

MINUTES OF PLANNING AND ZONING COMMISSION
OCTOBER 17, 2024
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, on October 3, 2024. 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 7:01 P.M. on October 17, 2024.

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

Absent were Tammy Jeffs, Marc Vacek, and Scott Stubblefield.

Quorum has been met.

Also attending were: Deputy County Attorney Josiah Davis and Zoning Administrator Dennise Daniels. There were several members of the public present.

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. No one spoke. The public forum closed at 7:02 P.M.

Chairperson Brady announced the procedure and etiquette for the upcoming public hearings.

Public Hearing. 5(a)

Chairperson Brady opened the public hearing for Agenda Item 5(a) at 7:02 P.M. regarding revision and possible approval 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.

Chairperson Brady reviewed the first topic, which was a blanket amendment to change side and rear setbacks to ten feet in the following districts, Agriculture (AG), Agricultural – Residential One (AGR1), and Agricultural – Residential Two (AGR2).

Mr. Schmidt inquired what the current setbacks are and Zoning Administrator Daniels advised that the current side setbacks are 10 feet and the current rear setbacks are 15. She explained that with the excessive number of multi-sided lots in Buffalo County, it would make inspections easier if the side and rear setbacks were the same. Chairperson Brady agreed that the amendment would make zoning inspections and discussions easier to explain to the public.

Chairperson Brady asked if anyone else wished to speak. No one spoke.

Motion was made by Secretary Wolfe, and seconded by Mr. Biehl to approve the adoption of the blanket amendment to change side and rear setbacks to ten feet in the following districts, Agriculture (AG), Agricultural – Residential (AGR), and Agricultural – Residential (AGR2).

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

Voting “Nay”: None.

Abstain: None.

Absent: Jeffs, Vacek, and Stubblefield.

Motion carried.

Chairperson Brady reviewed the second topic, which was the relaxation of livestock confinement setbacks in the Agriculture (AG) and Agricultural – Residential One (AGR1) Districts and relaxation of the Livestock Confinement Classification Table.

Chairperson Brady reviewed the Exception Report.

Vice-Chairperson Keep advised that he would like to keep the Livestock Confinement Classification Table, as presented. He added that the table was designed to be more inline with what the state of Nebraska had designated for certain class sizes. Chairperson Brady agreed.

Discussion occurred regarding the special use permit process and the zoning permit process.

Class sizes were discussed by The Commission and if they needed to be revised. The Commission agreed that they were appropriate.

Secretary Wolfe stated she spoke with several constituents of the public and the following concerns were brought to her attention: land values, water protection, community dynamics, workers’ health, to name a few.

Vice-Chairperson Keep stated he would be willing to relax the setbacks significantly if digesters become a more widely-used mitigation tool.

Chairperson Brady asked Deputy County Attorney Davis if Buffalo County could change the livestock expansion or creation process to ensure full participation from landowners or dwellings within the setback area. Vice-Chairperson Keep asked if the “surface land owner signature requirements” were in the proposal. Zoning Administrator Daniels stated the last revision proposed its removal. Vice-Chairperson Keep stated he would like to have the language readded. Deputy County Attorney Davis explained that would not be advisable to change the process as it could create litigation concerns and is difficult to defend. He added, however, it would be The Commissions’ decision to make those policy determinations.

The Commission discussed whether “surface landowners”, should be re-added. Vice-Chairperson Keep added that the land owners who want to construct a house should have a vote whether a livestock confinement operation should be created or expanded. However, he added, it

creates an issue for the applicant when an individual within the setback refuses to participate in the expansion or creation of the livestock project. The Commission agreed.

Motion was made by Mr. Biehl, and seconded by Vice-Chairperson Keep to approve the adoption of the livestock confinement setbacks in the Agriculture (AG) and Agricultural – Residential One (AGR1) Districts and the Livestock Confinement Classification Table as previously presented, and to readd the verbiage, which require the letters of agreement from surface landowners, as shown in Under Section 6.6 (1)(b)(1).

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

Voting “Nay”: None.

Abstain: None.

Absent: Jeffs, Vacek, and Stubblefield.

Motion carried.

Chairperson Brady reviewed the third topic, the recommendation of The Board of Commissioners to add the word “existing” to the portions of the proposed regulations, as shown on the Exception Report.

Vice-Chairperson Keep asked Deputy County Attorney Davis if leaving off the language would protect the county from being responsible for constructing a road and Deputy County Attorney Davis explained that the words “existing paved road” and “paved road” were synonymous.

Vice-Chairperson Keep stated that an entity may want to pay for the paving of a road up to a structure/use, and he believed adding the word “existing” would keep them from providing that service. Mr. Schmidt agreed.

Mr. Schmidt added that The Commission should not stifle growth, if an individual or entity wants to pay to have the road paved up to that structure or use.

Motion was made by Vice-Chairperson Keep, and seconded by Mr. Biehl to approve the proposed Zoning Regulations as presented by The Planning Commission under Buffalo County Zoning Regulations, 5.14, Section 5.34, Section 5.44, Section 5.52 and Section 5.54, removing the word “existing” as shown on Exceptions Report.

Chairperson Brady asked if anyone wished to speak. No one spoke.

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

Voting “Nay”: None.

Abstain: None.

Absent: Jeffs, Vacek, and Stubblefield.

Motion carried.

Chairperson Brady reviewed the fourth topic, the consideration of adding Solar Farm Regulations.

Chairperson Keep asked if the solar regulations in the packet were the same regulations that were presented at the last meeting and Zoning Administrator Daniels confirmed. She added that Deputy County Attorney Hoffmeister presented Gage County's regulations to see if they wanted to adopt those regulations in whole, part, or none at all.

Vice-Chairperson Keep inquired if Zoning Administrator Daniels was aware of any solar farms in Buffalo County, other than the one the city of Kearney has and Zoning Administrator Daniels responded that she was unaware of any others.

Vice-Chairperson Keep asked if they could receive the solar farm regulations from Dawson County and Hall County. Deputy County Attorney Davis left the meeting momentarily to print Dawson County's solar farm regulations and then returned within a few moments to provide the documentation to The Commission.

Chairperson Brady explained that The Commission could re-review the solar farm regulations at a later date.

Vice-Chairperson Keep asked what solar farm concerns should be addressed by The Commission. Deputy County Attorney Davis recommended that setbacks be considered, as well as fencing, perhaps.

The Commission reviewed the Dawson County and Gage County Solar Farm Regulations.

Vice-Chairperson Keep inquired if Zoning Administrator Daniels had received any request for Solar Farms and Zoning Administrator Daniels responded that she has received some inquiries.

The Commission agreed that they should adopt some additional regulations regarding solar farms, but needed additional time to review the documentation.

Vice-Chairperson Keep inquired whether The Commission should require a special use permit for solar farms. Zoning Administrator Daniels confirmed that special use permits are required for solar farms in the following districts: Agriculture (AG), Commercial (C), and Industrial (I).

Vice-Chairperson Keep asked Deputy County Attorney Davis what regulatory standards should be considered for solar farms and Deputy County Attorney Davis recommended setbacks and signage, as well as possible screening/fencing techniques.

The Commission agreed they would review the regulations they have been presented and make a decision at the next meeting.

Chairperson Brady reviewed the fifth topic to amend the regulations, generally shown by underlining as additions and strikethrough as deletion, as reflected below, and renumbering as necessary, presented by Buffalo County Deputy Attorney Andrew Hoffmeister, under Buffalo

County Zoning Regulations, Section 10.22 (2)(A)(2)(a), which states: “A licensed Engineer and/or Architect shall sign a letter of approval of plans, for a structure, or change in use of a structure, to accompany any zoning permit for structures and uses described in this section. This professional statement shall also include a certification by the Engineer and/or Architect that the structure(s) described in ~~on~~ the zoning permit, after finished construction, is compliant with 2012 IFC (International Fire Code) SECTION 510 EMERGENCY RESPONDER RADIO COVERAGE interconnectivity needs of emergency personnel and services together with any needed professional review as required by the Nebraska Engineers and Architects Regulation Act. (Neb.Rev.Stat. 81-3401 as of 10/19/23 or as subsequently amended)

This provision applies to zoning permits issued for:

The construction, remodeling, alteration, or renovation of a detached single-family through four-family dwelling of comprised of greater than five thousand square feet of above-grade finished space. Any detached or attached sheds, storage buildings, and/or garages incidental to the dwelling are not included in the tabulation of finished space.

The construction, remodeling, alteration, or renovation of a one-story commercial or industrial building or structure comprised of:

An area greater than ~~five~~ ten thousand square feet of above grade finished space...”.

Andy Spracklen, of 14150 145th Road, Amherst, Nebraska, stepped forward to provide comment. He stated that he is providing comment on behalf of the Home Builders Association and added that they were in opposition of the existing 5,000 square feet requirement in need of an architectural or engineer letter.

He stated that the city of Kearney, as well as the state of Nebraska, both include the garage as part of the residence and 5,000 square feet is difficult to obtain a letter with a residential structure that small. He, on behalf of the Home Builders Association, would request an increase to 10,000 square feet.

Mr. Spracklen thanked the Commission for their consideration.

Chairperson Brady asked if anyone else wished to comment. Vice-Chairperson Keep and Mr. Schmidt both agreed that the amendment should be approved and adopted. No one else spoke.

Motion was made by Vice-Chairperson Keep, and seconded by Mr. Schmidt to approve the adoption of the amendment, generally shown by underlining as additions and strikethrough as deletion, as reflected above, and renumbering as necessary.

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

Voting “Nay”: None.

Abstain: None.

Absent: Jeffs, Vacek, and Stubblefield.

Motion carried.

Chairperson Brady reviewed the sixth topic to amend the regulations, generally shown by underlining as additions and strikethrough as deletion, as reflected below, and renumbering as necessary, presented by Buffalo County Deputy Attorney Andrew Hoffmeister, under Buffalo County Subdivision Regulations, Section 4.03, which states, "...The minimum right-of-way widths shall be as follows: Type

Right-of-Way Width Expressways (12-10-13) 80 feet (6-11-13)

~~Rural Major and Other Arterials (12-10-13) 80 feet (6-11-13)~~

~~Rural collectors (12-10-13) 80 feet~~

~~Rural local (12-10-13) 80 feet~~

Collector 80 feet

Local and Remote

Local 80 feet

Minimum Maintenance 80 feet..."

and Buffalo County Subdivision Regulations, Section 4.11, which states, "Sec. 4.11 STREET AND ROAD DESIGN Rural Local Classification Standard 2 Conformance Streets and roads, whether private as allowed in Chapter 4 or public, within a subdivision shall minimally conform to the Nebraska State Board of Public Roads Design for Classification Local Road RL-2 Typical Cross-Section for Major arterial Rural Roadway under 400 average daily traffic as set out in Nebraska Department of Transportation-Roadway Design Manual, Chapter Six: The Typical Roadway Cross-Section as published May 2022 as to design, grade, back slope grade, maximum grade, tangent sight, traveled width of the road, shoulder width, and other particulars addressed in State Board of Public Road regulations regarding street layout with the dedicated road right of way."

Chairperson Brady asked Deputy County Attorney Davis if the proposed regulations were to marry Buffalo County's road regulations with what has been approved at the state level. Deputy County Attorney Davis confirmed.

Chairperson Brady asked if anyone else wished to speak.

Motion was made by Mr. Biehl, and seconded by Mr. Schmidt to approve the adoption of the amendment, generally shown by underlining as additions and strikethrough as deletion, as reflected above, with renumbering as necessary.

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

Voting "Nay": None.

Abstain: None.

Absent: Jeffs, Vacek, and Stubblefield.

Motion carried.

Chairperson Brady reviewed the seventh topic to amend the regulations, generally shown by underlining as additions and strikethrough as deletion, as reflected below, and renumbering as necessary, presented by Buffalo County Deputy Attorney Andrew Hoffmeister, under Buffalo County Subdivision Regulations, Section 5.08, which states, “Sec 5.08 MAINTENANCE OF STREETS/ROADS A. Public streets. (Resolution 2-25-2020)

1. Hard Surfaced Streets: Buffalo County, on behalf of the public, assumes ownership and surface maintenance of, but not improvements upon or to, all hard surfaced roads and streets, dedicated to and accepted by the public under the provisions of this subdivision regulation. After acceptance of dedication, the County shall be responsible for snow clearing of the dedicated hard surfaced streets and/or roads as the same can be performed by the county as part of a county wide plan for snow clearing of public roads. (Resolution 2-25-2020)

2. Non-hard surfaced Streets: Buffalo County, on behalf of the public, assumes ownership, upon and to, but not improvements upon or to, all non-hard surfaced roads and streets, dedicated to and accepted by the public by resolution of Buffalo County under the following terms. After acceptance of dedication, the County shall be responsible for snow clearing of the dedicated streets and/or roads as the same can be performed by the county as part of a county wide plan for snow clearing of public roads. The Subdivider as part of the subdivision process shall enter into a road improvement/maintenance agreement with the County signed by the subdivider and any entity having a lien on the subdivided real estate. (Attached is form agreement) This improvement/maintenance agreement shall run with the land sought to be subdivided and shall minimally provide that the Subdivider shall:

a. For ~~two (2)~~ Five (5) years after date of county approval of the final plat of the subdivision, be responsible to keep the dedicated streets supplied with gravel, be responsible for all grading of the gravel, and to maintain shoulders of the dedicated streets and/or roads

b. After this ~~two-five~~ year period, that the Subdivider shall be responsible for an additional ~~three~~ (3) five (5) years to keep the road graveled. For these ~~three (3)~~ following five (5) years, the County shall be responsible for no more than once a month monthly maintenance grading ~~and snow plowing as the same can be performed by the county~~ as part of a county wide plan for ~~snow clearing and~~ grading of public roads. Shoulder maintenance, as provided by Buffalo County’s Subdivision Resolution, is not an item of surface maintenance. ~~It~~ Shoulder maintenance is a road/street improvement item should future shoulder work be necessary.

c. That should the Subdivider not adequately gravel, grade, or adequately maintain the subdivision street(s) while the Subdivider is responsible for such activities under the terms of the maintenance agreement then the Buffalo County Highway Superintendent shall notify Subdivider of the inadequate graveling, gravel grading, and/or lack of shoulder maintenance. If the inadequacy is not remedied within ten (10) days, the Superintendent shall proceed to take procedures to obtain and place gravel, and/or maintain shoulders by whatever means feasible and the Subdivider shall be liable for such costs incurred by Buffalo County.

d. The failure of Buffalo County to take full steps to remedy the situation in any one instance shall not constitute a waiver of future actions by Buffalo County.

e. Waiver: In the event that County needs to create a rural road improvement district to pay for gravel and/or grading within the subdivision as provided in this subsection, the Subdivider and any lienholder of or to the subdivided property as part of the subdivision acceptance process for all lands within the accepted subdivision, waives the right to protest formulation of a rural road improvement district for the streets within a subdivision for this maintenance purpose all as allowed in current Nebraska Law Sec 39-1638. This provision does not limit creation of a rural road improvement district for any other purpose within the subdivision. (Resolution 2-25-2020)

B. Private Streets

a. Paved: Buffalo County does not assume maintenance nor ownership of paved or otherwise hard-surfaced private streets.

b. Non-paved: Buffalo County does not assume maintenance nor ownership of unpaved private streets.

c. Any dedication to the public for a private road, street, or way is solely for reservation of potential public street use and granting of easements. (Resolution 2-25-2020)

C. Subdivisions created prior to effective date of this subdivision resolution, or created after effective date and approved by a municipal zoning jurisdiction that desire county surface maintenance.

a. For subdivisions authorized by this Board on or prior February 18, 2009, and not having a surface maintenance agreement in effect with Buffalo County as of February 25, 2020, Buffalo County shall not assume surface maintenance of roads and streets and/or parts thereof dedicated for public use until the streets in the subdivision or portion thereof comply with regulations as to Chapters 4 (design standards), 5 (minimum improvements and maintenance), and 6 (subdivisions within flood plain). If county surface maintenance is sought within these subdivision(s), a written request for county surface maintenance shall be made upon application comprised of the lesser of: (a) party or parties owning twenty (20) percentage of street frontage or (b) three owners of land in the subdivision delivered to Buffalo County Clerk. Thereafter, the Board will consider the application for surface maintenance and after review and report by County Highway Superintendent to this Board and public hearing. Applicants shall bear any and all costs of engineer statements as to need of and placement of water conveyances, determining road grades and angles, and any other matter needing study and review to determine whether the request meets this subdivision resolution's standards and requirements. (Resolution 2- 25-2020)

b. For subdivisions created and approved by municipalities that are situated outside of municipal limits that do not have surface maintenance agreement in effect with Buffalo County as of February 25, 2020, (date of approval by County Board) Buffalo County shall not assume surface maintenance of roads and streets and/or parts thereof dedicated for public use until the streets in the subdivision or portion thereof comply with regulations as to Chapters 4 (design standards), 5 (minimum improvements and maintenance, with a road maintenance contract (Sec.

5.08 or as renumbered), see attached example, is executed), and 6 (subdivisions within flood plain) and see attached suggested contract) between the County and owner(s) and any lienholder(s) of all lands within the municipally created subdivision seeking county maintenance. Parts of a subdivision or parts of the dedicated streets are not allowed. Proof of ownership, reporting all lienholder(s), and other parties of interest of all lots shall to be provided with the maintenance request. Furthermore, if there is more than one owner, one owner shall be designated as the owner on the application, with that designated owner to be notified all notifications required under this provision. After acceptance of the county maintenance application, the County shall be responsible for snow clearing of the dedicated streets and/or roads as the same can be performed by the county as part of a county wide plan for snow clearing of public roads. This improvement/maintenance agreement shall run with the land sought to be subdivided and shall minimally provide that the owner(s) shall:

i. For ~~two (2)~~ five (5) years after date of approval of the county maintenance applications, be responsible to keep the dedicated streets supplied with gravel, be responsible for all grading of the gravel, and to maintain shoulders of the dedicated streets and/or roads.

ii. After this ~~two-five-year~~ period, that the owner(s) shall be responsible for an additional ~~three (3)~~ five (5) years to keep the road graveled. For these ~~three (3)~~ following five (5) years, the County shall be responsible for no more than once a month monthly maintenance grading ~~and snow plowing~~ as the same can be performed by the county as part of a county wide plan for ~~snow clearing and~~ grading of public roads. Shoulder maintenance, as provided by Buffalo County's Subdivision Resolution, is not an item of surface maintenance. It is a road/street improvement item should future shoulder work be necessary.

iii. That should the owner(s) not adequately gravel, grade, or adequately maintain the subdivision street(s) while the owner(s) is responsible for such activities under the terms of the maintenance agreement then the Buffalo County Highway Superintendent shall notify owner(s) of the inadequate graveling, gravel grading, and/or lack of shoulder maintenance. If the inadequacy is not remedied within ten (10) days, the Superintendent shall proceed to take procedures to obtain and place gravel, and/or maintain shoulders by whatever means feasible and owner(s) shall be liable for such costs incurred by Buffalo County.

iv. The failure of Buffalo County to take full steps to remedy the situation in any one instance shall not constitute a waiver of future actions by Buffalo County.

v. Waiver: In the event that County needs to create a rural road improvement district to pay for gravel and/or grading within the subdivision as provided in this subsection, the owner(s) and any lienholder of or to the subdivided property as part of the subdivision acceptance process for all lands within the accepted subdivision, waives the right to protest formulation of a rural road improvement district for the streets within a subdivision for this maintenance purpose all as allowed in current Nebraska Law Sec 39-1638. This provision does not limit creation of a rural road improvement district for any other purpose within the subdivision. (Resolution 2-25-2020)".

Chairperson Brady explained to The Commission that this avenue may satisfy the issue of heavy road maintenance and to relieve some of the pressure of the county.

Mr. Schmidt stated that he liked that it only added two additional years onto the developer in the maintenance agreement and was a good compromise to requiring all development to occur along paved roads.

Chairperson Brady asked if anyone wished to comment. Vice-Chairperson Keep said he preferred this method of road maintenance control over requiring paving to all developments.

Mr. Spracklen, again, stepped forward to comment. He stated that he prefers this methodology over the paving requirements.

Discussion occurred with The Commission regarding the proposed amendment.

Motion was made by Secretary Wolfe, and seconded by Mr. Biehl to approve the adoption of the amendment, generally shown by underlining as additions and strikethrough as deletion, as reflected above, with renumbering as necessary.

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

Voting “Nay”: None.

Abstain: None.

Absent: Jeffs, Vacek, and Stubblefield.

Motion carried.

Chairperson Brady asked if anyone else wished to speak. Andy Spracklen, again, stepped forward to request clarification for multi-family and single-family dwellings in the Agricultural – Residential Two (AGR 2) District. He asked if single family dwellings would be required to be along paved roads. Mr. Schmidt referenced proposed Section 5.42 (8), which requires single family dwellings abut an improved road and Section 5.43 (6) which requires multi-family dwellings abut a paved road.

Chairperson Brady closed the public hearing at 8:35 P.M.

Motion was made by Mr. Biehl, and seconded by Mr. Schmidt to approve Buffalo County Zoning and Subdivision Regulations, as presented at the close of this session, 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.

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

Voting “Nay”: None.

Abstain: None.

Absent: Jeffs, Vacek, and Stubblefield.

Motion carried.

Old Business

Minutes

Motion was made by Mr. Biehl, and seconded by Mr. Schmidt to approve the September 19, 2024 meeting, as presented.

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

Voting “Nay”: None.

Abstain: None.

Absent: Jeffs, Vacek, and Stubblefield.

Motion carried.

New Business

Report on Previous Hearings

Zoning Administrator Daniels stated there was no report on previous hearings.

Zoning Administrator Daniels reviewed the correspondence with The Commission. She reviewed The Dawson County Notice of Public Hearing.

Next Meeting

The next meeting will be November 21, 2024, if necessary.

Adjourn

Chairperson Brady adjourned the meeting at 8:40 P.M.

Scott Brady, Chairperson
Buffalo County Planning Commission

Loye Wolfe, Secretary
Buffalo County Planning Commission