

MINUTES OF PLANNING & ZONING COMMISSION
SEPTEMBER 18, 2008
BUFFALO COUNTY HIGHWAY DEPARTMENT
7:00 P.M.

Vice Chairperson Buss Biehl in the absence of Chair Rick Pope called the meeting to order at 7:00 o'clock P.M. with a quorum present on September 18, 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, Leonard Skov and Loye Wolfe. Absent: Rick Pope, Paul Steinbrink, Sr. and Craig Wietjes. Also attending were Deputy County Attorney Andrew Hoffmeister, Zoning Administrator LeAnn Klein and sixteen members of the public.

Vice Chairperson Biehl 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.

Vice Chairperson Biehl opened the public hearing at 7:01 P.M. for a special use permit requested by Farmers Cooperative Association of Ravenna for commercial storage and sale of fertilizer, chemicals and fuel on a 10.01 acre tract in the Southwest Quarter of Section 32, Township 11 North, Range 15 West of the 6th p.m., Buffalo County, Nebraska.

Harlan Schafer, General Manager of Farmers Cooperative of Ravenna, was present and showed the Commission a site plan to construct a retail agronomy service at this location for commercial storage and sale of fertilizer, chemicals and fuel. This would be located two miles off Highway 10. They have a purchase agreement with the Lawrence Schulte Trust for approximately 10.01 acres. This facility would house agricultural chemicals and would have a load out area. They would build a 200' x 60' building and the one million gallon tank would hold 32% nitrogen. This tank is lined and would meet all requirements through the Nebraska Department of Environmental Quality. The plan also shows a future proposed one million gallon tank, future office building and future bulk fuel facility. There are no plans for anhydrous ammonia at this site. Schafer feels this is a good site for this \$1.2 million facility. They have applied and received a well permit through the Natural Resource District. They have contacted NPPD for three phase power which will be from the north. This location will reduce miles for their customer base. They are very excited to expand into this area.

Hoffmeister asked the following questions:

1. How many employees will they have?
2. What type of lighting?
3. Will there be fencing?
4. How far from the nearest intersection?
5. What school district is this in?

6. How far is the nearest residence?
7. They will need a 911 sign for location purposes.

Schafer responded as follows:

1. They would have two full time employees and 1 seasonal employee.
2. They would have security lighting with 2 pole lights and directional lighting.
3. The entire property would be fenced for security purposes.
4. This is about ¼ mile north from the intersection of Pole Line and Antelope Road.
5. Someone from the audience said it was in the Pleasanton School District.
6. Paul Sucha said his house was ¼ mile east on Pole Line Road.

Wolfe asked what height the fertilizer storage would be and Schafer told her it would be 32'.

Heiden questioned what they would use between the tanks. Schafer responded they would use either rock or grass. Heiden also asked what area they would use to park tanks. Schafer thought they would use the area to the north.

Skov asked how much traffic would there be.

Schafer thought there would be about 20-50 per day between March and July. Some times of the season would be worse than others. It would take approximately 182 trucks to fill the big storage tank.

Biehl asked if they would flush the applicators at the site. Schafer told the Commission they usually flush and rinse the applicators in the field. Some will be emptied in the building but it can be mixed in with other applications but it would be contained. If their machines were muddy, they might rinse off the machines at this site but it would be mud from the machines, not product.

Wolfe asked if this operation was computer controlled but Schafer said there still would be employees to monitor the process.

Schafer told the Commission they do want fuel storage in the future. This could be from 20,000 gallons diesel to as much as 100,000 gallons of diesel. This facility would be similar as to what is in Ravenna. They also would be doing minor repairs in the shop.

Wolfe asked if they had started the process for EPA? Schafer said they are in the process of applying for the necessary permits through the Nebraska Department of Environmental Quality.

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)

Schafer said the hours of operation would be from 7:30 A.M. through 5:30 P.M. or in the spring sunrise to sundown. The million gallon tank would be filled in the off season.

Hoffmeister advised they might want to request extending the time frame of the building since our resolutions state construction must be completed in a 2 year time frame.

Paul Sucha is the resident to the east on Pole Line Road and he has concerns with the intersection of Pole Line Road and Antelope Road and would like four stop signs at that intersection. All of the other stop signs are on the north/south roads. He also has concerns of the noise factor.

Keep thought it wouldn't be any noisier than farm machinery because this was an agricultural area.

Tom Schulte also questioned if trucks would be using Jake breaks or if the County could outlaw them.

Biehl closed the hearing at 7:30 P.M.

A motion was made by Skov, seconded by Heiden to approve this special use permit for commercial storage and sale of fertilizer, chemicals and fuel as presented by Farmers Cooperative Association of Ravenna with a favorable recommendation made to the County Board and also to recommend the County Board look at placing a four-way stop sign at the intersection of Pole Line Road and Antelope Road, legal description described as follows: A tract of land being part of the Southwest Quarter of Section 32, Township 11 North, Range 15 West of the 6th p.m., Buffalo County, Nebraska, more particularly described as follows: Referring to the Southwest corner of the Southwest Quarter of said Section 32 and assuming the West line of said Southwest Quarter as bearing North and all bearings contained herein are relative thereto; thence North on the aforesaid West line a distance of 870.65 feet to the ACTUAL PLACE OF BEGINNING; thence continuing North on the aforescribed course a distance of 808.0 feet; thence East a distance of 533.0 feet, thence South parallel with the aforesaid West line a distance of 827.39 feet; thence N 87°55' W a distance of 533.35 feet to the place of beginning. Containing 10.01 acres, more or less, of which 0.61 acres, more or less, are presently being used for road purposes on the west side. Voting yes were Skov, Heiden, Biehl, Covalt, Keep and Wolfe. Voting no: none. Absent: Pope, Steinbrink and Wietjes. Motion passed.

Klein said this will be heard before the County Board on October 14, 2008 and notices will again be sent to adjacent property owners.

Vice Chairperson Biehl opened the public hearing at 7:40 P.M. for a zoning map amendment filed by Sally and Gilbert Vasquez for property described as Lot 93 and the south half of Lot 94, Village of Odessa, Buffalo County, Nebraska together with vacated part of alley and street.

Gary Day was present on behalf of Sally and Gilbert Vasquez. Day told the Commission that Sally Vasquez's Father had passed away and could not attend tonight's hearing. Day said they are asking to rezone this property from Agricultural-Residential to Commercial. This business is now closed and they want to sell this property and thought if it would be rezoned, it might sell faster. Day thought the building could not be re-furbished and if it was torn down, it could not be re-built with the current zoning.

Hoffmeister questioned how tall the fence is on the north and east. Day thought the fence to the north was about 6 feet and the fence on the east side of the property is 5'. Hoffmeister also asked how far the setback was from the highway. Day thought it was 35'.

Klein told the Commission they would have received a copy of a survey that shows the existing building and would also show the setback from the highway.

Hoffmeister asked if there was a well and septic on this property. Day thought the new well was put in about 3 years ago. Hoffmeister told the Commission there will also need to be parking. They will need parking for six cars since the existing building is 1200 square feet. He also questioned about the placement of the septic system. The adjoining neighbor to the north said there are problems with the existing septic.

Klein told the Commission that illustration 4.16 from the Buffalo County Comprehensive Plan existing land use map shows the properties of the bar and car lot as Commercial properties but these properties were never distinguished as commercial properties on our zoning map.

Hoffmeister also said the fencing is a good buffer. The neighbors who own the property to the north were present. Gugelmans said they put up a fence that surrounds their property.

Keep asked the Gugelmans how they keep customers from blocking their drive-way. The Gugelmans do have a 25' ingress and egress shown on their deed for access to their property.

Marcia Gugelman told the Commission parking is a huge problem. They can't get into or out of their property when the bar is busy. She said they have "no parking" signs all over but no one adheres to this. She said the business has been shut down by the State, the bathrooms do not work and there are problems with the septic system. She wants to know what their rights are as far as access to their property. This building is also infested with mice. She also submitted Exhibit 1 to the Commission.

Wolfe asked how long they have owned the property. Gugelman replied she bought this property in 1996.

Hoffmeister advised the Commission concerning the following:

5.57 HEIGHT AND AREAS REGULATIONS: The maximum height, maximum lot coverage and minimum area regulations shall be as follows: (Resolution 7-11-06)

1. General Requirements:

	<u>Lot Area***</u> <u>(Sq. Ft.)</u>	<u>Lot</u> <u>Width</u>	<u>Required</u> <u>Front Yard</u>	<u>Required</u> <u>Side Yard</u>	<u>Required</u> <u>Rear Yard</u>	<u>Height</u>
Permitted Uses	40,000	150'	Greater of 50'* or 83'**	15' or 50' * when abutting a road	20' or 50' * when abutting a road	none

* Measured from the abutting road right-of-way line.

** Measured from center line of abutting road right-of-way

2. MAXIMUM LOT COVERAGE: In no event shall the area of a lot covered by buildings or roofed areas, excluding allowed projecting eaves, balconies, and similar features exceed 55% of the lot area. (Resolution 10-10-03, Sec 5.59 & 7-11-06)

He told the Commission this probably should have been zoned Commercial originally but we still have problems with lot size. If a business fails to operate over a period of time they cease to exist. If someone were to buy this property, there would probably be issues with the zoning and a bank would not loan money on this property because of the current zoning.

Heiden asked what would happen if this is rezoned to commercial and they would tear town the existing building, what uses could this building be used for.

They would still need to comply with setbacks or obtain a variance through the Board of Adjustment.

Skov asked if he were to park in front of this facility, would he know where to park. Delmer Gugelman said he had put 17" x 15" no parking signs in front of their property, but people still block their drive way.

Wolfe asked Day if he knows what the Vasquez's intend for this property. Day thought they want to sell this property for a bar/grill.

Biehl agrees there are problems with the size of this lot regarding the size of the building, setbacks and placement of well and septic. Would we be making more problems if we would rezone this property?

Keep replied by having this stay AGR, they don't have a chance to improve this property.

Bev Refior was present and said there are problems with asbestos in this building.

Skov said this should be a commercial property. It's directly off a major highway and all the problems we have discussed here this evening is not pertinent to the question before us which is the rezoning of this property.

Hoffmeister referred to the following uses in what would be allowed if this property is rezoned.

Section 5.52 PERMITTED PRINCIPLE USES AND STRUCTURES: The following shall be permitted as uses by right:

1. Automobile wash facilities;
2. Churches and other religious institutions;
3. Construction sales and services;
4. Convenience store or filling station;
5. Detached banking facilities (ATM);
6. Electric and telephone substations;
7. Farm implement sales and services;
8. Garden centers and nurseries;
9. Irrigation equipment sales and services;
10. Mini storage facilities;
11. Motels, including accessory service uses, such as swimming pools, liquor stores and restaurants;
12. Restaurants and cafes;
13. Service stations;
14. Stores or shops for sale of goods or services at retail;
15. Transportation warehousing;
16. Trucks and freight terminals;
17. Utilities, including shops and offices;
18. Medical clinics;
19. Bed and breakfast operations; and
20. Campgrounds

5.54 PERMITTED SPECIAL USES: A building or premises may be used for the following purposes in the C Commercial District if a special use permit for such use has been obtained in accordance with Article 6 of these regulations.

1. Airports and Heliports;
2. Private clubs and lodges;
3. Facilities for the commercial storage or sale of fertilizer or toxic or flammable agriculture chemicals;
4. Radio studios, transmitters and antenna;
5. Recycling centers;
6. Single Family Homes and
7. Recreational facilities or entertainment facilities and/or areas not owned or operated by public agencies (Resolution 10-10-03)
8. Truck wash services. (Resolution 2-12-08)

Skov asked if it remained AGR, could someone build a house on this property. Hoffmeister replied no because of lot size.

Biehl said according to the Comprehensive Plan, this should have been Commercial property.

Covalt said it's fair to say if it is rezoned to Commercial there are more options to regulate this.

Wolfe questioned if there needs to be an access from the north?

Biehl closed the public hearing at 8:40 P.M.

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)

There was no one else present to speak.

Moved by Skov, seconded by Covalt to forward this application submitted by Sally and Gilbert Vasquez to the County Board with a recommendation that this application for a zoning map amendment from Agricultural-Residential to Commercial is approved for property described as the South Half of Lot 94 and all of Lot 93, and the East Seventeen Feet of Main Street as the same abuts said Lots on the West, in the Village of Odessa, Buffalo County, Nebraska, reserving, however, in the sellers, their heirs, personal representatives, and assigns, a permanent easement and right of way for the purpose of ingress and egress over and across the East Twenty Five Feet of said property. Voting yes were Skov, Covalt, Biehl, Heiden, Keep and Wolfe. Voting no: none. Absent: Pope, Steinbrink and Wietjes. Motion passed.

Klein said this application will be heard by the County Board at their October 14, 2008 meeting and notices again will be sent to adjoining property owners.

Rick & Marla Miller requests a zoning map amendment from Agricultural-Residential to Commercial for Lots 97, 98 & 99 & part of vacated street and part of the SW ¼ SE ¼ of Section 33, Township 9 North, Range 17 West of the 6th p.m., Buffalo County, Nebraska.

Vice Chairperson Biehl opened the public hearing at 8:47 P.M.

Hoffmeister asked the following questions.

1. What direction does this property face?
2. How many entrances are there?
3. Are there any other uses for this?
4. Is there a house located on this property?
5. How long has he been operating this business at this location?
6. How many employees?
7. Where are the wells and septic located?

Miller responded as follows:

1. This property faces south towards the highway.
2. There are two entrances on this property.
3. There really is no other use for this property. The west end is an irregular shaped parcel. He has about 20-50 cars on this property with an average of 30.
4. There is a rental house located on the east part of this property.
5. He has been in business since 1999.
6. Rick and his wife work at the business.

7. The septic is located to the northwest of the rental and they have separate wells.

Miller wants to be in compliance and be able to service vehicles. The property would be enhanced if it would be rezoned. The area to the north is agricultural use and he doesn't have the issues as the previous rezoning since there is plenty of room for parking, sewer and septic.

The public hearing closed at 8:55 P.M.

Motion was made by Skov, seconded by Heiden to forward this application submitted by Rick and Marla Miller to the County Board with a recommendation that this application for a zoning map amendment from Agricultural-Residential to Commercial is approved for property described as all of Lots 97, 98 and 99, together with the West 17.0 feet of vacated Main Street as the same Abuts said Lots on the East, and the South 40.0 feet of vacated Odessa Street as the same Abuts Lot 97 on the North and that portion of the West 17.0 feet of vacated Main Street (above mentioned) on the North, all in the Village of Odessa, Buffalo County, Nebraska AND all that part of the Southwest Quarter of the Southeast Quarter (SW ¼ SE ¼) of Section Thirty-Three (33), Township Nine (9) North, Range Seventeen (17) West of the 6th p.m., Buffalo County, Nebraska, that lies North of the Right-of-Way of the Union Pacific Railroad, and the vacated alley as the same abuts Lots Ninety-Seven (97), Ninety-Eight (98) and Ninety-Nine (99) on the West, all in the Village of Odessa, Buffalo County, Nebraska. Voting yes were Skov, Heiden, Biehl, Covalt, Keep and Wolfe. Voting no: none. Absent: Pope, Steinbrink and Wietjes. Motion carried.

This rezoning also will be heard at the October 14, 2008 County Board meeting.

Old Business: Moved by Keep, seconded by Covalt to approve the minutes of the July 17, 2008 as mailed. Voting yes were Keep, Covalt, Biehl, Heiden, Skov and Wolfe. Voting no: none. Absent: Pope, Steinbrink 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 October 16, 2008 at 7:00 P.M. at the Highway Department.

Motion was made by Heiden, seconded by Covalt to adjourn at 9:10 P.M.