

Minutes

June 13, 2022

Planning Commission Meeting

The agenda for this meeting was posted in the legal paper of record, the Plattsmouth Journal, on May 26, 2022. Planning Commission Members Althouse, Tesar, Staben, Mueller, Oehlerking, Felthousen, Sullivan and Widick met as advertised. Dennis was not present.

The Chairman, Alan Mueller, opened the public meeting at 7 pm & stated that the open meetings act is posted on the wall. Sullivan made a motion to approve the April 11, 2022 minutes as read. Seconded by Althouse. A voice vote followed with all present voting aye.

Mueller asked Mike Jensen, Zoning Administrator, to introduce the first item on the agenda: Conditional Use Permit 11397 - Tincher Investments Co., Inc – Young Road, Plattsmouth, NE – W1/2 NW1/4 SE1/4 & TL10 E1/2 NW1/4 SE1/4 7-11-14 – Conditional Use Permit – Final Plat – 24-lot Subdivision.

Jensen stated that the Application for Conditional Use Permit – Final Plat #11397 meets the Cass County Subdivision Regulations.

Administrative remarks:

This final plat is for Lakeview Estates III Phase 2 which includes 24 lots. Access to this subdivision will be off of Young Road which is a paved road. Maps included for final review:

- Final plat map including dedication to the public
- Preliminary Plat
- Site, septic and paving plan
- Road plan and profile (1)
- Road plan and profile (2)
- Grading and erosion control plan
- Grading and erosion control specs

Mueller opened the hearing at 7:02 pm. At this point, Ben Drews from TD2 – engineer for this subdivision - came up to answer any additional questions. Mueller stated that it was his understanding that the southern drive was shortened to meet Emergency Management's requirements. Drews stated that it was shortened to meet the County requirements to the 600-ft cul de sac. Mueller asked about the easement to the south – it's not a private drive anymore? Drews stated that from what he understood, there was an easement recorded on the final plat but they couldn't find any terms or dedications or specifications for that. So there wasn't really a way to enforce that road being connected through that subdivision to the south beyond just the language that said easement for private drive. That was all they could find so the County Board told them they had to shorten that up and eliminate that drive to the south. They also had several neighbors show up for the previous meeting and the County Board meeting asking them not to put that drive in so they ended up removing it. Staben asked if the roads are going to be gravel. Drews stated that they were – just like Lakeview Estates III Phase 1. Mueller asked if they were private roads. Drew stated that they are. Staben stated that when roads are run in a development, he is of the opinion that these roads should be paved, not gravel. He realizes that this would add a lot of cost to the project for everybody. Mueller asked if there were any more questions or comments from the board. Since there were none, he asked for any public comments. Joe Spicciati, assistant fire chief for Murray, came up to speak. Spicciati stated that he knows it was mentioned and talked about at the County Board meeting, but they would really love to see an access to the south to access Rock Bluff Road or connect Otter Trail north to south. There is a hydrant there at Clubhouse Circle at Rock Bluff Road – and if they had access where they could get from Rock Bluff Road through Lakeview Estates II Phase 2 then they could lay in with an engine and get hydronic water to fight a structure fire. Without that access, they can't use the hydronic water from Beaver Lake which has a huge surplus of it. Then they would have to set up drop tanks. As soon as they set up drop tanks on a gravel road, it closes that road. Without more than one access, they have to go all the way around to get Beaver Lake hydrants. The second issue is the two Otter Trails – the north half and the south half. This could make finding a place difficult in the event of a rescue call. If that was a through street, this wouldn't be an issue. Mueller asked if there is water on Young Road. Spicciati stated that there is water, but no hydrants. Widick asked how big of mains were put in. Tincher stated that they were 6 inch. He stated that 15 years ago the County and Planning Commission wanted hydrants inside of the subdivisions – and they put them in. Now, however, the Water Board doesn't want to service the fire hydrants. They did ask about putting hydrants in there but they won't service them because they don't have enough pressure. Mueller stated that he understood that the other roads to the south were private roads and they don't want to add that traffic on those roads. Felthousen asked where the fire hydrants were located in the other surrounding subdivisions. Tincher stated that Lakeview Estates II was

the only subdivision they made them put hydrants in. Felthousen stated that he believes the Water Board is going to have to take a look at that because with the multiple developments going in, they have to have water. It's foolish to go all the way to Beaver Lake to get water. Mueller asked if the water hydrant to the south is serviced by Beaver Lake. Spicciati stated that it is and it's the closest hydrant. Mueller asked if they contacted Beaver Lake to see if they could get an easement along the property line to run a main up and put a hydrant up there. Spicciati stated that he didn't know about that – he's just looking to get Otter Trail connected to make it a through street. Mueller stated that they aren't going to do that. Rural water doesn't want to put hydrants in because of the low pressure issue. Althouse asked where they are getting their water from. Drews stated that they get their water for the Rural Water District. The Water District said they didn't see any issues with supplying the water to the 26 lots that they had originally started with. They have adequate water supply for the subdivision but will not authorize a fire hydrant. Drews stated that he was trying to find other options like a knock-down gate dividing the two roads and was told they couldn't do that. Otter Trail to the west is already in the subdivision regulations and can never connect to Lakeview Estates II Phase 1 without approval from them. Felthousen asked at what point does fire protection get addressed – if they put in another subdivision of 24 lots and maybe 5 years later add another 24-lot subdivision. Tesar stated that for 30 years the fire district has stopped development because they wouldn't provide water for fire protection. He state that they aren't very conducive to development. Mueller stated that they can approve it the way it is or require some sort of fire protection – or maybe work out a deal with Beaver Lake. Tesar stated if they start requiring fire protection there won't be any more development. Felthousen ask when they have a fire and they hook up to the fire hydrant there – is that Beaver Lake water? Spicciati stated that it is. Felthousen asked if they charge them for that water. Spicciati stated that they are not charged for any water usage – even if they have a rural fire they are allowed to fill up at their hydrants. Mueller asked if there was anyone else that had comments or wished to speak on this CUP. Since there was none, Mueller closed the public hearing at 7:17 pm. At this point, Mueller asked for a motion. Tesar made a motion to approve this Conditional Use permit 11397 as submitted. Seconded by Felthousen but he wanted the water situation noted for the Board of Commissioners. The motion was amended by Tesar to note that there was no fire protection for this subdivision because of the Rural Water District. Amended motion seconded by Felthousen. A roll call vote followed with the following votes: Althouse – aye; Widick – aye; Oehlerking – aye; Mueller – aye; Sullivan – aye; Staben – aye; Felthousen – aye; Tesar – aye. Motion carried with an 8 to 0 vote. This will go to the Board of Commissioner's meeting on July 5, 2022 at 8 am.

The next item on the agenda is the regulations corrections and updates. Jensen stated that this was on the agenda as an action item – he recommended that they not take action on it at this time. He stated that with the additional changes and edits that need to be made, it would be better if we consolidate them all into one draft and plan on taking that to the Board of Commissioner's in August. Jensen covered a summary of revisions. These items are:

- Under definitions – add brew pub, micro-brewery. Tesar stated that it should just be added with the wineries.
- Delete storage unit terminology – “storage facility” covers everything storage. Tesar stated that the biggest decision will be what districts to have these in. Initially, it wasn't in TA – it was in AG. Jensen stated that it was in AG and not TA and they basically took it out of AG and put it in TA. Tesar stated that this is what the board needs to decide if that's what they want to do. Jensen stated that the primary reason they took it out of AG was because the last couple of Storage Units were more than a mile off of the hard surface roads and the dust and traffic were a major issue with the public. Tesar feels that they should not be allowed in TA because that is where they are wanting to put the subdivisions. Althouse stated that the dust problem will be coming more from the in and out traffic of the subdivision than it would from a Storage Facility. Mueller believes this would be more of a financial burden for the Roads Department. They would still be allowed in Industrial and Commercial. Althouse believes if you have a machine shed that you are no longer using and you want to use it to store campers you should be allowed to do so. Widick asked if these are all done under a Conditional Use permit. Tesar stated that they are. They can set the conditions per each permit. He requested that each Planning Commission member send their recommendations to Jensen and himself so they can make the changes. Limitations would be on distance from hard surface road, size, screening for outdoor storage, fencing and security.
- Felthousen brought up the paving of subdivisions. He believes they should all be required to pave or asphalt them as part of the Subdivision agreement. They agreed that it should be at least 6 inches thick.
- Delete MUD's and all references. Jensen stated that MUD should be removed and the areas now under MUD should be considered Residential. Beaver Lake was the only one that was done following the MUD standards. Jensen stated that Buccaneer Bay was intended to be a residential subdivision and the covenants clearly say that all properties are to be used for residential uses. There is no reason to have MUD on there at all. He stated that in the future, we will basically be relying on engineered plan for a development area. Most

subdivisions do have lots designated for Commercial use. Multiple use should be part of the engineered plans. If it gets that extensive, they should also be talking about the sewer and water supply to guarantee they are properly engineered. It was the general concession that MUD should be removed from the Regulations along with all references to it.

- Delete compatible use categories. These were a list of compatible use categories listed in the front of each district. All agreed this needs to be deleted. Discussion ensued on the Matrix and whether it was going to be a visual table of context. Jensen stated that it is just a quick reference. From there, they can go to the district to look it up. A disclaimer should be added at the bottom stating this.
- Tesar asked Jensen about receiving an electronic copy from JEO for the regulations. Jensen stated that he did receive a recent electronic copy that was from August 2021. This edition is editable. None of the changes that JEO made are in this electronic copy. Changes will be made in the editable electronic copy from August. Tesar will make changes and marry the two documents together.
- Residential density – AG – 3 lots less than 20 acres/160 acres. TA – 4 lots less than 20 acres/160 acres. Discussion ensued pertaining to the 20 acre amount. Tesar asked what the 20 acres was for. Jensen stated that there is a State statute stating that anything 20 acres or more is considered a farm – and we aren't allowed to regulate that administratively. Tesar stated that he searched State statutes and requested state statutes on this from JEO and never received them. His search produced absolutely nothing on this. Althouse stated that he believes we should stick with the 1 split per 40 acres. Jensen stated the way he suggests for residential density is consistent with surrounding counties. Discussion followed covering the issues with how this is currently set up. Deed restrictions and cluster developments were also discussed. Mueller suggested that Jensen and Tesar work on a draft and the verbage for this and bring it back to the Planning Commission next month.
- Residential splits may be made administratively.
- Remove CSCS as a CUP in TA. Jensen stated that this needs to be an action item for the July Planning Commission meeting so he can take some of the inconsistencies to the Board of Commissioner's by the end of August. Jensen stated that in order to have Commercial Solar in TA, it is his opinion that they should be required to have more restrictive setbacks than they have in AG. In TA, his recommendation would be for big multi-lot subdivisions, would be a setback for Commercial Solar of 1200 feet. This would be just under ¼ mile. Any non-participating residential property owners would be 500 feet – screening – and then the solar. Non-participating property owners can also sign a waiver if they don't have a problem with it being closer. This can be put on the deed. Mueller stated that he had Jensen pull up Lancaster and Saunders county's regulations on Commercial Solar in TA and their setbacks are 300 feet with buffers. Felthousen asked about county roads with no houses around. Jensen stated that traditional setbacks are 120 feet from centerline of the road. Tesar asked about some kind of criteria for farmers to be able to farm the land around these setups. Mueller feels that 1200 feet is too restrictive and suggests the 300 ft setback like the surrounding counties. Felthousen stated that the setbacks could vary depending on the conditions of the property. Jensen wants them to consider a higher standard for TA than they have for AG. Staben asked if the properties off of 12th street is all TA – Jensen stated that it is. Jensen asked if their recommendation for discussion on the setbacks is 300 feet? They all confirmed this.

At this point, Mueller asked if there was any more discussion about this. Judy Simpson came up to speak and asked why they were having discussion about Solar in TA when it was discovered in the audio files from the original regulation meeting that the County Commissioners agreed that there was going to be no Commercial Solar in TA? That was one of the errors that JEO made in the editing and she understood that this was part of the matrix changes that was going to be made and it was going to be corrected to reflect what written in each districts part. Jensen stated that they were also discussing the corridor zoning along the hard surface roads. He stated that this would be discussed with the County Attorney to make sure that interpretation was made correctly to make sure they weren't talking about corridor zoning but were talking about the solar. Simpson asked if he listened to the recording he was provided. Jensen stated he had, but it had been several months ago. Jensen stated that they would re-approach that. Simpson stated that it was plain in the recording – in Duane Murdochs' voice – he asked if they were voting for no commercial solar in TA. The consensus was yes. Simpson stated that everyone got a copy of that recording and she encouraged them to listen to it over and over and to make your decision based on that. One other person came up to speak about the ability to use their land as they see fit. For those farmers who are reaching retirement age, this would provide a steady income for them. They are simply asking the Planning Commission to minimize their interference as much as possible in their livelihood and the plans that they make. Let them choose how to use their

property. At this point, Lee Greenwald with Baird Holm Law firm on behalf of NextEra came up to speak. He stated that the discussion today was the county-wide zoning regulations and not about any particular project. He stated that he doesn't think that the proper forum to express concerns about any one particular project is the county-wide zoning regulation – if fact, there is a Conditional Use permit process for the commissioners to address any specific situations. He also addressed property rights. He also doesn't believe that 100% elimination of the view is necessary to protect the public health and safety. Increasing the setbacks in the TA district is certainly a way to do that. He stated that the County has the option now to look at it, to decide what a reasonable balance would be and decide what a reasonable Zoning Regulation would be and to clear up any indecision. He stated that they ask the County to strike a reasonable balance with the Regulations.

Mueller then asked if there was any more comments or discussion. Tesar asked about MUD in Beaver Lake – if they get rid of MUD, what will happen with some of the lots along Bluff Road. Jensen stated that they would still exist as legal non-conforming. Tesar stated that he believes they should all be zoned Commercial. Jensen stated that Beaver Lake was developed under a development plan under an RMUD plan and should stay as it is on the plat. If they would like to change them like they did the other lots, they should have the opportunity to do so. He stated that if they wanted to change the ones that are already used as commercial to commercial zoning he wouldn't have an issue with that. Discussion followed about this. Mueller then asked about the Section 8.09 Wireless Tower Communication which was retro back to the original regulations. Jensen had consulted with the consultant about this regulation and the consultant suggested going back to the original regulation verbiage that was in there prior to August 2021. Jensen stated that our consultant stated that the original regulation was better than the revised regulation brought before the board about a month ago. Althouse stated – under General Commercial – there are rental cabins. It's administrative under TA and RA, but you can't have a rental cabin under AG. He stated that if you have a pond on your land and wanted to do a cabin on it, you couldn't in AG. He stated that he thought it should be allowed in AG if it wasn't on farm ground. Jensen stated that it could be considered and if allowed, under a Conditional Use, his recommendation would be that there be a square footage limit and it would be considered a cabin. Felthousen had a question about the water issue – since we are talking about writing new regulations – should we put something in there about water – particularly fire hydrants needing to be within so many feet of a new development for all new developments going forward? Tesar stated that he would love to but the fact is there are very few places that you are ever going to get that done. Jensen stated that you would have to update the infrastructure from their point of supply. Tesar stated that the water districts will not be willing to do that because they are afraid that the water tower would run dry. Jensen stated that at some point, the County Planning and the County Water Districts have got to coordinate with regards to future developments and how they are going to plan this out – whether it's the 420 exit or whether it's new residential development for possible fire protection. Fire protection will be a limiting factor in all future developments. Jensen stated there is no interest from the Water Districts to extend their lines. Felthousen suggested some kind of inter local agreement with Beaver Lake for water for developments close to them. Jensen then mentioned that it's getting to be that time of year with the updated regulations when the Planning Commission should get together with the Board of Commissioners sometime around the first week of September. It will need to go to legal two weeks prior so he can review it first. Mueller than asked for any more comments. Since there was none, he asked for a motion to adjourn. Althouse made a motion to adjourn, seconded by Tesar. A voice vote followed with all voting aye. Meeting adjourned at 9:00 pm.

Linda Brouhard
Recording Secretary

*These minutes will not be approved until the next Planning Commission Meeting and are subject to change.