

Planning Commission Meeting Minutes
Monday, December 3, 2007

Chair Sharon Braun called the meeting of the Wayne Planning Commission to order at 7:00 p.m., Monday, December 3, 2007, in the Council Chambers of the Municipal Building. Roll call was taken with the following members present: Mark Ahmann, Chair Sharon Braun, Stephanie Hansen, Jill Sweetland, Kelby Herman, Mark Sorensen, and Chief Inspector/Planner George Ellyson. Absent: Bill Kranz, Derek Hill, and Pat Melena.

Chair Braun stated for the Commission that at their previous meeting, there was no motion or second to officially adjourn the meeting. Chair Braun stated she would entertain a motion to officially close the November meeting. Motion was made by Commissioner Sweetland and seconded by Commissioner Hansen to adjourn the November meeting. Chair Braun stated the motion and second. All were in favor; motion carried unanimously.

Motion made by Commissioner Hansen and seconded by Commissioner Sorensen to approve the minutes of November 5, 2007. Chair Braun stated the motion and second. All were in favor; minutes were approved as presented.

Commissioner Bill Kranz arrived at the meeting at 7:02 p.m.

Chair Braun stated that prior to the first public hearing Inspector Ellyson had some items of interest to share with the Commission.

Inspector Ellyson noted for the Commission that he has registration forms for the 2008 NPZA conference. If possible, Commission members were asked if they had any interest in attending, to notify the city offices so that room reservations could be made in advance.

Chair Braun opined for the Commission that she has been able to attend the last couple of years for a one day session and it has been very interesting.

Inspector Ellyson noted, as a point of clarity for the Commission, the State of Nebraska, i.e., Wayne State College, the County of Wayne Ag Society and their land holdings, whether it be the fairgrounds or the maintenance yard, and the City of Wayne with their municipal holdings, all three are in fact exempt from local zoning jurisdictions. Therefore the issue before the Commission, with regards to the rezoning of fairgrounds, is kind of a two-fold in that first of all it is a courtesy on be-half of the county to help the city get their zoning map more in-line with its current use. The second part of the rezoning request is that all though the county is exempt from local zoning jurisdiction, if the county were the ones proposing to build the tower, this meeting would not be happening. The county could build the tower irrelevant of city regulations in regards to zoning. Therefore, Inspector Ellyson wanted all of the Commission to know that although the county and the rezoning request is irrelevant of their decision, a rezoning must occur in order for US Cellular to build the tower, simply because they are not a public entity or a judicial government. Inspector Ellyson questioned the Commission if they had questions with regards to their duties or responsibility on the Planning Commission in regards to the first public hearing or the second hearing.

Chair Braun reiterated for the Commission that if they fail to recommend a zoning change for the Ag Society from R-2 to A-2, it is really a mute point to have a public hearing because one must come before the other unless the county were the builder of the tower, this issue would not be before the Commission.

Commissioner Sorensen questioned if the Commission votes not to change the area to A-2, then US Cellular would not be able to build the tower.

Chair Braun noted that would be the Commission's recommendation and Council could choose to do differently.

Inspector Ellyson stated that the process would stop at the Commission, simply because the zoning would disallow that particular use. Therefore, the request cannot go forward to Council, unless the Commission rezones the area and number two, the Commission makes the recommendation on the use, whether they recommend it or deny it. The

zoning needs to occur before the second hearing as long as US Cellular is the requesting party. Should that change and the county request it, then the zoning regulations would not be enforceable.

Commissioner Derek Hill arrived at the meeting at 7:11 p.m.

Chair Braun stated the next item on the agenda was the first public hearing for a rezoning request from R-2 Residential to A-2 Agricultural Residential, that area known as the Wayne County Fairgrounds, applicant being Wayne County Ag Society.

Chair Braun reminded the Commission that once the hearing has been opened, comments will be taken from the public and once the hearing is closed, the Commission can no longer have discussion with the public, it can only be discussion amongst the Commission.

Sam Mandalfo, of Omaha Nebraska, was present at the meeting representing US Cellular and the Wayne County Ag Society. They are asking for a rezoning request from R-2 to A-2 for their property at the west end of the city. Mr. Mandalfo stated that he had also brought along an engineer for the second public hearing.

Louis Lutt, Wayne, Nebraska, President of the Wayne County Ag Society, was present at the meeting to answer any questions the Commission had on the rezoning request. The Ag Society would like the rezoning request from residential to an agricultural zoning because this is what they believe the fair is, an agricultural event and that is what it would remain at and this is the intended use, for a fair only.

Inspector Ellyson questioned Mr. Lutt when the Ag Society bought the land or when did they receive the land where the fair is currently located.

Mr. Lutt stated it was a good twenty years ago and they bought it from the State National Bank.

Mr. Ellyson noted that he asked that question for point of clarity. This area has probably been zoned R-2 since 1979 when zoning was adopted by the city. When the Ag Society went out and purchased the land for whatever reason, the zoning map should have been updated at that time and was not. This is the request then now which brings the zoning map in line with the property's current use.

Mr. Lutt opined it was probably an oversight on the fair's part that it was never looked into.

Inspector Ellyson opined that it was more of an oversight by the zoning administrator for the City of Wayne at that time. Inspector Ellyson further noted that this was an area he was going to address in the upcoming zoning update.

Commissioner Herman questioned if this changed any of the things that went on at the fair, such as vendors selling things.

Inspector Ellyson noted that the Commission should keep in mind the exception status of Wayne County; they can do what they want.

There being no further comments from the public, Chair Braun closed the public hearing and opened the discussion up amongst the Commission members.

Motion was made by Commissioner Herman and seconded by Commissioner Ahmann to forward a recommendation of approval for the rezoning request from R-2 Residential to A-2 Agricultural Residential to the City Council. Chair Braun stated the motion and second. Roll call vote was taken with the following: Commissioner Sorensen - aye; Commissioner Herman - aye; Commissioner Sweetland - aye; Commissioner Hansen - aye; Commissioner Hill - aye; Commissioner Kranz - aye; Commissioner Ahmann - aye; and Chair Braun - aye. Chair Braun declared the motion carried unanimously.

Chair Braun stated the time was at hand for the second public hearing, a use by exception request, specifically Section 90-144(6) exceptions, radio and television towers and transmitters, applicant being US Cellular.

Brandi Vandenberg, Omaha, Nebraska was present to discuss the second public hearing. Ms. Vandenberg gave a little background information for the Commission. US Cellular purchased the Cellular One network about a year and a half ago and they required a site. Where they are currently located outside of town, the tower is not designed structurally to hold their current antennas and lines, which would better serve the community of Wayne; therefore, they are in need of removing their equipment from that tower. On the proposed tower at the fairgrounds, it is a 250 foot self-supporting structure and is designed for three additional cellular carriers, several microwave tops and the coverage in the community of Wayne is highly improved.

Inspector Ellyson questioned Ms. Vandenberg that she had mentioned there was room on the tower for other companies to rent space and would this be a lease type of arrangement with US Cellular. Ms. Vandenberg stated that was correct.

Inspector Ellyson further questioned Ms. Vandenberg what are some examples of this and what are some examples of the structures on the tower.

Ms. Vandenberg stated that could be anything similar to what US Cellular does like another Verizon, Alltel, Viaero, local 911. The towers are designed very strong to support a lot of different companies.

Inspector Ellyson questioned if there could be a dish. Ms. Vandenberg stated the tower being proposed could support up to ten dishes. Inspector Ellyson questioned how big the dishes would be. Ms. Vandenberg said they could be eight feet wide, but they have used a lot of microwaves on their towers.

Commissioner Sorensen questioned where the tower would be located at the fairgrounds. Inspector Ellyson stated it would be just a little bit west and up against the north fence of NeNPPD, but a little bit west of the cow/calf barn up on top of the hill by the arena; straight south of the old Fritz Ellis apartments.

Commissioner Sorensen questioned to confirm that there would not be any guy wires. Ms. Vandenberg stated it is a free standing, three legged tower, with a lighter base, tapered, so there are no guy wires.

Commissioner Sweetland questioned if there would be fence around the tower.

Ms. Vandenberg stated there would be a compound (fence) measuring 75x125 around the base of the tower because they would be using an equipment shelter which measures 12x20 concrete building, which is all inside the fenced area. Any equipment would be placed inside the building.

Chair Braun questioned what type of fencing material would be used.

Ms. Vandenberg stated they would use an eight foot high chain-link fence with three rows of barbwire around the type.

Inspector Ellyson questioned if they needed the barbwire.

Ms. Vandenberg stated it was standard.

Inspector Ellyson stated he would need to check if barbwire was permitted.

Commissioner Sorensen questioned if the NeNPPD building had barbwire on top of their fence.

Commissioner Sweetland questioned if the Ag Society will receive a commission for the tower.

Ms. Vandenberg stated US Cellular has a signed lease with the Ag Society, it is a five year term, and every five years the lease will be renewed for up to thirty years.

Chair Braun questioned what would happen if the lease was not renewed.

Ms. Vandenberg noted that in the event the lease was not renewed, it would be the responsibility of US Cellular to dismantle the tower or sell it to someone who would use the tower. Commissioner Kranz questioned if there were any issues related to the height of the tower.

Inspector Ellyson stated that the FAA has given their approval for the tower at this present location.

Commissioner Hill questioned for clarity that the barbwire at the top would be for security.

Ms. Vandenberg stated that was correct.

Commissioner Hill opined that he felt there should be something on the top to keep the temptation from the kids and if barbwire is not an acceptable means, then they, the Commission, should find something that is.

Inspector Ellyson noted for the Commission the height of the fence is a problem within the zoning language, but based on the use and the county, the eight foot will be acceptable and in his opinion, he believes NeNPPD has barbwire around the top of their fence as well.

Commissioner Kranz questioned if this topic came up for the tower that went in downtown, in terms of what was there to keep people from climbing the tower.

Ms. Vandenberg noted for the Commission that the people they have to work on the towers have their own safety harness to climb them; so the towers do not have any material on them that would be easy for someone else to climb.

Inspector Ellyson believed that the Viaero tower had a fence around it and that the city tower has a pad-a-lock system making reaching the ladder difficult.

Ms. Vandenberg noted for the Commission one option is that US Cellular could provide a ten foot anti-climb system and it is a precautionary measure they would be willing to provide.

Commissioner Sweetland questioned if it was appropriate to ask the Ag Society about this subject.

Louis Lutt stated for the Commission that the Ag Society, as a whole, approved the tower and they were looking forward to working with US Cellular and the Ag Society thinks it will be a very workable situation. It is up against the north fence line, not taking up much room and they feel the Ag Society can accommodate US Cellular very well.

There being no further comments from the public, Chair Braun closed the public hearing and opened the discussion amongst the Commission.

Inspector Ellyson noted for the Commission that any recommendation the Commission makes will go before the City Council as well and this is the time to place any type conditions on the use by exception they see fit.

Commissioner Hill questioned Inspector Ellyson if there was any particular reason why he was questioning the number of dishes to be placed on the tower.

Inspector Ellyson noted that he asked the question simply because what is there now may not be offensive but it could be in the future. There does not seem to be any public present at the meeting, either for or against the tower.

Inspector Ellyson noted that he had received two phone calls with regards to the request, both of which were favorable.

Commissioner Kranz questioned how they, the Commission, could specify some security measures when they did not do that for the tower downtown. Is there a way of putting language in the motion that would require US Cellular to do something similar to that of the tower downtown.

Commissioner Sorensen opined these are two different situations. The tower downtown has more traffic around the tower, where it would not be as tempting. Whereas the tower for US Cellular is more isolated, he could see kids trying more things than the other tower.

Motion was made by Commissioner Sorensen and seconded by Commissioner Sweetland to forward a recommendation of approval for the use by exception request to the City Council with the following conditions: 1) a fence to be built around the tower, similar to that of Northeast Nebraska Public Power and to place a ten foot anti-climb system on the tower. Chair Braun stated the motion and second. Roll call vote was taken with the following: Commissioner Ahmann - aye; Commissioner Kranz - aye; Commissioner Hill - aye; Commissioner Hansen - aye; Commissioner Sweetland - aye; Commissioner Herman - aye; Commissioner Sorensen - aye; and Chair Braun - aye. Chair Braun declared the motion carried unanimously.

Chair Braun stated the next item on the agenda was the public hearing for the use by exception request, specifically Section 90-205(7) exceptions in the R-1 Residential District, for a dental clinic, applicant being Wayne Area Economic Development Inc. (WAEDI).

Wes Blecke, from WAEDI, was present at the meeting representing the use by exception request. Mr. Blecke noted for the Commission that he was there on behalf of WAEDI, as they were the applicant for the request. Mr. Blecke opined that the dental clinic would be a good buffer between the gas service station and the residential district. This would also be a good opportunity for a dental clinic to expand from where they are currently at.

Chair Braun questioned where the main entrance would be located and do they have a proposed site plan.

Mr. Blecke stated that he did not have a plan, but the owner(s) would have to comply with all the regulations as set forth.

Dr. Rob Burrows, Wayne, Nebraska, was present to address the Commission on the use by exception request. Dr. Burrows noted for the Commission that there are two different floor plans for the structure, which he and Dr. Koehler the orthodontist who comes to Wayne and Dr. Burrows had been looking at. Dr. Burrows noted that he has been visiting with Inspector Ellyson and looked at the site to see what area on the lots would be available for building, minus the setbacks and the State's right-of-way on the north side. They are currently in the planning stage and much of it depends on whether they can even build, if the Council or Commission even allows them to move forward.

Commissioner Kranz questioned where the access would be located, all from the west or north.

Dr. Burrows opined that they would like to have some parking for employees and themselves along the alley way.

Inspector Ellyson displayed an overhead showing the site location for the proposed dental clinic.

Dr. Burrows noted for the Commission that he and Dr. Koehler had looked at another design layout which is a smaller building that would front to the west. If this would happen the parking lot would be accessing off of Pearl Street, however they would want the employees to park behind the building.

Commissioner Sweetland questioned where the parking lot would be located.

Dr. Burrows stated it would be located to the west of the building. Dr. Burrows was concerned with the traffic going to the highway with an intersection being located close.

Commissioner Hansen noted that she needs to abstain from voting on this agenda item due to the fact she is a property owner within 300 feet; however, she had a question regarding the traffic flow because there are a lot of issues with

going into the center lane either turning left onto Pearl Street or going the opposite direction; there is a lot of cross-over traffic. Commissioner Hansen opined staying away from the whole 7th Street would be better and keeping the traffic on Pearl Street would be best.

Commissioner Sweetland questioned how far south the entrance on Pearl Street would be.

Dr. Burrows noted that it would go as far south as possible.

Inspector Ellyson had the site triangle drawn on the overhead showing the distance. It is 90 feet east of the intersection centerline and 70 feet south of the centerline. This is a no build zone and it does not encroach at all onto the property lines. There is plenty of visibility at this intersection to see traffic coming from both ways.

Commissioner Sorensen was questioning where the entrance would come in at.

Dr. Burrows stated the entrance and exit, preferably, would both be at the southern edge of the property.

Commissioner Sweetland questioned if any thought has been given to barriers from the neighbors, as far as fencing or landscaping, or is this something they are interested in.

Dr. Burrows mentioned a retaining wall along the one property line.

Inspector Ellyson noted that should this area have been rezoned, a fence would have been required along the one property line area and it could be a condition placed on the use by exception, if approved by the Commission; a fence similar to that of Runza or Subway.

Commissioner Hansen noted that at the last Planning Commission meeting, there were some comments by the public that centered around the comments as noted by Commissioner Sweetland, such as lighting at a certain level, are they going to be shining in the neighbors windows, will there be a barrier between the property lines. Commissioner Hansen opined that she wanted Dr. Burrows to be aware of the comments made by the public at the last meeting.

Commissioner Sweetland also noted that the public was unaware a dental clinic would be going in the proposed rezoning area.

Dr. Burrows opined that he wanted to be a good neighbor and does not want to have a big bright sign or lights. He wants it to be as residential looking as possible. He does not have any problem with placing a fence on the property; he doubts he would need to have a lighted parking lot, unless it was a requirement.

Inspector Ellyson noted that when Ameritas came before the Commission with their request for a parking lot, not so much if there would be parking after hours or not, but a concern was the congregation of teenagers at nighttime. Some of the justification and reasoning behind a lit parking lot was that a dark spot was not created for the congregation of students or young people. Therefore, one of the conditions the Planning Commission placed on the Ameritas lot was the requirement of real low density lights that were obviously light sensitive, coming on at dusk and going off at dawn. The Planning Commission wanted this lot to have some type of lighting in it, simply because they did not want a dark spot for cars to gather at.

Commissioner Sorensen questioned what type of lighting was at this corner.

Inspector Ellyson was not for sure; he thought maybe a street light.

Commissioner Ahmann questioned why they looked at this particular property, because they were going to have to demolish structures to do that and there are some buildings available in downtown that are available; why did they choose this particular area.

Dr. Burrows stated for the Commission they would like to stay in this quadrant of Wayne that has the schools. It probably is not a big deal for him but it is a nice small town and kids can walk to their dental appointments. For the orthodontist coming in with him, it is a big deal, as that is his main clientele. They have the ability to walk from the middle school, especially, to the dental appointment and back, without the parents having to come get them. That is one reason why they want to stay in this quadrant; they do not want the kids to cross the highway. Dr. Burrows did note for the Commission, they had looked at the former State National Bank building, which is really rather large. The downtown area is good, but one of the main issues that Dr. Burrows has and his patients have mentioned, is parking. They have a few spaces in front of his office and often times, they are taken all day long.

The current facility is adequate; however it is fairly dated and there are some things that it could be laid out better and more accessible to the patients. Dr. Burrows also noted that the current facility could be remodeled, but where does he work while the facility is being remodeled. There are also apartments above the structure and they have some issues with that, including toilets overflowing. This property in question was suggested by First Realty to Dr. Koehler and then to Dr. Burrows.

Commissioner Sorensen questioned Dr. Burrows if he was opposed to having an exit onto the highway. At the last meeting, there were some residents that were concerned about the accessibility onto Pearl Street.

Dr. Burrows stated that he was not opposed to that; however, he did not know if there was such a way to make it a one-way so no one could make a left turn.

Commissioner Hill opined that no matter where the exit is located, if one car stops anywhere, there will be a traffic jam.

Commissioner Sweetland opined that she thought it might be alleviated if the entrance was further south on Pearl.

Commissioner Hill questioned how far south on Pearl Street the entrance would be located. Inspector Ellyson stated there are 72.3 feet from the site triangle line to the southwest corner property pin.

Chair Braun noted for the Commission that there are really limited times of the day when the traffic is congested.

Commissioner Hill questioned the hours of the dental clinic. Dr. Burrows stated 8:00AM to 5:00PM, general speaking and 8:00AM to 1:00PM on Friday, and on Wednesday's from 7:30AM to 4:00PM.

Commissioner Hill questioned what the average number of patients is per day. Dr. Burrows stated that a full day, with the hygienist, is about 25 per day. Dr. Koehler's hours are 9:00PAM to 4:00PM on Wednesday's only.

Some discussion was held regarding the parking layout. Dr. Burrows had noted that he would like to set the building as far south as possible and try to get the employee parking on the east side, with access off the alley and then the remainder as customer parking.

Commissioner Sorensen questioned if the Commission could make a recommendation with some conditions, such as a fence and with an exit onto Pearl and another onto Seventh Street; at least Dr. Burrows could move forward with his design.

Commissioner Sweetland questioned how large would the structure be. Dr. Burrows said the last design they had looked at was roughly 4500 square feet.

The Commission further discussed the traffic flow patterns with this particular area.

Commission Sweetland opined that she does not foresee this producing tons of traffic at once and the prospect of a business growing and growing with technology compares to what is presently there, outweigh the traffic; traffic means prospering.

Chair Braun asked if there were any other comments from the public regarding the public hearing.

Mr. Blecke asked the Commission if they do put conditions on the use by exception, would they continue the hearing and hold a special meeting before the next council meeting.

Inspector Ellyson noted that in the past the Commission could table the hearing and reconvene it without advertising, as long as the motion stated when the hearing would be reconvened, a date and time.

Commissioner Herman questioned where in the zoning it states the Commission can place conditions on the use by exception.

Inspector Ellyson stated there is a section of the code that stated conditions can be placed on the use by exception.

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

Further discussion was held amongst the Commission regarding the conditions that could be placed on the use by exception.

Motion was made by Commissioner Herman and seconded by Commissioner Sweetland to forward a recommendation of approval for the use by exception Planning Commission Meeting Minutes request to the City Council, with the following condition, that the use is subject to compliance with Section 90-425 special conditions for granting exceptions under the B-3 zoning district. Chair Braun stated the motion and second. Roll call vote was taken with the following: Commissioner Sorensen - aye; Commissioner Herman - aye; Commissioner Sweetland - aye; Commissioner Hansen - abstain; Commissioner Hill - aye; Commissioner Kranz - aye; Commissioner Ahmann - aye; and Chair Braun - aye. Chair Braun declared the motion carried unanimously.

Chair Braun stated the next item on the agenda was the public hearing regarding the amending of Chapter 90 Zoning, specifically Section 90-710(c) Parking or Driveway Surfaces.

There being no comments from the public, Chair Braun closed the public hearing and opened the discussion up amongst the Commission.

Chair Braun noted for the Commission that originally she and Commissioner Kranz were going to get together and discuss this issue; however, after visiting with Inspector Ellyson decided against the meeting.

Inspector Ellyson noted the following for the Commission that in August or September the City Council asked for the Planning Commission's review of an ordinance that would take effect in October of 2007 and would become enforceable. The Council wanted the Commission to review the ordinance and place some clarity in the language and a couple additional surfaces to be allowed interior of the lot. At that council meeting, Inspector Ellyson told them (Council) that the Commission needed some time to look at the ordinance, but would have something in place and ready for them at their January meeting. That was the agreement Council made with the Inspector's office.

The Commission has reviewed several changes. The changes were always identified in red ink, other than the last change that went from six inches to five and a half inches. The remaining changes discussed had been previously discussed. The implementation of a committee had been discussed and based on Council's desire of the Commission to go forward, there is not enough time to form a committee and discuss the ordinance. Secondly, anything the committee would develop different from the language the Commission has had a chance to edit and modify, is not what Council intended for them to do anyway. Council wanted the Commission to modify that existing ordinance and that is what they, the Commission, was charged with doing. After discussing this with the Chair, there is not enough time for a committee to be formed and any further discussion by the Commission. Based on the comments from the Commission, those changes are in fact in place and it is Inspector Ellyson's opinion then that the responsibility to Council has been met by drafting the language and therefore the public hearing was set.

Chair Braun opined that after reviewing the excerpt of the City Council meeting minutes, the Commission did not originally make a recommendation to the Council and therefore the Council took the parking matter into their own hands and passed the ordinance. Now, the Commission is asked to review something they did not recommend to begin with for further review.

Commissioner Hansen opined that the meeting minute excerpts helped her understand Council's reasoning. Commissioner Hansen opined this is something Council has created themselves and based on what was recommend by the Commission then that is something the Commission cannot go back on and fix, they can only go forward.

Chair Braun opined it was difficult to clarify language that was not the Planning Commission's recommendation to begin with.

Inspector Ellyson stated that from his opinion as the zoning administrator and enforcement agency, wanted the opportunity for the Commission to write something that he felt was enforceable. Inspector Ellyson opined that he feels this language is enforceable and meets the intent of what Council wanted.

Motion was made by Commissioner Sorensen and seconded by Chair Braun to forward a recommendation of approval for the language as drafted to the City Council. Chair Braun stated the motion and second. Roll call vote was taken with the following: Commissioner Ahmann - aye; Commissioner Kranz - nay; Commissioner Hill - aye; Commissioner Hansen - nay; Commissioner Sweetland - aye; Commissioner Herman - nay; Commissioner Sorensen - aye; and Chair Braun - aye. Chair Braun declared the motion carried by a vote of five ayes and three nays.

There being no further business, motion was made by Commissioner Hansen and seconded by Commissioner Hill to adjourn the meeting. Chair Braun stated the motion and second. All were in favor; motion carried unanimously; meeting was adjourned.