

MINUTES OF PLANNING & ZONING COMMISSION
MAY 21, 2009
BUFFALO COUNTY HIGHWAY DEPARTMENT
7:00 P.M.

Chairperson Wietjes opened the meeting at 7:05 P.M. at the Buffalo County Highway Department Building in Kearney, NE with a quorum present on May 21, 2009. Present were: Karin Covalt, Ken Erickson, Marlin Heiden, Willie Keep, Leonard Skov, Gwen Stengel, Paul Steinbrink, Sr., Craig Wietjes and Loye Wolfe. Absent: none. Also attending were Deputy County Attorney Andrew Hoffmeister, Zoning Administrator LeAnn Klein and eight members of the public.

Wietjes announced there was a copy of the open meetings act posted on the bulletin board and we do abide by the open meetings act and a copy is posted as required by law.

Agenda for such meeting was regularly posted as required by law and the agenda is available for anyone wanting one.

The public forum was opened at 7:09 P.M. No one was present to address the Commission. The public forum closed at 7:09 P.M.

There is a conservation easement between Michael and Patrese O'Brien, (Grantor) and Wetlands America Trust, Inc., a non-profit corporation (Grantee), that was referred to the Planning & Zoning Commission from the Buffalo County Board of Supervisors May 12, 2009 board meeting. According to Nebraska Rev. Stat. 76-2, 112 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. Attorney John Cunningham was present to represent the Grantee. Steve Donovan, a local biologist, was also present to answer any questions the Commission might have. Mr. Cunningham told the Commission pursuant to Nebraska law, they are required to get approval from the local zoning authority to make sure this meets with Buffalo County zoning requirements. This is for approximately 100 acres owned by Michael and Patrese O'Brien. He is asking for a recommendation of approval to the County Board.

Hoffmeister commented there had been a special use permit approved by Buffalo County on July 8, 2008 for quarry operation.

Mr. Cunningham said there would be no quarry operation at this site. They don't allow any type of commercial mining with these easements. This trust is a supporting organization of Ducks Unlimited and the legal description is the same as the deeds filed with the Register of Deeds office. This easement runs with the land and is subject to conditions as stated in this easement.

Klein noted she had received a call from Michael O'Brien on April 30, 2008 in which he said they would not be doing any mining on this property.

Mr. Cunningham explained this easement would prevent any future subdivisions from being built in this area.

Stengel asked the attorney to explain Section 2.4 of the easement and also water rights. She also asked about where the water rights are being transferred and what payments are made.

Cunningham explained they get grants to maintain wetlands. It requires a non-federal match. Cunningham also explained they are not transferring any water rights but these water rights stay with the land. The agricultural use can continue, it just can't be increased in the number of acres.

Heiden asked if the easement goes on forever and Cunningham replied this easement is perpetual and is filed with the real estate.

Keep asked if the property value would be impacted. Cunningham replied the property value would remain on the tax role. There will not be any mining or residential development.

Hoffmeister explained this area originally was all rural conservation before the County Board changed it to Agricultural.

Skov commented the primary purpose of this easement is to prevent future development.

It was moved by Erickson, seconded by Heiden to forward the conservation easement between Michael O'Brien and Patrese O'Brien (Grantor) and Wetlands America Trust, Inc., a non-profit corporation organized under the laws of the District of Columbia, a supporting organization of Ducks Unlimited, Inc., (Grantee) to the County Board with a favorable recommendation on a tract of land described as follows:

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 6TH P.M., 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 6th P.M., 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 S89°52'00"E and all bearings contained herein are relative thereto; thence N00°41'48"W and on the West line of 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, N02°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 N02°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, N51°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: S89°53'26"E a distance of 295.72 feet; thence N82°13'12"E a distance of 231.87 feet; thence N75°05'19"E a distance of 67.53 feet; thence S88°57'13"E a distance of 434.03 feet; thence S64°07'34"E a distance of 169.95 feet; thence S83°41'21"E a distance of 254.47 feet; thence S88°29'22"E a distance of 607.16 feet; thence N83°41'59"E a distance of 124.11 feet; thence N73°09'44"E a distance of 327.74 feet; thence leaving said existing fence line S04°23'14"E a distance of 1020.66 feet to a point on an existing fence line; thence S81°20'11"W and on said existing fence line a distance of 277.52 feet; thence continuing on said existing fence line the following courses and distances respectively: S18°21'29"W a distance of 109.21 feet; thence S66°55'38"W a distance of 626.83 feet; thence N86°39'08"W a distance of 1042.98 feet; thence N88°03'35"W a distance of 189.77 feet; thence S70°17'47"W a distance of 534.18 feet; to a point on an existing fence line; thence N09°49'10"W and on an existing fence line a distance of 44.09 feet to the place of beginning. Containing 75.47 acres, more or less. A TRACT OF LAND BEING PART OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER (NW1/4 NE1/4) LOCATED IN SECTION TEN (10) AND PART OF GOVERNMENT LOT ELEVEN (11), PART OF GOVERNMENT LOT THIRTEEN (13), PART OF GOVERNMENT LOT FOURTEEN (14) AND ACCRETIONS LOCATED IN SECTION THREE (3), ALL IN TOWNSHIP EIGHT (8) NORTH, RANGE FOURTEEN (14) WEST OF THE 6TH P.M., BUFFALO COUNTY, NEBRASKA, more particularly described as follows: Referring to the Southwest Corner of the Northeast Quarter of the Northwest Quarter of Section 10 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 S89°52'00"E and all bearings contained herein are relative thereto; thence N00°41'48"W and on the West line of the Northeast Quarter of the Northwest Quarter of said Section 10 a distance of 33.0 feet to a point on the North line of a Public Road (Kilgore Road); thence leaving the West line of the Northeast Quarter of the Northwest Quarter of said Section 10, S89°52'00"E and on the North line of said Public Road (Kilgore Road) a distance of 811.59 feet; thence S17°47'29"E and continuing on the Northerly line of said Public Road (Kilgore Road) a distance of 8.67 feet; thence N54°17'53"E and continuing on the Northerly line of said Public Road (Kilgore Road) a distance of 1177.02 feet; thence N49°47'04"E and continuing on the Northerly line of said Public Road (Kilgore Road) a distance of 501.58 feet; thence N60°57'23"E and continuing on the Northerly line of said Public Road (Kilgore Road) a distance of 324.97 feet to the ACTUAL PLACE OF BEGINNING; thence continuing N60°57'23"E and on the Northerly line of said Public Road (Kilgore Road) a distance of 354.83 feet; thence N71°27'13" E and continuing on the Northerly line of said Public Road (Kilgore Road) a distance of 198.71 feet; thence leaving the Northerly line of said Public Road (Kilgore Road) N20°19'11" W a distance of 196.40 feet; thence N42°45'03" W a distance of 322.60 feet; thence N14°44'59" W a distance of 121.04 feet to a point on an existing fence line; thence S81°20'11" W on an existing fence line a distance of 277.52 feet; thence continuing on said existing fence line the following courses and distances respectively: S18°21'29" W a distance of 109.21 feet; thence S66°55'38"W a distance of 626.83 feet; thence N86°39'08"W a distance 1042.98 feet; thence N88°03'35"W a distance of 189.77 feet; thence S70°17'47"W a distance of 534.18 feet to a point on an existing fence line; thence S08°48'59"E and on said existing fence line a distance of 118.25 feet; thence S86°49'14"E and on said existing fence line a distance of 55.90 feet to a point being 24.5 feet Northerly from the South line of Government Lot 14 located in said Section 3; thence continuing on an existing fence line the following courses and distances respectively: N81°51'37"E a distance of 167.24

feet; thence N63°33'18"E a distance of 301.25 feet; thence N82°23'33"E a distance of 96.48 feet; thence S73°22'52"E a distance of 296.32 feet; thence S22°26'43"E a distance of 113.66 feet; thence N80°31'06"E a distance of 204.03 feet; thence S86°51'35"E a distance of 174.79 feet; thence N86°38'05"E a distance of 229.06 feet; thence S74°55'55"E a distance of 107.03 feet; thence N73°54'16"E a distance of 236.25 feet; thence S86°36'19"E a distance of 567.17 feet; thence S01°49'07"E a distance of 200.07 feet; to the place of beginning. Containing 19.20 acres, more or less. 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 6TH P.M., 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 6th P.M., Buffalo County, Nebraska, and assuming the South Line of the Northeast Quarter of the Northwest Quarter of Section 10, as bearing S89°52'00"E and all bearings contained herein are relative thereto; thence N00°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 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, N02°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 N02°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, S51°17'43"W and on an existing fence line a distance of 224.37 feet; thence continuing on said existing fence line S82°59'02"W a distance of 123.59 feet to a point on an existing fence line; thence S09°49'10"E and on said existing fence line a distance of 1311.24 feet to the place of beginning. Containing 4.28 acres, more or less. A TRACT OF LAND BEING PART OF GOVERNMENT LOT FOURTEEN (14) AND ACCRETIONS LOCATED IN SECTION THREE (3), TOWNSHIP EIGHT (8) NORTH, RANGE FOURTEEN (14) WEST OF THE 6TH P.M., 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 6th P.M., Buffalo County, Nebraska, and assuming the South line of the Northeast Quarter of the Northwest Quarter of Section 10 as bearing S89°52'00"E and all bearings contained herein are relative thereto; thence N00°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, and said point being on the South line of Government Lot 14 of said Section 3; thence N02°02'39"E and leaving the Southerly line of Government Lot 14 of said Section 3, and on the West line of Government Lot 11 located in said Section 3 (if extended Southerly) a distance of 27.36 feet to the ACTUAL PLACE OF BEGINNING; thence continuing N02°02'39"E and on the West line of Government Lot 11 of said Section 3 (if extended Southerly) a distance of 158.66 feet to a point on an existing fence line; thence S09°49'10"E and on an existing fence line a distance of 44.09 feet; thence S08°48'59"E and continuing on said existing fence line a distance of 118.25 feet; thence leaving said existing fence line N86°49'14"W a distance of 31.35 feet to the place of beginning. Containing 0.06 acre, more or less.

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

Chairperson Wietjes opened the public hearing at 7:30 P.M. for a request of zoning map amendment filed by Blackhat Express/Gary Freeland for property described as a tract of land being located in the Northeast Quarter of the Northeast Quarter of Section 26, Township 9 North, Range 13 West of the 6th P.M., Buffalo County Nebraska containing approximately 31 acres. They wish to rezone this area from Agricultural (A) to Industrial (I) and from Commercial (C) to Industrial (I).

Paul Fredrickson with Fredrickson Construction was present to represent the applicant. This property is north of the I-80 Shelton interchange. Five acres of this is currently zoned Commercial and the remainder of this property is zoned Agricultural. They are asking to rezone both parcels to Industrial. They want to put a Commercial truck wash for cattle trailers and also livestock trailers. There is information in the packet from the Department of Environmental Quality regarding this application. The truck bay will have three bays and will be approximately 8200 square feet. There are two 6,000 square feet of solid storage area which will separate the liquids from the solids. There will also be one 30,000 square foot solid storage area. In the future they plan to build a 1600 square foot office building. They have cleaned up this site and the County has taken out the trees along 56th Road. Mid-State Engineering & Testing have prepared quite a bit of information which they also have submitted with the application. There are a number of truck washes for livestock trailers in the State but the majority of these will be shut down by DEQ. Packing houses will require the cattle trailers to be washed out after livestock is hauled. This is a suitable site because of the location between Grand Island and Gibbon. The engineers are working on designing this project. They will separate solids from the liquid and these two solid storage areas will be covered and it would be large enough to sustain storage for about six months. The 8.7 acres of manure storage pond will have a full liner and will handle the liquids for about 1 ½ years. Local people will take liquids to apply to local fields. The reason we are asking for a rezoning is that there is a lot of money that will be invested and they don't want to operate under a special use permit. There will be additional traffic in this area but they are planning on having the trucks exit off of the county road, run the trucks through the wash and they will exit onto the Shelton hard-surfaced road. The trucks will be parked for about one hour since the trucks will be hand-washed, not drove through. The benefits are this business will employ 12 full-time employees, they will generate property taxes and sales taxes and it will have cheap fertilizer for area farmers.

Heiden asked about the methane gas and also the traffic patterns. He also asked if area farmers will be taking anything out. Heiden also asked if floor wash from packing plants would be accepted.

Fredrickson replied there will be more traffic and he can't say if the trucks will come from Highway 30 or the Interstate. Fredrickson said farmers would be able to wash their stock trailers at this site. Stock trailers and cattle trailers would be the only items that would be washed at this facility. There would be no detergent used.

Hoffmeister reminded the Commission the only question before them is if this property should be rezoned to Industrial. This is not a special use permit application. He also asked how close the nearest home is located. There are two homes located to the north of this property.

Wolfe asked if the pond will be treated with anything and also if there would be a liner in the pond.

Fredrickson said they will have a liner in the pond and an engineer will be involved to meet DEQ requirements.

The Commission appreciates the extent of the information given to them.

Nelson Oliver lives about 250 yards north of this property and has concerns of the odor. He also asked if this would raise his taxes on his property. He also has concerns of his drinking water.

Fredrickson replied he wouldn't say there never will be any odor but by separating the solids from the liquid it will eliminate some of the odor. That is the reason they have consulted with DEQ and have an engineer involved to make sure things are done right.

Erickson said he is pleased they have consulted with DEQ.

Thomas Johnson questioned why this is being rezoned and why they don't do the special use permit instead. He sold this property to Freeland and he has restrictive covenants that go with the land. They could leave part of this property as Commercial and just do the special use permit. He questioned where this leaves the property he still owns.

Wietjes said the County doesn't deal with restrictive covenants. That is between the buyer and the seller.

Fredrickson said the cell has been re-designed and Johnson was told of the plan.

Hoffmeister referred to Section 11.3 of the Zoning Regulations.

Wietjes closed the public hearing at 8:15 PM.

Skov feels very comfortable with rezoning this area to industrial. It is next to the railroad and it is a very logical area to rezone.

Erickson also agreed by rezoning this area it will become a permanent fixture.

Wolfe understands that Mid-States Engineering will be involved.

Hoffmeister reminded the Commission if this area is rezoned, the truck wash will be a use by right.

Wietjes said this is a rezoning only. He commended Fredrickson on the amount of work that has already been done on this project.

Stengel has concerns of storage and land application of the waste.

Wietjes said Nebraska Department of Environmental Quality will be involved in the process.

Motion was made by Steinbrink, seconded by Heiden to forward this application submitted by Blackhat Express/Gary Freeland with the recommendation of approval of zoning map amendment from Commercial to Industrial on a tract of land being located in the Northeast Quarter of the Northeast Quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$) of Section Twenty-Six (26), in Township Nine (9) North, of Range Thirteen (13), West of the 6th p.m., in Buffalo County, Nebraska, more particularly described as being the West 654.05 feet of the East 694.05 feet of the North 333.0 feet of the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of said Section, AND recommend approval of zoning map amendment from Agricultural to Industrial on a tract of land being part of the Northeast Quarter of the Northeast Quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$), part of Government Lot Two (2) and accretion land abutting Government Lot 2, all in Section Twenty-Six (26), in Township Nine (9) North, of Range Thirteen (13), West of the 6th P.M., in Buffalo County, Nebraska, more particularly described as follows: Referring to the Northeast Corner of Section 26 and assuming the North line of said Section 26 as bearing N 89° 57' 39" W and all bearings contained herein are relative thereto; thence N 89° 57' 39" W and on the North line of said Section 26 a distance of 694.05 feet to the ACTUAL PLACE OF BEGINNING, said place of beginning also being on the West line of the East 694.05 feet of said Section 26; thence continuing N 89° 57' 39" W and on the North line of said Section 26 a distance of 1818.05 feet to a point on the Northerly line of a tract of land deeded to the Union Pacific Railroad Company as described on the Warranty Deed filed at Inst. 98-9790 filed on December 31, 1998 in the Office of the Buffalo County Register of Deeds; thence S 63° 55' 57" E and on the Northerly line of the aforesaid tract of land deeded to the Union Pacific Railroad Company a distance of 1164.47 feet to a point of curvature; thence on a 3919.72 foot radius curve to the right and continuing on the Northeasterly line of said tract of land deeded to the Union Pacific Railroad Company an arc distance of 791.69 feet to a point being S 58° 08' 37" E a chord distance of 790.34 feet from the previously described point; thence leaving said Northerly line N 73° 08' 08" E a distance of 790.91 feet to a point on the West Right-of-Way line of Highway Link 10-D (Shelton Road), said point also being 40.0 feet Westerly of as measured at right angles from the East line of said Section 26; thence N 00° 06' 54" W and on the West Right-of-Way line of Highway Link 10-D (Shelton Road) a distance of 364.30 feet to a point being 40.0 feet Westerly of as measured at right angles from the East line of said Section 26, said point also being on the South line of the North 333.0 feet of said Section 26; thence N 89° 57' 27" W and on the South line of the North 333.0 feet of said Section 26 a distance of 654.05 feet to the Southwest Corner of the East 694.05 feet of the North 333.0 feet of said Section 26; thence N 00° 06' 54" W on the West line of the East 694.05 feet of said Section 26 a distance of 333.0 feet to the place of beginning. Containing 26.06 acres, more or less, of which 1.34 acres, more or less, are presently being used for road purposes on the North side.

Voting yes were Steinbrink, Heiden, Covalt, Erickson, Keep, Stengel, Skov, Wietjes and Wolfe. Voting no: none. Motion carried.

Klein said this will be heard before the County Board on June 9, 2009.

Old Business: Moved by Skov, seconded by Stengel to approve the minutes of the April 16, 2009 as mailed. Voting yes: Skov, Stengel, Erickson, Covalt, Heiden, Keep, Steinbrink, Wietjes and Wolfe. Voting no: none. 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 18, 2009 at 7:00 P.M. at the Highway Department.

Moved by Stengel to adjourn at 8:50 P.M.