

MINUTES OF PLANNING & ZONING COMMISSION
JULY 17, 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 July 17, 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, Leonard Skov, Paul Steinbrink, Sr., Craig Wietjes and Loye Wolfe. Absent: Karin Covalt. Also attending were Deputy County Attorney Andrew Hoffmeister, Zoning Administrator LeAnn Klein and seven 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 7:00 P.M. No one was present. The public forum closed at 7:00 P.M.

Chairperson Pope announced the application for Farmers Cooperative Association had been withdrawn on July 7, 2008; therefore the hearing has been cancelled.

Hoffmeister asked if there was anyone present for the Farmers Cooperative hearing. No one was present. Klein stated she had sent notices to the adjoining property owners the application had been withdrawn.

Chairperson Pope opened the public hearing at 7:01 P.M. for a special use permit requested by Werner Construction for a temporary, intermittent asphalt plant site for a tract of land in Lot 7, Section 13, Township 8 North, Range 15 West of the 6th p.m., Buffalo County, Nebraska, together with all accretions thereto belonging, except that part deeded to the State of Nebraska.

Richard Ray was present representing Werner Construction, LLC and told the Commission they want to put an asphalt plant at this location. They also have a special use permit for gravel excavation in this area that was previously approved by Buffalo County. They did have the plant on the Broadfoot property south of the I-80 interchange, but they have run out of room and because of Nebraska Department of Environmental Quality rules, they are too close to existing homes. They want to have this for future road projects and have the permit approved prior to any road projects.

Hoffmeister asked the following questions:

1. Would this be temporary?
2. How close is this to Highway 10?
3. How far north of the Kearney County line?
4. Would access be directly off Highway 10?

5. What bonds are required?

Ray responded as follows:

1. This would be temporary and would be moved according to where they have road projects.
2. Ray said this is directly adjacent to Highway 10.
3. Ray said this was north of the County line about 100 yards.
4. Access would be directly off Highway 10.
5. They are required to post bonds for work done. They are also required to have DEQ permits for air discharge and stormwater permits.

Hoffmeister 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)

Klein also told the Commission she had received a phone call from Karl Burmester, the adjoining property owner to the south in Kearney County, and he thought there was some question of the ownership of accretion ground after talking to the State Surveyor. He does not want this asphalt plant being on his land. Klein said she told him the County does not determine property disputes. She asked him if he would be at the meeting tonight and he told her "no, it wouldn't do any good".

Skov questioned if there is a fixed amount of time on these special use permits. Hoffmeister said time limits could be addressed during the hearings. Werner's site is a little more permanent.

Biehl asked if this property is owned by Werner. Werner's do own this property.

Heiden asked if they would be using their own gravel which Ray responded they would. Heiden also asked what happens to the hot oil in the event it is spilled. Ray told the Commission if oil is under 120°, it becomes solid and it can be just picked up like a carpet.

Ray told the Commission the asphalt plant would not be located at this location permanently because the plant would be moved where the jobs are located.

Wolfe thought maybe we should have some kind of a time frame such as 3-4 years.

Skov thinks we need to be consistent with time frames for permits if they are similar.

There was no one in opposition present at the hearing.

Pope closed the hearing at 7:25 P.M.

Keep thinks this is a good spot for an asphalt plant.

Steinbrink said this does tie in with the gravel pit.

Heiden thought it would be a good idea to re-visit this periodically.

Ray told the Commission they do need to inform DEQ when they move the plant to another site.

A motion was made by Steinbrink, seconded by Heiden to approve this special use permit for an asphalt plant for a 4 year period submitted by Werner Construction, LLC 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 year on the following legal description:

A tract of land in Lot 7, Section 13, Township 8 North, Range 15 West of the 6th p.m., Buffalo County, Nebraska, together with all accretions thereto belonging, except that part deeded to the State of Nebraska. Completion dates are not applicable to this permit.

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

Klein said this will be heard before the County Board on August 12, 2008 and notices would again be sent to adjacent property owners.

Chairperson Pope opened the public hearing at 7:35 P.M. for a zoning map amendment filed by Gary Day for property described as Lot 86, Lot 87, Lot 88 and Lot 89, Village of Odessa, Buffalo County, Nebraska together with vacated part of alley and vacated Odessa Street.

Gary Day was present and told the Commission he has been in the cabinet business for the past ten years. It would be easier if this property would be rezoned from Agricultural-Residential to Commercial. He had been before the Commission for a special use permit last year for some storage units on this property. He thought he would be tearing down an existing building but instead has rehabilitated this brick building, He has improved these lots. He has a rental house on the west end of this property and also lives at the north end of the cabinet shop. He should have had this property surveyed prior to the special use permit. He has since discovered he has lost about three feet because of the encroachment of the neighbor to the north. He does a lot of

commercial work and his work has increased. He placed storage units on this property but erroneously put the openings to the north which he has since moved so the openings of the storage units are facing south. He is now using this building as an extension for his cabinet business.

Hoffmeister questioned what this building was previously used for. Day told him ten years ago this building was used as a welding and repair shop. The brick building later was used as rental units. Hoffmeister also asked what the old Odessa school was being used for. Day responded he wasn't sure what the building will be used for. Hoffmeister told the Commission Odessa does not have any property zoned commercial, but there is a bar and car lot north of Highway 30 with homes in between.

Klein told the Commission that illustration 4.16 from the Buffalo County Comprehensive Plan existing land use map shows these three properties as Commercial properties but these three properties were never distinguished as commercial properties in our zoning map.

Keep questioned what tax advantages would there be in rezoning something to Commercial. Hoffmeister said currently this is a non conforming structure and he would have problems adding to an existing building.

Hoffmeister asked how many employees he has. Day replied one employee in addition to himself and his wife.

Bev Refior was present and opposes this rezoning. She owns Lots 84 and 85 and this does not address the vacation of the alley. She has lived at this site for 30 years and she also doesn't want the alley vacated since that is the only way to get to the back of her property to fill her propane tank.

Hoffmeister asked Refior what was the use of Lot 86 before Day bought it. She told him it had been a house and than it was converted to duplexes. It also had been a grocery store and at one time a gas station. She also had said the propane tank is not on Day's property. Refior also said it would raise her property values.

Hoffmeister said we won't get into property disputes and he can't speculate if it would raise her property values. The alley is not a concern of the Planning & Zoning Commission. That is up to the County Board.

James Hayes was also present and is representing his son Nathan who owns the lot to the north. He told the Commission Day has been a good neighbor and he thought those lots were already zoned commercial. He said he would encourage changing the zoning on these lots from AGR to Commercial. There have been a lot of disputes with the neighbor to the south.

Refior doesn't think it is right that James is representing his son since he is not the landowner.

Hoffmeister said these are public hearings and there is a right of protest.

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 ($\frac{1}{2}$) 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 ($\frac{2}{3}$) majority of the County Board. (Resolution 10-10-03)

Hayes commented his son did ask him to represent him at this hearing but he does not have anything in writing from his son.

There was no one else present to speak.

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

Skov questioned the vacation of the alley. Hoffmeister told him this would be decided by the County Board. The commercial areas in Odessa were never zoned as commercial. This would be the logical place for it.

Heiden agreed this is a good place for Commercial property.

Pope also agreed this is a logical place since it is directly off Highway 30.

Steinbrink questioned if there was enough parking available for Commercial property.

Klein referred to 7.2 off street parking requirements which states parking as follows:

1. Residential
Single family, two-family dwelling 1 per dwelling unit
2. Mobile Home Trailer Park 1 per trailer unit
3. Hotel and Motel 1 per rental unit plus
1 for every 4 employees
4. Hospitals, nursing homes, rest homes,
Or similar uses 1 for every 2 ½ patient beds and 1 for
each staff and employee on the largest
shift
5. Places of public assembly such as auditoriums,
theaters, stadiums, community halls, churches,
etc. 1 per every four persons
6. Bowling Alley 2 for each alley
7. Retails sales department stores, restaurants,
taverns, grocery stores, etc. 1 per 200 square feet of floor area as
determined by exterior wall dimensions
8. Professional office establishments 1 per 500 square feet of floor area as
determined by exterior wall dimensions
9. Manufacturing, wholesale warehouse and
similar uses 1 for every 2 employees on the largest
working shift

Biehl thinks the major dispute here is lot lines and we don't decide lot lines but this is an ideal commercial area.

Keep questioned if the bar and auto lot should also be changed to commercial.

Skov stated there are advantages to having it zoned correctly.

Heiden said if a building is destroyed, it won't be able to be re-built since currently it is a non-conforming use.

Moved by Wietjes, seconded by Heiden to forward this application to the County Board with a recommendation that this application for a zoning map amendment from Agricultural-Residential to Commercial be approved for property described as Lot 86, Lot 87, Lot 88, and Lot 89, Village of Odessa, Buffalo County, Nebraska, together with the West ½ of the vacated alley abutting said Lots 88 and 89 on the East side and that part of vacated Odessa Street abutting said Lot 89 and abutting the West ½ of the vacated alley on the North.

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

Klein said this application will be heard by the County Board at their August 12 meeting and notices again will be sent to adjoining property owners.

Old Business: Moved by Biehl, seconded by Skov to approve the minutes of the June 19, 2008 as mailed. Voting yes were Biehl, Skov, Heiden, Keep, Pope, Steinbrink, Wietjes and Wolfe. Voting no: none. Absent: Covalt. 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 August 21, 2008 at 7:00 P.M. at the Highway Department.

Motion was made by Steinbrink, seconded by Biehl to adjourn at 8:40 P.M.