



SARPY COUNTY DEPARTMENT OF PLANNING

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REBECCA HORNER, DIRECTOR

PLANNING COMMISSION MEETING MINUTES

July 15, 2009

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Sarpy County Board of Commissioners
Sarpy County Courthouse
1210 Golden Gate Drive
Papillion, Nebraska 68046

To The Sarpy County Board of Commissioners:

The Sarpy County Planning Commission held a regular meeting on July 15, 2009, in the County Board Room at the Sarpy County Courthouse, Papillion, Nebraska. Chairman Wees called the meeting to order at 7:00 p.m. with the following members present: Susan Bliss, Courtney Dunbar, Don Fenster, Gary Stuart, Bernie Marquardt, Jerry Torczon, Alan Wear, Tom Wees, and Doug Whitfield. Absent were: Greg Gonzalez, and Stacen Gross. Also in attendance were the staff members: Rebecca Horner, Planning Director, Nicole O'Keefe, Deputy County Attorney and Michelle Alfaro, Planning Assistant.

Chairman Wees asked for Commissioner reports.

None.

Chairman Wees asked for a motion to approve the agenda.

- *Wear moved, seconded by Bliss to adopt the agenda as stated. Ballot: **Ayes:** Bliss, Dunbar, Fenster, Stuart, Marquardt, Torczon, Wear, Wees, Whitfield. **Nays:** None. **Abstain:** None. **Absent:** Greg Gonzalez and Stacen Gross. **Motion carried.**(9-0)*

Chairman Wees asked for a motion to approve the **June 17, 2009**, minutes.

- *Bliss moved, seconded by Fenster, to approve the minutes of the June 17, 2009, meeting as submitted. Ballot: **Ayes:** Bliss, Dunbar, Fenster, Stuart, Marquardt, Torczon, Wear, Wees, Whitfield. **Nays:** None. **Abstain:** None. **Absent:** Greg Gonzalez, and Stacen Gross. **Motion carried.**(9-0)*

- I. **CONSENT AGENDA ITEMS:** *Note: All consent items are automatically approved when the consent agenda is approved unless removed by a board member. Removed items will be placed under Regular Agenda Items for action by the Planning Commission.*

None.

II. **REGULAR AGENDA ITEMS: Public Hearing and Recommendation – Special Use Permit**

A. Waterfall Lounge, 10208 S. 168th Avenue Suite A and B, Omaha, NE 68136 requests approval of a Special Use Permit to operate a drinking establishment on the following described property, to wit: Lot 12 Tiburon Village, Sarpy County, Nebraska (168th Avenue, South of Cheyenne Road)

Discussion:

Ms. Horner discussed her staff report with the Planning Commissioners and stated the applicant was requesting approval of a special use permit for a drinking establishment, including an outdoor seating area for one bay in an existing strip retail building. The existing zoning and landuse is BG, General Business, improved with retail, including an existing drinking establishment. Waterfall Lounge was established prior to a 2007 amendment to the Sarpy County Zoning Regulations which made drinking establishments a permitted special use. The existing use is a legally non-conforming use. The applicant requested an expansion of the existing liquor permit with the Liquor Control Commission. The request for a drinking establishment both brings the existing non-conforming use into conformance with the zoning regulations and requests an addition for an outdoor seating area. Ms. Horner stated the outdoor area should be limited from having any speakers, live bands, or similar noise producing activities or devices in order to limit negative impacts to surrounding uses. Ms. Horner discussed outdoor seating area requirements and stated lighting, if used, should be limited to fixtures with sharp cutoff shields in order to limit light pollution to the adjacent existing residential and recommended approval to the request for a special use permit for a drinking establishment due to compatibility with adjacent zoning/uses, conformance with zoning and subdivision regulations and it is consistent with the Comprehensive Development Structure Plan contingent upon resolution of staff comments related to noise producing devices within the outdoor area and lighting.

Mr. & Mrs. Bargstadt came forward and provided information to the Commissioners.

Mr. Wees stated concern with the shorter fence due to the ability to pass drinks through.

Ms. Bliss asked for a copy of the applications submitted to the liquor control commission.

Public Hearing opened at 7:15 P.M.

Public Hearing closed at 7:15 P.M.

- *Dunbar moved, seconded by Bliss to approve agenda item A Special Use Permit for the Waterfall Lounge located at 10208 S. 168th Avenue as it complies with the Comprehensive Plan and Zoning Code of Sarpy County. Ayes: Bliss, Dunbar, Fenster, Stuart, Marquardt, Torczon, Wear, Wees and Whitfield. Nays: None. Abstain: None. Absent: Greg Gonzalez and Stacen Gross. Motion carried. (9-0)*

REGULAR AGENDA ITEMS: Public Hearing and Recommendation – Special Use Permit

B. Julie Nielson, 16410 S. 180th Street Springfield, NE requests approval of a Special Use Permit to operate a kennel on the following described property, to wit: Tax Lot 8A in Sec 29, Twp 13N, Rng 11E of the 6th P.M., Sarpy County, NE (180th & Pflug Rd)

Discussion:

Rebecca stated the request was for a special use permit for a private kennel for 16 dogs. The existing zoning is AG, Agricultural. The size of the site is 6.71 acres more or less. The existing site is developed with an acreage including several outbuildings. Ms. Horner stated a kennel is defined as any lot or premises on which more than four dogs or cats or any combination thereof are kept. The AG district allows private and commercial kennels and facilities for raising, breeding and boarding of dogs and other small domestic animals, provided all buildings and facilities are at least 100 feet from any property line and 300 feet from any residential zoning districts. Ms. Horner stated that the applicant submitted a site plan that indicated four outdoor areas existed for the dogs, however, Facility B, was not permitted in the existing location and a portion of facility A was not permitted as they are not 100 feet from the property line. Ms. Horner stated the proposed use was compatible with adjacent uses. Ms. Horner stated the Department of Agriculture submitted a report from April 21, 2009, and the Nebraska Humane Society submitted comments in opposition of the special use permit request. Staff recommended that if the kennel permit was issued that the property owner be required to meet the Department of Agriculture shelter requirements, be inspected and approved by the Department of Agriculture and Nebraska Humane Society and limited to one year so that staff may re-evaluate the request.

Mr. Dale Glenn and Ms. Julie Nielson came forward and stated they received a letter from the Humane Society stating that they would need a Special Use Permit and that they began working on it within 24 hours. Ms. Nielson discussed tickets that were issued by the Humane Society and stated that they were later withdrawn as she was able to provide veterinary reports on the goat and the horse.

Mr. Dale discussed the inspection that was performed on April 21, 2009 and stated he gave them full access. Mr. Dale stated that the Commission would see some bad things in the pictures but that the day those pictures were taken he had begun to clean up the area.

Ms. Nielson stated the Bureau of Animal Industry was primarily for the Commercial industry and stated she e-mailed the Bureau and they responded that their license requirements did not apply to them.

Mr. Glenn requested that the item be continued.

Ms. Bliss questioned what their care plan would include.

Ms. Nielson stated that the veterinarians have been out to the property and they do not have issues regarding the care of the animals.

Public Hearing opened at 7:40 P.M.

Kelli Brown, Nebraska Humane Society came and provided information regarding the tickets that were issued and withdrawn and expressed her concern regarding the request. Ms. Brown discussed horses with overgrown hooves. Ms. Brown stated that Mr. Glenn was not cooperative when she was at the home. He was issued a citation based on the lack of ability to provide proof of veterinary care. Ms. Brown stated that once veterinary care proof was provided she retracted the tickets. Ms. Brown stated Rick Herchenbach told the Humane Society of minor issues, water, grooming, etc. that were lacking and if they were unable to provide the minor care, what would happen with the more difficult care.

Ms. Lorayne Holfeldt came forward and stated that she lived south of Mr. Glenn and Ms. Nielson and she stated she had a concern for what they are doing and questioned if the kennel license was approved what follow-up would be done.

Public Hearing closed at 7:46 P.M.

Mr. Marquardt asked if they ever had puppies on the property.

Ms. Nielson stated no and that all animals were fixed.

Mr. Marquardt asked how long the animals are kept.

Ms. Nielson stated until they die of old age.

Mr. Marquardt questioned what was the plan to change the facilities and make things different to care for the animals.

Ms. Nielson stated there were no complaints about the secondary building.

Mr. Marquardt questioned if Ms. Nielson meant that they had no plans.

Ms. Nielson reiterated that nothing was written up about C & D, and that they are indoors and have heated weather buckets in the winter.

Mr. Stuart questioned what was the main purpose of keeping the animals.

Ms. Nielson stated they are kept as pets.

Mr. Torczon questioned what happens in one year if they receive approval for the permit.

Ms. Horner stated that the permit be limited to one year, come back before the commission as a new permit application, staff would request to see approved reports from the Department of Agriculture and Nebraska Humane Society.

Mr. Torczon questioned if other agencies would perform inspections for review in a year.

Ms. Horner stated the agencies would provide inspections for the report.

Mr. Marquardt questioned what would happen to the animals if the permit was denied.

Ms. Brown came forward and stated that Mr. Glenn and Ms. Nielson would be required to remove the animals down to four.

Ms. Dunbar stated that the Planning Commission was concerned with the use of the land.

Ms. Horner stated the Planning Commission has the authority to attach these conditions to the special use permit.

Ms. Dunbar stated in looking at the conditions, the comments from the Department of Agriculture and the Humane Society plus the land use, placed a lot of conditions upon the property owner with consequences including the loss of twelve dogs. Ms. Dunbar stated some of the conditions on the property would need to change.

Ms. Nielson stated they work opposite shifts to tend the animals and the veterinarian has been satisfied.

- *Fenster moved, seconded by Bliss to deny the request for a special use permit based on the findings of the Nebraska Humane Society and the Nebraska Department of Agriculture.*

Commissioners discussed concerns regarding motion.

- *Fenster moved, seconded by Bliss to call the question. **Ayes:** Bliss, Dunbar, Fenster, Marquardt, Torczon, and Wees and Whitfield. **Nays:** Stuart and Wear. **Abstain:** None. **Absent:** Greg Gonzalez, and Stacen Gross. **Motion carried.** (6-2)*
- **Original Motion:** *Fenster moved, seconded by Bliss to deny the request for a special use permit based on the findings of the Nebraska Humane Society and the Nebraska Department of Agriculture. **Ayes:** Bliss, Fenster, and Wees. **Nays:** Dunbar, Stuart, Marquardt, Torczon, Wear and Whitfield. **Abstain:** None. **Absent:** Greg Gonzalez and Stacen Gross. **Motion does not carry.** (3-6)*
- *Wear moved, seconded by Whitfield to continue the request for a special use permit to August 2009, and that the applicant correct issues with Nebraska Humane Society and the State Department of Agriculture. The applicant needs to provide an operational plan showing how to handle noise abatement and waste disposal, as well as, provide a favorable letter of recommendation from both agencies (Humane Society and the State Department of Agriculture) stating the deficiencies have been corrected. **Ayes:** Bliss, Dunbar, Stuart, Marquardt, Torczon, Wear and Whitfield **Nays:** Fenster and Wees. **Abstain:** None. **Absent:** Greg Gonzalez, and Stacen Gross **Motion carried.** (7-2)*

REGULAR AGENDA ITEMS: Public Hearing and Recommendation – Text Amendment

C. PROPOSED AMENDMENTS to the Sarpy County Zoning Regulations to add regulations Wind Energy Systems.

Discussion:

Ms. Horner stated the request was to amend the Sarpy County Zoning Regulations to add Wind Energy Systems. Ms. Horner made amendments to the draft based on concerns expressed at the previous meeting. She received comments from the US Fish and Wildlife which requested an amendment to the draft. Ms. Horner provided their comments to the Planning Commission and she supported his request and recommended they be incorporated into the draft.

Commissioners discussed the draft regulation.

Public Hearing opened at 8:36 P.M.

Steve Stultz, with Prevailing Power Wind Generators came forward and requested the Commissioners consider facts and figures from the American Wind Energy Association. Mr. Stultz stated the generators produce less than fifty decibels at the base of the tower with 55-60 decibels during storms. Mr. Stultz requested that they consider larger systems than the stated in the draft. Mr. Stultz spoke about roof mounted wind turbines.

Gale Faltin came forward and questioned if the number of towers would be limited in any one specified area. Ms. Faltin questioned if additional time could be given to review the decommissioning agreement portion of the draft.

Mr. Torczon questioned if she was in favor of the draft.

Ms. Faltin stated wind energy could be a favorable energy alternative if done the right way.

Mr. Fenster questioned if number of wind turbines could be limited.

Ms. Horner stated that it could be limited per unit area. Ms. Horner stated she intentionally left the regulation vague so the Planning Commission could review each case individually.

Public Hearing closed at 8:54 P.M.

- *Fenster moved, seconded by Bliss to accept and approve the wind energy regulations as written with the addition of the recommendations as provided by the US Fish and Wildlife . **Ayes:** Bliss, Dunbar, Fenster, Marquardt, Torczon, Stuart, Wear and Wees. **Nays:** Whitfield . **Abstain:** None. **Absent:** Greg Gonzalez and Stacen Gross. **Motion carried.** (8-1)*

Discussion:

Ms. Dunbar stated to keep in mind that the two main revenues in the state of Nebraska are agriculture and industry and there is a tax basis to support in the state and the main economic generator for the state is Sarpy County. Ms. Dunbar stated her concern was things going onto properties that cause the county to prohibit or in any way obstruct that land to be used for its highest and best use. Ms. Dunbar stated one of the main reason companies locate to this area was because of national and statewide electric costs are thirty percent below the national average. Ms. Dunbar stated the wind farms that exist now, don't exist here, but in central Nebraska where there is a lot of wind generation and it makes sense. There is also no population or obstruction of view with these wind farms. Ms. Dunbar stated that the wind turbines are not esthetically pleasing and if not controlled becomes environmental contamination in regard to esthetics and not necessarily in regard to energy usage.

Mr. Whitfield questioned various sections of the draft regulation.

Courtney Dunbar left the meeting 9:05

5 minute break

**REGULAR AGENDA ITEMS: Public Hearing and Recommendation – Special Use Permit
Continued from June 17, 2009, Planning Commission Meeting**

D. Ray Heimes, 21174 Riha Road, requests a special use permit for a wind energy system for residential use located on the following described property to wit: Lot 7 & 8B, Meadow Oaks South in Sec. 10, Twp 12N, Rng 11E of the 6th P.M., Sarpy County, Nebraska. (Highway 31 & Riha Road)

Discussion:

Ms. Horner asked if the Planning Commissioners would like to review what was presented at the last Planning Commission meeting.

Ms. Bliss questioned if anything new was presented.

Ms. Horner stated that nothing new was presented since June 17, 2009.

Mr. Stultz came forward and stated the tower was 50 foot and each blade was 13.6 feet tall for a total of approximately 63 feet.

Mr. Whitfield questioned Mr. Stultz's background.

Public Hearing opened at 9:22 P.M.

Gale Faltin came forward and stated the area is zoned as a conservation area in the comprehensive plan.

Public Hearing closed at 9:26 P.M.

The Planning Commission discussed the application request.

- *Whitfield moved, seconded by Bliss to deny the special use permit based on the environmental concerns expressed by the US Fish and Wildlife. Ayes:* Bliss, Fenster, Marquardt, Torczon, and Whitfield. *Nays:* Stuart, Wear and Wees. *Abstain:* None. *Absent:* Courtney Dunbar, Greg Gonzalez, and Stacen Gross –. **Motion carried.** (5-3)

REGULAR AGENDA ITEMS: Public Hearing and Recommendation – Special Use Permit Continued from June 17, 2009, Planning Commission Meeting

E. Tom Heimes, 21162 Riha Road, requests a special use permit for a wind energy system for residential use located on the following described property to wit: Lot 6, Meadow Oaks South in Sec. 10, Twp 12N, Rng 11E of the 6th P.M., Sarpy County, Nebraska. (Highway 31 & Riha Road)

Discussion:

Ms. Horner stated the application was continued from the June 17, 2009, Planning Commission meeting and no new information was supplied regarding the request.

Mr. Stultz came forward on behalf of the applicant and requested the Planning Commission reconsider the applications.

Public Hearing opened at 9:38 P.M.

Gale Faltine came forward and requested denial of the permit for the same reasons as previously stated.

Public Hearing closed at 9:38 P.M.

- *Wear moved, seconded by Torczon to approve the application for a special use permit for Tom Heimes for a wind energy tower. Ayes:* Stuart, Wear and Wees. *Nays:* Bliss, Fenster, Marquardt, Torczon, and Whitfield *Abstain:* None. *Absent:* Courtney Dunbar, Greg Gonzalez and Stacen Gross. **Motion did not carry.** (3-5)
- *Fenster moved, seconded by Bliss to deny the special use permit based on the environmental concerns expressed by the US Fish and Wildlife. Ayes:* Bliss, Fenster, Marquardt, Torczon, and Whitfield. *Nays:* Stuart, Wear and Wees. *Abstain:* None. *Absent:* Courtney Dunbar, Greg Gonzalez and Stacen Gross. **Motion carried.** (5-3)

F. Vote: Request to County Board regarding Architectural Review Committee.

- *Torczon moved, seconded by Whitfield to recommend that the Planning Director ask the County Board to direct the Planning Director to address the regulations regarding the Architectural Review Committee in order to remove the language which allows the Architectural Review Committee to grant waivers and further to amend the regulations so that the Architectural Review Committee becomes a recommending body similar to the review committee set up in Omaha known as the Architectural Review Board. **Ayes:** Bliss, Fenster, Marquardt, Torczon, Stuart, Wear, Wees and Whitfield. **Nays:** None. **Abstain:** None. **Absent:** Courtney Dunbar, Greg Gonzalez and Stacen Gross. **Motion carried.** (8-0)*

III. CORRESPONDENCE: The following items were briefly discussed to provide updates to the Planning Commissioners.

None.

IV. ADJOURNMENT: Being no further discussion, *Wear moved, seconded by Bliss to adjourn the meeting.* By a unanimous oral vote, Chairman Wees declared the meeting adjourned at 9:45 p.m.

Respectfully Submitted,

Tom Wees, Chairman
Michelle Alfaro, Planning Assistant