

Sidney, Nebraska, December 15, 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 December 15, 2014 in the City Council Chambers, located at 1115 13th Avenue. Present were: Chairman Spiker and Commissioners: Cortney, Egging, Mueller, Phillips, and Smith. Absent: England, McCarville and Volkmer. Others present: City Manager Person, Zoning Administrator Dayton, 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.

Egging moved, Phillips seconded, "That the minutes of the November 17, 2014 meeting be approved." Roll call vote: Yeas: Egging, Phillips, Spiker, and Cortney. Abstain: Mueller and Smith. Absent: England, McCarville, and Volkmer.

Chairman Spiker announced that the Planning Commission would now hold a public hearing re: the Conditional Use Permit application of Gary and Sonja Ehlers to operate a commercial gym and fitness center at 1850 15th 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: Sonja and Gary Ehlers.

City Manager Person informed the gathering that City Attorney J Leef was participating in the meeting via teleconference. Person explained the process of the certificate of occupancy application which new businesses in Sidney are required to complete, as follows: A new business owner is asked to complete the form, including the address and specific use(s) that will take place within the premises. The completed application is submitted to the City Manager, the Public Works Director, and the Zoning Administrator for code compliance, and acts as a check and balance system. He stated that the original application completed by the Ehlers did not list the intended use. When City Inspector Rowan noticed activity at the facility, he "red tagged" the building for non-compliance. The Ehlers then contacted the city staff on November 14 regarding its intended use and the city staff then explained the conditional use permit requirement and process for applying.

Under the City Zoning Code 1262.03i "Commercial Recreational Activities" are allowed in Commercial or Industrial Zones, but require the conditional use permit approval by the Planning Commission. The property is zoned industrial. It was further noted that because the intended use of this specific premises is not the same as it has been in the past, which previously was a shipping transport hub, it was no longer grandfathered in under the building codes. If the use was consistent with the previous use and continuous, it would have been grandfathered in and not subject to changes in the code requirements as they pertained to the request. Once any business operation ceases to continue with its use for longer than 12 months, it must follow any newly adopted zoning code requirements.

Sonja Ehlers explained that she was a certified personal trainer for Cross Fit. She began training people at the Cheyenne County Community Center through a rental agreement with the Center. When attendance grew too large for the space at the Center, her agreement with CCCC transferred to the St. Pat's Youth Center, which is also owned by the CCCC. She said the classes have again outgrown the space at the Youth Center, so she was forced to look for a building with more space. She leased a building at 1850 15th Avenue from Simmons Cook. The Cook building seemed ideal as it has more space to accommodate training as well as being in close proximity to the Sidney Deadwood Trail for running exercises. She conducts five classes daily with approximately 15 people per class. She has approximately 50 individuals that she trains. She employs one other trainer, Jordan Peters, who conducts the night classes.

Ms. Ehlers explained they have already put a sizeable investment into the building after signing the lease agreement on this property. She noted that they have already made some improvements, i.e. widening the stairs and putting up a handrail. They have paid for these improvements themselves and will not be reimbursed by the property owner. She stressed that all future building revisions would be at their expense. Inspector Rowan explained that a building permit had not been obtained and he therefore was not aware of the structural changes, had not made any inspections, and had no idea if the changes

were made to ADA compliance standards. The Ehlers requested that they needed to keep the overhead costs minimal, so as not to make the project cost prohibitive. City Manager Person explained that on November 14, during an inquiry they made at City Hall, the Ehlers were informed by the city staff as to the conditional use process. At this time, Inspector Rowan offered to go over the following day, or whatever time would work for the Ehlers, to inspect the premises. No request call came between the time of Nov. 14 and the Dec. 15 Planning Commission meeting.

Zoning Administrator Dayton noted that there is adequate parking in the rear of the building to meet the requirement for off-street parking. He stated that there have been no written or verbal objections from neighboring property owners toward the project, and from a zoning perspective it was an allowable use as long as the conditional use permit was obtained.

Chief Building Official Rowan stated that the issue with the building/parking is that it does not meet ADA requirements. Compliance deficiencies include a handicap accessible/public restroom, a handicap parking space, and handicap entry. He further noted that, aside from the ADA requirement, the designation "gym" also requires a public restroom or place for patrons to change clothes. He stated that he is recognized as an ADA compliance officer, knowledgeable in ADA laws, and would be willing to inspect the building with the Ehlers to point out any deficiencies.

Mr. Ehlers questioned as to whether the fact that this is a private training facility, which is only open to members, exempts it from these requirements.

The question was posed by the Ehlers about some businesses posting "no public restrooms" signs asking if that could apply to this situation? Rowan said the City has adopted the Existing Building Code, which does take into consideration financial hardship and functional feasibility in meeting certain code requirements or ADA compliance issues, but in this case it does not apply because the nature of the use of the building is significantly changing. A recreational gym would also necessitate an ADA compliant restroom and require other ADA and code compliance issues to be met.

It was the City Attorney's opinion that because a service is being provided through memberships to the public, it becomes a public entity and must follow compliance and zoning requirements of the City of Sidney. She further noted that if the City's code does not specify a particular issue, we cannot require more than what our code requires. However, with regards to the ADA requirements, the zoning code adopted by the City of Sidney encompasses the federal ADA requirements, therefore they are enforceable by the zoning administrator.

Commissioner Cortney questioned whether Golden Living Center had been notified as an adjoining property, as she did not see them on the list of notifications. It was determined that they had not been notified in the manner required, even though the Ehlers said they had visited with Golden Living representatives and seemed to have no issues with the project.

The Commissioners discussed two options in moving forward with the request. 1) Approval of the permit contingent on the ADA compliance review and satisfaction of code requirements being met, and notification of the Golden Living Center; or 2) Tabling the request until these issues are resolved.

City Attorney Leef stated that, according to Code, the gym cannot operate until all contingencies are met. However, if the Ehlers can prove that ADA compliance is in process and will be completed in a reasonable amount of time, as determined by the building inspector, and a favorable written opinion is obtained by Golden Living Center, they could possibly continue with their operation.

City Manager Person stated that he and Zoning Administrator Dayton will meet with Golden Living Center officials to present them with the notification and discuss the project with them. Inspector Rowan will meet with the Ehlers to go over the building requirements on December 16th at 1:00 p.m.

Following discussion by the Commission, it was determined that granting the permit with contingencies created too much liability for the City, as well as opening up this type of situation to anyone else with a similar request to operate contingent upon meeting requirements after the permit is granted, rather than prior to it being granted.

City Attorney Leef noted that the public hearing could be continued to a later date, alleviating the necessity for re-notification of property owners and publication of public hearing notice.

There being no further questions or comments, Chairman Spiker asked for a motion to continue the public hearing on this request until December 29, 2014 at 5:30 p.m. This two-week period would allow time for notification of the property owner and inspection of the property by City staff.

Phillips moved, Spiker seconded "That the public hearing regarding the Conditional Use Permit application of Gary and Sonja Ehlers to operate a commercial gym and fitness center at 1850 15th

Avenue be continued to December 29, 2014 at 5:30 p.m.” Roll call vote: Yeas: All commissioners present. Absent: England, McCarville, and Volkmer.

The meeting adjourned at 6:38 P.M.

CHAIRMAN

DEPUTY CLERK