

MINUTES OF PLANNING & ZONING COMMISSION
FEBRUARY 19, 2004
BUFFALO COUNTY HIGHWAY DEPARTMENT
7:00 P.M.

Chairperson Rick Pope called the meeting to order at 7:05 o'clock P.M. with a quorum present on February 19, 2004 at the Buffalo County Highway Department Building in Kearney, NE.

Agenda for such meeting was regularly posted as required by law. Present were: Francis "Buss" Biehl, Karin Covalt, Marlin Heiden, Rick Pope, Paul Steinbrink, Sr., and Craig Wietjes. Absent: Gene Jameson, Leonard Skov and Loye Wolfe. Also attending were Deputy County Attorney Andrew Hoffmeister, Buffalo County Zoning Administrator LeAnn Klein and twenty seven members of the public.

The public forum was opened at 7:06 P.M. Ernest Hartley spoke to the Planning & Zoning Commission regarding his property in Section 14 of Cherry Creek Township and what his intentions are. The Commission advised him to file a change of zoning request at the next meeting. Marvion Reichert, Sr. also addressed the Commission with some concerns. The public forum closed at 7:16 P.M.

At this time Deputy County Attorney discussed the research he had done concerning the "radius" issue for the Kennedy application from previous court cases and also the language regarding "consents/waivers/votes" can result in police powers of government being relegated to a vote rather than public policy planning.

Chairperson Pope opened the public hearing at 7:30 P.M. for an amendment of zoning regulations (6.3) for salvage yards. This was referred back from the County Board of Supervisors meeting on December 9, 2003.

Cody Kennedy spoke to the Commission regarding his request for an amendment to allow a salvage yard. This would be a state-of-the art facility and he would have to comply with EPA requirements and other state requirements. He would properly dispose of oil, fuels, antifreeze and vehicles.

Heiden questioned what would happen to the salvage yard if the business did not succeed. There is a bond that the state requires for clean-up. Pope also said it should come before the Commission for a vote. Steinbrink was concerned that the floodplain was adjacent to the property.

Klein stated a copy of the floodplain map was included in the packets sent out to the Planning & Zoning members.

Hoffmeister also said Kennedy should be able to bring this special use permit before both the Planning & Zoning Commission and County Board.

Jan Rodehorst, Virgil Wuehler, and Jack Simmon spoke in opposition to this salvage yard at this location. Jan stated she knew Cody would do a good job but the salvage yard at this location would effect the valuations on their adjoining properties. She also said this has been a long, drawn out process and it shouldn't be Kennedy's fault that the zoning regulations do not allow salvage yards within 1 mile of a residence. Rodehorst also said she is not in favor of having signed waivers because this pits neighbor against neighbor. It should be up to both Boards to decide this issue.

Pope closed the hearing at 7:50 P.M.

Moved by Biehl, seconded by Steinbrink to forward this application to the County Board with the recommendation to delete 6.3 #1 "Located on a tract of land at least one (1) mile from a residential or agricultural farm residence" from the Buffalo County Zoning regulations as previously adopted. Voting yes were Biehl, Steinbrink, Covalt, Heiden, Pope and Wietjes. Voting no: none. Absent: Jameson, Skov and Wolfe. Motion carried.

Chairperson Pope opened the public hearing at 7:55 P.M. for a special use permit filed by Cody Kennedy and Roy W. Long for a salvage yard to be located on a 10 acre tract in the North Half of the Southwest Quarter (N ½ SW ¼) of Section 6, Township 10 North, Range 17 West of the 6th pm in Buffalo County Nebraska.

Kennedy again addressed the Commission stating that salvage yards had been owned by an older generation and a lot were started in the early 1960's and were not regulated and in the present generation, salvage yards are now regulated by EPA and the State of Nebraska. He again said he's trying to start a career for himself and he would have a state-of-the art facility.

Long, the current owner of the land also spoke in favor of allowing Kennedy to start this business at this location.

The hearing closed at 8:05 P.M.

Hoffmeister reminded the Commission about the provisions listed in 6.2 which are:

1. Be compatible with and similar to the use permitted in the district, and
2. Not be a matter which should require re-zoning of the property, and
3. Not be detrimental to adjacent property, and
4. Not tend to depreciate the value of the surrounding structures or property, and
5. Be compatible with the stated intended use of the district, and
6. Not change the character of the district, and
7. Be in accordance with the Comprehensive Plan

Hoffmeister also questioned lightning and landscaping. Kennedy said he would have an 8' fence around the property and would plant evergreens to shield it from the Highway and would also comply with State regulations. Kennedy again reiterated that he would need a yearly permit from the State of Nebraska or he would not be able to operate.

Ernest Hartley spoke in favor of giving Kennedy a chance to open his business. Reickert also said there is a need for salvage yards.

An adjoining property owner, Jan Rodehorst again voiced her concern about the salvage yard in this location. She thinks it doesn't fit in this area as agricultural would fit. They would also be able to see this area from their property. Kennedy said it cannot be seen from their property.

Heiden questioned what would happen if the business failed. Kennedy said he would return the property to the condition that it was at the time the business was started. According to our planning & zoning regulations, a remediation fund or bond shall be posted for clean up of facility in the event of abandonment.

Moved by Wietjes, seconded by Steinbrink to recommend denial of this application and forward to the County Board this special use permit submitted by Cody Kennedy and Roy Long for property described as a 10 acre tract in the N ½ of SW ¼ of Section 6, Township 10 North, Range 17 West of the 6th pm. Voting yes: Wietjes, Steinbrink, Covalt, Heiden, and Pope. Voting no: Biehl. Absent: Jameson, Skov and Wolfe. Motion passed.

Chairperson Pope opened the next hearing at 8:25 p.m. for a special use permit filed by Helen & Richard Burkey for property described as Lot 3, H.R. Subdivision, a subdivision being part of the North Half of the Southwest Quarter of Section 10, Township 9 North, Range 15 West of the 6th pm, Buffalo County Nebraska for an auction house. This was continued from the January 15, 2004 Planning & Zoning Commission meeting.

Attorney Jim Ganz, Jr., was present to speak on Mr. & Mrs. Burkey's behalf. He addressed the following issues:

1. Well & septic will be within guidelines required by the State of Nebraska
2. There will be ample parking (total of 74 spaces)
3. There will be a line of trees around this site
4. Lots 2 & 4 are not needed for additional parking
5. Platte Valley Feeders is not an issue since this subdivision was platted and approved by the County Board in 1998 prior to zoning being implemented
6. Signature of waiver from Mr. Beck

Mr. Ganz does not feel that there is a need for a signed waiver from the adjoining livestock feedlot. He stated that the County Board had accepted this subdivision previously when the feedlot was already at this site. Ganz also wanted to address the statements made by Mr.

Fleming at last month's meeting which are as follows:

1. There have not been numerous calls other than to neighbor to south.
2. County roads are no better, no worse than other County roads. The proposal is not for an everyday business but just on occasions.
3. There has only been one drunk driver fatality in this area.
4. As far as need for this business, is not concern of neighbors
5. This is a market issue for number of auction houses already in area

Hoffmeister questioned lighting, fencing, where the materials would be stored, hours of operation, limitation of number of days items can be stored after sale and access road.

Steinbrink questioned the disposal of animal waste from animal auctions.

Klein again stated that part of this area does lie within the floodplain and if passed, would require a surveyor to identify the area of the floodplain.

Heiden questioned the location of the buildings on Lot 3. The building would be 80' x 60' and this building is very close to the floodplain area and this area should be surveyed as to the proximity of the floodplain.

Ganz stated they would have adequate lightning, materials would be stored inside except for farm machinery, and they would have a time limit of removal of property that does not sell.

Dave Fleming spoke in opposition to this auction house.

1. He feels that no one has researched the number of times the County Sheriff has been called out to Mr. Burkey's residence.
2. He feels mad cow disease is also an issue with the number of cattle that are already in the area and he also feels that this would be opening the door to many problems of disease when they conduct animal auctions.
3. He also questioned if the Commission would like to have this mess next door to their property.
4. He doesn't think the roads can handle the number of vehicles that this would bring in.
5. He also remembers the amount of water during 1966-1968 with water covering the road.
6. Inviting a lot of problems that there is no reason for.

Bruce Uden, a friend of Burkey, spoke in favor of the auction house.

Burkey said he had spoken to the State Veterinarian and every animal that is sold at the auction will have to be tested and the people would be charged for this test.

Chairperson Pope closed the hearing at 9:05 P.M.

Moved by Biehl, seconded by Heiden to recommend approval and forward this application to County Board for a special use permit for auctions such as farm auctions, estate auctions, furniture and secondhand auctions, bird and animal auctions and private parties and receptions with the following conditions:

1. They would have a shelter belt
2. There will be a minimum of three lights, one on east and one on west side of building
3. There will be an office on premise
4. There will be no on street parking
5. No items will be left at this location after sale no longer than 10 days if stored exterior
6. There will be a timely removal of animal waste

7. Consent from Mr. Beck, owner of Platte Valley Feeders for a favorable waiver
8. There will be two accesses to property
9. If private parties are held, no later than midnight

Voting yes were Biehl, Heiden, Covalt, Pope, Steinbrink and Wietjes. Voting no: none. Absent: Jameson, Skov and Wolfe.

Chairperson Pope opened the next hearing at 9:15 P.M. for a change of zoning request filed by Neil A. Koster to rezone property described as a tract of land being part of the NE ¼ NW ¼ and part of Government Lot 1 in Section 30 Township 9 North, Range 14 West from Agricultural to Commercial.

Neil Koster told the Commission of the proposed development for this area. He wishes to rezone the entire 40.3 acres including the 11 acres that was included in the special use permit previously requested. He has since broken down this property into smaller lots. Neil feels that this area east of Kearney along Highway 30 up to Hwy 10 and south to Interstate 80 is prime commercial property. He does have a prospective client that is interested in this area who would employ up to twenty people. Neil said he would be very selective in what business would go into this area. He said he had broken these lots into smaller lots than originally submitted. The one lot that is 2.15 acres in size would either be sold with east lot or it would be sold with lot adjacent to west. In this area there are already commercial properties present. Koster said problem of water drainage has been addressed. The culverts in this area have recently been cleaned.

Some of the questions asked by the Commission included width of side road, access road off Highway 30, water flow of this property, advantages of rezoning versus special use permit and number of trucks per day for the proposed business

Sid Rodehorst stated there is a need for commercial property in Buffalo County and is currently not available and if this is not passed, the proposed client will re-locate in Kearney County.

Rod Gangwish who owns the property to the north voiced his concerns.

1. Zoning should not be detrimental to adjacent land owners
2. Is this considered spot zoning?
3. County plan allows for development adjacent to cities and towns.
4. Special use allows for conditions, commercial does not stipulate conditions
5. Comprehensive plan states that this is agricultural preservation in this area.

He said these are questions we need to deal with. Jayne Gangwish also spoke in opposition to this change. The Comprehensive Plan is suppose to protect agricultural land between Kearney and Gibbon and changing this will also increase the traffic.

Monty Shultz, whose property is surrounded by these lots, also expressed his concern on the drainage in this area and the amount of traffic that is already on Highway 30. He said his way of life will be changed by this development. He said zoning was put into place for citizens to voice

concern. He feels the only person that will benefit from this type of development will be developers.

Koster readdressed some of the questions which had been raised again. He said this is not detrimental to the area, also there are already 10,000 vehicles per day on this section of Highway 30 and 5-10 trucks and 20 employees will not increase this adversely. This area was very hard to farm by the previous owner because of the way it was split up and that is the reason it was sold.

Pope closed the hearing at 10:20 P.M.

Covalt questioned why the area wasn't originally zoned commercial when zoning was implemented.

Hoffmeister stated that if this is zoned commercial, this property will be eliminated from greenbelt. Our comprehensive plan states commercial property should be located adjoining highways. In the original plan there were two types of agricultural and this area was transitory between agricultural and agricultural-residential. He also said that if we get 2-3 businesses at this location, we probably need to look at re-zoning this area to commercial. When asked about opinion regarding whether re-zoning would change prior special use permit regarding screening/trees surrounding the property, Hoffmeister indicated that because the C District specifically addressed screening, that condition regarding a prior conditional permit would be abrogated.

Pope said traffic is already an issue in this area. The engineer from the State Department of Roads had previously stated at an earlier meeting since adding turning lanes, had eliminated some problems.

Biehl stated the County wanted development along main thoroughfares and intersections.

Steinbrink feels this area will be developed in the next few years. There are no other areas available in the County that has access to major roads as this area does.

Wietjes and Covalt feel that if we keep this area as a special use permit, the Commission has more control.

Moved by Steinbrink, seconded by Biehl to approve the application filed by Neil K. Koster for property described as a tract of land being part of the NE ¼ NW ¼ and part of Government Lot 1 containing 40.08 acres in Section 30, Township 9 North, Range 14 West of the 6th pm, Buffalo County Nebraska and forward this application to the County Board that this area be re zoned from Agricultural to Commercial. Voting yes were Steinbrink, Biehl and Heiden. Voting no were Covalt, Pope and Wietjes. Absent: Jameson, Skov and Wolfe. Motion failed.

Hoffmeister noted the County Board is free to do what they wish as per Section 11.3 of the Buffalo County Zoning Regulations.

Old Business: Moved by Biehl, seconded by Heiden to approve the minutes of the January 15, 2004 meeting. Voting yes were Biehl, Heiden, Covalt, Pope, Steinbrink and Wietjes. Voting no: none. Absent: Jameson, Skov and Wolfe. Motion passed.

The Commission discussed livestock and livestock waste regulations. The Commission also discussed subdivision regulations and public utility and utility grids in AGR. Hoffmeister reiterated we need to get this approval soon. Hoffmeister also to do additional review regarding the radius of protection regarding confinement operations, particularly in light of issues posed by Burkey application.

Golf Courses and recreational reservation was also discussed. They discussed number of acres and relaxing density. The Commission discussed residential setbacks in AG districts.

The next meeting of the Planning & Zoning Commission will be March 18, 2004 at 7:00 P.M. at the Highway Department.

Motion by Biehl, seconded by Steinbrink to adjourn at 11:10 P.M.

Rick Pope, Chairperson

ATTEST:

Loye Wolfe, Secretary