

WASHINGTON COUNTY PLANNING COMMISSION MINUTES

March 14, 2016

7:00 p.m.

Supervisors Room, County Courthouse, 1555 Colfax Street, Blair, Nebraska

“All Commission members receive staff reports approximately one week prior to the meeting”

MEMBERS PRESENT

Gary Lambrecht, Chairman
Steve Neuverth
Terry Rasmussen
Matt Mathiesen
Wes Petznick

STAFF PRESENT

Tanna Wirtz
Terri Stanford
Teresa McBride

COMMISSION ACTION:

Chairman Lambrecht called the meeting to order at 7:00 p.m.

At time of roll call, members Lyle Schjodt & Dale Albracht were absent.

With regard to the February 4, 2016 minutes, the following action was taken:

MOTION: Petznick
I move the minutes be approved as presented
SECOND: Neuverth
VOTE: Aye –Lambrecht, Neuverth, Rasmussen, Mathiesen, Petznick
Nay – none

MOTION CARRIED

With regard to the agenda, the following action was taken:

MOTION: Neuverth
I move the agenda be approved
SECOND: Mathiesen
VOTE: Aye –Lambrecht, Neuverth, Rasmussen, Mathiesen, Petznick
Nay – none

MOTION CARRIED

Chairman Lambrecht welcomed everyone and stated this meeting will be conducted in accordance with the Nebraska Open Meetings Act and a copy of that Act is posted on the door; and noted that copies of material the Commission has is also available on the counter in the back of the room.

OLD BUSINESS/RENEWALS

Five Conditional Use Permits continued from the February 4, 2016 Planning Commission Meeting:

91-03	Kent Clausen	Mobile home for farm hand
91-04	Lake Arrowhead	community center
05-02	Martin Hoer	two homes temporarily
14-07	Ruwe's	sludge
14-14	Sprick-Huckleberry	two homes temporarily

Gordon, from the City of Omaha, stated that the Ruwe site has not be using sludge for years and that there is no contract with Ruwe for sludge. Wirtz advised that a correspondence was mailed to Ruwe requesting a letter stating that fact.

11-05 Dam's Farms sludge

Wirtz advises that Dam's Farms currently has a CUP sludge permit. There was a question as to whether or not a new parcel could be added to the existing Sludge CUP or if a new Sludge CUP would need to be applied for.

Lambrecht states that a new CUP application would need to be applied and presented to the Planning Commission for approval.

Conditional Use Permit reviews: Approved Administratively per County Zoning Regulations Section 6.14 and 6.18

98-07	Hoegermeyer Farms	sludge
98-09	Allen Trumble	sludge
07-04	John Tyson	corn milling bio-solids
07-06	Robert Peterson	corn milling bio-solids

07-07	Neale Family Farms	corn milling bio-solids
07-08	Randy Blomker	corn milling bio-solids
08-02	Jeff & Maria Bledsoe	sign
09-02	Camp Fontanelle	RV Park
11-07	Dan Knapp	acc building before home
14-03	Hoier/Botteger/Hoier	corn milling bio-solids
14-04	Neale Shaner	sludge
14-05	Kriete Farms	sludge
14-06	Shaner Family Farms	corn milling bio-solids
15-01	Tietz Farms, Inc.	two homes temporarily

Chairman Lambrecht opened the public hearing in relation to the sludge CUPs.

PUBLIC HEARINGS

Agenda Item 1.

Discussion of Zoning Amendment proposal submitted by Scott Japp titled: Washington County Farmland Protection Act.

Tanna Wirtz stated that Scott Japp had requested the PC be given the Purposes and Objective of Zoning in the NE Planning Handbook. The information was emailed to the members.

Japp addressed the PC stating that the County has the authority to make changes in statues and zoning. Agriculture is a protected class; the state constitution protects water for agriculture over industry. This board does have the authority to make changes in zoning.

Lambrecht asked for comments from the County Attorney Scott VanderSchaaf.

VanderSchaaf advised that he had general comments, but not an official recommendation. VanderSchaaf stated that there are Federal statues already in place that are very similar to the WCFPA. It is problematic to try to regulate a Federal statute without including all of it. According to the Farmland Federal Protection Act, the Governor has the authority to bring suit against Federal agencies whose projects, programs or activity negatively affects farmland. The manual specifically notes that "individual state governments, local units of government and nongovernmental organizations cannot challenge such activity in court." Even if the PC were to pass the WCFPA, there would be no authority to it, no way to enforce it. The Federal statues already say you cannot challenge it.

Mathiesen restated that some parts of the Federal Act were included in the WCFPA and some were not.

VanderSchaaf affirmed stating the WCFPA leaves out the Federal Act specifically stating the County does not have enforcement authority.

Rasmussen asked "if it would make a difference if we enacted the entire Federal law and included that Washington County would be able to enforce it".

VanderSchaaf advises the Federal Law already explicitly says the County cannot enforce it. The FPPA, which was enacted in 1981, states that the Governor goes through the Attorney General to file suit if there is a violation of the FPPA. He continued to explain what the FPPA states and how we would not have standing to take action. He also recommended that if the PC wants to do something, they should start from scratch and not use part of a Law that says they can't do what they want to do.

Keith Marvin addressed the PC referencing a case from 1981 that deals with eminent domain. Zoning cannot be applied to any governmental body that has the power of eminent domain. LESA is used in Iowa to look at farm protection done by the soil conservation service. This could possibly be used here. He is in the process of rewriting some of the Washington County Regulations anyway. He recommended making this policy driven in the Comprehensive Plan. The Comprehensive Plan is not being worked on at this time. The changes need to be more policy than regulator. Enforcement through zoning is limited. Marvin explained the LESA program which rates soil conditions and determines what farmland can be used for. LESA does not stop governmental agencies.

Mathiesen stated that the only thing the WCFPA is trying to do is stop governmental agencies. Marvin stated the County would have little power to fight them because they have the power of eminent domain and the Supreme Court already has case law that says so. Zoning isn't the place to deal with this.

Neuverth asked Marvin's opinion on the CSR rating. Marvin stated he wasn't clear on the conversion method, because NE does not use it, Iowa does. The rating is based upon productivity and the soil conditions. Iowa does this on a State level, not a local level. Marvin explained, how the point system works. It is a guideline, but the County can do different things with it depending on what is wanted.

Wade Junker, 13228 Co Rd. 40, addressed the PC. He stated that he had read the FFPA at the Federal level and understood that it was protecting landowners from Federal agencies that have the power of eminent domain. So those federal agencies would have to meet criteria to access the use of the land and verify if there was a better alternative before taking the land through eminent domain. He understands the WCFPA to be geared toward the local County level rather than higher elected offices. Nebraska doesn't have anything like the DNR that Iowa has. He also participates in the Papio Valley Preservation Association. They support Japp for some type of regulation or Act in place that makes higher elected officials stop and evaluate before they use eminent domain.

Mathiesen asked why the Federal Act isn't being complied with since it is already enacted.

VanderSchaaf believes we are trying to deal with this issue at the wrong place. The County doesn't have the authority to override the higher authorities. The intention is good; this is just the wrong place to address it.

Rasmussen asked the County Attorney "who the County goes to if there is a problem". VanderSchaaf referenced the FFPA that directs individuals to go to the Governor and the Attorney General.

Junker asked that the County regulations mention the FFPA and make sure it is followed. The average citizen needs someone to stand up for them.

Japp addressed the Commission stating that he does not object to something being put in policy. He questioned VanderSchaaf regarding the FFPA and if only agencies that use Federal funds are required to follow the FFPA and is it policed.

VanderSchaaf understands that if the agency receives any Federal funds they have to comply with the FFPA on all projects.

Japp is willing to change the WCFPA as presented to fit more with whatever the County wants. He specified that the County has higher authority than political subdivisions.

Discussion continued on the WCFPA and who it affects.

Marvin shared some information from a Case in 1981 regarding eminent domain. Basically, zoning ordinances do not apply to governmental agencies.

Junker mentioned conservation districts in other States that VanderSchaaf might want to look into.

Chairman Lambrecht closed the public hearing.

Chairman Lambrecht asked for any comments or a motion from the Commission.

Wirtz reminded the PC this was a discussion item only. It was not published as a public hearing.

Lambrecht suggested this item might be sent to the six-pack to discuss how we might add some of this into our regulations.

VanderSchaaf suggested possibly adding a preamble or intent that mentions refers people to the FFPA.

Wirtz reminded the board that we have a consultant working on the regulations. The Comprehensive Plan already addresses these areas.

Lambrecht asked if anyone objected to sending this to the six-pack the next time it meets.

Mathiesen said he didn't see the point because the PC cannot do anything anyway.

Lambrecht stated that if it was discussed at the six-pack and the County wanted some changes in the regulations, they could send it straight to Marvin and those changes would come back to the PC for approval.

Lambrecht asked Wirtz to add this topic to the next six-pack meeting.

NEW BUSINESS

Wirtz gave the PC information from the Dodge County clerk regarding sexually explicit businesses. The PC might want to discuss this.

Marvin informed the PC about a court case going on involving a man named Harrington, who is challenging different counties zoning regulations regarding sexually explicit businesses, claiming he is losing revenue because he cannot operate his business in those counties. Marvin is working with a group that is developing regulations that are defensible. There has to be locations where the businesses can locate. He will be dealing with that in the new regulations. The County can put a moratorium on this

type of property while the regulations are being rewritten. Marvin also mentioned other topics that will be discussed in the future: wind turbines, cell towers, etc.

REPORTS FROM STAFF

Wirtz informs the Planning Commission that she and Terri Stanford attended the NPZA Conference in Kearney last week.

ITEMS FROM THE MEMBERSHIP

Lambrecht mentioned that the PC in the past would meet at 7:30 in the summer and asked if anyone wanted to change back. Rasmussen asked to have the subject on the April agenda. Wirtz clarified that Rasmussen was asking for the time to be 7:30 during day light savings time and 7:00 otherwise.

ITEMS FROM THE PUBLIC

ADJOURNMENT

MOTION: Rasmussen
I move to adjourn the meeting.
SECOND: Mathiesen
VOTE: Aye – Lambrecht, Rasmussen, Neuverth, Mathiesen, Petznick
Nay – none

The meeting was adjourned at 8:16 p.m.

Gary Lambrecht, Chairman