

MINUTES OF PLANNING & ZONING COMMISSION
JULY 9, 2020
BUFFALO COUNTY COURTHOUSE
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.

Chairman Scott Brady opened the meeting at 7:09 p.m., with a quorum present on July 9, 2020.

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

Also attending were: Deputy County Attorney Kari Fisk, Zoning Administrator Dennise Daniels, and Nathan T. Bruner were in attendance.

Chairman Brady announced to The Commission members that John Keeney has resigned from his position, as of July 9, 2020, due to personal reasons.

Chairman Brady announced The Open Meetings Act.

The public forum was opened at 7:11 p.m. The public forum closed at 7:11 p.m.

Code Amendment

Public Hearing for Code Amendment opened at 7:11 p.m.

Chairman Brady announced item 5(a) as an Application for Code Amendment of solar arrays, under Section 3.3125, Section 5.32, & Section 5.33, by Nathan T. Bruner, for property described as a Part of Government Lot 16 in Section 18, Township 9 North, Range 16 West of the 6th p.m., Buffalo County, Nebraska.

Co-Chairman Keep clarified the purpose of the hearing: code amendment or application for a specific lot. Deputy County Attorney Fisk explained that this would be a county-wide code amendment. Neighbors had to be notified because an individual was bringing the application forth.

Nathan T. Bruner introduced himself, residing at 7845 W. 70th Road, Kearney, Nebraska. He stated that he is interested in putting solar panels, due to the location of Dawson Public Power transistor. He said that he made an application and discussed the current regulations, in regards to putting a solar array in the front yard, with Deputy County Attorney, Andrew Hoffmeister. He stated that the easement-access situation was discussed and could create some issues for properties, especially when defining front yards. He indicated that the 6.5 acres, which was the proposed minimum lot size for a solar array as a use by right, would be appropriate because most

development-type properties are three acres or less. If a person were to purchase two lots of the development, or a pivot corner, then it could potentially remain under the desired threshold. Other properties, such as his, that in excess of 6.5 acres would exceed the threshold, making it a use by right. He went on to say that the proposed amendment would be ideal for a farm property that wanted to put a solar panel along the road, making the panel more easily accessed. He referenced Nebraska Revised Statute 66-913 & 66-914 that encourages solar use, and stated that the proposed amendment would be more encouraging for solar use growth.

Chairman Brady addressed Deputy County Attorney Fisk, and asked if the amendment is passed, would solar arrays be allowed in AGR – Agricultural Residential. She stated yes, with regards to the suggested parameters. He voiced concerns that the Board of Commissioners, nor the Planning & Zoning Commission would review any of those requests for solar panels.

Co-Chairman Keep asked that, in AGR - Agricultural Residential, it is currently allowed by Special Use Permit. Deputy County Attorney Fisk stated the primary concern was the placement of the solar array, in the front yard. Accessory uses are not allowed in the front yard, by definition. He inquired what would stop anyone constructing an array next to the lot line. Deputy County Attorney Fisk stated that nothing would be stopping from individuals, except the standard setbacks. Co-Chairman Keep then stated that he had concerns regarding the 6.5 acres amendment, and wondered why the request was such a large acreage. Deputy County Attorney Fisk stated that The Commission could make any amendments, if they wished to amend the acre limit.

Chairman Brady wondered if Mr. Bruner's request would be allowed, in the current regulations, under Special Use Permit. Co-Chairman Keep advised that it would not; the code regarding front yards was what was impeding the permit approval. Deputy County Attorney Fisk confirmed and stated that if this amendment were passed, anyone could get a zoning permit and build a solar array. She also advised that if this location was truly AG - Agriculture, then it wouldn't be an issue, due to the primary differences in the districts. She stated that emerging technologies are hard to predict and regulate. Co-Chairman Keep highlighted the last meeting and how these codes would affect that parcel.

Chairman Brady stated that he was concerned with this amendment, because it would allow anyone to build a solar array. He felt that The Commission should police these requests on a more frequent basis, and require Special Use Permits for all solar arrays. Deputy County Attorney Fisk clarified that, if The Commission wished to go that way, then they could, however, every person that wanted to build an array, would require a Special Use Permit, which would require a Planning & Zoning Commission meeting upon every application. Chairman Brady asked if this amendment could be made to include a Special Use Permit option. Deputy County Attorney Fisk confirmed.

Co-Chairman Keep discussed adding a setback amendment. Mr. Bruner said that setbacks were acceptable. Deputy County Attorney Fisk stated that The Commission could amend the current requests to match their wishes.

Chairman Brady stated he felt that there was concern regarding allowing anyone to erect solar arrays without any policing in AGR – Agricultural Residential. Co-Chairman Keep agreed and he reiterated adding in the setbacks. Deputy County Attorney Fisk stated that the reason for the front yard regulation is to keep shed-type structures from obstructing the view from the road. Chairman Brady stated that he understood, but acknowledged there should be additional requirements any future issues. Deputy County Fisk advised The Commission they could amend setbacks or lot sizes, if they wished.

Mr. Vacek asked how other counties handle solar operations. Deputy County Fisk highlighted, generally, how counties are handling solar energy.

Chairman Brady asked Mr. Bruner how his property was unique from others. Deputy County Attorney Fisk specified that it is primarily the location of where he wishes to place the solar panel. She, then, asked Zoning Administrator Daniels how many other permits she has received for solar panels. Zoning Administrator Daniels stated that she has not received any applications for the front yard, just rear yard.

Ms. Wolfe agreed that the requested size was a concern. Deputy County Attorney Fisk indicated 6.5 acres was proposed due to the reduction of the likelihood of owners constructing directly on the lot lines.

Ms. Wolfe suggested considering setbacks and Zoning Administrator Daniels asked Mr. Bruner the distance from his lot line to the proposed solar array. Mr. Bruner stated that it would be approximately 50-70 feet. Mr. Bruner, then reviewed the GIS image, in regards to topography.

Mr. Vacek stated that he thinks this particular request is appropriate, but The Commission needs to decide how to specify the codes to benefit the county. Discussion ensued regarding Mr. Bruner's easement situation.

Deputy County Attorney Fisk reviewed The Commission's options. Co-Chairman Keep asked if Section 3.3125 needed to be amended to include setbacks. Deputy County Attorney Fisk informed The Commission that all three amendments may need to be revised, depending on The Commission's wishes. Co-Chairman Keep asked if Special Use Permits could be used. Deputy County Attorney Fisk confirmed. Proposed setbacks were discussed. Deputy County Attorney Fisk recommended The Commission to consider the maximum 16-foot height when amending the setbacks.

Chairman Brady stated that there should to be more of a checks and balances system. Deputy County Fisk suggested changing the code to read, that anyone who wanted to build a solar panel in the front yard would need to go through a Special Use Permit process. Ms. Jeffs asked if the size could be modified, along with the front yard options.

Co-Chairman Keep asked how a solar panel was different from a shed in the front yard. Mr. Bruner stated that since there is legislative intent, solar energy requests would be more distinct.

Mr. Vest agreed that setbacks seemed appropriate and Mr. Biehl agreed. Chairman Brady declared that the regulations should still be more restrictive for solar arrays. The Commission discussed potential issues with this amendment. Deputy County Attorney Fisk reminded The Commission about county regulations vs city municipalities' regulations and advised The Commission to consider revising the amendments to fit what they are trying to accomplish.

Co-Chairman Keep stated that it may be beneficial to allow Ground Mount Solar Energy Systems only to occur in the front yards. Discussion occurred regarding the encouragement of alternative energies.

Ms. Wolfe asked Ms. Jeffs to reiterate her recommendation regarding lot sizes. Ms. Jeffs suggested that anything smaller than 6.5 acres would be by Special Use Permits only. Deputy County Attorney Fisk advised The Commission that an additional amendment would need to occur, but would not affect the current request. Lot size and setback options were discussed. Deputy County Attorney Fisk recommended adding "front setbacks" to Section 3.3125, which would allow for conformity across Buffalo County Regulations.

After some discussion regarding solar array management, Deputy County Attorney Fisk recommended that The Commission recommend that solar arrays would not be allowed in a residential lot's front yard, except by Special Use Permit. Chairman Brady expressed concern for Mr. Bruner's request, as the Commission had no issues with his particular request, and wondered what would be required if The Commission moved forward with Special Use Permit only for front yards. Deputy County Attorney stated that he would have to reapply and another meeting would need to be conducted.

Chairman Brady stated that he would prefer a minimum of 10 acres by right. Anything less than 10 acres, should be by Special Use Permit.

Co-Chairman Keep affirmed that that he would prefer to see the setbacks reflected in the amendment. Mr. Bruner asked what the current front setback is for zoning. Zoning Administrator Daniels confirmed that 50-foot front setback was the current requirement. Deputy County Attorney Fisk confirmed with The Commission to add "front" setback to Section 3.3125. She recommended that the Special Use Permit be revisited at a later meeting, due to the lack of 10-days notice regulations.

Chairman Brady opened up the floor to any other suggestions. None were added. Mr. Bruner clarified the recommendations to add front setbacks to Section 3.3125.

Chairman Brady sought a motion to close the public hearing.

Public Hearing for Code Amendment closed at 8:03 p.m.

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

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

Voting “Nay”: None.
Abstain: None.
Absent: Keeney.
Motion carried.

Deputy County Attorney Fisk reiterated The Commission’s Recommendations as follows:

“ Section 3.3125 GROUND-MOUNTED SOLAR ENERGY SYSTEM: A Solar Energy System that is a ground-mounted structure; ~~not allowed in a residential use lot’s front yard,~~ and no closer than the allowed side, **front**, and rear yard setback from the property line for a structure within the zoning district in which it is situated, consisting of Solar Related Equipment that does not exceed sixteen (16) feet in height, from the highest panel edge to the ground. The area used for this system is considered coverage for lot coverage limitations in the various zoning districts.

AND

Add as AGR – Agricultural Residential as a listed Use by Right, under Permitted Principle Uses and Structures: Section 5.32:

Personal Use Solar Energy System, when the system is situated on a lot comprised of ~~at least 6.5 acres.~~ 10.00 acres or greater.

AND

3rd Amend in AGR – Agricultural Residential District as concerns accessory uses of personal solar energy systems.

5.33 PERMITTED ACCESSORY USES AND STRUCTURES: The following accessory uses and structures shall be permitted:

1. Accessory uses and structures normally appurtenant to the permitted uses and structures;
2. Home occupations in conformance with Article 8.2;
3. Roadside stands for sale of agricultural produce. (Resolution 10-10-03)
4. Personal Use Solar Energy Systems when situated in or on a residential use lot’s roofs, rear and side yards.

The Special Use Permit would be addressed at the next hearing. Co-Chairman Keep clarified the purpose of having Section 5.33 amended. Deputy County Attorney Fisk reviewed.

Motion was made to forward a recommendation to the Board of Commissioners. Moved by Vest, seconded by Biehl for adoption, for Code Amendments adopted as amended:

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

No opposition to the change.

Old Business

Minutes

Motion was made by Wolfe, seconded by Jeffs to approve the minutes of the June 18, 2020 as presented.

Voting yes: Jeffs, Keep, Vacek, Vest, Wolfe, & Brady.

Voting no: None.

Abstain: None.

Absent: Keeney.

Motion carried.

Report on Previous Hearings

Zoning Administrator Daniels reported on the Pawloski Rezone from AG – Agriculture to AGR – Agricultural Residential. She stated that it would be heard on the July 14, 2020 Board of Commissioner’s Meeting and she will report the decision at the next meeting.

She also let The Commission know that nothing has been filed to warrant an additional meeting for Planning & Zoning in July, 2020.

Deputy County Attorney Fisk clarified that the next Code Amendment, regarding tonight’s recommendations for Special Use Permits, would go in front of The Commission when they meet next.

Zoning Administrator Daniels opened the floor to any volunteers to act as the dual member on The Planning & Zoning Commission and Board of Adjustment. Deputy County Attorney Fisk clarified the requirements of the Board of Adjustment, after Co-Chairperson Keep inquired the duties.

Randy Vest volunteered.

New Business, Correspondence & Other Business

ETJ Subdivisions Correspondences

North Pointe Preliminary Plat

Co-Chairman Keep asked if Buffalo County would have to accept the roads for maintenance. Zoning Administrator Daniels explained that, in order for Buffalo County to accept any additional roads for maintenance, the RL-2 standards must be met and the Road Maintenance

contract must be signed. The GIS location for the proposed plat was reviewed, the plat was discussed, and the road conditions were debated.

Motion was made by Wolfe, seconded by Jeffs to North Pointe, with a favorable recommendation:

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

Voting "Nay": None.

Abstain: None.

Absent: Keeney.

Motion carried.

No opposition to the change, except for the concern by The Commission to add additional roads.

Next Meeting

August 20, 2020, if needed.

Adjourn

Chairman Brady adjourned the meeting at 8:27 p.m.