

MINUTES OF PLANNING & ZONING COMMISSION
APRIL 17, 2014
BUFFALO COUNTY COURTHOUSE
7:00 P.M.

Chairperson Scott Brady opened the meeting at 7:00 P.M. at the Buffalo County Courthouse in Kearney, NE with a quorum present on April 17, 2014.

Present were: Scott Brady, Marlin Heiden, Willie Keep, Richard Skelton, Leonard Skov, Paul Steinbrink, Sr., Gwen Stengel and Loye Wolfe. Absent: Ken Erickson. Also attending were Deputy County Attorney Andrew W. Hoffmeister, Deputy County Attorney Kari Fisk, Zoning Administrator LeAnn Klein and 8 members of the public.

Notice of the meeting was given in advance thereof by publication in the legal newspaper. A copy of the proof of publication is on file in the Zoning Administrator's office. Advance notice of the meeting was also given to the Planning & Zoning Commission and availability of the Agenda was communicated in the advance notice. The agenda is available for anyone wanting a copy of the agenda.

Chairperson Brady announced that in accordance with Section 84-1412 of the Nebraska Revised Statutes, a current copy of the Open Meetings Act is available for review and we do abide by the Open Meetings Act.

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

Chairperson Brady opened the public hearing at 7:02 P.M. for a zoning map amendment submitted by Future Holdings, LLC from Agricultural to Commercial on the following legal description: a tract of land being part of the Southwest Quarter (SW ¼) of Section Twenty-One (21), Township Nine (9) North, Range Fourteen (14) West of the Sixth Principal Meridian, Buffalo County, Nebraska, lying northerly of the North right-of-way line of U.S. Highway 30.

Mark Hahn was present on behalf of Future Holdings, LLC. He told the Commission he is one of the owners and they would like to rezone this property from Agricultural to Commercial. He had a list of all commercial businesses on the north side of Highway 30 between Kearney and Gibbon. There are currently 14 businesses located on the north side of Highway 30 between Kearney and Gibbon. The zoning change is not going to change the traffic. The traffic and trains are already there. This area also shows as Commercial on the future land use map. They would agree with adding a turning lane if needed. They would donate the land for this. Attorney Dan Bahensky was also present to represent the applicants. Bahensky told the Commission they would like a vote either up or down tonight. It is fitting with the area on the future land use map. It's hard to sell a product when it is still zoned agricultural.

Wolfe asked them if they had someone in mind already. Bahensky replied they are in talks with someone.

Stengel questioned if they had a plan for this area yet. Hahn replied nothing specific.

Skelton asked if they owned any additional land in this area. Hahn replied no.

Hoffmeister asked how many acres this parcel was. Hahn replied 11.1 acres. Hoffmeister stated we still need an additional 7' on the east side for future needs. The access would be from the Ravenna Road.

Skelton asked how far the entrance would be from Highway 30 from the Ravenna Road. Hoffmeister was unsure how far the access would be.

Brady asked how wide this piece of property is. Fisk replied about 500-600' in width.

Dan Stephens gave copies of the comprehensive plan to the Commission. He referred to about 8 points which he said proves this shouldn't be Commercial. This is shown as Exhibit #1. That is why we should have a special use permit so it is compatible with the Agricultural-Residential area.

Bahensky understands that Stephens has a truck business that is grandfathered in. He is advertising for drivers.

Hoffmeister stated Stephens doesn't have a terminal at this location but it is an accessory use.

Bahensky doesn't know of a better spot for Commercial than this would be. It's right next to a hard surfaced road. This wouldn't be a good fit for AGR because of the high amount of traffic. This is appropriate for Commercial.

Hahn asked how many residential properties have been added in the last 10 years in this area.

Stengel replied there was one home built in the 80's and one in the 90's.

Keep asked Fisk if she could pull up the aerial map that shows the number of residences in this area.

Hoffmeister showed the listings of the special use permits for Commercial uses. Fisk also showed the lists for the 22 uses for the Commercial district.

Brady stated that he failed to see where the special use permit would be necessary in the Commercial zoning district in that 22 uses are now allowed.

Keep asked where the access to this property is currently located. Hoffmeister said that as things now stand with nothing being disclosed for U.S. Highway #30, which is a limited access highway that this Commission would have to assume it is to the west off the Ravenna Road.

Brady said there probably not that many people that would want to build new residences in this location.

Heiden asked how many homes could be built in this area. Hoffmeister said a maximum of about 6-7 homes assuming a 70,000 square foot lot size. Heiden also noted how many trips these residents would have daily.

Irene Mercer just wants to know what is going in there. There could be lots of businesses they would not want going in there.

Heiden asked where her property is situated. Mercer showed the Commission on the map where her property is located. It was located to the north and west of the property in question.

Hahn said no adult entertainment would be going in there. They would agree to not put in a business that the neighbors would be opposed to.

Brady closed the public hearing at 7:47 P.M.

More discussion followed.

Stengel said in previous hearings, people always had a plan.

Hoffmeister said just because something is rezoned to Industrial or Commercial, it doesn't mean they have to go with what they have said when they were proposing the zoning map amendment. So far in several instances, after the rezoning was approved the party proposing the change had more or less proceeded with the use that was represented to this commission and the board. However, in such instances, there is never a guarantee that the intended future use would be the actual use once the rezoning occurred. There is never going to be a perfect answer.

Fisk said just because someone has a plan, it doesn't mean they have to go with that plan. They can decide to change the plan at any time, provided it fits under Commercial zoning.

Keep said it is opening it up to anything that could be allowed in the Commercial zoning district.

Bahensky said the builders don't know what they intend to do. We don't have a secret plan. What the builders will build we don't know at this point.

Stephens said that is why a special use permit should be granted. It protects people living in this area.

Hoffmeister asked what would be worth more, property with a special use permits or property rezoned to Commercial? The Commercial zoned property is easily marketable if it meets proper location criteria. When a property is granted a designated special use it can only be used for that one particular type of use and it usually has other restrictions that this commission and the board might place on the property and the special use. These additional restrictions and/or conditions might be screening, tree planning, types of lighting required on the premises, hours of use, signage, and other conditions. The limitations of use as allowed by a special use permit remain on and with the property until the special use is changed by zoning authorities, the property is

rezoned to a classification that allows that special use and other similar uses as a use by right, or the special use expires due to nonuse over a period of time. We have not seen in Buffalo County a property use situation where the special use permit ceases to be viable and the property has market limitations upon it due to the special use. Special use property is problematical for the county attorneys' office in that for zoning code enforcement special use property has to be treated as a nonconforming use. If a special use is granted for something like a roofing supply company and that property's use ceases to be a roofing supply company on a particular parcel of property, it will eventually revert back to being only allowed the uses allowed as uses by right in the particular zoning district where the special use property is situated. The roofing supply company that is granted a special use permit simply cannot change its' line of business to construction materials without a re-examination of the special use permit or the property being rezoned. That is a limitation on the marketability of the special use property. If the particular parcel of property is suitable for commercial use, it should be placed in the commercial district, if not then it should not be placed in the commercial district.

Chairperson asked for a motion.

Keep asked if 11 acres is enough acres to make the change.

Steinbrink said we haven't considered the acres on some of the other properties we have rezoned.

Motion was made by Keep, seconded by Stengel to deny the rezoning request submitted by Future Holdings, LLC from Agricultural (A) to Commercial (C) on the following legal description: a tract of land being part of the Southwest Quarter (SW ¼) of Section Twenty-One (21), Township Nine (9) North, Range Fourteen (14) West of the Sixth Principal Meridian, Buffalo County, Nebraska, lying northerly of the North right-of-way line of U.S. Highway 30.

This was based on the following reasons: this request was not comprised of enough acres to be commercially viable, there exists too many residential use properties in the area of the zoning map amendment request that will have incompatible use with the subject property if it is used for any allowed commercial use, there are concerns with traffic safety in this area in that it located at a high traffic density intersection that has a railroad crossing, heavy agricultural and commercial truck traffic, and heavy passenger car use, and this board has typically had some, although perhaps nonbinding, plan or concept of development of the property for which the zoning map amendment request is being requested. In the situation presented to this commission, there are too many unknowns regarding proposed commercial development of property. If this development is not done through special use guidelines some of the commercial uses allowed by right and/or special permission in the Commercial zoning use district might have detrimental economic effects on surrounding properties, particularly the residential use parcels. Additionally, in the present future use map, all property north of U.S. Highway #30 from the east side of Kearney to the Hall County line was changed from Agricultural use (AG District) to Commercial. This change in the future use map in the Comprehensive Plan was not noticed by several commission members until this zoning map amendment question was presented to this commission. This commission is not entirely settled that the now adopted future land use map should have extended commercial/industrial use east of the intersection of U.S. Highway #30

and State Highway #10. Voting yes were Heiden, Keep, Skelton, Stengel and Wolfe. Voting no: Brady, Skov and Steinbrink. Absent: Erickson. Motion carried.

Steinbrink was excused at 8:12 P.M.

Old Business: Moved by Skov, seconded by Heiden to approve the minutes of the March 20, 2014 as mailed. Voting yes: Skov, Heiden, Brady, Keep, Skelton, Stengel and Wolfe. Voting no: none. Absent: Erickson and Steinbrink. Motion carried.

Other items were discussed.

The next meeting of the Planning & Zoning Commission will be a special meeting to be held May 1, 2014 at 7:00 P.M

Chairperson Brady adjourned the meeting at 8:15 P.M.