

MINUTES OF PLANNING & ZONING COMMISSION
AUGUST 16, 2007
BUFFALO COUNTY HIGHWAY DEPARTMENT BUILDING
7:00 P.M.

Chairperson Rick Pope called the meeting to order at 7:04 o'clock P.M. with a quorum present on August 16, 2007 at the Buffalo County Highway Department building at 9730 Antelope Ave., Kearney, NE.

Agenda for such meeting was regularly posted as required by law. Present were: Francis "Buss" Biehl, Marlin Heiden, Willie Keep, Rick Pope, Leonard Skov, Paul Steinbrink, Sr., and Loye Wolfe. Absent: Karin Covalt and Craig Wietjes. Also attending were Deputy County Attorney Andrew Hoffmeister, Zoning Administrator LeAnn Klein and 46 members of the public.

Chairperson Pope announced there was a copy of the open meetings act posted.

The public forum was opened at 7:04 P.M. There was no one that spoke at this time. The public forum closed at 7:04 P.M.

Chairperson Pope opened the hearing at 7:05 P.M. for a special use permit filed by Neil Koster for property located in part 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.

Neil Koster told the Commission he had a purchase contract with Dennis Kenyon on behalf of Pro Select, Inc. to sell a 3.05 acre lot for a seed warehouse. The new owner plans on putting up a 260' x 60' building. This lot is located between Jared Axmann Trucking and Miles Maddux properties. Neil then turned it over to the prospective owner Dennis Kenyon.

Kenyon said his plans are putting up a 260' x 60' structure on the north side of this lot with a loading dock facing to the south. This building would have overhead doors and an 18' x 24' office with a bathroom as shown on the submitted drawing. This building would house 20,000 units of corn, soybeans, alfalfa and sorghum from November through April. He has the marketing rights to distribute seed to area farmers from Gothenburg to Aurora to Burwell. There would be approximately 24 semis twice a year. The seed is shipped out during March and April and there would be no overnight truck parking. About 20% carryover would be stored in the building.

Hoffmeister referred to Section 7.2 for parking and 7.3 for off-street loading requirements. Hoffmeister asked about the number of employees, what type of coverage on the lot and what type of lighting.

Kenyon responded there would be 6-8 part-time employees, there would be crushed rock on the driving surfaces, there would be no windows in the building and the overhead doors as submitted on the drawing. The trucks would be able to unload and turn around on the lot. He also said there would be outside lighting over the overhead doors. There would be no lighting on the north side of the building.

Klein asked what drive-way would be used to access the property and Kenyon said they would be using the drive-way off Highway 30.

Biehl asked if there would be equipment stored outside and Kenyon said everything would be stored inside the building.

Klein also asked if there was some type of easement on the north side of the lot. Koster replied there is a 20' easement reserved for Dawson Public Power. Kenyon told the Commission he might be moving the building 60' from the north property line.

Monty Shultz, a resident to the east, questioned what would be done to eliminate the dust from drifting from this site. He said according to EPA guidelines, dust must be contained on the property from private roads.

Koster stated there would be 24 semis twice a year, not every day. He said Axmann's trucks only average 10 miles per hour when they enter or exit their property.

Chairperson Pope closed the public hearing at 7:15 p.m.

Heiden asked what type of trees would be planted. Koster responded Maddux is going to put chain link fencing on the west side of the property. Axmann will be planting shrubs on the east side of this lot. He didn't think there was a need for trees on the north side of the building. Kenyon will be doing landscaping on the front of this property as needed.

Pope feels this building would fit into the character of the neighborhood.

Heiden commended Koster on how nice the area looks.

Motion was made by Biehl, seconded by Heiden to recommend to forward this special use to the County Board with a favorable recommendation as submitted on the drawing submitted by Dennis Kenyon on behalf of Pro Select, Inc. 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 Sixth Principal Meridian, 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 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 Biehl, Heiden, Keep, Pope, Skov, Steinbrink and Wolfe. Voting no: none. Absent: Covalt and Wietjes. Motion carried.

Klein said this would be heard by the County Board on September 11, 2007 and adjoining property owners would again be notified.

Hoffmeister explained the protest process to the audience as explained in Section 6.2 of the Zoning Regulations.

Chairperson Pope opened the next hearing at 7:25 p.m. for a special use permit filed by E. Dean Bauer for property located in part of the North Half of the Northeast Quarter, the Southeast Quarter of the Northwest Quarter and the Northeast Quarter of the Southwest Quarter of Section 29, Township 9 North, Range 17 West of the 6th p.m.; the Southwest Quarter and the West Half of the Southeast Quarter of Section 10, Township 9 North, Range 17 West of the 6th p.m.; and the Northwest Quarter of Section 15, Township 9 North, Range 17 West of the 6th p.m., Buffalo County Nebraska.

Dean Bauer was present and told the Commission in the past 30 years he has sold white clay to the County, State and contractors. The last time he sold dirt was about three years ago. They live adjacent to Odessa Road and something needs to be done to that road before someone is killed in a traffic accident.

Hoffmeister asked about how often he has sold dirt in the last 30 years. Bauer responded probably about 10-15 times.

Wolfe asked if they remove the topsoil first which Bauer explained they do.

Klein read a letter from Highway Superintendent Ron Sklenar that dirt had been purchased in the past and probably would in the future.

Klein also told the Commission the West Half of the Southeast Quarter of Section 10, Township 9 North, Range 17 West of the 6th p.m. is located in AGR and does not allow mining. Bauer responded there is a pivot on this property and dirt would not be taken from this area.

Skov asked the frequency of dirt removal which Bauer answered as needed.

There was no one present in opposition. Chairperson Pope closed the hearing at 7:35 p.m.

Moved by Steinbrink, seconded by Biehl to recommend this special use permit be forwarded to the County Board with approval for mining of white clay with the exception of West Half of the Southeast Quarter (W ½ SE ¼) that is located in Section 10 of Odessa Township which is zoned Agricultural-Residential. This is on the following described property: North Half of the Northeast Quarter, the Southeast Quarter of the Northwest Quarter, and the Northeast Quarter of the Southwest Quarter of Section 29, Township 9 North, Range 17 West of the 6th p.m., except the South one hundred feet (100') of the East One Hundred Thirty-Three (133') of the North Half of the Northeast Quarter (N ½ NE ¼), and subject to the right of way of Elm Creek Irrigation Ditch across the Southeast Quarter of the Northwest Quarter (SE ¼ NW ¼); the Southwest Quarter (SW ¼) of Section Ten (10), and the Northwest Quarter (NW ¼) of Section

Fifteen (15), all in Township Nine (9) North, Range Seventeen (17) West of the 6th P.M., Buffalo County, Nebraska. Voting yes were Steinbrink, Biehl, Heiden, Keep, Pope, Skov and Wolfe. Voting no: none. Absent: Covalt and Wietjes. Motion carried.

Klein said this would be heard at the September 11 County Board meeting.

Chairperson Pope opened the public hearing at 7:40 P.M for a zoning map amendment filed by Prairie Hills Golf & Ski Club Inc. for property described as a part of the West Half (W ½) of Section 36, Township 11 North, Range 16 West of the 6th p.m., Buffalo County Nebraska containing 55.85 acres. Mitch Humphrey was present to speak on behalf of John Weber, President of Prairie Hills Golf and Ski Inc. Humphrey told the Commission they are back to ask for a zoning map amendment from Agricultural to Agricultural-Residential for the entire 55.85 acres after last month's application was withdrawn after the July meeting. He has read last months minutes of the Planning & Zoning Commission and the issues in the minutes are a non-issue. Restrictive covenants should be discussed outside this hearing as well as the County Board's hearing. Mitch told the Commission he knows this property very well since he laid out the original lots and helped Mr. Weber. There are lots around the golf course and the future plan originally was to put an additional nine holes but that never happened. According to the Comprehensive Plan this area is shown as an AGR area. The remaining 55.85 acres should be changed to AGR. At last months meeting, the Commission had asked this entire piece be rezoned and they are now back to ask for the rezoning.

Hoffmeister explained Section 11.3 and 11.4 of the zoning regulations.

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 (½) 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 amending zoning district boundaries, the Planning Commission and County Board where applicable and authorized may place conditions upon property sought to be re-zoned. (Resolution 9-14-04)

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 therefrom, 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)

Hoffmeister asked Humphrey about the current road and if they want to dedicate this road to the public. Humphrey said the existing road is now a 66' road and when the adjoining land owners decide they want the County to maintain the road, they would have to contact the County Board. Humphrey said they had been in contact with the Highway Department to see what they required. Currently this road is a private road and the clubhouse does have an easement to gain access to their property.

Hoffmeister wanted to make sure the prospective owner of the five acres would have access to their property.

Klein said this area is shown as an AGR area on the future land use map in the Comprehensive Plan adopted in 2001 by Buffalo County. She also noticed when she was in Golfside Estates, she saw a vehicle driving to the clubhouse and no land could be seen to the east of the existing road.

Keep asked if this needed to be adjacent to a county road.

Klein noted we have a lot of easements and private drives to gain access to peoples' properties in Buffalo County.

Heiden asked how the clubhouse gains access to their property. Humphrey said the Clubhouse has an easement from Poleline Road.

Skov questioned the ownership of this land. Humphrey said this property is in the name of Prairie Hills Golf & Ski Club which is owned by John Weber.

Biehl asked if these lots were laid out in a subdivision. Humphrey replied not at this time. They are just asking for rezoning at this point.

Heiden asked Hoffmeister to explain how many animals could be put on this property. Hoffmeister referred to Section 6.4 which said a Class I could be up to 300 animal units with no minimum distance from a residence and a Class II could have from 301 to 1000 animal units with a ¼ mile distance requirement from a residence as a “use by right”.

Pope said at last month’s meeting, they wanted to just rezone a five acre piece which he considered spot zoning. Now he looks favorably on this since the entire 55.85 acres would be rezoned.

John Weber was present. He has put a lot of time and effort into the golf course in the past. He does have a contract to sell a five acre parcel but he can’t put restrictive covenants on those five acres. He can for any additional property sold. He told the Commission he does own the property including the road, nobody else. He would be more than happy to meet with anybody who lives in this area who has concerns.

Roger Garrelts lives in Golfside #1 which is located northeast of the golf course and he was told by Ercil Phillips he never would have cows in that area. He is opposed to cattle at the golf course. He doesn’t want to drive through a feedlot to get to the golf course.

Doug Welliver said even if you can’t see the livestock, you could smell them.

Cliff Kulhavy asked the Commission to deny the request to rezone. He wants this to be strictly residential.

Sandy Nicklasson asked the Commission to consider what livestock will do to their houses as well as the golf course business. The golf course is just now getting back on its feet.

Larry Johnson asked the question what happens if it is left as agricultural. He asked if someone could just put up a building and add cattle. He questioned if someone would put 300 head of cattle at this location.

Humphrey asked if they could put up to 1000 head of pigs currently at this location without rezoning. Hoffmeister replied they could put up to 1000 animal units.

Paul Nicklasson lives on the west side of the golf course. He currently has horses, barbed wire and weeds next to him.

Cliff Kulhavy wants the golf course to succeed and doesn’t want any animals out here.

Hoffmeister stated the question before the Commission is if this should be rezoned.

Curt Ven John asked how many animals could be allowed. Hoffmeister said this is shown in Section 6.4, up to 300 animal units without any distance requirements, Class II could have up to 1000 animal units with a ¼ mile distance requirement from the nearest home. Ven John also asked if the State of Nebraska doesn’t address the number of range cows per acre. Hoffmeister

said this is an open range State. Ven John asked if they could have a neglect charge if someone put 300 head on a small area.

Weber asked Hoffmeister if he could put restrictive covenants on this property which Hoffmeister replied he could. Weber reiterated he would have covenants on the remaining property except the five acre piece. People forget what covenants really are.

Hoffmeister again reminded the Commission the rezoning is the only question before them.

Don Peterson appreciates John Weber coming and speaking to them. They want to attract more people to come out and build homes and join the golf course.

Mary Kulhavy asked who owns the road which Pope replied Weber owns the road.

Roger Garrelts asked who maintains the road. The golf course currently maintains the road.

Cliff Kulhavy asked if Weber can give permission to anybody he wants to use the road. Hoffmeister responded these roads are private.

David Frost said Weber has the right to grant easements to anybody he wants.

Pope closed the public hearing at 8:30 p.m.

Heiden said that by changing the zoning, it does not change anything. Only Mr. Weber can change the restrictive covenants.

Wolfe said the flavor of this area is AGR.

Keep questioned Smith how long he would be keeping the 4-H animals. It probably would be a six month average. He also might keep an animal longer.

Pope agrees with Wolfe because this area should be AGR. He also said the five acre piece does slope to the east and the topography is such that would limit the number of animals.

Skov told the audience these people can deal with this issue privately.

Biehl said there is no reason this shouldn't be changed to AGR after looking at the zoning regulations.

Moved by Steinbrink, seconded by Wolfe to forward this application to the County Board with a recommendation that this application for a zoning map amendment be approved for property described as a tract of land being part of the West Half (W ½) of Section Thirty-Six (36), Township Eleven (11) North, Range Sixteen (16) West of the Sixth Principal Meridian, Buffalo County, Nebraska more particularly described as follows: Beginning at the Southeast Corner of the Southwest Quarter of said Section 36 and assuming the South line of the Southwest Quarter of said Section 36 as bearing S 89° 59' 26" W and all bearings contained herein are relative

thereto; thence S 89° 59' 26" W and on the South line of the Southwest Quarter a distance of 801.5 feet; thence N 00° 58' 12" E a distance of 244.54 feet; thence N 12° 00' 46" W a distance of 843.8 feet; thence N 18° 10' 55" E a distance of 320.1 feet; thence N 17° 57' 47" E a distance of 360.05 feet; thence N 06° 37' 05" E a distance of 331.65 feet; thence N 00° 29' 01" E a distance of 465.2 feet; thence N 11° 53' 44" E a distance of 428.13 feet; thence N 12° 44' 56" E a distance of 85.39 feet; thence S 89° 15' 08" E a distance of 634.76 feet to a point on the East line of the West Half of said Section 36; thence S 00° 25' 03" W and on the East line of the West Half of said Section 36 a distance of 3004.97 feet to the place of beginning. Containing 55.85 acres, more or less, of which 0.61 acres, more or less, are presently being used for road purposes on the South side, SUBJECT TO HOWEVER, a 66.0 foot wide strip of land to be used for ingress-egress purposes with the centerline of said 66.0 foot wide strip of land being more particularly described as follows: Referring to the Southeast Corner of the Southwest Quarter of Section 36; thence S 89° 59' 26" W and on the South line of the Southwest Quarter a distance of 600.0 feet to the ACTUAL PLACE OF BEGINNING; thence N 09° 00' E a distance of 1340.0 feet; thence N 01° 39' E a distance of 1686.93 feet to the point of termination, said point of termination being on the North line of the aforescribed 55.85 acre tract of land, said point also being N 89° 15' 08" W a distance of 363.73 feet from the Northeast Corner of said tract. Voting yes were Steinbrink, Wolfe, Biehl, Heiden, Keep, Pope and Skov. Voting no: none. Absent: Covalt and Wietjes. Motion passed.

Klein said the hearing before the County Board will be heard on September 11. Hearing notices will again be mailed to adjoining property owners.

Chairperson Pope opened the public hearing at 8:40 P.M. for a zoning map amendment filed by Phyllis Broadfoot from Agricultural to Agricultural-Residential for a tract of land being part of the East Half of Section Nineteen (19), Township Nine (9) North, Range Seventeen (17) West of the 6th p.m., Buffalo County Nebraska, containing 20.17 acres, more of less.

Justin Broadfoot and Phyllis Broadfoot were present. Justin told the Commission they have reduced this from five lots at the February meeting to three lots for three additional homes. There would be no visibility problems for the drive-ways. He told them they do have restrictive covenants on file. This would be nice homes, not modular homes. The area between these lots and Dunbar Road Sub is where they have a stock tank for cattle they have on this property. This would be retained for access by the Broadfoots.

Klein stated currently there are four homes at this location and the area to the south were split off prior to zoning being implemented. This is approximately 1 ½ miles north Highway 30.

Stan Wissel lives south of this proposed area. He said he was told by the realtor there would be no additional homes in this area. They purchased this property because it was out in the country. They are against this rezoning.

Tisha Stauffer doesn't think this should be rezoned. She doesn't think this is an AGR area and has concerns with their cattle in this area.

Jackie Stauffer owns property to the north and they also have cattle. The safety issue is a concern with the amount of traffic with farm equipment.

Charles Ripp is also concerned with the traffic and the condition of the road and is opposed to this.

Bryan Stauffer owns property directly to the north of this proposed area. This area was never meant to be residential.

Sheila Wissel has concerns with the traffic since Dunbar Road is a very narrow road.

Justin said they do have cattle in this pasture. There is one hill and one valley from Highway 30. These lots would be located on a plateau.

Sharon and Charles Ripp live at the bottom of the hill and this is an agricultural area and is opposed to this rezoning.

Ron Stauffer is afraid this rezoning will devalue their property value.

Phyllis Broadfoot stated they had never met the Wissels prior to the sale and had never made the statement there would be no more residents. They have had cattle for over 30 years.

Russ Horky bought two lots from Mr. Wilson to build a home and he doesn't want any additional homes in this area.

Tisha Stauffer hopes to build their home here someday and enough is enough.

Skov said there isn't any perfect development. Years ago someone built the first home, and then another person built another house in this area and so on. Sometimes areas do change to a residential nature and he doesn't know how to fix this. From what he has heard, this is the reason some homes have been built in this area because there weren't a lot of homes in this area and that made it attractive to buyers.

Stan Wissel understands the difficult decision the Planning & Zoning Commission has to make. He feels property off of minimum maintenance roads be developed.

Pope closed the public hearing at 9:15 P.M.

Heiden feels this is spot zoning.

Pope has concerns with putting residential homes in AG area. We need to protect agricultural areas.

Steinbrink said the Commission already gave the Broadfoot's permission to add two homes for family members. Later these two lots were sold.

Pope asked the location of the quarry for the Broadfoot land. Klein said the special use permit application for a quarry was south and east of this location.

Keep agreed we need to keep AG as AG. As far as the previous rezoning around the golf course, that was more residential in nature.

Biehl stated they try to keep subdivisions off or close to hard surfaced roads.

Skov questioned what the status was on subdivision regulations. Hoffmeister said the County Board still has tabled subdivision regulations.

Moved by Biehl, seconded by Skov to recommend to deny this application for a zoning map amendment from Agricultural to Agricultural-Residential and forward this to the County Board on the following legal description: a tract of land being part of the East Half (E ½) of Section Nineteen (19), Township Nine (9) North, Range Seventeen (17) West of the 6th p.m., Buffalo County, Nebraska, more particularly described as follows: Beginning at the Northwest corner of the Northeast Quarter of said Section 19 and assuming the west line of said Northeast Quarter as bearing SOUTH and all bearings contained herein are relative thereto; thence SOUTH on said west line a distance of 2010.36 feet; thence S 89° 47' 23" E a distance of 469.9 feet; thence NORTH parallel with said west line of the Northeast Quarter of said Section 19 a distance of 2010.36 feet to the north line of said Northeast Quarter; thence N 89° 47' 09" W and on said north line a distance of 469.9 feet to the place of beginning. Containing 20.17 acres, more or less, of which 1.52 acres, more or less, are presently being used for road purposes on the west side. Voting yes were Biehl, Skov, Heiden, Keep and Pope, Steinbrink and Wolfe. Voting no: none. Absent: Covalt and Wietjes. Motion denied.

Old Business: Moved by Skov, seconded by Heiden to approve the minutes of the July 19, 2007 as mailed. Voting yes were Skov, Heiden, Biehl, Keep, Pope, Steinbrink and Wolfe. Voting no: none. Absent: Covalt and Wietjes. Motion passed.

Other areas of concern were also discussed.

The next regular meeting of the Planning & Zoning Commission will be September 20, 2007 at 7:00 P.M at the Buffalo County Extension Center meeting room.

Motion was made by Heiden to adjourn at 9:45 P.M.