

DOUGLAS COUNTY
PLANNING COMMISSION MEETING
3015 MENKE CIRCLE
OMAHA, NEBRASKA 68134
October 12, 2011 6:00 P.M.

Before the meeting started, Temporary Chair Bob Bruhn 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”.

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

Members Present: Bob Bruhn, Michael F. Gerdes, Anne Houlihan, Luke Janke, and Bill Julien.

Members Absent: Robert L. Boozer, Dave Lanoha, Murray McArdle, and Milo P. Vacanti.

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

Approval of minutes from September 28, 2011 Planning Commission meeting

Motion by Commissioner Julien, seconded by Anne Houlihan to the following portion of the meeting minutes for September 28, 2011.

“Motion by Commissioner Janke, seconded by Commissioner Julien to recommend approval of application SPU-1-11 with the following conditions:

1. The Special Use Permit applies only to the applicant, Orion Land Management LLC.
2. Sale of the property to Orion Land Management LLC must be finalized.
3. Applicant will dedicate an additional 10 feet of right of way on the 264th Street boundary of the property.
4. County Board approval of an amendment to add to the Zoning Regulations Article 4, Zoning Districts, Table 4.1, Permitted Uses by Zoning District, Commercial Uses, Designating Recreation Vehicle Sales & Storage as a special use in the Mixed Use – 2 Zoning District.
5. All pole lights must be equipped with shields to minimize light pollution or alternatively the applicant must use fixtures that minimize light pollution.
6. Replacement of the well and septic system must be approved by the Douglas County Health Department.
7. All new construction must meet floodplain elevation requirements.
8. Proposed signs must comply with county sign regulations and be approved by the Nebraska Department of Roads.
9. Construction of future structures will require approval by the Nebraska Department of Roads because this property is in a designated corridor protection area.
10. Applicant will submit a landscape plan to Environmental Services Department for consideration and approval and install a landscape buffer adjacent to West Center Road.

Voting Yes: Boozer, Bruhn, Gerdes, Houlihan, Janke, Julien, and Lanoha
Voting No: None”

October 12, 2011

Voting Yes: Bruhn, Gerdes, Houlihan, Janke, and Julien.
Voting No: None.

APPLICATION G-7-11

REQUEST: Adopt 2011 National Electrical Code

APPLICANT: Douglas County Environmental Services

Mark Ekberg, Douglas County Building Inspector, presented the application stating that the State of Nebraska has adopted the 2011 National Electrical Code.

Temporary Chair Bruhn opened the public hearing. No one from the public spoke for or against the application. Temporary Chair Bruhn closed the public hearing.

Motion by Commissioner Gerdes, and seconded by Commissioner Janke, to recommend adoption of the 2011 National Electric Code.

Voting Yes: Bruhn, Gerdes, Houlihan, Janke, and Julien.
Voting No: None.

APPLICATION G-8-11

REQUEST: Adopt 2011 National Energy Code

APPLICANT: Douglas County Environmental Services

Mark Ekberg, Douglas County Building Inspector, presented this application with the following comments:

1. The State of Nebraska Energy Office is requesting that Douglas County adopt this code.
2. This code is similar to a chapter devoted to energy conservation in the Building Code.
3. The code on the agenda states the 2011 code but it should be the 2009 code.
4. Mr. Monbouquette was asked if the application needs to be re published because of the error. Mr. Monbouquette stated that is not necessary as long as the motion clarifies the code year.

Commissioner Gerdes asked if the County already had previously adopted a national energy code. Mr. Ekberg responded that this is the first time the State of Nebraska has requested jurisdictions adopt the National Energy Code.

Commissioner Gerdes asked if it was a lengthy document. Mr. Ekberg responded that the book is about a quarter of an inch thick as compared to the Building Code which is approximately an inch thick.

Temporary Chair Bruhn opened the public hearing. No one from the public spoke for or against the application. Temporary Chair Bruhn closed the public hearing.

Motion by Anne Houlihan, seconded by Bill Julien to recommend adoption of the 2009 National Energy Code.

Voting Yes: Bruhn, Gerdes, Houlihan, Janke, and Julien.
Voting No: None.

October 12, 2011

APPLICATION G-9-11

REQUEST: Adopt proposed revisions to Article 13, 13.09 (Powers of the Board of Adjustment), B (Variances, Conditions Governing Applications: Procedures, 1 (A written application for a variance is submitted demonstrating)

e. Applicant to provide list of surrounding landowners within three hundred feet ~~one mile~~ of subject property (~~amended June 30, 2009~~).

APPLICANT: Douglas County Environmental Services

Ms. Frohlich presented this application with the following comments:

1. The distance for notifying surrounding landowners was changed in June of 2009 from three hundred feet to one mile..
2. Now that we have used this requirement for some, it has become apparent that notifying surrounding landowners within one mile doesn't make sense.
3. The one mile requirement makes sense for re-zoning and special use permits but a variance application is limited to a defined area that will be impacted.
4. There is also a huge difference in the cost to an applicant. The cost for a surrounding landowners list for a variance application in Shiloh Ranges was \$1,500.00 with the one mile requirement. Another example is for property located at Military Road and Rainwood Road, a cost of \$787.00. A one mile search for property in the Fawn Heights area was estimated at \$1,200.00 as compared to a three hundred feet search for an estimated cost of \$125.00.
5. Based on those examples, staff is proposing the change in the regulations.
6. Mr. Don Turner is also present to speak to this application.

Temporary Chair Bruhn opened the public hearing.

Don Turner, 10620 N. 191st Street, Bennington, NE made the following comments:

1. Lives in Fawn Heights where most of the lots are half acre lots and his particular lot was one and a half acres. He has had the half acre lot restored as a separate deed and would like to build a residence on that half acre lot.
2. A variance would be required to meet the setback requirements because of the location of the residence on the one acre lot.
3. When he requested estimates for the one mile surrounding landowners list, he found it would be \$1,500.00 as compared to \$125.00 for a three hundred feet surrounding landowners list.
4. The one mile requirement seemed a little extreme so he requested staff look at restoring the three hundred feet notification requirement.
5. Only property owners within 300 feet of his property would be impacted by his request for a variance.

Mr. Monbouquette, Deputy County Attorney, made the following comments:

1. Reducing the number of persons to be notified of a variance application also reduces the number of persons who could claim they are aggrieved by the decision. This would reduce the number of persons that would have standing to file an appeal.
2. There was a case in Sarpy County where someone filed an appeal and they weren't within the group that had to be given notice. Therefore the Court said they were not aggrieved unless they could prove some direct financial impact resulting from the Board of Adjustment's decision.
3. If you had in mind that you wanted to reduce the number of people who could file an appeal, it would make sense to do this.
4. I don't know if the statute has a given distance for notice because I did not bring that to the meeting.

October 12, 2011

Commissioner Julien asked what the relationship was with notification to the problems there were at the landfill. Issues at the landfill for example impact more people that those within 300 feet.

Ms. Frohlich responded that was a Planning and Zoning application not a variance and staff believes the one mile notification is appropriate for re-zoning, subdivisions, and special use permit applications.

Mr. Monbouquette commented that you want to distinguish between a dimensional requirement which I think is what would apply to Mr. Turners' case and a special use permit or a zoning application. When asking the Board of Zoning Adjustment to vary a dimensional requirement, the applicant has to argue that the variance is not going to have a substantial impact and that he has some sort of demonstrable hardship. It is the difference between a dimensional and a usage matter. The usage issue would require a broader notice requirement.

Commissioner Julien asked if the Landfill could ask for a variance. Mr. Monbouquette stated could not ask for a variance regarding use but could ask for a variance because they lacked something dimensional for their operation. If they had two hundred and eighty feet of frontage and they needed three hundred feet of frontage, they could ask for a variance on that. The larger issue with the Landfill is the ability to use it for a specific purpose, and for that we have a broader or wider notice area.

Ms. Frohlich stated she did not see who changing the notification requirement for variances could create a problem at the Landfill. Mr. Holm agreed that any changes in use at the Landfill would require the one mile notification. Mr. Monbouquette clarified that the Board of Adjustment would be varying dimensional requirements not use requirements.

Commissioner Julien stated he was not trying to be hypercritical but was just trying to understand it. Could the Landfill ask for a variance if they needed three hundred or more feet to build a road leading into the Landfill? Mr. Monbouquette stated that is right, any request for a variance would require notification of property owners within three hundred feet.

Commissioner Julien responded that if you would approve building another road in the Landfill, then wouldn't that for expansion activity in the Landfill. Mr. Monbouquette stated the Board of Adjustment would not be able to grant anything having to do with roads. It is dimensional only, area or frontage setback and those sorts of things that, they can not vary the use.

Mr. Holm stated that would also start to impact the special use or conditional use that goes along with that particular usage. And that would be an issue that we would not feel comfortable with and would throw it in to a greater degree of scrutiny right there.

Commissioner Julien commented so there are a checks and balances here beyond what this is and that is why this is not that big of a deal.

Mr. Holm stated the proposed change is trying to address these very site specific dimensional type issues that really affect a defined land area. And we are seeing now that after it has been in use for a couple of years how punitive it is to make people get all this notification information for a mile out. This requirement is hard on the applicants requesting a variance.

Ms. Frohlich gave an example of the type of variances that are requested. If someone wants to construct an accessory building and they are five feet short of the required setback, they could file an application to the Board of Adjustment because that is a dimensional issue. Another example is if property is very sloped which diminishes the buildable area making the required setbacks difficult to comply with. Those variance applications only impact people in the immediate area.

Mr. Monbouquette pointed out that the Board of Adjustment has four requirements for the successfully obtaining a variance. One of them is that the authorization of a variance will not be

October 12, 2011

of substantial detriment to adjacent property and the character of the district will not be change by the granting of the variance. Another one is that the hardship is not generally shared by other properties in the same zoning district and the same vicinity.

Commissioner Julien pointed out that if your property is beyond the 300 feet how do you know what is going on.

Ms. Frohlich stated there is a sign posted on the property and legal notices are published. Mr. Monbouquette asked why 300 feet was being proposed. Ms. Frohlich stated that is what the requirement was before the 2009 change and the distance could be one half mile if that is what Planning Commissioners preferred.

Commissioner Gerdes commented that if the property is a square mile, it seems reasonable to notify those within one mile. If the property is a quarter or half acre, 300 feet seems reasonable.

Mr. Holm suggested that staff take another look at this and make another recommendation.

Commissioner Julien said that if the nature of the applications are similar then the 300 feet requirement will be no big deal.

Temporary Chair Bruhn closed the public hearing.

Motion by Commissioner Gerdes, seconded by Commissioner Julien to lay Application G-9-11 over to the November 2011 meeting.

Voting Yes: Bruhn, Gerdes, Houlihan, Janke, and Julien
Voting No: None.

APPLICATION G-10-11

REQUEST: Correct Zoning Map Errors

Parcel 1040455006, 2902 S. 264th Street, Zoning MU-3
Parcel 0110660004, 26404 W. Center Rd., Zoning MU-2
Parcel 0110720000, 26405 W. Center Rd., Zoning MU-2
Parcel 0110710008, property west of 26405 W. Center Rd., MU-2

APPLICANT: Douglas County Environmental Services

Ms. Frohlich stated these are the Zoning Map errors that were found when preparing the staff report background information from the Special Use Permit application from last month. This application is to correct those Zoning Map errors.

Temporary Chair Bruhn opened the public hearing. No one from the public spoke for or against the public hearing. Temporary Chair Bruhn closed the public hearing.

Motion by Commissioner Gerdes, seconded by Commissioner Julien to recommend approval of the request to correct the Zoning Map as follows:

Parcel 1040455006, 2902 S. 264th Street, Zoning MU-3
Parcel 0110660004, 26404 W. Center Rd., Zoning MU-2
Parcel 0110720000, 26405 W. Center Rd., Zoning MU-2
Parcel 0110710008, property west of 26405 W. Center Rd., MU-2

Voting Yes: Bruhn, Gerdes, Houlihan, Janke, and Julien.
Voting No: None.

October 12, 2011

APPLICATION G-11-11

REQUEST: Revise Zoning Regulations, Article 4, Zoning Districts, Table 4.1, Permitted Uses by Zoning District, Commercial Uses, Designate Recreation Vehicle Sales & Storage as special use in Mixed Use – 2 Zoning District

APPLICANT: Douglas County Environmental Services

Ms. Frohlich presented this application stating that this change was recommended at the September 28, 2011 Planning Commission meeting during the discussion on September 28, 2011 for Application Z-1-11.

APPLICATION Z-1-11

REQUEST: Rezone parcel from MU-2 to MU-3

LEGAL: Parcel 0110580007 located in the SW 1/4 of the SW 1/4 of Section 20, Township 15 N, Range 10 E of the 6th P.M.

LOCATION: 26250 West Center Road

APPLICANT: Orion Land Management LLC 17220 Wright Street, Suite 200 Omaha, NE 68130	Eichler Company P.O. Box 357 Elkhorn, NE 68022
--	--

The discussion on September 28, 2011 centered on the idea that it was more reasonable to add Recreational Vehicle Sales and Storage as a special use in the MU-2 zoning district than to rezone the property to MU-3 which included more expansive uses.

Temporary Chair Bruhn opened the public hearing. No one from the public spoke for or against the application. Temporary Chair Bruhn closed the public hearing.

Mr. Monbouquette recommended that the motion be made to approve revision of Table 4.1, permitted uses by zoning district to add special use for recreation vehicle sales and storage use in MU-2 zoning district.

Motion by Commissioner Janke, seconded by Commissioner Julien to recommend approval of the revision of Table 4.1 – Permitted Uses By Zoning District to add Recreational Vehicle Sales & Storage as a Special Use in the MU-2 Zoning District.

Voting Yes: Bruhn, Gerdes, Houlihan, Janke, and Julien.
Voting No: None.

Announcements: The Planning & Zoning Commission will have a meeting in November.

The following applications will be considered by the County Board of Commissioners on November 1, 2011:

APPLICATION G-11-11 - Revise Zoning Regulations, Article 4, Zoning Districts, Table 4.1, Permitted Uses by Zoning District, Commercial Uses, Designate Recreation Vehicle Sales & Storage as special use in Mixed Use – 2 Zoning District and

APPLICATION SPU-1-11 - Request: Special Use Permit for recreational vehicle storage and maintenance. Legal: Parcel 0110580007 located in the SW 1/4 of the SW 1/4 of Section 20, Township 15 N, Range 10 E of the 6th P.M. Location: 26250 West Center Road. Applicants: Orion Land Management LLC, 17220 Wright Street, Suite 200, Omaha, NE 68130 and Eichler Company, P.O. Box 357, Elkhorn, NE 68022

October 12, 2011

Meeting adjourned at 6:35 p.m.