

Sidney, Nebraska, August 20, 2012

A meeting of the Planning Commission of the City of Sidney, Nebraska, was convened in open and public session at 5:30 P.M. on August 20, 2012 in the City Council Chambers. Present were: Chairman: Spiker and Commissioners: Egging, Gull, Lawler, Leever, McCarville, and Phillips. Absent: England and Mueller. Others present: City Manager Person, Interim Chief Building Official Dayton, and Deputy Clerk Heilbrun. Notice of the meeting was given in advance thereof by publication in The Sidney Sun Telegraph, the designated method for giving notice, a copy of the proof of publication being attached to these minutes. Advance notice of the meeting was also given to the Chairman and all members of the commission, and a copy of their acknowledgment of receipt of notice is attached to these minutes. Availability of the agenda was communicated in the advance notice and in the notice to the Planning Commission of this meeting. All proceedings shown hereafter were taken while the convened meeting was open to the attendance of the public.

Chairman Spiker announced to all in attendance, that a current copy of the Nebraska Open Meetings Act was available for review.

Egging moved, Lawler seconded "That the minutes of the July 16, 2012 meeting be approved as printed." Roll call vote: Yeas: All commissioners present. Absent: England and Mueller.

Chairman Spiker announced that the Planning Commission would now continue the public hearing from July 16, on the Conditional Use Permit application of Harlan Sage to operate a Home-Based Business, consisting of a screen printing and woodworking shop, from a portion of Lot 98, Morrow Addition, more particularly described as 1208 6th Avenue; that the Board of Education of School District No. 1, Cheyenne County, Nebraska, and the Board of Education of Western Nebraska Community College have been properly notified in the time and manner prescribed by law and have not filed objections to the proposed request.

The following filed written objections: None. The following appeared in person or by agent or by attorney and were heard: Harlan and Tiffany Sage.

Mr. Sage provided the Commissioners with pictures and information regarding his operation, as requested, and informed them that he has three websites from which they conduct their mail order business. He reiterated that there is very little traffic at their shop, just postal pickup from the curb.

He described his bullet casting operation, pointing out that they contain no ammunition, but are simply lead “shells.” They are cast at a temperature of 875°. He explained that lead casts at a high rate of speed and does not give off any sparks or cinders. He has multiple fire extinguishers throughout the shop for fire suppression if needed. When asked what he uses for staining his wood products, he replied that all products are unfinished and that he uses shortening from Cash-Wa to make his seed-oils. He no longer uses linseed oil.

When asked what type of insurance they carry, Mr. Sage replied that they have homeowners insurance, nothing specific for the workshop.

City Manager Person explained that this particular issue was brought to the City’s attention by an outside party, at which time it became a compliance issue for the Planning Commission. He noted that Commercial Zones, as designated by the Comprehensive Plan and Planning & Zoning Code, are there for a purpose and must be adhered to. However, the Planning Commission may determine, on a case by case basis, if an exception can be made, i.e., for a home based business in a residential area, if it is minor in nature and does not impede on the integrity of a residential zone. He pointed out that there was a concern that the Sage’s had conducted this type of business at this same residential location once before, prior to moving to a commercial location. The question to answer is whether the Use is impeding upon the intent of a residential zone with the nature of the business venture?

Mr. Sage was asked about the cause of the fire at his former downtown business. He stated that the fire marshal’s report was inconclusive, but they could not rule out electrical or spontaneous combustion. There was speculation as to whether the overhead furnace overheated as it was above the center of the fire and some oil rags used by the business became subject to the spontaneous combustion.

Commissioner Leever asked if there are any other businesses in residential areas? Person speculated that while there are probably individuals conducting home-based businesses in residential neighborhoods, the new Planning and Zoning use chart does now require home-based businesses to seek a conditional use permit from the Planning Commission to conduct that business. This prevents full scale business operations occurring in zones not intended to carry out business functions. Most are likely established for secondary income or hobby type of operations. When the City does not have an awareness of the operation, but the issue is drawn to the attention of city officials, it becomes an issue of compliance requirement with the zoning use chart. The Planning Commission then needs to make the determination if that home-based business is compatible with the integrity of the residential neighborhood on a case-by-case basis, and may place certain types of restricted growth or business activities on the application.

Interim Chief Building Official Dayton stated that there is a fine line when defining home-based businesses. He gave examples, from Section 1274 of the Planning & Zoning Code, as clerical and bookkeeping from a home, where there is no in-and-out traffic of customers, as examples of allowable activities. The business cannot expand or gain an employee, or it would cross the line to commercial.

Commissioner Phillips asked what zone making furniture in a garage would fall under, to which Dayton replied, C-3 or higher.

Commissioner McCarville stated that, in his opinion, any operation where you are attempting to make a full-time living at it, is truly a business and should be conducted in a commercial zone and not allowed in a residential neighborhood.

Commissioner Egging stated that he would have a hard time giving an open-ended permit without a time line of even up to 3 months attached, to anything beyond a hobby, because of the close proximity to other homes and the what-if's if something happened.

Both Commissioners Leever and Lawler questioned the Sage's as to their business plan. Did they have a time-line as to when they would be able to move to a commercial location? Had they researched other locations and agencies that could help them relocate?

The Sage's response was that they had exhausted all possibilities of financial aid and did not have the money to move their operation, as the overhead would be more than their profits. They would have to increase retail sales to do this, and are barely able to pay their bills on their current production as it is. Harlan stated that moving their operation would cause a drastic loss of revenue and could not be accomplished in a 3-month time period, but more realistically in a year. Tiffany stated that what they have in their shop is not any more than what they would have if they did not have a business, with the exception of the printing. She further stated that the Planning Commission would be forcing them out of town if they do not allow them to continue as they are.

There being no further questions or comments, Chairman Spiker closed the public hearing and asked for a motion on the request.

McCarville moved, Egging seconded "That the Conditional Use Permit of Harlan Sage to continue operating a home-based business, consisting of a screen printing and wood-working shop, at 1208 6th Avenue be allowed for a period of six months, during which time the operation is to be moved to a commercial location or terminated in it's entirety." Roll call vote: Yeas: All commissioners present. Absent: England and Mueller.

Chairman Spiker announced that the Planning Commission would now hold a public hearing on the Rezoning Request of Sidney Housing Authority for Tract No. 1, Wellner's Third Addition and a portion of Tract No. 2, Wellner's Third Addition, consisting of 15+ acres, more particularly described as Sioux Villa Apartments, from R-1 (Single Family Residential) to R-3 (Heavy Density Multi-Family) Zone; that the Board of Education of School District No. 1, Cheyenne County, Nebraska, and the Board of Education of Western Nebraska Community College have been properly notified in the time and manner prescribed by law and have not filed objections to the proposed request.

The following filed written objections: None. The following appeared in person or by agent or by attorney and were heard: Nancy Bentley, Executive Director of the Sidney Housing Authority, and Rick Lehl, Maintenance Director of the Sidney Housing Authority.

Ms Bentley explained that the vision of the Housing Authority is to construct additional units on vacant land and eventually renovate other portions of Sioux Villa for workforce housing. Phase I of the project would include the construction of 10 units at Western Heritage and 10 units at Sioux Villa on current vacant property owned by the Housing Authority. Phase II of the project would include demolition and replacement of 2, 3, and 4 bedroom units and garages at Sioux Villa. Because the entire Sioux Villa area is zoned R-1, new construction or replacement of units requires a zoning change to R-3 (Heavy Density Multi-Family) Zone, which should be the proper zoning for the entire complex. When asked whether the park area at Sioux Villa would be preserved, she answered that it would not be exactly as it is, but rather divided into several small areas of common gardens in various locations within the development. The details of this aspect have not been finalized but are in the visionary stage at this time.

City Manager Person explained that the existing zoning of R-1 (Single Family Residential) had not been changed during the City's ownership following the Sioux Army Depot's relinquishment of the property and was taken over by the City in 1968. Because there had not been any new development or demolition / replacement of units in the development in that time it had not been necessary to change the zoning until now. According to the Planning & Zoning Code, anything of non-conforming use prior to 1985 is grand-fathered in, and can remain at the current zoning unless continuous use lapses for a period of 12 months or new construction or structural modifications are made. Since the Housing Authority is intending to build new units, it was felt by city staff that this also served as a proper time to recommend changing the entire area owned by the Housing Authority to the proper zoning, rather than each time the Housing Authority decides in the future to demolish existing 1942 vintage units and build new ones.

There being no further questions or comments, Chairman Spiker closed the hearing and asked for a motion on the request.

Phillips moved, Spiker seconded “That the Planning Commission recommend to the City Council that the Rezoning Request of Sidney Housing Authority for Tract No. 1, Wellner’s Third Addition and a portion of Tract No. 2, Wellner’s Third Addition, consisting of 15+ acres, more particularly described as Sioux Villa Apartments, from R-1 (Single Family Residential) to R-3 (Heavy Density Multi-Family) Zone, be approved.” Roll call vote: Yeas: All commissioners present. Absent: England and Mueller.

Chairman Spiker announced that the Planning Commission would now hold a public hearing re: Defining R-1 Single Family Residential Accessory Buildings in the Planning & Zoning Code; that the Board of Education of School District No. 1, Cheyenne County, Nebraska, and the Board of Education of Western Nebraska Community College have been properly notified in the time and manner prescribed by law and have not filed objections to the proposed request.

The following filed written objections: None. The following appeared in person or by agent or by attorney and were heard: City Manager Person.

City Manager Person explained that the City had been approached by different individuals over time, and more specifically a recent issue created a significant concern, regarding someone wanting to place a large commercial type building on a vacant residential lot, and another instance where an inquiry suggested demolishing an abandoned home on a lot and apply it towards some type of larger commercial type accessory building. He explained that while there are current stipulations on conformity to the Planning and Zoning Code for these types of construction activities in residential neighborhoods, there are also gray areas that need to be further defined so they will stand up in a court of law if challenged.

In a memo to the Planning Commission, the City Manager indicated the City Manager and Interim Chief Building Official sought the City Attorney's legal opinion on the matter. The City Attorney determined that her interpretation of the Chapter 1240.03 language on accessory buildings in residential areas shall mean that the accessory building shall not be the main purpose of the residential development and its square footage on the foot print should not exceed that of the main residential building. This opinion was based on the current language in the code "Accessory Buildings means a building detached from the main building which is located on a lot or tract of land, the use of which is subordinate to and appropriate and customarily incidental to the use of the main building." The City staff, however, prefers that this definition be further defined.

Commissioner McCarville stated that before any further discussion was held on the item he wanted to go on record in suggesting that the Commission hear discussion, but then table the item until a future meeting, giving each member the chance to review the information presented in depth.

Additional discussion centered around instances where individuals had asked to place an accessory building on a lot adjacent or across the street from their residence, or even whether a residence can be placed within an accessory building on a residential lot, or that if a lot was large enough, an accessory building would be much larger than an existing residence. The overriding concern on all of the examples is the impact it has on the integrity of a residential neighborhood.

City Manager Person discussed other suggestions to modify the language in code as submitted by City Attorney J Leef, from examples of other communities including: Accessory building. "Accessory building" means a building detached from the main building which is located on a lot or tract of land, the lot coverage of said accessory building being no more than 75% of lot coverage occupied by the main building, and the use of which is subordinate to and appropriate and customarily incidental to the use of the main building, or use a ratio of 3-2 or 2-1, but some type of language that clarifies the interpretation.

Other suggestions to consider in revisions to the definition were listed as follows:

- 1) Can a residence be located within an accessory building,
- 2) Lot size - where a building is proposed.
- 3) Maximum size allowed for accessory building, i.e., cannot exceed 100% footprint of house,
- 4) Architectural Compatibility - built out of same like material as house so as not to detract from residence or neighborhood.
- 5) Eliminate any per-engineered metal accessory buildings in residential neighborhoods.

City Manager Person noted that with the previous discussion being an agenda item on pending changes is now under consideration, it will prohibit anyone from requesting a building permit for an accessory building in a residential zone until the matter is settled.

There being no further questions or comments, Chairman Spiker closed the public hearing and asked for a motion on the item.

Spiker moved, Lawler seconded "That the item re: Defining R-1 Single Family Residential Accessory Buildings in the Planning & Zoning Code be continued to the next meeting of the Planning Commission." Roll call vote: Yeas: All commissioners present. Absent: England and Mueller.

The meeting adjourned at 6:28 p.m.

CHAIRMAN

DEPUTY CITY CLERK