

DOUGLAS COUNTY PLANNING COMMISSION
3015 MENKE CIRCLE
OMAHA, NE 68134

August 9, 2006
6:00 p.m.

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

Members Present: Bob Bruhn, Ann Houlihan, Dave Lanoha, Joe Roberts, and Milo Vacanti.

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

Before the meeting started, Vice 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 Bruhn, seconded by Commissioner Houlihan to approve minutes of the July 12th, 2006 meeting.

Voting Yes: Bruhn, Houlihan, Lanoha, and Vacanti.

Voting No: None

Abstain: Roberts

APPLICATION

C-4-06

REQUEST: Conditional Use Permit for Wireless Communication Tower

LEGAL: NW ¼ of NE ¼ of Section 13, Township 16 N, Range 10 E. of the 6th P.M.

LOCATION: 20911 Bennington Road

APPLICANT: Cingular Wireless, 2611 South 117th Street, Omaha, NE 68144
(property owned by D&K Leasing, 18606 Northern Hills Drive, Bennington, NE 68007)

Vice Chair Lanoha opened the public hearing.

Kent Holm, Director of Environmental Services, presented a map showing the cellular towers that have been recommended for approval by the Planning Commission and approved by the County Board. A tower under construction now on the Ackerlund

property (Cingular Wireless) was approved January 10th, 2006. Another tower approved on October 18th, 2005 is located on Appleby Farms. It is also a Cingular Wireless tower and has been completed. The U.S. Cellular tower on the Eipperle property that was approved December 19th, 2005 is currently "on-hold" status and is related to the application being discussed tonight.

Sam Mandolfo, representing Site Acquisitions Consultants, the agent for Cingular Wireless in this area, 2611 South 117th Street, made the following comments:

1. Originally we planned to co-locate on the U.S. Cellular tower previously approved for the Eipperle property. However, because of issues at that site, we don't believe that tower is going to be constructed.
2. U.S. Cellular will co-locate on our proposed tower pending your approval and then that tower will not be constructed.
3. Cingular Wireless has acquired AT&T Wireless and is in the process of trying to provide a better coverage area for their customer base. In so doing they need to install additional antennas because the frequencies that they have assigned to them by the FCC don't provide as much signal carrier penetration as some other carriers are able to provide.
4. We are trying to complete the network in order to be able to provide good service for the customer base and additional services.

Vice Chair Lanoha asked if there was anyone to speak on behalf of this application.

Michelle Ross, U.S. Cellular, 10343 Military Avenue, stated that U.S. Cellular supports this application and plans to co-locate on the tower if it is approved. Plans to build a tower on the Eipperle property would not be carried out.

Vice Chair Lanoha asked if anyone wished to speak in opposition of this Application.

Cathy Hanus, 13808 N. 324th Street, made the following comments:

1. This tower is probably far enough apart, I actually live close to where that Ackerlund tower site is and I have been here before the Board before.
2. When I came before the Board before I had no notice basically that this tower was going to be talked about. Just a day before I learned about this tower. Since that time I have learned an awful lot about towers and there are some points I feel compelled that I need to bring up to the Board.
3. U.S. Cellular had their equipment out there, had the tower setting out there, the foundation in the ground on the other tower.
4. I notice that with the Cingular contracts they make it clear that they don't plan on removing any of the foundation. It troubles me that they come in and say they are going to put up a tower and put in the foundation and then they don't return the ground to the way it was.
5. My question is if they trade off towers, will they be removing their foundation at the other site. It always bothered me when I was little and in the school yard if

- somebody would drop their ice cream wrapper on the ground because we were always taught to preserve our earth and watch our environment. I just feel like that it is garbage that has been left by the cell company. It is going to be expensive to remove the foundation.
6. It was represented to the Board with the tower that is near our place that there are no signals in the area. That's not true. This all happened so quickly I didn't know what I needed to do. Since that point in time there has been a call to us that has been throughout that whole valley and Cingular has a very good signal. I don't think we tested U.S. Cellular. But Cingular has good signals
 7. The Ackerlund tower has not been built. The call test was done before the Appleby Farm tower was built and also there is a proposed site at Valley that was not built. The Arlington tower which is north and I believe now has been built was not in existence at that time. They still had signals throughout the whole valley so there needs to be more in the application. You could give that application to an expert and there wouldn't be enough there for them to be able to tell if there legitimately isn't enough signal in that area.
 8. These towers don't have to be 260 feet. 260 foot tower requires lights. Lights are an issue for birds. They also provide issues when it comes down the road even for the Elk City towers are an excellent example. When they first put up the Elk City towers you come over the top of the bluff and you would be blinded at night. The flashing lights can be a real issue. It depends on where it is located.
 9. I'm not exactly sure where this tower is being put so I can't make any opinion on that.

Commissioner Vacanti: There is a location on the map.

Ms. Hanus stated she could see that but there are buildings there and so on. I'm not sure relative to the road just how it would affect things. I haven't done a detailed study.

Continued comments by Ms. Hanus:

10. The application in general is just lacking. When you look through the application it gives you inadequate information. It doesn't give you any foundation for some of the statements that they have made.
11. I truly think that the Board probably needs to hire a consultant for cell towers in general for the application just to review the applications and this is a cost. You would think nothing of taking a developer who is bringing up a housing development who needs to do a special study for this or that having to do with the development to make them pay for that study. There is no reason why you shouldn't also do the same thing with cell towers.
12. I notice in the application that I question some of those figures that in there because they are using figures that are 5 and 6 years old. Anybody who has been working with technology knows things change so rapidly that those figures are not accurate any more.

13. It is my understanding that the cell phone market is actually reaching more of a saturation level right now. What they are trying to do is to expand out into other markets in order to justify these things.
14. I would like to point out that in the Cingular application about removing the foundation if you look at paragraph 13 of the application, it says “nor will tenant be required to remove foundation or underground utilities.”
15. The other thing that I run across with cell towers that I had no clue about when I got started was there is a lot of dangers with cell towers that cell tower companies aren't going to tell you. There is lighting issues, you get these cell towers too close to buildings they will exactly burn buildings down or at least burn out their electricity in the building. There are battery explosions if the batteries are under extreme conditions. It doesn't happen often but it is quite devastating when it does happen. If you have a lot of ice, ice falls from these towers on a regular basis.

Commissioner Roberts stated he believes there is a 5 minute limit for speakers. Vice Chair Lanoha stated that is correct and asked Ms. Hanus to complete her comments.

16. I had experience working with wireless. I understand how radio signals work. You get enough of these towers out here and if they are not careful about the way they place them and where they place them they are actually creating more problems with signal interference and then they are response to that is that they don't have enough signal in the area and we need to put up another tower. In fact they really don't need to put up another tower they just need to better design their system.

Richard Mangold, 19747 Bennington Road, made the following comments:

1. What is the projected height of this tower? Commissioner Vacanti replied 260 feet.
2. Asked if lights would be required. Commissioner Vacanti stated the tower would require federal approval.
3. Said he lives ½ mile from this site and is very opposed to the tower if there are going to be any lights on it because people five miles north of the tower by the Elkhorn River can see it's lights at night.

Vice Chair closed the public hearing.

Comments, Discussion, or Questions:

1. Commissioner Roberts asked Mr. Monbouquette if Ms. Ross' statement that U.S. Cellular is supporting the application was sufficient or should there be something in writing. Mr. Monbouquette stated that if the Commission recognizes this person as the representative of their company, we certainly have the right to rely on that. Mr. Mandolfo indicated that the permitted tower was going to be abandoned then that would probably come back before this Board with a recommendation to the County

Board to revoke that Conditional Use Permit, if in fact it is not going to be used. I don't think that has to be in writing. There is a letter in the file dated June 15th, 2006 from Michelle Ross, the Project Manager of U.S. Cellular addressed to Mr. Mandolfo about co-locating on the applicant's tower. That's part of the file.

2. Commissioner Vacanti asked Ms. Hanus when she got her notice. Ms. Hanus replied that her notice was the sign that she found in a ditch. I walk that area every single morning and just happened to see the sign and thought it was garbage.
(Note: Ms. Hanus was referring to the sign for the tower application for the Ackerlund property.)
3. Vice Chair Lanoha asked Ms. Hanus where she lived in relationship to this application. Ms. Hanus replied that she lives ½ from Ackerlund Farms and is not close to this tower site. The issues that I brought up are issues that I found out that I believe the Commission should be aware of when they make any cell tower decision.
4. Commissioner Vacanti asked how many people didn't get any notice. Vice Chair Lanoha replied that Ms. Hanus is beyond the limit so she wouldn't get a notice.
5. Ms. Hanus stated that in her area that the people who should have been notified did not get notification within the 300 foot zone. There was improper notification. Vice Chair Lanoha stated that is an incorrect statement.
6. Ms. Hanus said she can prove it. The evidence is in the file if they pull it. I'm not saying they should reconsider the application but that would be wonderful.
7. Ms. Frohlich stated that the people for this application were given the proper notice by mail. A sign was placed on the property, notice was published in the Daily Record, and notice was published in the county paper, the Post Gazette. Vice Chair Lanoha stated that the staff followed the letter of the law in notices and that is all we can do.
8. Commissioner Vacanti asked the Cingular representative why there is no handicapped access or plumbing on the plans. Mr. Mandolfo stated that there is no plumbing at the site, there is no water service there and there is no handicap access required. It complies with federal law. It is not built for handicapped accessibility. It doesn't have to meet the requirements because it is so small.
9. Commissioner Vacanti commented that the plan shows a shelter, what is that for? Mr. Mandolfo stated the shelter is for the equipment storage, the computers and switching equipment in order to provide service at that site.
10. Commissioner Vacanti stated that there are going to be people at that site a lot and doesn't understand why they don't have to have plumbing and meet handicapped requirements. Mr. Mandolfo stated that the building is 11 x 20 in size and it is full of equipment. The maintenance occurs about once a month or they will come out on an as needed basis. The technicians are local so there is no bathroom and no handicapped access.
11. Commissioner Vacanti stated that you have a lot of (unintelligible) that are going on this tower. Mr. Mandolfo stated the tower was built to allow co-locations and Cingular intended originally to co-locate on the U.S. Cellular tower on the Eipperle property.

12. Commissioner Vacanti asked why U.S. Cellular is moving off the other site to go on this site? Mr. Mandolfo stated there were issues with that particular tower in terms of the landlord and essentially couldn't get it built.
13. Commissioner Vacanti commented that the concrete is in and everything. Mr. Mandolfo stated they had the tower sitting there and had it half way up but took it back down. It was not pretty.
14. Commissioner Vacanti asked if they have to get federal approval for that and do you have that already? Mr. Mandolfo replied they had federal approval.
15. Commissioner Vacanti asked if the application stated that they already had approval. Mr. Mandolfo stated that initially our tower requirements were 240 feet, U.S. Cellular requires a 250 foot tower so we are building it 10 feet taller to accommodate their needs.
16. Commissioner Vacanti asked how close the location is to the highway. Mr. Mandolfo replied about ½ mile west of the highway. The John Deere implement dealer owns the property on the corner and there is another property owner between us.
17. Commissioner Vacanti stated that the Commission didn't have enough information about the permits and handicap access. We need to find out about that. Mr. Mandolfo stated the building is not large enough to require any handicap access. It's not required and that's why there isn't any.
18. Commissioner Vacanti stated that if somebody is building a tower they are going to have people there and they are going need handicap access and plumbing. Mr. Mandolfo stated the tower is not manned. Ms. Frohlich stated that when they apply for the permit to construct the building our code requirements would be checked.
19. Commissioner Vacanti stated that the Commission will have to know that information before voting on it. Ms. Frohlich replied that the Commission does not determine the requirements for issuing the building permit.
20. Commissioner Vacanti stating that the Commission is voting on a tower and the only way we can vote on a tower giving approval to get a permit is to find out what is going on. Stated he thinks the application should be laid over to look into this tower.

Motion by Commissioner Vacanti to lay over the application. Motion failed for lack of a second.

Motion by Commissioner Roberts to recommend approval of the application. Vice Chair Lanoha seconded the motion if the condition for a Surety Bond for removal was added. Commissioner Roberts agreed to that condition.

Mr. Mandolfo stated that is no problem and there is a provision in the lease that provides that we will return the property it to its previous condition.

Voting Yes: Bruhn, Houlihan, Lanoha, and Roberts.

Voting No: Vacanti.

Abstain: None

APPLICATION P-1-06

REQUEST: Final Plat, Southamptons Subdivision, 81 acre parcel, 80 single family lots with community water and sewer, rezoning from Agricultural Farming-1 (AF-1) to Environmental Resource District.

LEGAL: Part of S ½ of NW ¼ of Section 10, Township 14, Range 10 E. of the 6th P.M

LOCATION: Between 234th and 240th south of West Q Road

APPLICANT: Boyer-Young Development Co., 9805 Giles Road, LaVista, NE 68128

Kent Holm, Director of Environmental Services, presented some history of the Southamptons Subdivision. The Preliminary Plat was first considered by the Planning commission in September, 2005. The Plat was laid over pending completion of the new Comprehensive Plan. The Comprehensive Plan was completed in March and the applicant brought the preliminary plat back to the Planning Commission in a revised format that incorporates conservation design elements. The preliminary plat was approved by the County Board on June 6, 2006. Subsequent to that, staff has been working with Bob Doyle, attorney representing the applicant, to draft a subdivision agreement which would go to the County Board for approval. The subdivision agreement identifies the necessary infrastructure timelines and there is a preliminary statement that defines some of the uniqueness of this development, the conservation design, and some of the elements of the Comprehensive Plan that are being complied with. It is way for everyone to have a better understanding what is planned for the subdivision.

Bob Doyle, 11440 West Center Road, representing the applicant made the following comments:

1. This is a final plat application for 80 lots in the Southamptons and I believe it fully complies with the preliminary plat which the Planning Commission had previously approved and was ultimately approved by the County Board.
2. This is probably the first subdivision that has gone through Douglas County with a subdivision agreement. We have worked with Mr. Holm and Mr. Monbouquette on getting this subdivision agreement prepared which details what it is we will be doing, what we can do, what we can't do.
3. Obviously we are going to be using practices which have not been enforced by Douglas County in the past. We are the first subdivision to be considered under the new Comprehensive Plan.
4. We are using low impact techniques, conservation techniques, and some clustering.

5. We are leaving a lot of open ground which will be dedicated to the public. There will be no development on any of that ground.
6. We do have a very comprehensive subdivision agreement that we concur with.
7. Obviously, some of the concepts of limited impact and so forth will work very well and some may not work too well. We were looking at the rain garden concept but about how well the rain garden concept works with curb, gutters, sidewalks, etc. These concepts are new to us and likewise I think they are new to the County. A lot of these items that are in the Comprehensive Development Plan are taken from other areas of the country where you usually see slab type homes. They are not built with basements so you don't have the problem of back up water and that type of thing but we are working with the County on all of this.
8. I think we have a super subdivision and it's something that Douglas County can be proud of. We would appreciate your recommendation for approval to the Douglas County Board subject to our subdivision agreement.
9. I do have one change on the preliminary plat. We didn't provide for any access for Mr. Alvarez on the final plat. It was on the preliminary plat and we will re-do the final plat to show that access before the County Board considers the final plat.

Commissioner Roberts asked about the sewage issue? Mr. Doyle stated there is an agreement with Douglas County, the City of Omaha, and the developer that has been approved by all the parties. We are pumping the sewage back to the City of Omaha.

Vice Chair Lanoha opened the public hearing.

Dan Souer, 20017 Elkhorn Ridge Drive, attorney representing James and Linda Alvarez made the following comments:

1. The Alvarez property is adjacent to the east of the Southamptons property.
2. The Alvarez's have no objection to the proposed subdivision but ask that approval be contingent upon access to the Alvarez property being shown on the final plat documents submitted to the County Board.

Vice Chair Lanoha closed the public hearing.

Discussion, Comments, Questions.

1. Vice Chair Lanoha asked Don Nielsen, County Engineer's Office, if their office had any problems with ingress and egress to the property? Mr. Nielsen stated that their comments addressed the offset nature of 234th and 235th Street and not allowing future accesses east for approximately 1000 feet.
2. Vice Chair Lanoha asked Mr. Doyle if he was agreeable to the contingency for access to the Alvarez property on the revised final plat. Mr. Doyle replied that agreeable to the applicant.
3. Ms. Frohlich reminded Commissioners that the staff report recommends that the setback request, waiver for maximum cul-de-sac length, and stormwater detention facility located on Outlot A should be part of any motion. Approval should also be contingent upon approval of the subdivision agreement by the County Board.

1. Kevin Denning representing DRB Products is in attendance. Tyler Hevlin with JEO Engineering who has been working on this project had a prior engagement but we are prepared to answer questions from the engineering standpoint.
2. The application is to re-zone the property from agricultural to general commercial and mixed use.
3. We are between the new Comprehensive Plan and yet to be adopted zoning regulations but this specific project is in accord with the Comprehensive Plan.
4. The parcel is an approximately 74 acre triangular area bounded on the north by Old Highway 36, on the southeast by new Highway 36 and on the southwest by new Highway 275. Also pointed out that this area is designated as mixed commercial on the land use concept map. The parcel has a lake that is about 15 acres.
5. It is planned to develop the parcels around the lake and that will be possible after the property is re-zoned.
6. There is also discussion with the State of Nebraska Department of Roads for access off of the new Highway 36.
7. As further interest is developed with other owners, then a subdivision with internal street and an internal water system will be developed. This is eventually expected to be an SID with community water and sewers.
8. The initial phase of development will be the RV service and sales consisting of two buildings with private well and septic system.
9. DRB Products is also working with property owners immediately to east and southeast on restrictive covenants that will restrict development to an aesthetically pleasing manner for all interests. A draft of those covenants was included with the application.
10. The size, location, and configuration of the future lots will depend upon the interest and proposed use.
11. The comments by the Douglas County Engineer's office have been reviewed and the applicant is prepared to satisfy those concerns.
12. Staff recommendations and conditions are also agreeable.
13. JEO has explored the location of utilities. Connection for sewage disposal is approximately one mile from the northeast corner and connection for water is immediately to the west. Initial contact has been made with the Fremont water district.
14. Understand that there are floodplain and drainage issues and are prepared to deal with those.
15. The applicant is requesting approval to move forward with this as the early stage of business/commercial development in accordance with the Comprehensive Plan.

Commissioner Vacanti asked what kin of business DRB is? Mr. Anderson replied they are recreational vehicles sales and service. They are presently in Fremont and Mr. Denning is here to answer questions about that but he will be moving his center here.

Vice Chair Lanoha opened the public hearing.

Cathy Hanus, 13808 North 324th Street, made the following comments:

1. I first heard about this just through the grapevine a couple of days ago. I came down here immediately and looked at the public viewing box but it didn't have the staff comments in there, there wasn't any indication without those staff comments of even what kind of a development they were talking about.
2. There was no sign out by this property to notify any of the neighbors and I haven't researched things to even know if there was proper 200 foot notification.

Vice Chair Lanoha asked if she lives a mile, two miles or what distance?

3. Cathy Hanus pointed out her property on the map and stated that from one point it is about ½ mile and from another about ¾ mile.
4. (Unintelligible) Road is about the only road we have to go out and we travel this area because to the north the road is completely torn up.
5. We work out of our home, and home school our children. We are at home all the time and probably travel past this area sometimes 4,5, and 6 times a day.
6. I have some concerns and I don't have a clue I haven't seen anything like this. I had no idea they were talking about an RV recreational place prior to this evening
7. I'm concerned that you want to rezone something to mixed use commercial that's not in the regulations yet. If that's even a legal thing you can do.
8. The stakeholders during meetings when they were developing the Comprehensive Plan wanted to maintain the rural character of their area.
9. I'm concerned partly we live in a floodplain area and one of the big issues of the Comprehensive Plan was the density issue. If you start putting homes here and commercial business, I'm concerned you are going to have issues as far as the sewer and that type of thing. Are they hooking to the sewer?

Commissioner Vacanti stated they are hooking into sewer and water.

Ms. Hanus continued her comments:

10. Stated that there are a lot of things that have yet to be figured out about what is happening here.
11. Right next door you didn't allow commercial rezoning, you issued a Conditional Use Permit. I think perhaps it could be better controlled so it fits the specific area better and that you should consider the possibility of a Conditional Use Permit also for this.
12. Also they have talked about development in the Comprehensive Plan where they require half of the property is supposed to be with green space and what concerns me is right now if you look at their covenants they talking about one acre lots. Realistically if you talking a 15 acre lake and one acre lots, that's about 60 acres the place would look pretty congested pretty fast and I'm concern about all the traffic as far as that's concerned.
13. The area to the north is 324th Street, that's the narrowest road in Douglas County. In your future transportation plans, there is no plan on paving that anytime in the near future. Right now it has almost reached the point where it needs (unintelligible) maintenance. The rain that we recently had required 4-wheel drive.

Vice Chair Lanoha asked Ms. Hanus to conclude her comments.

14. Ms Hanus stated that she felt the developers should take time to talk to the neighbors about what is going on. Instead the burden has been put on us to come from 324th Street down here for the meeting.
15. I am asking you is to keep it agricultural until things are a little more firmed up so we know better what is going to happen instead of changing it to mixed use zoning, when you don't even have it in the regulations yet. Consider a Conditional Use Permit and keep the density low.

Vice Chair Lanoha closed the public hearing. He also commented that he believes this is a great project to come to Douglas County, it is more tax base and the lake provides for ample open space. It's his opinion that it should not be residential.

Discussion, Comments, Questions.

1. Commissioner Roberts asked Ms. Frohlich if she followed procedures as far as posting and notifications? Ms. Frohlich replied that all procedure were followed and that sometimes signs do disappear from property.
2. Vice Chair Lanoha asked if Ms. Hanus was notified. Ms. Frohlich replied that she was not on the list for notification. Vice Chair Lanoha stated Ms. Hanus was not within the 300 feet limit.
3. Commissioner Roberts asked Mr. Monbouquette if rezoning would be illegal since the regulations have not been finalized as Ms. Hanus referred to.
4. Mr. Monbouquette replied that he thinks that this situation is going to happen when existing property is moving from the old Comprehensive Plan to a new Comprehensive Plan and then the corresponding transition from the old regulations to the new regulations. Believes that the type of use that is requested here is what has been adopted in the new Comprehensive Plan, we are moving from the old to the new.
5. Commissioner Roberts asked Mr. Holm if he was suggesting that any motion for approval is based on the completion and acceptance of the new zoning regulations. Mr. Holm replied we are working right now with the February Resolution by the County Board which directed staff and the Planning Commission to work with applicants as opposed to completely declaring a moratorium and shutting off development until we got new regulations in place. The County Board asked us to work with applicants and to meet, as best we could, the concept and policies in the Comprehensive Plan. That's what we have been doing. We obviously worked with the Southamptons and now with this particular applicant. We work with other applicants too that don't necessarily come before this Commission on site plan reviews and things like that. We are implementing as much of the Comprehensive Plan policies as we can. Hopefully, we will be able to get the new zoning regulations draft in front of the Commission very quickly so we can proceed with that process. With these applications we are making it very clear that there is going to have to be a development agreement. The Southamptons subdivision agreement helps spell that out and allows us the

vehicle to be able to explain what the County Board wants us to do so that everybody has a better understanding of not only what we are doing with infrastructure but why we are calling it this, why we are calling it mixed use. When the zoning regulations are completed, they will be very specific. It might be mixed use 1, 2 or 3. It will be a housekeeping item at that point to make that fit but right now it is conceptual. We certainly want to have a development agreement that addresses this and Mr. Anderson has indicated they are willing to do that. We don't see that there is an issue in moving forward with this because again we are trying to comply with the County Board's Resolution and create a paper trail that identifies what it is we are doing and where this is going.

Commissioner Vacanti made a motion to recommend approval of the application and let it go forward under any rules that are legal.

Ms. Frohlich asked if he wanted to include "contingent upon development agreement."

Commissioner Vacanti replied "any rules that are legal." Commissioner Vacanti replied to Ms. Frohlich that she is saying three or four things that the Commission can't do. He is saying that anything that applies to this man's application let him get out there and develop it. You said you were going to stop development are you going to stop the taxes for the year he has to pay. We have to go forward on these developments so whatever it takes.

Motion failed for lack of second.

Commissioner Roberts made the motion to recommend approval of the application to rezone from agriculture to mixed use contingent upon the development agreement.

Commissioner Vacanti seconded the motion.

Voting Yes: Lanoha, Roberts, Vacanti, Bruhn, and Houlihan.

Voting No: None

Abstain: None

APPLICATION G-12-06

REQUEST: Cede jurisdiction, proposed Bennington Estates Subdivision

LEGAL: Part of the NE ¼ of Section 8, Township 16 N, Range 11 E of the 6th P.M.

LOCATION: SE corner of 180th and Highway 36

APPLICANT: E&A Consulting, 330 North 117th Street, Omaha, NE 68154

Mr. Holm made the following comments:

1. Staff met with Skip Wolfe, Mayor Bennington, and the City's engineer from JEO.
2. Bennington has submitted a letter requesting that we cede jurisdiction as well.
3. Around 40% of the proposed subdivision lies within Douglas County's jurisdiction and staff felt that we couldn't make a recommendation to cede jurisdiction when the new Comprehensive Plan policies weren't being followed at least in Douglas County's portion of this subdivision.
4. There could potentially be an interlocal agreement among the three parties, the County, the SID and the City of Bennington.
5. The interlocal agreement would address some of the Comprehensive Plan elements like the conservation design. An interlocal agreement was drafted.
6. We would also look to implement the ASIP (arterial street improvement program) for this subdivision. That provides some additional monies for improvements to arterial streets.
- 7.

Bob Doyle, 11440 West Center Road, made the following comments as representative for the applicant:

1. This is an approximately 103 acre tract of ground which is located south and west of 180th Street & Highway 36.
2. Approximately 40% of the proposed subdivision is located within Douglas County jurisdiction and 55-60% located within the City of Bennington's jurisdiction.
3. An NRD public recreation area is located to the south and Shiloh Ranches is adjacent to the west. Shiloh Ranches is a subdivision like the one that you see outlined here except it has 4 or 5 acre lots.
4. To the east is Bennington Lake (Newport Landing) which is a very high end lake development with lots probably smaller than these which are proposed in this subdivision we are calling Bennington Estates.
5. Our feeling at the outset, seeing that you would have Bennington Estates to the east and Shiloh Ranches on the west which had already been developed was that Douglas County would take little if any interest in this piece of land.
6. The concept is basically an acreage development. There are about 74 lots on this 103 acre parcel. We felt it was incumbent upon us to apply to the City of Bennington first and the City of Bennington understands that they cannot speak for the area in Douglas County's jurisdiction.
7. The City of Bennington liked the concept that we proposed which are the acreage lots and they approved it.
8. The other point was that at some point in time, if the City of Bennington ever annexed Newport Landing or annexed any areas out here a little bit further this eventually would be part of the City of Bennington.
9. We don't have any problem with the conservation design elements as they relate to the Southamptons but this piece of ground is not a conservation development area. It is rolling hills and basically a cornfield. It is not the same as the Southamptons where there is limited impact development and 20-40% open space.
10. The developer has reviewed the plat to see if the limited impact items could be incorporated but it can't be done to the same extent as what was done in the Southamptons.

11. The NRD is asking us to have a buffer zone and the draft of the interlocal agreement it says "that all of the lots should back onto a buffer type area or open space." Lots on the perimeter don't allow for that.
12. The developer is willing to redesign the preliminary plat and make application to the County Planning Commission with final approval by the County Board but we concurred with the City of Bennington that it would probably be easier if there was just one party with jurisdiction. However, the City of Bennington's concept of what this should look like and the Douglas County's concept are certainly different.
13. The developer has no problem with the interlocal agreement stating that Douglas County will retain their ASIP fees. The City of Bennington will likely be considering the adoption of an ASIP fee.
14. Under the interlocal agreement, there are certainly things to negotiate with staff because they would be very difficult for us to comply with on this subdivision.
15. Your Comprehensive Plan shows this as existing development even though it is not existing development but there is existing development on both sides of it.
16. The area is more akin to urban development than it is to rural development and there is not really any designation that fits in between. In your stormwater exhibits there is an entity that is called "moderate density type area" and maybe that is more akin to this area.
17. Increasing the density and open space are things the developer is looking at.
18. The developer can proceed with submission a preliminary plat or we can proceed with the interlocal agreement to cede jurisdiction to the City of Bennington.

Vice Chair Lanoha opened the public hearing. No one from the public spoke for or against the application. The public hearing was closed.

Discussion, Comments, Questions:

1. Commissioner Vacanti asked if the developer has plans for the land below the lot lines. Mr. Doyle replied that area is the NRD property with a beautiful lake and recreational area.
2. Commissioner Houlihan asked for clarification as to what the Commission is being asked to do with this application.
3. Vice Chair Lanoha stated the Commission is suppose to decide whether to cede jurisdiction of this ground to the City of Bennington. Also stated that it seems to make sense to have an interlocal agreement to make sure everybody gets what they want. Asked Mr. Doyle if an interlocal agreement was acceptable to the developer.
4. Mr. Doyle replied that an interlocal agreement is acceptable and some changes need to be made to the preliminary plat. He stated he would work with Mr. Holm on the interlocal agreement and bring it back to the Planning Commission for review.
5. Mr. Holm stated that the interlocal agreement presented to the Planning commission is a draft and contains the basic principles to be consistent with what we have done with other applicants. He also stated the City of Bennington has not made any comments on the draft.

6. Mr. Holm also concurred that he believed an interlocal agreement can be worked out.
7. Mr. Doyle also mentioned that the interlocal agreement will also designate which lots will be in Douglas County's jurisdiction for the ASIP fees.

Ms. Frohlich suggested and Mr. Holm concurred that the application be laid over to next month with an interlocal agreement for the Planning Commission to review at that meeting.

Commissioner Houlihan made a motion to lay the application over until the next Planning Commission meeting.

Vice Chair Lanoha seconded the motion.

Voting Yes: Vacanti, Bruhn, Houlihan, Lanoha, and Roberts.

Voting No: None.

Abstain: None

Discussion items:

Mr. Holm handed out a brochure from the Nebraska Land Trust regarding a Conservation Seminar on Conservation Easements. He will be speaking about the conservation design element of our Comprehensive Plan and how it fits with conservation easements.

Meeting adjourned at 7:15 p.m.

Minutes approved September 13, 2006.