

Sidney, Nebraska, October 21, 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 October 21, 2013 in the City Council Chambers, located at 1115 13th Avenue. Present were: Chairman: Spiker and Commissioners: Egging, England, Leever, McCarville, and Phillips. Absent: Gull, Lawler, and Mueller. Others present: City Manager Person, City Attorney Leef, 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.

McCarville moved, Phillips seconded "That the minutes of the September 16, 2013 meeting be approved as printed." Roll call vote: Yeas: England, Leever, McCarville, Phillips, and Spiker. Abstain: Egging. Absent: Gull, Lawler, and Mueller.

Chairman Spiker announced that the Planning Commission would now hold a public hearing re: the Preliminary Plat Application of John & Jacqueline Wieser to Subdivide a parcel of land, located in Block 1 of Glover Business Park Filing 2 Subdivision, Sections 4 and 9, Township 13 North, Range 49 West of the 6th Principal Meridian, to create two separate Lots 1 and 2, Block 1, Glover Business Park No. 2; 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: John Wieser.

Mr. Wieser noted that the land in question lies 600 feet west of Highway L17J between the old sand pit and the Comfort Inn.

City Manager Person noted that a frontage street to the property already exists, that being Gregory Drive. He acknowledged the memo from Public Services Director John Hehnke, listing issues with the preliminary plat for the project. He stated that Mr. Wieser had met with staff regarding these issues and will see to it that they are addressed on the final plat and improvement districts.

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

England moved, Leever seconded “That the Planning Commission recommend to the City Council that the Preliminary Plat Application of John & Jacqueline Wieser to Subdivide a parcel of land, located in Block 1 of Glover Business Park Filing 2 Subdivision, Sections 4 and 9, Township 13 North, Range 49 West of the 6th Principal Meridian, to create two separate Lots 1 and 2, Block 1, Glover Business Park No. 2, be approved.” Roll call vote: Yeas: All commissioners present. Absent: Gull, Lawler, and Mueller.

Chairman Spiker announced that the Planning Commission would now hold a public hearing re: the Conditional Use Permit application of ATC Acquisition, LLC for the operation of a salvage yard at 151 East Elm Street, formerly US Recycling LLC; 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: Garth Ferris and Steve Eicher.

Garth Ferris, current manager of the salvage yard, stated that the change of ownership would not affect his position and that operations will continue as they are. Mr. Eicher noted that his company will improve the operation with the installation of technology, which will allow them better access to buy and sell on the current market. They will continue to be open half days on Saturdays.

It was noted that all the fencing requirements had been satisfied by US Recycling under the current conditional use permit.

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

McCarville moved, Phillips seconded “That the Conditional Use Permit application of ATC Acquisition, LLC for the operation of a salvage yard at 151 East Elm Street be approved for a period of one year.” Roll call vote: Yeas: All commissioners present. Absent: Gull, Lawler, and Mueller.

Following the vote, discussion reopened regarding the length of the permit. General consensus was to increase the length of the permit with an annual review by staff.

McCarville moved, England seconded “That the Conditional Use Permit application of ATC Acquisition, LLC for the operation of a salvage yard at 151 East Elm Street be approved for a period of five years, with an annual review by staff.” Roll Call vote: Yeas: All commissioners present. Absent: Gull, Lawler, and Mueller.

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/Concrete 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.

The following filed written objections: None. The following appeared in person or by agent or by attorney and were heard: City Attorney J. Leef, Terry Wilhelms, Tom and Walter Kielian, Jay and Rhonda Portenier, and Mike Wieser and Cheryl Wieser.

City Attorney Leef stated that after further review of the City Codified Ordinances she had determined that a party who could provide proof of ownership interest through a contractual lease with the owner of a property, could apply for a conditional use permit for that property. She noted that it is not our place to question a lease between two parties, but rather to set conditions on the actual permit for recourse, in order to protect the City if the conditions are not followed. She cited the example, in this particular case, of placing a \$1,000/month fee on the permit holder for road maintenance. She reviewed the five conditions listed in Chapter 1246, Section 1246.03 regarding special permits, stating that if all conditions could be met, the permit could be granted; if they could not, it should not be granted.

Terry Wilhelms of Werner Construction stated that his company currently has two overlay projects, one in Sunol and one in Lodgepole, that they need to complete. He stated that the millings, currently stored at the Kielian Trust sand and gravel pit, will be used up in their entirety on these two projects. He further stated that no more material will be brought in. He noted that Werner Construction had recently been awarded the 10th Avenue revitalization project for the City of Sidney, and will need to consider whether to locate a concrete batch plant at the Kielian site or bring the concrete in from another location. They have included a concrete plant in the permit application for this reason.

City Manager Person reported that he had met with the County Commissioners, the County Road Superintendent, and the Kielians to discuss options for opening up a new road to the gravel pit. He pointed out the proposed locations on the plat map. He further stated that the County expressed no interest in building any more roads, but would be open to finding a solution to the problems with the current road in relation to the site. He also reported that he had visited with adjacent property owners regarding a new road, and this option is still a viable one. It was his feeling that a new road could open up the area for new development, which would be attractive to the landowners. He stated that Tom Noel, County Road Superintendent, reported that Werner's and the Kielians have been responsive to the concerns he has taken to them.

Terry Wilhelm of Werner Construction offered that if dust is the main issue, they could water the road every other day. He noted that the truck traffic has decreased by 10 times since the summer, with only about 60 trucks per day travelling to and from the gravel pit. He offered that if the residents would call when they have a complaint against a driver, the condition of the road, etc. the site manager would see that it was taken care of. He stated that Werner was aware that a \$12,000 fee/year could be imposed on their company for whatever road maintenance was necessary, and they were accepting of this.

J. Leef stated that she was not sure how these fees would be utilized, noting that it was an administrative thing that would have to be worked out through an interlocal agreement or other means, with direction as to speeds suitable to conditions if the road was watered down, etc.

It was pointed out that Werner was not the only company using the pit, i.e. Nienhueser Construction, the County, and the State also send trucks for sand and gravel from the pit. It was further pointed out that if all the trucks would slow down, and the road was watered periodically as needed, the problem would be resolved.

Jay and Rhonda Portenier stated that they had called Werner's and Nienhueser's several times when a truck had been travelling too fast, etc. and had not seen any resolution to the problems. In addition to the dust making them sick, Mrs. Portenier stated that she was forced to close her day care at her home because the parents did not like the truck traffic and the dust, and stopped bringing their children there.

Tom Kielian stated that he has spent numerous hours talking to all the agencies involved, trying to find a solution to this problem. He noted that they have tried to address the dust issue by watering the road, which in turn sets them up for liability if someone should have an accident on a slippery road. He stated that Officer Wiedeberg had responded to a complaint regarding the speed of the trucks, gone out and watched, and found no trucks violating the speed limit. He compared the complaints against the pit to someone living near a railroad tracks or feedlot, where a solution to a nuisance issue is relatively impossible. He further stated that everyone needs to realize that this pit is an asset to the community, and that if material had to be trucked in from 25-50 miles, the cost of the many on-going projects would increase greatly. He also volunteered that the Kielian Family Trust has shown their investment in the community by pledging the donation of all the gravel for the new hospital project.

Walter Kielien reiterated that the Kielian Family Trust has been proactive in finding an alternative road, watering the current road, and urging the trucks to slow down. He stated that while the pit is not a gold mine, with revenues merely offsetting the taxes on the property, it provides a much needed service to the community. He offered solutions to the issues that could be conditions of the permit, i.e., imposing lower speed limits on the trucks, which, while not enforceable by law, could be implemented within the company with internal consequences.

Terry Wilhelm reiterated that there are 7,000 ton of millings out at the site which are for two projects. He proposed that Werner's could get these jobs done and be on their way. He offered that for future projects, they would give all the homeowners a card with a number to call if they have concerns, wanting to be proactive. He promised to personally sit down with the project supervisor and go through the conditions and terms of the permit.

City Attorney Leef stated that conditions could be placed on the permit that stipulate that drivers will decrease speed on this piece of road. If they do not abide by that condition, the permit can be revoked.

City Manager Person explained that there is \$12-15 million worth of road projects, such as the City overlay on Ft. Sidney Road, scheduled in this area, and that this site is critical to these

projects. He suggested that putting controls on the speed of trucks to and from the site was a better control than taking away the concrete needed for future projects.

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

Leever moved, Spiker seconded “That the Conditional Use Permit application of Werner Construction Inc. to operate a mobile asphalt/concrete plant, for road construction projects in the Sidney Area, on property 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, from October 21, 2013 through November 30, 2014, be approved with the following conditions: 1) a monthly assessment fee of \$1,000, when operating, for the duration of the permit, with a cap of \$6,000; 2) a 30 mph voluntary restriction on the speed limit of the drivers on Rd 20 leading to the sand and gravel pit; and 3) no additional millings can be brought into the site.” Roll call vote: Yeas: Egging, Spiker, Phillips, England, and Leever. Nays: McCarville. Absent: Gull, Lawler, and Mueller.

Chairman Spiker announced that the Planning Commission would now hold a public hearing on proposed changes to the Planning & Zoning Regulations Charts; 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 changes.

The following filed written objections: None. The following appeared in person or by agent or by attorney and were heard: Chief Building Official Brad Rowan.

Chief Building Official Brad Rowan explained that he had gone through the building and zoning regulation charts and found several inconsistencies that he recommended be corrected. Recommendations are as follows:

- Section
- 1) 1264.01. C-3 (Heavy Commercial) zoning allows for 50 foot maximum height restriction. Recommend changing to 80 foot to allow for taller hotels. **Commission agreed with this.**
 - 2) 1262.03. Residential Uses (a) 6. Recommend that Mobile Homes be allowed in AG zoning districts. **Commission stipulated both AR and A zones be changed to allow for mobile homes.**
 - 3) 1262.03. Sales and Retail of Goods (c) 23 and 24. Recommend that Landscaping/nurseries services and Landscaping sand/gravel/material storage be allowed in AG zoning districts. **Commission stipulated that these be allowed, but with a conditional use permit.**

- 4) 1262.03. Public Facilities and other uses (d) 5. Recommend that Communication towers and antennas be allowed in AG zoning districts. **Commission agreed with this.**
- 5) 1262.03. Services Provided (f) 15. Recommend that Landscaping, sand/gravel/material storage be allowed in AG zoning districts. **Commission stipulated that these be allowed, but with a conditional use permit.**
- 6) 1262.03. Miscellaneous Land Uses (j) 4. Recommend that Crop productions and orchards be allowed in AG zoning districts **WITHOUT** a conditional use permit. **Commission agreed with this.**

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

Egging moved, McCarville seconded “That the City Attorney be instructed to prepare an Ordinance incorporating the recommended changes to the Planning & Zoning Regulation Charts for consideration at the next meeting of the Planning Commission.” Roll call vote: Yeas: All commissioners present. Absent: Gull, Lawler, and Mueller.

City Attorney Leef was also instructed to prepare an Ordinance to revise the language in Section 1246.04 Special Permits, to include leasee and/or owner as eligible applicants for a special permit. This item will also be placed on the next Planning Commission meeting agenda.

City Manager Person informed the Commission of an informal meeting on November 5, 2013 from 3:00 p.m. to 5:00 p.m. at the Holiday Inn, where representatives from Cabela’s, SRMC, and Adams Industries will present details on expansion projects that will have an impact on the surrounding business community. He invited anyone interested to attend this informational meeting.

The meeting adjourned at 7:00 p.m.

CHAIRMAN

DEPUTY CITY CLERK