

MINUTES OF PLANNING & ZONING COMMISSION  
SEPTEMBER 15, 2005  
BUFFALO COUNTY HIGHWAY DEPARTMENT  
7:00 P.M.

Chairperson Rick Pope called the meeting to order at 7:05 o'clock P.M. with a quorum present on September 15, 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, Willie Keep, Rick Pope, Leonard Skov, Paul Steinbrink and Loye Wolfe. Absent: Craig Wietjes. Also attending were Deputy County Attorney Andrew Hoffmeister, Deputy County Attorney Melodie Bellamy, Zoning Administrator LeAnn Klein and 23 members of the public.

The public forum was opened at 7:06 P.M. Clifford Chamberlin asked about the parliamentary procedure. He asked since the City of Kearney had withdrawn their application, if the letter from the City of Kearney could be read and questioned when the people present tonight could address the Planning & Zoning Commission. Pope responded he would read the letter at a later portion of this meeting. Pope also questioned the process of the meeting tonight. Hoffmeister responded that the City of Kearney Attorney Michael Tye is present and he does want to address the Commission tonight. The public forum closed at 7:08 P.M.

Chairperson Pope stated that the special use permit from the City of Kearney for the construction of 9 wells and well houses for the West ½ of Section of Section 23, Township 9 North, Range 17 West, East ½ of Section 14, Township 9 North, Range 17 West and the Northeast Quarter of Section 23, Township 9 North, Range 17 West of the 6<sup>th</sup> P.M. had been withdrawn at 3:00 P.M. this afternoon. Chairperson Pope did read the letter that had been sent to County Clerk Judy Jobman at 3:00 P.M. this afternoon asking that the application for the special use permit be withdrawn.

At this time Deputy Attorney Hoffmeister told the Commission that discussions for the need for a permit had taken place between the County Attorney's office and the City Attorney. There was a case law if a political entity has the power of condemnation; they are exempt from county zoning laws. If the use is allowed as a special use permit under the zoning regulations, the County cannot outlaw this special use permit. This area is located in Agricultural-Residential Zoning and according to Section 5.34 #15 public utilities and utility distribution systems is allowed as permitted special uses. There are certain issues which must be addressed by the County Board and the City Council such as road issues, utilities and law enforcement.

City Attorney Michael Tye stated he has been City Attorney since Tuesday and it is the City's intent to have conversations with the County Board regarding road and other issues. He said that Utility Superintendent Kirk Stocker had met with neighbors a couple of weeks ago. He wants to share additional information and continue to provide information.

Chairperson Pope said they would allow people to briefly address the Commission.

Tom Schroeder's wife owns adjacent property and Tom did say they had asked Mr. Stocker many questions but have not gotten any answers. He wanted to know who is liable when City runs all wells dry.

Tye stated that is a question for Natural Resource District.

Allen Robinson stated NRD had already issued permits for these wells and the concern at the neighborhood meeting was the amount of underground water that is available. NRD has put out a map that shows this area does not have a sufficient supply of water. He questioned eminent domain and does this prove a need for the property?

Clifford Chamberlin asked if all of this property comes off the tax rolls if it is rented. Hoffmeister stated that if the City does own this property, it will come off the tax rolls. Chamberlin also stated that many questions had been asked at the neighborhood meeting. All the technical questions came with the answer "I don't know" by City officials. He also asked who was going to pay for the three phase power which needed to be brought up seven miles to run the wells. He wanted to know why the people's questions cannot be answered. When is all of this information going to come forth to the people? It doesn't sound like all the people who live in this area will be included in any of the meetings between the City of Kearney and Buffalo County. He also questioned that Mr. Stocker had stated the only requirement that would be set forth is that no registered well be drilled or exist within 1000' of a city well.

Lana Jacobson, an adjoining property owner, also reiterated that no property owners have been contacted by the City.

Bill Dibbern, who owns part of the property, also asked if the City was going through the condemnation process or do they intend to purchase the property?

Tye said that they are going through with the process. The City Council has agreed to proceed.

Mark Robinson questioned if they need to obtain legal council. Hoffmeister said another option would be to address your concerns to the County Board or City Council.

Keep questioned if NRD needs to re-evaluate the maps.

Biehl questioned the 2 mile jurisdiction.

Heiden asked if NRD would pay for any wells that dry up.

Pope said the Commission understands their frustration but they are powerless.

Old Business: Moved by Heiden, seconded by Covalt to approve the minutes of the July 21, 2005 meeting as mailed. Voting yes were, Heiden, Covalt, Biehl, Keep, Pope, Steinbrink, Skov and Wolfe. Voting no: none. Absent: Wietjes. Motion passed.

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

At this time the Commission went over the following proposed amendments

**PROPOSED AMENDMENT #2:**

Make all violations for zoning Class III violations in conformity with State Law:

Amend Sec. 12.2 to read as follows:

**12.2 PENALTIES**

The owner or agent of a building or premises in or upon which a violation of any provisions of this resolution has been committed or shall exist or lessee or tenant of an entire building or entire premises in or upon which such violation shall exist, shall be guilty of a Class ~~V~~ III misdemeanor. Each and every day that such violation continues after notification shall constitute a separate offense.

Nothing herein contained shall prevent the County from taking such other lawful action as is necessary to prevent or remedy any violation.

**PROPOSED AMENDMENT #3:**

Amend provisions relating to appeal process to be in conformity with State Law, Laws 2004 LB 793, effective April 2, 2004:

Add Sec. 6.5 to read as follows:

6.5 Appeals Special Use Permit

An appeal of a decision by the County Board of supervisors regarding a special use shall be made to the district court.

**PROPOSED AMENDMENT #4:**

Amend provisions relating to Floodplain Issues. Our zoning regulation is inconsistent to our floodplain regulations.

Amend Sec. 2.41 to read as follows:

**2.41 FLOODPLAIN STRUCTURAL REQUIREMENTS**

~~No structure or structural member of such structure shall be placed at, below, and/or less than one (1) foot above the high water mark of waterways in any tract of land, as identified by the Flood Insurance Rate Map (FIRM) dated 3/1/1990 as Special Flood Hazard Areas unless the lowest structural member thereof, including basements, is elevated to a minimum of one (1) foot above such high water mark or such structure or structural member is~~ All changes in use allowed by zoning permits shall be in compliance with any permit required by flood plain administrator- floodplain regulations adopted by Buffalo County. Floodplain administration is

the duty of the Buffalo County Floodplain Administrator and not the duty of the zoning administrator. The zoning permit form shall include a provision for review of such permit by the floodplain administrator.

Moved by Wolfe, seconded by Biehl to set a public hearing for October 20, 2005 to amend the Buffalo County Zoning Regulations as set forth in the proposed amendments 2, 3, & 4 as noted above. Voting yes were, Wolfe, Biehl, Heiden, Covalt, Keep, Pope, Steinbrink and Skov. Voting no: none. Absent: Wietjes. Motion passed.

The next meeting of the Planning & Zoning Commission will be October 20, 2005 at 7:00 P.M. at the Highway Department. Motion was made by Skov, seconded by Heiden to adjourn at 8:15 P.M.

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Rick Pope, Chairperson

ATTEST

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Loye Wolfe, Secretary