



CITY OF LA VISTA
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PLANNING COMMISSION MINUTES
OCTOBER 15, 2015-7:00 P.M.

The City of La Vista Planning Commission held a meeting on Thursday, October 15th, in the Harold “Andy” Anderson Council Chamber at La Vista City Hall, 8116 Park View Boulevard. Chairman John Gahan called the meeting to order at 7:00 p.m. with the following members present: Mike Krzywicki, Gayle Malmquist, John Gahan, Tom Miller, Jason Dale, Kathleen Alexander, Harold Sargus, Kevin Wetuski and Jackie Hill. Members absent were: Mike Circo. Also in attendance were Chris Solberg, City Planner; Court Barber, Intern; and John Kottmann, City Engineer.

Legal notice of the public meeting and hearing were posted, distributed and published according to Nebraska law. Notice was simultaneously given to all members of the Planning Commission. All proceedings shown were taken while the convened meeting was open to the attendance of the public.

1. Call to Order

The meeting was called to order by Chairman Gahan at 7:00 p.m. Copies of the agenda and staff reports were made available to the public. Gahan mentioned that due to the absence of a regular member, the alternate will be a voting member for the meeting.

2. Approval of Meeting Minutes – September 17, 2015

Sargus moved, seconded by Alexander to approve the September 17th minutes with corrections. **Ayes: Krzywicki, Sargus, Gahan, Wetuski, Miller, Dale, Alexander, Malmquist, and Hill. Nays: None. Abstain: None. Absent: Circo. Motion Carried. (9-0)**

3. Old Business

A. Public Hearing for Amendment to Section 7.11 of the Zoning Ordinance-Wireless Communication Towers

- i. **Staff Report:** Solberg states that based off of concerns from the last planning commission meeting, staff asked Robert Naumann, representative for CMS to attend tonight’s meeting to go over the ordinance and answer questions. He mentioned that Naumann will be the one working with this set of regulations upon implementation and is best suited to answer any questions. Solberg also said that two different intent statements are included at the end of this section as there was interest about using the old intent statement as opposed to the new one that the Commission has concerns over. .

- ii. **Public Hearing:** Continued from September 17th meeting.

Robert Naumann, representative for CMS, came up to speak and answer questions. He mentioned that there were 3 questions presented to him from Solberg and said that he would answer those and anything else that may come

up. The first question that he answered was in regards to 7.11.01, Purpose and Legislative Intent. He said that sometimes their model ordinance is used as a stand-alone ordinance and wanted to make sure all sections are covered. He said the intent statement could seem redundant with the primary purpose and intent statement of the zoning ordinance itself. He said that it can be left out, kept in, or modified depending on what the commission wants to do. The second question was in regards to insurance, section 7.11.18.01, and the potential need for workman's compensation insurance. He said that their model ordinance is kept at a minimum and to keep in mind that the wireless company is the applicant and they will have their own insurance. He said that it is up to the city if they want to put a required amount, but to keep it so that companies do not constantly have to modify their insurance amounts to do work. The third question was in regards to 7.11.09 and whether or not there is a height limitation, or if there should be a height limitation. This is handled in a variety of ways. First of all, there is a restriction, but it is not apparent. He states that according to FAA, anything over 200 hundred feet has to be lit. The only way that a tower could be over 200 feet is if the contractor asks for a relief and the commission approves the relief. If this cannot be justified, then the commission is encouraged to deny the relief. He mentioned that there are communities that he works with that have a tower height limit.

Sargus asked about 7.11.01 and the redundancy. He inquired as to where that is at.

Naumann said that he pulled of the city's purpose and intent in the ordinance and said that it was very similar. It basically states that we are looking out for the general welfare of the community.

Sargus asked why the model language says "May pose a significant risk..."

Naumann said that each case is different. He used the example of a rooftop mounted antennae on a residential building that is exposed to the general public could pose an RF risk to anyone that may have to do work on the roof. They don't have add or enforce any restrictions to the carrier on RF exposure, but they need to prove that they are following FCC rules.

Naumann went over 7.11.07 and asked about priority #6, in regards to placing a new tower on properties in areas zoned for Transitional Agricultural use and how that land can sometimes become residential land. He wanted to know if the commission wanted to insert language to indicate that this is not only for current zoning, but future zoning as well. He also mentioned adding residential as #7 as the last area to be utilized to put in a tower.

Miller asked if there is a rule of thumb as far as distance between towers for residential.

Naumann said that it's a moving target. He said that as the demand for more data increases, the closer in proximity the towers will need to be. He said that it will need to be made perfectly clear that residential placement needs to be a last resort.

Hill asked if the FCC had any data on RF Exposure.

Naumann said that the FCC and many of the carriers will say that that can't be regulated. He said that they will tell them that they are not regulating it, but making sure that they are in compliance. He said that the challenge with the FCC is that they have a lot of regulations and assume that they will be followed.

Hill mentioned that there is not a lot of oversight from the FCC.

Naumann said there is not a lot of oversight, unless there's a complaint or the consultant verifies that they are in compliance.

Hill asked about 7.11.06.08 in regards to the balloon only being flown for 4 hours.

Naumann said that it would be cost inhibitive to have it flown any longer, but if they want to have it adjusted they can.

Gahan asked if a conditional use permit would be needed for a company to put up a new tower.

Solberg said yes, that it is in the ordinance to have to apply for a CUP. They would need to go through the consultant first when applying for a CUP and getting an approval from the commission.

Naumann suggested having the party interested in building the tower speak to him first and do a site visit with them prior to applying for the CUP. He wants them to be completely prepared before the application process starts.

Hill asked if Naumann was asking if that is part of the pre-application meeting and who all was involved on the meeting.

Naumann said that they would invite whomever, but Solberg would most definitely be included. Naumann will be a part of this meeting as well as another consultant from CMS. He will also contact other experts in whatever field he may have a question for.

Naumann also suggested changing the fees to reflect modifications and co-locates for better clarification.

Hill asked about 7.11.16 in regards to Performance Security and the \$75,000 fee for a tower facility. She feels that the fees are a little low considering the costs for constructing a new tower.

Naumann said that the fees are based on if the tower is abandoned and needs to be demolished.

Hill brought up 7.11.18.04 in regards to the city requiring a 30 day written notice in advance to the company cancelling its insurance. She said that the state of Nebraska statute is 10 days of non-pay, so we will never get 30 days.

Naumann said that these models are nationwide and can be adjusted to fit our state statute if needed.

Krzywicki asked if the insurance provider can add a 30 day non-pay clause to continue coverage for those 30 days.

Naumann said that this can be modified if need be.

Public Hearing Closed: Miller moved, seconded by Krzywicki to close the public hearing. **Ayes:** *Krzywicki, Sargus, Gahan, Wetuski, Miller, Dale, Alexander, Malmquist, and Hill.* **Nays:** *None.* **Abstain:** *None.* **Absent:** *Circo.* **Motion Carried. (9-0)**

Sargus mentioned that he feels adding areas that could be rezoned to residential to 7.11.07 is a very good idea.

Solberg said that it can be added, but the likelihood is variant in context to La Vista. There is only one area of transitional agricultural that will become residential based on the future land use map. He said that it can be added for protection.

Krzywicki pointed out a mistake in the section where seven is spelled out, but six is in parentheses.

Sargus mentioned that there are two intent statements and wanted clarification if they had to choose between one of the 2, or if it could be omitted.

Solberg said that there has to be an intent statement, but they had the option of using the model statement, or the one that already exists.

Krzywicki said that he prefers intent statement "A". He also mentioned replacing "and" with "or" in the intent statement in regards to the sentence about the environment (second sentence of the first paragraph).

Sargus asked Naumann if the model language is ever changed when other states look at this ordinance.

Naumann said yes. He mentioned that they try to put the city more in charge of the ordinance, so they change it when needed. The language was written by their legal team and there has never been an issue.

Naumann said that most people's issues are with the visual aspect of the tower, as opposed to the health risks from the tower.

Solberg stated that they can add in residential to 7.11.01 if the commission votes to add it in.

Naumann suggested adding in residential and commercial to that section.

Solberg mentioned that if the commission wants to add a 7 and 8 to 7.11.01, then the zoning ordinance would have to be changed as well.

Recommendation: Sargus moved, seconded by Malmquist to recommend tabling this item until the next meeting, allowing staff time to make suggested changes to the documents.
Ayes: Krzywicki, Sargus, Gahan, Wetuski, Miller, Dale, Alexander, Malmquist, and Hill.
Nays: None. **Abstain:** None. **Absent:** Circo. **Motion Carried. (9-0)**

4. New Business

A. Public Hearing for Conditional Use Permit – CLR Development

The developer has decided to withdraw his application at this time.

B. Public Hearing for Amendments to Section 5.15 of the Zoning Ordinance – Planned Unit Developments

- i. **Staff Report:** Solberg states that some amendments have been made, but that there are other sections that do not coincide with the changes to this ordinance. This item will need to be tabled.

Recommendation: Krzywicki, seconded by Dale to table the item. **Ayes:** Krzywicki, Sargus, Gahan, Wetuski, Miller, Dale, Alexander, Malmquist, and Hill. **Nays:** None. **Abstain:** None. **Absent:** Circo. **Motion Carried. (9-0)**

5. Comments from the Floor

None.

6. Comments from Planning Commission

None.

7. Comments from Staff

A. Comprehensive Plan Update

Solberg talked about the Choices Workshops that were held for the Comprehensive Plan. They are vetting all of the input gathered and are going through the process of helping LSD with the changes to the document and will hopefully move forward to having more public meetings in the future. In doing so, this will hopefully get us closer to creating the final document.

8. Adjournment

Reviewed by Planning Commission:

Planning Commission Secretary

Planning Commission Chairperson

Approval Date

