

MINUTES OF PLANNING & ZONING COMMISSION
FEBRUARY 20, 2014
BUFFALO COUNTY COURTHOUSE
7:00 P.M.

Zoning Administrator LeAnn Klein opened the meeting at 7:08 P.M. at the Buffalo County Courthouse in Kearney, NE with a quorum present on February 20, 2014.

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

Notice of the meeting was given in advance thereof by publication in the legal newspaper. A copy of the proof of publication is on file in the Zoning Administrator's office. Advance notice of the meeting was also given to the Planning & Zoning Commission and availability of the Agenda was communicated in the advance notice. The agenda is available for anyone wanting a copy of the agenda.

Zoning Administrator Klein announced that in accordance with Section 84-1412 of the Nebraska Revised Statutes, a current copy of the Open Meetings Act is available for review and we do abide by the Open Meetings Act.

Klein asked for nominations for Chairperson. A motion was made by Stengel, seconded by Erickson to nominate Scott Brady for Chairperson. Klein called for nominations three times. There were no further nominations. Voting yes were Stengel, Erickson, Heiden, Skov and Steinbrink. Voting no: none. Abstain: Brady. Absent: Keep, Skelton and Wolfe.

Klein turned the meeting over to Chairperson Brady.

Chairperson Brady called for the election of a Vice Chairperson. Motion was made by Erickson, seconded by Stengel to nominate Willie Keep for Vice Chairperson. Chairperson Brady called for nominations three times. Voting yes were Erickson, Stengel, Brady, Heiden, Skov and Steinbrink. Voting no: none. Absent: Keep, Skelton and Wolfe.

Chairperson Brady called for the election of a Secretary. Motion was made by Erickson, seconded by Skov to nominate Gwen Stengel for Secretary. Chairperson Brady called for nominations three times. Voting yes were Erickson, Skov, Brady, Heiden, and Steinbrink. Voting no: none. Abstain: Stengel. Absent: Keep, Skelton and Wolfe.

The public forum was opened at 7:11 P.M. There was no one present to address the Commission. The public forum closed at 7:11 P.M.

Chairperson Brady opened the public hearing at 7:12 P.M. for a zoning map amendment submitted by Future Holdings, LLC. from Agricultural to Industrial on the following legal description: a tract of land being part of the Southwest Quarter (SW ¼) of Section Twenty-One

(21), Township Nine (9) North, Range Fourteen (14) West of the Sixth Principal Meridian, Buffalo County, Nebraska, lying northerly of the North right-of-way line of U.S. Highway 30.

John Widdowson was present on behalf of Future Holdings, LLC. He told the Commission he is one of the owners and they would like to rezone this property from Agricultural to Industrial. Hoffmeister asked how many acres it is and Widdowson responded that it is 11.16 acres.

Hoffmeister referred to Section 11.3 of the Zoning Regulations. This is a zoning map amendment. Hoffmeister also showed the other industrial areas in this vicinity.

Hoffmeister told the Commission this property is west of Gibbon. Hoffmeister asked if it was served by three phase wiring. Widdowson responded he thought it was. He was also asked what school district this was in. Widdowson assumed it was the Gibbon school district.

Heiden asked if it was east of the Ravenna Road. Widdowson said it was on the corner of Highway 30 and the Ravenna Road.

Stengel questioned where the entrances would be. Widdowson told her currently there is an entrance off of Ravenna Road. She also asked if they would have a frontage road. Widdowson said he didn't know. He hasn't explored the options yet. He has contacted the Nebraska Department of Roads but hasn't heard back from them yet.

Hoffmeister showed the future land use map to those in attendance. The future land use map shows this area as Commercial.

Brady asked if there was a single use for the property or multiple uses. Widdowson replied he didn't know yet what business would be going in there.

Brady read the letter from the Union Pacific Railroad into the record.

Hoffmeister asked if there were crossing arms at the railroad intersection. It was the consensus there were crossing arms at this location.

Brady asked if there should be any environmental concerns.

Skov said it is hard to know whether industrial is a good fit not knowing what is going in there. Is this the right time to do this?

Fisk showed the Commission the listing of Industrial uses and also the special use for Industrial zoning.

Erickson stated once it is rezoned, than the business becomes a use by right.

Brady said this also could be Commercial. Commercial properties are mostly retail and service businesses. He also questioned why Widdowson had picked Industrial. Widdowson replied in case they wanted a welding shop, than it would be zoned correctly.

Steinbrink asked where the closest Commercial property was located. Hoffmeister showed him how far the Commercial property was located.

Erickson asked if they would continue to farm this parcel. Widdowson responded they would continue to farm this parcel until which time it is sold.

Widdowson said they have made a significant investment in this property and they would like to have this rezoned to Industrial.

Dan Stephens was present and voiced his concerns in having this zoned Industrial. Once it is rezoned to Industrial, this opens this up to just about any type of business and there are no controls. He feels it should be done with a special use permit to better control what business goes in. There are four residences close to this property that would be adversely affected.

Erickson asked him if he had a trucking business at his residence. Stephens replied he had five trucks on 4 ½ acres. There are only two trucks parked there at night. They come and go. His biggest opposition is the unknown.

Hoffmeister went over the lot size and setbacks for Industrial zoning and also the lot size for Commercial zoning.

Heiden asked if the setbacks include parking lots. There are parking restrictions in our zoning regulations.

Stephens reiterated he would like to see a special use permit for this property.

Irene Mercer also lives in this vicinity and has concerns of the water usage and how it will affect their well. She also has concerns of the amount of traffic and there are no turning lanes on the Ravenna Road for trucks or cars. She said this would be a good place for residential homes.

Heiden said the State would have to address the problem with the traffic.

Widdowson questioned why the County has Industrial and Commercial zoning. They want to be good neighbors. They want to be Industrial to do the same thing as Select Sprayers or Millwright. They want the option to be able to manufacture something.

Brady asked if they had a major opposition in going with a special use permit. Widdowson replied this would be another hurdle to go through. They don't want to limit their options.

Mark Hahn questioned why do we have industrial zoning if it doesn't fit in County zoning.

Loretta Salaz stated the other industrial uses don't have residences close by.

Stephens also asked about the drainage problems in this area. He wanted to reiterate that this property is zoned Agricultural and they could apply for a special use permit for this area. This way the County would have more control of what is going to develop in this area.

Brady closed the public hearing at 8:36 P.M.

More discussion followed.

Erickson questioned if they needed to vote either for or against this motion.

Skov questioned what reasons the Commission could give for denying this application.

Motion was made by Erickson, seconded by Stengel to deny the zoning map amendment submitted by Future Holdings, LLC from Agricultural (A) to Industrial (I) and forward to the County Board with denial on the following legal description: a tract of land being part of the Southwest Quarter (SW ¼) of Section Twenty-One (21), Township Nine (9) North, Range Fourteen (14) West of the Sixth Principal Meridian, Buffalo County, Nebraska, lying northerly of the North right-of-way line of U.S. Highway 30. They are requesting the applicant comes back with a special use permit for this particular tract of land. They are denying this zoning change due to the close proximity of the residential properties and also not knowing what is going to go in at this location. It's also close to an urbanized area.

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

The next hearing was opened at 9:05 P.M. that Section 3.02, 3.14, 3.20, 4.04 and 9.03 of the subdivision regulations be amended.

Hoffmeister explained the following changes. Discussion followed. The hearing was closed at 9:16 P.M.

Motion was made by Brady, seconded by Steinbrink that Section 4.04 be amended to read as follows and forward these changes to the County Board with approval.

Sec. 4.04 EASEMENTS Easements of at least ten (10) feet in width shall be provided and dedicated on each side of rear lot lines and side lot lines, and fifteen (15) feet along front lot lines from the front lot line, for poles, wires, conduits, utility boxes, storm drains, wastewater collectors, water, or other mains. Easements of greater width may be required along or across lots where necessary for the extension of mains, sewers, or other utilities.

AS SUBMITTED TO P & Z:

Sec. 4.04 EASEMENTS Easements of at least ~~ten (10) feet in width shall be provided and dedicated on each side of rear lot lines and side lot lines, and~~ fifteen (15) feet shall be provided and dedicated along front lot lines from the front lot line, for poles, wires, conduits, utility boxes, storm drains, wastewater collectors, water, or other mains. Easements of greater width may be required along or across lots where necessary for the extension of mains, sewers, or other utilities.

AS RECOMMENDED BY P & Z:

Easements of at least ten (10) feet in width shall be provided and dedicated on each side of rear lot lines and side lot lines, and fifteen (15) feet shall be provided and dedicated along front lot lines from the front lot line, for poles, wires, conduits, utility boxes, storm drains, wastewater collectors, water, or other mains. Easements of greater width may be required along or across lots where necessary for the extension of mains, sewers, or other utilities.

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

Motion was made by Erickson, seconded by Stengel to amend Section 3.14 and Section 3.02 as follows:

AS SUBMITTED AND RECOMMENDED FOR APPROVAL BY P & Z:

Sec. 3.14 FILING FINAL PLAT

B. Proof of payment of taxes and assessments When final plat is delivered, the subdivider shall provide a statement attached or affixed to final plat from the County Treasurer's Office showing that, according to the Treasurer's records as of date of statement, there are no delinquent liens of taxes against said land within the proposed subdivision or any part thereof. The subdivider shall also provide a statement attached or affixed to plat from the County Treasurer's Office showing that all special assessment installment payments are ~~current~~ not delinquent as applied to the proposed subdivision or any part thereof. The County shall assume no responsibility for any tax or special assessment liability on the property to be subdivided, and approval of said final plat shall not be construed as either approval of or act as a waiver of the enforcement of all applicable statutes and resolutions with regard to the collection of taxes and special assessments on the proposed subdivided property or any part thereof. ~~All taxes and special assessments must be paid in full on all real property dedicated in fee to a public use.~~ Language of suggested statement or certification is appended hereto as "Exhibit B".

AND:

Sec. 3.02 ADMINISTRATIVE SUBDIVISION The Planning and Zoning Administrator or his/her authorized representative is hereby authorized to approve subdivisions as preliminary subdivision and submit the same to the Board as a final plat, under the following conditions:

O. Proof of payment of taxes and assessments When final plat is delivered, the subdivider shall provide a statement attached or affixed to final plat from the County Treasurer's Office showing that, according to the Treasurer's records as of date of statement, there are no delinquent liens of taxes against said land within the proposed subdivision or any part thereof. Language of suggested statement or certification is appended hereto as "Exhibit B".

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

Motion was made by Heiden, seconded by Erickson that Section 3.20 be changed as follows and forward to the County Board with approval:

3.20 MINOR SUBDIVISION CHANGES Minor Subdivision changes may be used after approval of Final Plat or division of Final Plat for dividing one (1) lot into two (2) parts, combining two (2) or more lots (or parts of lots) into one (1) parcel, or a combination thereof; or moving lot line between two abutting lots or several lots that have a common lot line. This definition shall apply only once to any subdividing transaction or conveyance involving any specific lot or combination of lots. Transaction or conveyances classified, as minor subdivision changes are hereby deemed not to constitute a “subdivision” for purposes of this regulation.

A. Conditions The following conditions shall be fulfilled to allow such change(s):

1. **Improvements** All required improvements shall have been installed and be available to the resulting parcel(s).
2. **No changes in Dedications to Public** There can be no dedication and/or change of public rights-of-way excepting dedication of additional street right of way that are needed to make the street width compliant with minimum design standards with conveyance accomplished by quit claim deed or similar deeding for entire width of public right of way. Any easement occupied by a utility cannot be changed. (Resolution 12-10-13)
3. **Remaining Parcels Must Comply with Zoning Laws** All resulting parcel(s) of land shall comply with all other applicable zoning and subdivision regulations in effect at time of submittal of such application.
4. **Utility companies notified** Party requesting change must provide written proof of all utilities that no utility occupies the easements to be moved.

B. Minimum Requirements and Procedures for Minor Subdivision Change(s) At a minimum the application shall contain the following:

1. **Legal Description with Survey** Legal description of the property to be subdivided prior to and after minor change(s). A survey shall be attached to the application showing:
 - a. Existing subdivided land upon which the change is sought, and
 - b. Proposed lots and abutting lots; and all existing structures, fences, and building setbacks on lots that are desired to be in effect after the minor change(s).
 - c. The lot area in square feet for each and any lot (s) created or modified. (Resolution 5-14-13)

2. **Fee** Shall be paid by subdivider as established by Buffalo County Board of Supervisors.

3. **Where Filed** All minor subdivision requests shall be submitted by written application to the Planning and Zoning Administrator, signed by all parties having any right, title, or interest in the real estate described, on form provided by such office.

C. Review and Appeal The Planning and Zoning Administrator shall forward the minor subdivision request to the Buffalo County Board for consideration by the Board to be heard as an ordinary agenda zoning item, without need of Notices as provided in Sec. 3.26. ~~may approve or disapprove the minor subdivision application as submitted or require changes to the application.~~

1. **Approval** In the event that the ~~Planning and Zoning Administrator~~ County Board approves the application or the required changes after review are fulfilled by subdivider, the proposed subdivision is ~~submitted to the Buffalo County Board for approval with the Board approving the subdivision~~ shall be approved by Resolution.

2. Disapproval Process and Appeal In the event that the ~~Planning and Zoning Administrator~~ County Board disapproves the application or requires changes that subdivider will not fulfill, written notice of such disapproval or the required changes shall be mailed to address given on application. Thereafter appeals shall be allowed and conducted as set forth in Sec. 3.27.

D. Post Approval Procedures Following approval of the minor subdivision change request, subdivider proposing the minor subdivision change(s) shall have the responsibility for transmitting to, filing with, and paying any filing fees of such documents with the Office of the Register of Deeds. Minimally the following documents shall be filed with the Office of Register of Deeds:

1. The approved plat reflecting the minor subdivision;
2. A certified copy of the resolution or minutes of meeting accepting said final plat ~~if of~~ the Board of Adjustment or Board of Supervisors that approved it, and
3. Any other data, documents, and/or items required by the Register of Deeds.

E. Failure to Timely File Approved Minor Subdivision Failure of the subdivider to file the approved application with necessary documents within six (6) months of date of approval by the ~~Zoning Administrator~~ Board of Supervisors and/or Board of Adjustment shall cause such subdivision request to become null and void and of no effect.

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

Discussion then was held concerning the Board proposed amendment to eliminate the Planning Commission from the hearing processes to amend Buffalo County's Subdivision Resolution. Various members of the Commission thought it might be helpful to the County Board to have additional public input into formulation of subdivision regulations by giving subdivision regulations a non-binding recommendation from the Planning Commission. Admittedly there is a time delay in processing amendment requests, but sometimes being in rush to amend thought out provisions of the subdivision regulation is not a good idea.

Moved by Stengel, seconded by Heiden that Section 9.03 not be changed and forward to the County Board with recommendation of denial:

This was submitted to the Planning Commission with the Planning Commission giving an "unfavorable" recommend to the following change:

- A. **Subdivision Resolution Amendments for matters other than fees:** Suggested amendments to this subdivision resolution shall be initiated by written application, filed in the Office of the County Clerk. Upon receipt of such application, the Zoning Administrator shall forward the application to amend ~~to the Planning Commission for its recommendation. Upon public hearing with notice as prescribed in this Resolution, the Planning Commission shall forward its recommendation~~ to the County Board, within thirty (30) days. Upon public hearing, the County Board may allow, deny, or allow with modifications, the proposed amendment all done in resolution form.

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

The next public hearing was opened at 9:22 P.M. concerning the adult entertainment language. Discussion followed. The hearing was closed at 10:05 P.M.

Chief Deputy Buffalo County Attorney Andrew W. Hoffmeister led the discussion in the public hearing with Deputy Buffalo County Attorney Kari Fisk also assisting. Hoffmeister explained that in 2010 his office initially drafted an ordinance and the present draft involved an extensive review of other jurisdictions zoning regulations. In the particular format now drafted, he liked the definitions. Of particular note, two significant items were changed from other jurisdictions regulations. One item concerned the outlawing of people of the opposite sex wrestling when a fee was paid for admission and this draft specifically exempted nursing. It is not uncommon to have in a high school wrestling match people of the opposite sex.

Hoffmeister noted that adult entertainment establishments are typically regulated by local governments by use of zoning, licensing, or outright ordinances. Buffalo County was seeking to have regulation by zoning and ordinance. The desired location would be in the Commercial District with any establishment being a minimum distance from both another establishment and Agricultural Residential District property. Distancing limitations were discussed. The initial draft stated 400 feet, but Hoffmeister noted that he thought he used 1,000 feet for distancing purposes. Stengel wanted to know why a distance such as 1,500 feet was not considered rather than the 1,000 distancing as proposed at the hearing. Hoffmeister responded that he thought the 1,000 feet measured from the edge of the Adult Entertainment Establishment structure to the property line of the AGR District would be a fair measurement. Otherwise, if we were to measure to a zoning district line, unexpected consequences would result. Also the 1,000 foot distancing would allow these types of entertainment establishments to exist at various places in the county. Ms. Fisk noted that if a 1,500 foot distancing limitation were put into place, Buffalo County would in effect make it extremely difficult, if not impossible, for these establishments to exist. That extreme of a distance, done without a logical purpose of regulation, would not pass any court test in that Buffalo County could not prohibit these establishments to exist. Thereafter the Commission reviewed the impact of the 1,000 foot distancing and other distances and the impact of the same for the Elm Creek, Odessa, Gibbon, and Shelton I-80 interchanges. Also the impact of the distancing limitations for the unincorporated village of Odessa was reviewed. Areas surrounding Ravenna were discussed. Hoffmeister noted that much of the potential areas for these establishments were located within Ravenna's municipal zoning jurisdiction. To regulate these areas Buffalo County was considering a county wide ordinance to provide some degree of uniformity in regulation of adult entertainment establishments. Also distances from public parks in these areas were reviewed. The 1,000 feet distancing seemed to be about the best method to protect rural residential housing values, with the Commission taking notice that in 2013 \$275,000 was the average rural residential zoning permit cost, exclusive of the cost of the real estate. The cost of rural residences was based values given upon the permits to build a rural residence in a separate report given to the Commission by the Zoning Administrator. This type of value needed some protection from inconsistent uses that could degrade the value of these residences.

Hours of operation were reviewed. Stengel wanted to know if it would be proper to have adult entertainment establishments have a 12-hour rest every day. Hoffmeister responded that if the operation were compared to establishments that served alcoholic beverages, the limitations were basically 1:00 a.m. to 7:00 a.m. that these types of beverages could not be served. What law enforcement wanted was some end to activities to adult entertainment establishments so that issues regarding calls to these establishments would end with the customers exiting the premises. Steinbrink noted that perhaps the same hours of operation as alcoholic beverage establishments might be a better time of required customer closing. Hoffmeister noted that the time should be consistent with the county ordinance regarding these establishments. All commission members wanted it

clearly understood that non-customer services rendered to adult entertainment establishments would not be regulated in the "closed" hour provision. All commission members thought that it might be a more logical answer for this commission to make no recommendation regarding required closing times so that the County Board would have full discretion to determine a time that was proper for county-wide purposes.

Issues concerning breast feeding and the potential of art students or artists were discussed. The Commission does not desire that the proposed Adult Entertainment Establishment provisions apply to breast feeding education or instructional groups. Art students, artists, and/or photographers that might do nude works would probably be best considered accessory uses in that a commercial structure would probably not be used while these people were pursuing their artistic expression. The language concerning breast feeding instruction groups was thought to exempt for breast feeding encounter groups and educational groups as exempted in the studio provisions.

Moved by Erickson, seconded by Stengel that the following be added to the language in the Buffalo County Zoning regulations:

To add as Adult Entertainment Establishment Definition:

3.32 ADULT ENTERTAINMENT ESTABLISHMENT is:

1. A commercial establishment or use open to the public which:
 - a. Displays, distributes, issues, gives, provides, lends, delivers, transfers, transmits, circulates, disseminates, presents, exhibits, advertises, sells, rents or leases a substantial or significant portion, as herein defined, of its stock in trade, any material defined by the Neb. Rev. Stat. Sec. 28-808 or characterized by the depiction of "specified anatomical areas" or "specified sexual activities", as such are herein defined; or
 - b. Utilizes a substantial or significant portion, as herein defined, of its display areas, including but not limited to, floor, shelf, rack, table, stand or case display areas, boxes, cabinet drawers, cartons, or any other storage area or apparatus, for any material defined by the Neb.Rev.Stat. Sec. 28-807, et. seq., or characterized by the depiction of "specified anatomical areas" or "specified sexual activities", as such are herein defined; or
 - c. Exhibits for a substantial or significant portion, as herein defined, of the total presentation time any material defined by Neb.Rev.Stat. Sec. 28-808, et seq., or characterized by the depiction of "specified anatomical areas" or "specified sexual activities", as such are herein defined.
2. A commercial establishment or use open to the general public which involves employees or customers who engage in conduct which is distinguished or characterized by "specified sexual activities" or "specified anatomical areas", as herein defined.
3. Adult Entertainment Establishments shall include, but are not necessarily limited to:
 - a. Adult arcades;
 - b. Adult bookstores;
 - c. Adult cabarets;
 - d. Adult motion picture theaters;

- e. Adult theaters;
- f. Escort agencies;
- g. Massage parlors;
- h. Nude modeling studios;
- i. Sexual encounter centers

(renumber)

3. (60?) SPECIFIED ANATOMICAL AREA: or AREAS is defined as:

- a. Less than opaquely covered human genitals, pubic region or pubic hair; or
- b. Less than opaquely covered perineum, buttock, or anus; or
- c. Less than opaquely covered female breast below a point immediately above the top of the areola; or
- d. Human male genitals in a discernibly erect or turgid state, even if completely and opaquely covered.

3. (61?) SPECIFIED SEXUAL ACTIVITY or ACTIVITIES is defined as:

- a. Human genitals in a discernible state of sexual stimulation or arousal; or
- b. Acts or representations of human masturbation, sexual intercourse, sodomy, bestiality, excretory functions, sadism, masochism, lewd exhibition of genitals; or
- c. Fondling or other erotic touching of human genitals, pubic region or pubic hair, perineum, buttock or anus, or female breast.

(renumber)

3. (67?) SUBSTANTIAL, SIGNIFICANT OR PRIMARY, regardless of whether these words are used singly or in combination means a use of over fifty (50) percent of stock in trade, display area, or presentation time, whichever may be applicable to the nature of the establishment. Stock in trade and material shall be measured in terms of titles or objects. Items with the same title or name shall be considered as separate titles or objects.

ADD OTHER DEFINITIONS AS FOLLOWS:

ADULT ARCADE: Any place to which the public is permitted or invited wherein coin-operated, slug- or token-operated, or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified anatomical areas" or "specified sexual activities," as herein defined.

ADULT BOOKSTORE: A commercial establishment which has devoted a substantial or significant portion of its business to the sale, rental or any form of consideration, of any one or more of the following:

- a. Books, magazines, periodicals or other printed matter, photographs, films, motion pictures, video cassettes, video tapes, or other video reproductions, slides, or other visual representations which depict or describe "specified sexual activities" or "specified anatomical areas"; or

b. Instruments, devices, or paraphernalia which depict "specified anatomical areas" or are designed for use in connection with "specified sexual activities".

ADULT CABARET: A nightclub, bar, restaurant, or similar commercial establishment which regularly features:

- a. Person or persons who appear by the exposure of his, her, and/or their "specified anatomical areas", or
- b. Live performances which are characterized by the exposure of "specified anatomical areas", or by "specified sexual activities", including topless or bottomless dancers, exotic dancers, or strippers; or
- c. Films, motion pictures, video cassettes or tapes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".

ADULT MOTION PICTURE THEATER: A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes or tapes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".

ADULT THEATER: A theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of exposure of "specified anatomical areas", or live performances that are characterized by the depiction or description of "specified sexual activities" or the exposure of "specified anatomical areas".

ESCORT: A person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a strip tease for another person.

ESCORT AGENCY: A person or business association which furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes, for a fee, tip, or other consideration.

MASSAGE PARLOR: Any place where, for any form of consideration, massage, alcohol rub, administration of fomentations, electric or magnetic treatments, or any other treatment or manipulation of the human body occurs as part of or in connection with any "specified sexual activity", or where any person providing such treatment, manipulation or service related thereto exposes any "specified anatomical area."

This term shall not apply to a place wherein registered physical therapists or a certified massage therapist treats only patients recommended by a licensed physician and operate only under such physician's direction.

This term shall not apply to Massage Therapy).

MASSAGE THERAPY:

As defined by the North American Industry Classification System (NAICS), 2007 edition, with the additional description that any establishment and/or person providing massage therapy

services shall be appropriately licensed by the Nebraska Department of Health and Human Services.

This term shall not apply to a Massage Parlor.

NUDE MODELING STUDIO: Any place where a person who displays any "specified anatomical area" that is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. This shall not include uses where instruction is given for human lactation, breastfeeding support groups, and human breastfeeding education groups.

SEXUAL ENCOUNTER CENTER: A business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration, activities between male and female persons and/or persons of the same sex when one or more of the persons displays or exposes "specified anatomical areas" and/or engages in "specified sexual activity or activities".

To amend 5.14 to not allow AEE's in AG District by special permit:

5.14 PERMITTED SPECIAL USES: A building or premises may be used for the following purposes in the "AG" Agriculture District if a special permit for such use has been obtained in accordance with Article 6 of these regulations: (Resolution 12-4-07 & Resolution 10-11-11)

14. Commercial and/or Industrial operations, excepting therefrom Adult Entertainment Establishments;

To add as separate special uses in the C District the following additional language in Section Sec. 5.54:

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.

9. Wind powered generation of electrical power.

10. Wind Farms.

11. Adult Entertainment Establishment, specifically allowed only in the Commercial District and not as a special use in Agricultural District.

ARTICLE 6 AMENDMENTS:

6.5 Special provisions regarding Adult Entertainment Establishments.

Adult Entertainment Establishment, as previously defined, shall not be allowed in the Agricultural District (AG), and shall only be allowed as a special permit in the Commercial (C) District, under the following conditions:

1. LOCATION AND DISTANCE REQUIREMENTS:

- a. An Adult Entertainment Establishment, as herein defined:
 - i. Shall not be located or expanded within one thousand (1,000) feet of Agricultural Residential (AGR) zoned property;
 - ii. Shall not be located or expanded within one thousand (1,000) feet of any other Adult Entertainment Establishment;
 - iii. Shall not be located or expanded within one thousand (1,000) feet of any church, synagogue or temple, hospital, public school or public park, or any day care center or day care home.
- b. Measurements pursuant to the foregoing section shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises of an Adult Entertainment Establishment to:
 - i. The nearest boundary of any district restricted to any Agricultural Residential (AGR) use by the Zoning Map of Buffalo County; and
 - ii. The nearest portion of the building or structure used as a part of the premises of any other Adult Entertainment Establishment; and
 - iii. The nearest property line of the premises of a church, synagogue, temple, hospital, public school, public park, day care center, and day care home.
- c. Distance certifications: An application for an Adult Entertainment Establishment shall be accompanied by a current certificate and straight-line drawing prepared within thirty (30) days prior to application by a registered land surveyor depicting the property lines and the structures containing any existing Adult Entertainment Establishments within 1000 feet of the property to be certified; the property lines of any church, synagogue or temple, hospital, public school or public park, or any day care center or day care home within 1000 feet of the property to be certified; and the property lines of any property zoned Agricultural Residential (AGR) by the Zoning Map of Buffalo County, within 1000 feet of the property to be certified. For purposes of this sub-section, a use shall be considered existing if it is in existence at the time an application is submitted.

2. SPECIAL REQUIREMENTS:

- a. An Adult Entertainment Establishment shall be located in a freestanding building, on one lot containing no other uses or Adult Entertainment Establishments.
- b. An Adult Entertainment Establishment shall not be open to customers between the hours of one (1:00 a.m.) and ten (10) a.m.
- c. All Adult Entertainment Establishment businesses, its owners, managers, entertainers, and any other employee thereof shall permit any governmental official acting in their official capacity to inspect the premises and activities on the premises as necessary to insure the business is complying with all applicable regulations and laws.

ADDITIONAL DEFINITIONS ARE:

ADULT ARCADE: Any place to which the public is permitted or invited wherein coin-operated, slug- or token-operated, or electronically, electrically, or mechanically controlled still or motion

picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified anatomical areas" or "specified sexual activities," as herein defined.

ADULT BOOKSTORE: A commercial establishment which has devoted a substantial or significant portion of its business to the sale, rental or any form of consideration, of any one or more of the following:

- a. Books, magazines, periodicals or other printed matter, photographs, films, motion pictures, video cassettes, video tapes, or other video reproductions, slides, or other visual representations which depict or describe "specified sexual activities" or "specified anatomical areas"; or
- b. Instruments, devices, or paraphernalia which depict "specified anatomical areas" or are designed for use in connection with "specified sexual activities".

ADULT CABARET: A nightclub, bar, restaurant, juice bar, or similar commercial establishment which regularly features:

- a. Person or persons who appear by the exposure of his, her, and/or their "specified anatomical areas", or
- b. Live performances which are characterized by the exposure of "specified anatomical areas", or by "specified sexual activities", including topless or bottomless dancers, exotic dancers, or strippers; or
- c. Films, motion pictures, video cassettes or tapes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".

ADULT MOTION PICTURE THEATER: A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes or tapes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".

ADULT THEATER: A theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of exposure of "specified anatomical areas", or live performances that are characterized by the depiction or description of "specified sexual activities" or the exposure of "specified anatomical areas".

ESCORT: A person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a strip tease for another person.

ESCORT AGENCY: A person or business association which furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes, for a fee, tip, or other consideration.

MASSAGE PARLOR: Any place where, for any form of consideration, massage, alcohol rub, administration of fomentations, electric or magnetic treatments, or any other treatment or manipulation of the human body occurs as part of or in connection with any "specified sexual

activity", or where any person providing such treatment, manipulation or service related thereto exposes any "specified anatomical area."

This term shall not apply to a place wherein registered physical therapists or a certified massage therapist treats only patients recommended by a licensed physician and operate only under such physician's direction.

This term shall not apply to Massage Therapy).

MASSAGE THERAPY:

As defined by the North American Industry Classification System (NAICS), 2007 edition, with the additional description that any establishment and/or person providing massage therapy services shall be appropriately licensed by the Nebraska Department of Health and Human Services.

This term shall not apply to a Massage Parlor.

NUDE MODELING STUDIO: Any place where a person who displays any "specified anatomical area" that is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration.

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

Old Business: Moved by Steinbrink, seconded by Skov to approve the minutes of the December 19, 2012 as mailed. Voting yes: Steinbrink, Skov, Brady, Erickson, Heiden and Stengel.
Voting no: none. Absent: Keep, Skelton and Wolfe. Motion carried.

Other items were discussed. Klein submitted her yearly report to the Commission.

The next meeting of the Planning & Zoning Commission will be March 20, 2014 at 7:00 P.M if needed.

Chairperson Brady adjourned the meeting at 10:10 P.M.