

PLANNING COMMISSION MINUTES
September 25, 2014
6:30 P.M.

1. CALL TO ORDER

Commissioner Britain called the September 25, 2014, Planning Commission meeting to order at 6:30 P.M.

MEMBERS PRESENT:

Fred Britain
Steve Funk
Scott Leason
Gregg Lewis
Brad Long
Kyle McLaren
Van Pooler
Allen Potter
Gerald Watson

STAFF PRESENT:

Scott Rickard, Assistant City Engineer

OTHERS PRESENT:

Jeff Jones
Maurice Perkins
Kirby & Janine Dutton
Randy & Teresa Dougherty
David & Gail Crenshaw
Brian Gaudreau
John Banks

2. APPROVAL OF MINUTES

Commissioner Funk moved, Commissioner Leason second, to approve the minutes of the July 24, 2014 meeting. Motion carried 9-0.

3. NEW BUSINESS

ITEM NO. 1 – CASE NO. 14-008-SUP: PUBLIC HEARING FOR THE CONSIDERATION OF OIL & GAS EXTRACTION ON PROPERTY ZONED I-1 AND LOCATED ON N. OIL HILL RD.

A) PRESENTATION OF REQUEST

Scott Rickard stated that according to the zoning regulations any new oil & gas extractions require a special use permit, this property is located East of Oil Hill Rd & South of Refinery Rd (10th Street). Brian Gaudreau of Vess Oil Corporation

stated that this is an additional development and this will be a fourth well on the site and hopefully it will be another producing site.

B) PUBLIC HEARING

Commissioner Britain opened a public hearing. Seeing no one, the hearing was closed.

C) DISCUSSION BY PLANNING COMMISSIONERS

Commissioner Watson asked if there are any other I-1 areas in town that would allow drilling. Mr. Rickard stated that a special use permit would be required in any I-1 district. He also stated that it's up to the KCC to designate proper drilling sites. Mr. Rickard stated the reason oil & gas extractions are brought before the planning commission is if they abut a residential area then screening & buffering can be discussed. Any new well drilling has to be approved by a special use permit. Commissioner Watson asked if there are already three wells on the proposed site then why it is necessary to approve another. Mr. Rickard stated that those are considered existing and nonconforming; they were drilled prior to the adoption of the zoning regulations. The purpose of looking at these sites now is for growth and future land use within the city. Commissioner Watson commented that the definition between I-1 & I-2 has a comment about smell and asked if that is a problem since oil usually smells, I-1 doesn't cover that in the definitions & I-2 does and he inquired if the City needs to change the land classification so the drilling can continue and so there is no conflict there. Mr. Rickard looks at the definition of I-1 & I-2 as the way the land is being used. He considers this use as a secondary use to the property not as primary. Commissioner Watson asked if this classification would be a problem for the company down the road. Mr. Rickard stated that the City only has one I-2 zone which is located at the old Union Tank Facility all other industrial properties in the city are zoned I-1. Commissioner Funk asked if the approval of this special use would set precedence for any other potential drilling sites. Mr. Rickard stated that any new drilling site would have to request a special use permit and follow the same process. Discussion ended.

D) MOTION

Commission Funk moved that Case No. 14-008-SUP, a request for a special use permit to allow oil & gas extraction on property zoned I-1 and located on N. Oil Hill Rd., be approved. Commissioner Long second.

ROLL CALL VOTE

Fred Britain	Y
Steve Funk	Y
Scott Leason	Y
Gregg Lewis	Y
Brad Long	Y
Kyle McLaren	Y
Van Pooler	N
Allen Potter	Y

Gerald Watson Y

Motion pass 8-1.

ITEM NO. 2 – CASE NO. 14-009-SUP: PUBLIC HEARING FOR THE CONSIDERATION OF A REQUEST FOR A SPECIAL USE PERMIT TO ALLOW A WIND TURBINE IN AN R-S ZONE LOCATED AT 3021 SE 34TH STREET.

A) PRESENTATION OF REQUEST

Mr. Rickard stated that Randy Dougherty has requested to install a wind turbine at property located at 3021 SE 34th. The property is located outside the city limits, but inside the extraterritorial growth area. This issue has been brought before the Butler County Zoning Department, the county has no problems with this & a turbine of this size does not require a special use permit it would just be allowed by right in the county. However, there are some special requirements that the City has in its regulations and are listed in the staff report. Randy Dougherty introduced himself and stated that he is the one requesting the wind turbine on their personal property.

B) PUBLIC HEARING

Commissioner Britain opened a public hearing. Mr. Rickard stated that he did receive a letter from neighbors Terry & Gayle Oaks at 3174 SE Sage Rd. they had reservations having a wind turbine erected, that if the wind turbine was allowed then others would follow suit and it would detract from the aesthetics of the rural neighborhood. They also are concerned about the noise and the fowl in the area and the resale of the rural properties in the area. They respectfully ask the planning commission to deny the Dougherty's request for a wind turbine. Mr. Rickard stated that was the only public comment that he had received. Seeing no one else had comments, the hearing was closed.

C) DISCUSSION BY PLANNING COMMISSIONERS

Commissioner Watson asked what kind of noise level the turbine makes. Mr. Rickard stated the city received a pamphlet on the turbine. Commissioner Pooler commented that the turbine at Circle sounds like a siren or when the wind speed changes its annoying. Mr. Rickard stated the only experience the city has with the turbines is the one the city has. Commissioner Funk asked how tall the city's turbine is. Mr. Rickard said it is 330 feet tall and the proposed turbine is 55 feet tall. Commissioner Lewis asked how big the blades are and Mr. Rickard stated they are 12 feet. Commissioner Funk asked Mr. Rickard to describe the neighborhood. Mr. Rickard stated that it is east and a little bit south of the El Dorado Airport and the properties in the area have approximately 3 to 5 acres. The plans on placing the turbine are a significant distance from the property lines. Part of the requirements of the special use permit is for the fall angle of the turbine & tower to be no closer than its height to any structure around it, the

turbine is 55 feet tall and the owner is placing it 170 feet from his south property line, 165 foot from east, 170 from north and 100 foot from a green house. Commissioner Long asked Mr. Dougherty about the noise level. Mr. Dougherty stated it does not make any more noise than a car driving down the highway. Commissioner Long then asked about lights for the turbine, Mr. Dougherty stated that there are no lights on the turbine. Commissioner Funk asked what staff recommendation was. Mr. Rickard stated that staff recommends approval; it meets all of the city's requirements and Butler County's. Commissioner Watson asked Mr. Dougherty if he had spoken with any of his neighbors, Mr. Dougherty stated the neighbors directly across the street do not have any problems with the turbine. Discussion ended.

D) MOTION Commission Lewis moved that Case No. 14-009-SUP, a request for a special use permit to allow a wind turbine in an R-S zone located at 3021 SE 34th Street, be approved. Commissioner Leason second.

ROLL CALL VOTE

Fred Britain	Y
Steve Funk	Y
Scott Leason	Y
Gregg Lewis	Y
Brad Long	N
Kyle McLaren	Y
Van Pooler	N
Allen Potter	Y
Gerald Watson	Y

Motion pass 7-2.

ITEM NO. 3 – CASE NO. 14-011-SUP: PUBLIC HEARING FOR THE CONSIDERATION OF A REQUEST BY JEFFREY JONES FOR A SPECIAL USE PERMIT TO ALLOW A TAEKWONDO SCHOOL IN A C-2 ZONE LOCATED AT 135 N MAIN, E.

A) PRESENTATION OF REQUEST

Mr. Rickard stated that is property is located at 135 N Main with access off of the rear public parking lot, this indoor recreational activity is required by special use permit in a C-2 district.

B) PUBLIC HEARING

Commissioner Britain opened a public hearing. Seeing no one, the hearing was closed.

C) DISCUSSION BY PLANNING COMMISSIONERS

Commissioner Potter asked if the building is currently vacant. Mr. Rickard stated that he believed it was; it was formally an art gallery. Discussion ended.

D) MOTION Commission Lewis moved that Case No. 14-011-SUP, a request by Jeffrey Jones for a special use permit to allow a taekwondo school in a C-2 zone located at 135 N Main, E., be approved. Commissioner Leason second.

ROLL CALL VOTE

Fred Britain	Y
Steve Funk	Y
Scott Leason	Y
Gregg Lewis	Y
Brad Long	Y
Kyle McLaren	Y
Van Pooler	Y
Allen Potter	Y
Gerald Watson	Y

Motion pass 9-0.

ITEM NO. 4 – CASE NO. 14-012-SUP: PUBLIC HEARING FOR THE CONSIDERATION OF A REQUEST BY JOHN BANKS FOR A SPECIAL USE PERMIT TO ALLOW A PARKING LOT IN A C-2 ZONE LOCATED AT 112 W CENTRAL.

A) PRESENTATION OF REQUEST

Mr. Rickard stated that the applicant John Banks and owners Kirby & Janine Dutton are requesting off street parking at 112 W Central, a site plan has been provided and staffs recommendation is to approve with the condition of a buffer along Central and a dedication of an easement along the east side of the property for the Westar utility.

B) PUBLIC HEARING

Commissioner Britain opened a public hearing. John Banks made a statement regarding the Duttons, they felt they have been victims of the city over the years they are not very comfortable giving the city an easement over their property. Mr. Banks stated that the ten foot easement is actually for him to put an electric line in for his building and that him and the Duttons are going to partner in the parking lot to benefit both of their businesses. Mr. Banks asked if getting that easement would be a part of the permit or if it's a separate issue and how it all works. Mr. Rickard stated that the easement is just a recommendation at staff level, knowing the situation of the former Trombala building and how it has no access to get utilities to it and how it is completely wrapped around with another building, there are public utilities just south of this area in the Sunshine Alley now, it is just a good location to put an easement in to serve the building. Janine Dutton, owner of

Dutton Kuttons, asked if it was necessary for the city to have easement and if it could be granted to Mr. Banks instead. Mr. Rickard stated that any utilities need to be on public easement they are available to franchised utilities in the city of El Dorado to utilize those corridors to service their customers. Mr. Rickard also stated that he does not want to hold up the parking lot if there is an issue with this easement. The easement does not benefit the city at this time it is for Westar purposes and Mr. Banks. Mr. Rickard then stated that if the Planning Commission desires it can just look at the use of the property as a parking lot, then the easement issue can be worked out at a later date. Mr. Banks asked if they would need to return to the Planning Commission for the easement. Mr. Rickard stated they would not. The Planning Commission is looking at the use of the property as a parking lot and just thought it would be a good time to get the easement granted. Mrs. Dutton is concerned if the city has an easement in the parking lot that at some time they would have rights to come in and do something with that and as a property owner she would have to agree with the work that they wanted to do. Mr. Rickard stated with an easement you retain ownership of that easement, but you are granting any franchised utility with the city of El Dorado to maintain their system. Mrs. Dutton asked if they would have to ask permission from the land owners to do any work. Mr. Rickard stated that they would not. Commissioner Brittain asked if anyone else wished to speak during the public hearing, seeing no one, the hearing was closed.

C) DISCUSSION BY PLANNING COMMISSIONERS

Commissioner Funk asked if Mr. Banks could put his electrical to the building without the easement. Mr. Rickard stated that Mr. Banks is in a unique circumstance with that building. Westar needs to run an electrical line and transformer somewhere close to his building, with his building being completely surrounded there is not much room for that, there hopes are to put an underground line on the east side of this proposed parking lot & set a transformer close to the sidewalk near Main Street. Commissioner Long asked if the easement could be granted to Westar. Mr. Rickard stated that it could, but he is reluctant to do that because when an easement is granted to a sole utility he is more concerned about future improvements who knows what will happen to this lot and if it's an easement that is owned by the city we are more willing to work with developers on closing easements for new development. Mr. Rickard also stated that in the past Westar have sold easements under their name that makes projects move a little slower and more difficult. Commissioner Long asked how the electrical line would get from the lot to the corner. Mr. Rickard stated it would be in the public right of way under the sidewalk. Mr. Banks stated that his basement goes out underneath the sidewalk and that today Kim with Kansas Gas Service notified him that his gas service is being shut off because they have closed the line that goes down Central and if he wants gas they will have to set two meters on the east side of his building. Mr. Banks stated that he is not in favor of that because it would be distractive of the looks of the building, so the only option he has is to go all electric. Commissioner Funk asked if his current electric was draped over the top of the building now. Mr. Banks stated that it just lying on the building and

been that way for quite some time, the building was built in 1886. Commissioner Funk asked Mr. Banks if he is comfortable with the commission approving the parking lot without the easement. Mr. Banks said yes he was and he is hoping the easement issue will get worked out with the Duttons. Mr. Banks says he does blame the city for the skepticism of the Dutton's in dealing with the city in the past. The Duttons have been victims of overzealous employees and Mr. Banks stated there are better ways to tell people that they can't park on their own property or they have to vacate their building. He believes that the Duttons have been treated badly and don't have a lot of faith in what the city can and will do. Mr. Banks also stated that the city is doing a better job now than in the past. Commissioner Brittain asked if the easement would be a separate issue from the special use and be worked out between the owners and the city. Mr. Rickard stated that he felt that this would be the opportunity to obtain an easement. Commissioner Brittain asked about the buffer and fence in the staff report that is not on the site plan. The previous request for a parking lot on South Main required a fifteen foot buffer with a fence and landscaping, if that was required for this parking lot it would not leave much room. Mrs. Duttons asked if they would have to have 15 foot buffer and asked about different fence material. Commissioner Brittain then stated he overlooked the email that Mr. Rickard received during the public hearing. Mr. Rickard said that Main Street recommends not allowing the parking lot on the proposed property. They feel this request is different than the parking lot on South Main, that parking lot was for a new development and apartments. Although Main Street's request is just a recommendation they ask that there is a setback from the sidewalk screening of some sort such as a fence or wall and that materials are used that match other materials in downtown area and also that they be included in the site plan review. Commissioner Brittain said the letter regarding the wrought iron and brick columns would help with Main Street's concerns. Mr. Banks commented that planning and everything will take maintenance and as long as Mr. Banks and the Duttons are involved it will be taken care of and very nice. People that purchase the property in the future might not have the means or pride that they do, Mr. Banks and the Duttons have considered a concrete wall or decorative fence that is easier to maintain than a planting area of shrubs. Commissioner Long asked how long the lot had been vacant. Mr. Rickard stated eight or nine years. Commissioner Long asked Mrs. Dutton if she someday sold her business what would she do with the parking lot. Mrs. Dutton said the parking lot would go along with the business. Commissioner Long asked Mr. Banks if he was part owner in the lot. Mr. Banks stated that he is. Commissioner Long asked about lighting. Mrs. Dutton and Mr. Banks stated they had not discussed lighting at this time. Commissioner Watson asked if they would have control to the lot at the back. Mrs. Dutton stated that it would only be in the front so people could not walk through the lot. Commissioner Long asked about Gizmos if they would benefit from the proposed parking lot. Mrs. Duttons stated that the parking lot would be only for her business and Mr. Banks. Commissioner Watson asked about the three to four feet of concrete on the site plan. Mrs. Dutton stated that's where she would like to place the fence. Mr. Rickard said that handicap parking would need to be close to

Mrs. Dutton's business and that staff would review the site plan. Commissioner Brittain asked if the city had reviewed the site plan yet. Mr. Rickard stated that he has glanced at it, but was waiting on approval of the parking lot for final review. Discussion ended.

D) MOTION Commission Funk moved that Case No. 14-012-SUP, a request by John Banks and Kirby and Janine Dutton for a special use permit to allow a parking lot in a C-2 zone located at 112 W Central with buffer conditions as stated in the staff report, be approved. Commissioner Potter second.

ROLL CALL VOTE

Fred Britain	Y
Steve Funk	Y
Scott Leason	Y
Gregg Lewis	Y
Brad Long	Y
Kyle McLaren	Y
Van Pooler	Y
Allen Potter	Y
Gerald Watson	Y

Motion pass 9-0.

4. OLD BUSINESS

None

5. STAFF ITEMS

None

6. ADJOURNMENT

Commissioner Watson moved, Commissioner Leason second, to adjourn the meeting. Meeting adjourned at 7:30 P.M.