

Sidney, Nebraska, April 21, 2014

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 April 21, 2014 in the City Council Chambers, located at 1115 13th Avenue. Present were: Chairman Spiker and Commissioners: Egging, England, Leever, McCarville, Phillips, Smith, and Volkmer. Absent: Mueller. Others present: City Manager Person, Zoning Administrator Dayton, City Attorney Sonntag, 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, Volkmer seconded "That the minutes of the March 17, 2014 meeting be approved as corrected." Roll call vote: Yeas: Egging, England, Leever, McCarville, Phillips, Smith, and Volkmer. Abstain: Spiker. Absent: Mueller.

Chairman Spiker announced that the Planning Commission would now hold a public hearing re: Rezoning Application of Croell Redi Mix to rezone a parcel of land known as Parcel B, situated in Section 3, Township 13 North, Range 49 West of the 6th Principal Meridian, Cheyenne County, Nebraska, containing 160 acres, more or less, from A (Agricultural) to M-1 (Light Manufacturing and Industrial Park) 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: Brian Marchant, Bob Reynolds, and Tom Kielian.

Brian Marchant, of Croell Redi Mix, Inc., gave an overview of his company which consists of 22 plants in Iowa, and 21 locations throughout Wyoming, South Dakota and Nebraska. There are five plants in Nebraska, with the closest being located in Bridgeport and Kimball. He stated that the company's interest in Sidney began when they were contacted last year regarding a possible plant in Sidney to accommodate several major projects slated to begin in Sidney, i.e. the Cabela's housing development, etc. He stated that they had considered other M-1 locations available in Sidney, but could find none better suited than the Kielian property. He noted that Croell is in the process of purchasing 160 acres immediately surrounding and including the current Kielian Pit, with a projected closing date of mid-May. He stated that the current operation is temporary, but they intend to construct a 3 to 4 bay permanent facility once the sale and permits are finalized.

Mr. Marchant addressed the issue of dust control on the road to the pit, stating that it is his company's standard practice to treat gravel roads with mag-chloride, one to two times per year, which eliminates the dust issue. They would be willing to maintain the road themselves or work with the City and/or County on this, so as to eliminate any inconvenience to the neighboring property owners. He stated that their company has a reputation for getting along with their neighbors and has never received a formal complaint or cease and desist order. He noted that they have a person on-site at all times to handle complaints, and operate under a "one warning and you are out" policy.

City Manager Person addressed the issue of a new road being built to accommodate the site, stating that the City of Sidney does not control any road issues, only the two-mile zoning jurisdiction and permit process. He further stated that the County Commissioners have discussed the issue and have taken the position that they are under no obligation to provide a new road. Negotiations with existing property owners would have to take place in order for a new road to be considered, which has been a stumbling block in the past.

Bob Reynolds introduced himself as the attorney representing Jay and Rhonda Portenier, Mike and Cheryl Wieser, and Brent and Cindy Talich. He stated that his clients were concerned with this new and permanent proposal, as the current permit restrictions, i.e. no more material brought into the property, were not adhered to. Although these violations were committed by the current permit holder, Werner Construction, how are they to know if the new company would adhere to any stipulations placed on them? He further stated that the problems with the existing site have been more recent and were not in play when these residents moved into the area. He presented an article regarding "Asphalt Plant Pollution," noting that it has been proven that toxins are released into the air when this type of product is present. He stated that his clients are asking for very specific requirements in regards to the road maintenance, noting that up to 100 trucks per day were using the road last summer, creating an unhealthy dust hazard. He further noted that there are 75 M-1 zoning designations in the City of Sidney where a plant could be located, rather than across the road from the Wieser's property.

Mr. Marchant of Croell responded that his company's proposed plant would be strictly redi-mix and aggregates. They have no intention of handling asphalt in any way, which should alleviate any concerns the neighbors might have as to this issue.

Tom Kielian, representing the Kielian Family Trust, stated that all the asphalt millings currently stored in the pit are going to be gone within two to three weeks, and the plant gone after the jobs currently underway are completed. He speculated as to the why there isn't more concern in regards to the existing redi-mix plant, which is located on Fort Sidney Road and directly across from multi-family apartment complexes and housing, when there is so much attention being paid to their site, which is several miles from this plant and borders only a few family residential homes.

There being no further questions or comments, Chairman Spiker closed the public 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 Application of Croell Redi Mix to rezone a parcel of land known as Parcel B, situated in Section 3, Township 13 North, Range 49 West of the 6th Principal Meridian, Cheyenne County, Nebraska, containing 160 acres, more or less, from A (Agricultural) to M-1 (Light Manufacturing and Industrial Park) Zone, be approved.” Roll call vote: Yeas: Egging, Smith, McCarville, Spiker, Phillips, and Leever. Nays: Volkmer. Abstain: England. Absent: Mueller.

Chairman Spiker announced that the Planning Commission would now hold a public hearing re: the CONDITIONAL USE PERMIT of Croell Redi Mix Inc., to operate a gravel pit/concrete plant on a parcel of land known as Parcel B, containing 160 acres, more or less, in Section 3, Township 13 North, Range 49 West, of the 6th Principal Meridian, in Cheyenne County, Nebraska; 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: Brian Marchant, Bob Reynolds, and Mike Wieser.

City Manager Person explained that a concrete plant does not require a conditional use permit, but mining of sand and gravel for the concrete does. Therefore, Croell is asking for a permit to complete their proposed operation. He reminded the Commission that a fee of up to \$1,000 can be imposed for road maintenance. An option would be that the City enter into an interlocal agreement with the County to pass these fees on for that purpose.

Bob Reynolds stated that the property owners he represents would like to see specific stipulations placed on the permit if it is granted, i.e., no millings stored at the site, no asphalt plant operated on this site, and measures to retard the dust on the road to the site.

City Manager Person stated that Werner Construction had been served with a cease and desist order for violating the condition of their permit which restricted them from bringing any more millings into the site. They have been given a time frame of 30 days in which to come into compliance. Werner has stated that more millings were brought into the site in order to finish their current jobs, which should be complete within 30 days.

City Attorney Sonntag explained that the Planning Commission can call a special meeting at any time to consider an immediate revocation of the permit, if they so desire. They do not have to wait 30 days. He also noted that a change in ownership of the property constitutes the end of an existing permit, and Croell has indicated that the sale should be finalized in mid-May. This timeframe is still within the 30 day window of the cease and desist order.

Brian Marchant of Croell addressed the dust issue, stating that in their other locations their company provides and treats the road with mag chloride chemicals themselves, but that they would be receptive to giving the City/County the cost/share maintenance fees for such applications if they would rather do it themselves. He stated that if done properly, one treatment

will last up to one year. On roads with heavy use it may require two treatments. He stated that covering the road with millings would be another solution to the dust problem.

Mike Wieser asked for clarification of the actual location of the 160 acres being considered for the new plant. Mr. Marchant pointed out the location on a map.

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

Spiker moved, Egging seconded, "That the Conditional Use Permit of Croell Redi Mix Inc., to operate a gravel pit/concrete plant on a parcel of land known as Parcel B, containing 160 acres, more or less, in Section 3, Township 13 North, Range 49 West, of the 6th Principal Meridian, in Cheyenne County, Nebraska be approved with the following stipulations: 1) Proof of Ownership must be established, 2) Restrict the speed limit of trucks on the gravel road to and from the pit to 30 m.p.h., 3) Croell is to contact the County to arrange mag chloride treatment of the road, 4) No asphalt millings or asphalt plant will be allowed at the site, and 5) A fee of \$1,000/month be imposed for road maintenance fees." Roll call vote: Yeas: Egging, Volkmer, Spiker, Phillips, Leever. Nays: Smith and McCarville. Abstain: England. Absent: Mueller.

Chairman Spiker announced that the Planning Commission would now hold a public hearing regarding the ANNEXATION request of K&W, LLC, for a 14.63 acre tract of land located within the Southwest Quarter of Section 9, Township 13 North, Range 49 West of the 6th Principal Meridian, Cheyenne County, Nebraska (K & W, LLC, Loves); 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 before Love's can form a public improvement district or build the improvements on their own and deed back to the City, the property must be annexed into the City limits.

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

Volkmer moved, Egging seconded "That the Planning Commission recommend to the City Council that the annexation request of K&W, LLC for a 14.63 acre tract of land located within the Southwest Quarter of Section 9, Township 13 North, Range 49 West of the 6th Principal Meridian, Cheyenne County, Nebraska, be approved." Roll call vote: Yeas: All commissioners present. Absent: Mueller.

Chairman Spiker announced that the Planning Commission would now hold a public hearing regarding the ANNEXATION request of The City of Sidney for a 36.4 acre tract of land located in the North Half of Section 7, Township 13 North, Range 49 West of the Sixth Principal

Meridian, Cheyenne County, State of Nebraska (Verde Lane Dam); 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: Gary Person.

City Manager Person stated that during the Planning Commission's several month discussion regarding squaring up of the boundaries of the City limits, this parcel was suggested for consideration, as it is City property which lies within the current boundaries of the City.

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

Smith moved, McCarville seconded, "That the Planning Commission recommend to the City Council that the annexation request of the City of Sidney for the Verde Lane Dam acreage, a 36.4 acre tract of land located in the North Half of Section 7, Township 13 North, Range 49 West of the Sixth Principal Meridian, Cheyenne County, State of Nebraska, be approved." Roll call vote: Yeas: All commissioners present. Absent: Mueller.

Chairman Spiker announced that the Planning Commission would now hold a public hearing regarding the ANNEXATION request of The City of Sidney for a 10.16 acre tract of land located in a part of the East Half of the Northeast Quarter of Section 7, Township 13 North, Range 49 West of the Sixth Principal Meridian, Cheyenne County, State of Nebraska (White Bluffs Veterinary Clinic); 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: Dr. Dave Weiderspon.

Dr. Weiderspon stated that he is currently hooked to City water and electricity and has no objections to the annexation of his property into the city limits, stating that he is an advocate of the power of development. He noted that in the spirit of fairness he would also like to see the properties designated as 18, 19 and 20 on the proposed annexation map be considered for annexation. (18 Fairgrounds, 19 Luehrs, 20 Filsingers).

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

Egging moved, Leever seconded "That the Planning Commission recommend to the City Council that the annexation request of the City of Sidney for the White Bluffs Veterinary Clinic acreage, a 10.16 acre tract of land located in a part of the East Half of the Northeast Quarter of Section 7, Township 13 North, Range 49 West of the Sixth Principal Meridian, Cheyenne County, State of Nebraska, be approved." Roll call vote: Yeas: All commissioners present.

Absent: Mueller.

Chairman Spiker announced that the Planning Commission would now hold a public hearing regarding the ANNEXATION request of the Estate of Wesley E. & Evelyn M Jensen for a 126.84 acre tract of land situated in the South Half of Section 8, Township 13 North, Range 49 West of the 6th Principal Meridian, Cheyenne County, Nebraska (Wesley Jensen Estate);); 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: Bruce Preston and Stan Sessions, representing the Jensen estate.

Mr. Preston introduced himself as the nephew and power of attorney for the Wesley and Evelyn Jensen estate. He stated it was their intention to annex 116.44 acres of this property for future planning and development.

Mr. Sessions presented a concept map prior to the actual on-site survey, stating that the actual acreage proposed for development is 116.44 acres. He noted that he has done quite a lot of development in the Colorado area and has found annexation to be a useful tool in finding buyers to develop land. He stated that it is not the intention of the Estate to develop the land themselves, but rather to offer the land for sale to prospective developers once it is annexed.

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

Phillips moved, England seconded “That the Planning Commission recommend to the City Council that the annexation request of the Estate of Wesley E. & Evelyn M Jensen for a 116.44 acre tract of land situated in the South Half of Section 8, Township 13 North, Range 49 West of the 6th Principal Meridian, Cheyenne County, Nebraska, be approved.” Roll call vote: Yeas: All commissioners present. Absent: Mueller.

Chairman Spiker announced that the Planning Commission would now hold a public hearing regarding the ANNEXATION request of the City of Sidney for a 12.516 acre tract of land located in part of the Southeast Quarter of Section 33, Township 14 North, Range 49 West of the Sixth Principal Meridian, Cheyenne County, State of Nebraska (21st Century Equipment); 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: Gary Dible, Tyler Burkholder, and Dan Rood, Bernie Fehringer and Gary Person.

Gary Dible spoke on behalf of 21st Century Equipment requesting that their property not

be annexed into the City limits at this time. He stated that they have been operating at their current location for 6 years. They are currently on City utilities with the exception of electricity. He noted that 21st Century paid the expense to bore for the water/sewer line to their development, as well as granting a right-of-way access to the City for water to the City's Industrial Tract at the time they relocated to this site. He stated that their electricity is currently provided by Wheatbelt Public Power. Reasons for not being annexed were: 1) A property tax increase of \$7,600; 2) County Road is access to their business. While the County has done a wonderful job of maintaining the 400 feet of road, he speculated as to whether the City could maintain it as well; 3) Currently agricultural parts and equipment have sales tax on them, and while this tax is "going away" on July 1st as a result as legislation, will it last long term? Right now they have a competitive advantage with not having to charge City tax on these items. They will lose this advantage. He noted that sports and lawn and garden equipment/supplies are and will continue to be taxable and would reflect an increase with the City tax; 4) When the facility was built they did not ask for any public funding, TIF benefits, etc. It is their thinking that now is not the time to annex their property as they do not anticipate development in the area for quite some time. If and when develop approaches the area, they would be glad to embrace it.

City Manager Person addressed the utility and road issues. He stated that the City could enter into a cooperative agreement with the County so they could continue doing what they are doing with the road. He further speculated that with the paving of Pole Creek Crossing, this 400 feet could possibly be included in the paving project, alleviating the need for gravel road maintenance. He explained that the City has 1 year in which to take over the electric line/service in this area and will proceed to do this if the property is annexed. He noted that the line that Wheatbelt built will go away.

Bernie Fehringer, a member of the WPPD board stated that Wheatbelt's rates are comparable to the City's, siting this as a non-issue in the consideration. He stated that as a member of the everyday farming community who spends money in the City, he saw this as a "revenue grab" and was not in favor of the annexation until such time development to this area deemed it necessary.

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

McCarville moved, Smith seconded "That the Planning Commission recommend to the City Council not to proceed with the annexation of 21st Century Equipment, a 12.516 acre tract of land located in part of the Southeast Quarter of Section 33, Township 14 North, Range 49 West of the Sixth Principal Meridian, Cheyenne County, State of Nebraska, at this time." Roll call vote: Yeas: All commissioners present. Absent: Mueller.

Chairman Spiker announced that the Planning Commission would now hold a public hearing regarding the ANNEXATION request of the City of Sidney for a 19.92 acre tract of land situated in the Southeast Quarter of Section Twenty-nine, Township Fourteen North, Range Forty-Nine West of the 6th P.M., Cheyenne County, Nebraska, (Anderson Forest Products); 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: Gary Person.

City Manager Person explained that this property was rezoned to develop the existing Anderson Forest Products operation and has all City services. He noted that the proposed annexation of the City Landfill could not happen without first annexing this property.

Deputy Clerk Heilbrun stated that a representative of Anderson Forest Products had phoned in and had no objections to the proposed annexation.

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

Spiker moved, England seconded “That the Planning Commission recommend to the City Council that the annexation of Anderson Forest Products, a 19.92 acre tract of land situated in the Southeast Quarter of Section Twenty-nine, Township Fourteen North, Range Forty-Nine West of the 6th P.M., Cheyenne County, Nebraska, be approved.” Roll call vote: Yeas: All commissioners present. Absent: Mueller.

Chairman Spiker announced that the Planning Commission would now hold a public hearing regarding the ANNEXATION request of the City of Sidney for a 142.9 acre tract of land situated in the East Half of Section Twenty-Nine, Township Fourteen North, Range Forty-Nine West of the 6th P.M., Cheyenne County, Nebraska, (City Landfill); 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: Gary Person.

City Manager Person explained that the area proposed for annexation DOES NOT include the shooting park. He noted that the City has 100% ownership in this property. He explained that there is one section of County road that will either become the City’s responsibility to maintain or continue to be maintained by County under a cost share agreement.

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

McCarville moved, Leever seconded “That the Planning Commission recommend to the City Council that the annexation of the City of Sidney Landfill, a 142.9 acre tract of land situated in the East Half of Section Twenty-Nine, Township Fourteen North, Range Forty-Nine West of the 6th P.M., Cheyenne County, Nebraska, be approved.” Roll call vote: Yeas: All commissioners present. Absent: Mueller.

City Manager Person explained that the item regarding designation of Substandard and Blighted to an area located at the old Sioux Army Depot had been postponed because it was determined that the City Council must first consider the request at their April 22nd meeting, and then refer it to the Planning Commission for consideration at their May 19, 2014 meeting.

Commissioner McCarville suggested that the Commission reconsider pursuing the revocation of the Werner Conditional Use Permit as soon as possible. Taking into consideration the necessary time for publication requirements and notifications, it was decided that this item be placed on the May 19th agenda for consideration.

At this time, 6:52 p.m., Chairman Spiker reopened the public hearing regarding the Conditional Use Permit for Croell Redi Mix Inc.

The following filed written objections: None. The following appeared in person or by agent or by attorney and were heard: Sparky England and Bernie Fehringner.

Commissioner England excused himself from the bench and introduced himself as the manager of the Croell plant in Sidney. He stated that he would personally guarantee that the road will be taken care of once Croell assumes ownership of the property. He stated that he felt that \$1,000/month for road maintenance fees was extremely high, considering Croell has offered to provide the road maintenance themselves or work with the County on this issue. He asked if the assessment of the monthly fee could be waived until it is determined how they actually take care of things.

Chairman Spiker suggested that the assessment be left as previously decided, with a review in 90 days after the company begins operation.

Bernie Fehringner agreed with a 90 day reconsideration period, stating that it would give Croell, the City and the County time to work out an arrangement for the road maintenance.

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

Phillips moved, Leever seconded "That the stipulations placed on the Conditional Use Permit for Croell Redi Mix be revised to include a 90-day review after the plant becomes operational." Roll call vote: Yeas: All commissioner present. Absent: Mueller.

Discussion was held regarding the comment that parcels 18, 19, and 20 be considered for annexation. City Manager Person reiterated that the City must follow the premise of the annexation laws toward agricultural land in that they cannot be annexed until a redevelopment plan is proposed. He advised that these parcels be considered when this occurs.

The meeting adjourned at 7:00 p.m.

CHAIRMAN

DEPUTY CITY CLERK

Footnote: During the meeting an attorney representing some private landowners made reference to a cease and desist order issued the previous week by the City to the Kielian Family Trust. The City goes on record that this order was later dismissed and should not have been issued to the Kielian Family Trust, rather to Werner Construction which had been issued the original conditional use permit and allegedly violated the terms of the agreement. Werner had a lease arrangement to use the sand and gravel pit. The City subsequently issued a written apology to the Kielian Family Trust and specifically to Rosalie Kielian, who had been served the order.