

City of Scottsbluff, Nebraska

Monday, April 10, 2017

Regular Meeting

Item Appr. Min.1

Approve minutes of 3/13/17 meeting

Staff Contact:

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**Planning Commission Minutes
Regular Scheduled Meeting
March 13, 2017
Scottsbluff, Nebraska**

20 The Planning Commission of the City of Scottsbluff, Nebraska met in a regular scheduled meeting on
21 Monday, March 13, 2017, 6:00 p.m. in the City Hall Council Chambers, 2525 Circle Drive, Scottsbluff,
22 Nebraska. A notice of the meeting had been published in the Star-Herald, a newspaper of general
23 circulation in the City, on March 3, 2017. The notice stated the date, hour and place of the meeting, that
24 the meeting would be open to the public, that anyone with a disability desiring reasonable
25 accommodation to attend the Planning Commission meeting should contact the Development Services
26 Department, and that an agenda of the meeting kept continuously current was available for public
27 inspection at Development Services Department office; provided, the City Planning Commission could
28 modify the agenda at the meeting if the business was determined that an emergency so required. A
29 similar notice, together with a copy of the agenda, also had been delivered to each Planning Commission
30 member. An agenda kept continuously current was available for public inspection at the office of the
31 Development Services Department at all times from publication to the time of the meeting.

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ITEM 1: Chairman Becky Estrada called the meeting to order. Roll call consisted of the following
members: Anita Chadwick, David Gompert, Jim Zitterkopf, Callan Wayman, Mark Westphal, Henry
Huber, and Becky Estrada. Absent: Dana Weber, Angie Aguillo. City officials present: Annie Folck,
Planning Coordinator, Gary Batt, Code Administrator II, and Anthony Murphy, Fire Prevention Officer.

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 the February 13th meeting were reviewed. **Conclusion:** A motion was made by
Westphal and seconded by Gompert to approve the minutes for the February 13th meeting. **“YEAS”:**
Estrada, Westphal, Wayman, Huber, Gompert, Zitterkopf, and Chadwick. **“NAYS”:** None **Abstain:**
Absent: Weber, Aguillo

ITEM 7A: The Planning Commission opened a public hearing for a Special Use Permit for a Scrap Metal
Processing Facility located at 417 9th Avenue. The applicant is Langer Industries, represented by Pete
Langer. Folck stated that the property is located in an M-2 Heavy Manufacturing and Industrial zoning
district. The applicant has submitted all the necessary paper work for the special use permit. The
surrounding properties to the east and south are also zoned M-2. The property to the southwest is zoned
M-1, Light Manufacturing and Industrial, and the property to the west and north is zoned C-3, Heavy
Commercial. There are some residential properties within 300 feet; however, they are all on the other
side of the Burlington Northern Railroad Tracks, so there is some separation between the residential
areas and the proposed facility location. With the location along the Beltline Highway, it is very unlikely
that any truck traffic from the facility would ever enter into the residential areas to the north. However,
other potential effects such as noise and rodents should be considered as these could possibly affect the
residents to the north.

Pete Langer, representing Langer Industries, stated that they plan to collect, process, and ship out scrap
metal. There would be no smelting; the most intensive processing involved would be shearing.
Addressing the concern about noise, he stated that he took a decibel meter to the site and measured the
noise from a passing train at over 80 dB, and the processes at their facility all measure at less than 75

57 dB. He said that the typically noise generated by the facility would be comparable to the noise generated
58 by traffic on the Beltline Highway, which measured at 60-65 dB. Commissioner Gompert asked what kind
59 of metals would be processed. Langer answered that they would take all kinds of metals, but they must
60 all be free of oils, fluids, Freon, or anything else that could be an environmental concern. They will not
61 typically have more than 300 tons of scrap metal on site at any point in time, as their goal is to process it
62 and ship it out as soon as possible. Gompert asked if there was a rail spur to the property. Langer said
63 that there is, and that they expect to ship things by both train and truck. Commissioner Zitterkopf asked if
64 this operation would be similar to the one in Gering. Langer said yes, but that the turnover would be
65 faster, because they try to get cash in hand as soon as possible, rather than stockpiling it and waiting for
66 a good price. Commissioner Huber asked if the property would be fenced. Langer said yes, it would be
67 fenced, and this serves the dual purpose of screening some of the facility from view and keeping people
68 from trespassing on the property, which could be a liability concern. Commissioner Westphal asked if the
69 metal shearing would be done inside or outside. Langer answered that it would be done outside.
70 Gompert asked if they would have their operations on dirt or concrete. Langer said that both would be
71 used, but there is quite a bit of concrete on the site, and they would try to keep as much of their
72 operations on concrete as possible. Zitterkopf asked about concerns from battery acids or other fluids,
73 and if those activities were regulated by the EPA. Langer answered that there are many regulations, and
74 they would follow all requirements. One of their biggest concerns is actually stormwater, so any
75 processes that have the potential to contribute to stormwater pollution are done inside to protect runoff
76 quality. They also monitor stormwater as it runs off and in the past 20 years that they have operated this
77 type of facilities, they have never found anything of concern. Gompert asked if the materials they accept
78 would potentially have oils. Langer stated that they do have a demanufacturing process by which they
79 drain cars and make sure that all fluids are contained and stored to keep them out of the ground. There
80 have been many new regulations that address these issues in recent years, and facilities today are much
81 cleaner than older facilities. Commissioner Wayman asked if they would have a car body crusher.
82 Langer answered that yes, once the demanufacturing process is completed, car bodies would be crushed
83 before being shipped out. Gompert asked about access for trucks coming in and out of the facility.
84 Langer answered that the main entrance to the facility is off of Beltline Highway. They would maintain
85 this as the main entrance, and access to the facility would be controlled to ensure that all trucks enter
86 through this access point so that they can be weighed every time they enter and exit the facility.
87 Westphal asked if the property is currently in use. Langer stated that the property is currently vacant.
88 Gompert stated that one of his biggest concerns was the impact this facility could have to stormwater
89 quality. Langer stated that they would inspect runoff in rain events to ensure that this is not an issue, but
90 that the main way they would prevent stormwater pollution would be to refuse to accept any materials that
91 could be of concern.

92

93 Rex Morse, representing Aulick Leasing, a property owner to the south, stated that while he was not
94 concerned about truck noise, he did have other questions about the proposed facility. He asked if they
95 currently operate other similar properties, and if so, what are the height of the piles of scrap metal on site,
96 and what is the height of the equipment used. Langer stated that the proposed facility would be very
97 similar to the one they currently operate in Colby, Kansas, where their piles are typically 12-15' high. The
98 tallest equipment they would use initially would be an excavator, and eventually they could have some
99 taller booms.

100

101 Robert Franco, whose mother owns a residence just north of the proposed facility at 9th Avenue and 7th
102 Street, stated that Scottsbluff Recycling and MPK in Gering both have very large piles of material on site.
103 He has concerns about the view, the kind of materials that might come in, runoff from the facility that runs
104 into the river, and water gathering in the borrow pit that could infiltrate into the groundwater. When the
105 City considered the Blight Study for East Overland, he brought up his concerns about not wanting certain
106 types of businesses near the residential neighborhood, and this is the type of facility that he had concerns
107 about. This facility is very close to residential, and the residents in the area do not want it in their
108 backyard. There are already three similar recycling facilities in the area, so there is no need for more. He
109 would like to see the East Overland area improved, and is concerned that a project like this will drive
110 down property values, will be noisy, and could have other risks such as fire.

111

112 Morse asked what tonnage would be shipped out by train and how often. Langer said that they can get
113 100 tons on a train car, and the frequency with which they would ship it out would depend on how much
114 volume comes in. Typically they would receive around 1000 tons per month, and have no more than 200-
115 300 tons there at any one time. They would also ship some out on trucks. Morse stated that truck traffic
116 could be a concern as there is no left turn land on that section of the Beltline Highway.

117
118 Gompert asked if rodents were a concern. Langer said that they have never had an issue with it, and
119 even at their Colby facility, where there are many rattlesnakes throughout the area, they have never had
120 an issue with snakes at their site because material is always being turned over, and nothing sits there for
121 very long before being disturbed. Gompert asked if they would have someone there for 24 hours, and if
122 dumping of materials at the gate might be a problem. Langer said that they would typically be an 8-5 or
123 8-6 operation, and they would keep the area fenced and locked and have cameras around the facility so
124 that if anyone dumped materials around the facility after hours, they could prosecute them for that. He
125 said that this has not been an issue at any of their other facilities. Westphal asked if his other facilities
126 had fences or trees to help screen them. Langer said that none were required in Colby, but they have a
127 fence there for their own benefit in order to control access.

128
129 Huber asked if it would be possible to set a length of time for the Special Use Permit after which the
130 Planning Commission could review how the facility is operated and if it is adversely affecting the
131 residential neighborhood to the north. Langer stated that with the amount of money that they plan to
132 invest in the facility, he does not think a temporary Special Use Permit would be acceptable. He is fine
133 with having some accountability to ensure that they do everything that they say they will, but they need
134 predictability for their business. They are planning on hiring 10 people and making a sizeable investment
135 in the facility, and it would not be fair to them to have the permit revoked in a few years due to a judgment
136 call by the Planning Commission. They are proud of the way they operate their facilities and plan on
137 being good neighbors, and have a great relationship with both the City and County in Colby, Kansas.

138
139 Wayman asked if a 6' fence would be sufficient that close to a residential area. Langer said that at some
140 facilities, 6' is the standard, but others have an 8' fence that can also help to keep people from
141 trespassing. Gompert asked if they would consider planting some trees on the north side to help screen
142 the facility from view. Langer said they could consider that. He also stated that they would be cleaning
143 up vacant property that is currently an eyesore. Westphal asked if he would be opposed to grading the
144 property to limit the places where stormwater runs off. Langer stated that all work would be done to the
145 west and south of the main office to limit the area where their processes are exposed to stormwater.
146 Wayman said that with this location being one of the first things that people see as they come into town, a
147 6' fence may not be sufficient. Langer said that they have looked at ways to obscure the facility from
148 view, but that they would not be able to obscure it 100%.

149
150 Morse asked if he was aware of any current environmental issues with the property from previous uses.
151 Mike Sarchet, representing Panhandle Area Development District, stated that he has known the property
152 owners for eight years. The property owners, who also own RTS Shearing, have bid a lot of large jobs,
153 and have demolished Hergert Milling, the Swift packing plant, and most recently the McKinley school.
154 They purchased the property because of the rail spur as an investment. They also purchased and took
155 down Hergert Mill in Gering and have made a lot of investments in the community. They are currently
156 working with TCD and the City of Gering on a Brownfield Assessment Grant, and they completed a Phase
157 I environmental assessment of the property. They are also working on a Phase II environmental
158 assessment and have taken samples on 21 sites, looking at soil and water quality in order to have a
159 complete evaluation. They are still waiting for the results of these tests to come back. Before they
160 started the Phase II assessment, Nebraska Department of Environmental Quality reviewed their
161 assessment plan and had them evaluate a few additional locations on the property, including under the
162 building. This process will establish liability; if pollution is found in the future, it will be easy to tell if the
163 current property user is the one responsible. Westphal asked what the depth to groundwater is in that
164 area. Sarchet answered that it is about 13', and on the southeast part of the property 12' 2", although this
165 could come up in the spring as the river rises. He also stated that personally, he knows that with the
166 current farm economy, there are a lot of farmers in the area who are getting rid of old equipment, and this
167 type of business is good for the community. He also believed that the access is very good for trucks.

168

169 Franco said that there had been a lot of talk about business investments, but that the Commissioners
170 should consider the investments of residential property owners in the area. Many properties were
171 purchased for \$40,000 or more, and they have been many improvements to those properties.
172 Homeowners have invested a lot into their properties and do not want this to be an eyesore. He asked if
173 anyone would want to live next to a facility like this, and said that if this business wants to be in this
174 community, they could find another location that is not so close to a residential area. Homeowners in the
175 area have put a lot of time and work into their properties, and he does not think they should have to have
176 this facility come in so close to their homes, which in addition to being a nuisance to the property owners,
177 could also devalue their properties.

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179 Morse asked if it could be a possibility to do a little more research into this facility and the similar one they
180 operate in Kansas before making a decision. Folck stated that this is a possibility, and that the Planning
181 Commission had the option of taking a vote now or tabling it until the next meeting so that more research
182 could be done before taking a vote. Langer said that he is ok with the City taking time to get more
183 information, and that he has had no complaints in the two years they have operated in Colby, so he would
184 be happy for the City to talk to the City and County where that facility is located.

185

186 Anthony Murphy added that some of the concerns that were brought up with regard to environmental
187 issues are already addressed by some regulations that the City has in place, which limit the quantity of
188 oil, gas, and other flammable substances that can be stored on site. They also have requirements for
189 storage tanks and other requirements to help with the stormwater concerns.

190

191 Westphal said that he felt it would be beneficial to have some time to research the effects of the other
192 facility and to determine if there are any appropriate conditions that they could require in granting the
193 permit to mitigate the impact on neighbors, such as tree planting or a taller fence.

194

195 **Conclusion:** A motion was made by Westphal and seconded by Wayman to table the Special Use
196 Permit for a Scrap Metal Processing Facility at 417 9th Ave until the next meeting.

197

198 **“YEAS”:** Westphal, Wayman, Gompert, Huber, Chadwick, Zitterkopf, and Estrada. **“NAYS”:** None.

199 **ABSTAIN:** None **ABSENT:** Aguillo, Weber. Motion carried.

200

201 **ITEM 7B:** The Planning Commission opened a public hearing to consider code changes allowing for 24-
202 hour daycare. Folck stated that currently, the City’s zoning code classifies two types of day cares. A
203 “Family Child Care Home” is a daycare that provides care for 12 or fewer children. A “Child Care Center
204 or Preschool” or “Daycare” provides care for more than 12 children. This matches licensing requirements
205 from the Nebraska Dept of Health and Human Services. Currently both types of daycares are only
206 allowed to operate for 12 or fewer hours per day. The City has been approached by a daycare owner
207 who wants to start operating around the clock to provide child care services to parents who work nights.

208

209 Folck recommended a code change that would allow 24-hour daycares in the same zones where other
210 daycares are allowed, but only with a Special Use Permit. This would allow more oversight and give
211 neighbors an opportunity to voice any concerns they have about traffic or hours of operation which could
212 affect them. The other change that is included in this ordinance is to add the title “nursery school” to the
213 definition for “Day Care”. Previously “nursery school” was listed as a permitted use in the zoning code,
214 but there was no definition for it. While there is some concern about cars coming and going at night, child
215 care during night hours is a need in our community, and the City should try to find a way to allow it.

216

217 Westphal stated that he was ok with the changes, but did not think that a special use permit would be
218 necessary in commercial zones, as there are already many 24 hour uses allowed there.

219

220 **Conclusion:** A motion was made by Westphal and seconded by Chadwick to recommend approval of the
221 ordinance with the condition that it be modified to allow 24 hour daycares as a use by right in commercial
222 zones.

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224

225 **"YEAS"**: Westphal, Wayman, Gompert, Huber, Chadwick, Zitterkopf, and Estrada. **"NAYS"**: None.

226 **ABSTAIN**: None. **ABSENT**: Aguallo, Weber. Motion carried.

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

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231 There being no further business, a motion to adjourn was made by Gompert and seconded by Westphal.

232 The meeting was adjourned at 7:30 p.m. **"YEAS"**: Zitterkopf, Gompert, Westphal, Wayman, Huber,

233 Chadwick, and Estrada. **"NAYS"**: None. **ABSTAIN**: None. **ABSENT**: Aguallo, Weber. Motion carried.

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240 _____
Becky Estrada, Chairperson

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242 Attest: _____

243 Annie Folck