

MINUTES OF PLANNING AND ZONING COMMISSION
OCTOBER 19, 2023
BUFFALO COUNTY COURTHOUSE
5:30 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 5:39 P.M. on October 19, 2023.

In Attendance: Tammy Jeffs, Kurt Schmidt, Loye Wolfe, and Scott Brady.

Willie Keep attended at 6:40 P.M.

Also attending were: Deputy County Attorney Andrew Hoffmeister, Zoning Administrator Dennise Daniels, Keith Carl, of Hanna:Keelan, Associates, P.C., and Tim Keelan, of Hanna:Keelan, Associates, P.C. whom appeared via ZOOM. No members of the public were present.

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

Workshop Session

Chairperson Brady announced Item 3(a) at 5:39 P.M. and opened discussion for revision of 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.

Zoning Administrator Daniels discussed several proposed changes in sections that have been discussed, including redefining Section 5.52, "Enlargement, Repair, Alterations...", defining an "Arborist", allowance of porches or decks to project into front yards under Section 3.3189, Section 5.54 Commercial District Permitted Special Uses to permit an Arborist, Section 5.62, and Permitted Principal Use to allow an Arborist.

Zoning Administrator Daniels stated she wished to review the revisions that were proposed at the August 17, 2023 meeting to ensure The Planning Commission found the revisions to be acceptable and to discuss other small verbiage corrections. The Commission found those variations to be acceptable.

The Commission discussed revisions to Buffalo County Zoning Regulations, Section 6.2 through 6.4.

The Commission, also, reviewed several portions of the subdivision regulations that were created after the August 17, 2023 Meeting. The Commission found those revisions acceptable. They, then, discussed Buffalo County Subdivision Regulations, Section 3.09, Amendment to Preliminary Plat After Board and Planning Commission Approval, and Section 5.01, Minimum Improvements, Future Improvements, & Maintenance through Section 5.09, Postal Facilities.

Chairperson Brady closed the discussion on this agenda item at 6:47 P.M.

The Commission adjourned for a recess at 6:47 P.M.

Chairperson Scott Brady called the meeting to order, after a recess, at 7:10 P.M.

Chairperson Brady re-called attendance. In Attendance: Tammy Jeffs, Kurt Schmidt, Willie Keep, Loye Wolfe, and Scott Brady.

Quorum was met.

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

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

The public forum was opened at 7:11 P.M. The public forum closed at 7:11 P.M.

Public Hearing. 5(a)

Chairperson Brady opened the public hearing for Agenda Item 7(a) at 7:12 P.M. regarding the Application for Special Use Permit, filed by Mark Morten, to operate a commercial dog business performing training, breeding, and limited small scale boarding services on tax parcel 380081010, located at 29235 145th Road, Kearney, Nebraska, and described as Part of the Northwest Quarter of the Northwest Quarter, situated in Section Twenty-five (25), Township Ten (10) North, Range Sixteen (16) West of the Sixth Principal Meridian, Buffalo County, Nebraska.

Vice-Chairperson Keep inquired about the zoning history on this property. Deputy County Attorney Hoffmeister responded, this particular hearing would be based on a new application by a returning applicant. He explained that the applicants' prior Special Use Permit had been revoked by The Buffalo County Board of Commissioners due to lack of progress. Further, he explained, the applicant can reapply.

Deputy County Attorney Hoffmeister invited the applicants forward.

Mark Morten and Jessica Morten, of 29235 145th Road, stepped forward to present their application. Mr. Morten described his intent for the application. He stated that he intends to perform training, breeding, and limited small scale boarding services on the proposed property.

He explained that he has added to an existing shop on the property to kennel dogs. In order to be licensed, Mr. Morten continued, it has to be climate-controlled and up to code. He said he has enclosed the indoor-outdoor runs and he's insulated with 3" of spray foam for maximum sound protection. He stated that he will need to exercise the dogs twice a day, once in the morning and once in the evening; the dogs will have exercise 30 minutes after sunrise or 30 minutes before sunset. Mr. Morten added that he has spoken with 13 of 14 neighbors within a quarter-mile radius.

Deputy County Attorney Hoffmeister asked if the signed sheets, identified as Exhibit 1, are the signatures from the neighbors having no objection to the proposed project and Mr. Morten confirmed. He explained that there were a couple neighbors that would not physically sign the document, but would verbally agree.

Deputy County Attorney Hoffmeister reviewed the prior project and compared it to the proposed project.

Deputy County Attorney Hoffmeister asked Mr. Morten the number of dogs that will be kenneled on this property and Mr. Morten answered there would be 10 total dogs for training and boarding. He disclosed that he has another dog, that is not included in the number of dogs, a Bassett Hound that is a family pet and will be housed in his residence.

Secretary Wolfe asked for clarification on the ownership of the dogs that will be kenneled; Mr. Morten explained that he owns two female labs that he uses for breeding and he's included them in the 10 dogs. Further, he stated, there are only seven kennels within his boarding facility and each kennel can only have one dog. However, he added, if there are two dogs from the same residence, they may be placed in a kennel together under Nebraska State Regulations.

Secretary Wolfe referenced the requirements that state 2-3 dogs may be placed in one kennel and Mr. Morten responded that it was based on the size of the dog to the square footage required.

Secretary Wolfe asked Mr. Morten where the parking would be located and Zoning Administrator Daniels referenced the parking document within The Commissions' packet.

Mr. Schmidt asked if the signatures Mr. Morten had acquired were the signatures of just adjacent property owners and Mr. Morten answered they were signatures of neighbors that may not be adjacent.

Chairperson Brady inquired whether there would be someone onsite at all times to monitor the kennel and Mr. Morten answered there would not be someone onsite, other than Mrs. Morten, who cares for their children.

Deputy County Attorney Hoffmeister confirmed that the proposed structure, as shown on the map and as presented in The Commission's packet, would be 300 feet from any property line or residence. Mr. Morten confirmed.

Deputy County Attorney Hoffmeister asked Mr. Morten what the threshold was required to acquire a license and Mr. Morten stated he was unsure, but the licensing fees were dependent on the number of animals that would be kenneled/boarded.

Deputy County Attorney Hoffmeister inquired if Mr. Morten would, also, be doing gun training and Mr. Morten confirmed. Deputy County Attorney Hoffmeister asked if any projectiles were used and Mr. Morten stated blank primers were used for the training. Ms. Jeffs asked when Mr. Morten would be conducting training and Mr. Morten responded, the daytime.

Deputy County Attorney Hoffmeister inquired about signage for the business and Zoning Administrator Daniels referenced Mr. Morten's application and confirmed that Mr. Morten had stated a sign would be erected and it would be compliant with Buffalo County's signage regulations.

Chairperson Brady inquired what Mr. Morten's goal was with his business and Mr. Morten responded he would like to open a business in a commercially-zoned area to enlarge his business. He added, he understood that he would need to apply for the maximum amount of dogs that he thought he could have, but quickly realized that he did not want that many dogs onsite. He continued that he would prefer to operate under the same conditions, on a hobby basis, as he has been for the last year.

Deputy County Attorney Hoffmeister inquired if all the neighbors had dogs and Mr. Morten confirmed, he said he estimated approximately 20 different dogs of various sizes within their area.

Deputy County Attorney Hoffmeister provided procedural background for Special Use Permit for the applicant and citizens.

Chairperson Brady inquired if anyone from The Commission had any other concerns or questions. No one spoke.

Chairperson Brady stated he had concerns that there would not be any more dogs on site than what was proposed and Mr. Morten stated he would provide assurance. Deputy County Attorney Hoffmeister referenced the application that states, "there will be a maximum occupancy of 10 dogs for any combination of these services, e.g. 3 boarding dogs, 4 training dogs, and 3 dogs for breeding purposes...".

Mr. Morten disclosed that he would have one additional dog, not listed as a business dog, a Bassett Hound will be housed in the residence and will not be used as part of the business. He said that he currently has two female labs that are used for breeding, but when the labs outgrow their ability to produce offspring, then they will be retired and will not be included in the 10 dogs.

Ms. Jeffs stated she had concerns of this becoming a puppy mill situation and wanted to ensure that would not become an issue.

Mr. Morten provided background on his acquisition of this property with the intent to have a animal facility. He added, it was zoned Agricultural and that knowledge played a large factor in his purchasing of the property.

Deputy County Attorney Hoffmeister reminded The Commission that Mr. Morten could have up to 2,500 animal units on this tract of land.

Chairperson Brady thanked Mr. Morten for his presentation and opened the presentation table to the members of the public, in attendance at the meeting.

A member of the public stepped forward to testify. Travis Martenson, of 14227 Highway 10, Kearney, Nebraska, discussed his concerns for the proposed project. He stated he was not spoken to about the project, but had no issues with the project or the business. However, he said, he was disappointed that Mr. Morten had applied for a second permit, after not following through with previous application. Mr. Martenson stated that he was required to move a building after he put up a building without a permit, and he followed through. He said that he had to follow the rules, everyone should have to, also.

Mr. Martenson, also, voiced concern that Mr. Morten would enlarge his business without going through the proper channels. Deputy County Attorney stated that Mr. Morten would, potentially have puppies, with his breeding operation. He reiterated that Mr. Morten had disclosed he would only have 10 dogs, at any given time, not including his Bassett Hound.

Deputy County Attorney Hoffmeister asked Mr. Morten the age in which puppies are weaned and Mr. Morten replied, eight weeks. Deputy County Attorney advised that The Commission may want to consider an exemption or age for the puppies. Discussion occurred the age in which puppies are no longer considered "puppies".

Ms. Jeffs inquired how quickly puppies are moved to their new homes and Mr. Morten stated he wishes to have them gone at eight weeks.

Discussion occurred regarding environment around dogs versus livestock.

Mr. Martenson clarified that he had no issues with the proposed business plan, so long as Mr. Morten complies with the Special Use Permit and its conditions.

The Commission thanked Mr. Martenson for this testimony. Mr. Martenson thanked The Commission for their time.

Mike Kreutzer of 15165 Highway 10, Kearney, Nebraska, presented his testimony to The Commission. Mr. Kreutzer stated that he believed that there is no limit on the number of dogs a person can have for their family pets. Mr. Kreutzer stated that as long as he's not selling his personal dogs, then those dogs should not be counted towards the 10-maximum number of dogs.

Ms. Jeffs asked Mr. Kreutzer if he was in favor of or against the proposed project and Mr. Kreutzer stated that he was in favor of the project, but wanted The Commission to consider leaving his personal dogs out of the 10-maximum amount.

Mr. Kreuzter thanked The Commission for their time and The Commission thanked him for his testimony.

Mike Rost, of 29745 145th Road, Kearney, Nebraska, also, provided testimony. Mr. Rost stated that Mr. Morten did provide a business proposal to Mr. Rost and that he appreciated his time. Mr. Rost stated that as long as Mr. Morten continues to operate under the number of dogs he currently is, then he has no concerns with the business.

Mr. Rost stated that he testified against 40 dogs next to residence, but had no issues with the maximum of 10 dogs. He added that he would like The Commission to add further restrictions on the number of breeders and litters. Deputy County Attorney Hoffmeister recommended having a maximum number of breeders, such as three.

Mr. Rost, also, recommended The Commission consider counting the puppies 10 weeks or older in the 10-maximum number.

Mr. Martenson expressed concern about how The Commission would regulate the number of dogs that Mr. Morten would have. Deputy County Attorney Hoffmeister explained that this area is hard to regulate by Buffalo County.

The public hearing was, then, closed by Chairperson Brady at 8:01 P.M. The applicant wished to provide additional testimony and requested to provide a closing statement. Chairperson Brady reopened the public hearing at 8:01 P.M. for the sole purpose of closing statement.

Mr. Morten provided a closing statement regarding the application. He stated that he wished for The Commission to regulate him the same way as other similar businesses were regulated.

Nick Ridgeway, the applicant's attorney, spoke on their behalf. He explained that while all of the hypothetical concerns brought forth by the members of the public, are valid concerns, that would not be the case with Mr. Morten. Mr. Morten, he added, takes his business very seriously for sportsmen and a puppy mill situation would not happen.

Chairperson Brady closed the public hearing at 8:03 P.M.

Discussion occurred regarding ages of dogs that should be included in the maximum number of dogs. The life cycle of a dog was discussed from weaning to probable adoption and licensing requirements through the state of Nebraska. Deputy County Attorney Hoffmeister recommended 10 weeks of age or older should be included in the 10 dogs maximum.

Chairperson Brady reviewed Mr. Morten's Project Description, which shows the combination of dogs that add to the maximum number of dogs. Mr. Schmidt recommended that any puppy/dog 13 weeks or older would not be included in the maximum number of 10 dogs. Secretary Wolfe asked Mr. Morten if 12 weeks appeared reasonable and Mr. Morten agreed.

The maximum number of breeding dogs was discussed by The Commission, but Mr. Morten stated in his project description that 3 dogs, for breeding purposes, would be used.

Motion was made by Ms. Jeffs, seconded by Mr. Schmidt, to recommend favorably the Application for a Special Use Permit, to operate a commercial dog business performing training, breeding, and limited small scale boarding services on tax parcel 380081010, located at 29235 145th Road, Kearney, Nebraska, and described as Part of the Northwest Quarter of the Northwest Quarter, situated in Section Twenty-five (25), Township Ten (10) North, Range Sixteen (16) West of the Sixth Principal Meridian, Buffalo County, Nebraska, as presented, but with the following conditions: the exact combination of dogs, as written in the Project Description and the maximum occupancy of 10 dogs shall include any puppy or dog aged 13 weeks or older, to The Buffalo County Board of Commissioners.

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

Voting "Nay": None.

Abstain: None.

Absent: Biehl, Vest, Vacek, and Stubblefield.

Motion carried.

Old Business

Minutes

Motion was made by Secretary Wolfe, seconded by Ms. Jeffs, to approve the minutes of the August 17, 2023 meeting, as presented.

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

Voting “Nay”: None.

Abstain: None.

Absent: Biehl, Vest, Vacek, and Stubblefield.

Motion carried.

New Business

Report on Previous Hearings

Zoning Administrator Daniels provided a report on previous hearings to The Commission:

On September 12, 2023, The Board of Commissioners approved the Code Amendment to The Buffalo County Zoning Regulations, with renumbering as necessary, in Section 3.3156, creating subcategories and outlining requirements of setbacks for Roof Attached Solar Energy Systems.

New Business, Correspondence and Other Business

Zoning Administrator Daniels highlighted the annexation of The Meadows plat.

Zoning Administrator Daniels, also, reviewed the proposed subdivisions “Petersen Subdivision”, “Buffalo Island 2nd Subdivision”, and “Stone Creek Second Subdivision” and corresponding letters to the city of Kearney.

Zoning Administrator Daniels notified The Commission of the NPZA Planning Conference on from March 6, 2024 through March 8, 2024.

Discussion occurred the amount of time left to complete The Comprehensive Plan Regulation review. Discussion occurred regarding potential topics.

Chairperson Brady requested Zoning Administrator Daniels send Deputy County Attorney Kari Fisk a thank you card for supper and wish her luck on her next journey. Zoning Administrator Daniels agreed.

Next Meeting

The next meeting will be November 16, 2023. Discussion occurred possible times, providing a public hearing will not be required.

Adjourn

Chairperson Brady adjourned the meeting at 8:28 P.M.

Scott Brady, Chairperson
Buffalo County Planning Commission

Loye Wolfe, Secretary
Buffalo County Planning Commission

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