

**DOUGLAS COUNTY  
PLANNING COMMISSION MEETING  
3015 MENKE CIRCLE  
OMAHA, NEBRASKA 68134  
March 9, 2011 6:00 P.M.**

The meeting was called to order by Chair Lanoha at 6:00 p.m. with roll call vote.

Members Present: Bob Boozer, Bob Bruhn, Anne Houlihan, Luke Janke, Bill Julien, Michael Gerdes, Dave Lanoha, and Murray McArdle.

Members Absent: Milo Vacanti.

Other County Officials and Staff Present: Mark Ekberg and Kent Holm, Douglas County Environmental Services, and Bernie Monbouquette, Deputy County Attorney.

Before the meeting started, Chair Lanoha made the following statement:

“This meeting is conducted in accordance with the Open Meetings Law of the State of Nebraska and the provisions of the law are posted in the back of the room.”

Motion by Commissioner Gerdes, seconded by Commissioner Janke to approve February 9, 2011 minutes.

Voting Yes: Gerdes, Houlihan, Janke, Julien, Lanoha, and McArdle.

Voting No. None.

Abstain: Boozer and Bruhn.

Order of meeting changed

**APPLICATION**

**PZ-1 11**

REQUEST: Preliminary and Final Plat, Side Hill Acres, Lot 1 - 5.40 acres Lot 2 – 4.41 acres, zoning remains RR-2.

LEGAL: Part of the SE ¼ of the NW ¼, Section 20, Township 16N, Range 11E of the 6<sup>th</sup> P.M.

LOCATION: 9210 N. 186<sup>th</sup> Street.

APPLICANT: Greg and Sherry Paasch, 9210 N. 186<sup>th</sup> Street, Bennington, NE 68007

Chairman Lanoha opened the public hearing.

Jeffrey Farnham, 220 N. 89<sup>th</sup> St, Suite 201, Omaha, NE 68114 representing Dennis Hawks made the following comments:

1. Displayed aerial map of the property and described the adjoining properties.

2. Most of the people that purchased acreages in this area, right or wrong, purchased them with the idea that they liked the idea of having a home in the country with some room with other acreages around it and the privacy that that provides and they have all made quite a significant investment in the ground and in their homes in this area.
3. The two areas that I want to discuss are the area here on the east side of 186<sup>th</sup>, these acreages, this area here is kind of a bigger area, a macrocosm, of this area. Then I want to talk about the area west of 186<sup>th</sup> Street which consists of the four acres Mr. Paasch's four acres and Mr. Hawks's property.
4. From my client's property, there are 19 8-15 acres parcels within  $\frac{3}{4}$  of a mile.
5. Most of these acreages are visible from the other acreages.
6. Mr. Paasch's lot was sold to him by Mr. Hawks a number of years ago and there are covenants in place.
7. The covenants don't say anything about the lot size.
8. At that point in time, you could split out 10 acres, I believe, without the subdivision requirement.
9. That is kind of an overview. Again back to general area, none of us can say this is going to happen for sure but as most of you know, there is a dam site proposed at 186<sup>th</sup> and Fort heading back north.
10. You can see that the tailing area of the lake, takes into account these streets, I only mention that to show you that with respect to the undeveloped land between the large acreages here, not all of it is going to be useable.
11. The creek divides it and I would suggest that this little area right here is very conducive to more acreage development of larger areas.
12. Because of these factors, you have some issues with access and bridges and so on and so forth coming at least from 186<sup>th</sup> Street.
13. Again, the area right around here is all large acreages with very expensive homes on them.
14. We certainly understand progress in the County and that as the County develops, the residential areas of necessity have to become denser.
15. I know the Comp Plan deals with that but the Comp. Plan is not a mandate and I think that you can vary from the Comp. Plan if you have good reasons to do so.
16. I would suggest that there is some common sense involved here too.
17. The Comp. Plan defines urban residential and that is what this ground is right now and talks about it being developed in a denser fashion.
18. There are two urban residential areas in the Comp. Plan, the northern area and the southern area.
19. The northern area is 10,462 acres.
20. The Comp. Plan was done in 2006 or 2007 and it talked about rate of development and the things that are going to happen in the County and it talks about that rate going forward.
21. Well, as we all know, since 2006 and 2007, the development rate is very different now. So some things have changed.
22. The Comp. Plan also talks about as some of its first principles and broad goals: That the County will preserve and enhance the unique character of the County; will preserve its uniqueness by directing compact development to areas contiguous to existing development; and that it will strive to maintain reasonable economic land use and value for landowners.
23. If you look at the plat of the application, there is a 100' strip on the southern edge of the property that comes back.
24. I believe 100' of frontage is required on the County Road to have an acreage so that comes back to the west and then the lot kind of goes from south to north and is very narrow and then it sort of balloons out on the northern end which is where I believe a house would be.
25. The character of this area over here with the acreages. A lot I would call a stacked lot or a piggyback lot which you don't see in Omaha.

26. The only place I have ever seen a lot of piggyback lots is in California where the land prices are much higher and the density much greater.
27. We believe that this lot doesn't make any sense back here to stick another house on.
28. I think the lot is a little over four acres but actually just a little over three if you take into account the 100' strip that is essentially for the access requirement.
29. I think lot size changes the character of the area here.
30. We think lot size affects the property values of the people around here with acreages. For those reasons, we are against this application and don't think it fits.
31. Again, the Comp. Plan, I think is not a mandate.
32. I suggest that the unique character of this area both the larger area encompassing all of the larger acreages and the area west of 186<sup>th</sup>, particularly the unusual stacking of the lots, I don't believe would be allowed in Omaha and are the reasons we are against this application.

Ron Brown, 9112 No. 186<sup>th</sup> Street made the following comments:

1. My wife and I live to the south of Greg and Sherry Paasch.
2. We have worked really hard for what we have.
3. We were in front of this board in 1999 and you agreed to rezone the old farm-stead so that we could buy it and clean it up.
4. We did that to improve the area and increased the number of high end houses around us.
5. I don't see how this is going to increase our value.
6. This 100' strip between our property and the way it is laid out here, I think from my property line to Greg's building is about 115'.
7. I don't see how this lays out real good. Sure it will work but it is pretty steep embankment.
8. There are always ways to make things work but squeezing a house up in the hill between Hawks and Passchs, I don't see how this is improving our community or our area.
9. From my front porch, I know of 10-15 places around us, all 10 acres or better and I don't want to see those all get split up down the road and I don't think anybody does.

Mike Kelley, 7134 Pacific, Omaha, NE made the following comments:

1. I am assuming Mr. Chairman that you all have copies of what we are trying to do here in front of you.
2. I guess my first reaction to the opponents is wow you would think we were putting a shopping center in here.
3. Keep in mind, this is not comparable to Omaha, this a 10 acre plot of land.
4. Now residential development is coming that way, you are going to see some residential development.
5. These folks have no immediate plans and the proposed lot has not been sold to anybody.
6. They are not sure when they would sell this but obviously, it would increase the value if the have two lots here instead of one, it increases the value.
7. They have spent considerable time and effort to do it that is why it has been approved by your staff and the health department. by everybody that they have asked. They said OK for it.
8. I think the objections when we note them and maybe they don't like it but I don't think it is a reasonable objection that they are lodging.
9. I didn't hear anything that made any sense, something about stack housing and something about it might lower value. I can't imagine it is going to lower the value.
10. We are not talking about 8 houses or a big huge subdivision.
11. We are taking 10 acres and having it now be six acres and four acres.
12. I don't think that is asking an awful lot especially when they have gone through and done all their homework, done all the stuff they are supposed to do, and have approval all the way down the line.
13. I think that this is something that is a logical extension you have as the City comes to you, you are going to have some subdivision, that is going to happen and I don't think there is anything wrong with it.
14. They want to add just one lot to it and it certainly is accessible.

15. The driveway is just as accessible as Mr. Hawks' house.
16. I didn't hear any objection that made any sense to me that was strong enough to deny this project so we would hope you would approve it.

Chairman Lanoha closed the public hearing.

Commissioner Comments, Questions:

Commissioner Julien directed these comments to Mr. Hawks. When you basically bought this ground, whenever it was, maybe 20 years ago, you made an investment. The idea of that investment was that you bought this ground to live on as 10 acres, you wanted this, basically making the investment with that assumption that you counted on in perpetuity, is that correct?

Dennis Hawks, 9220 N 186 Street made the following comments:

1. I am the property owner immediately to the west of the property that is in discussion to be subdivided.
2. Twenty one years ago I bought this property, it was 25 acres. It was a piece of property that Henry Neuhaus owned that didn't fit with the rest of his farming operation.
3. When I bought it, the County's laws I guess were such that we could sell off a 10 acre parcel and that is what we did.
4. We kept 15 acres and sold off 10 acres. At the time, we wrote covenants on the ten acres that were protective: limited the size of house, the type of house, various setbacks, and the number of animals.
5. All the things that you would try to do to maintain the quality of life that you were searching for and that you would hope that whoever you were selling it to would have those same ideas in mind.
6. At the time, we felt that this was the proper thing. We assumed that the sale to the individual that their interests were the same as ours. At that time you already had a development that was in the process at 180<sup>th</sup> and State Street, all ten acre parcels, there was 12 parcels there, 10 of them have developed with homes, very expensive homes.
7. Since that time across the street from us has been another development, a 40 acre parcel that has four plots on it. Three homes have been constructed and are probably in the million dollar range. The area that is there has continued the thoughts and feelings that we had when we bought the land and divided it.
8. Actually, I guess it was not a subdivision at that time because the law stated that we did not have to go through that process.
9. But the last thing that we assumed would happen was that somebody could come in and divide a 10 acre into a 3, 4 or 5 acre.
10. When you think about it, if that same mentality applies to everything out there, there are 20 ten acre or more parcels that I can see from my porch.
11. If, everybody did the same thing, now all of a sudden, we have 40 acreages out there instead of 20 and we have 40 driveways instead of 20 and of course it just goes on and on and on.
12. At some point in time, the Comprehensive Plan would make sense and it is important to have it but sometimes the topography of the area dictates what you can do and not the Comprehensive Plan.
13. You are looking across the street at property with a creek going through it and at some point, it will be a big green belt area because there probably will be some floodplain restrictions. You are going to have a lot of green belt across there and it is not just going to relate to that particular area.
14. The area is not going to relate to developing two and three lots per acre.
15. Now right behind us to the west, Frank Krejci owns 160 acres and another 120 acres.
16. At some point in the future, when it is economically feasible, I am sure he will develop that and it is not going to be in 10 acre parcels.
17. It is going to be in two and three acre parcels but it will make some sense.

18. He developed an area off of Highway 31 just south of State, 80 acres there into two and three acre parcels and it is tremendous acreage development but it was planned and it was done in total and not what is trying to be done here.
19. A four acre parcel behind a six acre parcel placed in all of these areas that have 10 acreage development, would be an awful mess and it is not just consistent with what is already there so I would ask the Board of deny the request.

Commissioner Julien made the following comment: I have a question, at some time in the future if any of these individuals decide to sell their property, can they subdivide property again? If they see a 10 piece of ground, they bought it as a 10 acre piece of ground, when they go to sell that ground, can that be subdivided?

Mr. Holm made the following comments:

1. Any subdivision would be subject to rules and regulations in effect at the time.
2. There is no prohibition against what they are doing.
3. If you look at your staff report, the comments that are on there especially in the last paragraph. The comment there talks about the intent of the Comp. Plan to have this be higher density development eventually. A lot of the comments you have heard are consistent with that, we have some acreage development out there already.
4. At some point, there is going to be contiguous development that gets out there, there will be an opportunity at some point for the interceptor sewer coming out of Omaha to be connected to those new developments.
5. Until the sewer gets out there, you probably won't see any kind of mass subdivision activity going on because it is simply too expensive to be able to bring that sewer out and foot that bill independently.
6. There is still the option for a property owner to subdivide. That is kind of the essence of what is going on tonight here, they are exercising their option as a landowner to come in and request that subdivision.
7. Your job obviously is to evaluate that based on what you have heard and what the Comprehensive Plan is versus their right as property owners to subdivide.

Commissioner Julien made the following comment:

1. I don't care what the Master Plan is.
2. Basically you have a situation where people did make an investment, they expected that investment to stay 10 acres and kept and were there for a reason.
3. I think they are grandfathered as long as everybody else plays the same game.
4. It is my opinion that it is wrong to subdivide it this way.

Motion by Commissioner Janke to recommend approval. Motion failed for lack of a second.

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

Voting Yes: Boozer, Bruhn, Gerdes, Houlihan, Julien, and McArdle.

Voting No: Janke and Lanoha.

Abstain: None.

## **APPLICATION**

### **G-4 11 WELLHEAD PROTECTION REQUEST FROM FREMONT (Laid over from February 9, 2011 Meeting)**

REQUEST: Adopt wellhead protection area for area designated by the City of Fremont for city wells

LOCATION: Map available at Douglas County Environmental Service office

APPLICANT: Douglas County Environmental Services and City of Fremont

Chairman Lanoha opened the public hearing.

Kent Holm stated that per the planning commission's request, additional information was sent to the landowners. It included a copy of the regulation and an explanation again of the opportunity for them to contact us if they had any questions.

Chairman Lanoha asked if any comments were received.

Kent Holm stated no comments were received.

Chair Lanoha opened the public hearing.

Cathy Hanus, 13808 N. 324<sup>th</sup> Street made the following comments:

1. I did do research because there is knowledge out there that I am not sure everybody here might have. I don't know how well briefed you are.
2. I started making some phone calls and talking to some people and I had a couple of extensive conversations with the NDEQ.
3. One of the things that concerns me as I am looking at the regulation, it defined wellhead protection area as an area through which contaminants are reasonably likely to flow and reach water of well fields.
4. If you look at the map, I believe you can see it best at least on the map that was on the back of my package. You can see my property is the little house that is on the southeast corner essentially of the boundary line.
5. I understand that the water flow currently goes from the river towards me. It doesn't go from me towards the river so even if I were to create contaminants on my property, it wouldn't be flowing in that direction. Water would flow the other direction.
6. If contaminants are in the river, I need to be more concerned about that because it would reach me. It is my understanding of flow lines that if the line catches a little piece of the section; they include the whole section even if though the whole section isn't part of the concern of the time of travel water line.
7. If you look at the maps, my property isn't in that time of travel water lines.
8. This boundary appears to be drawn thorough the middle of the river but there is no concern for what is happening on the Saunders County side of the line. Somebody could dump a tank of fuel on the Saunders County side of the line and it would be devastating to us on the Douglas County side of the line, including Fremont's well fields.
9. I as if my property could be excluded and was told it could be and Counties have excluded a property that is near the edge so that would be one possibility.

Chairman Lanoha stated we limit comments to five minutes, can you please tell us if you are for or against the application.

Cathy Hanus continued with the following:

10. I also have a concern that the regulation doesn't cover the transient truck traffic that comes through with the farming activity that goes on in the area.
11. One of the things that also troubles me is that it is my understanding that these regulations are pretty much based on regulations that already exist with the NDEQ. Is that correct?

Chair Lanoha answered yes.

Cathy Hanus continued with the following:

1. Why would Douglas County want to write their own version of that and then take on enforcements when the jurisdiction would fall under the NDEQ?
2. That seems to be more effort for Douglas County than what I might propose.
3. What I might propose is that you adopt that first page as just being something that we are looking at every time somebody comes up for permits in the wellhead field area.
4. I think there are just a lot of loose ends to these NDEQ regulations; I would rather not be included.
5. I am concerned about something initiating more restrictions.
6. The area where we have put the paunch is beautiful land.
7. There is one thing that I want to point out that I think a lot of people don't realize when it comes to animals and compost. They are actually using compost to remediate land that has jet fuel spills and that is because the bacteria in the compost helps to clean up those kind of contaminants and so compost is not a bad thing.

Chair Lanoha closed the public hearing.

Commissioner Comments, Questions:

Chair Lanoha commented that everyone was notified in the area and it is my opinion is that NDEQ already has regulations in place and it seems cumbersome to me to put another overlay on top of this for a myriad of reasons.

Commissioner McArdle made the following comments:

1. I pretty much feel the same way.
2. When you take the last case we had up here, I mean that is something we can do and we can make a decision on.
3. Whatever we decide here, the NDEQ or whoever is going to over rule us and run over the top of us anyway.
4. It is not going to matter, the Corps of Engineers, all these people have so much more authority than we do and I feel we are out of our area.
5. I feel we are jumping into something we don't really understand and I don't really want to act on it.

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

Voting Yes: Boozer, Bruhn, Gerdes, Houlihan, Janke, Julien, Lanoha and McArdle.

Voting No: None.

Abstain: None.

Announcements

Mr. Holm made the following comments:

1. We are subject to a Phase II Stormwater Permit as Douglas County. There a number of other entities here in the Metro area that have Stormwater permit requirements through NDEQ. Back in 2007 you reviewed a Storm water Management Regulation and recommended approval to the County Board. The County Board did approve the regulation after you took action on it.
2. We are taking another look at that regulation, there are a couple of provisions in there that we need to update to make sure we are in compliance with our Stormwater Permit and the things that are associated with that.
3. We are also taking the opportunity at the same time, to go through the rest of the zoning regulations and making sure we don't have any issues that conflict with the Stormwater regulations.

4. We are about to the point we have all those issues resolved and drafted and will present that to you at most likely the April meeting.
5. I would like some input from you as to whether you would like us to have a separate session either prior to presentation to the Planning Commission or after presentation to the Planning Commission where we can invite the public for comment.
6. You wouldn't necessarily have to be there but we just provide that public open house opportunity.
7. We may also look at trying to do that on our website and have a virtual open house instead of trying to ask everybody to come to a particular time.

Chairman Lanoha asked what is the catalyst, why are we putting another layer on top of regulations.

Mr. Holm made the following comments:

1. It is really not another layer; it is modifications to what we already have.
2. There are some provisions that the original Storm water Management Regulation didn't include when it was put through and we need to identify some things that will make it easier for us to administer and also easier for the public, developers, and engineers to follow.
3. I don't think we are really doing anything different than what we are doing now but we have to put the language in there and we have to clean those regulations up in several places and we need to fix some conflicts that that regulation has with the zoning regulations.

Commissioner Julien stated this is a very emotional issue because we are talking about building dams aren't we.

Mr. Holm made the following comments:

1. No it is not, in fact that is actually one of the reasons why we need to do some of this. Because there were a number of people opposed to some of the things that we were doing when we were in partnership with Papio Creek Watershed Partnership, the County Board basically said we are not going to be in favor of dam building and are taking a different approach which is very consistent with the Comp Plan.
2. There are not a lot of things that are different but we need to identify things in the Stormwater Management Regulation to make sure that they are consistent with what the Country Board is wanting to happen and also that it is in compliance with the Permit. There are couple of things that just need to clarify and clean up to make it a lot easier, not only for us administratively but also when we have developers/engineers come in it makes it more straight forward for us to show them what they have to do. It is easier for them to then put their plans together and come before you folks.

Commissioner Gerdes stated this is mostly erosion sediment control storm water runoff management.

Mr. Holm replied that is correct..

Chairman Lanoha asked if the regulation is trying to mirror Omaha's because I know there are a few people in this room that have a real hard time with that.

Kent Holm made the following comments:

1. We need to be somewhat consistent with some of the things they are doing but these regulations are consistent with what is in our Comp Plan. The conservation design aspect and making sure that we take care of our natural resources that are out there and not try to build in places that we shouldn't be building.

2. These regulations just help to make sure we are following the our Permit and make it easier for us administer, easier for the development community, and individual property owners as well.
3. I will have something for you in April and we will have some internal discussions about how we want to try and handle some of the public comment and input.
4. I am leaning towards trying to do a lot of that online and getting information out to people. We may do a mass mailing or some articles in the Post Gazette for example to get the information out there and then direct people to our website so they can see what it is. They can of do it at their own pace rather than having to come here to look at a bunch of maps and text.
5. I think that facilitates people, everybody is busy, instead of trying to call a particular public hearing or meeting and also I think it is respectful of your time so that if you guys want to go out and take a look at it on your own time, it is a little more respectful of your time as well.

Meeting adjourned 6:48 P.M.