

MINUTES
OF
DOUGLAS COUNTY PLANNING COMMISSION

3015 MENKE CIRCLE
OMAHA, NE 68134

April 13, 2005
6:00 p.m.

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

Members Present: Bob Boozer, Bob Bruhn, Ron Bucher, Barbara Hayes, Luke Janke, Joe Roberts and Milo Vacanti (arrived at 6:05 p.m.).

Members Absent: Michael Gerdes and Dave Lanoha

Other County Officials and Staff Present: Barb Frohlich and Kent Holm (Douglas County Environmental Services), and Bernie Monbouquette (County Attorney's Office).

Motion by Commissioner Bucher, seconded by Commissioner Boozer to approve minutes of the March 9, 2005 meeting.

Voting Yes: Boozer, Bruhn, Bucher, Hayes, Janke, Roberts, and Vacanti.

Voting No: None.

Abstain: None.

APPLICATION G-6-05

REQUEST: Amendments to Douglas County Zoning Regulations – Wireless Telecommunications Facilities (Specified proposed amendment language is available at 3015 Menke Circle.

APPLICANT Douglas County Environmental Services

Chair Hayes stated that a draft proposal was included in the Commissioner's meeting packets. Mr. Holm stated the draft was available on the screen to make any necessary changes as the draft is discussed.

Commissioner Bucher stated that in the definition section, that "wireless service facilities" was not in alphabetical order.

Chair Hayes stated that she was concerned that height requirements were tied to the zoning districts. Mr. Frohlich stated the draft provides for an applicant to request a

waiver for the height requirement as part of the conditional use permit application and the specific height would be a condition of the conditional use permit.

Commissioner Bucher asked Chair Hayes if she believed a maximum height should be included as part of the regulation.

Chair Hayes stated that she had done research looking at different parts of the United States, not just Lancaster County and Omaha, to review case law and found that jurisdictions have more control over the tower situation that most people believe. She also stated that some of the ordinances are more defined than our draft.

Commissioner Roberts stated that he believed the City of Valley's height restriction was 125 feet.

Chair Hayes stated that 120 feet was in some of the ordinances she reviewed. Chair Hayes further stated that language requiring the applicant to show their service is needed should also be included with criteria for evaluating that information.

Commissioner Bucher stated an applicant could always request a higher height than what the maximum allowed in the regulation.

Commissioner Vacanti stated that the area the tower is located in is also important.

Commissioner Bucher commented that it is difficult to control the location as Valley found out. Some federal regulations override the local regulations.

Commissioner Roberts stated that he believed Fremont was being sued as well as Papillion or Plattsmouth. He also suggested that Mr. Monbouquette talk to John Riggs, City of Valley Attorney, for more information.

Chair Hayes stated that the specific language in the regulation affects how the regulation stands up in court. She suggested laying over the application for one month so she could provide additional information to Planning Commissioners. She also asked Ms. Frohlich what regulations were used as the model for the draft?

Ms. Frohlich stated the draft is a combination of language from the City of Omaha, the City of Lincoln, and Lancaster County. She also stated that most of the jurisdictions charge a fee for the conditional use permit and then a building permit fee for construction of the tower. The building permit fee is based on the cost of the project. Commissioner Lanoha brought up forcing co-location at a previous meeting. Mr. Monbouquette addressed that issue in his memo to the Planning Commission and suggested consideration of a financial incentive. Co-location saves the cost of constructing a tower so that is an incentive. Whether or not adding another type of incentive also needs to be discussed.

Commissioner Bucher asked what the cost of a building permit would be? Ms. Frohlich stated it would be based on the cost of the project and our fee schedule.

Chair Hayes pointed out that often the towers are leased by the wireless companies, they don't construct their own towers.

Commissioner Bucher stated he would rather have language requiring the applicant prove they cannot co-locate. Also commented that he was not sure you can stop the towers from being located in a residential area but believes the court would be sympathetic if there is an existing tower that would provide the service an applicant is seeking.

Chair Hayes stated there is case law on that issue and co-location is the preferred solution

Commissioner Roberts stated the City of Valley had an application from someone that wanted to construct a tower on their property and then rent it to providers. The City of Valley Planning Commission denied the request because other towers were available. Towers can only accommodate so many antennas.

Chair Hayes stated that some of the regulations she reviewed had a limit for the number of antenna on towers and some required a tower constructed to accommodate at least one to three other antenna.

Mr. Holm asked if language should be added regarding a requirement for certification by a structural engineer for the capacity of the tower.

Chair Hayes stated that she believed the Telecommunication Act addressed that issue.

Ms. Frohlich read from the draft, "Evidence that the tower is of sufficient structural integrity to allow co-location for access and use of similar equipment of other firms provided the additional telecommunication equipment does not cause interference with the existing pole in use." This requirement is part of the operating statement that the applicant must submit.

Chair Hayes stated she was not comfortable with the 15 years for a conditional use permit and asked where the 15 years for the length of the permit was from? Ms. Frohlich said she believed that was in the City of Omaha's ordinance.

Commissioner Bucher suggested having an annual review similar to Pheasant Haven and possibly having the permit renewed annually.

Chair Hayes stated that a lot of jurisdiction s are renewing permits annually. Ms. Frohlich stated that any reports required by the FCC are also required to be submitted to the County.

Chair Hayes stated that she would like to have the language tighter and would provide information to Commissioners and regulations will be reviewed again at the May meeting.

Motion by Commissioner Bucher to lay over the application to the May Meeting, seconded by Commissioner Boozer.

Voting Yes: Boozer, Bruhn, Bucher, Hayes, Janke, and Milo Vacanti.

Voting No: None.

Abstain: None.

Comp Plan Update

Memo from Mr. Holm stated the Architects and Engineer's selection committee met April 1st and interviewed the three firms that were short listed, RDG, Gould Evans, and Olsson Associates. The initial scope of services to be provided and proposed and the estimates have been requested from RDG. Also asked that Planning Commissioners be appointed to the committee to work with the consultant. Mr. Holm added that he is negotiating a contract with RDG.

Commissioner Bucher asked how the firms were ranked since the costs were unknown?

Mr. Holm stated the Architects and Engineer's Committee typically selects a short list based on the proposals that are submitted. In this case, three firms were interviewed. Based on those interviewed and their proposals, the Committee ranks them. Everyone on the committee ranked RDG first.

Chair Hayes asked who the Committee members were? Mr. Holm responded Jerry Leahy, Public Properties Director; John LeMay, Purchasing Agent, Dan Kutilek, County Engineer's Office, Steve Walker, Fiscal Administrator, and himself.

Commissioner Bucher stated he found it hard to rank anybody unless you knew what the charges were going to be.

Mr. Holm stated that this is the procedure used by the Committee. Chair Hayes stated the same procedure is used by the City of Omaha.

Commissioner Bucher further commented that because it is the procedure used does not make it right because the first two could be very close in capabilities but there could be a signification difference in their fees.

Chair Hayes stated that she agreed.

Commissioner Vacanti asked why they don't tell exactly what they are going to do for the money? Chair Hayes responded they have said what they are going to do but just not much it is going to cost.

Chair Hayes asked about the time frame for completing the update. Mr. Holm responded that after the comprehensive plan is updated, the zoning and subdivision regulations will be reviewed for any changes that may be needed to coincide with the comprehensive plan. The review of the regulations should be completed by May of next year.

Chair Hayes asked when the contract would start? Mr. Holm stated the contract would start as soon as the County Board approves it.

Chair Hayes and Commissioner Roberts stated they would like to work with the Committee.

Chair Hayes requested that it be in the record that Commissioner Vacanti disagrees with the actions of the A&E Committee and would rather go back to the three short listed companies.

Building Coverage

Ms. Frohlich gave Commissioners a copy of the material to be presented to the County Board for approval for review and comment. Commissioner Bucher suggested that it be discussed at the May meeting.

Announcements

Ms. Frohlich stated there were applications submitted for the May meeting.

Commissioner Bucher asked if the County Board had re-appointed members yet? Mr. Holm said the County Board will likely be considering this sometime in May. Ms. Frohlich said she would notify those considered for re-appointment of the date.

Commissioner Bucher asked if the County Board was expecting them to appear at the meeting. Chair Hayes stated she appeared last year for those to be re-appointed and reminded the County Board that some people have jobs.

Meeting adjourned at 6:45 p.m.