

MINUTES OF PLANNING AND ZONING COMMISSION
MAY 18, 2023
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 and Zoning Commission and availability of the Agenda was communicated in the advance notice. The Agenda is available for anyone wanting a copy.

Chairperson Scott Brady opened the meeting at 7:00 P.M. with a quorum present on May 18, 2023.

In Attendance: Tammy Jeffs, Kurt Schmidt, Scott Stubblefield, Francis "Buss" Biehl, Willie Keep, Loye Wolfe, and Scott Brady.

Randy Vest and Marc Vacek were absent.

Quorum was met.

Also attending were: Deputy County Attorney Andrew Hoffmeister, Zoning Administrator Dennise Daniels and several members of the public.

Chairperson Brady announced The Open Meetings Act and agendas were available if anyone wished to have one.

The public forum was opened at 7:01 P.M. The public forum closed at 7:01 P.M.

Public Hearing. 5(a)

Chairperson Brady opened the public hearing for Agenda Item 5(a) at 7:01 P.M. regarding the Application for Zoning Map Amendment, filed by Mitch Humphrey, Registered Land Surveyor, on behalf of Poulson Family Limited Partnership, L.T.D., for property described as Part of the Southeast Quarter of the Northeast Quarter and Part of Government Lot One (1) located in Section Five (5), Township Eight (8) North, Range Eighteen (18) West of the Sixth Principal Meridian, Buffalo County, Nebraska, to rezone approximately 15.00 acres, more or less, from Agricultural – Residential (AGR) to Commercial (C).

Mitch Humphrey, Registered Land Surveyor, on behalf of Buffalo Surveying Corporation, located in Kearney, Nebraska, and on behalf of Poulson Family Limited Partnership, L.T.D., stepped forward to present the application. He explained the site is located north of the Elm Creek I-80 interchange on the west side of the road. He stated the area is currently zoned Agricultural – Residential (AGR) and the applicant wishes to rezone to Commercial (C). This

location, he added, is primarily a commercial-type area when he reviews the existing and future land use maps.

Deputy County Attorney Hoffmeister inquired how the property will be accessed and Mr. Humphrey responded, it will have highway access.

Deputy County Attorney Hoffmeister reviewed the Future Land Use Map with The Commission and reiterated this area is designated commercial.

Deputy County Attorney Hoffmeister requested the size of the subdivided parcel and Mr. Humphrey answered, 15 acres. He explained, after the 15 acres is conveyed, the remainder tract will be compliant with more than 10 acres.

Mr. Humphrey added this area will be a commercial enterprise and open jobs to the residents of Elm Creek. Chairperson Brady asked if there is an intent for this property and Mr. Humphrey confirmed.

Secretary Wolfe requested clarification on where the property would have highway access and Mr. Humphrey confirmed.

Chairperson Brady asked if The Commission wished to ask any questions. No one spoke.

A member of the public, who identified herself as Michelle Stretch, of 3875 Highway 183, Elm Creek, Nebraska, stepped forward to testify. Ms. Stretch, who owns the RV Park, situated easterly of the proposed zoning amendment, stated she is in opposition of the zoning map amendment. She testified, a towing company was attempting to purchase this property and having that kind of commercial use, across the road, would not be acceptable for her residents. She stated that towing companies bring in old vehicles and allow the fluids to leak into the ground. She explained the groundwater and wells are located close to this area.

Deputy County Attorney Hoffmeister asked Ms. Stretch if she had concerns regarding the rezone or one of the potential uses of Commercial District and Ms. Stretch answered she appreciates the view of the hayfield she has now. She explained, she believes she will lose business if a towing company is granted use here.

Vice-Chairperson Keep inquired if Ms. Stretch had concerns regarding the truck repair business south of the proposed location and Ms. Stretch stated she did not. Vice-Chairperson Keep queried how the uses were different and Ms. Stretch stated it was too close to her business.

Ms. Stretch testified, the buyer intends to purchase the remaining tract and she voiced concerns over the amount of junk that would be collected.

Chairperson Brady asked the zoning of Ms. Stretch's RV Park and Zoning Administrator Daniels answered, Commercial. Deputy County Attorney Hoffmeister reviewed the history of the commercial zoning of Ms. Stretch's Park.

Ms. Stretch thanked The Commission for their time.

Chairperson Brady inquired whether anyone else wished to comment. No one spoke.

Deputy County Attorney Hoffmeister reviewed the Future Land Use Map with The Commission and confirmed this area is designated Commercial.

Chairperson Brady closed the public hearing at 7:18 P.M.

Chairperson Brady asked Mr. Humphrey if there was an intent to make this area residential and Mr. Humphrey stated it did not.

Vice-Chairperson Keep commented he believed the commercial use belonged in this area based on the current uses and Future Land Use Map.

Secretary Wolfe requested confirmation the proposed area is not located in the floodplain and Mr. Humphrey confirmed it is not.

Deputy County Attorney Hoffmeister advised The Commission on their options and reviewed permitted principle uses and structures.

Discussion occurred after the closing of the public hearing.

Motion was made by Ms. Jeffs, seconded by Mr. Schmidt, to recommend favorably the Zoning Map Amendment, filed by Mitch Humphrey, Registered Land Surveyor, on behalf of Poulson Family Limited Partnership, L.T.D., for property described as Part of the Southeast Quarter of the Northeast Quarter and Part of Government Lot One (1) located in Section Five (5), Township Eight (8) North, Range Eighteen (18) West of the Sixth Principal Meridian, Buffalo County, Nebraska, to rezone approximately 15.00 acres, more or less, from Agricultural – Residential (AGR) to Commercial (C).

Upon roll call vote, the following Board members voted "Aye": Biehl, Jeffs, Keep, Schmidt, Wolfe, Stubblefield and Brady.

Voting "Nay": None.

Abstain: None.

Absent: Vacek and Vest.

Public Hearing. 5(b)

Chairperson Brady opened the public hearing for Agenda Item 5(b) at 7:27 P.M. regarding an Application for Preliminary Subdivision, "Sears Second Subdivision", filed by Paul E. Sears and Joyce A. Sears, located in part of Southwest Quarter of the Northwest Quarter of Section Six (6),

Township Twelve (12) North, Range Thirteen (13) West of the Sixth Principal Meridian, Buffalo County, Nebraska.

Paul Sears, of 48582 275th Road, Ravenna, Nebraska, stepped forward to present the application. Mr. Sears testified there is a house, located on the tract of land they wish to subdivide, they wish sell.

Deputy County Attorney Hoffmeister inquired the zoning of the proposed tract and Zoning Administrator Daniels responded Agricultural – Residential (AGR).

Deputy County Attorney Hoffmeister reviewed the processes of subdivisions with The Commission and the requirements, thereof.

Vice-Chairperson Keep inquired the history and ownership of the residences in the proposed quarter section. Mr. Sears provided the subdivision and sales history on his property for The Commission, since the passing of his father.

Chairperson Brady requested clarification on the intent of the subdivision and Mr. Sears confirmed he wished to subdivide approximately three acres with the intent to sell the land and the house, not to add additional residences.

Chairperson Brady inquired if anyone wished to comment or ask questions. No one spoke.

Chairperson Brady closed the public hearing at 7:37 P.M.

Motion was made by Mr. Biehl, seconded by Mr. Schmidt, to recommend favorably the Application for Preliminary Subdivision, “Sears Second Subdivision”, filed by Paul E. Sears and Joyce A. Sears, located in part of Southwest Quarter of the Northwest Quarter of Section Six (6), Township Twelve (12) North, Range Thirteen (13) West of the Sixth Principal Meridian, Buffalo County, Nebraska.

Upon roll call vote, the following Board members voted “Aye”: Jeffs, Keep, Schmidt, Wolfe, Stubblefield, Biehl, and Brady.

Voting “Nay”: None.

Abstain: None.

Absent: Vacek and Vest.

Public Hearing. 5(c)

Chairperson Brady discussed Agenda Item 5(c) and, at the previous meeting, it was voted to be tabled. Therefore, when that meeting ended, the public hearing closed. He explained, reopening the public hearing may create some redundancy.

Deputy County Attorney Hoffmeister advised there may be a pending motion from the prior meeting by Mr. Vacek, but he was not in attendance. Furthermore, he continued, The Commission received additional exhibits, Exhibit C, Exhibit D, Exhibit E, and Exhibit F, from the applicant and those were dispersed. Deputy County Attorney Hoffmeister provided advisement to The Commission of potential actions.

Chairperson Brady declared the previous motion made by Mr. Vacek dead and The Commission will begin anew.

Vice-Chairperson Keep commented that he believed the 1-mile setback was created to protect the livestock confinement operator. Deputy County Attorney Hoffmeister advised, while that may be true, the classifications may still need to be reviewed.

Chairperson Brady added, he appreciated the existing setbacks, but classifications may need to be re-reviewed by The Commission. He attested, he believed The Commission should consider the use of Special Use Permits for Livestock Confinement Operations, as well.

Deputy County Attorney Hoffmeister reviewed the feedlots of record and the maps created by Zoning Administrator Daniels, named Variations in Setbacks. Those records, in order of submittal, were named Exhibit G and Exhibit H, Exhibit H-1, Exhibit H-2, Exhibit H-3, Exhibit H-4, Exhibit H-5, Exhibit H-6, and Exhibit H-7.

Chairperson Brady inquired whether waivers would still be required if the Special Use Permit process was implemented and Deputy County Attorney Hoffmeister confirmed. The waiver process was discussed.

Chairperson Brady asked if The Commission believed the public hearing should be reopened for additional comment. Mr. Schmidt commented, since he was unable to attend the last meeting, he would appreciate additional testimony.

Deputy County Attorney Hoffmeister advised The Commission, if they wished to reopen the public hearing, then a time limit should be set and only new or supplementary testimony will be accepted.

The waiver process was further discussed.

Deputy County Attorney Hoffmeister advised The Commission to consider an amendment to the existing regulations and stratify the existing classes. Further, he added, the amendment would affect the entire county.

Mr. Biehl stated he believed there were several members of the public in attendance and each should have the ability to comment on the proposed amendment.

Ms. Jeffs recommended a five-minute limit and Chairperson Brady stated, as long as there was no objection from The Commission, the public hearing will be re-opened with a five-minute limit and only new information will be permitted. No one spoke in opposition.

Chairperson Brady reminded the public they needed to identify their names and addresses as part of the testimony. Deputy County Attorney Hoffmeister counseled The Commission that the applicant be allowed an opening testimony, at three minutes, and a closing testimony. The Commission agreed. Zoning Administrator Daniels advised she had the timer available.

Chairperson Brady opened the public hearing for Agenda Item 5(c) at 8:01 P.M., regarding the Application for Code Amendment, filed by Cory Banzhaf, Power of Attorney, JKS Farms L.L.C., under Section 6.4, Livestock Confinement Facilities/Operations, regarding class sizes and setback requirements, for property described as a Part of Section Twenty-Seven (27), Township Eleven (11) North, Range Fifteen (15) West of the 6th P.M., Buffalo County, Nebraska.

Mr. Craig Bennett, of Miller and Associates, located at 1111 Central Avenue, Kearney, Nebraska and Mr. Cory Banzhaf, residing at 28430 128th Road, Kearney, Nebraska, stepped forward to open the discussion. Mr. Bennett reviewed Exhibit F, the map of livestock confinement operations in Buffalo County.

Mr. Banzhaf reviewed Exhibit D, Economic Impacts of Fed Cattle and Hog Bans, with The Commission. He, also, discussed the waiver process.

Mr. Schmidt inquired the number of head Mr. Banzhaf intended to have. Mr. Banzhaf responded, he did not have a proposal, he just wanted the regulations amended in order to apply. Deputy County Attorney Hoffmeister advised the applicant wished to have an additional class added to re-stratify the classes.

A member of the public, Charles Woodside, of 1708 W. 49th Street Place, Kearney, Nebraska, stepped forward to testify. He stated he was supportive of the proposed amendment. He testified the success of the State of Nebraska's economic growth is due to corn, cattle, and ethanol. He wishes to support the economic growth of these industries.

Ms. Jeffs asked Mr. Woodside if he would consider residing within a half-mile of a livestock confinement operation. Mr. Woodside stated he grew up next to a feed lot.

Chairperson Brady explained to Mr. Woodside The Commission is, also, charged with protecting the rights of the landowners that do not wish to reside next to a feedlot. He asked how he believed The Commission should protect those rights. Mr. Woodside explained that one landowner should not have the authority to veto an expansion and, perhaps, a registration of disagreement should be considered.

Deputy County Attorney Hoffmeister asked Mr. Woodside if the landowners within a certain perimeter should have more clout. Mr. Woodside stated he believed that could be a consideration to protect the businesses, as well as the residences.

Another member of the public, Tammi Ahrens, of 21415 Poole Road, Ravenna, Nebraska, stepped forward to testify. She explained she is in opposition of the amendment. She testified she has been impacted by Mr. Banzhaf because he has constructed a DEQ-approved animal confinement operation, of 950 head, 500 feet from her residence and she was never given the opportunity to sign a waiver of disagreement.

She explained she has to contend with flies, smell, and dust on a regular basis.

Ms. Ahrens explained to Zoning Administrator Daniels she wished to have the photos she took provided to The Commission. These would later be identified as Exhibit I and Exhibit J.

She added, the construction of the feedlot next to her residence affects her property value, health, and the ability to hold gatherings.

The next member to testify was Ron Reese, of 26650 355th Road, Pleasanton, Nebraska, ~~stepped forward to testify~~. He stated he was in support of agricultural being unduly restrictive. He testified he'd like The Commission to consider economic growth and regulatory fairness for the agricultural sector.

Chairperson Brady asked Mr. Reese if livestock confinement operations should be permitted and Mr. Reese responded, with consideration given to some variables, all businesses should have the same regulatory guidelines.

Chairperson Brady said he appreciated Mr. Reese's testimony, but he believes zoning maintains due diligence in protecting all citizens of Buffalo County.

John Widdowson, of 14182 Range Road, Gibbon, Nebraska, stepped forward to testify. He testified he is the 5th generation to his family farm and ranch. He testified The Commission needs to support and advocate for existing farmers and ranchers and the next generation of farmers and ranchers in Buffalo County.

Deputy County Attorney Hoffmeister asked Mr. Widdowson if he believed a 1-mile setback was appropriate for 2,501-head operation is too restrictive. Mr. Widdowson responded, he wasn't sure, but he was sure that requiring consent for all the neighbors is not acceptable.

Chairperson Brady asked Mr. Widdowson if he believed residential development should not be allowed in rural parts of the county and Mr. Widdowson responded, they should be permitted, but not to a point where it restricts generational agricultural growth. Discussion occurred regarding economic development.

Zoning Administrator Daniels was able to provide two photos from Mrs. Ahrens. They will be admitted as Exhibit I and Exhibit J. The Commission allowed Ms. Ahrens to quickly explain the photos. Ms. Ahrens explained where the photos were taken and re-reviewed some of her previous testimony.

Deputy County Attorney Hoffmeister inquired the purpose of bringing the photos forward when the public hearing was regarding a code amendment and Ms. Ahrens explained she should have the right to veto an expansion because her residence was located at that area before he expanded.

Jerome Loeffelholz, of 21300 Cherry Road, Pleasanton, Nebraska, stepped forward to testify. Mr. Loeffelholz testified that his driveway along 220th is hazardous with the amount of feeder trucks and wagons going to the livestock confinement operation. He explained the road is in worse condition now, with the amount of truck traffic to the livestock confinement operation, than when his grandparents originally homesteaded. He asked The Commission to protect the citizens of Buffalo County who do not want to reside next to animal confinement operations.

Jeff Burr, of 2508 W. 34th Street, Kearney, Nebraska, testified. Mr. Burr stated he understood the position The Commission was in advocating for the entirety of Buffalo County. Mr. Burr testified he was in support of economic growth, but with some flexibility in regulatory standards.

Deputy County Attorney Hoffmeister asked if Mr. Burr was in favor of the proposed amendment and Mr. Burr explained he was in favor, but with some degree to regulation, to ensure the future of Buffalo County.

Discussion occurred regarding regulation amendments post construction.

Kirk Potter, of 9180 Poole Avenue, Kearney, Nebraska, testified. He testified, he is opposed to the permissibility of one person to veto the expansion or construction of a livestock confinement operation. He explained that farmers and ranchers that are willing to take a risk, should not be restricted by one person who can veto an expansion.

Ms. Jeffs asked Mr. Potter what percentage of waivers would be acceptable. Mr. Potter stated he wasn't sure, but he said he believed 75% of signatures, within a 1-mile setback, was appropriate.

Mr. Potters stated, he has no issues with regulations because livestock confinement operations are so-heavily controlled. However, he added, one person who can stop an expansion is too restrictive.

Deputy County Attorney Hoffmeister reviewed Keith County, Nebraska's regulations, regarding half-mile setback with the veto review.

Discussion occurred regarding the density of population in abutting counties.

Sadie McKillip, of 2082 29th Road, Kearney, Nebraska, testified. Ms. McKillip reviewed the economic impacts of agriculture in Buffalo County.

Chairperson Brady inquired if agricultural development should be a higher priority than other forms of economic development and Ms. McKillip answered, she believed diversification is imperative.

Allissa Troyer, of the Nebraska Department of Agriculture, testified. She discussed absentee and foreign land ownership in Nebraska. She explained, in 2011, the United States Department of Agriculture reported 25.7 million acres of US Agland was held in title, wholly or partially, by foreign land ownership. In 2018, she continued, foreign entities owned around 30 million acres of US Agland and in 2021, foreign entities owned just over 40 million acres of US Agland. However, she added, in 2011, 1.26 billion acres of US Agland was domestically owned and in 2021, 1.25 billion acres of US Agland was domestically owned.

She discussed a “cattle country easement”, which is a tool used by other Nebraska counties for the use of parceling off agricultural lands for residential use.

Chairperson Brady asked Ms. Troyer if she was aware how many agricultural-based businesses were owned by foreign entities and Ms. Troyer answered she was unsure.

Ms. Jeffs requested clarification from Ms. Troyer if she was for or against the proposed amendment and Ms. Troyer explained she was providing the information for The Commission to consider revising the waiver process because a foreign entity may refuse to sign the waiver.

Mel Huyser, of 8 N. Cove Road, Johnson Lake, Nebraska, testified. Mr. Huyser testified he operates a livestock confinement operation near Elm Creek, Nebraska, located two miles north. He explained residential development has occurred next to his operation and a waiver was never requested of him.

Deputy County Attorney Hoffmeister explained the amendment proposed was regarding setbacks and asked if Mr. Huyser agreed. Mr. Huyser explained he did not agree with requiring 100% consent of neighbors.

Deputy County Attorney Hoffmeister reminded the members of the public this particular hearing was regarding regulation change, not a specific livestock confinement operation.

Chairperson Brady asked if anyone wished to speak and provided an open invitation to the public to speak, no matter the comment. He explained The Commission wished to deliver an amendment that was conducive for the entirety of Buffalo County.

No one else spoke.

The applicant, Mr. Banzhaf, and Mr. Bennett concluded the testimony portion of the public hearing. Mr. Bennett thanked The Commission for their time and consideration. He re-reviewed Exhibit A, showing the previous, existing and proposed setbacks. Mr. Bennett also reviewed Section 5.12 (2), which states, “General farming and ranching activities, excluding any expansion of existing or development of Class IV or larger livestock confinement facilities/operations as defined in Article 3”.

Mr. Bennett asked The Commission to consider the newly-passed Comprehensive Plan and to decide if the amendment aligns. He referenced Exhibit H, and states there are only 8 large animal confinement operation and explained there is prime farm ground across the county, that has been restricted with the existing regulations.

Chairperson Brady asked Mr. Bennett if he could cite an example where the regulations have been too restrictive and Mr. Bennett responded, there hasn't been significant agricultural growth in Buffalo County. Further, he added, family farms are growing and the regulations, as they exist now, are too restrictive for families to expand their operations.

Mr. Banzhaf concluded his testimony by stating the regulations are too restrictive and he requested The Commission consider protecting agriculture in Buffalo County.

Discussion occurred regarding the amendment process with Buffalo County. Deputy County Attorney Hoffmeister reviewed Article 11 of Buffalo County Zoning Regulations. He, also, reviewed potential options with The Commission.

Chairperson Brady provided one last invitation for testimony. No one spoke.

Chairperson Brady closed the public hearing at 9:31 P.M.

Chairperson Brady recessed for a ten-minute recess at 9:31 P.M.

Chairperson Brady reconvened at 9:42 P.M.

Exhibit K, Buffalo County Livestock Confinement Operations Regulations (Current, Proposed and Recommended) was reviewed by The Commission.

Deputy County Attorney Hoffmeister, then, reviewed the requirements and classifications of livestock confinement operations under the State of Nebraska. The classifications, he counselled, classifies 1 animal unit to 300 animal units are classified as “small”, 301 to 1,000 is classified as “medium”, and anything larger than 1,000 animal units is classified as “large”. At that point, Deputy County Attorney Hoffmeister added, in the state licensing process due to a desire for public participation requested by DEQ/Dept of Ag, the County Board is asked by DEQ/Depart of Ag for a recommendation or commentary. When given this request, he continued, without some type of notice and opportunity for public comment, the Board is

conducting a hearing and some local review should be conducted, particularly if there's a state request for comment.

Deputy County Attorney Hoffmeister advised The Commission to consider amending the proposed IIA Class, due to Agricultural – Residential (AGR) District, allowing livestock confinement operations of Class III or higher.

Vice-Chairperson Keep inquired what additional information would be obtained at the Special Use Permit public hearing and Deputy County Attorney Hoffmeister answered, it gives The Planning Commission to make the decision about whether the proposed site should be in existence. Vice-Chairperson Keep asked if the same requirements would be allowed and Deputy County Attorney Hoffmeister confirmed.

Deputy County Attorney Hoffmeister advised The Commission to consider more stratified data and a model was presented as shown below, based on the State’s classifications:

Recommended Class Stratifications - Original						
	Class I	Class II	Class III	Class IV	Class V	Class VI
Total Animal Units Allowed	1 to 300	301 to 1,000	1,001 to 5,000	5,001 to 7,500	7,501 to 10,000	10,001 and above
Minimum Distance Allowed	No Minimum Requirement	3/8 Mile	1/2 Mile	3/4 Mile	1 Mile	1.5 Mile
State Classification	Small	Medium	Large+			

Deputy County Attorney Hoffmeister reviewed The Comprehensive Plan and stated that livestock confinement operations are not allowed to exist near The Platte River or The Lower Basin.

Ms. Jeffs inquired if the percentage of approval could be adjusted. Deputy County Attorney Hoffmeister stated it may be discussed at a later date, but may require additional consideration. At this time, he said, the stratum needed to be addressed.

Chairperson Brady commented a decision needed to be made and a stratum needed to be determined.

Secretary Wolfe commented that she resides within two miles of a 5,000 head livestock confinement operation and she believes setbacks are important due to the significant waste. Discussion occurred after the closing of the public hearing.

Several exchanges of ideas were discussed among The Commission members and several deliberations occurred from the public outside of the closing of the public hearing.

The final discussion for classes and setbacks as follows:

Final Recommendation (Table 5/18/2023)					
	Class I	Class II	Class III	Class IV	Class V
Total Animal Units Allowed	1 to 300	301 to 1,000	1,001 to 2,500	2,501 to 5,000	5,001 and Above
Minimum Distance Allowed	No Minimum Requirement	1/2 Mile	1/2 Mile	3/4 Mile	1 Mile

Motion was made by Ms. Jeffs, seconded by Secretary Wolfe to revise the proposed amendment, as presented under “Table 5/18/2023”, regarding the Application for Code Amendment, filed by Cory Banzhaf, Power of Attorney, JKS Farms L.L.C., under Section 6.4, Livestock Confinement Facilities/Operations, regarding class sizes and setback requirements, for property described as a Part of Section Twenty-Seven (27), Township Eleven (11) North, Range Fifteen (15) West of the 6th P.M., Buffalo County, Nebraska, to the following:

Final Vote (Table 5/18/2023)					
	Class I	Class II	Class III	Class IV	Class V
Total Animal Units Allowed	1 to 300	301 to 1,000	1,001 to 2,500	2,501 to 5,000	5,001 and Above
Minimum Distance Allowed	No Minimum Requirement	1/2 Mile	1/2 Mile	3/4 Mile	1 Mile

Upon roll call vote, the following Board members voted “Aye”: Keep, Schmidt, Wolfe, Brady and Jeffs.

Voting “Nay”: Biehl and Stubblefield.

Abstain: None.

Absent: Vacek and Vest.

The Planning Commission discussed and exchanged ideas in which districts and class levels the Special Use Permit process would initiate.

Motion was made by Vice-Chairperson Keep, to recommend favorably a code amendment requiring all livestock confinement operations, classified as Class III, or larger, in the Agriculture (AG) District, to acquire an Application of a Special Use Permit, prior to construction of a new operation or expansion of existing operation. He explained that this should be required, under the State of Nebraska’s classification of “large” animal confinement operations.

Discussion occurred between The Commission members on the restrictiveness of Class III. Mr. Schmidt recommended the requirement change to Class V, instead of Class III.

Vice-Chairperson Keep retracted his motion recommending favorably a code amendment requiring all livestock confinement operations, classified as Class III, or larger, in the Agriculture (AG) District, to acquire an Application of a Special Use Permit, prior to construction of a new operation or expansion of existing operation. He explained that this should be required, under the state of Nebraska's classification of "large" animal confinement operations.

Motion was made by Mr. Stubblefield, seconded by Mr. Schmidt, to recommend favorably a code amendment requiring all livestock confinement operations, classified as Class V, or larger, in the Agriculture (AG) District, to acquire an Application of a Special Use Permit, prior to construction of a new operation or expansion of existing operation.

Upon roll call vote, the following Board members voted "Aye": Schmidt, Stubblefield, Jeffs and Keep.

Voting "Nay": Wolfe, Biehl, and Brady.

Abstain: None.

Absent: Vacek and Vest.

No action was taken on Agricultural – Residential (AGR) District.

Public Hearing. 5(d)

Chairperson Brady opened the public hearing for Agenda Item 5(d) at 11:04 P.M. regarding the Discussion and Consideration of Revision to the Buffalo County Zoning and Subdivision Regulations as part of the Buffalo County Comprehensive Plan, or the general plan for the improvement and development of the county outside of the jurisdiction of any city or village, as required per Neb. Rev. Stat. §23-174.06.

Deputy County Attorney Hoffmeister reviewed the proposed code amendments regarding Buffalo County Zoning Regulations, Section 5.52 (12), to state, "Storage facilities having no more than the following special limitations per each unit of storage: a maximum area of no more than 640 square foot per each storage unit area; an entry access or accesses to each storage unit that has no greater dimensional area than that of 224 total square feet; and a maximum exterior height of no greater than twenty feet."

Chairperson Brady closed the public hearing at 11:08 P.M.

Motion was made by Secretary Wolfe, seconded by Ms. Jeffs, to recommend favorably the code amendment to Buffalo County Zoning Regulations, Section 5.52 (12), to state, "Storage facilities having no more than the following special limitations per each unit of storage: a maximum area of no more than 640 square foot per each storage unit area; an entry access or accesses to each storage unit that has no greater dimensional area than that of 224 total square feet; and a maximum exterior height of no greater than twenty feet."

Upon roll call vote, the following Board members voted "Aye": Wolfe, Stubblefield, Brady, Biehl, Jeffs, Keep and Schmidt.

Voting “Nay”: None.

Abstain: None.

Absent: Vacek and Vest.

Chairperson Brady opened the public hearing for Agenda Item 5(d) at 11:09 P.M. regarding the Discussion and Consideration of Revision to the Buffalo County Zoning and Subdivision Regulations as part of the Buffalo County Comprehensive Plan, or the general plan for the improvement and development of the county outside of the jurisdiction of any city or village, as required per Neb. Rev. Stat. §23-174.06.

Deputy County Attorney Hoffmeister, then, reviewed the proposed amendments regarding wind farms, as well as two articles regarding wind farms and protecting migratory birds, labelled as Exhibit A and Exhibit B.

He referenced <https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/>, to show inventoried wetlands across Buffalo County and ensuring that no hydraulic oil leaks into our wetlands if a tower falls.

Chairperson Brady closed the public hearing at 11:22 P.M.

Motion was made by Mr. Biehl, seconded by Mr. Schmidt, based upon the request of the Buffalo County Board of County Commissioners for further study on issues related to wind farms, and after public meeting held on March 14, 2023, the Commission finds that the following amendment(s), suggestions, and recommendations should be favorably reported back to the Buffalo County Board of County Commissioners.

A. As to Item #1, listed above, this Commission believes that due to the substantial presence of migratory flyways within Buffalo County that outright prohibition to wind farms throughout the county on its initial review appears to be advisable. However, the maps referred to by the County Board do not cover the entirety of Buffalo County. Therefore, the enactment of an outright countywide prohibition of wind farms based upon this reason might cause a litigation risk of this county’s overall regulations regarding windfarm distancing provisions. An over extensive application of the areas disclosed on the map could expose all of this county’s regulations regarding windfarms to an “arbitrary and capricious” and “overinclusive” conclusion. Therefore, upon advice of counsel, this Commission believes that should this Commission should not state that the protection of migratory flyways is the sole basis of county-wide prohibition. The Commission also believes that due to other provisions regarding distancing from waterways and other protected areas, together with the additional adoption of a distancing provisions from inventoried wetlands, that reasonable zoning protection will be given to migratory animals. Additionally, if not previously declared, this Commission adopts the public goals of protection of migratory flyways as an additional justification as to why Buffalo County needs windfarm regulation.

B. As to Item #2, this Commission, after consideration documents and publication in materials previously contained in this Commission’s proceedings and the County Board’s proceedings, finds that the energy conversion machinery in a wind tower contains lubricants. Some articles

have indicated the presence of 120 or more gallons of lubricant needed in power generation area of smaller towers. This presence of lubricants in windfarms can be, and will be, spilled into inventoried wetland areas if and when the wind towers fall. These lubricants, when leaked will cause contamination of wetlands, together with impact/fall area of a fallen wind tower. Some towers located in Nebraska have a height greater than 180 meters, or 600 feet. The trend is fewer towers at a greater height so as to achieve a greater energy conversion. Therefore, this Commission recommends an amendment to Buffalo County's Zoning Resolution to add the following language as a minimum distancing provision for the protection of inventoried wetlands:

“1. LOCATION AND DISTANCE REQUIREMENTS-WIND FARMS:

A. A Wind Farm, as herein defined within the Buffalo County Zoning Regulations:

Shall not be located or expanded within:

The south river bank of the Platte River to three miles from the north right of way for Highway 30 and three miles from the centerline of Highway 2.

Three miles from the thread of the stream of the South Loup River.

Five miles from any Federal or State wildlife preservation or management area.

One-quarter mile from any and all inventoried Wetlands, as set out in the U.S. Fish and Wildlife's mapping and inventory of Wetlands, namely the mapping contained at: (<https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/>).

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 a Wind Farm to the following distances, whichever applies:

The nearest portion of the building or structure used as a part of a Wind Farm;

The nearest property line of a Federal or State wildlife preservation or management area.

The nearest edge of inventoried Wetlands as set out in the U.S. Fish and Wildlife's mapping and inventory of Wetlands, namely the mapping contained at: (<https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/>).”

C. As concerns Item #3, this Commission again finds, upon advice of counsel that the perimeter protection buffer comprised of all lands bordered by other counties, does not have a scientific and reasonable reason to justify a buffering regulation. The advice of counsel is that this provision is not defensible because it does not have scientific and reasonable reasons justifying enactment. Because of this reason, and upon advice of legal counsel, the Commission makes no recommendation on this provision. The Commission does note that significant areas of Buffalo County's perimeter contain zoning protected areas that have been protected by previously enactment by the County Commissioners of wind farm zoning regulations. Additionally, there is additional overlap when additional setbacks for inventoried wetlands are added to the various areas that have been granted zoning protection.

As concerns Item #4, the overall height limitation, this Commission believes that no further recommendation should be given to the County Commissioners because this provision might be best considered when and if special use applications are submitted for review as a part of the zoning process. Considerations as to limiting height might be best left on a site-specific basis depending upon the facts that exist at each wind tower location and placement.

Upon roll call vote, the following Board members voted “Aye”: Biehl, Jeffs, Keep, Schmidt, Wolfe and Stubblefield.

Voting “Nay”: None.

Abstain: None.

Absent: Vacek and Vest.

Old Business

Minutes

Motion was made by Secretary Wolfe, seconded by Ms. Jeffs, to approve the minutes of the April 20, 2023 meeting, as presented.

Upon roll call vote, the following Board members voted “Aye”: Jeffs, Keep, Wolfe, Stubblefield, Brady, and Biehl.

Voting “Nay”: None.

Abstain: Schmidt.

Absent: Vacek /and Vest.

Motion carried.

New Business

Report on Previous Hearings

Zoning Administrator Daniels provided a report to The Commission from the May 9, 2023 Board of Commissioners: Application for Special Use Permit, for the National Audubon Society, Inc., filed by Kristal Stoner, Executive Director of Audubon Great Plains. She reviewed the compliant sign design packet with The Commission.

Zoning Administrator Daniels notified The Commission that the Application for Zoning Map Amendment, filed by Mauslein Land Holdings, L.L.C will be heard by The Commissioners on May 23, 2023 and she will report back the decision at the next meeting.

New Business, Correspondence and Other Business

Zoning Administrator Daniels reviewed the extra-territorial jurisdictional subdivisions with The Planning Commission. The City of Kearney had put forth proposed “Arbor View Second” in February 2023, for their review. She stated The Commission recommended renaming that street to avoid delays in emergency personnel with the confusing name changes. That subdivision was

resent to The Commission for a re-review. She explained, she had sent the draft to The Buffalo County Sheriff's Office and it was recommended to add "East" to the street names to, again, avoid confusion for emergency personnel. Further, she stated, there was a drafted letter in their packets and to let her know if there were concerns with the draft. No one spoke.

Zoning Administrator Daniels reviewed Dawson County Notices of Public Hearing.

Zoning Administrator Daniels asked The Commission to review their public information, which was attached in their packet. She stated that she had received calls from the public that some information was incorrect. She requested The Commission review the information and let her know if something has changed.

Discussion occurred regarding livestock confinement operations expansions and notice requirements.

Next Meeting

The next meeting will be conducted June 15, 2023. Zoning Administrator Daniels provided a notice to The Commission that there may be a "special meeting/workshop" on June 22, 2023 from 5:00 P.M. to 8:00 P.M. to complete the review of the Buffalo County Regulations.

Adjourn

Chairperson Brady adjourned the meeting at 11:35 P.M.

Scott Brady, Chairperson
Buffalo County Planning and Zoning Commission

Loye Wolfe, Secretary