

MINUTES OF PLANNING & ZONING COMMISSION
JUNE 19, 2008
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 June 19, 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, Karin Covalt, Marlin Heiden, Willie Keep, Rick Pope, Paul Steinbrink, Sr., and Loye Wolfe. Absent: Leonard Skov and Craig Wietjes. Also attending were Deputy County Attorney Melodie Bellamy, Zoning Administrator LeAnn Klein and four 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 7:04 P.M. Bev Refior was present and has some concerns of the alley being vacated behind her property in Odessa. She has received a letter from Mr. Day wanting her signature on the vacation of the alley. Chairperson Pope told her this has been turned over to the County Attorney's office and is out of the Commission's jurisdiction. She questioned why no one notified her regarding this vacation of the alley. The public forum closed at 7:08 P.M.

There has been a deed of conservation easement between Central Platte Natural Resources District and R & J Marshall Company that was referred to the Planning & Zoning Commission from the Board's June 10, 2008 meeting. According to Nebraska Rev. Stat. 76-2 112 (3) the local planning commission has 60 days to provide comments regarding the conformity of the proposed acquisition to comprehensive planning for the area. If such comments are not received within sixty days, the proposed acquisition shall be deemed approved by the local planning commission. These easements do not prohibit irrigation on the affected tracts, they merely terminate the surface water rights. The tracts will still be able to be irrigated with groundwater. The agreement is filed against the real estate.

The Commission has concerns if this should be a public hearing and if adjoining property owners should be notified. They questioned why this even comes before the Planning & Zoning Commission. This is not addressed in our zoning regulations. Keep questioned how it affected the zoning regulations. Pope reminded the Commission that lack of action constitutes approval. Klein offered to contact Ron Bishop from Central Platte NRD with their questions. Bellamy read the Nebraska Rev Stat. 76-2 112 (3) to the Commission.

It was moved by Wolfe, seconded by Heiden to forward the conservation easement between R & J Marshall Company (Grantor) and the Central Platte Natural Resources District, a political subdivision of the State of Nebraska (Grantee) to the County Board with a favorable recommendation on a tract of land being part of Government Lot Three (3) and Government Lot

Four (4) and the South Half of the Northwest Quarter (S ½ NW ¼) of Section Five (5), Township Eight (8) North, Range Eighteen (18) West of the 6th P.M., Buffalo County, Nebraska, EXCEPT the North 387.0 feet of the East 1,267.0 feet of said Government Lot 3 located in Section 5, Township 8 North, Range 18 West of the 6th p.m., Buffalo County, Nebraska.

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

Chairperson Pope opened the public hearing at 7:20 P.M. for a special use permit requested by Michael O'Brien for a gravel mining operation for a tract of land being part of Government Lot 10, part of Government Lot 11, part of Government Lot 12 and accretions located in Section 3, Township 8 North, Range 14 West of the 6th p.m., Buffalo County, Nebraska containing 53.96 acres, more or less.

Michael O'Brien was present and told the Commission what his plans are. He apologized for filing the wrong form. He had originally filed a rezoning application for this area but has since withdrawn the rezoning application. There are 80 acres of crop ground and 20 acres of trees. He submitted plans of the summary of reclamation plans of Mosquito Creek. He plans on mining the western part of this property as shown on the submitted plans. This entire plan is being prepared by a joint effort between The Nature Conservancy, U.S. Fish and Wildlife, NRCS, The Pace Group, Ducks Unlimited and himself. When the project is completed the entire 100 acres will be placed into a conservation easement. The final plan will consist of approximately 10 acres of open water, 30 acres of reclaimed wetlands, 5 acres of reclaimed river channel wetlands, 52 acres of grassland, 1 acre with a cabin, and a 2 acre building site on the west end for a possible home. He is currently working on a pit area for himself. The pit area would be 45' deep instead of 70-80'. Mid-Nebraska Aggregate will be hauling the gravel. This would be done in a time frame of 7-10 years.

Bellamy asked where the closest residence was located. O'Brien said it would be about 3000' to the mineral extraction from the nearest home. All the gravel would be hauled to the west and taken out through Mid-Nebraska Aggregate property. There won't be any road traffic to the east; everything would be hauled to the west.

Klein asked what the hours of operation would be. They would be pumping from 4:00 A.M. until 1:00 A.M. during the summer time.

Heiden asked the number of homes along Kilgore Road. O'Brien was unsure of the number of homes in this area. O'Brien said Mid-Nebraska hauls gravel both directions when they exit their property. Klein stated there are quite a few homes in this area.

Klein referred to the following zoning regulations:

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)

Biehl asked what the goal is for all this work. O'Brien told the Commission he wants to create a place for hunting and fishing for his children and grandchildren.

Heiden asked about the excess sand. O'Brien said they would save the black dirt, pump the sand and put the black sandy loam back onto the property.

Keep asked if the hunting and fishing would be limited to his family only. O'Brien replied it won't be commercial, just for family only.

There was no one in opposition present at the hearing.

Pope closed the hearing at 7:40 P.M.

Klein said usually a special permit needs to commence within 120 days and be completed within two years unless conditions are put on the special use permit.

O'Brien said the pumping probably will not start until next spring. It probably will take 5-7 years to finish.

Klein asked if this was the correct legal description. O'Brien said there is a boundary dispute and he will have to check to make sure this is the correct legal description.

The Commission discussed the time frame of this special use permit. Wolfe recommended some kind of documentation to the County Board be made on a two year time frame.

The Commission discussed prior special use permits for gravel and dirt mining timeframes.

A motion was made by Wolfe, seconded by Biehl to approve this special use permit for mining as shown on the site plan as submitted by Michael O'Brien with a favorable recommendation made to the County Board and recommend that a report be made to the County Board by the Zoning Administrator every two years on the following legal description:

A tract of land being part of Government Lot Ten (10), part of Government Lot Eleven (11) and accretions located in Section Three (3), Township Eight (8) North, Range Fourteen (14) West of the Sixth Principal Meridian, Buffalo County, Nebraska, more particularly described as follows:

Referring to the Southwest Corner of the Northeast Quarter of the Northwest Quarter of Section Ten (10), Township Eight (8) North, Range Fourteen (14) West of the Sixth Principal Meridian, Buffalo County, Nebraska and assuming the South line of the Northeast Quarter of the Northwest Quarter and the South line of the North Half of the Northeast Quarter of Section 10 as bearing S 89° 52' 00" E and all bearings contained herein are relative thereto; thence N 00° 41' 48" W and on the West line of the Northeast Quarter of the Northwest Quarter of said Section 10 a distance of 1318.64 feet to the Northwest Corner of the Northeast Quarter of the Northwest Quarter of said Section 10 said point also being on the South line of Government Lot 14 located in said Section 3; thence leaving the South line of Government Lot 14 of said Section 3, N 02° 02' 39" E and on the West line of Government Lot 11 of said Section 3 (if extended Southerly) a distance of 186.02 feet to the ACTUAL PLACE OF BEGINNING, said point being on an existing fence line; thence leaving said existing fence line and continuing N 02° 02' 39" E and continuing on the West line of Government Lot 11 (if extended Southerly) and on the West line of Government Lot 11 of said Section 3 a distance of 1429.80 feet to a point on an existing fence line; thence leaving the West Line of Government Lot 11 of said Section 3, N 51° 17' 43" E and on an existing fence line a distance of 29.65 feet; thence continuing on said existing fence line the following courses and distances respectively:

S 89° 53' 26" E a distance of 295.72 feet; thence
N 82° 13' 12" E a distance of 231.87 feet; thence
N 75° 05' 19" E a distance of 67.53 feet; thence leaving said existing fence line S 54° 27' 57" E a distance of 2031.44 feet to a point on an existing fence line; thence S 66° 55' 38" W and on said existing fence line a distance of 626.83 feet; thence continuing on said existing fence line the following courses and distances respectively:
N 86° 39' 08" W a distance of 1042.98 feet; thence
N 88° 03' 35" W a distance of 189.77 feet; thence
S 70° 17' 47" W a distance of 534.18 feet; to a point on an existing fence line;
thence N 09° 49' 10" W and on an existing fence line a distance of 44.09 feet to the place of beginning.

Together with:

A tract of land being part of Government Lot Twelve (12), and accretions located in Section Three (3), Township Eight (8) North, Range Fourteen (14) West of the Sixth Principal Meridian, Buffalo County, Nebraska, more particularly described as follows: Referring to the Southwest corner of the Northeast Quarter of the Northwest Quarter of Section Ten (10), Township Eight (8) North, Range Fourteen (14) West of the Sixth Principal Meridian, Buffalo County, Nebraska, and assuming the South line of the Northeast Quarter of the Northwest Quarter of Section 10, as bearing S 89° 52' 00" E and all bearings contained herein are relative thereto; thence N 00° 41' 48" W and on the West line of the Northeast Quarter of the Northwest Quarter of said Section 10, a distance 1318.64 feet to the Northwest Corner of the Northeast Quarter of the Northwest Quarter of said Section 10 and said point being on the South line of Government Lot 14 of said Section 3; thence leaving the South line of Government Lot 14 of said Section 3, N 02° 02' 39" E and on the East line of Government Lot 12 located in said Section 3 (if extended Southerly) a distance of 186.02 feet to the ACTUAL PLACE OF BEGINNING, said point being on an existing fence line; thence leaving said existing fence line and continuing N 02° 02' 39" E and continuing on the East line of Government Lot 12 (if extended Southerly) and on the East line of Government Lot 12 of said Section 3 a distance of 1429.80 feet to a point on an existing fence

line; thence leaving the East line of Government Lot 12 of said Section 3, S 51° 17' 43" W and on an existing fence line a distance of 224.37 feet; thence continuing on said existing fence line S 82° 59' 02" W a distance of 123.59 feet to a point on an existing fence line; thence S 09° 49' 10" E and on said existing fence line a distance of 1311.24 feet to the place of beginning.

With the aforescribed tracts of land containing a total of 53.96 acres, more or less.

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

Klein said this will be heard before the County Board on July 8, 2008 and notices would again be sent to adjacent property owners.

Old Business: Moved by Heiden, seconded by Biehl to approve the minutes of the May 15, 2008 as mailed. Voting yes were Heiden, Biehl, Covalt, Keep, Pope, Steinbrink and Wolfe. Voting no: none. Absent: Skov and Wietjes. 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 July 17, 2008 at 7:00 P.M. at the Highway Department.

Motion was made by Covalt, seconded by Biehl to adjourn at 8:20 P.M.