

City of Scottsbluff, Nebraska

Monday, June 13, 2016

Regular Meeting

Item Appr. Min.1

Minutes

Approve minutes of 5/9/16

Staff Contact: Annie Urdiales

**Planning Commission Minutes
Regular Scheduled Meeting
May 9, 2016
Scottsbluff, Nebraska**

The Planning Commission of the City of Scottsbluff, Nebraska met in a regular scheduled meeting on Monday, May 9, 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 May 6, 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, Angie Aguillo, Henry Huber, Jim Zitterkopf, Callan Wayman, and Becky Estrada. Absent: Weber, Westphal, 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 April 11, 2016 were reviewed and approved. A motion was made to accept the minutes by Wayman, and seconded by Chadwick. **"YEAS"**: Chadwick, Zitterkopf, Wayman, and Estrada. **"NAYS"**: None. **ABSTAIN**: Aguillo and Huber. **ABSENT**: Westphal, Weber, and Gompert. Motion carried.

ITEM 7A: The Planning Commission opened a public hearing for a request for an Ag Estate Dwelling Site. Applicant(s), and property owner(s) are Rod Adams Farms, Inc. & Cory A. Adams, they are represented by Paul Reed Construction. The Agricultural Estate Dwelling final plat of property described as a tract of land in the Northeast Quarter of Section 30, Township 22 North, Range 54 West of the 6th P.M Scotts Bluff County, Nebraska is situated south of Highland Road and west of County Road 24. Properties to the west, south, and north are all zoned agricultural this proposed parcel is located in our Extra Territorial jurisdiction.

The property owner is proposing to separate approximately 2.70 acres more or less of the property to allow for a home and out buildings from the farmland. The area now is approximately 73 ± acres, an AEDS is allowed out of less than 80 acres of reserved land, in the event that it meets the intent of the agricultural reserve which is the case here. Access into the site will be from Highland Road, the property owner has checked with Scotts Bluff County Roads department on the access on to the site. Development Services staff has reviewed the application and the lot meets all the necessary requirements of an Agricultural Estate Dwelling Site (AEDS) in an Agricultural Zoning District.

Conclusion: A motion was made by Zitterkopf and seconded by Chadwick to make positive recommendation to City Council for approval of the Ag Estate Dwelling Site (AEDS) for property

described as a tract of land in the NE Quarter of Section 30, Township 22 North, Range 54 West of the 6th P.M Scotts Bluff County, Nebraska (2.70 acres). "YEAS": Aguillo, Huber, Zitterkopf, Wayman, Chadwick, and Estrada. "NAYS": None. ABSTAIN: None. ABSENT: Westphal, Weber, and Gompert. Motion carried.

ITEM: 7B: The Planning Commission opened a public hearing for the Five 22 Developing L.L.C. Redevelopment Plan, applicant(s) and owner(s), John Adams, Stephen and Lynette Adam. Annie Folck, City Planner gave a brief overview of the project, this site is located within a Blighted and Substandard area and is eligible for tax increment financing. The parcels are located south of West Overland on both sides of Avenue G, (lots 1- 10 & lots 12& 13, Rosenberg Addition) The Adams plan on developing all the lots with single family residential homes. This subdivision was platted in 1952 and has remained undeveloped. This is good example of infill development as the developer can use existing infrastructure, these lots have access to water along Avenue G and sewer in the alleys. The public improvements to the property will include paving Avenue G from West Overland south to 11th Street along with curb & gutter, sidewalk, handicap ramps, storm drain pipe, street inlets and earthwork, there will also be a turnabout at the end along 11th Street to allow for emergency vehicles to turn around. A. Folck noted that the plan fits and is in compliance with the comprehensive development plan and recommends approval of the Resolution for the Redevelopment Plan for review by the CRA (Community Redevelopment Authority) and City Council.

John Adams answered a couple of questions regarding the redevelopment. The single family homes will not have basements and will be built to with flood vents, approximately half of this area is located in the AO Floodplain zone. Some fill dirt will be required for development of the land. The hope is to have affordable medium income housing costing approximately \$140,000 to \$150,000. They would like to have six homes completed this year if the plan and TIF is approved. The plan is in conformance with the City's Comp Plan and a positive recommendation of the resolution is requested for the revitalization plan to be forwarded and reviewed by the Community Redevelopment Authority and City Council.

Conclusion: A motion was made by Zitterkopf and seconded by Aguillo to make positive recommendation of the resolution to approve the Redevelopment Plan for the Five 22 Developing LLC Redevelopment for Lot 1-10 and Lots 12, & 13, Rosenberg Addition to the Community Redevelopment Authority, and City Council. "YEAS": Aguillo, Huber, Zitterkopf, Wayman, Chadwick, and Estrada. "NAYS": None. ABSTAIN: None. **ABSENT:** Westphal, Weber, and Gompert. Motion carried.

ITEM 7C: The Planning Commission opened a public hearing regarding proposed ordinance changes to Chapter 25, Article 2, which would allow Permanent Color Technology as a permitted use by right in the O & P zoning district and in residential zoning districts with a special use permit from the Planning Commission. At last month's Planning Commission meeting there was some discussion regarding differences in tattoo parlors and permanent color technology establishments. Definitions were added to the code for both uses. The Planning Commission was asked to think about possibility of allowing permanent color technology establishments in other zoning districts besides the commercial and manufacturing districts. Below are the definitions for tattoos and permanent color technology

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.

The definitions are similar and do not specify the layers of skin that is colored and how long the procedure will last. Permanent Color Technology are licensed by the State the same as Tattoo Parlors but the

license itself is different. Most permanent color is usually done within Beauty Salons and Spas and not on their own. Some beauty salons offer this type of permanent color for clients.

Research into other Cities in Nebraska did not provide anything that addressed differences in permanent color technology and tattoo parlor establishments. Permanent Color is used for but not limited to the application of eyeliner, eyeshadow, lip, eyebrow or cheek color, it is also used for the purpose of scar concealment; and/or re-pigmentation of areas involving reconstructive surgery.

Jon and Danielle Darnell, property owners, of Wake Up N' Makeup, spoke regarding permanent color technology and had asked that the Planning Commission look at separating this use separately from tattoo establishments and to consider them as a personal service facility as they are more like a beauty salon where they do cosmetics and makeup and not a tattoo parlor. The tattoos and permanent art require different training and different licensing. Unlike traditional tattoos performed on the body, permanent cosmetics professionals do not use traditional tattoo ink (dye). Permanent cosmetics pigment is more delicate and designed to work with the skin's undertones and to mimic hair for eyebrows. The ink is different and more organic it does need to be reapplied after a few years as it does fade. A topical anesthesia is also applied which is not done when a person is tattooed.

Darnell, also, handed out a review/case for this same situation in Wisconsin, he researched on line and was unable to find anything at all in the State of Nebraska, and it has also never been challenged. He would like to see a distinction between the two procedures. Permanent makeup or permanent cosmetic businesses are a fast growing segment of the cosmetic industry and will be around for a while. Most popular procedures are eyebrows, eyeliner & lip color. Some points brought up in the Wisconsin case were that permanent cosmetic facilities mostly function as traditional spas or salons; they are also usually small in size and have a nice clean appearance. They (WI) concluded that differentiating permanent color technology use from tattoo establishments was reasonable and would not harm the public interest. The Darnell's would like consideration from the City of Scottsbluff to consider making the same differentiation in these facilities and allow them as a permitted use by right in zoning districts other than the commercial and manufacturing zoning districts and special use permits in residential zones.

They would like to continue their business if at possible, the State inspector has already inspected their business; when they bought the business in 2015, from Lee's Skincare & Permanent cosmetics, they assumed and did not check to make sure the zoning was in compliance, since it has been used as a commercial use for years as either cosmetology or dental offices. Proposed hours could possibly be 9:00 a.m. to 3:00 p.m., with maybe three customers per day. Number of employees could also be limited, no negative impact on the property as this has been a commercial use for several years.

Annie Folck stated that any decisions made by the Planning Commission should not be based on the needs of any one business, but on what makes sense for all such businesses. Commissioner Chadwick stated that there can be an issue with salon-type businesses in residential zones if they are doing business outside of typical business hours; while it may not be an issue for them to have appointments during the day, appointments in the late evening are more problematic to neighbors in a residential zone. The Planning Commission discussed the differences in hours between Permanent Color Technology and Tattoo Parlors and stated that in their opinion, Tattoo Parlors are more likely to be open later in the evening. This is the basis for allowing Permanent Color Technology facilities in areas where tattoo parlors are not allowed.

At a past meeting there was some support from the public in separating the permanent color technology from tattoos and body piercing facilities. Allowing for flexibility in where these facilities may be located, possibly in an O & P (office & professional) or PBC (Planned Business Center) zoning districts and in residential districts with a special use permit from the Planning Commission. The Planning Commission discussed different conditions that could be placed on the facilities, by limiting hours of use, etc. Staff will look at the City's zoning code comprehensively in the future. One of the changes that staff would like to make is to move away from special use permits and using more conditional use permits. This will allow for some flexibility in the zoning code while making sure that the City is consistent in its requirements.

168 **Conclusion:** A motion was made by Wayman and seconded by Zitterkopf to approve an ordinance
169 amendment to allow for permanent color technology in O&P, PBC zoning districts and in residential zones
170 with a special use permit from the Planning Commission. "YEAS": Zitterkopf, Huber, Chadwick,
171 Wayman, Aguillo, and Estrada. "NAYS": None. ABSTAIN: None. ABSENT: Westphal, Weber, and
172 Gompert. Motion carried.

173
174 **ITEM 7D:** The Planning Commission opened a public hearing for Ordinance amendments to Chapter 25,
175 Article 3 Section 25 dealing with zoning & miscellaneous regulation by including regulations for shipping
176 containers used for storage by adding 25-3-15(16) restricting the use of shipping containers as storage.
177 The Planning Commission has reviewed this ordinance a couple of times at last month's meeting a few
178 changes were requested from the board. These changes have been added, in residential zones a permit
179 will be needed and they will be for temporary use only for thirty days, one extension can be applied for
180 another thirty days, after this they must be removed. In the commercial zones the containers may be
181 used only for storage or shipping by the occupant of the lot in all the commercial districts only as an
182 accessory building. All containers must be permitted, located in areas not utilized by customers,
183 maintained in good repair with no rust, or holes, they must also be secured adequately to prevent entry by
184 unauthorized people. They must be placed on a level surface with a base of rock or concrete/pavement to
185 prevent settling of the containers.

186
187 In Commercial, manufacturing & Agricultural Districts, a building permit is required if the container is to
188 remain on the lot for a period greater than six months and used for onsite storage of material incidental to
189 the permitted or accessory use of the lot. If located in a front or side yard it must be painted so no signage
190 or language is visible, they cannot be connected to any City utility, kept in good repair with no holes or
191 rust, and must be placed on a level surface with a base of rock or concrete to prevent any settling of the
192 container while it is on the lot.

193
194 The City is getting more requests for these types of containers and has issued a few building permits,
195 some of the things we are concerned about is placement on property as they could be placed in the
196 floodway, and would also need a floodplain permit. The existing containers will be considered pre-
197 existing, non-conforming.

198
199 **Conclusion:** A motion was made by Huber and seconded by Aguillo to make positive recommendation
200 to City Council of the amendments/changes made to the Shipping container ordinances. "YEAS":
201 Zitterkopf, Wayman, Chadwick, Huber, Aguillo, and Estrada. "NAYS": None. ABSTAIN: None. ABSENT:
202 Weber, Westphal, and Gompert. Motion carried.

203
204 **ITEM 7E:** Annie Folck addressed the Planning Commission regarding starting the process for revamping
205 our zoning code, one we want to start with is for Sexually Oriented Businesses facilities (SOB's). Several
206 communities in Eastern Nebraska are currently working on drafting ordinances for this type of use. We
207 would like to get a head start on the process here. Currently the City only addresses adult book stores, if
208 someone comes in to the City office and asks us about opening a business for any type of a SOB we
209 would have to search our zoning districts and try to determine and make a call on where it would fit and
210 be defined in our current zoning districts. This type of use is considered free speech and we want to
211 make sure we are fair to all types of businesses regardless of personal opinions. Things we need to look
212 at are where they can be placed, what kind of impact will they have on surrounding properties, secondary
213 effects on the surrounding properties. The City wants to have criteria that makes sense zoning wise and
214 is fair for everyone in our community. Folck stated that staff is currently trying to determine whether the
215 City should zone these types of businesses based on the same criteria that we use for most other land
216 uses (hours, auto, mass, emissions), or if staff should look into potential secondary effects that these
217 types of businesses could have on surrounding properties. Commissioner Aguillo stated that there used
218 to be a strip club called The Library located on Broadway in years past, and there were many detrimental
219 effects to surrounding properties at that time, including increased crime, with fights commonly breaking
220 out just outside of the business, large amounts of litter of a certain nature that became a public health
221 concern being found in the alleyway behind the business, underage kids trying to get in to the business,
222 lower property values, etc. The Planning Commission discussed the fact that there is probably a need for
223 some additional zoning requirements for these types of businesses, such as a minimum distance from

224 schools, churches, public buildings, residences, and concentrating similar businesses in specific districts
225 in order to help prevent some of these issues. They determined that it will be necessary for Staff to look
226 at different studies and determine what secondary effects have been experienced by other communities
227 in order to make a proper determination of how to zone for these types of businesses. Staff will do this
228 research and bring this information back to the Commission for more discussion and comments.
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230 **ITEM 8: Unfinished Business:** None.
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232 There being no further business, a motion to adjourn was made by Chadwick and seconded by Aguallo.
233 The meeting was adjourned at 7:20 p.m. **"YEAS"**: Zitterkopf, Wayman, Huber, Chadwick, Aguallo, and
234 Estrada. **"NAYS"**: None. **ABSTAIN**: None. **ABSENT**: Westphal, Weber, & Gompert. Motion carried.
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236 _____
237 Becky Estrada, Chairperson
238

239 Attest: _____
240 Annie Urdiales