibit #15 is a plan of the dairy at Shelby, Nebraska.

Biehl told the audience this Commission is appointed by the County Board and the Commission can put conditions on special use permits.

Dan Charron asked if the Commission has reviewed these permits and if they can make a decision.

Mike Miigerl questioned the number of cattle.

Gilbert Muhlbach questioned the legal description on the three permits and the number of cattle on each permit.

Hoffmeister said the Commission can place animal limitations on this permit.

Wolfe asked Danny Kluthe about his business and asked if OLean Energy is a hog business or is he in the business of producing digesters. Kluthe replied OLean Energy is his business and he raises hogs.

Ron Urwiller voiced his concerns about the open feedlot.

Hoffmeister reminded everyone that this area is zoned agricultural and anyone can have a Class I or Class II as a use by right without any regulations.

Joyce Sears questioned the numbers of the cattle and submitted Exhibit #16 which is a soil survey of Buffalo County Nebraska.

Doug Nuttelman is a dairy farmer from Stromsburg and also sits on the board of the Dairy Farmers of America. He told the Commission his goal is to maintain the amount of milk that is delivered to the Leprino plant in Ravenna. 40% of the milk that is currently delivered to Ravenna comes from northwest Kansas and Eastern Colorado. We need dairies in this area to maintain the plant at Ravenna.

Bea Urwiller has concerns of the large number of cattle in a confined space becoming ill and the amount of antibiotics that are fed to dairy cattle.

Nuttelman said he is under strict controls when antibiotics are given to the cattle when they are ill.

Liz Lockhorn questioned the permits and why there are three permits that cover all of Section 13, part of Section 12 and the W ½ of Section 18. She questioned if these homes are within 1 mile. She also submitted petitions marked as Exhibit #17 that were gathered in Ravenna from November 10 through November 15.

Skov again reminded the audience that homes would need to be 1 mile from the actual confinement facility rather than the land. You could have a 1000 head open feedlot without any permits.

Mark Vacek questioned if the gray area on the map would hold both the 7500 head of dairy and 1000 head.

Skov closed the public hearing at 10:04 P.M.

Biehl said this application fits the rules. This decision will be difficult and he would like to hear from other Commission members. We don't have anything to do with soil types.

Wolfe questioned how many head have they applied for. Woitaszewski replied they are requesting 7500 head of dairy. How many acres would be required to apply the effluent? Skala replied the Dairy would apply for this.

Skala said Nebraska Department of Environmental Quality would regulate this and he submitted the letter of the Nebraska Department of Environmental Quality Exhibit #18. He said DEQ does not attend public hearings.

Denise Myers, an attorney for the Woitaszewski Brothers, stated the Commission has the right to set perimeters for this permit. She understands the concerns expressed tonight.

Hoffmeister said the permit is subject to any local, state or federal restrictions whichever is most restrictive.

Keep has concerns with the sand issue and the soil type. DEQ will address some of these concerns. He questioned if the digester should be in an industrial zone. We need more of the 1000 head feedlots because feed is available here and the economics of livestock is very important. The digester will handle more of the waste management problem. This is an agricultural area. There is a lot of emotion and opinions here tonight. He didn't think we should table this application because the application before us does fit.

Wietjes told the audience everybody serves as a volunteer and they have been appointed by the County Board and if anyone would like to serve on this, all they have to do is contact the County Board of Supervisors. They are serving for the good of Buffalo County.

Biehl commented that he is a farmer and he thinks the digester is a good idea. He said most of the members had taken a trip to Mead, Nebraska and they also visited a dairy farm in Polk County. If it is set up correctly and run right, a digester would take care of the smell.

Wolfe voiced her concern about protecting the residents of Buffalo County by placing conditions on special use permits.

Motion was made by Biehl, seconded by Heiden to approve the following three special use permits and forward these to the County Board with the following conditions:

- These three applications would be considered as one total unit.
- Class V facility with a limit of 10,500 animal units.
- Facility must be located in the gray area as shown on Exhibit #10.
- A digester system would be used, with a lined lagoon subject to approval with the Nebraska Department of Environmental Quality.

Voting yes were Biehl and Skov. Voting no: Covalt, Heiden, Keep, Steinbrink, Wietjes and Wolfe. Absent: Pope. Motion failed.

Hoffmeister stated this is just a recommendation to the County Board and referred to the following:

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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. (Resolution 10-10-03)

Hoffmeister also referred to Section 6.4 of the zoning regulations.

Keep and Wietjes expressed their concerns that the motion is too restrictive. They questioned the open feedlot which would allow 1,000 head without any necessary permits.

Skov said there is nothing to prevent a new motion from being made by the Commission.

Keep is not comfortable with the 10,500 head limitation.

Heiden asked if this permit could be amended later to allow the 1000 head open feedlot.

Covalt questioned why we are worrying about future expansion.

Motion made by Wietjes, seconded by Keep to forward these three special use to the County Board on the following legal descriptions described as the North Half (N ½) of Section 13, Township 12 North, Range 14 West of the 6<sup>th</sup> p.m.; the South Half (S ½) of Section 13,

Township 12 North, Range 14 West of the 6<sup>th</sup> p.m., excepting therefrom a tract of land containing 3.02 acres, more or less, and a tract of land containing 2.94 acres, more or less, deeded to the State of Nebraska, Department of Roads, in Trustee's Deed recorded March 4, 1993 on Roll 93, Pages 2859 thru 2861; the West Half of Section 18, Township 12 North, Range 13 West of the 6<sup>th</sup> p.m.; all that part of the Southwest Quarter of the Northwest Quarter of Section 12, Township 12 North, Range 14 West of the 6<sup>th</sup> p.m. lying south of the tract in said Southwest Quarter of the Northwest Quarter previously conveyed to Buffalo County, Nebraska for road purposes, which tract is more particularly described as follows: A strip of land 100 feet wide being 50 feet in width, measured at right angles on each side of the center line of the main tract of the Pleasanton Branch of the Union Pacific Railroad Company as formerly constructed and operated and extending southwesterly from the north line to the west line of said Southwest Quarter of the Northwest Quarter; the West Half of the Southwest Quarter of Section 12, Township 12 North, Range 14 West of the 6<sup>th</sup> p.m., all located in Buffalo County, Nebraska with the following conditions:

- Class V facility with a limit of 11,500 animal units, with 10,500 animal units located in gray box as shown on the map on Exhibit #10 and 1000 animal units open air within the ¼ mile of nearest resident located on lands in the three applications.
- A closed-loop digester system, with lined lagoon subject to approval with the Nebraska Department of Environmental Quality.

Voting yes were Wietjes, Keep, Biehl, Heiden, Skov and Steinbrink. Voting no: Covalt and Wolfe. Absent: Pope. Motion passed.

Hoffmeister talked to the Commission regarding the 35 foot limitation in the AGR area. This is consistent with the universal building code.

Skov opened the public hearing for consideration of general amendment of Section 5.37 to the Buffalo County Zoning Regulations at 11:10 P.M.

There was no one present to speak in favor or opposition.

Skov closed the public hearing at 11:10 P.M.

Motion made by Heiden, seconded by Covalt that Section 5.37 be amended to read as follows and forward this to the County Board:

5.37 MAXIMUM HEIGHT: ~~No limitation,~~ Thirty-Five (35) feet unless more strictly regulated by state or federal authorities.

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

Old Business: Moved by Steinbrink, seconded by Biehl to approve the minutes of the October 18, 2007 as mailed. Voting yes were Steinbrink, Biehl, Covalt, Heiden, Keep, Skov, Wietjes and Wolfe. Voting no: none. Absent: Pope. Motion passed.

Klein told the Commission the decision of previous hearings made by the County Board.

The next regular meeting of the Planning & Zoning Commission will be December 20, 2007 at 7:00 P.M.

Motion was made by Steinbrink to adjourn at 11:25 P.M.