

Sidney, Nebraska, September 16, 2013

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 September 16, 2013 in the City Council Chambers, located at 1115 13th Avenue. Present were: Chairman: Spiker and Commissioners: England, Gull, Lawler, Leever, McCarville, Mueller and Phillips. Absent: Egging. Others present: City Manager Person, Acting City Attorney Sonntag, Chief Building Official Rowan, 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 at the rear of the room.

Phillips moved, England seconded "That the minutes of the August 19, 2013 meeting be approved as printed." Roll call vote: Yeas: All commissioners present. Absent: Egging.

Chairman Spiker announced that the Planning Commission would now review and consider approval of a redevelopment plan referred by the City of Sidney Community Development Agency entitled "Tax Increment Financing Redevelopment Plan of Cabela's Corporate Campus Expansion and Reganis Commercial Development" and Resolution No. PC20130901 . This matter is being considered as a regular item of business for which there is no required public hearing.

City Manager Person stated that this Redevelopment Plan was being referred to the Planning Commission by the Community Development Authority to determine conformity with the goals and strategies of the Comprehensive Plan 2012. He introduced Dennis Armstrong of Cabela's to describe the Plan.

Mr. Armstrong noted that the area to be covered in this plan for redevelopment is predominantly used for commercial and retail business. He described the area as consisting of 2 tracts of land: a 27 acre tract owned by Cabela's and a 14 acre tract owned by Timothy Reganis. The project would consist of "phase development" of the Cabela's Corporate Campus area with plans to construct office buildings as needed, with connecting walkways between the buildings. The construction of the first building will begin in 2014, with an anticipated occupancy date in 2015. He described the stormwater management plan for the total acreage, as well as infrastructure and grading to balance out both acreages included in the site.

Jordan Ball, legal counsel for Timothy Reganis, noted that removal of the 7 foot high areas of the Reganis property to fill in gulleys on the Cabela's property would allow for grading and leveling of both properties, giving Mr. Reganis the opportunity to prepare his property for future development, also.

Mueller moved, Phillips seconded “That the Planning Commission recommend to the Community Development Agency that the “Tax Increment Financing Redevelopment Plan of Cabela’s Corporate Campus Expansion and Reganis Commercial Development” and Resolution No. PC20130901 be approved.” Roll call vote: Yeas: All commissioners present. Absent: Egging.

Chairman Spiker announced that the Planning Commission would now hold a public hearing re: the Rezoning Application of Cabela’s Incorporated to rezone a parcel of land situated in the Northwest Quarter of Section 8, Township 13 North, Range 49 West of the 6th P.M., Cheyenne County Nebraska, more commonly known as Cabela’s Corporate Campus on Old Post Road, from A (Agricultural) to C-3 (Heavy Commercial) Zone, for the purpose of constructing a commercial office addition to the west of their current corporate headquarters; 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: Dennis Armstrong, Tim Reganis, and Jordan Ball.

There being no further questions or comments following the discussion regarding the development plan for the area, Chairman Spiker closed the public hearing and asked for a motion on the request.

England moved, McCarville seconded “That the Planning Commission recommend to the City Council that the Rezoning Application of Cabela’s Incorporated to rezone a parcel of land situated in the Northwest Quarter of Section 8, Township 13 North, Range 49 West of the 6th P.M., Cheyenne County Nebraska, more commonly known as Cabela’s Corporate Campus on Old Post Road, from A (Agricultural) to C-3 (Heavy Commercial) Zone be approved.” Roll call vote: Yeas: All commissioners present. Absent: Egging.

Chairman Spiker announced that the Planning Commission would now hold a public hearing on the Notice of Appeal of Thomas Kielian, Trustee of the Kielian Family Trust re: Violation of Conditional Use permit and Order to Cease and Desist for the storage of concrete and asphalt at the Kielian Family Trust Sand & Gravel Pit on the Southwest Quarter of Section 3, Township 13 North, Range 49 West of the 6th P.M., in Cheyenne County, Nebraska, located ½ mile south of the intersection of Rd 20 and Rd 117; 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.

Chairman Spiker noted that the hearing was being recorded and asked that anyone speaking on the item come to the podium and state their name for the record. The hearing was opened at 5:45 p.m. with Thomas Sonntag, acting City Attorney, conducting the hearing.

The following filed written objections: None. The following appeared in person or by agent or by attorney and were heard: Thomas, Walter and Jeff Kielian, and Terry Wilhelms of Werner Construction for the appeal; Brent Talich and Mike & Cheryl Wieser in opposition to the appeal; Steve Olson on behalf of the Cheyenne County, and Thomas Sonntag, Gary Person, and Brad Rowan representing the City of Sidney.

The following is a written summation of the proceedings. An exact accounting of the meeting can be found on the recording which is filed with the application and notice of appeal.

Attorney Sonntag established that the City of Sidney had properly notified the Kielian Family Trust of the violation of permit for storage of asphalt and concrete, and that the Planning Commission was in possession of a copy of: 1) the original Conditional Use Permit granting the Kielians permission to operate a Sand and Gravel Pit at the established location; 2) the Cease and Desist Order for the storage of asphalt and concrete at the location, which was served on August 22, 2013; and 3) the Appeal filed by Thomas Kielian on behalf of the Kielian Family Trust on September 4, 2013. He called Chief Building Official Brad Rowan forward to testify and present photographs documenting the violations.

Chief Building Official Rowan presented eleven photographs showing 1) the condition of the road to the site; 2) two photographs of excess concrete piles; and 3) eight photographs of separate piles of asphalt grindings. It was established that the asphalt photographs were of more than one pile of asphalt, that being seven or eight separate piles. It was further established that the original conditional use permit did not include the storage of asphalt or concrete.

City Manager Gary Person outlined the location of the Kielian Sand and Gravel Pit site on an overhead projection map. He explained the City's two-mile zoning jurisdiction, which includes any area that is located within two miles of the city limits. The Kielian property falls within this 2-mile zoning jurisdiction.

Attorney Sonntag stated at this time that the City of Sidney had no further evidence to present and invited testimony from the Kielian representatives.

Thomas Kielian, trustee of the Kielian Family Trust, addressed the issue of the storage of concrete, noting that the concrete pile is located on a road leading to the pit but outside the parameters of the sand and gravel pit. He stated that this concrete came from the City Airport project and is owned by Paulsen Construction. He referred to a letter to Paulsen Construction, which granted them permission to store the concrete and crush for later projects in the Sidney area. In return for storage of the concrete, the Kielians were given 1/3 of the concrete to crush and put in the creek bed to combat erosion issues, as needed.

As to the issue of the storage of the asphalt, Kielian explained that asphalt has to be blended into the mix for road repair and construction to meet the Department of Roads specifications. It was his opinion that, because of this requirement, the storage of asphalt should be included in any sand and gravel pit permit. He noted that the asphalt piles belong to Werner Construction, and are being used in various Cheyenne County road projects. He also stated that he had personally used the millings for filling driveway erosion and potholes on his property.

It was Mr. Kielians opinion that the main issue here is the truck traffic on the road leading to the pit, and blamed the County for dropping the ball on the matter of dust control and road conditions. He noted that he had suggested using millings on the road to control the dust, but this suggestion was not pursued. He further explained that he had offered to purchase a strip of land from Mike Wieser to build a private road, with an asphalt surface, but Mr. Wieser would not sell him the land in order to do this.

He explained that the Kielian Family Trust makes only \$8,000 to \$10,000 per year from product taken from their pit, which is not that much of a benefit to them. He further noted that the sand and gravel pit has been operational at this site since the construction of Interstate 80 in 1971. He gave examples of previous permits where asphalt batch plants were included in the permits, i.e. Werner Construction 2004 and 2008, and Pine Bluffs Sand & Gravel in 2010.

Terry Wilhelms of Werner Construction testified that his company had approximately 7,000 tons, or 25 truckloads, of asphalt millings stored at the Kielian sand and gravel site. He stated that these millings are going to be used in two State crossover projects located at Sunol and Lodgepole, and should be used up by the completion of both projects. He stated that the Sunol project was slated for October, 2013 and the Lodgepole project for spring 2014 with a completion date of no later than June 2014. He further explained that they had not anticipated any problems with the storage of the millings at the site, as they had been granted permission to do so on at least two other occasions

Attorney Sonntag noted that each conditional use permit stands on its own and assumptions cannot be made based on earlier permits.

Mr. Wilhelms noted that Werner Construction has applied for a conditional use permit for the duration of their projects should the Kielian appeal be denied. Mr. Wilhelms also addressed the dust issue on the road, explaining that earlier in the year, there were approximately 200 trucks per day using the road to the pit and that Werner had helped water the road to control dust.

Brent Talich, a resident in the area, stated that he had put up a game cam which recorded 500+ trucks in a 7 hour period coming and going from the pit during recent months. He presented pictures of the road with dust, and testified as to the damage to the road, stating that with there being no ditches to speak of, a flood would flow right into his yard. He pointed out his property on the overhead map. He suggested an alternative route to the pit be found or something be done to the road to prevent further dust and damage.

Alternatives for the relocation of a road to the pit were discussed. Suggestions included a strip located on the edge of the Wieser land, land belonging to the UPRR and Bob Erlich, and land north of Walmart. Both Wieser and the railroad have stated that their land is not an alternative. Other suggestions included resurfacing the current road, which is approximately 1 1/4 mile in length, with millings or a hard surface. Cheyenne County Commissioner Steve Olson addressed this issue as being cost prohibitive and not necessarily a better surface to drive on. He suggested a drive on the Weyerts Road to see what a surface of re-ground asphalt would be like. He further explained that it was the County's duty to think of more than just the people in that area when this type of expense was involved. City Manager Person cited East Elm Street/the dump road as another example of this type of surface, stating that while it has helped with the dust issue, there might be long-term issues.

Mike Wieser described his reasons for not wanting to sell land for a new road. He stated that the land is currently CRP land and has culverts in 3 different places that drain water off the UPRR and Erlich land. He currently has an access off road L17J on the front of his property and if he sold this land and then wanted to develop any of the remaining property in the future, he would have lost his access. Cheryl Wieser questioned why if the gravel pit benefits the City and County, they would not want to pay for resurfacing the road. She stated that their property has been devalued because of this issue. Tom Kielian suggest that the development of a new road may help develop the area, and in turn increase property values.

Mr Kielian stated that it was not his family that received the most benefit from allowing the construction companies to continue with their current activity at the site, but the community and construction companies. He predicted that road construction project costs would go up if these companies are forced to transport products from other plants located further away.

City Manager Person suggested that it was not the Commission's duty to weigh the benefits or impact on future projects, but to determine if the parameters of the current permit have been adhered to or violated. He noted that these types of issues could be discussed with future applications.

Commissioner Leever suggested rezoning the property permanently as a solution to this issue.

Tom Kielian stated that rezoning the property from agricultural to commercial would increase the taxes on the property, and the income generated by the pit would not support this. He also questioned whether rezoning would affect their right to graze cattle on the land. City Manager Person stated that this type of use would be grand-fathered in as an agricultural purpose.

City Manager Person noted that if the City would annex the property it would force the issue of rezoning.

Commissioner Phillips questioned whether the permit could be revised to allow time to finish ongoing/scheduled projects.

Attorney Sonntag stated that granting an extension for a period of time for removal of material would be an acceptable solution.

Terry Wilhelms of Werner Construction stated that no new millings are being brought into the site and estimated completion of projects and removal of current piles would be completed by late spring, more specifically the end of May.

There being no further questions or comments, Chairman Spiker closed the public hearing at 7:00 p.m. and asked for a motion on the request.

Phillips moved, Gull seconded "That a nine month extension be granted to the Kielian Family Trust for the Conditional Use Permit issued November 19, 2012, with the stipulation that all asphalt millings are to be used up and removed from the site by June 16, 2014, nine months from date of revised permit." Roll call vote: Yeas: Gull, Mueller, Lawler, Spiker, Phillips, England, and Leever. Nays: McCarville. Absent: Egging.

Chairman Spiker announced that the Planning Commission would now hold a public hearing on the Conditional Use Permit of Werner Construction Inc. for the operation of a Mobile Asphalt Plant located in the Southwest Quarter of Section 3, Township 13, Range 49 West of the 6th P.M., which is located ½ mile south of the intersection of Rd 20 and Rd 117 on property owned by the Kielian Family Trust, and present site of the sand and gravel pit, which is located outside the City Limits; 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.

Chairman Spiker stated that he had been instructed by City Attorney J. Leef to inform the gathering that a Conditional Use Permit cannot be issued to anyone other than the landowner. Since Werner Construction is not the landowner of this property they cannot apply for a conditional use permit.

Terry Wilhelms of Werner Construction stated that with the nine month extension stipulated on the Kielian Family Trust permit, they will be able to finish their projects. As to issuance of future applications, he questioned whether a lease with the property owner would constitute a chain of ownership.

Councilman Mark Nienhueser quoted the Codified Ordinances which state that the **owner** must be the applicant. Therefore, unless the Kielian Family Trust wants to rezone the property they will have to apply for any future conditional use permits.

Chairman Spiker closed the public hearing at 7:08 p.m.

The meeting adjourned at 7:10 p.m.