

City of Scottsbluff, Nebraska

Monday, October 9, 2017

Regular Meeting

Item Appr. Min.1

Approve minutes from September 11th Meeting

Staff Contact:

**Planning Commission Minutes
Regular Scheduled Meeting
September 11, 2017
Scottsbluff, Nebraska**

The Planning Commission of the City of Scottsbluff, Nebraska met in a regularly scheduled meeting on Monday, September 11, 2017, 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 September 1, 2017. 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, David Gompert, Angie Aguillo, Jim Zitterkopf, Henry Huber, Callan Wayman, Mark Westphal, and Dana Weber. Absent: None. City officials present: Annie Folck, Planning Coordinator, Gary Batt, Code Administrator II, 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 August 14, 2017 meeting were reviewed.

Conclusion: A motion was made by Westphal and seconded by Gompert to approve the minutes from the meeting on August 14, 2017. **"YEAS":** Gompert, Westphal, Wayman, Huber, Weber, Zitterkopf, Chadwick, Aguillo, and Estrada. **"NAYS":** None. **ABSTAIN:** None **ABSENT:** None. Motion carried.

ITEM 7A: Planning Commission opened a public hearing for the review of a Final Plat for Lots 1-2, Block 30, North Scottsbluff Addition. Annie Folck stated that the applicant(s), Justin Schlager, represented by Panhandle Land Surveying, has requested approval of a Final Plat of Lots 1-2, Block 30, North Scottsbluff Addition. The property is situated north of 21th St, on the east side of Broadway. The property has never been platted and is currently identified as tax lots. The plat would create two lots of different sizes. Both properties have access to streets, water, and sewer. There is no minimum lot size or minimum lot width in the C-1 zoning district. The north lot is a little narrow at 25 feet, but since there are no required setbacks in the C-1 zoning district it is still a usable lot. If the owner wishes to build right up to the property line, he can, but there may be some requirements from fire code if he chooses to do so. Commissioner Gompert asked what those requirements would be. Anthony Murphy answered that he would have to put up fire walls if he did not meet the minimum required distance between building. The applicant stated that he is planning on demolishing the building on the south end of the property and replacing it with a new building. The building on the north end of the property is to stay in place.

Conclusion: A motion was made by Aguillo and seconded by Westphal to approve the Final Plat of Lots 1-2, Block 30, North Scottsbluff Addition. **"YEAS":** Gompert, Westphal, Wayman, Huber, Weber,

57 Zitterkopf, Chadwick, Aguallo, and Estrada. **"NAYS"**: None. **ABSTAIN**: None **ABSENT**: None. Motion
58 carried.

59

60 **ITEM 7B:** The Planning Commission opened a public hearing for the Final Plat and Dedication of a
61 Portion of East 9th Street. Annie Folck gave a staff review of the project, stating that a few months ago
62 there was some confusion because this portion of E. 9th St was never actually dedicated to the City as
63 right-of-way. After doing some research, it was determined that it is City-owned property. In order to
64 avoid confusion about whether this is a parcel or public right-of-way, the City is now formally dedicating it
65 as part of East 9th Street.

66

67 **Conclusion:** A motion was made by Zitterkopf and seconded by Westphal to approve the Final Plat and
68 Dedication of a Portion of East 9th Street **"YEAS"**: Gompert, Westphal, Wayman, Huber, Weber,
69 Zitterkopf, Chadwick, Aguallo, and Estrada. **"NAYS"**: None. **ABSTAIN**: None **ABSENT**: None. Motion
70 carried.

71

72 **ITEM 7C:** The Planning Commission opened a public hearing to consider an amendment to the City's
73 Comprehensive Plan. Annie Folck gave a staff review of the project, stating that it has been brought to
74 the City's attention that the current Comprehensive Plan does not address the City's competition fields.
75 Feedback from the public has indicated that there are improvements needed in order to provide a more
76 comfortable space for spectators and visiting teams, ensuring that competitions and tournaments
77 continue to be held in Scottsbluff. This will also help support the local economy as visiting teams support
78 restaurants and lodging establishments. Some representatives of 23 Club are working on a grant for
79 improvements to the 23 Club facilities, which is a City-owned facilities, and are requesting a change to the
80 Comprehensive Plan to include suggestions for improvements to these facilities.

81

82 Folck stated that one of the benefits of doing a Comprehensive Plan in-house is that she was able to go
83 back and look at the raw data and survey results that were obtained as part of the public input process for
84 the City's current Comp plan. In looking at this information, there were several comments made
85 pertaining to the importance of maintaining City facilities and making them comfortable for families with
86 children. The importance of adequate restrooms and well-maintained equipment was repeatedly stated.
87 There were also comments about the importance of baseball and softball facilities to our community, both
88 for recreation for area residents and as an attraction for people coming from other communities for
89 tournaments. For this reason, staff was recommending an amendment to the plan to include the
90 suggested goals and projects for 23 Club. Folck also said that they were adding an item in the plan to
91 address the septic tank at Lacy Park which is currently not adequate to serve the needs of the restroom
92 facilities out there.

93

94 Linda Redfern stated that in years past when she was on Council, the need for good parks and recreation
95 amenities was in line with the mission statement that the City adopted, as well as with the goals set out in
96 their Vision 2020 planning. She was happy to see that there is some progress being made on these
97 goals. Commissioner Aguallo stated that the item about Lacy Park appeared to be redundant, as the
98 need for a new septic system was already listed in the suggested capital improvements in the plan. Folck
99 stated that the second item addressing Lacy Park could be removed.

100

101 Commissioner Weber asked about costs for the project, and what the costs to the City would be if the
102 amendment was approved. Jack Baker, representing the 23 Club, stated that the group was working with
103 the City to apply for a \$150,000 grant. He stated that the City is actually the grant applicant, and the
104 mayor has already signed a letter of support for the grant that commits the City to provide the grant match
105 and in-kind support to the project. He stated that there will also be private fundraising to help support the
106 project as well. The grant will be for the first phase of the suggested improvements to 23 Club, which will
107 be for a new building, which will provide a better space for concessions, changing spaces for teams, ADA
108 compliant restrooms, and storage for equipment. Commissioner Westphal asked if there was a design for
109 the improvements. Baker stated that they had a rough concept showing the footprint of the building and
110 the dimensions of the amenities within the building, but they do not have a finalized design yet.

111

112 **Conclusion:** A motion was made by Zitterkopf and seconded by Aguallo to approve the amendment to
113 the Comprehensive Plan with the condition that the second item addressing the septic system in Lacy
114 Park be removed to avoid redundancy. **"YEAS":** Gompert, Westphal, Wayman, Huber, Weber,
115 Zitterkopf, Chadwick, Aguallo, and Estrada. **"NAYS":** None. **ABSTAIN:** None **ABSENT:** None. Motion
116 carried.

117
118 **ITEM 7D:** The Planning Commission opened a public hearing to consider an ordinance instituting a
119 stormwater impact fee and new requirements for stormwater retention on new developments. Annie
120 Folck gave an overview of the ordinance, stating that currently, the City requires all new subdivisions to
121 install stormwater retention basins on-site. After installation, the developers are also required to maintain
122 these facilities in perpetuity. This has proven to be very impractical and difficult to enforce, as it is very
123 unappealing for developers to sacrifice developable land for stormwater facilities, and once the lots have
124 been sold off, the developer does not want to remain responsible for the ongoing maintenance of the
125 facilities. Previously, developers' agreements have stated that homeowners associations will be created
126 to fund the ongoing maintenance of stormwater facilities; however, in practice, these associations have
127 not been established, leaving no entity to take responsibility for the stormwater facilities. In addition,
128 many other communities that have attempted similar requirements have had issues with the responsible
129 entity ceasing to pay taxes on the parcel that houses the stormwater facility, so the responsibility of
130 maintaining the facility will then fall back on the City. The City is also facing new regulatory requirements
131 that ultimately hold the City responsible for ensuring that adequate maintenance is performed on all of
132 these facilities; this is extremely difficult to accomplish when these facilities are privately owned.

133
134 In order to alleviate the burden on developers to build and maintain stormwater treatment facilities, and to
135 relieve the City of the challenge of enforcing maintenance requirements on private property owners, City
136 staff is proposing that from now on, when property is developed or redeveloped, resulting in increased
137 stormwater runoff, that runoff should be routed to City facilities. The City will install and maintain these
138 facilities in perpetuity. In order to fund this, an impact fee will be charged for any new impervious cover
139 (streets, driveways, buildings, etc.) that is installed. This will be a one-time fee that is charged any time a
140 building permit or paving permit is issued. The paving permit will be established to allow the City to track
141 and charge an impact fee for any new paving of over 1,000 square feet. This will better allow the City to
142 accommodate the increased runoff from large paving projects throughout the City. Regular maintenance
143 activities on existing pavement (overlays, repair, etc.) will not be required to pay an impact fee. This will
144 also allow the City to fulfill the requirements of its NPDES permit by ensuring that they have access to
145 and control over all future retention facilities, allowing them to ensure regular maintenance is performed.
146 The City has already piloted this system with Hilltop Estates, where, in lieu of installing and maintaining
147 their own retention basins, the developer agreed to pay a fee that allows him to route their runoff to
148 facilities that will be owned and maintained by the City.

149
150 Rex Morse, representing Aulick Leasing, addressed the commission and asked what would happen with
151 existing facilities that are currently privately owned. Folck stated that these would remain privately
152 owned, but that if the current owners wanted the City to take over maintenance of these facilities, the City
153 might consider it in return for a fee. The facilities would have to be brought up to City standards before
154 the City would consider it, and an equitable fee would be charged to help cover ongoing maintenance
155 costs. Morse asked what the boundaries for the new fee would be; would it be only within City limits or
156 would it extend into the City's zoning jurisdiction? Folck stated that as currently proposed, the fee would
157 apply to all properties within the City's extraterritorial zoning jurisdiction.

158
159 Eric Reichert asked if the City had determined the cost to build the City-owned facilities being proposed,
160 and if there was an estimated maintenance cost for these facilities. Leann Sato, the City's Stormwater
161 Program Specialist, stated that there have been six sites identified along the Scottsbluff Drain that could
162 be developed to add additional retention, and these sites would be built as needed to handle additional
163 runoff from new development. Reichert asked if the City had considered how this would affect
164 development, as it is a very substantial fee, which may be as much as 5% of a project. As an example,
165 he did some calculations and the site that was recently developed for a Scooter's drive through coffee
166 shop would have had to pay a fee of \$18,000. He questioned if it would make Scottsbluff unable to
167 compete with other communities for business. He stated that he is not completely against the fee, but

168 questions the dollar amount, and maybe something around 25 cents per square foot would be more
169 appropriate. Commissioner Weber asked if there would be a cost anyway for installing and maintaining
170 retention for the project, and which he thought would be better, an upfront fee or ongoing costs for
171 maintenance? Reichert stated that in many cases, they have to bring in fill for the building, so the cost for
172 building the retention facility is minimal as they would be pulling dirt from other areas of the site anyway.
173 He said that in many cases, green space is already required, so if they use the retention area as the
174 required green space, then there is no additional maintenance required beyond what is necessary for the
175 green space. Weber asked if the City had considered allowing an option for developers to choose to
176 install and maintain privately owned facilities in lieu of the impact fee. Folck stated that staff had
177 considered that option, but ultimately decided against it because historically, privately owned facilities
178 throughout town have not been maintained. She gave the example of the old Albertsons grocery store
179 which has now been vacant for many years. The retention ponds on that property are overgrown and
180 silted in and have not been maintained at all over the past several years. She stated that even if the
181 original owner does a great job with maintenance, subsequent owners may not take care of these
182 facilities, and the City would then have to try to require them to perform the necessary maintenance. The
183 process of trying to assess fines to private property owners to bring them into compliance can be
184 extremely slow and costly to the City, and in many instances may cost more in staff time and legal fees
185 than the City would be able to recoup in fines. For this reason, staff recommends that all future
186 subdivisions route their retention to facilities that are City-owned and City-maintained, eliminating the
187 dilemma of how to ensure maintenance on privately owned facilities.

188
189 Commissioner Westphal asked if the retention ponds would be built by City staff or by a contractor. He
190 stated that he believed that it may be cheaper to bid out construction to private contractors, and he would
191 like to look at any options that may reduce the cost of these facilities. Weber stated that the problem was
192 that the City will still have to pay for maintenance of the facilities in perpetuity. Westphal stated that
193 currently, it seemed like some ongoing developments had to have retention and others didn't.

194
195 Reichert asked if it would be possible to lease privately owned facilities, thereby eliminating the cost to
196 construct new facilities. Folck stated that most existing privately owned facilities had been designed to
197 handle runoff from a certain lot or subdivision and would not be large enough to accommodate runoff from
198 future development as well. Reichert asked if some of the costs could be paid by the LB840 fund. Folck
199 stated that if a qualifying business applied for and was awarded LB840 funds, those could go towards
200 paying the impact fee. Reichert stated that that would still take away some of the necessary capital for
201 the project.

202
203 Commissioner Wayman asked how this would affect infill lots, and if it would make people less likely to
204 develop existing vacant lots. Folck stated that if the lot already had impervious cover, the fee would not
205 apply, but if new or additional impervious cover was to be added to the lot, a fee would have to be paid.
206 Wayman stated that he believed this would discourage development of infill lots.

207
208 Reichert asked if the fee charged would help with specific problems in the stormwater system. He stated
209 that he is considering a 6-7,000 square foot addition to his shop, and he currently has issues with
210 stormwater running onto his lot from the street. He asked if the fee he paid for the addition would be used
211 to improve that specific situation. He also stated that he would like to see some projected overhead costs
212 for installation and maintenance of the facilities before the fee is set at \$1.50 per square foot.

213
214 Commissioner Gompert asked who would bear the cost to get the stormwater from the new development
215 to the City's stormwater retention facilities. Folck stated that the developer would be responsible for
216 getting the stormwater to the City's stormwater system and that any additional costs to route it to a
217 stormwater facility would be the City's responsibility. Westphal asked if there had been a study done for
218 the Scottsbluff Drain and if it would be overwhelmed with additional runoff if this policy were adopted.
219 Sato stated that there has been a study of the Scottsbluff Drain that identified several areas where
220 additional retention could be created. One such area that has been developed is along the drain between
221 Avenue B and 5th Ave, north of 23 Club. The study proposes adding more retention areas such as this
222 one that would provide the capacity necessary to handle additional runoff from developments north of
223 Highway 26.

David Hartline, representing Morton Buildings, asked if the fee would apply to all types of construction. Folck stated that it would apply to any impervious surfaces installed, both residential and commercial. Hartline asked if the City had talked to other communities that had instituted these types of fees. Sato stated that since this is a relatively new thing for Nebraska, most of the communities staff researched were in Colorado. Hartline asked if the other communities they had looked at were of similar size to Scottsbluff. He stated that this will be a big impact for building permits of all sizes. He felt that the City could just fine private property owners if they were not maintaining their facilities.

Morse stated that he felt that it was unfair to charge the fee if there is no storm drain available to serve the location for which the fee is being charged. Kelly Strey, representing B & C Steel, asked if impact fees generated from early projects would be kept in a fund to maintain those facilities, or if the City would be relying on fees from future projects to fund maintenance for previous projects. He also asked what would happen if the City does not have property available in the correct location for a regional retention basin, and the private property owners are not willing to sell them the area for retention. Commissioner Wayman stated that he felt that the additional fee would be detrimental to development. Westphal stated that he would like to have Dave Schaff here to explain how the suggested fee was determined, and that the City needs to take its time on this issue to get it right. Hartline stated that he had seen this happen in Colorado, and as a result of new impact fees, people would move out of communities. Gompert said that he would like to continue discussion on the topic and get it right so that Scottsbluff could eventually serve as a model for other Nebraska communities.

Weber stated that the City would first need to deal with the problem of the existing facilities that are not being maintained. He would also like to address the sites that are outside of City limits in the ETJ, possibly allowing them to do their own facilities with strong agreements that would require the developer and all subsequent property owners to keep them maintained. He stated that the City does not want to do anything to stymie development, but the taxpayers should also not be on the hook for maintaining these facilities either. Wayman stated that he felt that it would be better for the City to consider these facilities on a case by case basis, allowing developers the option of building their own facilities or paying the fee to route the stormwater to the City's facilities. Folck stated that the problem with allowing owners to build their own facilities is that historically, these facilities have not been maintained, and the City has no good way of ensuring compliance on private property. It often costs more in staff time and legal fees than the City can recoup in fines, and it is a long and arduous process. Morse asked how much square footage of impervious surfaces had been added throughout the City in the past 5 years and how much of an impact fee would have been charged for those areas. Folck stated that she did not know, but that the City could research that. Gompert asked if DEQ could be brought in to help the City enforce on private property. Sato stated that they could, but as they currently only have a staff of 3, it is unlikely that they would be able to dedicate many resources to our community.

Conclusion: A motion was made by Gompert and seconded by Westphal to table the ordinance so that City staff can do further research on the costs to install and maintain their facilities and consider alternatives for properties in the ETJ. **"YEAS":** Gompert, Westphal, Wayman, Huber, Weber, Zitterkopf, Chadwick, Aguallo, and Estrada. **"NAYS":** None. **ABSTAIN:** None **ABSENT:** None. Motion carried.

ITEM 8: Unfinished Business: None.

There being no further business, a motion to adjourn was made by Weber and seconded by Aguallo. The meeting was adjourned at 7:25 p.m. **YEAS":** Gompert, Westphal, Wayman, Huber, Weber, Zitterkopf, Chadwick, Aguallo, and Estrada. **"NAYS":** None. **ABSTAIN:** None **ABSENT:** None. Motion carried

Becky Estrada, Chairperson

280

281 Attest: _____

282 Annie Folck