

MINUTES OF PLANNING & ZONING COMMISSION
JULY 21, 2005
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 July 21, 2005 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, Leonard Skov, Craig Wietjes and Loye Wolfe. Absent: Paul Steinbrink, Sr. Willie Keep arrived at 7:05 P.M. Also attending were Deputy County Attorney Andrew Hoffmeister, Deputy County Attorney Melodie Bellamy, Zoning Administrator LeAnn Klein and 12 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 recused himself from the hearing since he rents corn stalks from the applicant. He then turned the meeting over to Vice-Chairperson Buss Biehl.

Vice-Chairperson Biehl opened the public hearing at 7:01 P.M. for a special use permit for Gangwish Seed Farms Inc. for the expansion of the current business located in part of the Southwest Quarter of the Southeast Quarter, located in Section 27, Township 10 North, Range 13 West, Buffalo County Nebraska, containing approximately 3 acres more or less.

Randall Gangwish addressed the Commission on purchasing approximately 3 additional acres and adding this onto the current site to expand their business.

Hoffmeister questioned the process of Gangwish Seed Farms. Gangwish stated they bring in ear corn, dry it, shell it, put in bins and deliver to customers. They do have an office on site.

Hoffmeister clarified why he had ruled they would need to go through the process of a special use permit. He considers this a wholesale operation rather than a farmer that sells it to elevators or feeds it to livestock. He also asked if Gangwish Seed Farm, Inc. grows all their own seed corn. Gangwish replied they have other people produce the grain and Gangwish Seed Farm than purchases the seed corn.

Skov questioned future development which Gangwish responded they might expand their business. Skov also questioned if they were replacing a building, why they would need a special use permit.

Gangwish showed the site on a map where the building had burned and where the new building is located. If the building would have been put in the exact location, they wouldn't have needed a special use permit but since the new building is located on adjacent land which is owned by someone else, this constitutes expansion of the business. The building was lost in a fire in October, 2002.

Klein asked if they had outside employees, which he stated they did but Gangwish questioned why this was different than any other farmer.

Keep asked if any seed could be rejected which Gangwish said it could.

Skov stated there is not a problem in what is being done, if the special use permit is in place, the intent is clearly stated and is okay.

Hoffmeister said the key word is warehousing. It goes out as seed which is different than a farmers selling to an elevator.

Wolfe questioned the “desired use of property” on the application.

Skov asked Hoffmeister if the Commission needs to address the same issues based on Section 6.2 #1-7 of the Buffalo County Zoning Regulations.

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 responded these seven points still need to be addressed.

There were no other comments in opposition. Vice-Chairperson closed the public hearing at 7:20 P.M.

Moved by Heiden, seconded by Wolfe to recommend that the County Board approve the special use permit filed by Gangwish Seed Farms, Inc. for part of the Southwest Quarter of the Southeast Quarter of Section 27, Township 10 North, Range 13 West of the 6th pm, Buffalo County Nebraska containing approximately 3 acres and forward this to the County Board with the land described being able to be used for all use that is consistent with grain warehousing and processing. Voting yes were Heiden, Wolfe, Biehl, Covalt, Keep, Skov and Wietjes. Voting no: none. Abstain: Pope. Absent: Steinbrink. Motion passed.

Klein stated this would be heard by the County Board the second Tuesday in August and all adjoining property owners would again be notified. There will be a detailed description that will be provided by the surveyor at that time.

Vice-Chairperson than turned the meeting back over to Chairperson Pope.

Chairperson Pope opened the public hearing at 7:25 P.M. for a change of zoning request filed by Neil A. Koster for property described as a tract of land being part of Government Lot 1 located in Section 30, Township 9 North, Range 14 West of the 6th P.M., Buffalo County Nebraska

containing 3.05 acres, more or less. They wish to rezone this area from Agricultural (A) to Commercial (C) for a truck terminal.

Koster asked that Craig Wietjes withdraw from the Commission since Wietjes has a conflict of interest. Wietjes didn't think there would be a conflict of interest but would withdraw in the interest of time. Hoffmeister stated that legally he didn't think that it would be a conflict. Wietjes voluntarily withdrew from the hearing at that point.

Koster told the Commission why he wants to rezone the area (aka lot 7 on map) from agricultural to commercial. There is no parking for semi trucks currently available in Buffalo County. The people that want to rent this property from him have rented from him from 1996-2002 at his former location east of the Kearney Airport. They have always been good renters and has never had trouble with them in the past. The tenants have between 4-6 trucks with 8-12 trailers which would be parked on this property overnight. Koster said they would pull out once per day and return at night. They serve a local area and haul grain, potatoes and other farm products. They had bought about 7 acres southwest of Kearney but they are not able to park any trucks on this property. There will be no buildings but would just have electrical outlets to plug the trucks in the winter time.

Hoffmeister questioned if this would be a parking lot only with electrical outlets. Koster said that was correct. He also asked about lighting which Koster said they might have night lights.

Klein asked what road the trucks would be using to gain access to property. Koster said they probably would use the drive off Highway 30 and would probably use Keystone Road in the event of lots of traffic or if they are coming from the west. Klein also asked who would be maintaining that road since it is not a public road. Koster stated he would maintain the road.

Chairperson Pope read the letter of opposition from Thomas & Judith Hayes, adjoining land owners.

Klein stated the Hayes own "parcel 3" as shown on the map.

Heiden asked Koster if these people also transport fuel. Heiden asked if there would be any preparation for the land. Hoffmeister replied this would have to be addressed by Nebraska Department of Environment Quality. Koster thought the trailers would be empty when they are parked.

Skov asked why he wanted to rezone this area. He also asked what Koster envisions for this area. He also asked Koster what the intent of Hayes was. Koster replied he didn't know what their intended use might be in the future. Skov asked if he had a plan for an orderly development. Koster said originally he wanted this for 6-8 business but he didn't know what businesses would be located. According to the Comprehensive Plan, this would be an ideal area for business between Kearney and Gibbon since it is off a major arterial road. Skov stated this business must be compatible with the area residences. Koster said the tomato plant had been rezoned to commercial which is just east of the Shultz's residence. Koster said no additional homes would be able to be built in this area because of the 1000' requirement.

Klein stated only the east 6.13 acres has been re-zoned to commercial.

Covalt asked Koster how Hayes knew about his property. Koster said he had a for sale sign otherwise he didn't know.

Koster said the County Board didn't want to rezone the entire piece of property to commercial when he had originally requested it.

Wolfe asked if refrigeration units would be stored at this location. Koster replied no. Koster also said there would be 4-6 trucks and could be up to 12 trailers.

Skov asked if the prospective clients were buying this property which Koster replied they were only renting it.

Biehl asked if trucks would be serviced here. Koster replied no.

Cynthia Shultz owns the residence adjacent to property and is opposed to this. She stated the following:

1. Feels this is spot zoning.
2. They are concerned about if this is re-zoned, what happens when the people quit leasing the property. What type of business would than be put on this property.
3. Noise, traffic, dust is also a concern.
4. Vehicle storage.
5. Rezoning should be adjacent to communities, should not be sprawl.
6. A truck terminal is not compatible with area residences.
7. Hour's trucks would be coming and going?
8. Truck terminal southwest of Kearney already has a court case pending in District Court.

Rod Gangwish spoke next. His family owns the property to the north. He stated the following concerns:

1. If this property re-zoned and it is used as a rental property, things change and their concern is once it is re-zoned, they lose control of use.
2. Another issue is screening. They had been promised screening on their south property line but it never happened. All they had asked for originally is screening.
3. This area is surrounded by agricultural use.
4. The tomato plant is no longer storing tomatoes but seed corn.
5. He is opposed to the entire piece being zoned commercial.
6. He is not opposed to trucks hauling grain.

Megan Gangwish who lives in the adjacent residence also spoke. Lights on the tomato plant are huge and if there are more lights on commercial buildings this will have an affect on their lives. The owners of businesses do not live in this area at night.

Koster stated the County Board did request lights on his building. Koster said he did try to rezone the entire area where the tomato plant is located but the County Board just wanted to rezone the east 6.13 acres. These trucks will be hauling farm related products such as grain, produce, and other ag related items. He also presented pictures of Gangwish's and Shultz's residence. He also said Gangwish parks their semis outside. What is the difference?

Chairperson Pope closed the hearing at 8:00 P.M.

Heiden asked Hoffmeister to define truck terminal.

Hoffmeister stated the Commission may specify certain conditions for the rezoning.

Biehl asked about the similarities between this and the tomato plant.

Monty Shultz stated they had been promised trees on both the east and west side but nothing had been done. There is a real problem in enforcing the zoning laws.

Biehl stated they need to have good reasons as to why this lot should be rezoned.

Wolfe asked how long the Shultz had lived at their location. Mrs. Shultz responded 4 years. This is their home and they have spent a lot of time and money on their property.

Hoffmeister responded to the questions on zoning issues. There have been changes to the zoning code whereby the Board can now place conditions on the rezoning. When there are many conditions placed on a property, it is very hard to police.

Keep does see commercial property when he drives by. He feels this is an ideal place because of location to a major highway.

Pope does have concerns if this lot is rezoned. Once it is rezoned, any type of business can go in at this location. We need to consider if this should be a commercial application or should this be a special use permit. There is more control if a special use permit is done. We shouldn't look at this solely if this is a truck terminal. We need to look at the issue if this area should be rezoned.

Covalt asked Koster what type of lot people thought they were buying. Koster replied his sign on the land stated it was "agri-business lots for sale-a place to build your business".

Keep asked what the lot would look like in the daytime. Koster replied there would be 4-6 semi trailers because they would pull out in the morning and come back at night.

Heiden replied they had a similar situation with a hearing with the City of Kearney. They had been told by owners of a trucking business they would pull out once in the morning and just make one trip back at night. A neighbor kept a list and it averaged about 12-13 trucks per day. Koster replied the lease was only for a certain amount of trucks each day and if they brought in more trucks, they would be charged additional rent.

Skov said the screening not being put in is a concern. Koster replied he had planted trees! The County Board did not specify how big or how many trees he needed to plant. Both of the lots had been sold and he had no control after they were sold.

Pope asked if Koster felt he followed the intent of the special use requirement.

Klein read the minutes of the June 23, 2003 County Board meeting which stated shrubs needed to be planted on the north and east adjacent properties and to show growth within one year. Klein also noted that the shrubs had not been planted but Koster said he did water the shrubs. Koster also stated Mr. Schultz had mowed off the shrubs.

Pope stated this is irrelevant to this matter.

Skov questioned Hoffmeister on the specifics of rezoning versus a special use permit. He explained the differences and with the requirements of a special use permit, sometimes this can transition a business to blend in with the surrounding neighbors better. Skov also asked if a special use permit can have a beginning and an end. Hoffmeister replied it can whereas a change of zoning goes on forever.

Hoffmeister informed the Commission of the rezoning requirements according to Section 11.3 and 11.4 as follows:

11.3 AMENDMENT CONSIDERATION AND ADOPTION

The procedure for the consideration and adoption of any such proposed amendments shall be in like manner as that required for the consideration and adoption of the resolution except herein before or herein after modified. For action on zoning amendments, a quorum of the Planning Commission is more than one-half ($\frac{1}{2}$) of all the members. A vote either for or against an amendment by a majority of all the Planning Commission members present constitutes a recommendation of the commission; whereas a vote either for or against an amendment by less than a majority of the Planning Commission present constitutes a failure to recommend.

When the Planning Commission submits a recommendation of approval or disapproval of such amendment, the County Board, if it approves such recommendation, may either adopt such recommendation by resolution or take no further action thereof as appropriate. In the event the Planning Commission submits a failure to recommend, the County Board may take such action as it deems appropriate. Upon receipt of a recommendation of the Planning Commission which the County Board disapproves, the said governing body shall return such recommendation to the Planning Commission with a statement specifying the basis for disapproval, and such recommendation shall be considered in like manner as that required for the original recommendation returned to the Planning Commission. If such amendment shall affect the boundaries of any district, the resolution shall define the change or the boundary as amended, shall order the Official Zoning Map(s) to be changed to reflect such amendment, and shall amend the section of the resolution incorporating the same and reincorporate such Map as amended.

11.4 PROTEST

Regardless of whether or not the Planning Commission approves or disapproves a proposed zoning amendment or fails to recommend, if a protest against such amendment be filed in the office of the County Clerk within seven (7) days after the date of the conclusion of the Planning Commission's public hearing pursuant to said publication notice, duly signed and acknowledged by the owners of twenty percent (20%) or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending one hundred (100) feet there from, or of those directly opposite thereto extending one hundred (100) feet from the street frontage of such opposite lots, such amendments shall not become effective except by the favorable vote of two-thirds (2/3) majority of the County Board. (Resolution 10-10-03)

Motion was made by Skov, seconded by Covalt to recommend denial on the request for zoning map amendment rezoning from agricultural district to commercial district filed by Neil Koster on property described as a tract of land being 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 S 00°09'34" W and all bearings contained herein are relative thereto; thence 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 745.68 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 356.34 feet; thence N 00° 09'34" E and parallel with the West line of said Government Lot 1, a distance of 372.84 feet to a point on the North line of said Government Lot 1; thence N 89°29'20" W and on the north line of said Government Lot 1, a distance of 356.34 feet; thence S 00°09'34" W and parallel with the West line of said Government Lot 1, a distance of 372.85 feet to the place of beginning, containing 3.05 acres, more or less. Voting yes were Skov, Covalt, Biehl, Heiden, Pope and Wolfe. Voting no: Keep. Abstain: Wietjes. Absent: Steinbrink. Motion passed.

Wietjes than resumed his seat with the Planning & Zoning Commission.

Old Business: Moved by Wietjes, seconded by Heiden to approve the minutes of the June 16, 2005 meeting as mailed. Voting yes were Wietjes, Heiden, Biehl, Covalt, Keep, Pope, Skov and Wolfe. Voting no: none. Absent: Steinbrink. Motion passed.

New Business: Klein reported on the action of the County Board at their last zoning hearing.

The next meeting of the Planning & Zoning Commission will be August 18, 2005 at 7:00 P.M. at the Highway Department. Motion was made to adjourn at 8:55 P.M.