

MINUTES OF PLANNING & ZONING COMMISSION  
FEBRUARY 15, 2018  
BUFFALO COUNTY COURTHOUSE  
7:01 P.M.

Vice-Chairperson Willie Keep opened the meeting at 7:01 P.M. at the Buffalo County Courthouse in Kearney, NE with a quorum present on February 15, 2018.

Present were: Marlin Heiden, Tammy Jeffs, Willie Keep, Marc Vacek, Randy Vest, and Loye Wolfe. Absent: Scott Brady, Austin Gardine, and Richard Skelton. Also attending were Deputy County Attorney Kari Fisk, Zoning Administrator LeAnn Klein, and six members of the public.

Vice-Chairperson Keep 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.

Chairperson Scott Brady arrived at 7:02 P.M. Vice-Chairperson Keep turned the meeting over to Chairperson Brady.

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.

The public forum was opened at 7:02 P.M. Several persons were present, but no one provided any comment. The public forum closed at 7:02 P.M.

Chairperson Brady opened the public hearing at 7:02 P.M. for recommendation to amend Buffalo County Zoning Regulations as previously adopted to allow cell towers with a special use permit under Commercial zoning and add Section 5.54 #12 "Communications towers in excess of 100 feet which serve communication needs including radio, telephone, television, or emergency communication purposes so long as they comply with all applicable Federal Aviation Administrative rules and regulations. Additional, any special use permit application under this section shall include engineering certifications regarding the collapse zone of any proposed tower."

Jeffrey Skinner with Verizon Wireless from Waukee, Iowa was present and told the Commission they want to put a wireless cell tower in the Elm Creek vicinity for service on the I-80 corridor but they need to amend our zoning regulations first since this tower location is in Commercial zoning. Currently our zoning regulations do not allow wireless towers in the Commercial zoning. Currently under Section 5.54 #4 only radio studios, transmitters and antenna are allowed under the Commercial district with a special use permit.

Discussion followed.

Fisk stated currently the wording is different in the Agricultural and Agricultural-Residential zoning districts.

Keep said this is a housekeeping issue and the wording needs to be the same in all four districts.

Fisk said towers are currently not allowed in the Industrial zoning district or Rural Conservation zoning district.

Keep said the towers are self-standing and the fall zone is very minimal.

Chairperson Brady closed the public hearing at 7:08 P.M.

Fisk said we can address the Commercial issue tonight and we will address the other three zoning classification in the future.

A motion was made by Vacek, seconded by Heiden to amend the Buffalo County Zoning Regulations as previously adopted as follows and forward to the County Commissioners with recommendation of approval:

Add 5.54 #12 “Communications towers in excess of 100 feet which serve communication needs including radio, telephone, television, or emergency communication purposes so long as they comply with all applicable Federal Aviation Administrative rules and regulations. Additional, any special use permit application under this section shall include engineering certifications regarding the collapse zone of any proposed tower.”

Voting yes were Vacek, Heiden, Brady, Jeffs, Keep, Vest, and Wolfe. Voting no: none. Absent: Gardine and Skelton.

Klein said this would be heard by the County Commissioners on March 13, 2018 at 9:15 A.M. and notices would again be sent out.

Chairperson Brady opened the public hearing at 7:15 P.M. for a special use permit submitted by Frank and Terri Meier on the following legal description: Lots 3 and 4 and the Northeast Quarter of the Northwest Quarter of Section 17, Township 8 North, Range 18 West of the 6<sup>th</sup> P.M., Buffalo County, Nebraska, including all reparation and alluvial rights and accretion land, if any.

Frank and Terri Meier of Elm Creek were present and told the Commission they want to add a building as a venue for events such as bull sales, weddings, receptions, graduations, family reunions etc. This steel building would be approximately 80' x 100' and they would like to convert it to a home in the near future for their son who is currently serving as a pilot in the United States Air Force. He would be coming home in approximately 4-6 years. It is on some land that is considered wasteland.

Fisk asked if they had a parking plan. Terri said there is approximately 60 acres that is wasteland that can be used for parking. This parking would be northeast of the building site.

Heiden asked how far the building would be from their home. Frank said it is about ¼ of a mile.

Wolfe asked about alcohol. Terri said they wouldn't be supplying any alcohol but they had visited with other people who said they could get a permit for one day for the alcohol. The applicant would have to supply their own alcohol and also have a security guard present.

Vacek asked if there was only one entrance and one exit. Terri responded that was correct.

Brady asked if they had contacted the Highway Department to see if the existing road was sufficient to handle the traffic. Frank said the present road is private and doesn't have anything to do with the County. It is off Highway #183 to their private drive. The private drive would be their concern. It does go through their cousin's property and they have talked to their cousin about it and they don't have any problem with them using the private driveway.

Fisk asked if the only access to their property is through a third party property. Meier said they have been using this access for about 30 years.

Fisk asked if this was a legal easement. Frank said they had talked to an attorney and the attorney had said if they had been using it for 30 years it would be a legal easement.

Wolfe had asked if they have a 911 address for their property. They do have a 911 address off of Highway #183.

Fisk said they cannot approve a special use permit that uses a third party to access their property unless that third party joins in the application process. Currently we would be binding a third party without any kind of written permission for this special use permit.

Heiden asked if they would be splitting this property.

Fisk replied they could have an additional home for a relative in the Agricultural zoning without splitting it. She also said they could have some type of sunset clause which would state after so many years this could be converted to a residential home.

Keep said this is a private drive.

Fisk said the Commission can put on conditions and these would have an impact on the third party. The Commission could put conditions that the road be a certain width etc.

Frank said the third party knows about this and they are not against it.

Keep said this is fenced on both sides of the drive-way. Frank said there is another road to the north of this road which also is an access to their property. It would be the same landowner.

They tried to find out last year whether the road to the north was a township road or a county road and it is neither.

Fisk also said they could have an attorney prepare a legal document that would draft a legal instrument to which would address this issue and would let you apply for this permit alone.

Keep said if they would have their own bull sale or wedding reception, they wouldn't need a special use permit to have the event.

Fisk said it is a little different if they rent it out to a third party, then it becomes Commercial and a special use permit would be required.

Ron Follmer said he had a similar situation in Hall County and he just gave them the access and they could just lease it back.

Fisk said they could just table this application until they can get the necessary legal papers drawn up and that way they wouldn't have to pay additional fees.

Joe Meier questioned if they were rezoning this to Commercial.

Fisk told him this is a special use permit and will not be rezoned to Commercial.

Vacek said it shouldn't change the tax base.

Frank said they would spend a few years in using the building for events, than it would become a home for their son.

Kari said they could put a few conditions on this special use permit such as hours, where parking was located, lighting and access for road.

Motion was made by Wolfe, seconded by Jeffs to table this special use permit filed by Frank and Terri Meier on the following legal description: Lots 3 and 4 and the Northeast Quarter of the Northwest Quarter of Section 17, Township 8 North, Range 18 West of the 6<sup>th</sup> P.M., Buffalo County, Nebraska, including all riparian and alluvial rights and accretion land, if any until the necessary legal paperwork is finished to address the private easement.

Voting yes were Wolfe, Jeffs, Brady, Heiden, Keep, Vacek and Vest. Voting no: none. Absent: Gardine and Skelton. Motion carried.

Chairperson Brady opened the next public hearing at 7:37 P.M. for a special use permit submitted by Michael Mauslein for a welding shop 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 6<sup>th</sup> 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 989.72 feet to a point being on the most Northerly corner of a tract of land deeded to the State of Nebraska Department of Roads, as described on Microfilm Roll 94, Pages 18992 thru 18993 and filed in the Buffalo County Register of Deeds Office on December 30, 1994; thence S 59° 38' E and on the Northerly line of the aforesaid tract of land deeded to the State of Nebraska Department of Roads, a distance of 150.66 feet to the Southeasterly corner of said tract of land, said point also being on the North line of the Union Pacific Railroad Company's Right-of-Way, thence N 73° 30' E and on the North line of the Union Pacific Railroad Company's Right-of-Way, a distance of 1271.12 feet to the ACTUAL PLACE OF BEGINNING; thence continuing N 73° 30' E and on the North line of the Union Pacific Railroad Company's Right-of-Way a distance of 317.08 feet; thence leaving the North line of the Union Pacific Railroad Company's Right-of-Way, N 04° 30' W a distance of 313.50 feet; thence continuing on the aforescribed course N 04° 30' W a distance of 11.73 feet; 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 00° 09' 34" W and parallel with the West line of said Government Lot 1, a distance of 96.91 feet; thence S 16° 29' 55" E a distance of 334.45 feet to the place of beginning.

Michael Mauslein was present and told the Commission he wants to put up a 60' x 80' steel building for a welding business. His well would be located in the northwest corner of the lot and his septic would be on the south side of the building. The building would be located 60' from Highway 30. His electricity would be buried underground and he has purchased an easement from Neil Koster to access the property. There would be two entrances to the property off the private drive.

Wolfe asked how many vehicles per day. Mauslein said between 0-10 per day depending on the day. Wolfe asked what kind of welding. Mauslein replied high end welding. He is a certified welder.

Brady asked if there would be any employees. Mauslein said not at this time.

Brady said this fits the area and it fits the Commercial/Industrial area.

Fisk said they have to look at the following:

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.

Fisk went over some of the conditions that had been placed on the special use permits for the other businesses at this location such as Versatile Roofing and Axmann Trucking.

Keep asked if they would be doing any painting at this location. Mauslein said no.

Brady asked Mauslein if he had any objections to any of these conditions. Mauslein said he wants the area to look nice.

Vest asked if he would be storing any materials outside. Mauslein said no. If he would, he would buy a container to put any materials in.

Wolfe asked about gas cylinders and where they would be stored. Mauslein said they would be stored inside.

Mauslein said there is nothing hazardous stored here.

Wolfe asked if there would be any windows in this facility. Mauslein said there would be two windows in this building.

The Commission went over the conditions of the special use permit. Brady said we should be consistent with the other businesses at this same location.

Heiden asked if anything would be stored outside. Mauslein said everything would be stored inside or in a shipping container.

Keep asked if the electrical would be 3 phase electrical power which Mauslein said it would and it would be underground.

Fisk asked the Commission if the entrance points to the property are sufficient. Mauslein said he would tell semi drivers to use the north entrance off the private drive.

Vacek said the south entrance is close to the highway and semis should not use the south entrance.

Chairperson Brady closed the public hearing at 8:00 P.M.

A motion was made by Vest, seconded by Vacek to approve this special use permit to allow a 60' x 80' building for a welding shop and forward to the County Commissioners 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 6<sup>th</sup> 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 989.72 feet to a point being on the most Northerly corner of a tract of land deeded to the State of

Nebraska Department of Roads, as described on Microfilm Roll 94, Pages 18992 thru 18993 and filed in the Buffalo County Register of Deeds Office on December 30, 1994; thence S 59° 38' E and on the Northerly line of the aforesaid tract of land deeded to the State of Nebraska Department of Roads, a distance of 150.66 feet to the Southeasterly corner of said tract of land, said point also being on the North line of the Union Pacific Railroad Company's Right-of-Way, thence N 73° 30' E and on the North line of the Union Pacific Railroad Company's Right-of-Way, a distance of 1271.12 feet to the ACTUAL PLACE OF BEGINNING; thence continuing N 73° 30' E and on the North line of the Union Pacific Railroad Company's Right-of-Way a distance of 317.08 feet; thence leaving the North line of the Union Pacific Railroad Company's Right-of-Way, N 04° 30' W a distance of 313.50 feet; thence continuing on the aforescribed course N 04° 30' W a distance of 11.73 feet; 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 00° 09' 34" W and parallel with the West line of said Government Lot 1, a distance of 96.91 feet; thence S 16° 29' 55" E a distance of 334.45 feet to the place of beginning with the following conditions.

1. Applicant may construct the proposed building and up to one additional building (two buildings total) so long as each building is principally used as a welding shop.
2. That appropriate exterior security lighting shall be placed on the premises by applicant with the lighting projecting downward if mounted on the building or light pole(s) and upward so long as any upward lights is directed at the building itself.
3. Only operative equipment shall be allowed on the premise outside of approved buildings.
4. That no items or materials will be stored on the premises unless (1) stored within the approved building; (2) stored inside an enclosed and well maintained shipping container or (3) stored within an area totally enclosed by an 8' privacy fence which completely obscures visibility of the materials stored therein.
5. That all driveways and building approaches must be surfaced with crushed rock or higher grade of construction material.
6. That all garage doors and/or loading areas will be on the east and/or west side of the building.
7. That up to one well-maintained shipping container may be placed on the property for the purpose of storing materials or equipment.
8. That one roll-off dumpster or scrap material storage container can be placed on the north side of the building so long as it is shielded from road visibility.
9. That the property shall be kept free of litter and trash by the applicant and/or successor.
10. That the applicant will secure proper 911 addressing and will place adequate signage on the building in a manner visible to emergency personnel.

Voting yes were Vest, Vacek, Brady, Heiden, Jeffs, Keep, and Wolfe. Voting no: none. Absent: Gardine and Skelton. Motion carried.

Klein said this would be heard by the County Commissioners on March 13, 2018 at 9:15 A.M. and notices will again be sent out.

Old Business: Moved by Vacek, seconded by Heiden to approve the minutes of the January 18, 2018 as mailed. Voting yes: Vacek, Heiden, Brady, Jeffs, and Keep. Voting no: none. Abstain: Vest and Wolfe. Absent: Gardine and Skelton. Motion carried.

Other items were discussed.

The next meeting of the Planning & Zoning Commission will be held March 15, 2018 at 7:00 P.M.

Chairperson Brady adjourned the meeting at 8:06 P.M.