

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

Chairperson Rick Pope called the meeting to order at 7:00 o'clock P.M. with a quorum present on August 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, Rick Pope, Craig Wietjes and Loye Wolfe. Absent: Marlin Heiden, Gene Jameson, Leonard Skov and Paul Steinbrink, Sr. Also attending were Deputy County Attorney Andrew Hoffmeister, Buffalo County Zoning Administrator LeAnn Klein and twenty two members of the public.

The public forum was opened at 7:01 P.M. There was no one present to speak. The public forum closed at 7:01 P.M.

Chairperson Pope opened the public hearing at 7:02 P.M. for a special use permit for Neil Koster for property located in part of the Northeast Quarter of the Northwest Quarter and part of Government Lot 1, located in Section 30, Township 9 North, Range 14 West, Buffalo County Nebraska.

Neil Koster wanted to clarify why he didn't rezone the entire piece he owned originally and he said the County Board wanted to have special use permits to better control this area. He said this is an ideal location for business because of the cost of getting started and start-up is not feasible closer to the City of Kearney. The area is a 5.73 acre piece of land and the new owner would like to put a ready mix plant at this location. A proposed road-way has been put in and does comply with County specifications. Koster said he had sold this property since he made application and the property was now owned by Shane Roach and the date the deed was filed was August 6, 2004. He said some equipment has come in early and has been unloaded at this site.

Hoffmeister questioned if a concrete plant would be more of an industrial use. He stated that under 5.14 #2 of the zoning regulations, this would be allowed with a special use permit. He also questioned Koster why the footings had been poured before a permit was ever obtained.

Klein noted that she had been out to the site on 8/11/04 to take pictures of the poured footings and on 8/17/04 when equipment was moved in. She also stated that the road had not been accepted since this area has not been subdivided and the road has not been dedicated to the public.

Pope read a letter from the Department of Environmental Quality regarding concrete batch plants and also read two letters in opposition to the concrete batch plant from Robert Lewis Living Trust and Thomas & Judith Hays, who own adjoining properties.

Hoffmeister clarified that the two letters in opposition to not constitute a protest filed with the County Clerk. A protest must be filed with County Clerk after the Planning & Zoning Commission makes their recommendation to the County Board.

Klein stated she was asked by the two parties who sent the opposing letters to have their letters read into the minutes since they could not attend the public hearing this evening.

Biehl questioned if they needed to consider these letters of protest and Hoffmeister stated the Planning & Zoning Commission would need to consider these letters.

Cindy Shultz, Janis Shultz and Rod Gangwish all spoke in opposition to this concrete plant at this location. They expressed the following concerns:

1. The water contamination and amount of water that will be used.
2. The noise.
3. The dust impact.
4. The heavy volume of traffic already in this area and this plant would just increase the traffic.
5. Place neighbors at risk because of the silica and dust particles and risk of carcinogens.
6. The depreciation of the value of land.
7. This plant belongs in an industrial area, not an agricultural area.

Shultz presented letters from their loan company, area appraisers and realtors regarding the effect this would have on their value of their property. She also referred to 6.2 #1-7. This would be a detriment to their property and would depreciate the value of their property.

Shultz wanted to show a video but because of lack of time, she gave a brief summary of hazards of a concrete batch plant.

Wolfe questioned if they had a construction permit from Department of Environmental Quality at their plant in Spaulding and how he would deal with the containment of waste water. She also questioned about the amount of time to get the DEQ permit and also the stockpiling of raw materials. She voiced her concern about not having the DEQ permit.

Pope asked Roach what type of surface would be on the roadway. Roach said it would be gravel.

Pope said as per 5.14 #2 of the Buffalo County Zoning Regulations, this is allowed under agricultural zone with a special use permit.

Biehl questioned if they would need a permit from DEQ.

Covalt questioned if Roach knew what this area was zoned. She also voiced her concerns in not having the required permits before the footings were poured.

Wietjes asked Roach if he had ever dealt with DEQ because it is a lengthy process. Wietjes and Biehl both expressed concerns about not having the required permits.

Roach said he was not aware of the required permits. He said the trucks would be washed when they get back from the job site and he would contain the water in a holding area. There would not a lot of water used. He has about 10-15 years of experience in the concrete business.

Pope also expressed his concerns of the concrete plant in this area. He felt it would affect the valuation in this area of adjoining property owners and would be detrimental. He also expressed his concern in seeing footings poured and equipment already at this location. He referred to 6.2 #1-7

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.

Pope closed the hearing at 7:45 P.M.

Wietjes questioned if this could be tabled until the next meeting but upon the recommendation of Hoffmeister, he stated it would be better to forward this to the County Board in the interest of time as they will have the final decision.

Moved by Covalt, seconded by Biehl to recommend to deny the request of the special use permit for a ready-mix plant and forward this application to the County Board with denial on the following legal description: A tract of land being part of the Northeast Quarter of the Northwest Quarter and part of Government Lot 1, located in Section 30, Township 9 North, Range 14 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: Referring to the Northwest Corner of Government Lot 1 in Section 30, and assuming the West line of Government Lot 1 as bearing S00°09'34" W and all bearings contained herein are relative thereto; then S 00°09'34" W and on the West line of said Government Lot 1, a distance of 372.85 feet; thence S 89°29'20" E and parallel with the North line of said Government Lot 1 a distance of 1102.02 feet to the ACTUAL PLACE OF BEGINNING; thence continuing S 89°29'20" E and parallel with the North line of said Government Lot 1, a distance of 150.18 feet; thence N 00°09'34" E and parallel with the West line of said Government Lot 1 a distance of 96.91feet; thence S 89°29'20" E and parallel with the North line of said Government Lot 1 a distance of 373.17 feet; thence S 04°30' E a distance of 11.73 feet to a point being N 04°30' W a distance of 313.5 feet from the North line of the Union Pacific Company's Right-of-Way'; thence S 89°05'44" E a distance of 323.0 feet to a point being N 04°30' W a distance of 214.5 feet from the North line of the Union Pacific Railroad Company's Right-of-Way'; thence N 04°30' W a distance of 290.95 feet to a point on the North line of the Northwest Quarter of said Section 30, said point also being westerly a distance of 670.23 feet from the Northeast Corner of the Northwest Quarter of said Section 30; thence N 89°29'20" W and on the North line of said Northwest Quarter a distance of 653.67 feet to the Northwest Quarter of the Northeast Quarter of the Northwest Quarter of said Section 30, said point also being the Northeast Corner of Government Lot 1 in said Section 30; thence N 89°29'20" W and on the North line of said Government Lot 1 a distance of 171.08 feet; thence S 00°09'34" W and parallel with the West

line of said Government Lot 1, a distance of 372.84 feet to the place of beginning. This decision is based on Section 6.2 #1-7 of the Buffalo County Zoning Regulations.

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

Chairperson Pope opened the next hearing at 8:00 P.M. for a change of zoning request filed by LaVern Yendra to rezone property described as a tract of land being part of Government Lots 8, 9 and 11 and parts of accretion in Section 1 and part of Government Lots 2 and 3 and parts of accretion in Section 12, all in Township 8 North, Range 14 West of the 6th P.M. in Buffalo County Nebraska from Agricultural to Agricultural-Residential.

Yendra told the Commission they would like to build one additional home all on one level but because of the 1000' foot requirement, they are not able to do this. This would be located on a 4.24 acre piece of property and the house where they currently live would then be sold. Their current home is approximately 800' from this lot and their son lives about ½ mile east of this site.

Klein stated at the time of zoning being implemented, there were a number of homes in this area already. She also said this area is not in a floodplain.

There was no opposition.

Pope stated he wasn't concerned about one more home being located on this side of the road.

Biehl also stated one additional home would not change the character of the neighborhood.

Pope closed the hearing at 8:11 P.M.

Hoffmeister stated this rezoning runs for the life of property. He also stated that with a majority vote of the Commission, the County Board does need to either accept or reject the recommendation and cannot make adjustment to what this Commission has done.

Moved by Wolfe, seconded by Wietjes to forward this application to the County Board with a recommendation that this application for a change of zoning from Agricultural to Agricultural-Residential with the condition that only one additional dwelling be built on this property for property described as a tract of land being part of Government Lots 8, 9 and 11 and parts of accretion thereto in Section 1 and part of Government Lots 2 and 3 and parts of accretion thereto in Section 12, all in Township 8 North, Range 14 West of the 6th P.M. in Buffalo County Nebraska, more particularly described as follows: Beginning at the point of intersection of the centerline of the Gibbon-Lowell Road and the South line of said Section 1 and assuming the centerline of the Gibbon-Lowell Road as bearing North and all bearings contained herein are relative thereto; thence North on the aforesaid centerline a distance of 198.2 feet; thence N 68°46'13" E a distance of 413.8 feet; thence S 08°31'54" E a distance of 451.02 feet; thence S 75°30' W a distance of 467.5 feet to a point on the centerline of the Gibbon-Lowell Road; thence North on the aforesaid centerline a distance of 214.9 feet to the place of beginning. Containing

4.24 acres, more or less of which 0.31 acres, more or less, are presently being used for road purposes on the west side EXCEPTING HOWEVER, right of ingress and egress over and across the South 30.0 feet of the above described tract from.

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

Chairperson Pope opened the public hearing at 8:15 P.M. for a change of zoning request from agricultural to agricultural-residential filed by Robert Leonard for property described as a tract of land being part of Government Lot 3 and accretion located in the Northwest Quarter of Section 12, Township 8 North, Range 14 West of the 6th P.M., Buffalo County Nebraska.

Robert Leonard told the Commission he wants to put additional homes in this area. According to the application, they would like to add 6 additional homes.

Klein said the area had just been drawn on to the existing survey by Lonnie Jurgens and we are unsure of the number of acres in the proposed six lots. Klein also noted that she had received a letter from DEQ and they have only approved 3 additional lots in this area. She had talked to Rick Hoopes, an engineer with DEQ, with questions regarding the distance between the septic and drain field, the amount of space from bodies of water to septic area and how septic systems are treated in a sandy area. There are a number of homes already in this area. It is unclear which three lots were approved.

Hoffmeister questioned the number of houses to be built in this area and how many dwellings DEQ has approved. He also questioned if any of this property had been subdivided or the road dedicated, which it had not been.

Jim Manfull spoke in opposition to any more homes going into this area. He owns ground to the south and Leonard's were granted an easement on the west part of his property. He has concerns of uncontrolled traffic already in this area as well as concerns of water and sewer.

Bill Manfull also spoke in opposition. He lives to the south of this property and expressed concerns people are scoping in rifles southwest of the houses, using this as a rifle range and dumping garbage on this property. He also stated there is only one entry and exit onto this property.

Robbie Leonard, who already lives at this location, doesn't see a problem with people scoping in guns and the Manfull's do use this road to get to their duck blinds.

Jason Smallcomb, who also lives at this location, said that traffic is a concern of his as well as how the additional homes would affect his well and septic system.

LaVern Yendra questioned how many houses can be located in a small area before you need a wastewater treatment plant.

The road leading to the homes is a private road maintained by the Leonard's. Pope questioned who would maintain this road 20 years from now.

The Commission has concerns because of no measurements for these future lots and they don't have any idea about the size. They reiterated that the minimum lot size is 3 acres or 70,000 square feet with Department of Environmental Quality's approval.

Pope closed the hearing at 8:45 P.M.

Pope has concerns regarding this road and also the size of the proposed lots.

Moved by Biehl, seconded by Wolfe to recommend that this application be tabled until the September meeting until more information regarding lot size is received. Voting yes were Biehl, Wolfe, Covalt, Pope and Wietjes. Voting no: none. Absent: Heiden, Jameson, Skov and Steinbrink. Motion passed.

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

Hoffmeister discussed the status of the zoning regulations that had been forwarded to the County Board at their August 10, 2004. Everything except 11.3 had been approved.

Pope requested a report from Klein as far as what action was taken by County Board regarding future hearings and decisions.

A discussion was held on the subdivision regulations. Hoffmeister stated that the committee had met once on the subdivision regulations and would be meeting when Skov returns.

Klein also asked the Commission questions on a subdivision that is zoned agricultural that was accepted by the County Board prior to zoning being implemented but was never filed in the Register of Deeds until after December 31, 2002 deadline. The Commission recommended a letter be sent to the owner.

The next meeting of the Planning & Zoning Commission will be September 16, 2004 at the Highway Department. Motion by Wolfe, seconded by Covalt to adjourn at 9:30 P.M.