

MINUTE RECORD

PAPILLION PLANNING COMMISSION MEETING JULY 28, 2021

The Papillion Planning Commission met in open session at the Chrysalis Event Center in Papillion Landing on Wednesday, July 28, 2021 at 7:00 PM. Chairwoman Rebecca Hoch called the meeting to order. Planning Assistant Andrea Blevins called the roll. Planning Commission members present were Howard Carson, Judy Emswiler, Jim Hrabik, Raymond Keller Jr., John E. Robinson III, and Leanne Sotak. Raymond Keller Jr., Jim Masters, Herb Thompson, and Wayne Wilson were absent. Planning Director Mark Stursma, Assistant Planning Director Travis Gibbons, Assistant City Attorney Carla Heathershaw-Risko, and Staff Engineer Derek Goff were also present.

Chairwoman Hoch led those present in the Pledge of Allegiance.

Notice of the meeting was given in advance by publication in the Sarpy County Guide on July 16, 2021. A copy of proof of publication is on file at the office of the City Clerk.

Chairwoman Hoch announced that a copy of the Open Meetings Act is posted in Council Chambers.

Approval of Agenda

Motion was made by Ms. Emswiler, seconded by Mr. Robinson III, to approve the agenda as presented. Roll call: Six yeas, no nays. Motion carried.

Approval of the Planning Commission Minutes

Motion was made by Mr. Robinson III, seconded by Mr. Hrabik, to approve the June 30, 2021 minutes. Roll Call: Six yeas, no nays. Motion carried.

FINAL PLATS

Final Plat – A request for a Final Plat for the property legally described as part of the NW1/4 of Section 4, T13N, R12E of the 6th P.M., Sarpy County, NE, generally located SE of S 108th Street and Schram Road. The applicant is Celebrity Homes. (Schram 108 (Phase 1)) **FP-21-0004**

John Fullenkamp, 11440 W Center Road, Suite C (Omaha), stepped forward to represent the applicant. He explained that the preliminary plat for this project contemplates a total of 257 lots, adding that the Final Plat for Phase 1 encompasses 153 lots. He stated that the applicant has no issues with the contingencies outlined in the Planning Commission Staff Report.

Chairwoman Hoch called for discussion amongst the Commission.

With no further discussion, **Motion** was made by Mr. Robinson III, seconded by Mr. Hrabik, recommend approval of the Schram 108 (Phase 1) Final Plat (FP-21-0004) because it is generally consistent with the Comprehensive Plan, compatible with adjacent uses, and compliant with the Zoning and Subdivision regulations, contingent upon the resolution of staff comments. Roll Call: Six yeas, no nays. Motion carried.

PUBLIC HEARINGS

Preliminary Plat – A request for a Preliminary Plat for the property legally described as the S1/2 of the SE1/4 of Section 25, T14N, R11E of the 6th P.M., Sarpy County, NE, generally located on the NW corner of S 132nd Street and HWY 370. The applicant is NP Dodge. (Black Elk Industrial) **PP-21-0004**

Chairwoman Hoch opened the public hearing.

Eric Williams, 2111 N 67th Street (Omaha), stepped forward to represent the applicant. He stated that the property located on the northeast corner of S 132nd Street and HWY 370 is proposed to be subdivided into two LI Limited Industrial lots and one AG Agricultural outlot.

Chairwoman Hoch called for proponents and opponents. Seeing no further input, Chairwoman Hoch closed the public hearing and called for Commission Discussion or Motion.

Mr. Carson noted that the property is adjacent to Prairie Queen Lake and is currently owned by the Papio-Missouri River Natural Resources District (P-MRNRD), and asked why the property was not being conserved as a wildlife preservation. Mr. Williams stated that due to the projects location, the applicant intends to maintain as much of the natural wildlife preserve as possible. Mr. Carson asked whether the City has any control over the property being sold for development. Mr. Stursma stated that when the P-MRNRD purchased land for Prairie Queen Recreation Area, they obtained more land than was needed for the project. He added that most of the extra land was sold at auction; however, this parcel was held by the P-MRNRD because it failed to receive an appropriate bid. He summarized that the P-MRNRD has long anticipated selling this property for development.

Mr. Carson asked that the applicant be diligent in mitigating run-off at the development site into Prairie Queen Lake. Mr. Williams stated that the developer has requirements that they must meet in regards to runoff.

Ms. Emswiler asked whether the applicant is confident they can address the contingencies outlined in the Planning Commission Staff Report. Mr. Williams stated that the applicant does not have any concerns.

With no further discussion, **Motion** was made by Mr. Hrabik, seconded by Ms. Emswiler, recommend approval of the Black Elk Industrial Preliminary Plat (PP-21-0004) because it is generally consistent with the Comprehensive Plan, compatible with adjacent uses, and compliant with the Zoning and Subdivision regulations, contingent upon the resolution of staff comments. Roll Call: Six yeas, no nays. Motion carried.

Change of Zone – A request for a Change of Zone from AG Agricultural to LI Limited Industrial for the property legally described as the S1/2 of the SE1/4 of Section 25, T14N, R11E of the 6th P.M., Sarpy County, NE, generally located on the NW corner of S 132nd St and HWY 370. The applicant is NP Dodge. (Black Elk Industrial) **CZ-21-0005**

Chairwoman Hoch opened the public hearing.

Eric Williams, 2111 N 67th Street (Omaha), stepped forward to represent the applicant.

Chairwoman Hoch called for proponents and opponents. Seeing no further input, Chairwoman Hoch closed the public hearing and called for Commission Discussion or Motion.

Mr. Carson asked that the applicant provide adequate landscape buffer between the north side of Lot 1 and Prairie Queen Lake. Mr. Williams stated that the applicant will need to meet the minimum landscaping requirements adding that the sanitary sewer easement on the north side of the lot offers additional buffer.

With no further discussion, **Motion** was made by Mr. Robinson III, seconded by Mr. Hrabik, recommend approval of the Black Elk Industrial Change of Zone (CZ-21-0005) because it is generally consistent with the Comprehensive Plan, compatible with adjacent uses, and compliant with the Zoning and Subdivision regulations, contingent upon the resolution of staff comments. Roll Call: Six yeas, no nays. Motion carried.

Text Change – A request to amend § 205-218 (Fence Regulations), of Article XXXIV (Supplemental Site Development Regulations), of Chapter 205 Zoning of the Papillion Municipal Code, to provide regulations for residential trash enclosures. The applicant is Councilman Steve Sunde. (Residential Trash Enclosures Ordinance Amendment) **TC-21-0004**

Chairwoman Hoch opened the public hearing.

Councilman Steve Sunde, 1113 Locust Avenue, stepped forward to represent the applicant. He summarized that the requested amendment seeks to amend § 205-218 of the Zoning Regulations regarding fences within front yards. He stated that the current code requires any fencing within the front yard to be fifty-percent open. Councilman Sunde stated that he believes that citizens private property rights should not be infringed upon so long as their actions do not harm their neighbors. He stated that he believes that the proposed amendment honors the intent of the ordinance but offers an exception for the limited purpose of trash enclosures.

Chairwoman Hoch called for proponents and opponents. Seeing no further input, Chairwoman Hoch closed the public hearing and called for Commission Discussion or Motion.

Mr. Carson asked staff to clarify whether fencing is permitted in front of a house now. Mr. Stursma stated that the citizen who built the trash enclosure shown in the Planning Commission Staff Report used fencing material, therefore, the violation falls under the fence regulations. He added that Councilman Sunde asked staff to draft an ordinance amendment that would create an exception for this type of enclosure to screen trash cans.

Chairwoman Hoch asked whether a building permit is required for this type of construction. Mr. Stursma answered in the affirmative. Chairwoman Hoch asked whether other examples of such structures are being constructed without permits or with a variance. Mr. Stursma stated that this particular structure is the first that the Planning Department has been made aware of. Councilman Sunde stated that he believes the amendment provides a commonsense exception.

Mr. Hrabik asked staff what structures fall under the term “accessory structure.” Mr. Stursma asked staff to pull up the definition from the zoning code. He stated that accessory structures are not permitted in front of the front building line. Mr. Hrabik stated that he does not see a need for the proposed exception because there are several other options one could use to achieve the same result. He stated that the exception is meant to appease a small percentage of the population rather than the overall community. Mr. Hrabik gave an overview of the requirements to approve a variance, and concluded that a variance would not be granted in this instance. He summarized that the code should not be amended if a variance would not be granted.

Ms. Emswiler asked whether the homeowner would have been put on notice that the structure was non-compliant had they gotten the required permits prior to construction. Councilman Sunde stated that the ordinance applied is intended to regulate opaqueness of fences in the front yard, but does not make sense for the purpose of this structure since the purpose of the enclosure is to conceal trash containers. Mr. Stursma stated that the fencing that goes past the front building line is in violation, the fencing behind the front building line is zoning compliant. Ms. Sotak asked if the structure would be zoning compliant if it was pushed back behind the front building line. Mr. Stursma said yes. He added that he discussed the alternative of placing a gate at the front building line with the homeowner; however, the homeowner believes this mechanism would be cumbersome. Ms. Sotak stated that the intention of the amendment is to allow something that looks nice. Ms. Emswiler stated that the fencing being fifty-percent open would objectively look worse.

Chairwoman Hoch stated that she drove around Papillion and noticed that non-compliant structures are more common in older neighborhoods. She stated that the proposed enclosures could become a place to store junk. Councilman Sunde stated that he does not think citizens would build a nice structure to hide their junk; however, some store junk out in the open now.

Ms. Sotak stated that covenants often prevent such structures in neighborhoods with active Homeowner’s Associations. She recommended that the ordinance amendment be revised to better define “trash enclosures.”

Mr. Hrabik restated that there are several options to conceal trash cans behind the front building line of a home. He suggested that one-off changes to the zoning code become cumbersome for the Code Enforcement Officer to enforce. He stated that the Code Enforcement Officer should be consulted and considered in these matters.

Ms. Emswiler reiterated that the alternative could look much worse.

Chairwoman Hoch noted that Section III(A)(4) of the Planning Commission Staff Report points out that Chapter 162 (Solid Waste) of the Papillion Municipal Code governs where trash cans can be kept. Mr. Stursma stated that § 162-6(D) allows “[t]wo rightly closed, impermeable garbage containers” to be kept within three feet of an exterior wall of the home.

Ms. Sotak suggested that the item be tabled. Chairwoman Hoch and Carla Heathershaw-Risko stated that the item could not be tabled since the public hearing had been closed.

Mr. Stursma stated that the Supreme Court case that allows zoning regulations states that the purpose of zoning regulations is to regulate based on the health, safety, welfare, and morals of the community. He added that this needs to be a consideration for regulations. Chairwoman Hoch stated that because neighborhood covenants would likely prohibit such a structure, allowing such structure could create a visible difference between neighborhoods and give citizens a reason to challenge neighborhood covenants. Ms. Heathershaw-Risko clarified that neighborhood covenants cannot undermine zoning regulations but can be more restrictive.

Mr. Hrabik suggested that one-off code regulations create a snowball effect of other problems. As an example he stated that additional pavement to park recreational vehicles in rear and side yards creates run-off issues for neighbors. Councilman Sunde disagreed and stated that run-off issues are an example of unintended consequences for the infringement of private property rights. He stated that as a community and a government, we need to respect the private liberties of citizens.

Chairwoman Hoch asked about the reasoning for the ten foot projection. Councilman Sunde stated that this number came from the Planning Department, but he would be willing to modify the number. Mr. Stursma stated that the number is arbitrary. Mr. Gibbons stated that a ten foot projections is permitted for other structures and this distance allows for movement for ADA compliance.

Ms. Emswiler asked about the average height of a trash can. Several attendees concluded that the average residential trash can is about four feet tall. Ms. Emswiler asked for clarification that the ordinance amendment seeks to allow a six foot tall fence to project ten feet into the front yard setback for the purpose of a trash enclosure. Mr. Stursma confirmed.

Mr. Robinson III asked whether the ten foot encroachment might cause security issued for homeowners. Mr. Stursma stated that he was not qualified to answer the question.

Mr. Stursma stated that any motion to recommend approval of the ordinance would need to include an amendment to Section J(4) to change the word "less" to "more" per Ms. Heathershaw-Risko.

Ms. Emswiler stated that she was a bit concerned that the citizen in violation and the neighbor that reported them were not present to defend or oppose the amendment. Councilman Sunde stated that he was unsure whether either person knew about the hearing. Mr. Stursma clarified that the proposed amendment applies to the entire jurisdiction, not just this property.

With no further discussion, **Motion** was made by Ms. Sotak, seconded by Ms. Emswiler to send the Residential Trash Enclosures Ordinance Amendment (TC-21-0004) back to staff for revision. Roll Call: Three yeas, three nays by Chairwoman Hoch, Mr. Hrabik, and Mr. Robinson III. Motion fails.

Motion was made by Mr. Hrabik, seconded by Mr. Carson, recommend approval of the Residential Trash Enclosures Ordinance Amendment (TC-21-0004) with an amendment to Section J(4) to change the word "less" to "more." Roll Call: Two yeas, four nays by Mr. Carson,

Chairwoman Hoch, Mr. Hrabik, and Mr. Robinson III. Motion fails, therefore, the recommendation is denial.

Ordinance No. 1934 – 2021 Building Code Update – An ordinance to amend in its entirety Chapter 92, Article III, Section 15 of the Papillion Municipal Code entitled “Adoption of Standards”, to adopt the following listed International and National Building and Construction Codes; to provide for local amendments to the same; having to do with the adoption of International Residential Code (IRC); International Building Code (IBC); International Energy Conservation Code (IECC); International Fuel Gas Code (IFGC); International Plumbing Code (IPC); International Mechanical Code (IMC); International Existing Building Code (IEBC); National Electric Code (NEC); International Fire Code (IFC); and the International Code Council Performance Code (ICCPC). The applicant is the City of Papillion. **MISC-21-0010**

Chairwoman Hoch opened the public hearing.

Shawn Hovseth, 122 E 3rd Street, stepped forward to represent the applicant. He stated that the proposed amendment is to clean up a few items in the 2018 codes and bring certain provisions in line with the zoning regulations.

Chairwoman Hoch called for proponents and opponents. Seeing no further input, Chairwoman Hoch closed the public hearing and called for Commission Discussion or Motion.

Mr. Carson asked whether the 2018 codes had already been adopted. Mr. Hovseth answered in the affirmative.

Mr. Carson asked whether the building community was aware of the proposed changes. Mr. Hovseth stated that his team reached out to the two major building groups, and both were fine with the amendment. He added that a mass email was also sent out to any contractor who pulled a permit within the last two years. Mr. Hovseth stated that active codes are listed on each permit.

Ms. Emswiler asked whether the amendment would make the codes more restrictive than standard. Mr. Hovseth stated that the revision regarding fencing for pools is more restrictive, but is in line with zoning regulations. He added that other provisions that are more restrictive encompass safety issues that are worth protecting. He and Mr. Stursma added that the amendments are in line with building code standards around the metro.

Chairwoman Hoch asked whether Mr. Hovseth anticipates that hurricane tie-downs will become standard in the future with changing weather patterns. Mr. Hovseth stated that tie-down standards have increased to accommodate 115 mph winds.

With no further discussion, **Motion** was made by Mr. Hrabik, seconded by Ms. Sotak, recommend approval of Ordinance No. 1934 (MISC-21-0010) because the proposed ordinance will bring municipal code into compliance with code standard set by the State of Nebraska and provide consistency with surrounding jurisdictions. Roll Call: Six yeas, no nays. Motion carried.

OTHER BUSINESS

With no further business to come before the Commission, **Motion** was made by Mr. Hrabik, seconded by Ms. Sotak, to adjourn. The meeting adjourned by unanimous consent at 8:30 P.M.

CITY OF PAPIILLION



John E. Robinson III, Vice Chair