

MINUTES
OF
DOUGLAS COUNTY PLANNING COMMISSION

3015 MENKE CIRCLE
OMAHA, NE 68134

February 9, 2005
6:00p.m.

The meeting was called to order by Chairperson Hayes with roll call vote.

Members Present: Bob Boozer, Bob Bruhn, Michael Gerdes, Dave Lanoha, Joe Roberts and Milo Vacanti.

Members Absent: Ron Bucher and Luke Janke.

Other County Officials and Staff Present: Barb Frohlich, Val Toombs, and Kent Holm (Douglas County Environmental Services), Bernie Monbouquette (County Attorney's Office), Don Nielsen (Douglas County Engineer's Office), Tom Breitreutz and Tom Baker (Douglas County Health Department).

Motion by Commissioner Boozer, seconded by Commissioner Gerdes to approve minutes of January 12th, 2005 meeting.

Voting Yes: Boozer, Bruhn, Gerdes, Hayes, Lanoha, Roberts and Vacanti.

Voting No: None

Abstain: None

APPLICATION

P-5-05

REQUEST: Approval of Final Plat, The Hampton's, 189 acres, 115 single family lots with community water and sewer, outlots A, B, C, and D and Single Family-1 (SF-1) zoning district.

LEGAL: SW ¼ of Section 3, Township 14, Range 10 and N ½ NW ¼ of Section 10, Township 14, Range 10 of the 6th P.M.

LOCATION: North of West Q Road, 234th to 240th Streets

APPLICANT: Francis Hert Trust, C/o Great Western Bank Trust, 9290 West Dodge Road, Omaha, NE (Boyer Young Development Company)

Bob Doyle, 11440 W. Center Road, Omaha, NE, on behalf of the applicant made the following comments:

1. The application of the Hampton's Land Development LLC is for a subdivision on 192.22 acres north of "Q" between 234th and 240th Street.
2. The plan originally called for 113 single family lots. Two lots have been added as well as a significant number of traffic calming devices which are shown on the plat.
3. Some of the lots have had minor changes in configuration to improve them relative to the topography.
4. The development will comply with the Douglas County Emergency Management requirements.
5. There are still a number of comments by the Douglas County Engineer. Some minor changes may be made to the final plat before it goes to the County Board in order to comply with those comments.
6. The plat has been changed from a rural configuration to an urban design that includes storm sewers. The storm sewers should alleviate the comment about allowing one driveway per lot since high end housing with houses valued between \$450,000 and \$1,000,000 often have circular driveways.
7. Don Heine, Mark Boyer, and Tim Young are also present to answer questions.

Chair Hayes asked Mr. Heine to explain the letter sent to Planning Commissioners regarding excess storage for the treatment plant.

Don Heine, Hill-Farrell Associates, 1008 Lincoln Road, Bellevue, NE 68005, explained that the final design for the treatment plant will provide for a minimum of 24 hours of excess storage to be used in the event of maintenance. The treatment plant has the ability to be taken off line for 24 hours without special permits for bypass into the river.

Chair Hayes opened the public hearing.

Bob Trent, 23551 W. "Q" Road, Omaha, NE, made the following comments:

1. Attended the first public hearing and expressed concern about the water supply for 117 homes and the impact on neighboring wells.
2. Also asked if the additional test well as requested by the Planning Commission had been drilled? Mr. Heine responded that a draw down study was performed by Chatman & Associates. The study found that the proposed wells are down in the Dakota Aquifer which basically has a limitless amount of water and the draw down effect on any adjacent properties is very negligible.
3. Stated that when he bought his property from Francis Hert she was very proud of the property where the subdivision will be because of numerous Indian arrowheads and several Indian burial grounds found there. She also stated the sites were recorded with Douglas County.
4. If such sites are on the property, he would like to see them preserved.

Chair Hayes stated she believed the sites are recorded with the State Historical Society and were investigated when MUD did an archeological study for their corridor that runs through the property.

Leonard Frecks, 23363 W. "Q" Road, Omaha, NE, made the following comments:

1. Stated that he lives on the east side of 234th Street, south of "Q" Street.
2. His well was drilled down 175' to sandstone or rock and then down to a depth of 201feet. Concerned that if water is taken from upstream, it will impact his well.
3. Expressed concern about the traffic. Has counted 100 vehicles going both ways on "Q" Street in a 15 minutes period. There have been numerous accidents in front of his house.
4. Believes the Indian burial ground and village should be respected. Francis Hert's father found remains of human beings on the property. Francis Hert arranged for the University of Nebraska to pick up the remains but they were gone when they arrived. Everyone believed her father had re-buried the remains.
5. Expressed concern about site distances at the entrances to the subdivision.

Mr. Heine responded that both right and left turn lanes are planned for both entrances.

Don Nielsen. Douglas County Engineer's office, made the following comments:

1. The County Engineer's office does not want to delay the approval process but is concerned that additional right-of-way should be dedicated, especially at the east end of the project, to accommodate future improvements to "Q" Streets.
2. The street calming design has not been reviewed by the traffic engineer. There may be some minor changes needed.
3. Requested that these issues be resolved before the application is heard before the County Board.

Chair Hayes closed the public hearing.

Commissioner Lanoha moved to recommend approval of the final plat with the condition that the County Engineer's office comments are complied with and if the well of an abutting landowner or landowner directly south of "Q" Street has draw down and is no longer usable, the developer is required to supply them with water at the developer's expense. Commissioner Gerdes seconded the motion.

Voting Yes: Boozer, Bruhn, Gerdes, Hayes, Lanoha, Roberts and Vacanti.

Voting No: None

Abstain: None.

APPLICATION C-1-05 (laid over from January 12, 2005)

REQUEST: Approval of Conditional Use Permit for Sand and Gravel operation, 232.49 acres (three parcels, parcel 1088 0000 01 (owner-G&G Manufacturing), parcel 1087 0000 01(owner-August Graske) and parcel 1086 0000 01 (owner-August Graske).

LEGAL: West ½ of NW ¼ of Section 32, Township 15 N, Range 10 E of the 6th P.M.

LOCATION: SE corner of 264th Street and Highway 92 (West Center Road)

APPLICANT: Mallard Sand & Gravel Co., P.O. Box 638, Valley, NE 68064

Bill Green, 647 Platte View Dr., Waterloo, NE, made the following comments on behalf of Don Rogert:

1. Mr. Rogert is out of town and unable to attend the meeting.
2. Was the president of his previous company and was asked to present the application.
3. Mike Stratman, head of operations for the sand and gravel is at the meeting to answer any technical questions.
4. It is a sand and gravel operation located at 264th Street and Highway 92. It will provide material for various companies that utilize sand and gravel such as asphalt companies, block companies, and concrete plants.

No one from the public spoke for or against the application.

Commissioner Vacanti asked if a lake would be there after the sand and gravel is removed? Mr. Green stated a lake suitable for residential or commercial use would result and added that the property is being developed at the request of the landowner.

Motion by Commissioner Vacanti to recommend approval of the application, seconded by Commissioner Lanoha.

Ms. Frohlich asked if any conditions were to be added to the conditional use permit? No conditions were added to the recommendation for approval.

Mr. Green stated that Mr. Rogert has been in business for about 40 years and has always run a fine operation. His equipment is first class and the people that work for him are first class.

Voting Yes: Boozer, Bruhn Gerdes, Hayes, Lanoha, Roberts and Vacanti.

Voting No: None

Abstain: None

APPLICATION

G-3-05 (laid over from January 12, 2005)

REQUEST: Change Future Land Use Map from Agricultural to Industrial

LEGAL: Part of NE ¼ of Section 9, Township 16 n, Range 9 E of the 6th P.M.

LOCATION: Intersection of Highway 36 and Highway 275

APPLICANT: Douglas County Environmental Services

APPLICATION

Z-1-05 (laid over from January 12, 2005)

REQUEST: Approval of re-zoning from AF-1 to M2, 51.5 acres.

LEGAL: Part of NE ¼ of Section 9, Township 16 N, Range 9 E of the 6th P.M.

LOCATION: Intersection of Highway 36 and Highway 275

APPLICANT: Sun Valley Speedway, LLC (Roger Hadan), 12240 North 153rd Circle, P.O. Box 17, Bennington, NE 68007

Chair Hayes asked if a representative for the application was present. No one was present. Ms. Frohlich stated that she had talked to Mr. Slusky's office and advised them that it was possible if citizens were present to give testimony at the public hearing that the testimony would be taken.

Chair Hayes stated in the past that when a layover is requested, the applicant has always been told there should be a representative here to request the layover.

Ms. Frohlich pointed out that the layover for the Mallard Sand and Gravel application was granted with a letter.

Chair Hayes stated the applicant did request a layover by letter but she wanted to proceed with the public hearing. Planning Commissioners concurred and Chair Hayes opened the public hearing with the following conditions: asked that a limited number of people speak, that people not say the same thing and limit comments to three minutes. Commissioner Gerdes suggested the public hearing be limited to 20 minutes. Commissioners concurred.

Pat Ryan, 2336 W. 253 St., Valley, NE made the following comments:

1. Faxed a letter to the Planning Commission this afternoon.
2. Lives five or six miles from the proposed site and probably will not hear the noise but is concerned about the overall serenity of the area.

3. There was a rumor that the application might be laid over.
4. Stated this was the second public hearing and it is not fair to those who live in the area to continue the public hearings.
5. The applicant could file their application again and start over.
6. Has been a member of the Iowa Bar since 1986 and tries to put himself in the position of the people making the decision on this matter.
7. Their position should be whether or not this racetrack is appropriate for the property and it is not appropriate for the property.
8. Requested the Planning Commission recommend denial of the application.

Chair Hayes stated that in defense of the applicant, the request was for more time to complete the studies that Planning Commissioners requested that they present to us. We did say to them we thought it might take more than a month. At that time they thought it would only take a month so their request to lay over the application is to give them adequate time to finish the studies requested.

Mr. Ryan suggested that is all the more reason that I submit to you to let the thing be withdrawn, dismissed, or whatever is appropriate. Let them re-file their application. Continuation of the public hearing is not fair to those citizens in attendance.

Mr. Monbouquette commented that it has been the practice of the Planning Commission for a request to layover be made at the meeting with a letter submitted as notice that such a request would be made. He also stated that he thinks they waived their opportunity to come and discuss the application. The Planning Commission could go ahead and continue the public hearing; conduct a public hearing on what is available, or take action based on the information you have.

Tom Thomsen, 340 E. Military, Fremont, NE 68025 made the following comments:

1. He is an attorney from Fremont working with a group of landowners surrounding the site.
2. Stated he had talked to Mr. Monbouquette about spot zoning.
3. The spot zoning matter can be legally challenged if the re-zoning is approved.
4. Three or four issues need to be addressed with spot zoning:
 - a. Is the re-zoning compatible with the Comprehensive Plan? The answer is no, the property is zoned agricultural.
 - b. The adjacent property on Highway 275 is not zoned industrial, it is zoned highway commercial.
 - c. Is the re-zoning designed to promote the general welfare of the surrounding area or designed to benefit an individual? It is clear from the people who are here and have been in the past that it is clearly not designated to benefit the general area.
 - d. These people are against it.
 - e. Surrounding the property are agricultural operations, animal operations, a game preserve and a veterinary hospital. People are strenuously opposed to the noise and dust that be occasioned by this facility as well as the traffic.

- f. This is a small area surrounded by agricultural lands.
5. Believe this is an illegal spot zoning project.

Commissioner Vacanti mentioned the letter from the mayor of Fremont stating the project will have a positive economic impact on Fremont.

Mr. Thomsen stated he agreed that it may have an positive economic impact on Fremont but not the immediate surrounding area.

Leourieta Glass, 9708 N. 300th Street, Valley, NE. 68064 made the following comments in opposition to the application:

1. Has resided at the above address for the last 25 years.
2. Douglas County zoning regulations are intended to promote health, safety, and general welfare of the community by regulating and restricting use of land. Per Neb. Rev. Stat., 23-114, 23-163.
3. Douglas County zoning regulations must be made in accordance with a comprehensive plan. Per Neb. Rev. Stat., 23-161, 23-163.
4. Nonconforming uses are not favored. Per Neb. Rev. Stat., 23-161.
5. The statute provides that any person aggrieved by the decision of the board may present to the district court a petition alleging that the decision is illegal and specifying the grounds of illegality. Per Neb. Rev. Stat., 23-168.
6. "Spot Zoning" is generally defined as singling out of a small parcel of land for use or uses classified differently from surrounding area, primarily for the benefit of the owner of property so zoned, to the detriment of area and other owners therein.
7. The fact that a residence is in the rural Douglas County area requires expectations that the residence will be subject to normal rural conditions, but not to such excessive abuse as to destroy the ability to live and enjoy the home, or to reduce the value of residential property.
8. Douglas County rural residents must expect to bear with farm and livestock conditions normally found in the area where they reside, but even in an industrial area or rural area, one cannot conduct a business enterprise in such manner as to materially prejudice a neighbor. Per Neb. Rev. Stat., 81-1501. Revised Supplement 1974, 28-1016, 81-1506.
9. The Douglas County Planning Board has no statutory authority to create a nuisance. The law does not tolerate a nuisance, because it is essentially unlawful or wrongful in character.
10. Under the criminal code, the erection and maintenance of any nuisance is declared to be a crime, and this declaration is not restricted by the enumeration of certain acts, but all common-law nuisances are crimes.
11. Government officials suit for reimbursement for legal fees paid in the defense of a criminal action that arose out of the properly dismissed, as Neb. Rev. Stat. 13-1801 did not require the county to provide a defense in criminal actions. *Guenzel-Handlos v. County of Lancaster*, 203 Neb. LEXIS 8, 265 Neb. 125, 655 N. W. 2nd 384 (2003).

12. Where a business operation of a speedway racetrack, as conducted materially and injuriously affects the comfort, enjoyment of property rights of those in vicinity, it becomes a nuisance and may be enjoined.
13. Ordinarily, a property owner of the speedway racetrack does not have and cannot acquire a vested right, or constitutional privilege to maintain or continue a nuisance. From the American Law Reports, 41 ALR 3rd 1273. An automobile racetrack is a nuisance.
14. In accordance with the general rule that no use of property which is lawful can be a nuisance, per se, it has been stated that an automobile racetrack is not a nuisance per se. Yet the rule that a business which is lawful in itself may become a nuisance, either because of the locality in which it is carried on or because it is conducted in an improper manner.
15. The attack on operating an automobile race has usually been based on the claim that the defendant's operation created such an unreasonable amount of noise as to amount to an annoyance and a disturbance of the neighboring resident's peace and quiet. Depending on the sufficiency of the evidence to support the allegations of such disturbances, the courts have found automobile racetracks to be potential nuisances, with appropriate relief being fashioned accordingly.
16. In conclusion, I believe as a property owner that the automobile racetrack would greatly impede and be detrimental to the future development of lake front property for high end residential homes and commercial development along old Highway 275, costing Douglas County much needed real estate tax revenues.
17. Since our farm is directly south of the proposed project, I believe that if this proposed project is allowed to go forward it will cause my family great, severe, and irreparable economic harm in denying us the use of our property for lake front and commercial development in compliance with the current Douglas County Comprehensive Plan.

Mike Caldararo, 14101 N. 312th Street, Valley, NE. 68075 made the following comments:

1. Stated he had presented over 100 letters of opposition and signatures from neighbors who do not want to see our normal and quiet way of life ruined.
2. He left New York over 40 years ago for a different way of life and found it here.
3. Recently retired from teaching and wants to live in peace and quiet.

Cathy Hanus, 13808 N. 324th St., Valley, NE 68064 showed the Planning Commission a map designating the property owners that signed the petition.

Commissioner Vacanti asked how much property was owned by the person selling the property for the racetrack.

Mrs. Hanus answered that she did not know. She also stated that Mr. Ackerlund was told that overflow parking might be on the other side of Highway 36. Chair Hayes stated that information was not given to the Planning Commission.

Cathy Hanus, 13808 324th Street, Valley, NE, also made the following comments:

1. Wanted to know if the Commissioners had any questions about the material submitted to them.
2. Also stated that in her research, she found that communities who have speedways and often other sport park facilities have found that their infrastructure cannot support the facilities.
3. Property taxes increase and the market value of surrounding property around these facilities decrease because no one wants to live there.
4. Encouraged the Planning Commission to deny the application because it is spot zoning and would be a great loss to the surrounding property owners.

Laurine Blankenhau, 3808 Grebe, Omaha, NE, a member of the Audubon Society, stated that she is concerned about the wildlife in that area and the farmer who has an organic farm nearby and is opposed to the construction of the speedway.

Paul Kalisek, 13605 N. 288th St. about 2½ miles east of this. My wife and I would just like to say that we don't want it to come in. We bought the house 3 years ago to get away from the city and noise raising our daughter and we have enough people coming by speeding. We find beer bottles in the yard now and we just don't want to see any more of that happening. So we are against it.

Thiago Harvey, 1446 N. 142nd Cir. Omaha, NE 68154, commented as a representative for his father, Jack K. Harvey. His family owns riverfront property within a mile of the proposed racetrack and they are opposed to the inappropriate spot zoning.

Chair Hayes closed the public hearing and asked for comments from the Commissioners. Commissioner Roberts stated that the information provided by our attorney pretty well satisfied him. Commissioner Hayes stated she was concerned about re-zoning the property to industrial.

Motion by Commissioner Vacanti to deny the applications G-3-05, Z-1-05, and C-2-05 seconded by Commissioner Bruhn.

Voting Yes: Boozer, Bruhn, Gerdes, Hayes, Lanoha, Roberts, and Vacanti.

Voting No: None

Abstain: None

Chair Hayes reminded the public that the Planning Commission is a recommending board. The applicant can go forward to the Douglas County Board of Commissioners and suggested that Ms. Frohlich be contacted for information regarding that.

APPLICATION

Z-2-05

REQUEST: Re-zoning from AF-2 to SF-1, Lot 2, Lawver Subdivision.

LEGAL: Lot 2, Lawver Subdivision

LOCATION: 26025 Blondo Street

APPLICANT: John and Maxine Martin, 26025 Blondo Street, Waterloo, NE 68069

John Martin, 26025 Blondo Street, presented the application with the following comments:

1. Requesting re-zoning from AF-2 to SF-1.
2. The property is located on Curtis Acres Lake and they are members of the lake association.
3. Requesting the change in zoning to be the same as other properties on the lake.

Chair Hayes opened the public hearing. No one from the public spoke for or against the application.

Motion by Commissioner Boozer to recommend approval, seconded by Commissioner Vacanti.

Voting Yes: Boozer, Bruhn, Gerdes, Hayes, Lanoha, Roberts, and Vacanti.

Voting No. None

Abstain. None

APPLICATION

P-4-05

REQUEST: Approval of Preliminary Plat, Gardiner Acres, 33.95 acres, 5 lots approximately 6.0 to 6.5 acres in size, zoning to remain AF-1

LEGAL: Part of NE ¼ of NW ¼ of Section 13, Township 16 N, Range 10 E.

LOCATION: 211th and Bennington Road

APPLICANT: MRP, Inc. (c/o Lil Smith), 414 North Molley, Bennington, NE 68007 (Donald Gardiner, representative)

Mark Westergard, E&A Consulting Group, 12001 "Q" St., Omaha, NE presented the application with the following comments:

1. The application proposes a 32 acre tract to be divided into five lots, approximately 6 acres each.
2. The street would be an eight inch asphalt cul-de-sac constructed to Douglas County standards.
3. A waiver is requested to the length of the cul-de-sac from the required 600' to allow 800'.
4. A waiver is also requested for the requirement for a community well. It is proposed that each lot be served by individual well and septic systems.
5. The Douglas County Health Department has said that individual wells and septic systems would be acceptable for this development.

Chair Hayes opened the public hearing

Iris Moore, 21260 Bennington Road, stated she was opposed to the application and thought the County only approved 20 acre lots

Ms. Frohlich commented that Ms. Moore was referring to City of Omaha zoning requirements and that lots in the County could be as small as two acres.

Chair Hayes explained that County Regulations previously required that any subdivision of land 10 acres or less had to be considered by the Planning Commission but our regulations were changed to require any division of land 20 acres or less must be considered by the Planning Commission.

Mike Pregler, 21141 Bennington Road, asked if a water study had been done to determine impact on neighbor's wells and expressed concern about water runoff.

Mr. Westergard stated a water study had not been done

Glen Carl, 20939 Bennington Road, also expressed concern about water and runoff. He also questioned if more wells would draw water from the landfill to their wells.

Chair Hayes closed the public hearing.

Mr. Westergard made these additional comments:

1. This development could have been 3 acre lots. The applicant made the lots twice as large to alleviate some of the concerns about the number of residences and wells.
2. We are not talking about a community well system here that would potentially have a larger impact on surrounding wells. We would just be serving individual houses and although we did not do a formal study the amount of water use from 5 residences would not normally have a significant impact on the surrounding wells.
3. Drainage issue - this pretty much sits on top of the hill and most of the drainage goes to the southeast. With our grading and with the drainage in our street, there would not be any additional runoff that would go towards the neighbor's land beyond what is historically going in that direction.

Commissioner Gerdes asked about the issue of extending 211th Street? Mr. Westergard stated that was a comment from the City of Omaha, not Douglas County.

Commissioner Lanoha asked about the road construction and depth of asphalt? Mr. Westergard stated the road would be constructed to Douglas County standards with 8 inches of asphalt.

Chair Hayes asked Mr. Westergard to clarify the two waivers that were being requested. Mr. Westergard stated a waiver for individual wells was being requested because the development does not meet the 5 lot threshold and the waiver for the length of the cul-de-sac. He further stated it was his opinion as their engineer that five individual wells would have less impact than a community well.

Commissioner Vacanti asked where Bennington Implement is located from the proposed development? Mr. Westergard stated Bennington Implement is approximately five tenths of a mile east.

Chair Hayes states she was concerned that this subdivision would be isolated from any future surrounding subdivisions.

Commissioner Roberts stated he was concerned about the septic systems

Mr. Holm reminded Planning Commissioners that staff recommended denial of this application based on the fact that they don't meet the minimum requirements for the water system and cul-de-sac. That's still staff's position regardless of County Health's comments that the application can meet minimum requirements. Staff is still recommending denial of the application because it does not meet the subdivision requirements.

Motion by Commissioner Roberts to recommend denial of the application, seconded by Commissioner Boozer.

Voting Yes: Boozer, Bruhn, Hayes, Lanoha, and Roberts.

Voting No. Gerdes and Vacanti.

Abstain: None

APPLICATION **PZ-3-05**

REQUEST: Approval of Preliminary Plat, Redhawk Estates, 71.9 acres, 23 lots approximately 3 acres in size, rezoning from AF-1 to SF-1

LEGAL: Part of NW ¼ of Section 30, Township 16 n, Range 11 E

LOCATION: SE corner of 204th and State Street

APPLICANT: Redhawk Development, LLC, 17404 State Street, Bennington, NE 68007

Larry Jobeun, 11440 West Center Road, appearing on behalf of the applicant, Redhawk Development LLC made the following comments:

1. The preliminary plat was original designed with 23 lots. The plat has been changed to 20 lots which increased the size of each lot to approximately three acres.
2. The total size of the subdivision is approximately 71 acres and located at the southeast corner of Highway 31 and State Street.
3. The comments from the Douglas County Engineer's Office have been reviewed and are acceptable. The access to the property has been moved to the eastern side of the property as far as possible.
4. The developer is willing to participate and cooperate in re-grading State Street but the development cannot bear the burden of the entire cost.
5. The original cost estimate for this development was approximately \$209,000 for State Street as a two lane section road. The cost increases to \$615,00 if the work is done privately and increases to \$740,800 if a SID is created.
6. The development is not feasible bearing the entire burden of cost for lowering State Street about 4.5 feet for a distance of 400 feet.
7. The comments from the City of Omaha are acceptable except for item 5 and 7. Item 5 relates grading State Street to a 5 lane roadway. This cost is prohibitive.
8. Item 7 recommends dedicating an additional 33 feet of right-of-way along lot 7. The developer is not necessarily unwilling to do that but it doesn't make a lot of sense because we don't believe there will ever be a roadway in that particular location.
9. The developer is also willing to install the siren as required by the Emergency Management Agency.
10. Also submitted a letter from Layne Western regarding their opinion that the ground water aquifer is capable of supplying water for the development.
11. The design of the plat provides for lots over three acres in size to meet the requirement for private well and private septic system.
12. Subdivision regulations require a community well for subdivisions of 20 lots. Because of the existing and proposed septic systems to the south and west in Karrington Lane and north of State Street, it is not possible to site a community well in the development that complies with distance requirements.

13. Mr. Jobeun quoted the following from the Subdivision Regulations: *whenever a tract of land proposed to be subdivided is affected by surrounding developments or unusual conditions such that the strict application requirements contained in this regulation would result in substantial hardships or inequities, the County Board upon recommendation of the Planning Commission may vary or modify such requirements so that the developer is allowed to develop his property in a reasonable manner but so at the same time the public welfare and the interest of the county and surrounding area are protected in the general intent and spirit of these regulations are preserved.*
14. Mr. Jobeun further stated that he believes the development complies with the general intent and spirit of the regulations because what the developer proposes is to put in the subdivision agreement and/or the private covenants a requirement that once sewer and water are brought to this particular subdivision, that each owner would be required to connect.
15. He also stated it was his understanding that the law requires a user to connect to sewer and water lines once they are within 200 feet but that he needed to confirm that.
16. Believes this development is consistent and compatible with the surrounding development that occurred at this location and also is the best use of this property given it's location.

Chair Hayes asked if he was referring to Karrington Lane. Mr. Jobeun confirmed.

17. Clarified that he believes the proposed use is appropriate given the acreages to the northwest and southwest of the property.
18. Also stated that easements for future public water and sewer systems would be included in the plat as well as the requirement for property owners to connect to the public systems.

Commissioner Lanoha asked who the developer of the project is? Mr. Jobeun responded that Fred Hunzeker, is the owner of the property and the developer.

Commissioner Lanoha asked if Mr. Hunzeker has any relationship to Karrington Lane? Mr. Jobeun stated he did not.

Commissioner Gerdes asked if the properties are divided on the creek line. Mr. Jobeun stated that was correct and the Karrington Lane subdivision was done before the current regulations were adopted.

Commissioner Roberts asked how far the proposed subdivision is from public water and sewer? Mr. Jobeun stated that depends on how the area developed but he believed it would be some time before public water and sewer would be available. He also pointed out that by approving this subdivision, the development would get on the tax roles with the ability to comply with the regulations when public water and sewer is available.

Chair Hayes opened the public hearing.

Don Nielsen, Douglas County Engineer's Office, made the following comments:

1. Stated that the County has no plans in their current 1 in 6 year highway improvement plan for any changes or improvements to State Street.
2. Stated there is no guarantee the County would have funds available to make the improvements to State Street a viable project.
3. Stated that grading needs to be coordinated with future improvements planned for State Street.
4. Also stated the County Engineer's office would be required to issue a permit for the street connection to State Street and if there is not the required 400 foot sight distance, then a permit would not be issued because of safety issues.

Len Burrell, 20015 State Street, made the following comments:

1. He lives directly east of the property adjoining the proposed roadway into the new development.
2. Expressed concern about diminished water supply and septic runoff because he is located uphill from this proposed development.
3. Also wanted to know if the development would impact his plans for a pond.
4. The new road is proposed directly alongside his fence, maybe 100 feet. We were just wondering since our fence is uphill from our property and there is quite a slope there if they were going to put a retaining wall there between our property and the proposed roadway.
5. Getting out of our driveway is pretty tough because there is a berm that State Street creates just east of our property. When we exit out property we have to make sure that no one is coming. We have a driveway that goes around our house and use the east driveway if we are going to make a left turn because you can see the traffic a little bit easier.
6. Also we are concerned with the dirt during construction and all that if is a prevailing south wind; about 250 days it blows north.
7. We are worried about our taxes increasing but have been assured by other people that isn't going to happen
8. We are zoned agriculture 1 and we are concerned that our zoning might change.
9. We are also concerned that once the people move in they will make complaints about noises and smell associated with animals. People who don't want animals can be relentless.
10. The other question we have is there is a proposal out there somewhere that eventually State Street will be upgraded to 6 lanes. I'm concerned about what the actual width of the road would be. Mr. Nielsen said a 6 lane roadway is planned for the future. He stated he wasn't sure what the eventual width would be, it might be 60 feet of the section line depending upon the type of median used.
11. He stated that 48 feet would end up right at his neighbor's doorstep.
12. He is concerned that he may lose about two acres of his eight acres to right-of-way. Mr. Nielsen pointed out that he would be paid for the right-of-way.

13. Also stated he was concerned that all their mature trees would be removed.

Chair Hayes pointed out that the proposed six lanes for State Street is an issue the Planning Commission has no control over.

Patrick DiMartino, 20150 State Street, Bennington, NE made the following comments:

1. Lives directly north of State Street across from the proposed access road.
2. Has lived there for 16 years and knows how dangerous the hill on State Street is. There have been two accidents there.
3. Thinks it would be safer to go down toward the bottom of the hill where it is flatter for access because there is a stop sign that controls some of the speed.

Chair Hayes stated the access point has to be a certain setback from the intersection.

Mr. DiMartino continued his comments:

4. The hill is very dangerous.
5. The water issue is also a concern. If I have trouble with my water, where do I go for help.
6. Also concerned about dust and debris from the construction site because of wind blowing from the south.

Chair Hayes closed the public hearing.

Questions, Comments, and Discussion among Commissioners:

1. Chair Hayes stated she was concerned about what Mr. Jobeun was saying about Karrington Lane and reminded Planning Commissioner that Karrington Lane was approved before the subdivision regulations were changed. Karrington Lane is the reason the subdivision regulations were changed.
2. Commissioner Lanoha reminded the members that the Planning Commission recommended denial of the Karrington Lane subdivision but the County Board approved it.
3. Commissioner Gerdes stated the same situation occurred with Hidden Hills.
4. Chair Hayes stated those were the last two subdivisions approved before the regulations were changed.
5. Commissioner Vacanti asked for an explanation of the circumstances surrounding Karrington Lane? Chair Hayes stated it is a subdivision of 11 lots with individual wells and septic systems.
6. Commissioner Lanoha stated Karrington Lane is a classic example of not connecting one subdivision to another. There are no street for future connections. Those planned future connections would have solved the problem of ingress and egress for the proposed development.
7. Commissioner Gerdes stated his concern for the homeowner in the future to hook up to public water and sewer because it is relatively expensive to properly abandon a

septic system and well. Mr. Jobeun responded that the requirement would be in the covenants so the property owner would understand the obligation they will have in the future. He also stated the covenants should have a provision that the provision for hooking up to public water and sewer cannot be changed without the County Board's approval.

8. Chair Hayes asked if covenants couldn't be changed in the future by a vote of the homeowners? Mr. Jobeun responded that there would be a provision in the covenants that only the County Board could make that change. He believes it would be very difficult to get the County Board to change that provision.
9. Mr. Holm commented that he would like to request that legal counsel do some research on this issue because of potential problems. He would like to see provisions made for those future connections but there may be a loophole where the homeowners could amend the covenants. Mr. Jobeun stated that is why he suggested that the covenants could not be amended without County Board approval with respect to that provision.

Motion by Commissioner Vacanti to recommend approval. Motion died for lack of second.

Motion by Commissioner Gerdes to recommend denial of the application, seconded by Commissioner Roberts.

Voting Yes: Bruhn, Gerdes, Hayes, Lanoha, Roberts, and Boozer.

Voting No: Vacanti.

Abstain: None.

APPLICATION

G-4-05

REQUEST: Amend Agricultural Farming –1 (AF-1) to add Conditional Use Permit

15. Other uses that are consistent with the character of Agricultural Farming –1 (AF-1).

Amend Agricultural Farming – 2 (AF-2) to add Conditional Use Permit

8. Other uses that are consistent with the character of Agricultural Farming –2 (AF-2).

APPLICANT: Douglas County Planning & Zoning, Douglas County Environmental Services

Ms. Frohlich explained that the proposed language was the result of Mr. Backman's request for rezoning at the January 12, 2005 meeting. Commissioner Lanoha expressed the opinion that a conditional use might be more appropriate for the use proposed by Mr. Backman in an agricultural district. The proposed language is very generic allowing the

Planning Commission discretion to determine if the proposed use is compatible with the zoning district.

Chair Hayes and Commissioner Lanoha expressed concern about the broadness of the proposed language. Commissioner Lanoha also stated being too specific though is what caused the problem.

Mr. Monbouquette offered the following comments: the conditional use allows for restrictions that are really tight, it can be restricted to the present owner, and restricted for a definite period of time, for example.

Commissioner Roberts stated that making a conditional use permit valid for only one year is incentive for the property owner to be more careful with their activities.

Ms. Frohlich suggested that at some point, the Planning Commission may also want to look at whether or not all uses in commercial and industrial zoning districts should be conditional use permits to provide more restrictions on issues such as noise, odor, and operating hours.

Commissioner Roberts commented that you can have much tighter rein on uses with conditional use permits.

Motion by Commissioner Lanoha to recommend adoption of the proposed language, seconded by Commissioner Gerdes.

Voting Yes: Boozer, Bruhn, Gerdes, Hayes, Lanoha, Roberts, and Vacanti.

Voting No: None

Abstain: None

Announcements

Mr. Holm stated that the RFP for updating the Comprehensive Plan will be mailed to planning firms in the metropolitan area, and will be posted on the American Planning Association's web site.

Ms. Frohlich pointed out that the March meeting is a very important meeting. There are no applications to consider but proposed changes to regulations need to be discussed.

Chair Hayes also stated that there are important issues that need to be discussed and changes that need to be made and encouraged all members to attend.

Adjourned: 7:45 p.m.

Minutes approved at the March 9, 2005 meeting.