

# **City of Scottsbluff, Nebraska**

**Monday, May 9, 2016**

**Regular Meeting**

**Item Appr. Min.1**

**Minutes 4/11/16**

*Approve minutes April 11, 2016*

**Staff Contact: Annie Urdiales**

**Planning Commission Minutes  
Regular Scheduled Meeting  
April 11, 2016  
Scottsbluff, Nebraska**

The Planning Commission of the City of Scottsbluff, Nebraska met in a regular scheduled meeting on Monday, April 11, 2016, 6:00 p.m. in the City Hall Council Chambers, 2525 Circle Drive, Scottsbluff, Nebraska. A notice of the meeting had been published in the Star-Herald, a newspaper of general circulation in the City, on April 1, 2016. The notice stated the date, hour and place of the meeting, that the meeting would be open to the public, that anyone with a disability desiring reasonable accommodation to attend the Planning Commission meeting should contact the Development Services Department, and that an agenda of the meeting kept continuously current was available for public inspection at Development Services Department office; provided, the City Planning Commission could modify the agenda at the meeting if the business was determined that an emergency so required. A similar notice, together with a copy of the agenda, also had been delivered to each Planning Commission member. An agenda kept continuously current was available for public inspection at the office of the Development Services Department at all times from publication to the time of the meeting.

**ITEM 1:** Chairman, Becky Estrada called the meeting to order. Roll call consisted of the following members: Anita Chadwick, Mark Westphal, Jim Zitterkopf, Callan Wayman, Linda Redfern, and Becky Estrada. Absent: Aguillo, Weber, Huber, and Gompert. City officials present: Annie Folck, City Planner, Annie Urdiales, Planning Administrator, and Gary Batt, Code Administrator II.

**ITEM 2:** Chairman Estrada informed all those present of the Nebraska Open Meetings Act and that a copy of such is posted on bookcase in the back area of the City Council Chamber, for those interested parties.

**ITEM 3:** Acknowledgment of any changes in the agenda: None

**ITEM 4:** Business not on agenda: None

**ITEM 5:** Citizens with items not scheduled on regular agenda: None

**ITEM 6:** The minutes of March 14, 2016 were reviewed and approved. A motion was made to accept the minutes by Zitterkopf, and seconded by Wayman. **"YEAS":** Chadwick, Zitterkopf, Wayman, and Estrada. **"NAYS":** None. **ABSTAIN:** Westphal and Redfern. **ABSENT:** Aguillo, Huber, Weber, and Gompert. Motion carried.

**ITEM 7A:** The Planning Commission opened a public hearing for the Owen Oral Surgery Center Redevelopment Plan, applicant(s) and owner(s), Owen Development, L.L.C. Annie Folck, City Planner gave a brief overview of the project, the Planning Commission at a previous meeting approved a final plat for Lots 1 and 2, Block 10, Five Oaks Subdivision for property owner, Zachary Owen. These lots are located in a Blighted and Substandard area and are eligible for TIF (tax increment financing). Dr. Owen plans on developing Lot 1, as his office for Oral Surgery part of this plan includes several public improvements to the property including the completion of the west side of Avenue G from 42nd Street south to 40th Street, and improvements to the water and sewer systems. This redevelopment plan includes a request for tax increment financing for eligible costs and improvements to the land. Folck noted that the plan fits and is in compliance with our newly adopted comprehensive development plan and recommended approval of the Resolution for the Redevelopment Plan for review by the CRA (Community Redevelopment Authority) and City Council.

John Selzer, representing Owen Development L.L.C, addressed the Planning Commission and outlined how the proposed project meets the intent of the City's Comprehensive Development Plan, Lot 1, which will be developed as the Oral Surgery Office is located in an O & P zoning district, this office building will be a good buffer between the Webb development in a C-2 zoning district to the west and the R-4 residential district to the east of Avenue G. The office will have regular business hours and be low

intensity, low traffic with approximately fifteen patients a day. The Plan also includes landscaping and possibly sidewalk which will soften the edges of the office, the office building will be designed to fit in with both the commercial to the west and the residential to the east it will fit with Highway 26 District street patterns. As Lot 1 is developed a water line will be put in place under Avenue G to serve future development to the east, this will allow for the availability of water services to future development without having to tear up the street. The plan is in conformance with our Comp Plan and Mr. Selzer requested a positive recommendation of the resolution for the revitalization plan to the Community Redevelopment Authority and City Council.

**Conclusion:** A motion was made by Zitterkopf and seconded by Westphal to make positive recommendation of the resolution to approve the Redevelopment Plan for the Owen Oral Surgery Center on Lot 1, Block 10, Five Oaks Subdivision to the Community Redevelopment Authority, and City Council. "YEAS": Westphal, Redfern, Zitterkopf, Wayman, Chadwick, and Estrada. "NAYS": None. ABSTAIN: None. **ABSENT:** Aguillo, Weber, Huber, and Gompert. Motion carried.

**ITEM 7B:** The Planning Commission opened a public hearing for a proposed rezone for property located at 1401 19<sup>th</sup> Avenue (tracts 12, & 13, Wildy & Lana Commercial Tracts). The applicant(s), Kathy Birch from Van Newkirk Real Estate, representing property owners, T.H. & Spencer Steel; Ms. Birch addressed the Planning Commission regarding the request to change the zoning from R-4 Multifamily residential to C-3 Heavy Commercial. The property owners live in Colorado and are unable to take care of the property anymore; they want to sell the property and have someone interested in the property if can be rezoned to a C-3 heavy commercial zoning district, they are asking the Planning Commission to consider changing the zoning which will help with the sale of the parcel, which will improve the area as it is now an eyesore, the prospective buyer is aware of the landscaping requirements in a C-3 zone and will landscape with trees and hope to provide a sidewalk in this area also. The proposed use is for commercial storage.

The property has been used as a mobile home park for several years (Wagon Wheel Mobile Home Park) and is situated south of East 15<sup>th</sup> Street between 19<sup>th</sup> and 21<sup>st</sup> Avenue. Properties to the north, south and west are zoned C-3 Heavy Commercial and east of 21<sup>st</sup> Avenue the area is zoned M-1 Light Manufacturing. These parcels were zoned C-3 in the past and rezoned a years ago to R-4 as the owner at that time was planning to remove the mobile homes and put in multifamily rental units. He later sold the property and it has been used as a mobile home park ever since with different owners, the Steele's had sold the property but the property reverted back to them after the previous owners were unable to make the proposed changes and improvements to the mobile home park.

**Conclusion:** A motion was made by Wayman and seconded by Chadwick to recommend approval of the proposed zone change for Tracts 12 & 13, Wildy & Lana Commercial tracts from R-4- Multifamily to C-3 Heavy Commercial. "YEAS": Zitterkopf, Westphal, Chadwick, Wayman, Redfern, and Estrada. "NAYS": None. ABSTAIN: None. **ABSENT:** Aguillo, Weber, Huber, and Gompert. Motion carried.

**ITEM 7C:** The Planning Commission opened a public hearing for proposed ordinance amendments to Chapter 25, Article 2, Including definitions relating to Tattoo Establishments, Body Piercing, Branding and Permanent Color Technology, also amending Chapter 25, Article 3, amending various zoning districts in which a Tattoo/Body Piercing Establishment or Permanent Cosmetic Facilities will be allowed as a permitted use by right.

Annie Folck gave a brief description of the changes to Chapter 25 Article 2 & 3, of our zoning code. Definitions were added to Article 2 defining the following:

25-2-13.1. Body piercing

Body piercing means puncturing the skin of a person by aid of needles or other instruments designed or used to puncture the skin for the purpose of inserting removable jewelry or other objects through the human body, except that body piercing does not include puncturing the external part of the human ear lobe.

25-2-13.2. Branding - Branding means a permanent mark made on human tissue by burning with a hot iron or other instrument.

25-2-90.1. Permanent Color Technology - Permanent color technology means the process by which the skin is marked or colored by insertion of non-toxic dyes or pigments into or under the subcutaneous portion of the skin upon the body of a live human being so as to form indelible marks for cosmetic purposes.

25-2-125.1. Tattooing - Tattooing means the process by which the skin is marked or colored by insertion of non-toxic dyes or pigments into or under the subcutaneous portion of the skin upon the body of a live human being so as to form indelible marks for decorative or figurative purposes.

25-2-125.2. Tattoo/body piercing establishment - Any establishment where tattooing, branding and/or body piercing is engaged in and where the business of tattooing, branding, and/or body piercing is conducted, or any part thereof. This definition does not include practices that are considered medical procedures such as implants under the skin. Practices recognized as medical procedures by the State Medical Board shall not be performed in a tattoo/body piercing establishment. All tattoo/body piercing establishments must obtain appropriate licensure through the Nebraska Department of Health and Human Services for body art facilities.

The City's current language for zoning has requirements/guidelines listed these will be removed as we do not conduct inspections of the facilities, these facilities and licenses are all governed by the State and the only thing we should control is the zoning and where the establishment can be a permitted use by right. City staff is not trained or qualified to make determinations as to whether or not health code requirements are being met. If the City decides to start regulating these facilities it should be done through a regulatory ordinance that addresses public health not through zoning.

Below is the language which will be removed:

25-3-15(91) - *Tattoo parlor meeting the following conditions:*

*a. Prior to operating a tattoo parlor, the operator/practitioner must first apply for and receive a permit and certificate of occupancy from the Development Services Director. The permit is subject to revocation if the permittee at any time fails to comply with the conditions set forth herein.*

*b. The operator/practitioner must comply with any and all federal, state and local regulations pertaining to the activity of tattoo artistry on the human skin.*

*c. The operator/practitioner must submit to regular and/or unannounced inspections by the Department of Planning, Building and Development, the Scotts Bluff County Department of Health, and any other authority empowered to regulate such activities.*

*d. All instruments and equipment must be cleaned and sterilized before use. Sterilization of equipment shall be accomplished by exposure to live steam for at least thirty (30) minutes at a minimum pressure of fifteen (15) pounds per square inch, temperature of two hundred forty (240) degrees Fahrenheit or one hundred sixteen (116) degrees Celsius.*

*e. The operator/practitioner must positively identify each client and keep record of the client's name, age, mailing address and phone number and not dispose of such information for a period of at least ten (10) years. Any transfer in ownership or operation of the business will result in revocation of the permit. All records shall be relinquished to the Development Services Director at that time.*

*f. The operator/practitioner may not perform work on anyone eighteen (18) years of age or younger without written permission from the minor's parent/parents or legal guardian.*

*g. The operator/practitioner shall comply with the OSHA (Occupation Safety and Health Act) blood borne pathogen rules as it relates to the disposition of hazardous waste materials.*

*h. To prevent the cause and/or spread of infection or disease, any and all tattoo needles used for each client shall be disposed of properly and not reused.*

Under Chapter 25, Article 3 Zoning District Provisions –Tattoo/Body Piercing Establishments and Permanent Cosmetic Facility were added to the C-1, C-2, M-1, & M-2 zoning districts as a permitted use by right. Permanent Cosmetic Facilities was also added to the C-3 zoning district as a permitted use by right; previously C-3 was the only zoning district that allowed Tattoo/Body Piercing as a permitted use.

168

169 Discussion on how to classify Permanent Color Technology should also be allowed in a O&P zoning  
170 district and in residential districts with a special use permit, a decision on whether the permanent color  
171 should be considered the same as a tattoo establishment or as cosmetic similar to Beauty Salons some  
172 of which offer this type of permanent color for clients, which includes eyeliner, eyebrows, lip liner and  
173 some cosmetic color work for cancer patients who have had a mastectomy. Research into other Cities  
174 did not provide anything that addressed permanent color technology.

175

176 Proponents that spoke in favor of the change were Matt Drake, Signature Ink, Summer Bianco of Bianco  
177 and Company, David Marez, NE Ink, and Chris Seaton, Handsome Devil Tattoo, all spoke in favor of the  
178 ordinance. The current ordinance is antiquated and they are governed the same as a beauty salon.  
179 Change in the ordinance will level the playing field and allow for Tattoo Parlors to be in other zoning  
180 districts currently the C-3 district which is mostly along East Overland, there are not very many empty  
181 building in this area for a business and people are also afraid of this area and do not like to be there after  
182 certain hours. People want to feel safe when they are out in the City. Allowing for these Establishments  
183 in other districts will help the community. More establishments will bring more revenue tattoos are  
184 becoming more main stream and this is a positive change for the community, it will help in removing the  
185 gangster mentality. These facilities and tattoo artists are required to have licenses and follow all  
186 requirements from the State; all disposals of needles are done according to State guidelines, back ground  
187 checks are also done by police. Hours can be different for the establishments some open later in the  
188 morning and are open till evening hours. Cliental can vary from 20 to 30 a month; this type of traffic will  
189 not disrupt the surrounding neighborhood.

190

191 Jon Darnell, Wake Up N' Makeup, spoke regarding permanent color technology and would like the board  
192 to look at separating this use separately from tattoo establishments and to consider them as more as a  
193 beauty salon where the do cosmetics and makeup these are personal services they are providing for  
194 their clients. The tattoos and permanent art require different training and different licensing.

195

196 Bill Trumbull also spoke in favor of separating the permanent color technology from tattoos & body  
197 piercing. This will allow for flexibility in where these different facilities may be located, maybe in a O & P  
198 zoning district and in residential with a special use permit form the Planning Commission.

199

200 Brenda Colin addressed the Planning Commission and offered support for the ordinance amendment for  
201 tattoos from a different age group, tattoos are a form of self-expression and represent art, sometimes the  
202 tattoo has a meaning of something that has happened in a person's life it is free enterprise and should not  
203 be discriminated against.

204

205 Desirae Natali also spoke in support of the change in ordinance. It's time to change the stigma of tattoo  
206 parlors, the gangster image, and negativity of these types of establishments. The new ordinance will level  
207 the playing field for everyone.

208

209 David Chalupa spoke against the change, the City should have regulations in place before they expand  
210 the use to other zoning districts.

211

212 Planning Commission Member Redfern noted that this is the first time we are using the new  
213 comprehensive development plan and zoning is looking at everything differently, with the new plan & a  
214 new process, there will be lots of trials in of the new plan and we will have lots of updates to our zoning  
215 code, looking at how the different zoning districts effect the surrounding areas.

216

217 This ordinance can be revisited in the future and we can add to or remove language as needed.

218

219 **Conclusion:** A motion was made by Westphal and seconded by Chadwick to approve the ordinance  
220 amendment as presented: "YEAS": Zitterkopf, Westphal, Chadwick, Wayman, Redfern, and Estrada.  
221 "NAYS": None. ABSTAIN: None. ABSENT: Aguillo, Weber, Huber, and Gompert. Motion carried.

222

**ITEM 7D:** The Planning Commission opened a public hearing for Ordinance amendments to Chapter 25, Article 3 Section 25 dealing with zoning & miscellaneous regulation by including regulations for shipping containers used for storage by adding 25-3-15(16) restricting the use of shipping containers as storage.

The Planning Commission had previously reviewed this ordinance at the January meeting which adds language to our zoning code regarding shipping containers for storage use and had recommended approval of the proposed additions/changes to City Council. City Council referred this back to Planning Commission and asked that Development Services Staff make more specific requirements for this type of storage container in both commercial districts and residential districts. Originally one ordinance was approved, staff was asked to break this into two ordinances one for residential districts and one for commercial districts. The commercial ordinance lists more guidelines than the residential ordinance.

Some of the types of these containers are - freight container, ISO container, shipping container, high-cube container, box, C container or container van, which are designed to store and move materials. General restrictions for shipping containers proposed include, a shipping container may be placed in the front yard setback only if being used for moving or relocating purposes. They cannot be placed within the site triangle, may exceed 8 feet in width, 9 feet in height or 40 feet in length, cannot be placed in easements, public rights-of-way, and setbacks except as otherwise provided for in the Code. A shipping container may be placed on a lot without a permit if it is incidental to the permitted construction activities on the same lot. The shipping container must be removed at the completion of the construction project or expiration of the building permit.

Residential zoning districts shipping container shall not be allowed, except on a temporary basis for moving or actually used for construction activities, in all residential zoning districts. A shipping container may be allowed for a period of 30 days if used for moving or if used for construction activities if additional time is needed the owner of the lot can apply for one 30 day extension.

Commercial zoning districts shipping containers may be used for storage or shipping in all commercial zoning districts provided they are located in areas not utilized by customers of the commercial business and where shipping & receiving are conducted on the lot. The containers are maintained and kept in good repair with no holes and rust and secured to prevent entry and injury to unauthorized people. The containers must also be placed on a level surface with a base of rock or concrete so as to prevent any settling of the shipping container while it is on the lot.

Manufacturing & Agricultural Districts, a building permit is required if the container is to remain on the lot for a period greater than six months and used for onsite storage of material incidental to the permitted or accessory use of the lot. If located in a front or side yard it must be painted so no signage or language is visible, they cannot be connected to any City utility, kept in good repair with no holes or rust, and must be placed on a level surface with a base of rock or concrete to prevent any settling of the container while it is on the lot.

The City is getting more requests for these types of containers and has issued a few building permits, some of the things we are concerned about is placement on property as they could be placed in the floodway, and would also need a floodplain permit.

Some of the questions brought up, if these are considered temporary and then remain on the property will it be taxable. With a permit as an accessory structure they would be reviewed by the County and appropriately taxed. At this time FEMA considers them as a permanent structure and must conform to rules in the floodplain permit. How do we regulate the 30 days, if they are placed by a company they would keep track. If not we would probably handle on a complaint basis as they are called in to the City.

The Planning Commission would like more clarification in the ordinance regarding whether they are temporary or permanent structures (6 months or more), will be an accessory use or primary use, how will it be assessed and taxed, more clarification in the different requirements between manufacturing and commercial zoning district.

279 Conclusion: A motion was made by Redfern and seconded by Wayman to table the ordinance text  
280 amendment on shipping containers and asked that staff bring back to next month's meeting with  
281 clarification of the above concerns: "YEAS": Zitterkopf, Westphal, Chadwick, Wayman, Redfern, and  
282 Estrada. "NAYS": None. ABSTAIN: None. ABSENT: Aguillo, Weber, Huber, and Gompert. Motion  
283 carried.

284

285 **ITEM 8: Unfinished Business:** None.

286 There being no further business, a motion to adjourn was made by Chadwick and seconded by Wayman.

287 The meeting was adjourned at 7:40 p.m. "YEAS": Zitterkopf, Wayman, Westphal, Chadwick, Redfern,

288 and Estrada. "NAYS": None. **ABSTAIN:** None. **ABSENT:** Aguillo, Weber, Huber, & Gompert. Motion

289 carried.

290

291

292 \_\_\_\_\_  
Becky Estrada, Chairperson

293

294 Attest: \_\_\_\_\_

295 Annie Urdiales