

MINUTES OF PLANNING & ZONING COMMISSION  
MAY 15, 2008  
BUFFALO COUNTY HIGHWAY DEPARTMENT  
7:00 P.M.

Chairperson Rick Pope called the meeting to order at 7:02 o'clock P.M. with a quorum present on May 15, 2008 at the Buffalo County Highway Department, 9730 Antelope Ave., Kearney, NE.

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

Chairperson Pope announced there was a copy of the open meetings act posted and we do abide by the open meetings act.

The public forum was opened at 7:02 P.M. Bev Refior was present and told the Commission of the problems with an adjoining neighbor and the storage units. She has been to numerous County Board meetings and stated nothing is being done to enforce the current zoning regulations. Klein told the Commission she has taken pictures and has turned it over to the County Attorney's office. Hoffmeister has written a report to Shawn Eatherton as well as the County Board. The public forum closed at 7:11 P.M.

Chairperson Pope opened the public hearing at 7:12 P.M. for a special use permit requested by USCOC Nebraska/Kansas LLC on behalf of M.J. Shultz and Janis K. Shultz for a 250' communication tower and a 12' x 20' equipment shelter for property described as a leased area located in the Northeast Quarter of Section 13, Township 11 North, Range 16 West of the 6<sup>th</sup> p.m., Buffalo County, Nebraska.

Jesse Hernandez was present representing USCOC for this property that is owned by M.J. and Janis Shultz. He presented a site plan which shows the location of the tower as well as an easement to get to the tower site. It is a 100' x 100' lease area which will have a fenced area for a 75' x 75' area. It will also have a propane tank for back up power. The 250' tower will be set back 320' from the east property line and 450' from the north property line. They want to provide cell phone coverage along Hwy 10 and the Pleasanton area.

Hoffmeister asked Hernandez if all the property around this site is owned by Shultz. Janis Shultz was present and said they do own all the surrounding property which is currently pasture land. Hoffmeister also asked how far from Kearney this property is located. Mrs. Shultz said the property is about 12 miles north of Kearney.

Klein asked what type of lighting would be located on the tower and if they had applied for the necessary FAA permits. Hernandez said they have applied for the FAA permits and will need approval from them. Klein stated she had notified both the Grand Island and Kearney airports of

this hearing. Hernandez said their lighting would be determined by FAA which is white lights in the day time and red lights at night.

Heiden asked about the construction of the tower. He asked if this would be a collapsible tower which would not fall sideways. They are engineered with stress points which would collapse.

Judy Dixon was present and told the Commission this is in the flight path for air care. She also asked if it would have guide wires. Hernandez told her this tower does not have any guide wires.

Hoffmeister explained the following process:

## **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)

Hoffmeister asked if there would be any lighting on the building. Hernandez said there would not be a light.

Pope closed the hearing at 7:20 P.M.

A motion was made by Wolfe, seconded by Biehl to approve this special use permit for a 250' communication tower and a 12' x 20' equipment shelter as shown on the site plan as submitted with a favorable recommendation on the following leased legal description: located in the Northeast Quarter of Section 13, Township 11 North, Range 16 West of the 6<sup>th</sup> P.M., Buffalo County, Nebraska. Said tract of land shall be more particular described by metes and bounds as follows. Commencing at the Northeast Quarter of Section 13, Township 11 North, Range 16, West of the 6<sup>th</sup> p.m., Buffalo County, Nebraska; thence south 00° 50' 26" West to a point on the East line of the Northeast Quarter of Section 13 a distance of 1558.91 feet; thence North 89° 09' 34" West to a point on the West right of way of Hawk Road a distance of 33.00 feet; thence South 72° 39' 01" West a distance of 80.69 feet; thence South 44° 15' 07" West a distance of 188.37 feet; thence North 00° 00' 00" East a distance of 28.50 feet; thence North 90° 00' 00" West a distance of 30.00 feet to the POINT OF BEGINNING; thence South 00° 00' 00" East a distance of 100.00 feet; thence North 90° 00' 00" West a distance of 100 feet; thence North 00° 00' 00" East a distance of 100.00 feet; thence North 90° 00' 00" East a distance of 100.00 feet to

the POINT OF BEGINNING. Said tract containing a calculated area of 10,000 square feet more or less, AND THE ACCESS EASEMENT AS FOLLOWS:

A legal description of an Access Easement located in the Northeast Quarter of Section 13, Township 11 North, Range 16 West of the 6<sup>th</sup> Principal Meridian, Buffalo County, Nebraska. Said tract of land shall be more particular described by metes and bounds as follows. Commencing at the Northeast Quarter of Section 13, Township 11 North, Range 16 West of the 6<sup>th</sup> Principal Meridian, Buffalo County, Nebraska; thence South 00°50' 26" west to a point on the East line of the Northeast Quarter of Section 13 a distance of 1585.91 feet; thence North 89° 09' 34" West to a point on the West right of way of Hawk Road a distance of 33.00 feet to the point of beginning; thence South 72° 39' 01" West a distance of 80.69 feet; thence South 44° 15' 07" West a distance of 188.37 feet; thence North 00° 00' 00" East a distance of 28.50 feet; thence North 90° 00' 00" West a distance of 30.00 feet; thence South 00° 00' 00" East a distance of 100.00 feet; thence North 90° 00' 00" East a distance of 30.00 feet; thence North 00° 00' 00" East a distance of 28.50 feet; thence North 44° 15' 07" East a distance of 211.57 feet; thence North 72° 39' 01" East to a point on the West right of way of Hawk Road a distance of 63.24' thence North 00° 50' 26" East to a point of the West right of way of Hawk Road a distance of 31.58 feet to the point of beginning. This property is owned by M.J. Shultz and Janis K. Shultz and will be leased to USCOC Nebraska/Kansas LLC, a Delaware limited liability company. Voting yes were Wolfe, Biehl, Heiden, Keep, Pope, Steinbrink and Wietjes. Voting no: none. Absent: Covalt and Skov. Motion passed.

Klein said this will be heard before the County Board on June 10, 2008 and notices would again be sent to adjacent property owners.

Chairperson Pope opened the public hearing at 7:28 P.M. for a zoning map amendment filed by Randy Roberts for property described as part of the South Half of the Northwest Quarter and part of the North Half of the Southwest Quarter of Section 13, Township 9 North, Range 18 West of the 6<sup>th</sup> p.m., Buffalo County, Nebraska. Roberts wishes to rezone this area from Agricultural to Agricultural-Residential for his home. Randy Roberts was present and told the Commission he owns 40 acres and because of where his neighbors are building their homes, he is not able to build his home where he wants to because of the 1000' rule. It limits where he can put his future home.

Hoffmeister asked when this property was pieced out. Klein told Hoffmeister that Roberts bought this property in November 30, 2007. Surrounding parcels have been pieced out since zoning was implemented.

Hoffmeister explained Section 11.3 and 11.4 of the zoning regulations.

### **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 (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 amending zoning district boundaries, the Planning Commission and County Board where applicable and authorized may place conditions upon property sought to be re-zoned. (Resolution 9-14-04)

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.

#### **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 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 (100) feet therefrom, or of those directly opposite thereto extending one hundred (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. (Resolution 10-10-03)

Hoffmeister asked Roberts how many homes he wants to build in the future. Roberts replied just one home. He wants the flexibility to put a home where he wants to.

A neighbor to the north has put a mobile home close to the property line.

Hoffmeister also asked how many homes are currently at this location. Klein responded she has issued two zoning permits in this quarter which are in the process of being built. Klein noted a mobile home has been placed north of this property without a permit and she has notified the current owner. She is unsure if this mobile home can be there because another permit has been granted in that quarter and she will have to check out the 1000' rule.

Roberts said he has given an easement on the north side of his property for utilities. The neighbor to the north gets his power from this site.

Keep asked if Roberts had given an easement to Dawson Public Power District. Roberts was unsure of this. He told the Commission DPP was suppose to take care of the easement.

Wolfe asked where he would like to build. Roberts replied there are only a few places he can build because of the 1000' foot limitation.

Biehl asked if Roberts could hook into the power to the north. Roberts replied yes he could.

Wolfe also asked if the power company had specified how far the tree line could be from the easement.

Pope has concerns with the number of homes already in this area. This is an Agricultural area. Pope thinks he could build a home without rezoning this area. He is reluctant to see this many homes in an agricultural area. He doesn't see a problem with putting a home in the northern part of this property. The utility easement shouldn't be a problem with placing a home in this area. We don't know what setbacks are required from a utility easement.

Biehl questioned what the closest AGR area is. Klein responded the AGR area is about 1 ½ mile from the Elm Creek jurisdiction and about three miles from the AGR area to the east.

Wolfe questioned if the mobile home to the north prevents Roberts from putting his home on the northern part of this property. Klein said the mobile home is in another quarter which would not affect where Roberts puts his home.

Randy Wilson owns property to the south of the Roberts property. Wilson has applied for a zoning permit and is in the process of building. He thinks Roberts has ample room to put his home on his property. Wilson said Roberts has had the south 15 acres for sale and has recently taken it off the market. Wilson has horses on his property and has concerns with the liability for his horses and the close proximity of neighbors. He has a 750' x 750' area where he could build a home.

Lynette Mitchell lives on the east side of Custer Road and also thinks Roberts has ample space in which to build his home. The Wilson's are limited as to where they can build because of the topography of the land.

Mike Mitchell stated he has lived in this area for 10 years and they don't want to live in a subdivision.

Roberts said Osentowski and himself did buy the 80 acres together from Stock Farms and later split it into two 40 acre pieces. Stock Farms would not sell anything less than 80 acres and he couldn't afford to buy 80 acres.

Ryan Knapp owns property to the north and bought his property from Osentowski and he is also upset with the trailer being placed south of him.

Deb Hild doesn't want this area rezoned. She also doesn't want the trailer house there and is concerned with more trailer houses being moved in.

Hoffmeister told the audience Buffalo County does not have building codes.

Randy Wilson said everyone that has bought property in this area has been able to deal with the 1000' requirement.

Doug Hild also thinks there is enough room to build a home. He doesn't want to see additional homes being built at this location.

Roberts questioned if restrictions couldn't be place on the rezoning.

Pope closed the public hearing at 8:10 P.M.

Heiden questioned if this would be spot zoning.

Biehl said usually they try to put subdivisions along hard-surfaced roads. If this was rezoned, they could put more homes in this area.

Keep asked if we could relax the 1000' requirement.

Wolfe stated the Commission could rezone with conditions. This area is in the middle of AG land and is far from a hard-surfaced road.

Heiden said the rezoning goes with the land.

Moved by Keep, seconded by Heiden to forward this application to the County Board for a zoning map amendment from Agricultural to Agricultural-Residential with recommendation of denial for property described as a tract of land being part of the South Half of the Northwest Quarter and part of the North Half of the Southwest Quarter of Section 13, Township 9 North, Range 18 West of the Sixth Principal Meridian, Buffalo County, Nebraska, more particularly described as follows: Referring to the Northeast corner of the South Half of the Northwest Quarter of Section 13 and assuming the North line of the South Half of the Northwest Quarter of Section 13 as bearing N 89° 54' 57" W and all bearings contained herein are relative thereto; thence N 89° 54' 57" W and on the North line of the South Half of the Northwest Quarter of said Section 13 a distance of 1346.84 feet; thence leaving the North line of the South Half of the Northwest Quarter of said Section 13, S 00° 04' 28" E and parallel with the East line of the South Half of the Northwest Quarter of said Section 13 a distance of 1292.97 feet to the ACTUAL PLACE OF BEGINNING; thence continuing S 00° 04' 28" E and parallel with the East line of the South Half of the Northwest Quarter and the East line of the North Half of the Southwest Quarter of said Section 13 a distance of 1292.97 feet; thence S 89° 47' 15" E a distance of 1346.84 feet to a point on the East line of the North Half of the Southwest Quarter of

said Section 13, said point also being 36.40 feet Northerly from the Southeast corner of the North Half of the Southwest Quarter of said Section 13; thence N 00° 04' 28" W and on the East line of the North Half of the Southwest Quarter of said Section 13 a distance of 1276.95 feet to the Northeast corner of the North Half of the Southwest Quarter of said Section 13; thence continuing N 00° 04' 28" W and on the East line of the South Half of the Northwest Quarter of said Section 13 a distance of 17.61 feet; thence leaving the East line of the South Half of the Northwest Quarter of said Section 13, N 89° 50' 53" W a distance of 1346.77 feet to the place of beginning. Containing 40.00 acres, more or less, of which 0.98 acres, more or less, are presently being used for road purposes on the East side. Voting yes were Keep, Heiden, Biehl, Pope, Steinbrink, Wietjes and Wolfe. Voting no: none. Absent: Covalt and Skov. Motion passed.

Klein said this would be heard by the County Board on June 10 and notices again will be sent to adjacent property owners.

Chairperson Pope read the following statement from Michael O'Brien requesting the hearing for a zoning map amendment be tabled for part of Section 3 and part of Section 10, all in Township 8 North, Range 14 West of the 6<sup>th</sup> p.m.:

"Please table my request for rezoning. Addition information has come to my attention and I will need to provide you more details. I will have these details in place at next month's meeting. Thank you for your patience."

Hoffmeister wanted the record to reflect the request has come from Mr. O'Brien. All the legal notices have been sent out to adjoining property owners. He asked if anybody had shown up for this hearing. No one was present for this specific hearing. There might be potential problems if there is any litigation when people show up for hearings and they have requested the hearing be tabled.

Klein did state the request to table had been faxed to her office on May 14, 2008.

The Commission probably needs to address this issue.

Motion was made by Wietjes, seconded by Steinbrink to postpone this application with reluctance until the next meeting. Voting yes were Wietjes, Steinbrink, Biehl, Heiden, Keep, Pope and Wolfe. Voting no: none. Absent: Covalt and Skov. Motion passed

Old Business: Moved by Wolfe, seconded by Biehl to approve the minutes of the April 17, 2008 as mailed. Voting yes were Wolfe, Biehl, Heiden, Keep, Pope, Steinbrink and Wietjes. Voting no: none. Absent: Covalt and Skov. Motion passed.

Klein also reported the outcome of the hearings heard by the County Board at previous meetings.

Other items of concern were discussed.

The next meeting of the Planning & Zoning Commission will be June 19, 2008 at 7:00 P.M. at the Highway Department.

Motion was made by Wietjes, seconded by Steinbrink to adjourn at 8:32 P.M.