

WASHINGTON COUNTY PLANNING COMMISSION MINUTES

November 3, 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  
Matt Mathiesen, Vice Chairman  
Terry Rasmussen  
Wes Petznick  
Dale Albracht  
Lyle Schjodt

STAFF PRESENT

Ryan Sullivan  
Teresa McBride  
Terri Stanford

COMMISSION ACTION:

Member Steve Neuverth was absent.

With regard to the October 6, 2016 minutes, the following action was taken:

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

MOTION CARRIED

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

MOTION: Schjodt  
I move the agenda be approved as presented.  
SECOND: Mathiesen  
VOTE: Aye – Rasmussen, Lambrecht, Mathiesen, Petznick, Albracht, Schjodt  
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

Conditional Use Permit reviews approved administratively per County Zoning Regulations Section 6.14 and 6.18.

13-03 Daniel & Linda Douglas two homes temporarily Renewed for 6 months to demo or move old house Approved

PUBLIC HEARINGS

CONSERVATION EASEMENT

**1. Request by Mary Lou Chapek**

Conservation Easement of the E½ SE¼, SW¼ SE¼ and tax lots 3, 31 & 32 in Section 23 Township 17 North Range 12 East of the Sixth P.M. and tax lot 42 in Section 25 Township 17 North Range 12 East of the Sixth P.M. and tax lots 39, 45, 51, 56, 57, 62, 63, 67, 73, 74, 76, 78, 79, 80, 81, & 82 in Section 24 Township 17 North Range 12 East of the Sixth P.M. (General location: US Hwy 75 & County Road 38, Fort Calhoun, NE)

Edmond Talbot, representative for Mary Chapek, advised the Commission that Mary Lou Chapek is the land owner and was there to ask for a conservation easement on land that is just less than 596 acres. Talbot stated that the main reason for the easement is to protect the property. Chapek has been involved for a number of years with conservation projects and has worked with the University of Nebraska on some of this to preserve her property. Chapek would like to preserve the land in the current state it is in, which is agricultural, farmlands, woodlands, and prairie. It is a unique piece of property and Chapek would like to continue it in that state. There is also a tax aspect. Chapek is able to have a tax break through the IRS for capital gains for the current year, which is

important to her in this particular year due to the sale of a business. The tax break is secondary to the purpose of the preservation of the property. The Nebraska Conservation Act and a few Nebraska Statutes, the first one being §76-2,111 (terms, defined) paragraph (1) and Nebraska Legislature has adopted these specific statutes for conservation easements. Important to the Commission and the Board of Supervisors is the next statute, §76-2,112 (Easement; creation; approval by governing body; when required) paragraph (3), which specifically talks about the board's review of this conservation easement.

Talbot stated that this is the first conservation easement that he is aware of within Washington County. Mr. Sands has been involved in numerous easements in Sarpy County and others throughout the State. Nebraska allows the Planning Commission and the Board of Supervisors to review the conservation easement. The duty of the Planning Commission is to decide if the conservation easement should be denied upon a finding by the appropriate governing body that the acquisition is not in the public interest when the easement is inconsistent with (a) a comprehensive plan for the area which had been officially adopted and was in force at the time of the conveyance, (b) any national, state, regional, or local program furthering conservation or preservation, or (c) any known proposal by a governmental body for use of the land. The Planning Commission must decide if the Conservation Easement conflicts with the current comprehensive plan.

Talbot advised that he had spoken with Steve Mencke from the Assessor's office about the assessment piece of this. There is a provision in statute 76-2,116 (Property subject to easement; how assessed). Real property subject to a conservation or preservation easement shall be assessed with due regard to the restricted uses to which the property may be devoted. The conservation or preservation easement in the hands of the holder shall be subject to assessment, taxation, or exemption from taxation in accordance with general laws applicable to assessment and taxation of interests in real property. Mencke informed Mary Lou Chapek that there is going to be no change in the taxes. She will continue to own this property and the easement has nothing to do with that use other than it will continue in the present use and how it is assessed will not affect it in anyway.

Mary Lou Chapek addressed the Commission explaining some of her history in the area and how she came to own the land indicated in the conservation easement. Chapek described the land, indicating there are rolling hills, farmland, marshland, streams, woodlands and native prairie amongst beautiful views and wildlife. Chapek advised that there are volunteers that monitor the blue birds, frogs, bats, butterflies and other wildlife. There are 200 blue birds fledged a year from volunteers on the blue bird trail. The Monarch Butterfly is on the endangered species list and this land participates in the North American Butterfly count every year and there are more Monarchs by far counted on this property than in the other areas counted around us combined. Chapek loves the land and wants to protect it from development. She believes it is important to preserve a part of this beautiful county so future generations can enjoy it. She knows under State law that as an owner she can choose to develop the land or protect it.

Chairman Lambrecht opened the public hearing.

Dave Sands, Executive Director of Nebraska Land Trust (NLT) was in attendance to answer any questions the Commission may have. Sands explained about the Nebraska Land Trust. Three things make NLT a bit unique. First is they are a land conservation organization that does not own any acre of land anywhere. They believe in the stewardship of private landowners and they work for landowners that do not want to see their stewardship undone by those who follow. Second thing that makes them a bit unique is their mission statement which is to foster the protection of agricultural, historical and natural resources on land in Nebraska, through education, partnering, and permanent conservation. Third thing that makes them unique is their Board of Directors, which is largely a board of other organizations and agencies involved in land stewardship.

Lambrecht asked how many acres in the State of Nebraska have conservation easements. Sands stated they have about 35 easements in the State of Nebraska from Sarpy to Sioux County along the Wyoming border totaling roughly 15,000 acres. Sands stated that Nebraska Land Trust does hold a conservation easement in Washington County in the City of Blair.

Rasmussen asked "Is there any way down the road that this can be dissolved or is this forever?" Sands stated that easements are intended to be perpetual. There is a statute that states if the conservation purpose for which the easement was put in place no longer exists, then an easement could be dissolved. Petznick inquires who makes that decision. Sands stated to get an easement dissolved is a judicial decision by a judge.

Schjodt inquired as to how the Board of Directors is appointed for the Nebraska Land Trust. Sands explained the NLT is a 501 (c) (3) nonprofit organization, so the board is by invitation. Schjodt asked who is the TCP, LLC on the Turkey Creek Easement contract. Chapek stated that is one of her entities.

Larry Alexander addressed the Commission.

Unknown person addressed the commission, advising that he has known Chapek for years and is very much for the conservation easement on the property. (Someone coughing - cannot hear name).

Dr. Fredrick Ware addressed the Commission and was supportive of the conservation easement on the property.

Steve Mencke, Washington County Assessor, advised the Commission that there is no guarantee what the value is going to be on a property from year to year. Nebraska Statute §77-1359 (Agricultural and horticultural land; legislative findings; terms, defined) (a) Land retained or protected for future agricultural or horticultural purposes under a conservation easement as provided in the Conservation and Preservation Easements Act except when the parcel or a portion thereof is being used for purposes other than agricultural or horticultural purposes. Nebraska Statute §76-2,116 (Property subject to easement; how assessed). Real property subject to a conservation or preservation easement shall be assessed with due regard to the restricted uses to which the property may be devoted. The conservation or preservation easement in the hands of the holder shall be subject to assessment, taxation, or exemption from taxation in accordance with general laws applicable to assessment and taxation of interests in real property.

Mencke stated the concerns with the Turkey Creek Conservation Easement agreement is what's known as the Bundle of Rights. A bundle of rights is a set of legal rights afforded to the real estate title holder. It can include, but not limited to the right of possession, the right of control, the right of exclusion, the right of enjoyment and the right of disposition. In this case, there is a situation where part of the land is owned by two different people and part of the rights is being transferred to another person. It is always a little bit of a concern.

Commission and Mencke discuss the 501 (c) (3) nonprofit organization and the tax assessment. Additional research may be involved on the issue. The Greenbelt status is discussed amongst Mencke, Talbot and the Commission.

Tim Odorisio addressed the Commission.

Chairman Lambrecht closed the public hearing.

Chairman Lambrecht asked for thoughts and actions from the Commission.

Commission discussed the correspondence from County Attorney VanderSchaaf. Lambrecht does not understand how the County Attorney could base his opinion on the revision of the Comprehensive Plan that is currently not in place. Talbot advised the Commission that according to Neb. Stat. §76-2,112 (3)(a) Approval of a proposed acquisition may be denied upon a finding by the appropriate governing body that the acquisition is not in the public interest when the easement is inconsistent with (a) a comprehensive plan for the area which had been officially adopted and was in force at the time of the conveyance.

Commission continues discussion on the easement and tax issues.

MOTION: Rasmussen  
I make a motion to approve the Turkey Creek Conservation Easement as presented.  
SECOND: Lambrecht

Commission continues discussion on the easement. Mathiesen commends Chapek on trying to protect the land, but advised that he has concerns with a few issues. Discussion about the future of the easement and what could happen should it be bequeathed to Chapek heirs.

Lambrecht advised that there is a Motion to approve the Turkey Creek Conservation Easement as presented.

VOTE: Aye – Albracht, Lambrecht, Rasmussen  
Nay – Mathiesen, Petznick, Schjodt MOTION DENIED

## PRELIMINARY PLAT

### **2. Request by Barry Kolterman**

A proposed residential subdivision, to be known as Homestead 77, from the NW ¼ SE ¼ and tax lot 23, Section 6 Township 17 North-Range 12 East of the Sixth P.M. (general location: Co. Rd. P35 North of Co. Rd. 32)

Dennis Whitfield advised the Commission that after considering the recommendations on the road, the road was lengthened, which decreased the slope to 6.73 percent. The end of the cul-de-sac has been shortened, which makes it 6.73 percent also. The total length of the cul-de-sac is now 1,983 feet long. Whitfield discussed the cul-de-sac, roads and bus loop with the Commission.

Whitfield stated that all lots now conform to RS-2 and RA Subdivision requirements. Whitfield advised the Commission about the dike crossing and drainage studies. The NRD and OPPD have been consulted.

Chairman Lambrecht opened the public hearing.

Chairman Lambrecht closed the public hearing.

Chairman Lambrecht asked for thoughts and actions from the Commission.

Commission continued discussing the various items.

MOTION: Schjodt  
I make a motion to approve the Preliminary Plat for Homestead 77.

SECOND: Rasmussen

VOTE: Aye – Albracht, Lambrecht, Rasmussen, Mathiesen, Petznick, Schjodt  
Nay – None

MOTION CARRIED

SECOND MOTION: Rasmussen  
I make a motion to grant a waiver of the 600 feet cul-de-sac length on Homestead 77 Preliminary Plat

SECOND: Mathiesen  
VOTE: Aye – Albracht, Lambrecht, Rasmussen, Mathiesen, Petznick, Schjodt  
Nay – None

MOTION CARRIED

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#### NEW BUSINESS

#### REPORTS FROM STAFF

Discussion on whether a CUP to stockpile scrap waste would be needed. Commission states that a CUP would be required.

Precision Enterprises is looking to purchase land just north of the county line off of County Road P51 and east of Hwy 75. The property is alongside the river and is known as Country Marina and Yacht Club. Precision would like to have a “member’s only” RV complex like Cottonwood Marina, but would possibly have an ATV trail system. Commission stated that a CUP would be required.

Discussion was held on easements, lots, landlocked parcels, regulations, etc. Lambrecht recommended that these issues be brought before the current six-pack board in December and the new six-pack board in January to obtain their views on these topics.

#### ITEMS FROM THE MEMBERSHIP

#### ITEMS FROM THE PUBLIC

#### ADJOURNMENT

MOTION: I move to adjourn the meeting.

SECOND:

VOTE: Aye – Rasmussen, Lambrecht, Mathiesen, Petznick, Schjodt, Albracht  
Nay – none

The meeting was adjourned at 9:20 p.m.

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*Gary Lambrecht, Chairman*