

PLATTE COUNTY
PLANNING AND ZONING
MAY 14, 2014

Chairman Marty Shepard called the Platte County Planning and Zoning Commission regular meeting to order at 7:00 P.M. Commission members present were Bob Brockman, Sherry Warner, and Bonnie Lockhart. Also present were Reed Elmquist, Planner and County Commissioners Tim Millikin and Steve Shockley.

The Commission reviewed the minutes from the April 9, 2014 meeting. Commission member Brockman made a motion to accept the minutes from that meeting. Commission member Lockhart seconded the motion and it carried.

Item #1: Reed Elmquist, Planner, presented a Simple Subdivision request to divide one parcel into two from Hiland Crude LLC, applicant; and Sheri Nicks, Julie Irvine, Lucinda J. McDaniel-Frederick Living Trust, Charles A. & Mabel F. Frederick Living Trust, and the Douglas C. & Barbara S. Frederick Living Trust , titleholders.

The applicant proposes to buy approximately 25 acres from this 80-acre parcel. Because only two parcels are proposed and because both parcels will be over five acres in size, this can be processed as a simple subdivision. The property has good access to a publicly maintained road, Tank Farm Road.

The property is zoned Agricultural District and is entirely surrounded by agricultural zoning with Industrial District beginning one mile to the east.

ADVANTAGES: The property has good access to a county-maintained road.

DISADVANTAGES: There appear to be none.

AGENCY COMMENTS: This property lies outside the boundaries of the Wheatland Irrigation District.

OTHER COMMENTS: As this is not an advertised hearing and as notices are not sent to adjoining landowners there should be no other comments.

ANALYSIS: The proposed lot sizes easily allow for adequate individual water supply and wastewater disposal systems.

STAFF RECOMMENDATIONS: The Planning Office recommends approval of this subdivision request with the following condition:

1. That one (1) parcel of approximately 25 acres be separated from the existing parcel.

Chairman Shepard opened the floor to public comment. Erik Schovanec, project engineer from Hiland Crude, stated that the company intends to split off this parcel for the construction of up to six crude oil tanks, of which 3 are immediately proposed.

Chairman Shepard closed public comment and brought the issue to the Board for discussion. Hearing none, he called for a motion. Commission member Warner moved to recommend do pass for the Subdivision Request to divide one parcel into two parcels in an Agricultural District. Commission member Brockman seconded the motion. Chairman Shepard called for discussion, there was none; he called for questions, there were none. Chairman Shepard then called for the vote and the motion carried.

Item #2: Reed Elmquist, Planner, presented a Request to Rezone to Industrial District from Agricultural District from Hiland Crude LLC, applicant; and Sheri Nicks, Julie Irvine, Lucinda J. McDaniel-Frederick Living Trust, Charles A. & Mabel F. Frederick Living Trust, and the Douglas C. & Barbara S. Frederick Living Trust, titleholders.

Hiland Crude proposes to construct three to six crude oil tanks a 12" diameter pipeline that will start at this site and run 488 miles to Dore, ND. A connection to the nearby Pony Express pipeline is also proposed. The property to be rezoned lies just over a mile west of the existing Guernsey Tank Farm.

There appear to be no more than three residences within one mile.

ADVANTAGES: A property within one mile is already zoned Industrial District. The property has direct access to a County-maintained road.

DISADVANTAGES: This proposal would likely result in a significant increase in truck traffic that Tank Farm Road may not be in adequate condition to handle.

AGENCY COMMENTS: No comments have been received at this time.

OTHER COMMENTS: Gay Carroll expressed concerns about an increase in truck traffic.

Thu, Apr 8, John Watson who farms for Thalkens called to express concern about the additional truck traffic AND the already deteriorated condition of the road that will now only get worse.

ANALYSIS: Industrial District appears wholly appropriate. This property is within one mile of another Industrial District.

STAFF RECOMMENDATIONS: Staff recommends approval of this request to rezone to Industrial District.

Chairman Shepard opened the floor to public comment. Mr. Schovanec stated that the site was proposed to be manned by only three workers at this time and the traffic impact would therefore be minimal.

Chairman Shepard closed public comment and brought the issue to the Board for discussion. Hearing none, he called for a motion. Commission member Lockhart moved to recommend do pass for the rezone to Industrial District from Agricultural District. Commission member Brockman seconded the motion. Chairman Shepard called for discussion, there was none; he called for questions, there were none. Chairman Shepard then called for the vote and the motion carried.

Item #3: Reed Elmquist, Planner, presented a request to vacate platted properties from Chris Paulsen, applicant, and titleholders Mark & Jill Kaufman, Chris & Linda Paulsen, and Mike & Betty Eastman.

Chugcreek Estates was platted in 1975. The Road Maintenance Association was formed shortly after. In the early to middle 1980s, a couple harsh winters made Bellis Road on the west edge impassable, but the Chugcreek Road Maintenance Association was barred from clearing the road as it is maintained by the County. This prompted the homeowners along Bellis Road to petition the Association for their lots to be removed and no longer be assessed dues. An undated copy of the approved petition was ultimately recorded at the courthouse on July 21, 2011. The applicants allege that the Association honored the petition right up until 2008. At that time, the Association board sent assessment bills to the Bellis landowners and threatened to put liens on their properties if the Association did not receive payment. The applicants responded by providing the board with a copy of the approved petition but the board refused to recognize it. The applicants therefore wish to file a vacation plat removing their properties from Chugcreek Estates as they believe the Road Maintenance Association has refused to honor their agreement. A similar request came before the County in October 2012, with three more properties included, and was denied as all entities owning land in the subdivision had not been properly notified.

AGENCY COMMENTS: Brad Thompson, president of the Chugcreek Road Maintenance Association, expressed confusion that this request was being considered after having been denied previously. He cited Wyoming Statute 34-13-108 which states that one primary test of vacating a portion of a plat is “such vacating does not abridge or destroy any of the rights and privileges of other proprietors in said plat”. Therefore, if one landowner believes there is a potential for harm, this request cannot be approved. He also cited a portion of State Supreme Court decision Carnahan v. Lewis which stated “in order to vacate the plat, all owners of lots in the plat had to join in a written instrument, duly executed, acknowledged, and recorded in the Laramie County Clerk’s office, declaring the plat to be vacated. It is undisputed that the Griffiths were the only owners of lots in the subdivision to execute the affidavit of vacation; no other owners of lots in the plat joined in the affidavit. Consequently, the effort to vacate the plat was not done in accordance with Wyoming law”. In other words, this request to vacate cannot be allowed without unanimous approval from each and every entity owning a lot in Chugcreek Estates. This matter has been addressed previously and should be over with. Finally, he implied that the applicants have made no effort to address their issues with the association, as provided for by the covenants. (Copy of comments attached)

OTHER COMMENTS: Doug Weaver commented that this request would not have to be heard by the Town of Wheatland but pointed out that Statute 34-12-106 explicitly requires that in cases where lots in a subdivision have been sold, the plat may only be vacated with every entity owning a lot in that subdivision “joining in the execution of the writing aforesaid”.

Greg and Kay Loveland oppose this request. They stated that they were part of the previous vacation request but were not invited to be included this time around. They now believe that to allow just three properties to vacate at this point would be unfair and result in more inconsistencies to the area affected, reducing property values. (Copy of letter attached)

Kelly Lambert also opposes this request. He estimates that the fee in question amounts to a small sum of \$6.50 per month, per acre. By approving this request, the County could set a precedent for landowners arguing that they should not have to pay County taxes when their land does not have direct access to a County-maintained road. (Copy of letter attached)

On May 7th an opinion from W. H. Vines of Jones, Jones, & Vines at the request of County Attorney Eric Jones was received stating: Wyoming statutes provides in 34-12-106 for vacations. Specifically it states that a plat may be vacated provided “...in case where lots have been sold, the plat may be vacated as herein provided by all of the owners (emphasis added) of lots in such plat joining in the execution of the writing aforesaid...”, referring to the written instrument and plat declaring the same to be vacated. The statute goes on to say “no plat or portion thereof for which a subdivision permit has been obtained...shall be vacated as herein provided without approval of the County Commissioners...” Wyoming Statute 34-12-108 provides “Any part of a plat may be vacated under the provisions and subject to the conditions of the act...(referring to the other parts of this chapter including 34-12-106 above-cited)...provided such vacating does not abridge or destroy any of the rights and privileges of other proprietors (owners) in said plat...” It is my understanding that the impetus for this vacation is the objecting to the maintenance of the roads in the development. Clearly, allowing such vacation diminishes the remaining lot owners’ ability to provide adequate maintenance for roads or, at a minimum, increased the burden on their lots. The next statute, Wyoming Statute 34-12-109, provides that “When any part of a plat shall be vacated as aforesaid, the proprietors (lot owners) of the lots so vacated may enclose the streets, alley and public grounds adjoining lots in equal proportions.” Which means that the owner of any lot vacated can shut down one-half (1/2) of the street or alley adjoining their property that was dedicated on the original plat; once again creating problems for the remaining lot owners. In my last copy of your regulations, Chapter IV Regulations covers Vacation of Subdivision Plats. Section 5 D provides that a statement required on a Vacation Plat must be “...executed by the owners of all legal and equitable interests in the property being vacated...” This would then include any mortgagees (lenders) of lot owners. The regulations also require title insurance or an attorney’s opinion of title in Section D 2)c and 3). In Carnahan v. Lewis 273 Pacific 3rd 1065, 1076 (Wyo. 2012), the Wyoming Supreme Court set out Wyoming Statute 34-12-106 (above-cited) in a case involving an attempted vacation of a road in a platted subdivision. The predecessor’s to one of the parties involved had attempted to vacate a portion of a platted subdivision. The Court states “...therefore in order to vacate the plat, all owners (emphasis added) of the lots in the plat had to join in a written instrument, duly executed, acknowledged and recorded...declaring the plat to the vacated.” The court went on to say “It is undisputed that the Griffiths were the only owners of lots in the subdivision to execute the Affidavit of Vacation; no other owners of the lots in the plat joined in the Affidavit. Consequently, the effort to vacate the plat was not done in accordance with the Wyoming law.”

Although this was dicta in the case because it was not necessary to the determination of the question presented to the court, to-wit whether or not a platted road should be vacated, it is certainly strong language by the court as to how it would determine such an issue if presented to them. The court went on to hold that unless all owners of lots in a platted subdivision join in writing to vacate a public road the vacation is invalid. It would appear that the attempted vacation does not comply with the requirements of the law for several reasons, primarily being not all of the owners in the subdivision joined in asking for this partial vacation; in fact, the vacation plat only constitutes approximately one-half (1/2) of the actual subdivision plat involved.

ANALYSIS: While the applicants have a valid argument that they should not have to pay for maintaining roads they do not use, this is a matter that should be resolved between the Bellis landowners and the Association and the County should not have any involvement in it. The vacate process is not intended for landowners to free themselves from homeowners' associations, as covenants would still remain intact with their property.

No vacation has ever been approved by Platte County under these circumstances. A similar request from landowners on the east side of Chugcreek Estates came before the Planning Commission in 2006. The vacation was then approved by the Board of Commissioners and a 30-day extension was granted by the Town Council of Wheatland, but the request was ultimately withdrawn before it was to be brought back before the Town Council. The exact same issues were present then. An e-mail from Association board member F. John Arter to then-County Planner Marlin Johnson explained that vacating those properties would effectively dissolve the Association because it would mean that the Association solely exists at the discretion of the Board of Commissioners' decisions.

In order to discourage similar requests in the future, Section 4-A3, Chapter IV of the County subdivision regulations should be amended to more closely resemble the language of the state statute:

A vacation plat shall be submitted in order to vacate any tract of land created by a plat recorded in the County Clerk's Office; to vacate any tracts, lots, streets, or easements such vacation may be heard by submitting a vacation application to the Board for a formal resolution. In case where any lots have been sold, the plat may be vacated as herein provided, by all owners of lots in said plat joining in the execution of the writing aforesaid. When a vacation plat is not required, the review process for the application shall be the same as identified in this section for vacation plats.

RECOMMENDATION: Without the consent of all entities owning property in Chugcreek Estates, this office cannot recommend approval.

Chairman Shepard opened the floor to public comment. Chris Paulsen stated that he believed the owners of the 6 lots had the right to vacate from the subdivision based on his own interpretation of the state statute. Chairman Shepard asked Mr. Paulsen for further clarification on why they were attempting to vacate when their lots had already been removed from the Association. Mr. Paulsen answered that they had been threatened with liens in years past.

Chairman Shepard expressed skepticism that the Association could legally place a lien on any property. He asked Association president Brad Thompson if the Association had filed any liens on the properties. Mr. Thompson answered that the Association had not actually filed any liens, nor did they recognize the document filed by Mr. Paulsen at the courthouse because it would have required approval from 70 percent of the landowners per the covenants and the page showing the signatures had been lost. He reiterated his belief that allowing even one lot to vacate would effectively dismantle Chugcreek Estates. Chairman Shepard asked Mr. Thompson how much the landowners were assessed. Mr. Thompson was unsure of the exact fee.

Chairman Shepard expressed his belief that the applicants were wasting everyone's time by making this frivolous request and there would be nothing gained. Rather, approving this request would only serve to create even more irresolvable and irreversible issues. The applicants were aware of all the covenants and fees when they bought their properties.

Mike Eastman countered that they had all bought their properties with the understanding that they would not be assessed fees for road maintenance and that they were not threatened with liens until approximately three years after he had bought his property.

Linda Paulsen added that Mr. Thompson had not actually been elected president and has never been willing to listen to them.

Mr. Paulsen stated that he was under the impression that their request could be approved based on the letter he originally received from the Planning Office. Planner Elmquist countered that he had only sent Mr. Paulsen a list of the requirements for his request to be heard by the Planning Commission and never insinuated that the Commission would approve it, as the language of the state statute appears nowhere in the County zoning regulations. Mr. Paulsen then stated that they had the right to a partial vacation under Section 108 of Title 34-12 and asked Planner Elmquist why he was choosing to ignore that statute in favor of Section 106, which Mr. Paulsen believed only applied to a full vacation. Planner Elmquist responded that Mr. Paulsen was ignoring the clause in Section 108 that specifically refers to Section 106.

Jill Kaufman cited the last clause of Section 106, which provides that no approval of a vacation shall be arbitrarily or unreasonably withheld.

Mick Cochran asked which covenants the applicants were trying to get out of, and why they didn't simply move elsewhere. Mr. Paulsen answered that they were not opposed to any covenants, only the road maintenance fees, and had no desire to move elsewhere.

Richard Reddy stated that the fees are collected for other expenses than just road maintenance, and that the Association has been ineffective because they have difficulty finding people willing to volunteer.

Doyle Duin stated that he believed that the Association was open to anyone who wanted to get involved, and that he owns property to the north of the Kaufmans and in that case the County had refused to enforce their regulation prohibiting more than two derelict vehicles without screening.

Dan Nein expressed his approval of the Association.

Kelly Lambert reiterated that the County Clerk's Office does not have a copy of the original petition in their records.

Mrs. Paulsen countered that the petition was recorded with a notarized statement of the secretary who had taken the vote but admitted that most of the older records of Association business have been lost.

Joe Ervin asked why they had been threatened with liens. Mrs. Kaufman provided him a copy of the letter they had received from the Association to read.

Mr. Thompson stated that the Association was considering no longer assessing Bellis landowners for road maintenance fees once the new covenants are adopted.

Chairman Shepard asked Commissioner Shockley whether anyone besides the County Road and Bridge Department was permitted to plow snow off County roads. Commissioner Shockley answered negative.

Mrs. Paulsen stated that they want to vacate simply because they mistrust the Association.

Chairman Shepard closed the floor to public comment and brought the issue to the Board for discussion.

Commission member Warner stated that she believed the state statutes are very clear that this request could not be approved and that she did not want to go against Mr. Vines' legal advice.

Commission member Brockman stated that this was really a civil matter and suggested that the applicants settle their differences with the Association in court.

Hearing no further Board discussion, Chairman Shepard called for a motion. Commission member Warner moved to recommend do not pass for the request to vacate platted properties. Commission member Lockhart seconded the motion. Chairman Shepard called for discussion, there was none; he called for questions, there were none. Chairman Shepard then called for the vote and the motion carried.

The meeting closed at 8:02 P.M.

Respectfully Submitted, Reed Elmquist, County Planner