

MINUTES OF PLANNING & ZONING COMMISSION  
MARCH 15, 2012  
BUFFALO COUNTY COURTHOUSE  
7:00 P.M.

Chairperson Erickson opened the meeting at 7:00 P.M. at the Buffalo County Courthouse in Kearney, NE on March 15, 2012.

Present were: Scott Brady, Ken Erickson, Marlin Heiden, Willie Keep, Richard Skelton, Paul Steinbrink, Sr., Gwen Stengel and Loye Wolfe. Absent: Leonard Skov. Also attending were Deputy County Attorney Andrew Hoffmeister, Zoning Administrator LeAnn Klein and twenty-two members of the public.

Chairperson Erickson announced there was a copy of the open meetings act posted on the bulletin board and we do abide by the open meetings act.

Chairperson Erickson presented plaques to Karin Covalt, who had been a member of the Planning & Zoning Commission since November of 2003 and to Craig Wietjes, who had been a member of the Planning & Zoning Commission since January of 2004. He thanked them for their years of service to Buffalo County.

Richard Skelton was welcomed as the newest member of the Commission.

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 7:05 P.M. Keith Brown of Central City was present and expressed concern he was not notified regarding the gravel pit hearing. His property is one mile from the gravel pit and he thinks he should have been notified. Chairperson Erickson told him landowners within 300' are notified of potential hearings. The public forum closed at 7:09 P.M.

Chairperson Erickson opened the public hearing at 7:09 P.M for a special use permit for Roland Whitney on behalf of Carl Whitney Sand & Gravel Inc. for property described as the South Half of the East Half of the Northeast Quarter of Section Twenty three (23), Township Nine (9) North, Range Thirteen (13) West of the 6<sup>th</sup> p.m. Buffalo County, Nebraska for a gravel pit. This was continued from the February 16, 2012 meeting.

Deputy County Attorney Hoffmeister explained the process of special use permits and also zoning map amendments. He told the audience the public hearing would be re-opened because of the new plan the Commission had received. He also explained the process of a public hearing.

Chairperson Erickson declared the public hearing re-opened.

Paul Brungardt, an engineer, was present to represent Roland Whitney. The drawings have come from his office. The issues of concerns are on drainage. He told the Commission a triple box culvert (38' x 3') is located under the Shelton Road and drains the north 40 acres. The North

Channel of the Platte River is also to the south of these forty acres. The scope of their work is in the south forty acres and will not impede the flow of water. He is aware of the issues to the west of this property.

Hoffmeister showed both drawings to the audience and the correct drawing shows the south forty acres only.

Erickson asked Brungardt if he thought drainage was an issue. Brungardt replied not on the south forty acres. He does believe there are issues with the north forty acres.

Heiden asked if the pit would be straight up and down. Whitney told him no, it would slope.

Hoffmeister asked where the entrance to the property would be. Brungardt responded the entrance is directly off the Shelton Road, a hard surfaced road.

Brady asked if the size would encompass what is shown on the submitted drawing. Brungardt said the edge of the pumping would be several hundred feet from adjoining properties. All of the pumping would be contained on site. The setbacks for pumping were discussed.

Hoffmeister asked how soon he would begin pumping. Whitney replied as soon as he gets the permit.

Erickson asked if the waste would go on the southwest corner of the property. The only thing that will leave the site will be sand and gravel.

Wolfe asked about the hours of operation and how many years will he pump. Whitney responded most of the time it is 8-5, five days per week unless they get a State contract. As for the length of time, they won't know until they start pumping. A lot will depend on how much gravel is located on this property. She also asked if the entrance would have to be widened. Whitney said they would have to enlarge the entrance to allow for big trucks. They would have to apply to the State Department of Roads to get their entrance permit.

Scott Stubblefield was present and also owns land about ¼ mile to the northwest of this area. He asked if the level of ground would be the same as when he started. Whitney said he couldn't tell him that. If this special use permit is approved, would the next permit be approved? There is a ridge that runs from northeast to southwest. Will the ridge force more water to the north? He doesn't want any additional ground water coming back onto his property.

Brungardt said the waste would be piled on the high part of the ground in the southwest corner of the lot.

Keep asked what the soil type was. The soil type is silver creek. Ground water flows through this type of soil.

Hoffmeister said there would be other factors involved. There is a need for gravel pits in the County.

Erikson said each special use permit is looked at individually. The north forty acres would have more drainage issues.

Loren Niemack asked how we could give a special use permit when the property is not zoned industrial.

Hoffmeister explained the process of a special use permit again.

Niemack questioned if an environmental study has been done. He owns property directly to the west. He has concerns water will be pushed back onto his property. He has contacted NRD and also talked to the Army Corps of Engineer. He said they need to get a 404 permit through the Corp. He passed out maps to the Commission. He questioned how far Whitney will be able to pump from adjoining property owners, from Shelton Road and from the Platte River.

Erickson said they need the County permit first before they can get the 404 permit.

Keith Brown has concerns of drainage in this area. If the pumping is on the south forty, there are not as many sloughs as the north forty.

Brady asked if there could be drainage relief to provide the necessary drainage in this area?

Brungardt has been out to the site many times. Some of the culverts are probably not the correct size to handle all the water in this area. There are lots of "fingers" in this area.

Hoffmeister asked if 200' setbacks would be a problem.

Niemack said you can't pump in the Platte River. He doesn't want sand drifting onto his property. He is opposed to this and doesn't want it. You can't plug up a natural drain way.

Stubblefield asked if the Commission also could disapprove the permits.

Erickson closed the public hearing at 8:00 PM.

Stengel reiterated they need to do something before the permit is sent elsewhere. After the process begins, they can then apply for the 404 permit through the Army Corps of Engineer. Also there may be a need to apply for floodplain activity permits.

Heiden questioned the setbacks and the distance. The entire forty will not be water.

A motion was made by Heiden to recommend approval of this permit for a special use permit to quarry sand and gravel on the subject property to the County Board with one condition: 1. There will need to be a minimum setback of 200' from excavation from property lines.

Brady seconded the motion but asked that it be amended to additionally require as a condition that the design incorporate as a plan, and a construction practice once operational, a drainage plan and practice that would not hinder and possibly enhance the drainage and the natural flow of

water across the subject property. Brady's second with this amendment was accepted by Heiden. The subject property is the following legal description on the South Half of the East Half of the Northeast Quarter of Section 23, Township 9 North, Range 13 West of the 6<sup>th</sup> p.m., Buffalo County, Nebraska, excepting therefrom a strip of land deeded to Buffalo County, Nebraska by Quitclaim Deed recorded July 14, 1959 in Deed Book 171, Page 309. Thereafter discussion was had on the motion as amended and a conclusion of Commission discussion, the Chairperson called for a vote by roll call. Voting yes were Heiden, Brady, Erickson, Heiden, Keep, Skelton, Steinbrink, Stengel and Wolfe. Voting no: none. Absent: Skov. Motion passed. The Chairperson declared that the Motion had passed for favorable recommendation with the two conditions on an 8-0 vote, with one member absent, and the application with this Commission's recommendations would be forwarded to the County Board for its consideration.

The next hearing was for a zoning map amendment filed by Mitch Humphrey on behalf of Jim and Gayle Knoll Bruner for property described as a parcel in Government Lot 1 and Lot 2, NW ¼ of the NW ¼ and accretions except part of Section 24, Township 9 North, Range 13 West of the 6<sup>th</sup> p.m., Buffalo County, Nebraska from Agricultural to Agricultural-Residential. Erickson opened the public hearing at 8:15 P.M.

Mitch Humphrey was present and represented Jim and Gayle Knoll Bruner. This property is located just east of the previous application. The Bruner's have had a gravel operation at this location since 1945. This property is also in a floodplain. The Bruner's live at the site in the northwest corner. There is a drainage area that cuts through the northwest corner of this site and they have kept this channel open. Jim has formally retired and wants to re-zone this area from Agricultural to Agricultural-Residential. It is next to a hard-surfaced road and is not an active pit. The north channel of the Platte River borders the south boundary of this property. There is no other viable use for this property. This is located two miles south of Shelton.

Hoffmeister asked where the access to these lots would be.

Humphrey replied directly off of Shelton Road.

Wolfe asked how much would have to be built up. Humphrey replied it won't have to be built up very much. He doesn't have the exact heights. Most of the area has been built up.

Heiden asked when they officially quit pumping. Bruner replied September 15, 2009 was the last date they had quit pumping.

Hoffmeister questioned if gravel excavation was allowed in AGR.

Keep showed him where it had been added in the zoning regulations.

Wolfe stated this area would be a beautiful spot for homes.

Follmer agreed this is a good spot for houses.

Erickson read letters of support from Cornerstone Bank, RAI of Nebraska, Village of Shelton and Shelton Public School district. They encourage the change from AG to AGR to encourage additional housing in the Shelton vicinity.

Erickson reiterated the only thing we are doing is rezoning this property.

Heiden asked about the width of the drainage area.

Erickson closed the public hearing at 8:35 P.M.

Moved by Brady, seconded by Stengel to approve the zoning map amendment from Agricultural (A) to Agricultural-Residential (AGR) and forward to the County Board with approval on the following legal description: Government Lot 1 and Government Lot 2 and the Northwest Quarter of the Northwest Quarter (NW ¼ NW ¼ ) and accretions all located in Section Twenty-four (24), Township Nine (9) North, Range Thirteen (13) West of the Sixth Principal Meridian, Buffalo County, Nebraska, EXCEPTING THEREFROM a strip of land deeded to the County of Buffalo in the State of Nebraska recorded August 13, 1963 in Deed Book 183, Page 563, EXCEPTING THEREFROM; a tract of land being part of the Northwest Quarter of the Northwest Quarter (NW ¼ NW ¼ ) and part of Government Lot Two (2) located in Section Twenty-four (24), Township Nine (9) North, Range Thirteen (13) West of the Sixth Principal Meridian, Buffalo County, Nebraska, more particularly described as follows: Referring to the Northwest Corner of the Northwest Quarter in Section 24 and assuming the North line of the Northwest Quarter of the Northwest Quarter and the North line of Government Lot 2 in Section 24 as bearing N 89° 39' E and all bearings contained herein are relative thereto; thence N 89° 39' E and on the North line of the Northwest Quarter of the Northwest Quarter in said Section 24 a distance of 50.0 feet to the ACTUAL PLACE OF BEGINNING, said point being the Northeast Corner of a tract of land deeded to Buffalo County as described in Quit Claim Deed filed in Deed Book 183, Page 563, recorded August 13, 1963 in the Office of the Buffalo County Register of Deeds; thence continuing N 89° 39'E and on the North line of the Northwest Quarter of the Northwest Quarter in said Section 24 a distance of 1274.28 feet to the Northeast Corner of the Northwest Quarter of the Northwest Quarter in said Section 24; thence continuing N 89° 39' E and on the North line of Government Lot 2 in said Section 24 a distance of 310.02 feet; thence leaving the North line of Government Lot 2 in said Section 24, S 55° 54' 10" W a distance of 333.23 feet; thence S 58° 09' 22" W a distance of 193.0 feet; thence S 85° 30' 18" W a distance of 114.0 feet; thence S 76° 36' 16" W a distance of 231.0 feet; thence S 65° 45' 51" W a distance of 766.0 feet; thence N 88° 27' 32" W a distance of 106.0 feet a point on the East line of said tract of land deeded to Buffalo County, said point being 50.0 feet Easterly of as measured at right angles from the West line of the Northwest Quarter of the Northwest Quarter in said Section 24; thence N 00° 07' 54" W and on the East line of said tract of land deeded to Buffalo County and on a line parallel with the West line of the Northwest Quarter of the Northwest Quarter in said Section 24 a distance of 653.0 feet to the place of beginning, AND ALSO EXCEPTING THEREFROM; a tract of land being part of Government Lot Two (2) and part of accretions to Government Lot Two (2), all located in Section Twenty-four (24), Township Nine (9) North, Range Thirteen (13) West of the Sixth Principal Meridian, Buffalo County, Nebraska, being more particularly described as follows: Referring to the Northeast Corner of Section 24 and assuming the North line of the Northeast Quarter of said Section 24 as bearing S 89° 40' 12" W

and all bearings contained herein are relative thereto; thence S 89° 40' 12" W and on the North line of said Section 24 with said North line also known as the North line of Government Lot 3 and the North line of Government Lot 2 in said Section 24, a distance of 1684.16 feet to the ACTUAL PLACE OF BEGINNING; thence continuing S 89° 40' 12" W and on the aforesaid North line a distance of 1009.00 feet to the North One-Quarter of said Section 24, said point also being the South One-Quarter of Section Thirteen (13), Township Nine (9) North, Range Thirteen (13) West of the Sixth Principal Meridian, Buffalo County, Nebraska, with said points being monumented with a pipe and brass cap as described in the Dependent Resurvey completed by the United States Department of the Interior, Bureau of Land Management, on August 23, 1974; thence South on a line as the same would be extended to the Southwest Corner of the Southeast Quarter of said Section 24 a distance of 1395.00 feet; thence N 35° 45' 55" E a distance of 1726.38 feet to the place of beginning, TOGETHER WITH rights of ingress and egress over and across a tract of land described as being the North 33.0 feet of Government Lot 2 located West of the aforescribed tract and the North 33.0 feet of the Northwest Quarter of the Northwest Quarter all located in said Section 24.

Voting yes were Brady, Stengel, Erickson, Heiden, Keep, Skelton, Steinbrink and Wolfe. Voting no: none. Absent: Skov. Motion passed.

The next hearing was a public hearing for recommendation to amend Buffalo County Zoning Regulations to allow wind turbines as a special use permit under Section 5.64 #5 in Industrial zoning.

Erickson opened up the public hearing at 8:35 P.M.

Hoffmeister handed out an amendment and explained we also would need to add Wind Farms in addition to wind powered generation of electrical power. Anything above 65 kilowatt would make it a wind farm. Dennis Jorgensen consented to the proposed amendment as drafted by Hoffmeister.

Dennis Jorgensen was present and told the Commission his wind turbine would not exceed 110'. Grain legs at Buda are just as tall as this wind turbine and Platte Valley Feeders would also have a tall structure. Jorgensen said his facility would use about 60 kilowatt in the winter time.

Brady asked how many homes would be lit from a wind turbine of this size.

Dave Behle from Dawson Public Power District was present and said he been working with Jorgensen on this wind turbine. He told the Commission the amount of output for these wind generators at 60 kilowatt would provide electricity for about 6 homes. Anything above a 25 kilowatt would have net metering. Their engineers would have to look at this turbine and approve it. This would be the first wind turbine that Dawson Public Power would have.

Hoffmeister said wind farms and smaller turbines are allowed with a special use permit in the AG district and smaller turbines are allowed in an AGR district with a special use permit.

The question before the Commission is if wind turbines should be allowed by special permit process in the Industrial zoned areas of Buffalo County.

Tim Williams, a pilot, was present and has concerns with the placement of this wind turbine in proximity to the Airport.

Jim Lynaugh, Kearney Airport Manager, was present and has issues and concerns if this is approved. They have student pilots, commercial aircraft and loaded spray planes. His concern is the left turn outs that planes make sometimes upon take off. Sometimes these spray planes are heavily loaded and they have difficulty taking off.

Brady asked if the City of Kearney's jurisdiction was to the west of this area.

Klein has a map which shows the 2-mile jurisdiction line for the City of Kearney.

Erickson asked if the Federal Aviation Administration had approved this wind turbine.

Jorgensen has already received approval from the Federal Aviation Administration.

Dave Behle with Dawson Public Power District will work out the details with Jorgensen.

Erickson closed the public hearing at 9:08 P.M.

Motion was made by Brady, seconded by Heiden to recommend approval of the zoning amendment and forward to the County Board to add as separate special uses in the Industrial district the following language in Section 5.64:

5. Wind powered generation of electrical power
6. Wind Farms

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

The next public hearing was for a special use permit for Select Sprayers & Equipment, L.L.C. for a wind turbine on property described as part of the W ½ of the SW ¼ of Section 26, Township 9 North, Range 15 West of the 6<sup>th</sup> p.m., Buffalo County, Nebraska.

Erickson opened up the hearing at 9:11 P.M.

Jorgensen said his business has always been environmentally friendly. He said the wind turbine would not be over 110' and would not exceed 65 kilowatt.

Hoffmeister asked the following questions:

1. If there would be lighting on the tower?
2. If they could meet the required setbacks as specified in the draft for proposed amendments in the 2012 Comprehensive Plan as they now exist together with other specifications?

3. Where is the tower located on the property?
4. If there would be fencing?
5. How big is the lot?
6. Is the wiring underground?

Jorgensen replied as follows:

1. There would be a red light on the turbine as required by FAA.
2. Yes, they can meet the required setbacks.
3. The tower is located in the northeast corner of the lot.
4. Yes, there would be fencing.
5. The lot is 9 acres.
6. Yes, all the wiring is underground

Sean Pender, who manages Buffalo Air Service, also has concerns in placing the turbine at this location. Is this really the best spot for a wind turbine? A loaded spray plane can be 8,000 pounds. There are two grain bins approximately 100' in height also located in this area and with this turbine, it would leave a small window upon take off. Buffalo Air Service uses the runway closest to the wind turbine.

Hoffmeister asked how many flights per day. Airport Manager Lynaugh responded there are 30,000 yearly take off and landings per year.

Tom May, another pilot, also has concerns. The wind tower would be in the way with a hard left turn. There are existing structures south of this area which have been there a long time.

Brady asked if there have been near hits with the grain bins and elevator legs. Lynaugh was not aware of any. Lynaugh reiterated it would affect the hard left turn upon take-off.

Brady asked if the tower height could be lowered. Jorgensen responded they could lower the tower height by 10 feet.

The Federal Aviation Administration has approved this wind turbine.

Erickson closed the public hearing at 9:30 P.M.

Keep said its unfortunate the wind turbine is located at this location but that runway is not used 12 months out of the year but just during the spray season.

Motion was made by Steinbrink, seconded by Wolfe for a recommendation to approve the special use permit on a wind turbine and forward to the County Board on the following legal description: A tract of land being part of the West Half of the Southwest Quarter (W ½ SW ¼ ) of Section Twenty-Six (26), Township Nine (9) North, Range Fifteen (15) West of the Sixth Principal Meridian, Buffalo County, Nebraska, more particularly described as follows: Referring to the Northwest Corner of the Southwest Quarter of said Section 26 and assuming the west line of said Southwest Quarter as bearing SOUTH and all bearings contained herein are relative thereto: thence SOUTH on the aforesaid WEST line a distance of 696.62 feet to the ACTUAL



PLACE OF BEGINNING; thence continuing SOUTH on the aforescribed course a distance of 960.0 feet to a point on the northerly right-of-way line of the Union Pacific Railroad; thence N 73° 13' 15" E on the aforesaid right-of-way line a distance of 447.03 feet; thence NORTH parallel with the West line of said Southwest Quarter a distance of 830.95 feet; thence WEST a distance of 428.0 feet to the place of beginning with the following conditions:

1. Limit the tower height to 100'
2. Limit the wind turbine up to 65 kilowatt
3. The wind turbine shall be located in the northeast part of the lot
4. Located on a lot or parcel of at least three (3) acres;
5. Shall be permitted by an approved special use permit to be issued in the AG, AGR, C and I zoning districts.
6. SWECS shall maintain a minimum setback distance from any property line of one and one-half (1.5) times the total system height of the windmill for non-participating property owners. Adjoining property owners (second or third additional farm/ranch single dwelling) participating in the same or Aggregated Project shall have no setback requirements between adjoining properties.
7. SWECS shall maintain a minimum setback distance from any public road, or highway of at least one point one (1.1) times the total system height of the windmill from the public road or highway right-of-way. (45 feet from the center of the road)
8. In no case shall a WECS be located within any required setback or in any front yard area.
9. Turbine towers when painted or coated, shall be of a non-reflective white, grey, or other neutral color and shall not be used to display advertising.
10. SWECS shall not be artificially lighted unless such lighting is required by the Federal Aviation Administration (FAA).
11. All electrical wires associated with a small wind energy system other than the wires necessary to connect the wind generator to the tower wiring, the tower wiring to the disconnect junction box, and the grounding wires shall be located underground.
12. The minimum distance between the ground and any part of the rotor blade system shall be thirty (30) feet.
13. All ground mounted electrical and control equipment must be labeled and secured to prevent authorized access. A tower may not have step bolts or a ladder within eight (8) feet of the ground that is readily accessible to the public.
14. The owner of a small wind energy facility shall minimize or mitigate any interference with electromagnetic communications, such as radio, telephone or television signals caused by the facility.
15. Construction access must be regraded and re-vegetated to minimize environmental impacts.
16. A SWECS application must include an agreement that addresses decommissioning and abandonment of the facility. The agreement must at a minimum provide for reuse or dismantlement of the facility at the owner's expense.

Voting yes were Steinbrink, Wolfe, Brady, Erickson, Heiden, Keep, Skelton and Stengel. Voting no: none: Absent: Skov. Motion passed.

Lonnie Dickson, Regional Planner with Hanna Keelan Associates, was present. He reviewed the proposed changes of the updated Comprehensive Plan. This was discussed at length.

Motion was made by Stengel, seconded by Wolfe to set April 19, 2012 as the public hearing to adopt the Buffalo County Comprehensive Plan and Land Use Map and instruct the Zoning Administrator to publish the necessary legal notice and notify the necessary parties. Voting yes were Stengel, Wolfe, Brady, Erickson, Heiden, Keep, Skelton and Steinbrink. Voting no: none: Absent: Skov. Motion carried

Old Business: Moved by Heiden, seconded by Keep to approve the minutes of the February 16, 2012 as mailed. Voting yes: Heiden, Keep, Brady, Erickson, Skelton, Steinbrink, Stengel and Wolfe. Voting no: none. Absent: Skov. Motion passed.

Stengel told the Commission Campbell's truck wash is still operating in the Ravenna area.

The next meeting of the Planning & Zoning Commission will be April 19, 2012 at 7:00 P.M. at the Buffalo County Courthouse.

Stengel moved to adjourn at 10:50 P.M.