

Sidney, Nebraska, July 21, 2014

A meeting of the Planning Commission of the City of Sidney, Nebraska, was convened in open and public session at 5:30 P.M. on July 21, 2014 in the City Council Chambers, located at 1115 13th Avenue. Present were: Chairman Spiker and Commissioners: Cortney, McCarville, Mueller, Phillips, Smith, and Volkmer. Absent: England and Egging. Others present: City Manager Person, Zoning Administrator Dayton, City Attorney Leef, and Deputy Clerk Heilbrun. Notice of the meeting was given in advance thereof by publication in The Sidney Sun Telegraph, the designated method for giving notice, a copy of the proof of publication being attached to these minutes. Advance notice of the meeting was also given to the Chairman and all members of the Commission, and a copy of their acknowledgment of receipt of notice is attached to these minutes. Availability of the agenda was communicated in the advance notice and in the notice to the Planning Commission of this meeting. All proceedings shown hereafter were taken while the convened meeting was open to the attendance of the public.

Chairman Spiker announced to all in attendance, that a current copy of the Nebraska Open Meetings Act was available for review at the rear of the room.

Phillips moved, Mueller seconded, "That the minutes of the June 16, 2014 meeting be approved." Roll call vote: Yeas: Cortney, Mueller, Phillips, Smith, Spiker and Volkmer. Abstain: McCarville. Absent: England and Egging.

Chairman Spiker announced that the Planning Commission would now hold a public hearing re: the Conditional Use Permit of Dr. Sean Blackburn and Viaero Wireless to place a temporary cellular communications tower at the rear of the vacant lot at 2575 11th Avenue, Lot 4A, Block 1, John J. Treinen Addition; that the Board of Education of School District No. 1, Cheyenne County, Nebraska, and the Board of Education of Western Nebraska Community College have been properly notified in the time and manner prescribed by law and have not filed objections to the proposed request.

The following filed written objections: Dr. John W. Platz. The following appeared in person or by agent or by attorney and were heard: Henry Jacobsen of Viaero Wireless, Dr. John W. Platz, Tamara Nelsen, Jason Petik, and Rod Horn.

Henry Jacobsen, Site Acquisition & Engineering Specialist, presented the request on behalf of Viaero Wireless/Sean Blackburn. He stated that the purpose of the request was to allow Viaero to handle the dramatic increase in "traffic" caused by the availability and utilization of high speed data services, in addition to existing cellular phone services, mainly in residential areas. He noted that it is essential to locate as close to the public as possible in order to access 4G services, adding that zoning restrictions prevent them from locating towers in any zoning area except commercial. He described this south residential area below Cabelas as having the worst service in town, with complaints of dropped calls and slow data services. He estimated that 40 - 50% of residences have given up their phone landlines, contributing to the demand in cellular and high speed data services. Other than his verbal testimony, no further evidence was presented in writing or verbally from Viaero customers substantiating the claim.

Mr. Jacobsen explained that they have been searching for a permanent tower location in south Sidney for approximately a year, having approached the Hospital/Sloan Estates and NRD in this area, as well as other available commercial properties who turned them down, prior to receiving permission for a temporary tower on the property owned by Dr. Blackburn. He noted that Dr. Blackburn does not want to sell the property, as he intends to relocate his optometry office at this location in the future. He stressed that this is a temporary location for the COW (cell on wheels), which will be located on a trailer at the rear of the lot where the City currently piles snow in the winter. Security measures will include a fence around the perimeter of the tower, three, short guide wires to stabilize the tower, and anti-climb features on the tower/trailer. The COW would be located behind the trees, rising above the foliage of the area to a total height of 60', with antennas tilting downward to prevent polluting of the frequency.

He noted that price is not an issue for his company, but rather finding a property and owner willing to sell. He promised that Viaero would actively continue their search for a permanent location for a tower in this area. He stated that this is not a business decision but a service issue, and satisfying the public is their main concern. He asked the Commission to serve the public's interest by granting the Conditional Permit for a temporary tower at the proposed location.

Deputy Clerk Heilbrun read a letter of opposition from Dr. John W. Platz which is listed in its entirety below:

City of Sidney Planning Commission
1115 13th Avenue
Sidney, Nebraska 69162

To Chairman Spiker and Commissioners of the Sidney Planning Commission,

It has come to my attention that a conditional use application will be presented to the Planning Commission for the section of land between my property and the Cedar Lanes bowling alley in order to accommodate a cell phone tower for Viero.

This letter is in response to that application. I would like this commission to know that I strongly **object** to the conditional use application and I am officially stating my objection via this letter.

I urge the members of the Planning Commission for the City of Sidney to **deny** the request for the change in the conditional use on this property, owned by Sean Blackburn, for the construction of a tower. The land in question is located in a residential area that is showing growth potential for single or multi-family units. I did not protest the original commercial zoning for an optician's office, which would be unobtrusive in the neighborhood. A "blinking" tower in this area would be a nuisance and an eyesore; especially considering that this tower will be tall enough to require warning lights. This would not only negatively affect the properties and the value of those properties located next to this tower, this will negatively affect the entire neighborhood and possibly the south end of Sidney. The tower will have an undesirable impression on two elderly housing areas within this zoning (How many old people want to look out their window and watch a blinking tower?) There are plenty of places surrounding the city that would be better suited for a large tower than this tract of land.

Please consider my objection and the negative impact this tower would have on the neighborhood as you decide to cast your vote for this proposed request.

Respectfully,



Dr. John W. Platz

Tamara Nelsen, resident of 1157 Country Club Drive and Chairman of the Sidney Housing Authority spoke in opposition to the placement of the temporary tower at the proposed location. She stated that proposed location is four houses down from her home, in site line with her driveway, and would directly impact her property. She presented a photo comparison, provided by Mr. Jacobsen, of the proposed tower, referring to it as having a "mini space station" on top. She stated that her research had revealed that property values were typically reduced from 5-10% due to visual pollution and the detrimental health aspects of radiation, even if this is not a reality. She visually compared the height of the proposed tower to that of the Methodist Church spire which is 70' 4."

She stated that the neighborhood had recently undergone an electrical underground line conversion, in which the property owners were required to pay one-half of the cost of removal of poles and overhead lines. She felt that this investment by the City and neighborhood was a great aesthetic improvement to the area, and that the presence of a tower would be more noticeable to these particular homeowners because of their recent investment.

She reported that at the last meeting of the Sidney Housing Authority, the temporary cell tower was discussed. It was the feeling of some of the Housing board members and staff that this was not the best place for a tower, as it was in direct line-of-sight for residents of the Western Heritage apartment complex who are not as mobile as other members of the community and confined to the views they have from their homes.

Jason Petik, CEO of Sidney Regional Medical Center, spoke in opposition to the proposed temporary tower, citing the close proximity of the tower to Sloan Estates as detrimental to any future expansion planned for the assisted living facility. He further stated that it was the hospital board's opinion that they did not want to be responsible for placing "visual pollution" in a residential area occupied by elderly people with limited mobility and restricted views. They were concerned that the open-ended temporary permit could become permanent.

Rod Horn of the South Platte Natural Resources District stated that Mr. Jacobsen had approached them to purchase a lot from the NRD, but the offer was rejected due to the fear of becoming landlocked if they wanted to expand their operation. Because of this, coupled with the negative response of the neighborhood, they felt it would not be a good fit.

Concerns of the Commissioners included: the substantial opposition of the neighborhood; issuing an open-ended temporary permit for a commercial activity in a predominantly residential area; the impact on an area where elderly housing is so significant; safety; the aesthetic impact on the neighborhood; whether other locations would be less intrusive; the availability of service existing presently; whether the need for faster service justifies the intrusion into this residential neighborhood, and the possible devaluation of property due to the intrusion.

There being no further questions or comments, Chairman Spiker closed the public hearing and asked for a motion on the request.

McCarville moved, Phillips seconded "That the Conditional Use Permit application of Viaero Wireless to place a temporary cellular communications tower at the rear of the vacant lot at 2575 11th Avenue, be denied." Roll call vote: Yeas: Smith, Mueller, McCarville, Spiker, Phillips, and Volkmer. Abstain: Cortney. Absent: England and Egging.

Chairman Spiker announced that the Planning Commission would now hold a public hearing re: the Conditional Use Permit of Fred and Jacque Neal for gravel excavation/mining and stockpiling of sand and gravel on the SW1/4 of the SW1/4 of Section 20, Township 14 North, Range 49 West of the 6th P.M., consisting of 29 acres more or less; that the Board of Education of School District No. 1, Cheyenne County, Nebraska, and the Board of Education of Western Nebraska Community College have been properly notified in the time and manner prescribed by law and have not filed objections to the proposed request.

The following filed written objections: None. The following appeared in person or by agent or by attorney and were heard: Fred Neal and Bob Willits.

Mr. Neal began by explaining that the gravel pit was semi-operational when he bought the property. He decided to shut it down when it became evident that he could not control the usage to a degree that he felt comfortable with. Recently he was approached by Bob Willits for the use of the pit for defense department contracts in the area, and decided to reopen the pit in a more controlled fashion, with Willits as the exclusive operator. He noted that he was unaware that this property fell under the City's 2-mile zoning jurisdiction, and even though the plant equipment has been moved onto the site, they have not "turned a wheel", awaiting permit approval.

When asked by the Commission if the previous sand and gravel mining operation on the Neal property previously had a conditional use permit, City Manager Person explained to the Commission that Mr. Neal's property was likely not subject to a conditional use permit in its previous operation because it was grandfathered in because it was operational at the time of the 1985 zoning code adoption changes. City Attorney Leef further explained that when a property use becomes inactive for a period of 12 months, it loses any standing in regards to the previous use prior to the zoning code change. It has since been inactive longer than that period of time. To operate "mining of sand and gravel" now, the city's zoning code requires it must include a conditional use permit and only in those areas that allow for the "mining" to occur. The two mile zoning extraterritorial jurisdiction is provided in Nebraska State Statute for First Class Cities, which are those communities over 5,000 population but less than 100,000 population.

Mr. Neal further noted that he lives on the road to the proposed plant and does not want to deal with dust or poor road conditions, so will be diligent about the maintenance issues. He stated that they have visited with Cheyenne County Road Superintendent Tom Noel who does not think there will be a problem. The County currently blades the road every 2-4 weeks.

Bob Willits spoke on behalf of his company, Willits Company, Inc., stating that he has never lost a permit at renewal as they run a clean, quiet operation. He described the traffic for the next two months, as they fulfill their American Civil Contractors contract, as "heavy". He estimated approximately 84,000 Ton of product being transported primarily north on county roads. He noted that the sand from the pit will be blended with a high spec crushed rock materia imported from Cheyenne. He stated that they want to be a "good neighbor", leaving the area

better than they found it. It is their intention to reduce the "cliff walls" to a slope at the Neal pit, as they remove product. He noted that they will be the exclusive operator at the site, with no one else coming in and out, but would sell to other contractors as warranted. It was noted that there was a stockpile of sand being used for City projects at this time.

He further stated that although they have not discussed long term arrangements, he would like to continue his business arrangement with Mr. Neal following the completion of his current contract, as there is a need for good quality material for the infrastructure demand in the area.

Mr. Neal stated that there will be no stockpiling of any other type of material at the site, only sand and gravel excavation. He stated that he would like to see the permit issued for a period of five years, but that they are still in the discovery period. The only sure thing at this time is supplying product to fulfill Willits defense contracts.

The issues of road maintenance fees and length of permit were discussed.

City Manager Person stated that while Mr. Neal has been proactive in the past with property conditions and aesthetics of the area, he speculated as to what might happen with trucks coming onto East Elm Street, through the narrow underpass. He could foresee possible damage to this road.

Suggestions included a one-year permit with periodic inspections by the zoning administrator, then reconsideration if no concerns with the operation. Mr. Willits stated that he would request a minimum of two years on the permit in order to bid on future projects in the winter season. Following discussion, it was the consensus that 18 months would satisfy both parties.

It was noted that Croell Redi Mix, who was granted a conditional use permit for a sand/gravel pit in April, had been directed to pay \$1,000/month for road maintenance fees for a period of three months, with an evaluation by the County after the completion of three months. It was the consensus of the commission that this condition would be fair for this similar application.

There being no further questions or comments, Chairman Spiker closed the public hearing and asked for a motion on the request.

Mueller moved, Spiker seconded "That the Conditional Use Permit of Fred and Jacque Neal for gravel excavation/mining and stockpiling of sand and gravel on the SW1/4 of the SW1/4 of Section 20, Township 14 North, Range 49 West of the 6th P.M., consisting of 29 acres more or less, be 1) approved for a period of eighteen months, through December 31, 2015, 2) conditional periodic review by City personnel, and 3) \$1,000/month road maintenance fee for a period of 3 months, with review by County and City staff after such time, and agreement following determination of need going forward." Roll call vote: Yeas: All commissioners present. Absent: England and Egging.

City Manager Person informed the Commission that he had been contacted just prior to the meeting by Dave Hrbek regarding Item #5 on the agenda - Conditional Use Permit application of Turf Irrigation, LLC. Mr. Hrbek stated that because ownership of this property by this company could not be established prior to the time of the meeting, they would not be able to go forward with the request at this time.

Discussion was held on Home Based Businesses as they relate to the City Zoning Ordinance/Chart.

Zoning Administrator Ben Dayton presented examples from Kearney, Alliance, Scottsbluff, and North Platte. He stated that he liked different aspects of the various examples, specifically language from Alliance which specified categories for minor and major occupations and North Platte's "definition" and "revocation" language. One suggestion was to clarify and establish parameters on internet occupational businesses.

Staff was directed to work with the City Attorney on a design to incorporate suggestions for review at the next Planning Commission meeting.

Comments Item: Chairman Spiker:

1) Question as to what recourse the City has when a property is rezoned and then the use for which the property was rezoned does not occur. City Attorney Leef stated that when approving a zoning change, it is the Planning Commission's/City Council's job to look at the request in a broad prospective, including all the uses allowed in the zone and how it complies with the Comprehensive Plan. Once a property is rezoned it is the Building Department's job to make sure any development complies with the zoning.

2) Can we reduce the time limit allowed on a Cease and Desist Order to be less than 30 days? City Attorney Leef will research and come back with an opinion at the next Planning Commission meeting.

The meeting adjourned at 7:05 P.M.

CHAIRMAN

DEPUTY CLERK