

**DRAFT MINUTES
PAPILLION PLANNING COMMISSION MEETING
SEPTEMBER 28, 2022**

The Papillion Planning Commission met in open session at the Papillion City Hall Council Chambers on Wednesday, September 28, 2022 at 7:00 PM. Chairwoman Rebecca Hoch called the meeting to order. Planning & Legal Clerk Andrea Blevins called the roll. Planning Commission members present were Heather Bernady, Howard Carson, Jim Hrabik, Ray Keller, Jr., John E. Robinson III, Leanne Sotak, Herb Thompson, and Wayne Wilson. Judy Emswiler was absent. Planning Director Travis Gibbons and City Attorney Alan Thelen 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 September 16, 2022, and the Omaha World Herald beginning on September 16, 2022. 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 Mr. Hrabik, seconded by Mr. Thompson, to approve the agenda as presented. Roll call: Nine yeas, no nays. Motion carried.

Approval of the Planning Commission Minutes

Motion was made by Mr. Keller, seconded by Mr. Hrabik, to approve the August 31, 2022 minutes. Roll Call: Seven yeas, no nays, two abstentions from Mr. Carson and Mr. Robinson III. Motion carried.

Approval of the 2023 Planning Commission Meeting Schedule

Motion was made by Mr. Hrabik, seconded by Mr. Carson, to approve the 2023 meeting schedule. Roll Call: Nine yeas, nays. Motion carried.

PUBLIC HEARINGS

Mixed Use Development Agreement Amendment – A request to amend the Shadow Lake Towne Center Mixed Use Development Agreement to allow Kennels and Body Art Services as a permitted uses on the property legally described as Lots 1 - 4, inclusive, Lots 7 - 9, inclusive, Lots 14 and 15 and Outlots A, B, D, and E, Shadow Lake Towne Center; Lots 1 and 2 and Outlot A - C, inclusive, Shadow Lake Towne Center Replat 1; Lots 1 and 2, Shadow Lake Towne Center Replat 2; Lot 1, Shadow Lake Towne Center Replat 3; Lots 2 -4, Shadow Lake Towne Center Replat 4; and Lots 1 and 2, Shadow Lake Towne Center Replat 5, generally located on the SW corner of S 72nd Street and HWY 370. The applicant is PPG Shadow Real Estate, LLC. (Shadow Lake Towne Center Mixed Use Development Agreement Amendment) **MISC-22-0015**

Chairwoman Hoch opened the public hearing.

Matt McCombs, 7775 Olson Drive, Suite 205, and Rich and Ana Jungman, 12705 S 81st Street stepped forward to represent the applicant and offered to answer any questions.

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

Mr. Hrabik asked which bay or bays the proposed Kennel use would occupy. Mr. McCombs displayed a site plan for Shadow Lake Towne Center and pointed out the location, noting the location as Suite L107. He noted that the business would occupy approximately 6,000 square feet.

Ms. Bernady asked whether the proposed outdoor area would be located behind the building. Mr. McCombs confirmed that the outdoor play area would be located behind the building, adding that AstroTurf would be used and cleaned regularly throughout the day per the franchise's specifications.

Ms. Sotak asked how the outdoor play area would be screened and how noise would be mitigated. Mr. McCombs noted that the property back to a creek with a large hill as a buffer to the closest residential uses. He added that an eight-foot-tall vinyl fence would screen the outdoor play area.

Ms. Sotak asked whether the hours the dogs could be outside would be limited. Mr. Jungman stated that outdoor play would be limited to certain hours of operation, with no outdoor time after 8:00 PM. He added that most of the animals would not be boarded overnight, as about 85% of their business revolves around dog daycare.

Mr. Keller asked whether noise mitigation measures are planned to avoid disrupting neighboring businesses. He asked whether the neighboring tenants had been contacted regarding the proposed use. Mr. Jungman stated that the franchise uses state of the art soundproofing. Mr. McCombs noted that he visited other franchise locations and noted no smell or sound issues. He added that the franchise uses a specialized ventilation system as well.

Mr. Hrabik reminded the Planning Commission that an apartment complex is proposed nearby. Chairwoman Hoch clarified the location.

Mr. Carson stated that he is in support of the request to allow the Body Art Services use, but believes that the Kennels use is inappropriate due to the proximity of existing apartments.

Mr. Thompsen asked for clarification between the Pet Services use type and the Kennels use type. Mr. Gibbons explained that Pet Services uses must be carried out entirely indoors, therefore, Kennels is the only appropriate use type for dog daycares with an outdoor component. He noted that the code does not differentiate the less intensive use of a dog daycare. He added that the Mixed Use Development Agreement can be conditioned to reflect the noise mitigation, screening, and the hours of operation deemed appropriate.

Chairwoman Hoch noted that the Planning Commission recently recommended approve a similar use in the Settlers Creek Mixed Use District and suggested that the use in Settlers Creek was located closer to residential uses than the proposal at Shadow Lake Towne Center.

Ms. Sotak noted that the current amendment does not appear to limit the number of Kennel uses permitted within the MU District and asked whether a competitor would be able to locate in the shopping center as a result. Mr. McCombs stated that Shadow Lake Towne Center plans to execute an exclusive rights agreement with the Jungman's. Mr. Gibbons stated that the Planning Commission could make a motion to condition its recommendation of approval on only one such use being permitted in the MU District.

Mr. Hrabik asked if the existing PetSmart would need similar approvals if it decided to add similar services. Mr. Gibbons answered in the affirmative.

Mr. Hrabik asked for clarification on the motion that would need to be made to limit the number of Kennels uses permitted. Mr. Thelen clarified.

Mr. Thompson asked about the maximum capacity of dogs. Mr. McCombs stated that the applicant anticipates up to 40 dogs per weekday, and 50 – 60 dogs on weekends with about 20 dogs being boarded overnight.

With no further discussion, **Motion** was made by Mr. Hrabik, seconded by Ms. Sotak, to recommend approval of the Shadow Lake Towne Center Mixed Use Development Agreement Amendment (MISC-22-0015) because it is consistent with the existing agreement and compatible with existing uses in Shadow Lake Towne Center, contingent upon the resolution of staff comments.

Motion was made by Ms. Sotak, seconded by Mr. Hrabik, to limit the Kennel use type to one such use within the Shadow Lake Towne Center Mixed Use District. Roll Call: Nine yeas, no nays. Motion carried.

The vote was called to approve the original Motion with the approved amendment. Roll Call: Eight yeas, one nay by Mr. Carson. Motion carried.

Special Use Permit – A request for a Special Use Permit to allow a new wireless telecommunications facility on the property legally described as Tax Lot 3A1A2 located in Section 2, T13N, R11E of the 6th P.M., Sarpy County, NE, generally located at 12362 S 150th St. The applicant is Omaha Cellular Telephone Company, d/b/a/ Verizon Wireless. (New Cellular Tower - 12362 S 150th St) **SUP-22-0006**

Chairwoman Hoch opened the public hearing.

Michelle Roth, 508 N Polk Circle, stepped forward to represent the applicant. She stated that the application seeks approval of a 190-foot-tall monopole with lightning rod (199 feet total). She stated that the tower is designed to support equipment three additional carriers. She noted that the purpose of the tower is to offload capacity for other area monopoles. Ms. Roth stated that Verizon currently collocates on all the available towers in the area, which creates the need for a new tower.

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

Ms. Sotak asked whether the proposed height of the monopole is standard. Ms. Roth answered in the affirmative.

Ms. Sotak asked how far the proposed monopole is from existing residential properties. Ms. Roth explained that there is a home on site; however, the homeowner is in support of the request.

Ms. Sotak inquired about the duration of the contract on this property. Ms. Roth stated that 25 years is common.

Ms. Sotak asked whether the site would improve wireless coverage in the area. Ms. Roth reiterated that the site is meant to offload existing towers, and therefore, is meant to maintain existing coverage. She added that it will likely offer some improvement in service.

Mr. Wilson inquired about the number of cellular towers in the vicinity, and how many new towers could be anticipated in the future. Ms. Roth displayed a coverage map and pointed out the locations of current towers.

Mr. Hrabik inquired about the size of the above ground fuel storage tanks at the site, and the distance from those tanks to residential structures. Ms. Roth was unsure. Mr. Gibbons noted that such information would be reviewed by the Building Department and Fire Marshal at the time of permit, and that the Planning Commission is only considering whether to allow the use at this location.

With no further discussion, **Motion** was made by Mr. Keller, seconded by Mr. Hrabik, to recommend approval of the Verizon Communications Tower Special Use Permit (SUP-22-0006) because it is generally consistent with the Comprehensive Plan, compatible with adjacent uses, and compliant with the Zoning Regulations, contingent upon the resolution of staff comments. Roll Call: Nine yeas, no nays. Motion carried.

Ordinance No. 1975 – A request for approval of an ordinance to amend § 205-11 (Definition of general terms) to add a definition for “deck” and § 205-21 (Fence Regulations) having to do with golf course fences. The applicant is the City of Papillion – Councilmember Tom Mumgaard. (Golf Course Fences Ordinance Amendment) **TC-22-0002**

Chairwoman Hoch opened the public hearing.

Chairwoman Hoch noted that written public testimony was provided to the Planning Commission from Jeremy Buhl, 117 Castle Pine Drive, on behalf of the Eagle Hills Homeowners Association.

Councilmember Tom Mumgaard, 1216 Cork Drive, stepped forward as the applicant. He noted that the proposed amendment has been modified from the August 31, 2022 version previously seen by the Planning Commission. He noted that the changes eliminated the possibility of chain link fencing materials and would allow the proposed fences to project up to 5’ into a side yard if such projecting fence was no more than three feet tall. He clarified that the proposed amendment would not allow fences on the perimeter of the portion of the property abutting the golf course.

Mr. Mumgaard stated that he supports the essence of the ordinance but believe that there should be some accommodation for appurtenances such as dog runs. He added that many of restrictive covenants for the affected subdivisions already prohibit fences on the golf course. He noted that golf course fences affect both golfers and homeowners on the golf course; however, the proposed amendment would only allow fences that are no more obtrusive than the deck that would be required to install a fence.

Chairwoman Hoch called for proponents and opponents.

Michael Tiedeman, 101 Summerset Drive, stepped forward and explained that he is running for City Council in the Ward that encompasses the Eagle Hills subdivision. He suggested that notice of the proposed amendment was insufficient. He advocated that the proposed amendment provides no benefit to residents. Mr. Tiedeman stated that the City should not be amending the zoning regulations in ways that conflict with neighborhood covenants.

Pam Mertz, 323 Castle Pine Circle, stepped forward to express concerns about lack of notice and the potential for this amendment to undermine neighborhood covenants.

Pat Mertz, 323 Castle Pine Circle, and echoed the concerns of Mrs. Mertz. He suggested that the applicant was “stepping out of his lane” with the proposed amendment.

Robert Jacober, 215 Oakmont Drive, stepped to express concerns about the equity of the proposed ordinance, noting that having exceptions for only certain lots is unfair. He added that allowing fences will have a negative affect on the aesthetics of golf course lots.

Karla Rupiper, 812 Bailey Drive, stepped forward to express concerns about the proposed ordinance, echoing the public concerns about lack of notice. She added that she has lived in Western Hills for over 25 years, and her family chose their home partially because neighborhood covenants prohibit fences. She added that her neighbor installed a pool to take advantage of the exception to allow a fence in the instance that it surrounds an in-ground pool. She stated that homeowners on golf course lots have grown to expect that fences are not permitted, and it is unfair to change the rule to benefit a few homeowners who did not follow the rules.

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

Mr. Robinson III inquired as to the notice provided. Mr. Gibbons stated that state law requires only publication in a local newspaper.

Mr. Hrabik noted that the Planning Commission recommended denial of a similar ordinance amendment brought forward by Councilman Sunde. He stated that changing the regulations for a singular benefit is out of bounds.

Mr. Carson asked whether neighborhood covenants supersede zoning code. Mr. Mumgaard answered in the affirmative. He explained that Homeowner’s Associations and individual homeowners within the subdivision are the only entities who can enforce neighborhood covenants.

Mr. Carson stated that he is concerned that the proposed amendment would result in many fences being installed.

Mr. Thompson asked whether Councilman Mumgaard would meet with the affected property owners prior to City Council consideration. Councilman Mumgaard stated that he would welcome such discussion.

Mr. Wilson expressed opposition.

Chairwoman Hoch stated that neighborhood covenants become unenforceable, when not enforced. She added that the public does not seem to want fences on golf course lots at all.

Mr. Keller suggested that the neighborhood covenants should be amended prior to amending zoning code. He expressed opposition.

With no further discussion, **Motion** was made by Mr. Carson, seconded by Ms. Bernady, to recommend approval of Ordinance No. 1975 (TC-22-0002). Roll call: Zero yeas, Nine nays. Motion fails; therefore, the recommendation is denial.

OTHER BUSINESS

Mr. Gibbons announced that Ms. Blevins is leaving the City for another job opportunity.

With no further business to come before the Commission, **Motion** was made by Mr. Keller, seconded by Mr. Hrabik, to adjourn. The meeting adjourned by unanimous consent at 8:12 P.M.

CITY OF PAPIILLION

Rebecca Hoch, Chairwoman