

MINUTES OF PLANNING & ZONING COMMISSION  
JUNE 18, 2020  
BUFFALO COUNTY COURTHOUSE via ZOOM  
7:00 P.M.

Notice of the meeting was given in advance thereof by publication in the Kearney Hub, the designated method for giving notice. 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.

Chairman Scott Brady opened the meeting at 7:00 P.M. via ZOOM, with a quorum present on June 18, 2020.

In Attendance: Scott Brady, Willie Keep, Randy Vest, Francis Biehl, Loye Wolfe, Tammy Jeffs.  
Absent: Marc Vacek & John Keeney.

Also attending were: Deputy County Attorney Kari Fisk, Zoning Administrator Dennise Daniels, and Chad Dixon, with Miller & Associates.

Chairman Brady announced The Open Meetings Act in regards to the current COVID-19 crisis.

Chairman Brady announced that agenda item 5(b), regarding the request for code amendment of solar arrays would be not be heard tonight.

The public forum was opened at 7:02 P.M. The public forum closed at 7:02 P.M.

**Zoning Map Amendment**

Public Hearing for Zoning Map Amendment opened at 7:02 p.m.

Chairman Brady announced Agenda Item 5(a): Zoning Map Amendment, filed by Chad Dixon, on behalf of Cynthia Pawloski, for property described as Part of the East Half of the Southwest Quarter, Section 12, Township 11 N, Range 16 W of the 6<sup>th</sup> P.M. The applicant has requested to rezone approximately 10.62 Acres from AG – Agriculture to AGR – Agricultural Residential.

Chairman Brady introduced Chad Dixon, land surveyor, from Miller & Associates, as the presenter and requested any additional parties, to come forward. Mr. Dixon identified himself, 1111 Central Avenue, Kearney, Nebraska, representing Matt & Cindy Pawloski, requesting a rezone of a 10.62 acre tract from AG - Agriculture to AGR – Agricultural Residential. He requested a screen share to go through the packet.

First, Mr. Dixon briefly reviewed the exhibits in The Commission's packets and indicated the location of the proposed rezone, between Kearney & Pleasanton, on the north side of 265<sup>th</sup> road. The Future Land Use Map was then reviewed. The proposed rezone is situated along the Highway 10 corridor on the Future Land Use Map, which is deemed AGR – Agricultural Residential.

Mr. Dixon notified The Commission that the reason for rezone is due to a potential buyer wanting to construct a house within 1,000 feet of an existing house in the AG – Agricultural

District. In the regulations, it states that a house cannot exist within 1,000 feet of another house in the same quarter section. As it relates, the split and rezone would allow a potential buyer to build a house on this proposed split.

After examining the three houses that are currently in that quarter section and their proximity to the proposed house, Mr. Dixon stated that he had spoken with John Maul regarding the safest location for a private drive and discussed the devised location. He displayed the google imaging of the terrain and the location of the proposed house.

Mr. Dixon analyzed several aspects of the proposed rezone such as the current uses of land around the proposed location, Soil Report, the well & septic tank, and the traffic changes in regards to the proposed house.

Chairman Brady asked if the entire quarter and the other houses were zoned AG – Agriculture and Deputy County Attorney Fisk confirmed the zoning district is AG – Agriculture.

Mr. Dixon concluded the presentation, but opened the floor to questions.

Co-Chairman Keep requested the amount of acres Pawloskis owned and Mr. Dixon stated they have 80 acres. Co-Chairman Keep questioned why a larger tract wasn't rezoned to AGR – Agricultural Residential and Mr. Dixon stated that the applicants wish to leave the rest AG – Agriculture. Co-Chairman Keep stated that he would prefer to see a larger tract rezoned, instead of such a small tract.

Chairman Brady brought up the issue of spot zoning and the concern from the last meeting with the rezoning of the commercial lots at The Greens at Prairie Hills. He stated that he believes this request is more like a spot zoning-type situation and Co-Chairman Keep agreed. Ms. Wolfe stated that it was close to Highway 10 and the application supports the Future Land Use Map. Co-Chairman Keep stated that he agreed, but would still like to see a larger tract rezoned. The Commission discussed the site and the lack of good location for a house.

A woman logged onto the meeting and asked where The Commission was at on the agenda. Zoning Administrator Daniels explained that The Commission is currently discussing the Pawloski Rezone. Due to significant background noises and echoes, Deputy County Attorney Fisk asked the woman to end either the phone call or the video call.

Marilyn Whitney, along with her husband, Roland Whitney, identified herself, after Chairperson Brady requested the identification, and stated that she has had 2 lots to the west of the Pawloski's, facing Highway 10. She read a prepared statement. She stated that she has had people interested in her lots and has turned those individuals down for a sale. She said that she received a call from Mr. Pawloski asking about creating a subdivision and the Whitneys explained that there were several reasons why they did not wish to move forward including: existing covenants, livestock disturbances, safety concerns regarding electric fences and the inability to safely enter 265<sup>th</sup> Road. The Whitneys also voiced concerns regarding the accidental release of livestock. She is requesting to leave the property, as is, AG – Agriculture.

Chairperson Brady asked if she owned the balance of the quarter section and Ms. Whitney stated that she owns 60 acres.

Chairperson Brady addressed The Commission members about reservations regarding the rezoning.

Mr. Dixon asked Mr. Pawloski to speak to his request. Matt Pawloski, identified later, discussed the events around the covenants and their restrictions. Co-Chairman Keep asked if Deputy County Attorney Fisk had copies of the covenants and she stated that she did not, but as far as county zoning was concerned, private covenants did not have an impact on the decisions that are made. Those need to be resolved between the landowners.

Chairman Brady asked Mr. Pawloski if he would consider rezoning the whole tract to AGR – Agricultural Residential and Mr. Pawloski stated that was not his intention. He reaffirmed that he wished to keep the area primarily AG – Agriculture, but he had some concerns about how that would affect his neighbor’s assessed values.

Ms. Whitney stated that taxes were sure to go up.

Ms. Wolfe asked Zoning Administrator Daniels if there were additional correspondences in regards to oppositions of this rezone. Zoning Administrator Daniels stated that she received no calls, no emails, and no letters in opposition of this application.

Mr. Dixon and Ms. Whitney discussed the 10-acre split from 2018 and the current request.

Co-Chairman Keep requested confirmation on how many houses are allowed in a quarter and Deputy County Attorney Fisk stated that four are allowed in a quarter section. She verified that this request is consistent with the county’s overall zoning objectives and comprehensive plan.

Chairperson Brady inquired if the house could be erected further than 1,000 feet from the existing house and Mr. Dixon stated that it is possible, but it would cost significantly more to construct, due to a side slope.

Ms. Whitney asked if the Pawloski’s have land on the east side that could be sold and Mr. Dixon stated that land belongs to another landowner.

Mr. Biehl questioned that if spot zoning isn’t illegal, then The Commission should move forward. Deputy County Attorney Fisk stated that if the county could do larger tracts, that is ideal. However, in this situation, there would be a large strip all the way up Highway 10, which could be rezoned to AGR – Agriculture Residential. She stated that she believes that this is appropriate, short of rezoning the whole corridor.

Mr. Biehl stated that the application seemed appropriate.

Mr. Dixon stated that, in regards to The Greens at Prairie Hills, the Commercial rezone was not spot zoning, due to the design. The design had to include a larger tract to avoid spot zoning in an area that was designated AGR – Agricultural Residential on the Future Land Use Map. Mr. Biehl agreed.

Chairman Brady stated that The Commission must be careful to avoid spot zoning and setting precedence for future requests.

Mr. Biehl affirmed that applicant’s request indicated as AGR – Agricultural Residential on the Future Land Use Map.

Ms. Wolfe stated that the location is within a quarter of a mile of paved road.

Deputy County Attorney Fisk reiterated to The Commission that it is important to encourage growth that is consistent with Buffalo County's Comprehensive Plan. She stated that this application for rezone would be more distinguishable from others due to the location next to a paved road.

Co-Chairman Keep asked if there was a way to put more distance between Whitney's property and the proposed lot. He has concerns about the residential abutting an AG – Agriculture District.

Mr. Dixon shared his screen and explained that it is possible, but the reason for the design is due to the terrain, location of the tree line, and allowance for a safe exit and entry onto 265<sup>th</sup> Road. Co-Chairman Keep acknowledged Mr. Dixon's answer, but wondered if there was any way to redesign the split to allow more distance between the AGR – Agricultural Residential rezone and the Whitney's AG – Agriculture District. He brought up concerns about future property owners. Deputy County Attorney Fisk reminded The Commission that it is the responsibility of The Commission to review the Comprehensive Plan and to consider the rezone from AG – Agriculture to AGR – Agricultural Residential alone.

Co-Chairman Keep stated that he had concerns regarding the opposition. Deputy County Attorney Fisk stated that it is important to consider the characteristics of the property, not the neighbors. She recommended it would be best that The Commission avoids any illegal or improper status and to base their decisions on the property, not the people.

Chairman Brady stated that it [future landowners] could all be subject to change. He asked The Commission if there have been any instances regarding spot zoning. Deputy County Attorney Fisk stated that the Zoning Map, which Mr. Dixon was sharing, showed that there haven't been any large "swath" rezones, and all appear to have been application-based.

Chairman Brady stated that there is a concern for the rezoning of one lot. Deputy County Attorney Fisk stated that The Commission could consider rezoning everything along Highway 10, if that was their wish, to AGR – Agricultural Residential, pursuant to the Future Land Use Map. However, this rezone would include the opposing neighbors. Application-based rezoning appears to have been the preference of The Commission for the last several years.

Mr. Vest addressed The Commission and inquired why this request would be any different from a pivot corner that had been approved, except this location is ideal due to the proximity of Highway 10. It had been acceptable up until this point.

Chairman Brady sought a motion to close the public forum.

Public Hearing for Zoning Map Amendment closed at 7:45 p.m.

Motion was made to close the hearing, moved by Biehl, seconded by Vest approve closing the public hearing.

Voting "Aye": were Biehl, Jeffs, Keep, Vest and Wolfe.

Voting "Nay": None.

Abstain: None.  
Absent: Keeney & Vacek.  
Motion carried.

Chairman Brady addressed The Commission, and stated that this is a development-type project, and speculated how The Commission would set precedence, after their decisions.

Mr. Biehl stated that the location seemed appropriate due to its proximity to Highway 10. Ms. Wolfe added that the request is aligned with the Comprehensive Plan and the Future Land Use Map and Jeffs agreed.

Mr. Vest stated that the design and driveway entry onto 265<sup>th</sup> is well planned. Co-Chairman Keep stated that he agreed with the views of his associates, but he has concerns regarding the opposition.

Motion was made to forward a favorable recommendation to the Board of Commissioners. Moved by Vest, seconded by Wolfe for rezone from AG – Agriculture to AGR – Agricultural Residential:

Voting “Aye”: were Vest, Wolfe, Biehl & Jeffs.  
Voting “Nay”: Keep & Brady.  
Abstain: None.  
Absent: Keeney & Vacek.  
Motion carried.

### **Code Amendment**

Chairman Brady reiterated that Item 5(b), regarding a Code Amendment of Solar Arrays would not be heard tonight and would be rescheduled.

### **Old Business**

### **Minutes**

Motion was made by Biehl, seconded by Jeffs to approve the minutes of the May 21, 2020 as presented.

Voting yes: Wolfe, Jeffs, Keep, Vest, & Biehl.  
Voting no: None.  
Abstain: None.  
Absent: Vacek & Keeney.  
Motion carried.

### **Report on Previous Hearings**

Zoning Administrator Daniels reported on the Board of Commissioner’s Hearing from June 9, 2020. She notified the Planning & Zoning Commission that the AG – Agriculture to C – Commercial Zoning Map Amendment was approved, the AG – Agriculture to AGR – Agricultural Residential Zoning Map Amendment was approved, and The Greens at Prairie Hills Preliminary Plat with

recommendations from the Planning & Zoning Commission, and the Code Amendment was approved adding additional uses by right under the Commercial & Industrial Districts.

**Correspondence & Other Business**

Chairman Brady asked about a response from the City of Gibbon, regarding the extra-territorial district preliminary plats that were forwarded on with favorable recommendations from The Commission. Zoning Administrator Daniels stated that there was no response, after a letter was mailed.

**Next Meeting**

Chairman Brady addressed The Commission about having a meeting regarding the solar arrays on July 9, 2020, as an alternative hearing. Co-Chairman Keep and Ms. Wolfe stated that he had concerns regarding the moving of the meeting and Deputy County Attorney Fisk assured the members that the meeting was being rescheduled due to a sign being knocked down and the 10-day notice was not satisfied. The reschedule was not due to accommodations for the applicant.

Co-Chairman Keep stated that he finds the date acceptable, under those terms. Deputy County Attorney Fisk stated that The Commission will begin to meet in person, when the Governor's Orders expire June 30, 2020. Vest, Keep, Jeffs, and Brady will be available.

Ms. Wolfe asked if the members had the ability to visit the site and Deputy County Attorney Fisk stated that the Zoning Administrator is the only with immunity from trespassing.

Chairman Brady announced that July 9 would be the next meeting in person, providing no orders will be placed on in-person meetings.

**Adjourn**

Chairman Brady adjourned the meeting at 8:01p.m.