

**Wayne Planning Commission Meeting Minutes  
Monday, August 2, 2010**

Chair Braun called the regular meeting of the Wayne Planning Commission to order at 7:00 P.M., on Monday, August 2, 2010, in the Council Chambers of the Municipal Building. Roll call was taken with the following members present: Bill Kranz, Derek Hill, Pat Melena, Jessie Piper, Jill Sweetland, Chair Sharon Braun and Inspector/Planner Joel Hansen. Absent: Mark Sorensen, Lee Brogie, and Kelby Herman.

Motion was made by Commissioner Sweetland and seconded by Commissioner Hill to approve the minutes as presented for July 12, 2010, with one correction on page four, seventh paragraph, to change the word "shuttle" to "subtle". Chair Braun stated the motion and second. All were in favor; motion carried unanimously.

Chair Braun read the Open Meetings Act and advised that anyone desiring to speak should limit themselves to three minutes and wait until being recognized by the Chair.

Chair Braun stated the first item on the agenda is a public hearing amending Section 90-424 Exceptions by adding "vehicle towing service" and Section 90-425 Special Conditions and Conditions for Granting Exceptions, applicants are Main Street Auto Care and City of Wayne.

Chair Braun opened the public hearing and asked for any comments from the public.

Ted Kurpgeweit, co-owner of Main Street Auto Care, was present to address the Commission on the amendment of the zoning language. Mr. Kurpgeweit stated they have been working with the city for awhile to get a use by exception in their zoning for the towing service they operate. Mr. Kurpgeweit noted for the Commission that a towing service has been operating out of that facility for a number of years.

Chair Braun questioned Mr. Kurpgeweit, if before they purchased the property, did the previous owners provide a towing service as well.

Mr. Kurpgeweit stated they did provide a towing service, which was owned by D&N Service. They had a towing service there for nearly twenty years.'

Chair Braun questioned if there was a gap between when D&N owned the facility and when it was purchased for Main Street Auto Care.

Mr. Kurpgeweit stated there was no gap in between the two owners for the use of a towing service. Main Street provided a towing service from the day they owned the property; they had no tow truck only a trailer and wrench. Mr. Kurpgeweit believed that the issue is that there was no wrecker on site for almost a year as they just used a trailer and wrench.

Chair Braun questioned Mr. Kurpgeweit, to his knowledge, how long did D&N occupy the property and provide a towing service?

Mr. Kurpgeweit believed it was nearly eighteen years, as well as the previous owners.

Chair Braun asked for any other comments from the public; there being none Chair Braun closed the public hearing and opened discussion among the Commission members.

Inspector Hansen added some background information to the Main Street Auto situation. Inspector Hansen noted for the Commission that if vehicle towing service had been listed as a use by exception in B-3, the Commission would not be meeting about this agenda item. The code states that if a use existed as a use by exception when the code was amended in 1993, if the use existed at the property at that time, it would have become a lawful conforming use and would be grandfathered in for that property for all time. However, vehicle towing service was not listed as a use by exception in B-3, so that went away for Main Street Auto. The grandfathering in of the use was ruled on by the previous zoning administrator and he ruled that his definition, which included the use of a towing/wrecker truck and the definition proposed, vehicle towing service, was not in the zoning definitions. The definition proposed to the Committee about a month prior was about having an actual tow or wrecker truck, by that definition, then Zoning Administrator Lowell Johnson ruled that Main Street Auto was not using a tow or wrecker truck for a period of one year and therefore Main Street Auto lost the use. In order to get the use back, Main Street Auto had to either appeal the decision, which there was nothing to appeal due to a lack of definition in the zoning. Now, the only opportunity for Main Street Auto to get their use back is to amend the zoning and get the use back. Inspector Hansen further noted that at the meeting the Commission is not specifically discussing Main Street Auto, the Commission is really discussing all property in Wayne which is zoned B-3 could come and apply for a use by exception permit to run a vehicle towing service as defined in the city code.

Commissioner Kranz was questioning Heikes Automotive. Inspector Hansen stated Heikes Automotive is zoned B-2 and they can keep the business as is,

unless there would be a twelve month time period where vehicle towing would not take place and the building would sit empty. Then the use would go away. Commissioner Kranz wanted to know the difference between the two. Inspector Hansen stated Main Street Auto is zoned B-3 and Heikes is zoned B-2.

Commissioner Kranz questioned where the definition of vehicle towing service was in the code as he did not find it. Inspector Hansen stated the definition probably is not in their code books yet as it was only passed a couple months ago and that the code book on the web page is most current.

Inspector Hansen noted that when the use was added as an exception in the B-1, the Planning Commission did not add a definition for the use at the same time.

Commissioner Sweetland questioned Inspector Hansen if there were any B-3 areas where he would view this as an issue.

Inspector Hansen noted that basically all the B-3 areas are along Seventh Street and then some are along the north end of Main and some along Tenth Street near the college. Inspector Hansen opined he views this as a use that is reasonable between a residential and commercial district. Part of this is the conditions and there are a set of conditions placed on the storage of towed vehicles in the B-1 district, which has been brought forward to the Commission, which is the second part of the amended language, Section 90-425 Special Conditions and Conditions for Granting Exceptions. If the Commission would approve adding vehicle towing service, the Commission then has the option to place conditions on those permits.

Commissioner Sweetland questioned if that would be each time someone would apply for this use by exception.

Inspector Hansen noted that every time someone would apply for the use by exception, they would need to comply with those conditions. Inspector Hansen noted that the Commission was supplied with the same list of conditions as are in the B-1 for discussion purposes and also every time someone comes before the Commission and asks for a use by exception permit, that lists in the zoning code is the minimum requirements, the Commission has the option to look at where the use would be located and place additional conditions on them.

Commissioner Kranz questioned if whatever the Commission recommends tonight needs to have the conditions as part of the motion.

Planning Commission Meeting Minutes  
Monday, August 2, 2010  
Page Four

Commissioner Melena opined the conditions they were given were only suggested; the Commission can decide what they want.

Inspector Hansen stated the Commission will amend both sections of the code at this meeting. If the Commission only approves adding the use and not the conditions, then the Commission has approved the use without any conditions, unless the Commission puts conditions on the permit when they apply.

Commissioner Sweetland questioned if they need to set a height for the fence or is that for each separate request.

Inspector Hansen stated that the Commission can be set a fence requirement each time a request comes before them.

Commissioner Melena was questioning the difference between towed and stored vehicles. What is the difference between a vehicle coming in because it was damaged in an accident and is awaiting for an insurance claim or if the vehicle gets towed in because it had something wrong that needs to be repaired that day or the next. Are they a towed vehicle or a stored vehicle?

Commissioner Sweetland opined that according to the language, a towed vehicle and a stored vehicle have the same language.

Commissioner Melena opined that he believes it should not be that way. A stored vehicle is waiting for a third party to decide on its outcome and not just waiting for a chance to get into the service station for repair. However, the vehicle arrived, if it was driven in or pulled in.

Commissioner Melena opined that conditions need to be set for stored vehicles and leave towed vehicles out of it and set those conditions for something that will be sitting there for a few days or a few weeks. Commissioner Melena opined he would like to see the word towed vehicles removed as it may not apply to all vehicles which have arrived there because it had a flat tire and an hour later it is going down the road again or maybe the next day. Commissioner Melena opined that he would like to separate towed and stored.

Commissioner Sweetland opined that she felt they should only be discussing towed vehicles and not stored vehicles, so maybe they should take out stored vehicles, no matter where they are stored. She was unsure what a stored vehicle was.

Planning Commission Meeting Minutes  
Monday, August 2, 2010  
Page Five

Commissioner Melena opined that a stored vehicle to him is one that was involved in a serious accident and gets pulled in and is waiting for the insurance adjuster or whomever to make a decision on the vehicle, if it is stored until then.

Commissioner Sweetland questioned, was the vehicle towed in?

Chair Braun questioned, wouldn't that be covered under number 8a, vehicles shall only be stored on-site, pending settlement or legal disposition of vehicles by insurance carrier and/or owner.

Commissioner Melena stated that it would; but in 8b, it states all towed and stored vehicles shall be...and those in a serious accident should be behind the front property line.

Commissioner Piper opined that if you bring in a vehicle with a flat tire you want it out front to be serviced quickly.

Commissioner Melena opined that all the other conditions sounds fine, they just need to change 8b to say all stored vehicles shall be stored behind the front building line.

Commissioner Piper questioned those vehicles sitting there to be purchased later.

Commissioner Sweetland opined they risk others not agreeing with the definition of stored vehicles. Someone could argue it was towed in so it could be a towed vehicle.

Commissioner Melena opined he would be satisfied if they took out towed vehicles from item 8b.

Inspector Hansen opined that the Zoning Administrator needs to have some common sense; it needs to be realized that some vehicles will only be there one or two days and those for salvage when they have been sitting there for several days or weeks.

Commissioner Piper questioned if there was any room behind the building at Main Street Auto.

Commissioner Kranz noted there is a barrier wall on the back side.

Chair Braun opined that the Commission delete item 8e and remove the barrier fence requirement since items a through f are just the minimum requirements, that a barrier fence could be an additional condition placed on the use. This would give the Planning Commission some leeway to add a recommendation and Council would be the one to ultimately decide, because you need to look at each use on a case by case basis as not all properties would need a barrier of sufficient height. If it is in there, that is a minimum for all to meet.

Inspector Hansen noted that the conditions before them came from the B-1 zone and that is the only reason the staff recommendations were made, was to give the Commission a point of discussion to begin.

Chair Braun stated that on any use by exception permit there are minimum requirements that will need to be met.

Inspector Hansen noted that when you have the use by exception permits, they are advertised to the public, there is a notice posted on the property, and all the property owners within 300 hundred feet are notified. If a fence would be an issue in the neighborhood, the property owners will be there at the meeting and remind the Commission of the need for a fence.

Commissioner Sweetland noted that the Commission is not deciding about Main Street Auto, they are setting minimum requirements for this in general and that will come up at the public hearing for the use and not this hearing. Commissioner Sweetland opined that she is okay with taking out the word towed and taking out item 8e.

Chair Braun opined she does not have a problem with the words towed and stored.

Inspector Hansen noted that if you take towed out, and as Zoning Administrator, if he would need to interpret this, he would look under the heading and see Storage of Towed Vehicles and he would put towed in there, just based on the heading, it is implied by the heading.

Chair Braun opined that the whole purpose of this is to protect the neighbors that surround this property so that they do not need to look at a wrecked vehicle for months on end.

Inspector Hansen noted for the Commission that if someone is in violation of the conditions, the only way he will know is if someone complains about the stored vehicles, if someone complains about stored vehicles sitting out and he goes to

verify and does not see anything that is wrecked. Then he will need to go back to the one who complained and ask that they verify the wrecked vehicle was there for several days; as he could not determine if it was towed there or driven.

Commissioner Sweetland asked what would be easier to enforce.

Inspector Hansen opined that it is splitting hairs and if the language already exists in the code under the B-1 section, he probably would not change it; it would make it more confusing as to why it reads one way in the code and another way in another part of the code. Inspector Hansen opined that he believes everyone is in agreement that they are after the same thing.

Chair Braun opined that she would like to see item 8e stricken from the draft language, due to the fact, that anyone who comes before the Commission for this use, will need to put up a solid barrier or fence, no matter where they are located.

Inspector Hansen opined that a chain-link fence could be a solid barrier fence if it had the slats in it. It would help hide the visibility of the wrecked vehicles.

Commissioner Hill questioned if these conditions are from the B-1 zoning.

Inspector Hansen stated that they are right out of the book.

There being no further discussion, a motion was made by Commissioner Melena and seconded by Commissioner Sweetland to approve and forward a recommendation of approval to the City Council by amending Section 90-424 Exceptions in the B-3 Neighborhood Commercial District by adding "vehicle towing service" to the list of exceptions and amending Section 90-425 Special Conditions and Conditions for Granting Exceptions in the B-3 Neighborhood Commercial District by adding item # 8 "storage of towed vehicles", with the exception of "e", as stated in the attachment with the findings of fact being staff's recommendation and the comprehensive plan, and the current and future land use map. Chair Braun stated the motion and second. Roll call vote was taken with the following: Commissioner Kranz – aye; Commissioner Melena – aye; Commissioner Hill – aye; Commissioner Piper – aye; Commissioner Sweetland – aye; and Chair Braun – aye. Chair Braun declared the motion carried unanimously.

Chair Braun stated the next item on the agenda is a public hearing for a request for a use by exception, under Section 90-424(14) two-family dwelling, applicants David & Connie Stuthmann.

Chair Braun opened the public hearing and stated the Commission would accept comments from the public.

Sheryl Lessman, who owns property immediately to the south of the subject property, was present to address the Commission. Ms. Lessman stated they have not seen any plans yet and they have some concerns. One concern is how the two-family dwelling drainage would handle and secondly, there is an existing retaining wall that they wanted to know how it would be affected. They are also concerned as to how close to the property line it would be built. Also, what the criteria really is and how measurements take place.

Inspector Hansen noted that he had received two phone calls on the issue which they were just asking some questions and another call was from someone who lived on Walnut Drive that asked what they are doing; they had no comments other than positive.

Ms. Lessman questioned where the entrances and exists would be in relation to her property.

Chair Braun opined that the only person to really answer those questions would be the applicant; which she asked to step forward.

Connie Stuthmann was present to address the Commission on the use by exception request. Ms. Stuthmann stated they are proposing a two-family dwelling which would face towards the north, so the entrances would be off of 8<sup>th</sup> Street and the garage would also come off of 8<sup>th</sup> Street. They do not have final plans in place yet as their intentions when they bought the structure were to remodel; however, after several meetings with the Norfolk inspector and Inspector Hansen that it would be complicated for them to meet building code. So their plans have changed. At this point they have not gotten too far into it, as they did not know if their use by exception would be granted or not, so they could go ahead and make plans and get bids. Ms. Stuthmann stated they do have a plan of sorts in place.

Chair Braun reiterated that the entrances would face north and the property lines are set by code.

Inspector Hansen stated that the setback line is zero; they can build directly up to the property line, except they must stay ten feet away from any existing structure on the abutting property and on the east side, which is a side yard, they can build up to the property line there as well, which is the alley. The ten feet needs to be away from any existing structure, which would include the shed or the house.

Chair Braun then said there is the issue of the existing retaining wall.

Inspector Hansen said until they actually get out there and have a surveyor find the corner pins that will be the question of where that retaining wall fits on one side of the property or the other.

Ms. Lessman was concerned about the drainage and where it would run off to.

Mr. Stuthmann was present and he said it will be sloped to drain towards the alley.

Inspector Hansen noted the property lines will be determined when the footing inspection is conducted, because the property pins need to be exposed and a string line layout so that a measurement can be taken to determine setback.

Ms. Lessman questioned technically they could build right up next to the retaining wall, even though the Stuthmann's stated they would not.

Inspector Hansen stated that if the retaining wall is the dividing line, Stuthmann's could build right up next to it.

Chair Braun questioned if the retaining wall would be considered a structure.

Inspector Hansen read the definition of structure to the Planning Commission and in his opinion the retaining wall would be considered a structure.

Mr. Stuthmann noted for the Commission there would not be a walk-out basement, only a half-basement.

Commissioner Kranz questioned if there would be enough room for a driveway.

Inspector Hansen said that is an 80 foot right-of-way so there is a lot of space to work with. They would have almost 19 feet of terrace that they will have before the property line and then the set back from the property line he believed was 15 feet on that side.

Chair Braun asked for any further comments from the public. There being none, Chair Braun closed the public hearing and opened discussion among the Commission members.

There being no discussion, Chair Braun stated she would entertain a motion.

Planning Commission Meeting Minutes  
Monday, August 2, 2010  
Page Ten

A motion was made by Commissioner Sweetland and seconded by Commissioner Melena to approve and forward a recommendation of approval to the City Council for the Use by Exception request under Section 90-424(14) in the B-3 Neighborhood Commercial District, for Dave and Connie Stuthmann to construct a two-family dwelling at 721 Windom Street, with the findings of fact being, staff's recommendation and the use fits with the comprehensive plan and the current and future land use map. Chair Braun stated the motion and second. Roll call vote was taken with the following: Commissioner Sweetland – aye; Commissioner Piper – aye; Commissioner Hill – aye; Commissioner Melena – aye; Commissioner Kranz – aye; and Chair Braun – aye. Chair Braun declared the motion carried unanimously.

Chair Braun stated the next item on the agenda is public hearing for the Benscoter Addition Planned Unit Development Replat 1, A Replat of Lots 3 and 4, and Plat of Dedicated Jaxon Street, applicant being Louis Benscoter Jr.

Chair Braun opened the public hearing and asked for any comments from the public.

Lou Benscoter, father of Louis Jr. was present to address the Commission as he stated he has been involved in this more. Mr. Benscoter stated that their goal here is that a retailer has a minimum area requirement they wish to build on. So Benscoter moved Jaxon Street to give the retailer the additional area they are requiring for what they wish to build.

Commissioner Piper questioned where Jaxon Street moved.

Mr. Benscoter stated that Jaxon Street actually straightened out. By doing this they needed a utility easement to run the sewer and storm sewer on the west side of that lot. They combined lots 21 and 22 and then 19 and 20 to make lots 19 and 20. Mr. Benscoter further noted for the Commission that by straightening Jaxon Street and if the hotel plans hold true they are planning to have Jaxon be the entry into the hotel.

Commissioner Piper questioned what the plans are for Lot 3.

Mr. Benscoter noted they are planning for a mini-strip mall, small stop shop. Benscoter noted that should the retailer back out of Lot 4, they are planning for a mini-strip mall on that lot as well.

Commissioner Kranz noted that there was a lot adjustment to the lot on the north.

Chair Braun noted that the surveyor has some corrections to be made to the plat. Those corrections are as follows: in the bottom left corner it states a 'special meeting' by the Commission, the plat was heard at a regular meeting; the plat will need the consent of all the property owners being Louis Benscoter, Javanah Benscoter, Investment Group, and the City of Wayne. Chair Braun noted that Inspector Hansen had commented on a couple corrections.

Inspector Hansen stated that the text under the "Notes" section that the zoning is R-4 for lots 5 through 25, it should be for lots 5 through 23.

Inspector Hansen stated he had one more item, that the rear-yard setback for lots 5 through 14, which is zoned R-4, that the setback is ten feet. In a Planned Unit Development, the peripheral of the development must meet the zoning setbacks for that district, which in an R-4 is the smaller of 25 feet or 20 percent of the total lot depth. The lot depths are 80 feet which would be 16 feet. The City does not have an issue with this, as the land behind the lots is the old railroad right-of-way. The motion would just need to state that the Planning Commission is okay waiving the rear yard requirement for those particular lots.

Chair Braun questioned Inspector Hansen if he thought that a finding of fact, the Commission would be okay reducing the rear yards due to the permanent railroad-right-of-way easement.

Mr. Benscoter opined that he does not like changing as the plat was done last fall, but he has a retailer who is coming which would be very beneficial to the city and if they could get them a site it would help.

There being no further business, Chair Braun closed the public hearing and opened the discussion up among the Commission members.

Chair Braun opined that with the changes which need to be made, she would be comfortable sending a recommendation, but adding to it pending the changes, the surveyor correcting the PC approval date, and the owners of record need to be shown.

There being no further discussion, motion was made by Chair Braun and seconded by Commissioner Kranz to approve and forward a recommendation of approval to the City Council for the Benscoter Addition Planned Unit Development Replat 1, Part of the Northwest Quarter of the Northeast Quarter and Part of the Northeast Quarter of the Northwest Quarter of Section 18, Township 26 North, Range 4 East of the 6<sup>th</sup> P.M., Wayne County Nebraska, with the findings of fact being: staff's recommendation and the replat is consistent

with the comprehensive plan and the current and future land use map, subject however to the following being met: Olsson Associates accurately describing the name of the replat in the Surveyor's Certificate, and subject to Olsson Associates accurately showing the property owners being Louis Bencoter Jr. and Javanah Bencoter, Northeast Nebraska Investors LLC, and the City of Wayne, and subject to Olsson Associates properly showing that the Planning Commission heard this at a regular meeting after proper notice on August 2, 2010 which appears in the bottom left-hand corner, and subject to the notes on the left hand side of Replat 1, it should reflect that zoning is R-4 for lots 5 through 23, and part of the recommendation is that the Planning Commission is in agreement with reducing the rear-yard setbacks for lots 5 through 14 as set forth in the subdivision agreement filed of record and entered into between the Bencoter's, the LLC and the City of Wayne. Chair Braun stated the motion and second. Roll call vote was taken with the following: Commissioner Hill – aye; Commissioner Piper – aye; Commissioner Sweetland – aye; Commissioner Melena – aye; Commissioner Kranz – aye; and Chair Braun – aye. Chair Braun declared the motion carried unanimously.

Chair Braun stated the last item on the agenda is the discussion and recommendation of the amendments to the Redevelopment Plan for Lot 1 of Bencoter Addition Planned Unit Development Replat 1.

Chair Braun noted for the Commission that they are just amending the Redevelopment Plan for the plan year of the hotel project.

Mr. Bencoter stated that the Redevelopment Plan needs to have the dates current.

Chair Braun noted for the Commission, their only concern is whether or not it is consistent with the Comprehensive Plan. It is in the correct zoning district.

Commissioner Kranz stated for the Commission that he will not sign the Resolution as he felt it was not his responsibility, but rather that of City Council.

There being no further discussion, motion was made by Chair Braun and seconded by Commissioner Sweetland to approve and forward a recommendation of approval to the City Council for the amended Redevelopment Plan for Lot 1 of Bencoter Addition Planned Unit Development with the following findings with respect to the Redevelopment Plan: 1) The Planning Commission has reviewed the Redevelopment Plan as to its conformity with the general plan for the development of the City as a whole; and 2) the Planning Commission confirms that the area described in the Redevelopment Plan and the

Redevelopment Contract is blighted and substandard as defined in the Nebraska Community Development Law; and 3) The Planning Commission finds that the Redevelopment Contract and Redevelopment Plan, if implemented will help eliminate blight and substandard conditions in the area affected by the Plan; and 4) the Planning Commission recommends the adoption and approval of the Redevelopment Plan, as contained in the Redevelopment Contract attached hereto as Attachment A, with such amendments, additions and deletions as are deemed necessary by the Agency. Chair Braun stated the motion and second. Roll call vote was taken with the following: Commissioner Melena – aye; Commissioner Hill – aye; Commissioner Piper – aye; Commissioner Sweetland – aye; Commissioner Kranz – aye; and Chair Braun – aye. Chair Braun declared the motion carried unanimously.

There being no further discussion, motion was made by Commissioner Sweetland and seconded by Commissioner Hill. Chair Braun stated the motion and second. All were in favor; motion carried unanimously. The meeting was then adjourned. Next meeting date is September 13, 2010.