

HASTINGS PLANNING COMMISSION
MINUTES
June 15, 2015

A meeting of the Hastings Planning Commission was called to order by Chairman Keith Napier, Monday, June 15, 2015 at 4:00 p.m. in the City Building, 220 North Hastings Avenue, City Council Chambers, Hastings, Nebraska.

ROLL CALL

Mr. Gaines
Mr. Stutte
Mr. Rosenberg
Mr. Napier, Chairman
Mr. Kully
Mr. Johnson
Mr. Hamburger

STAFF

Mark Evans, Building Inspector
Linda Waldron, Fire Prevention Officer
Dave Ptak, City Attorney
Kim Jacobitz, Recording Secretary/City Clerk
Joe Patterson, City Administrator &
Interim DS Director
Al Meyer, Hastings Utilities
Lance A. Lang, City Planner

It was stated that a quorum was present.

The Pledge of Allegiance was recited by all present.

The Chair asked for a motion to adopt the current agenda. It was moved by Mr. Stutte, seconded by Mr. Gaines to adopt the current agenda.

VOTE – 7- YES – Gaines, Stutte, Rosenberg, Napier, Kully, Johnson, Hamburger.

The Chair stated that the Open Meetings Act is posted on the southeast wall of the City Council Chambers and that prior to this meeting a notice was placed in the Hastings Tribune on June 4, 2015, that notice was posted in three public places, that each Planning Commission member received a copy of the proposed agenda and that an agenda for such meeting, kept continuously current, is available for public inspection.

Chair Napier asked for a motion to approve the May 18, 2015, minutes. It was moved by Mr. Hamburger to approve the minutes. Seconded by Mr. Gaines.

VOTE – 7 - YES – Gaines, Stutte, Rosenberg, Napier, Kully, Johnson, Hamburger.

The first item on the agenda under tabled applications was request number **15-024**. Application of Ryan Karr and Brian Nauert of Hastings Self Storage for a Conditional Use Permit to allow self-storage units on Lots 3-6, South Burlington Subdivision, Hastings, Nebraska. (North of H Street approximately 315 feet west of Burlington Avenue and extending approximately 300 feet west therefrom and 106 feet north).

The Chair asked for a motion to bring that item from the table. It was moved by Mr. Rosenberg, seconded by Mr. Johnson.

VOTE – 7- YES – Gaines, Stutte, Rosenberg, Napier, Kully, Johnson, Hamburger.

The Chair asked Mr. Lang to give an update on this request. Mr. Lang stated this item was heard last month and continued because of several issues that were identified by Staff and the Commission. Staff has met with the applicants several times since last month and revised plans have been submitted. One of the major changes is swapping the two buildings such that the building that had access on both sides by overhead doors and was located along H Street is now located at the north end of the property and the other building that only takes access from the interior is located along H Street. This change takes care of many of the concerns from last month such as the access questions from H Street to the south facing doors and potential encroachment on the public right-of-way. The new layout provides an area for landscaping and the applicants have submitted a Landscape Plan with grass, trees and shrubs between the building and H Street. The rear wall of the building is more attractive from the street without all of the overheads doors and a fence is no longer required since the building wall functions as a barrier.

Mr. Lang then called attention to the Site Plan as shown on an 11 x 17 inch sheet of paper with red ink mark-ups. This is the latest version of the revised plan and was not included when the packets were mailed. Copies were distributed to the Commissioners prior to the start of the meeting. This plan addresses the final four issues of concern. First, the already mentioned Landscape Plan is provided, second, the outside corners of the north building on both the east and west ends have been modified to insure that a vehicle can make the turning radius around the building corner to access the north side of the building. The proposed storage units at the northeast and northwest corners have been reduced to a 10 x 10 foot unit with an angled exterior wall to accommodate this turning movement. The overhead door to access these units will be in the angled wall. The third item is the addition of a four-foot wide public sidewalk along the 300 feet of H Street frontage. There is an existing sidewalk to the west of this property in the residential area. Given the mixed-use nature of the neighborhood Staff feels it is important to continue the sidewalk across this property and the applicants have agreed to do so. Drainage arrows are show on the plan to indicate direction of flow for stormwater. The fourth and final issue has to do with the return radiuses for the east and west access points from H Street. Code specifies a fifteen-foot radius but due to the close proximity of the existing drive to the west it is impossible to meet the 15-foot minimum. Staff has reviewed the proposed access configuration and has determined it to be acceptable, even though the 15-foot radii cannot be met. H Street is a low volume, local street and the proposed use as storage units is also a low traffic demand use. If the proposal were for a higher intensity use, such as a convenience store, the radius could be a problem. In this scenario it should be okay.

Staff is satisfied with the revisions that have been made to the plans for this Conditional Use Permit and recommends that the Planning Commission send this application forward to the City Council with a recommendation for approval based on the revised plans.

The Chair asked for a motion to approve this application.

Moved by Mr. Rosenberg to approve 15-024. Seconded by Mr. Kully.

The Chair asked for further questions or discussion. There being none, the Chair asked for the vote.

VOTE – 7 - YES – Gaines, Stutte, Rosenberg, Napier, Kully, Johnson, Hamburger.

Motion carried unanimously.

The Chair stated the application for Conditional Use Permit is approved.

The next item on the agenda was request number **15-025**. Application of Terry Diecker of Diecker Construction to request vacation of the seventy foot (70') wide public street right-of-way for "A" Street between Denver Avenue and St. Joseph's Avenue, City of Hastings, Nebraska.

The legal notice was read into the record.

The Chair declared the public hearing open.

The Chair asked for comments from Staff.

Mr. Lang stated that this is a request to vacate street right-of-way measuring 70 feet in width known as A Street from Denver Avenue to St. Joseph's Avenue. Mr. Lang pointed out that the exhibit depicting the area to be vacated that was included in the packet is not correct. That drawing shows the vacation extending east all the way to the east side of St. Joseph's Avenue. The area to be vacated only extends to the west side of St. Joseph's Avenue and does not include any of the right-of-way in St. Joseph's Avenue. A revised exhibit has been provided.

According to past research conducted by the City, this right-of-way is owned by the City of Hastings. In cases such as this, where the street does not provide any real public benefit, does not make any kind of meaningful connection, or provide through access, it can be vacated. Generally, one half of the street right-of-way from the centerline over to the abutting property reverts to the property Owner on that side while the opposite half reverts to the Owner of property that abuts the other side of the street.

The Chair asked if anyone would like to speak to this application.

Art Langvardt, Attorney at Law, 622 East Side Blvd., Hastings, Nebraska. I am trying to look into this for Carol O'Flannigan, his father had owned this property just along the south of "A" Street right-of-way. We have been looking to see what the status of this right-of-way is. They have a fence that goes into more than half of what the "A" Street right-of-way would have been. They are using it for a fence which was located where City people during discussion disputes several years ago, said they should put the fence, just south of a tree line. It has been stated here the City owns the right-of-way and that may be the case. But there is a couple of things that make a difference. One, how did it get to be "A" Street originally and then there is a question of who owns it. Can the City vacate it. So I wanted to see did the plat of St. Joseph's Addition particularly Block 12 which is the land to the south, the plat precede that railroad. There were two railroads. There is still one the northern one, but the bottom one the Fremont/Elkhorn/Missouri Railroad. They change a lot. You can track them through different iterations of which railroad has it, but the significance of it being platted first, one the street came to the city by plat and dedication of the owners. The railroad had cut through here. You can see the angle on your maps of where it went. It came along later in the Register of Deeds records are lots of deeds from various owners of these lots in St. Joseph's Addition granting right-of-way for that line through there. What I cannot find, and I don't think anybody else can find is where is something from the City granting the railroad right-of-way where it is utilizing a portion of "A" Street right-of-way. And again, I find nothing. But I can't imagine all the trouble they went to acquire right-of-way all along that including just

south of "A" Street through there and they got nothing from the City authorizing them to take street right-of-way for "A" Street that the city owned and use it for railroad right-of-way. Logic tells you there had to be something, but I can't find it. Even a permit from the City that they can use, but I find nothing. If we assumed that something came from the City to the railroad letting them use where there right-of-way cut through "A" Street that would mean that that portion of "A" Street the City might not have authority to vacate. If that makes any sense. If you found in the Register of Deeds records what it would look like you ought to find, a portion of that "A" Street right-of-way where that old railroad line angled through would not be available to be vacated. As I said I don't find anything. I just find it hard to believe that there wasn't something granted to the railroad by the city which already owned that street to go through and if some authority to use it or deed from the City was given to the railroad for the portion of "A" Street that went for railroad right-of-way, then we should be looking for something from the railroad back to the City, but I don't find that either. Again, people have probably looked more than I have with a lot more skill, but I am not finding anything that can account for that fact. How this City street right-of-way became part of railroad right-of-way. And again, I almost came here looking for illumination from those who are really good at searching real estate records. But I don't find it. That is my question, can the city vacate? Generally I think the law you would apply if it went to the City by plat and dedication, as opposed to say the City condemning land to create a road, then at that time, if it were vacated, it would go to the abutting owners. There have been changes to the law since and I think the law today would be that the City could choose to vacate it and retain the title. I think that's the law today would be that the City could choose to vacate it and retain the title. I think that's the law today, but as near as I can tell from a couple of Supreme Court cases you wouldn't apply the law today you would look at what kind of a title the city would have gotten then. So, it's correct if you vacated it. You couldn't do something else with it like retain it or sell it to someone else or sell it all to one person. I think that is the applicable law, if the City still owns it. I suggest if someone has any ideas for searching this, because it does make quite a difference. For one thing, my clients will have to move their operation because part of what the City said where they could put their fence, is in the north one-half of that street right-of-way, which would go to the abutting owners to the north. Those are my comments. I don't think it is particularly clear that the city owns it because at some point after it was given to the City, by plat, it became part of railroad right-of-way. I don't anybody will refute that. We don't quite know how. So those are my comments. I think we need to somehow be certain if the City has the power to vacate it, which would require ownership by the City which they would have for sure but for the whatever happened with the railroad. It ought to be looked into some more or maybe the City people who are better at these things. I can't explain why the railroad was using the street for railroad right-of-way.

The Chair asked if anyone else would like to speak to the application. There being no one the Chair declared the public hearing closed.

The Chair asked for a motion to approve the application.

Moved by Mr. Rosenberg to approve 15-025. Seconded by Mr. Kully.

The Chair asked for further questions or discussion.

The Chair asked Mr. Ptak for clarification.

Mr. Kully asked Mr. Ptak for comments. Mr. Ptak commented that Mr. Langvardt raises a lot of questions that we had before this every got on the agenda. Mr. Ptak stated that Rod Davidson, the

licensed Land Surveyor for the City of Hastings, had researched the ownership status of this right-of-way in the past. In fact, a dispute over the right-of-way became a District Court case years ago, but unfortunately no determination was made in those proceedings so no conclusion can be drawn from the court case. City research by Mr. Davidson confirmed that the right-of-way was, and is still today, owned by the City of Hastings. The railroad did use a portion of the right-of-way at one time but no longer does. Mr. Ptak stated that the City allowed the railroad to use the right-of-way, but it is unclear whether that was in the form of an easement or some other agreement because no records can be found. Since the City owns the right-of-way the City has the prerogative to vacate the right-of-way with the two halves of the right-of-way reverting to the abutting owners on each side of the vacated street.

The Chair asked for further questions or discussion. There being none, the Chair asked for the vote.

VOTE – 7 - YES – Gaines, Stutte, Rosenberg, Napier, Kully, Johnson, Hamburger.

Motion carried unanimously.

The next item on the agenda was request number **15-027**. Application of Terry Boutin, property owner, to request rezoning from I-2, Heavy Industrial District to R-2, Mixed Density Neighborhood District for property described as Lots Six through Fourteen (6-14) inclusive, Block 16, M.J. Smiths Addition, City of Hastings, Adams County, Nebraska. (714 and 720 South Ross Avenue)

The legal notice was read into the record.

The Chair declared the public hearing open.

The Chair asked for comments from Staff.

Mr. Lang stated that the Owner, Mr. Boutin, was in to discuss the possibility of rezoning his property from industrial to residential. He owns nine lots that are only each 25 feet in width and there are two existing residential buildings located on these lots. His property is right on the dividing line between I-2, Industrial zoning and R-2 Residential zoning. Mr. Lang called attention to the zoning exhibit that was included in the packet. R-2 zoning abuts the subject property to the south and west and R-2 extends further south, west and northwest. I-2 zoning is southeast, east and north of the subject property. The property abutting the back of the lots and abutting to the south is zoned R-2 so a request to rezone this property to R-2 is reasonable. In addition, the property is already being used for residential purposes with the two houses existing on the property. An administrative subdivision was recently approved for this property dividing the nine narrow lots into two larger lots. The subdivision is called Boutin's Subdivision. Mr. Lang said that Staff is in support of this rezoning request.

The Chair asked if anyone would like to speak to this application. There being none, the Chair asked for a motion to approve the rezoning.

Moved by Mr. Kully to approve 15-027. Seconded by Mr. Johnson.

The Chair asked for further questions or discussion.

There being none, the Chair asked for the vote.

VOTE – 7 - YES – Gaines, Stutte, Rosenberg, Napier, Kully, Johnson, Hamburger.

Motion carried unanimously.

The next item on the agenda was request number **15-029**. Application from Hastings Development Services Department to amend Section 34-311 of the Hastings Municipal Code as it pertains to the defined size of a garage or carport space, and to amend Table 311-1: "Residential Accessory Structures" pertaining to the size and number of accessory buildings allowed in residential zones.

The legal notice was read into the record.

The Chair declared the public hearing open.

The Chair asked for comments from Staff.

Mr. Lang stated that the proposed code amendments are really a "housekeeping" issue. These sections of the code are, in one case antiquated and need to be removed, and in the other case difficult to apply in the field without further definition and refinement. Mr. Lang said he would present the first part of the proposed changes and Building Inspector Mark Evans will present the second part.

The language dealing with accessory buildings on corner lots is incorrect because it treats these situations as if there is a rear yard when in actuality there are two interior side yards so the language that allows encroachment into the rear yard setback makes no sense. This paragraph also states that a corner lot shall provide a side yard on the street side of not less than 15 feet which is already the default setback for corner lots and does not need to be repeated here. This language is to be stricken from the code in its entirety.

For the next part of the amendment, the language that regulates the size of allowable accessory buildings is currently based on a lot area multiplier of 2,000 square feet for each "garage/carport" space. Without a definition of what size constitutes a garage/carport space this is a very difficult formula to apply in a consistent manner. Staff proposes to define a garage/carport space as 12 x 24 feet (288 square feet) based on a typical two-car garage size of 24 x 24 feet. Mr. Lang explained, otherwise an Owner might say that he plans to have an RV and a boat someday, so his garage/carport space is 12 x 40 feet resulting in a much larger accessory building than the code intends to allow.

Mr. Evans explained the changes to the table on the mid-sized garages between 145 sq. ft. and 864 sq. ft./three car garage. The first change recognizes there are times when a property owner may have a small shed and want to build a 2-car garage because one per lot is currently allowed, even though they have a 12' x 14' shed that falls into the next category of 145 sq. ft. To accommodate the need for a detached garage, staff has added the language that would allow you to build the second garage and add the two areas together so the aggregate area is still under the 864 sq. ft. or the size of the house, whichever is more restrictive.

The second is a clarification in the code. If one has a large lot, code allows you to have a larger detached accessory structure over 864 sq. ft. and if you have a small acreage, code would allow multiple larger garages, however, because the code is set on the medium sized structures, one per lot, there was the odd instance where staff would deny a permit for a second mid-size garage on a very large lot.

Staff would ask for recommendation for approval to those changes.

The Chair asked if anyone else would like to speak to the application. There being none, the Chair asked for a motion.

Moved by Mr. Gaines to approve 15-027. Seconded by Mr. Hamburger.

VOTE – 7 - YES – Gaines, Stutte, Rosenberg, Napier, Kully, Johnson, Hamburger.

Motion carried unanimously.

The ad hoc committee for the Highway 281 Corridor is meeting tomorrow night, June 16 at 5:30 pm.

The Chair asked for a motion to adjourn.

Moved by Mr. Hamburger, seconded by Mr. Rosenberg.

The Chair asked for the vote.

VOTE –7 - YES – Gaines, Stutte, Rosenberg, Napier, Kully, Johnson, Hamburger.

Motion carried unanimously.


Chairman