

**DOUGLAS COUNTY  
PLANNING COMMISSION MEETING  
3015 MENKE CIRCLE  
OMAHA, NEBRASKA 68134  
October 10, 2007**

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

Members Present: Bob Boozer, Bob Bruhn, Michael Gerdes, Dave Lanoha, Joe Roberts and Milo Vacanti.

Member Absent: Barbara Hayes, Ann Houlihan, and Luke Janke.

Other County Officials and Staff Present: Barbara Frohlich, and Kent Holm (Douglas County Environmental Services), and Bernie Monbouquette (County Attorney's 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 Roberts, seconded by Commissioner Bruhn to approve September 12, 2007 meeting minutes.

Voting Yes: Bruhn, Lanoha, Roberts and Vacanti.

Voting No. None

Abstain: Boozer and Gerdes.

**APPLICATION                    G-11-07 (laid over from September 12, 2007 meeting)**

REQUEST:            Amend interlocal agreement with the City of Valley to square off extraterritorial jurisdiction on the south, 259<sup>th</sup> to Platte River, with Blondo as south boundary. Douglas County jurisdiction requested to be ceded equals approximately 77 acres.

APPLICANT:        City of Valley Nebraska

Mr. Holm presented this application with the following comments:

1. This application was originally on the September 12, 2007 agenda. We requested it be laid over because there is an application on tonight's agenda for ceding another area of jurisdiction to the City of Valley.
2. The application adjusts the south extraterritorial jurisdiction boundary of the City of Valley.
3. Staff recommends that the application be recommended to the County Board for approval.

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

Motion by Commissioner Vacanti to recommend approval of the application, seconded by Commissioner Boozer.

Voting Yes: Gerdes, Lanoha, Roberts, Vacanti, Boozer, and Bruhn.

Voting No: None.

Abstain: None.

**APPLICATION                    G-13-07**

- REQUEST:**            Cede jurisdiction to City of Valley for proposed Preliminary Plat for Subdivision, Glass Lake, approximately 342 acres. Approximately 116 acres is located in Douglas County's jurisdiction.
- LEGAL:**                Part of the SE ¼, the SW ¼ and the NW ¼ of Section 15 and part of the NE ¼ of Section 16, and part of the NE ¼ and NW ¼ of Section 22, and included right-of-way of Rainwood Road all located in Township 16 N, Range 19 E of the 6<sup>th</sup> P.M.
- LOCATION:**            300<sup>th</sup> Street to 312<sup>th</sup> Street between Reichmuth Road and Highway 275
- APPLICANT:**        Douglas County Environmental Services

Vice Chair Lanoha clarified for the public in attendance that this application is for ceding jurisdiction to the City of Valley, it is not to approve the lake or the project.

Mr. Holm presented the application with the following comments:

1. Staff has asked Jason Thielen, E&A Engineering, to make a presentation tonight that is basically the same as was presented to the City of Valley,
2. Staff is recommending an interlocal agreement similar to the one with the City of Bennington and the SID for the Newport Hill subdivision to incorporate elements of the Comprehensive Plan for Douglas County, i.e. Conservation Design and Low Impact Development.
3. One thing that was omitted from the staff recommendation is consideration of whether or not the area is appropriate for resource extraction.

Jason Thielen, E&A consulting, made the following comments on behalf of Glass Lake LLC.

1. I am just going to take you through the presentation that we have done for the City of Valley.
2. We have preliminary plat approval from the Valley City County as of last night.
3. We are in the process of preparing our revised preliminary and final plat.
4. The project is a 342 acre lake development located northwest of 300<sup>th</sup> Street and Reichmuth Road.
5. The project is centered around a lake with approximately 330 lots. Some adjustments are being made that may change the number of lots.
6. 246 lots will be single family lots with lake frontage.
7. Approximately 40 acres will be for commercial development and will include a marina for access to the lake, lots for restaurants, a bank, and a convenience store.
8. Zoning will be changed to be consistent with the City of Valley requirements.
9. The property is located in the floodplain which means the first floor of structures will have to be three feet above the existing ground.
10. However, the Corps of Engineers has given us an elevation that is two feet higher that we have to comply with.
11. All lots around the lake with have walkout basements so actually the ground will be raised 18 to 20 feet.
12. There are not wetlands located on the site and Corps of Engineers has issued a letter stating that no mitigation is required.
13. This project is located in the City of Valley's jurisdiction and Douglas County jurisdiction and has been designed to comply with the requirements of either jurisdiction.
14. Approximately, two thirds of the project is located in the City of Valley's jurisdiction and one third is in Douglas County's jurisdiction.
15. We are requesting the vacation of Rainwood and are the majority property owners on both sides of the area to be vacated.

16. Sanitary sewer will be utilized with each lot having its own grinder pump and there will probably be a lift station located in the eastern part of the project and from there it will gravity feed into the Valley system.
17. Storm sewers will also be part of the project.
18. We have followed the Douglas County Comprehensive Plan , it talks about stormwater, some of the low impact development items that they like to see and we have those in the back of our minds so we can easily adjust this plan to incorporate those.
19. Municipal water service will be provided from the main line at Valley and will not come from Valley Shores.
20. 300<sup>th</sup> Street as well as all roads within the project will be paved.
21. Four access points are proposed off Reichmuth Road and three off 300<sup>th</sup> Street. We are waiting for approval on these.
22. Warning sirens will be placed on the property.
23. The lake will be 160 acres and since this is the feature of the project, maintenance of the lake is extremely important. An aquatic biologist is working on a management plan for the lake to assure the health of the lake for a lifetime.
24. Highway 275 is a green corridor and the required buffer and landscape regulations are included in the design.
25. A controlled shooting range and airstrip are located on Mr. Werner's property adjacent to the project and no problems with the uses co-existing are anticipated.
26. There is almost a 500 foot separation between the properties with the Reichmuth Road right of way as well as the Union Pacific right of way as well as higher density units and commercial uses so that it not seen as an issue.
27. Future homeowners will have that information disclosed to them within the covenants and with lot sales.
28. The project will probably be constructed in three phases. Construction of the lake will begin in the spring and probably be a two to three year project. A two to three year build out is planned for each phase.
29. A waiver to reduce cul-de-sac radius was requested and denied by the City of Valley.
30. Available to answer any questions.

Vice Chair Lanoha opened the public hearing.

Mary Caffey , Mayor of the City of Valley, made the following comments:

1. Thanked the Planning Commission for the opportunity to speak and apologized for walking into the meeting late.
2. Stated she was sorry she missed Mr. Holm's opening remarks.
3. The City of Valley joins with the applicant here, Douglas County Environmental Services, for the request to cede jurisdiction to the City of Valley.
4. The City of Valley does not wish enter into an interlocal agreement. We see that it would be in the best interest for the City, for the development, and for consistency in development in our area to follow all the management practices that the City of Valley has successfully employed with the developments that we have in our area right now
5. Those of you who have been out in our area would understand that stormwater management that we have to address and our best practices are not the same as you would see in the Papio watershed. We would like to continue to employ those best practices. Our issue is moving the water, and not retaining the water.
6. The City of Valley requests the jurisdiction be ceded without an interlocal agreement.

Roger Booze, 30290 Rainwood Road, made the following comments:

1. Asked if his zoning would change because he has green belt status.
2. Pointed out the location of his house and his brother's house and stated he has lived there for five years.
3. Expressed concern about the increased traffic in front of their homes.

4. Stated that originally the development was going to build their own road on the south side of Rainwood Road and close Rainwood Road. Now they plan to use Rainwood Road because they say they cannot get another access approved along that side.
5. Didn't move to this area to have 50-60 cars or more going by his house.
6. Wants Rainwood Road closed because he has grandkids and dogs.
7. If all the traffic will be going in front of his house, he will put his property up for sale.
8. Also was told he would have to take out his septic tank because of runoff but was told the developer will replace it.
9. Thinks the County should approve an access for them.

Mr. Holm pointed out to Planning Commissioners that the property Mr. Boozer is referring to is located in the City of Valley's jurisdiction and that staff would make the County Engineer aware of his concern since that office is responsible for decisions regarding roads,

Ms. Frohlich also suggested that Mr. Booze might contact the County Engineer directly to discuss the situation with them and offered to provide their telephone number.

Commissioner Boozer asked what alternative there would be for the road situation.

Jason Thielen responded that Rainwood Road is the half mile section line road. The intersection became an issue if the entire length of Rainwood Road was vacated. We explained to Mr. Booze that if the County Engineer agreed to another access point, the road would be offset. The developer does not have a problem with vacating the entire length of Rainwood Road if the County Engineer will agree.

Vice Chair Lanoha closed the public hearing.

Commissioner Vacanti commented well, I think the road issue and ceding all that land from Douglas County. I haven't even been into this yet and I sure would like to study it a little bit.

Motion by Commissioner Vacanti to lay over the application, seconded by Commissioner Boozer.

Mr. Holm asked Commissioner Vacanti to clarify when the application would be heard again. Commissioner Vacanti stated 60 days. Ms. Frohlich stated there would not be a meeting in December. Commissioner Vacanti stated to lay over the application until January.

Larry Jobeun appearing on behalf of the applicant stated that the applicant has a closing on December 1<sup>st</sup> and would like to get these issues resolved before they are required to close on property. Asked if 30 days could be sufficient if the applicant met independently with commissioners to answer any questions between now and the next meeting. The 60 days really causes a problem for the applicant.

Commissioner Roberts asked for clarification of the reason for the motion to lay over the application. Commissioner Vacanti stated that because when you cede that many acres in the County, he wanted to look at it.

Commissioner Roberts asked if he was talking about the roads. Commissioner Vacanti stated he was talking about the land we have to cede. I am talking about the gentleman worrying about the road. There are a lot of things here that nobody has seen. Have you seen this before? Has this been up here before?

Commissioner Roberts stated it is a preliminary not final plat. Ms. Frohlich reminded commissioners that the application is to cede jurisdiction not approve a plat.

Commissioner Vacanti stated he made a motion so make a roll call please.

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

Voting No: Roberts and Gerdes.

Abstain: None.

**APPLICATION            G-14-07**

REQUEST:        Review buffer dimension around landfill

APPLICANT:     Douglas County Environmental Services

Mr. Holm explained that the Douglas County Comprehensive Plan, page 47-48, recommends that the one half mile buffer around the landfill be reviewed on an annual basis to determine if it should be continued, expanded, or decreased.

Vice Chair Lanoha opened the public hearing.

Donald Appleby, Burnsville, MN , made the following comments:

1. Stated that he owned land on the west of the original landfill, on the west side of 225<sup>th</sup> Street.
2. Would like to know what the buffer zone really is and wants to understand what is going on with the landfill.

Mr. Holm made the following comments:

1. The existing landfill has a monofill which is still in operation and that is currently on the north side of RDF site which is between 216<sup>th</sup> and 225<sup>th</sup> Street.
2. The solid waste landfill that is currently accepting solid waste is east of there so there is essentially almost a two square mile area there that has some landfill activity.
3. The active landfill, Pheasant Point, is going to continue in operation.
4. The monofill is continuing at this point and I don't have an ending date for that particular activity.

Mr. Appleby asked if the monofill was receiving the product from the Blair plant and if it was different from the material going into the public landfill.

Mr. Holm answered that the monofill receives product from the Blair plant and it is different from the material going into the public landfill.

Mr. Appleby stated that he was aware the material going into the monofill was supposed to be biodegradable and that he knows it was rotting because you can smell it for several miles. He also asked if the monofill was a concern for the buffer area and wondered how long his land would be in the buffer zone.

Mr. Holm responded that the intent of the buffer zone is to minimize conflicts with residential development primarily and it is not intended to restrict all development within that buffer. Industrial and commercial type development are not seen as a problem within that buffer zone. When the Comprehensive Plan was being developed, it was felt that the buffer needed to be there in order to prohibit residential development within that buffer because of the potential conflicts such as noise and smell issues.

Vice Chair Lanoha asked Mr. Appleby if he was concerned about his ability to keep farming or someday being able to development the property.

Mr. Appleby responded that he had no problem continuing to farm and that the only problem right now is the horrible smell that they are trying address but he was concerned about what is going to happen down the road with the buffer zone. He is taxed just like the guy that is out of the buffer zone. It isn't fair and I can't get it changed.

Mr. Holm stated that staff's recommendation at this point is to leave that half mile buffer intact and the reason for the public hearing is to gather input. He expressed his appreciation for Mr. Appleby commenting on the review.

Vice Chair Lanoha closed the public hearing.

Commissioner Roberts asked Mr. Holm if any changes with the landfill are foreseen for the next year.

Mr. Holm responded that he and Norm Hansen in our office have had discussions with Scott O'Neill with Waste Management about the odor issue on the monofill. Believes the odor issue will get resolved but if it doesn't, action may need to be taken related to the conditional use permit for the monofill. That is the only potential change.

Motion by Commissioner Vacanti not to change the half mile. He also asked who brought this issue up.

Ms. Frohlich stated that the Comprehensive Plan requires that it be reviewed every year.

Vice Chair Lanoha asked if Commissioner Vacanti intended the motion to keep the buffer zone the same.

Commissioner Vacanti stated he wanted to keep the buffer zone one half mile. Commissioner Boozer seconded the motion.

Voting Yes: Roberts, Vacanti, Boozer, Gerdes, and Lanoha.

Voting No: None.

Abstain: Bruhn

**APPLICATION                    G-15-07**

REQUEST:            Adopt 2006 International Residential Code as amended by the City of Omaha

APPLICANT:        Douglas County Environmental Services

Ms. Frohlich presented this application by stating that Douglas County makes an effort to adopt the same Building Codes as the City of Omaha to provide consistency for contractors. The City of Omaha has adopted the 2006 International Building Code with amendments and staff is recommending that Douglas County adopt the same code.

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

Motion by Commissioner Roberts to recommend approval of the application, seconded by Commissioner Gerdes.

Voting Yes: Boozer, Bruhn, Gerdes, Lanoha, Roberts, and Vacanti.

Voting No: None.

Abstain: None.

**APPLICATION                    G-16-07**

REQUEST:            Adopt Private Water Supply (potable) supplement to Zoning Regulations

APPLICANT:        Douglas County Health Department  
Douglas County Environmental Services

Mr. Holm stated that there was discussion about this last month and the Health Department recommended that the existing regulation be split into two regulations to address potable and nonpotable private water supplies. The Health Department has prepared a draft for your consideration.

Vice Chair Lanoha opened the public hearing.

Mr. Monbouquette stated that he was asked by the Health Department to review their draft of the proposed regulation for potable water supply systems and he provided comments and answered questions. Several definitions were added, clarification of the location where measurements are made was added, and violations clarified.

Commissioner Vacanti commented that he didn't want this to interfere with existing people out there. They are making their living in different types of well business and watering their product, whatever they have out there.

Mr. Holm responded that the regulation as it is written only would apply to new well situations.

Commissioner Vacanti asked what if someone has 500 acres and they want to put a well on the other side so that they can build a little factory and use private water. Are the new regulations just for people that are going to try to start a business?

Commissioner Gerdes stated that he sees the regulation as the basis for definitions more than anything else. The State Department of Health governs well installation and wellhead protection. It is a separate document

Mr. Holm added there are a number of Health and Human Services regulations that would apply.

Ms. Frohlich added that this is the basic regulation for somebody wanting to drill a well for a house out in an area where there is not municipal water.

Commissioner Vacanti asked if the old regulations weren't any good. Ms. Frohlich responded that the one regulation was split into two separate regulations.

Commissioner Vacanti asked about subdivisions that have to water all their common areas. Ms. Frohlich stated that this regulation only relates to drinking water.

Mr. Monbouquette stated the definition of potable water is water suitable for human consumption. On page three, it also stated that construction requirements are outlined in the Nebraska Health and Human Services regulations and those have to be complied with. Quality of water is determined by standards promulgated by the Environmental Protection Agency and the Nebraska Health and Human Services Department. The last page also states the Nebraska Health and Human Services regulations for design, construction, installation, and operation must be complied with as well as distribution systems must comply with MUD standards.

Vice Chair Lanoha commented that he believes Commissioner Vacanti is concerned and that he agrees that the regulation should not prevent someone from getting a permit to put a well in that goes through all the proper channels and meets the regulations. The regulation does not stop businesses or homeowners that are not served by MUD from obtaining well permits and even if they are served by MUD, the applications still goes to the Plumbing Board.

Mr. Holm pointed out that an applicant can always request a waiver.

Motion by Commissioner Roberts to recommend approval of the application, seconded by Commissioner Bruhn.

Voting Yes: Bruhn, Gerdes, Roberts, and Boozer.

Voting No: Lanoha and Vacanti

**APPLICATION            G-17-07**

REQUEST:            Adopt Private Water Supply (non-potable) supplement to Zoning Regulations

APPLICANT:        Douglas County Health Department  
                         Douglas County Environmental Services

Mr. Holm stated this is the draft regulation developed by the Health Department for non-potable uses. One of the reasons the regulations were separated was a concern about the use of geothermal wells in areas that are served by municipal water sources.

Vice Chair Lanoha opened the public hearing.

Brian Doyle, Fullencamp, Doyle, and Jobeun, representing a number of residential and commercial land developers made the following comments:

1. Speaking in opposition to the non-potable water supply system regulation of private wells and specifically to the language that was added that prohibits private wells for the purpose of supplying water to a water feature.
2. Opposed the singling out of this specific limited use of a private well while not precluding other uses also.
3. Will provide information about why it is important for land developers to be able to dig wells in order to supply water to these water features.
4. Water features are often times much more than just a water feature or fountain. A water feature while it enhances the aesthetics of a residential development also provides valuable stormwater detention which reduces the amount of stormwater runoff.
5. Water features are often times an integrated part of a development's stormwater runoff plan. Water features can and do help to further the County's draft stormwater management policy by providing both pre-construction and post-construction benefits in reducing sediment and in controlling erosion.
6. Water features designed and used as naturalized detentions and infiltration basins also further the County's Comprehensive Plan. The County's Comprehensive Plan addresses stormwater management in appendix B and has a number of Best Management Practices which the County has advocated for encouraging low impact development. While utilizing methods such as less impervious coverage, bioswales, rain gardens, and stormwater level spreaders,. One thing that we know is that the need for these detention basins still exists and it also still is the best method for capturing stormwater prior to leaving the site. It reduces peak discharge, it enhances the quality of the water by removing sediment and silt and other contaminants. Another thing I noticed in the Comprehensive Plan is that the Plan identifies the detention basins as an attractive site amenity also. Generally, detention basins as I understand it come in two different types, there are dry basins and wet basins. In a dry basin, the stormwater event the water fills in and it is slowly released out. While dry basins are effective and certainly are used frequently in pre-construction phases. Dry basin long term as a stormwater detention is both unsightly and as I understand from my research, it is not as effective as a wet basin particularly in the post-construction phase. A wet basin as the name implies contains water at all times and during the rain event, that basin is built to accommodate additional stormwater runoff which again is slowly released out. A wet basin provides improved sediment dispensing ability over dry basins and provides the additional benefit of natural vegetation, improved wildlife, improved microorganisms to improve the effectiveness of the basin. Although it also provides something that is aesthetically pleasing to homeowners that have to end up living next to these basins. In conclusion, without supplementing wet basins with well water, what will happen is that the cost to use MUD water to supplement these wet basins would be cost prohibitive. We believe that would leave many of the designated wet basins to deteriorate into more or less a dry bed basin that becomes weed infested, mosquito breeding ground that has less effectiveness and also creates a community eyesore for the people that end up living next to these. Due to the cost of municipal water, many wet basins will be left unfilled and I believe they will be left to the fate which I have described. I think allowing well water to

enhance wet basins is a win-win both for the City and for the developer, it provides both an economic benefit by providing an attractive amenity in a development and it also is an improved environmental benefit by reducing the amount of sediment in there. I would be happy to answer any questions and Mark Westergard is also here.

Mark Westergard, E&A Consulting, representing a number of developers made the following comments:

1. E&A has designed a number of dry and wet basins representing a number of developers.
2. Wet basins have the ability to drop out 50 to 100% more sediment than a dry basin.
3. To keep a wet basin looking attractive with MUD water is very expensive.
4. Seems the ordinance is written singling out water features.
5. Seems a farmer could drop a well producing 600 to 1,000 gallons per minute for center pivot irrigation but a 30 gallon per minute well to top off a small wet basin is not allowed. This doesn't seem consistent.
6. Seems it would be better to allow all the applicants to make their case for the merits of their application and then have the applicant ruled on as being acceptable or not.

Mr. Monbouquette asked the two speakers to identify where in this draft regulation there is prohibition on wells of non-potable water to be used for water features.

Mr. Westergard replied on page two under the application process.

Mr. Monbouquette read from the draft regulation, "says that no wells shall be drilled for supplying water features where municipal water is available" so it seems to be that if municipal water is not available there is no prohibition on a well being drilled to be used for water features.

Mr. Westergard stated that is correct but nearly all developments are done with MUD water available and there is also the requirement for onsite detention so a given project with onsite detention would be required to use MUD water to supplement the wet basin.

Mr. Monbouquette responded that is not a blanket prohibition and he was interpreting Mr. Westergard's comments to indicate that.

Mr. Westergard stated that is how he read it. Any place that MUD water is available, you could not drill a well for supplying the water to a water feature.

Commissioner Lanoha also made the following comments:

1. He is a developer and interesting that Mr. Westergard brought up that someone could put in a 1,000 gallon per minute well and we can't supply water to the wet basins.
2. The wet basins are amenities, an aesthetic amenity and quality of life issue.
3. Believes we are going too far to correct issues.
4. If wells are properly installed and meet all the regulations, doesn't know why we need further restrictions.
5. He is also owner of a large nursery and MUD water cannot be used. It will hurt our plants tremendously and other nurseries also have the same concerns.
6. It is extremely expensive to extract chlorine and chemicals from MUD water, almost seems that MUD helped write the new regulation.

Commissioner Gerdes stated that he totally agreed with Commissioner Lanoha and believes that the harm done to some of these basins by adding municipal water needs to be looked at.

Commissioner Roberts asked if the new City of Omaha park out along Dodge Street out toward Elkhorn was using MUD water for its water feature. Mr. Holm and Vice Chair Lanoha stated they didn't know the answer.

Mr. Monbouquette pointed out that the regulation was drafted by the Health Department.

Mr. Westergard further commented that when application has been made for small wells to top off basins to the Plumbing Board, there has never been opposition from MUD. Doesn't think MUD cares too much about them as long as they are small well and don't interfere with their well field. Would be happy to give you examples of wet basins and dry basins, there is a huge difference between a dry basin that is there permanently and a wet basin that is properly maintained.

Commissioner Roberts asked if there had ever been a problem with them in the past. Mr. Holm stated that he wished the Health Department was at the meeting to answer questions and would understand if the Planning Commission wants to lay this over until the Health Department could be in attendance. Also pointed out that the Health Department has expressed that there are private wells that are having trouble getting water and so if more wells are put in those areas that becomes more of an issue.

Motion by Commissioner Vacanti to recommend denial of the application, seconded by Vice Chair Lanoha.

Voting Yes: Gerdes, Lanoha, Vacanti, Boozer, and Bruhn.

Voting No: Roberts.

Mr. Holm stated that he would take this draft regulation back to the Health Department because they are going to have to address the issue because they split the regulation into potable and non-potable. They are going to have to address this some way. It is going to have to come back before you in some form.

Commissioner Vacanti asked why it would come back when there were two separate motions. Mr. Holm stated that the regulation was just recommended for denial had a section that regulates geothermal wells so the regulation will have to be re-drafted to address that issue.

Mr. Westergard added that he believes the proper authority for approving wells should be the Douglas County Health Department rather than the Plumbing Board and believes the development community would support that.

#### Announcements

Mr. Holm pointed out the announcement for a Greenroof Symposium on October 25, 2007 and encouraged Commissioners to consider attending.

Ms. Frohlich stated at this point, there will not be a November or December meeting.

Commissioner Roberts asked about the procedure for a special meeting to be called. Mr. Monbquette stated that the By-laws state that special meetings may be called by the Chair upon determination that such a special meeting is required. He also stated that a majority of members of the Planning Commission can request in writing to the Chairman that a special meeting be called.

Meeting adjourned at 7:02 p.m.

Minutes approved November 14, 2007.