

MINUTES OF PLANNING & ZONING COMMISSION
DECEMBER 16, 2010
BUFFALO COUNTY HIGHWAY DEPARTMENT
7:00 P.M.

Vice Chairperson Skov in the absence of Chairperson Craig Wietjes opened the meeting at 7:00 P.M. at the Buffalo County Highway Department Building in Kearney, NE with a quorum present on December 16, 2010. Present were: Ken Erickson, Marlin Heiden, Karin Covalt, Willie Keep, Leonard Skov, Paul Steinbrink, Sr., Gwen Stengel and Loye Wolfe. Absent: Craig Wietjes. Also attending were Deputy County Attorney Andrew Hoffmeister, Zoning Administrator Clerk, Janice Taubenheim, Gale Luther and several members of the public amounting to approximately 20 people.

Skov announced there was a copy of the open meetings act posted on the bulletin board and we do abide by the open meetings act and a copy is posted as required by law.

Agenda for this meeting was regularly posted as required by law and the agenda is available for anyone wanting one. It was noted that the hearing concerning POC, LLC for a special use permit to construct a hangar for aircraft has been moved to January 20, 2011 public meeting and it would not be heard at this evening's meeting.

The public forum was opened at 7:01 P.M. No one was present to address the Commission. The public forum closed at 7:01 P.M.

Vice Chairperson Skov opened the public hearing at 7:07 P.M. for approval of a zoning map amendment filed by Gale Luther on behalf of Wayne Patrick and Catherine L. Luther for property more particularly described later, but simply referred to as the "100-acre tract". The request is to amend the Buffalo County Zoning map for the 100-acre tract from Agricultural (AG) to Agricultural-Residential (AGR).

Gale Luther and his father, Wayne Patrick Luther usually referred to as "Pat", were present at the meeting for the applicant. Gale Luther told the Commission that they would like to rezone this property to be able to do a subdivision on part of a tract that consisted of roughly 100 acres, more or less. The subdivision would have five residential type lots of 3 to 5 acres each, where the pasture is currently situated. The entrance point would be from the north on 70th Road, an east to west graveled county road.

Hoffmeister explained the process of the rezoning as per Article 11.

Hoffmeister asked her the following questions:

1. Does the property abut a hard surfaced road?
2. Are there improved roads east and west side of the 100 acres?
3. Are there utilities that can supply power to the tract?
4. How far is it from the Village of Elm Creek?
5. What school district is it?
6. Are there any residences now in the area proposed to be re-zoned?

7. Are there any residences in the section of the proposed map amendment?
8. Is the 100-acre tract used for grazing only?
9. What is, or who owns, the cut out in the northeast corner 100-acre tract?

Gale Luther replied as follows:

1. The property on its northern portion is located along 70th Road, a gravel surfaced road. Traffic in and out of the 100-acre tract would probably travel on 70th road east to Arrow Road, then south at 70th and Arrow, following Arrow to either U.S. Highway #30 for about one and one-half miles or turning at Arrow and 56th to the east to drive a little over one mile east to U.S. #183. One could also drive west on 70th Road to Apache Road, located on the Buffalo and Dawson County lines and drive south to U.S. Highway #30, but that traffic would probably be infrequent because most residents of the proposed subdivision would probably have ties with Elm Creek. Both Apache and Arrow Roads were graveled.
2. There are no hard surfaced roads adjacent to the tract proposed to be rezoned. However, the northeast corner of Section 19 is about one and one-quarter miles west of U.S. 183, with 70th Road being a minimum maintenance road east of its intersection with Arrow Road from that intersection to its entry on #183. From the northeast corner of Section 19, it is one and one-half miles south to U.S. Highway #30.
3. There are utilities located along 70th Road.
4. The east property line of the tract is about one-mile from the zoning jurisdiction of Elm Creek.
5. The tract is in the Elm Creek School District.
6. Currently one residence is on the 100-acre tract. That residence is the applicant's father. It is roughly in the center of what would hopefully be an 18-20 acre subdivision in the 100-acre tract.
7. There are about four to five residences in Section 19. Most are believed to be small tract type residences.
8. The 18-20 portion of the 100-acre tract is only used for grazing. The farm ground east and west of the grazed portion in the 100-acre tract is irrigated farm ground.
9. The tract in the northeast corner cut-out of the 100-acre tract is a 3-4acre tract occupied by the residence of Justin Sindt. That tract is not included in the rezoning request because it is not owned by the applicant.

Heiden asked whether this was a request to rezone 18-20 acres of the 100-acre tract or a request to rezone the entire 100-acre tract. The applicant noted that there was no exact survey for the 18-20 acres. Heiden commented that he considered the only legal description in the application to be for the lands described in the deed that was attached to the application. That would mean the application was for zoning map amendment for approximately 100 acres.

Hoffmeister showed the location of this property on the zoning map. He also showed areas on the map that had been previously rezoned and he discussed where these properties were located. He also discussed conditions that had been placed on previous rezoning requests and differences and priorities of the AGR and AG District.

The 100-acre tract is entirely surrounded by the AG District.

Various Commission members asked about the condition of the several roads that could possibly be used by increased density in the 100-acre tract. The fact that 70th Road east of its intersection with Arrow Road was a low or minimum maintenance road was a concern. Also availability of emergency services in the area was discussed by Commission members and the applicant. The area to be rezoned is mostly visible from Highway #30 looking to the north and from Elm Creek looking to the northwest. Therefore if any improvements were placed on the property, emergency services could locate the improvements.

Some Commission members questioned the proposed plat drawing or plan of development submitted by the applicant.

Skov stated the applicant will have to come back with a preliminary plat at a later date to address this issue and other more detailed issues.

Hoffmeister told the audience the zoning regulations encouraged more residential type housing closer to hard-surfaced roads and communities. Buffalo County has had growth in the past and the Commission is faced with issues such as will the school district in this area be able to handle this growth in their school district, will this area be serviced by utilities and will the roads sustain the traffic. What type of density should be here is a zoning question left to this commission and the County Board. Conditions could be placed on the property sought to be rezoned that would limit density and access points. The map amendment questions and the type of conditions placed upon it would require consent of both this Commission and the County Board.

Heiden stated that he believed that the only question before the Commission is whether this property should be rezoned and the rezoning question concerned approximately 100 acres and not 18-20 acres within the 100-acre tract.

The Commission discussed placing restrictions for the number of homes that could be placed in this rezoning request.

Hoffmeister told the Commission they could place conditions on the number of lots, entry point or points, and also the minimum lot size.

Justin Sindt and his wife, Holli, spoke generally in disfavor of the proposed rezoning. They own the three to five acre portion that is cut-out of the applicant's property in the northeast corner of the 100-acre tract. They have property adjacent to the proposed map amendment. They had concerns that any increased density would cause traffic problems on 70th Road and Arrow Road. They desired to live in the country without any increased density. They hoped that any change for increased usage would occur several years from now, not now.

Kenneth Wenburg, who owns land in Section 19 east of the 100-acre tract, also addressed the Commission. His concerns were similar to the Sindt's. He saw issues of dissimilar use. Density differences of residences as allowed in the AGR and AGR Districts were discussed.

Brad Sutherland also addressed the Board with reservations concerning this proposed rezoning. Mr. Sutherland also resides in Section 19. He has a small feedlot on the east side of Section 19 and he can usually get along with the rural, non-farm operator, residents. Because he has at times concentrated livestock in his yards, he voiced concerns about urbanization and crowding in the area. He voiced concerns about increased traffic and the lack of a good road to service increased traffic that this proposed rezoning would cause.

Rodney and Dee Ann Nickel spoke against the proposed map amendment. The Nickel property is located in Section 18 along 70th Road, situated to the north and east of the 100-acre tract. Their land consisted of roughly 3.7 acres.

Julie Swartwood, a resident in the area spoke in opposition of the map amendment. She in particular stated that the Apache Road means of travel was not good because the road was situated on a county line. As such, it was not in the exclusive control of one county and maintained fully by both counties.

Waunda Wenburg, who lives in Section 19, east of the 100-acre tract, stated that the roads in the vicinity of 70th and Arrow were not sufficiently maintained to handle increased traffic. She was opposed to the map amendment.

Mr. Hoffmeister explained the differences of the AGR and AG District as concerns the maximum allowed animal units in confinement facilities. The AGR District placed restrictions on the maximum number of livestock that could be placed in a confinement facility, the AG District did not. Both required special use permits when the facility reached a certain capacity. Also explained were the various setback distances separating the confinement facilities from residences, churches, and similar facilities. These setbacks did not relate to the zoning district.

Skov also reminded the audience that much of Buffalo County's lands that are zoned AGR are used for agricultural purposes and would have appearances similar to areas zoned AG.

Heiden, Erickson, Wolfe, and other members of the Commission also said the Planning & Zoning Commission should place conditions on the number of lots that could be allowed in the 100-acre tract, if it were to be rezoned.

Mr. Luther said they would have protective covenants in place that would address some of the issues concerning undesirable structures and uses.

Hoffmeister reiterated that covenants are between the buyer and seller.

Skov closed the public hearing at 7:55 P.M.

Erickson together with several other members thought the Commission should limit the number of homes and also limit the number of roads entering 70th Road. Otherwise, there is potential of several small tracts or pencil lots all entering 70th Road. Pencil lot development along a road is typically not a good plan of development. Although a rezoning request is not platting and

intensive development planning, some conditions if the 100-acre tract were rezoned would give some predictability as to the type and intensity of the development. It would also make the intensification of use consistent with surrounding areas. It was noted that there are several nonfarm operator residences in the vicinity. These residences were situated on 3-5 acre tracts. The existence of these smaller tract residences in a rural area simply by their existence creates a demand for more small lots which results in more demand for rural type residential development in the area. This situation is starting to develop in the vicinity of the 100-acre tract sought to be rezoned. Ideally, the development at this time should be limited to 5 residential lots, which would include the present residence on the 100-acre tract, with the rest of the land in the 100-acre tract left as is, but subject to future change as needed.

Stengel asked if the 100-acre tract was any part of the reservoir planned northwest of Elm Creek some years ago by Central Platte NRD. She was informed that this land was not part of nor in consideration for being part of that project.

Other Commission members agreed with the one point of entry for residential purposes concept. All thought this was an application on the 100-acre tract and not a smaller portion. Should more development be needed, then the applicant could come in with a request to amend the condition that limited density. That way another public hearing process could occur and matter be revisited.

A motion was made by Erickson, seconded by Heiden, to forward this zoning map amendment to the County Board with recommendation that the following described property referred to in these minutes as the "100-acre tract" be rezoned from Agricultural to Agricultural-Residential District:

The North 1460 feet of the Northwest Quarter and the North 1460 feet of the West 60 acres of the East half of Section Nineteen (19), Township Nine (9) North, Range Eighteen (18), West of the 6th P.M., Buffalo County, Nebraska, EXCEPTING THEREFROM a tract of land being part of the Northwest Quarter of the Northeast Quarter of said Section 19, more particularly described as follows: Referring to the Northwest Corner of the Northeast Quarter of said Section 19, and assuming the North line of said Northeast Quarter as bearing N 88°42' E and all bearings contained here are relative thereto; thence N 88°42' E and on the North line of the Northeast Quarter of said section a distance of 119.05 feet to the ACTUAL PLACE OF BEGINNING, thence continuing N 88°42' E a distance of 341.0 feet; thence S 00°22'35"W a distance of 447.3 feet; thence S88°42'W and parallel with the North line of the Northeast Quarter of said section a distance of 341.0 feet; thence N00°22'35" E and parallel with the East line of said tract a distance of 447.3 feet to the place of beginning.

with the two conditions as follows:

1. There shall be a limit of 6 lots, five being of residential type, with one residence per lot, on the 100-acre tract sought to be changed from the AG to AGR District.
2. All residential type lot access will be limited to one access road on to 70th Road.

Voting yes were Erickson, Heiden, Keep, Skov, Steinbrink, Stengel, Covalt, and Wolfe. Voting no: none. Absent: Wietjes. Motion carried.

Taubenheim, said this will be heard by the County Board on January 11, 2011 at 11:00 o'clock, a.m. and notices will again be mailed to adjacent property owners.

The public hearing for this Commission's recommendations and suggestions concerning a proposed conservation easement submitted by Jacobsen Trust, et al, to Central Platte Natural Resources District was considered by the Commission at 8:22 p.m. This easement, as proposed in a deed considered by the Commission, concerns solely acquisition of surface water on land described in the proposed conservation deed. After closure of the public hearing without any public comment, Wolfe moved and Stengel seconded, that the proposed easement be returned to the Buffalo County Board with a favorable recommendation.

Old Business: Moved by Stengel, seconded by Wolfe to approve the minutes of the November 18, 2010 as mailed. Voting yes: Stengel, Wolfe, Erickson, Heiden, Keep, Skov, Covalt, and Steinbrink. Voting no: none. Absent: Wietjes. Motion passed.

Hoffmeister reported that the Buffalo County Board adopted fees for conservation easements. He also reported that Hanna-Keelan and Associates, Land Use Planners would soon be participating in updating process of the Comprehensive Plan and Zoning Map. Some review of the Zoning and Subdivision Resolutions might also occur in the process.

The next meeting of the Planning & Zoning Commission will be January 20, 2011 at 7:00 P.M. at the Highway Department.

Moved by Stengel to adjourn at 8:45 P.M.