

THE OFFICIAL PROCEEDINGS OF THE CITY OF GERING PLANNING COMMISSION REGULAR MEETING, MAY 6, 2025

A regular meeting of the City of Gering Planning Commission was held in open session on May 6, 2025, at 6:00 p.m. in the Gering City Hall Council Chambers at 1025 P Street, Gering, NE. Present were Commissioners Miles, Crews, C. Kaufman, T. Kaufman, Hauck, and Alvizar. Absent: Taylor and Keener. Also present were City Engineer Annie Folck, Mayor Kent Ewing, Secretary Carol Martin, and Karen Heins. Notice of the meeting was given in advance by publication in the Star-Herald, the designated method of giving notice. All proceedings hereafter were taken while the meeting was open to the attendance of the public.

Call to Order and Roll Call:

Chairman Miles called the meeting to order at 6:00 P.M. and noted that a quorum of the Planning Commission was present and business could be conducted.

1. Pledge of Allegiance

2. Open Meetings Act - Neb. Rev. Stat. Chapter 84, Article 14

Chairman Miles stated: As required by State Law, public bodies shall make available at least one current copy of the Open Meetings Act posted in the meeting room. Agenda items may be moved up or down on the agenda at the discretion of the Chairperson. Additions may not be made to this agenda less than 24 hours before the beginning of the meeting unless they are considered under this section of the agenda and the Planning Commission determines that the matter requires emergency action.

3. Appointment of Karen Heins as Secretary to the Planning Commission

Motion by Commissioner T. Kaufman to approve the appointment of Karen Heins as Planning Commission Secretary. Second by Commissioner Alvizar. There was no discussion. The Secretary called the roll. "AYES": Crews, Miles, C. Kaufman, T. Kaufman, Hauck and Alvizar. "NAYS": None. Abstain: None. Absent: Taylor, Keener. Motion carried.

4. Approval of Minutes of the April 1, 2025, regular Planning Commission meeting

Motion by Commissioner T. Kaufman to approve the minutes of the April 1, 2025 regular Planning Commission meeting. Second by Commissioner Crews. There was no discussion. The Secretary called the roll. "AYES": Crews, Miles, C. Kaufman, T. Kaufman, Hauck, and Alvizar. "NAYS": None. Abstain: None. Absent: Taylor, Keener. Motion carried.

5. Current Business:

- A. Public Hearing to consider a Zone Change from C-2 Central Business District to RM Residential Medium Density for the following properties: Lots A and C, Dutton Tracts, A Replat of Lot 3 and the West Half of Tract 4, Dutton Tracts, City of Gering, Scotts Bluff County, Nebraska, and the East Half of Tract 4, Dutton Tracts, City of Gering, Scotts Bluff County, Nebraska, generally located at the northwest corner of 10th Street and D Street.**

Chairman Miles opened a public hearing to consider a Zone Change from C-2 Central Business District to RM Residential Medium Density for the following properties: Lots A and C, Dutton Tracts, A Replat of Lot 3 and the West Half of Tract 4, Dutton Tracts, City of Gering, Scotts Bluff County, Nebraska, and the East Half of Tract 4, Dutton Tracts, City of Gering, Scotts Bluff County Nebraska, generally located at the northwest corner of 10th Street and D Street at 6:04 p.m.

**CITY OF GERING
PLANNING COMMISSION RECOMMENDATION AND REPORT**

To:	Planning Commission	Date:	May 6, 2025
From:	Planning & Community Development	Zoning:	C-2
Subject:	Recommendation & Report – Zone Change from C-2 Central Business District to RM Residential Medium Density	Property Size:	3.67 acres
Location:	Northwest Corner of D Street and 10 th Street	#Lots/Parcels:	3
Owner:	Rodney and Deborha Schutte Carlin and Raylene Van Velson James Strauss	City Council Public Hearing:	May 27, 2025

Public Notice: This Public Hearing was noticed meeting City Zoning and Subdivision Regulations and according to Nebraska State Statutes.

Agenda Item Summary

The City of Gering has received an application to change the zoning on a property located on Lots A and C, Dutton Tracts, a Replat of Lot 3 and the West ½ of Tract 4, Dutton Tracts, City of Gering, Scotts Bluff County Nebraska, and the East ½ of Tract 4, Dutton Tracts, City of Gering, Scotts Bluff County, Nebraska, which is generally located at the northwest corner of 10th Street and D Street. The application requests a change in zoning from C-2 Central Business District to RM Residential Medium Density.

The property is surrounded by RM zoning to the east, C-3 General Commercial District zoning to the south, and C-2 Central Business District to the north and west. The proposed change would make the property consistent with the RM zoning to the east.

Two of the three properties are existing residential properties that are currently pre-existing nonconforming. The proposed zone change will bring those properties into conformance with the City's zoning regulations. The third property, Lot C, has a 2800 square foot metal building that was built in 2024, and is otherwise vacant. The property owner of Lot C would like to rezone this property in order to build a residence. The existing metal building is for personal use only and does not currently house a business.

The City's Comprehensive Plan describes this area as District 3, Southwest Gering Neighborhood District. In the section that discusses future land use, the plan states, "The district is envisioned to contain a variety of residential densities and residential types. Existing residential should be maintained and enhanced whenever possible."

While these properties are currently zoned C-2, Central Business District, the Comprehensive Plan shows this area as being appropriate for either low density residential, medium density residential, or high density residential.

Findings of fact in favor of approving the zone change:

- Two of the three properties are already a residential land use, and this zone change will bring these properties into conformance with current zoning requirements
- The Comprehensive Plan shows the future land use of this area as being primarily residential in nature
- The proposed zoning would be consistent with the zoning of the property to the east

Finding of fact in favor of denying the zone change:

- The property to the south is C-3, General Business District, which is not specifically intended to be compatible with residential zoning

Recommendation

Recommend Approval

Recommend approval to City Council of a Zone Change from C-2 Central Business District to RM Residential Medium Density for properties described as:

- Lots A and C, Dutton Tracts, A Replat of Lot 3 and the West 1/2 of Tract 4, Dutton Tracts, City of Gering, Scotts Bluff County, Nebraska, and the
- The East 1/2 of Tract 4, Dutton Tracts, City of Gering, Scotts Bluff County Nebraska

for the following reasons:

Recommend Denial

Recommend denial to City Council of a Zone Change from C-2 Central Business District to RM Residential Medium Density for properties described as:

- Lots A and C, Dutton Tracts, A Replat of Lot 3 and the West 1/2 of Tract 4, Dutton Tracts, City of Gering, Scotts Bluff County, Nebraska, and the
- The East 1/2 of Tract 4, Dutton Tracts, City of Gering, Scotts Bluff County Nebraska

for the following reasons:

Table

Table making a recommendation for a Zone Change from C-2 Central Business District to RM Residential Medium Density for properties described as:

- Lots A and C, Dutton Tracts, A Replat of Lot 3 and the West 1/2 of Tract 4, Dutton Tracts, City of Gering, Scotts Bluff County, Nebraska, and the
- The East 1/2 of Tract 4, Dutton Tracts, City of Gering, Scotts Bluff County Nebraska

for the following reasons:

Public Hearing

Engineer Folck referenced the vicinity and zoning maps displayed noting the proposed location is near the southern end of Gering. She stated there are three lots in total and the two lots on the east side that border 10th street are already residential. The lots are all currently zoned C-2 Central Business District and the request is to rezone residential. The owner of the western lot approached the City wanting to rezone residential in order to build a house that lot. She pointed out that, according to the Comprehensive Plan, the area falls within District 3, the Southwest Gering Neighborhood District, where residential zoning classifications R1, R2, and R3 are all considered acceptable in that area. The Future Land Use Map shows that particular area as being acceptable for residential or higher density residential. The request is a zone change to R2, Medium Density Residential. While discussing this application, it was considered to rezone just that lot but to be consistent, and because there are some non-conforming uses already, if the neighboring property owners would sign off on the application, they could rezone all three of the lots which would be then consistent with the zoning at that location and bring the two non-conforming lots into conformance. As those lots have been built as residential and used as residential for as long as anyone can remember, they would then no longer be non-conforming use properties. And by rezoning this lot, it would then allow for the property owner to build the home he's hoping to build. Engineer Folck further noted that the lot is currently mostly vacant. There is a newer metal building that was built in 2024 on the property and the owners do intend to use it for personal use only as an accessory building, a garage or shop, that would go along with the home they are hoping to build.

She further stated that in looking at the requested zone change and the Comprehensive Plan, some of the findings of fact in favor of approving the zone change include:

- it would bring these properties into conformance,
- it matches the future land use as laid out in the Comprehensive Plan, and
- it would be consistent with the zoning of the property to the east.

Staff does feel this is an acceptable zone change and recommends approval based on the findings of fact. Engineer Folck added that if there were to be any concerns to be noted, the one concern that could be used to justify the denial of the zone change would be that right across the road is C3 which is not necessarily designed to be compatible with residential zoning. That being said, Engineer Folck said it is primarily a residential area and there is already an existing residence directly across the street from C3 and that's not going to change. She stated that staff is in favor of this zone change.

Chairman Miles requested clarification regarding the structure located just west of this site. Engineer Folck responded that it is possibly vacant. She referenced the bowling alley nearby and noted that the Planning Commission approved, a few months back, a conditional use for some storage units at the Todd Hoke property next to the bowling alley.

Chairman Miles asked if anyone in the Council Chambers wished to speak regarding this application and if so, to please come to the podium and state their name and address.

Rodney Schutte, 810 D Street, stated he submitted the application for the zone change and confirmed his plans for the lot. In speaking with Engineer Folck, she mentioned recommending rezoning the non-conforming properties.

Gary Warner, 3246 Heritage Drive, noted he was the previous owner of the property to be rezoned and still owns the tract 5 to the left. Mr. Warner asked whether rezoning the area to residential would have any impact on the remaining commercial zoning along the highway, and if there could ever be any restrictions placed on the adjacent properties as a result.

Engineer Folck responded that the only impact on the commercial property to the west would relate to the landscaping code; if it borders a residential zone instead of another commercial property, a landscape buffer would be required between them. It would not affect the commercial use of the business.

Mr. Warner also noted that the quonset is not abandoned. He shared that he uses it for storage for his farm.

Mr. Shutte asked whether the landscaping requirement applies only along the highway. Engineer Folck clarified that the requirement pertains specifically to commercial properties, not residential ones. She added that any commercial zone bordering a residential area must include landscaping when it is developed.

Chairman Miles stated that with no further comments, the public hearing was closed at 6:11 p.m.

i. Make recommendation to City Council

Chairman Miles entertained a motion regarding the proposed Zone Change from C-2 Central Business District to RM Residential Medium Density for the following properties: Lots A and C, Dutton Tracts, A Replat of Lot 3 and the West Half of Tract 4, Dutton Tracts, City of Gering, Scotts Bluff County, Nebraska, and the East Half of Tract 4, Dutton Tracts, City of Gering, Scotts Bluff County, Nebraska, generally located at the northwest corner of 10th Street and D Street.

Motion by Commissioner C. Kaufman to recommend approval to the City Council for the proposed zone change. Seconded by Commissioner Alvizar. Discussion: It was noted that the City Council makes the final decision; this is a vote to recommend to the City Council. The Secretary called the roll. **"AYES":** Crews, Miles, C. Kaufman, T. Kaufman, Hauck, and Alvizar. **"NAYS":** None. **Abstain:** None. **Absent:** Taylor, Keener. **Motion carried.**

6. City Engineer Report

Engineer Folck reported the following:

- A. New staff person, Karen Heins, will be serving as Secretary to the Planning Commission. She started in time to work on the last set of robust minutes.
- B. With regard to the last meeting and the zone change that was considered, the result of that public hearing went to City Council. Engineer Folck noted that prior to the City Council meeting, the neighboring property owners had filed a protest which made it so that instead of needing a simple majority, they needed a three fourths majority to pass the zone change. The City Council had voted five to two in favor of the zone change but it didn't pass because they needed six votes and there were only seven Council members in attendance that night. The result was that the zone change is not moving forward at this time. She noted that some individuals were somewhat upset, expressing the belief that, since the City Council supported the project, it should have been allowed to proceed.

In reviewing the code, it was noticed that the way it's written regarding the protest process is somewhat unusual. State statute does allow for a protest of a zone change but only in cases where the proposed zone change does not conform to the Comprehensive Plan, so if the zone change meets the requirements of the Comprehensive Plan or meets the future land use of the Comprehensive Plan, then they cannot protest it. Where the current code allows a protest for any reason, which is pretty broad, it makes it quite difficult to get anything through even if it's perfectly

in line with what the City envisioned through the Comprehensive Plan. Legal and staff are recommending that the code be reviewed. The next Planning Commission meeting will be the first Tuesday in June. The agenda item will be to consider a code change to the Zoning Code, proposing a change to the language reflecting the way it reads in State Statute allowing for a protest but only in those limited cases. Engineer Folck remarked that, ideally, the City should not be approving anything that doesn't align with the Comprehensive Plan. But, with the change, it would help better align with the City's long-term vision and make it less susceptible to being blocked by a few upset neighboring property owners.

- C. Additionally, a concern was raised at the last meeting regarding whether Planning Commission members are permitted to abstain from voting. She commented that if someone believes they cannot make an unbiased vote, they can abstain from voting. That being said, it is being requested that if they are going to abstain, that it should be decided before the start of the agenda item to let everyone know the conflict of interest. While the request is to inform everyone prior to the agenda item, it is also noted that they should refrain from participating in the discussion as well. She further noted that if a Planning Commissioner finds themselves in a position that they cannot make an unbiased decision very often, they probably need to reconsider their commitment to the Planning Commission. These scenarios should be few and far between. As it is a small community, there may be times that come up, but it is expected to not be very often.

Commissioner Hauck stated that he was the one who abstained from the vote on the rezone at the last meeting and asked whether that had been appropriate. Engineer Folck confirmed that he had done the right thing, particularly since he had disclosed that he didn't believe he could make an unbiased decision. She went on to explain that otherwise, someone could challenge the decision by pointing out that a Planning Commissioner had admitted to being biased, which would make it difficult to defend the outcome. She confirmed that Commissioner Hauck did the right thing by abstaining. However, she requested that in the future, if a commissioner knows in advance that they cannot make an unbiased decision, they should inform staff before the meeting and announce it prior to the agenda item—rather than waiting until the vote is being taken.

Commissioner Hauck noted that the Chairman had questioned whether he was allowed to abstain. Engineer Folck responded that the issue is currently being discussed with legal counsel, as there appear to be some differences between the procedures for the Planning Commission and the City Council in this regard.

Commissioner Hauck mentioned that the area in question is his neighborhood, just a block away, and that he knows many of the people who live there. Engineer Folck again responded that, unless there is a financial conflict of interest, it is up to the individual commissioner to determine whether they can make an unbiased decision. She explained that in situations where a commissioner lives in the neighborhood, or knows someone involved—such as a friend or relative—it's appropriate to disclose any perceived conflict of interest before the agenda item. For example, a commissioner might say, "I live in this neighborhood," or describe the situation, and then clarify, "That being said, I feel I can make an unbiased decision and do plan to vote tonight." She emphasized that this approach is acceptable. She noted, "it's up to you as planning commissioners and your own personal conscience whether or not you can make an unbiased decision."

A question was raised regarding how long an applicant must wait before reapplying for a rezone. Engineer Folck responded that, after consulting with legal, there is no specific time limit in place.

7. Open Comments:

Chairman Miles noted that discussion or action by the Planning Commission regarding unscheduled business will not take place. This section is for citizen comment only. He asked they state their name and address if they would like to address the Planning Commission.

There was none.

8. Adjourn

Motion by Commissioner Alvizar to adjourn. Commissioner C. Kaufman seconded the motion. There was no discussion. The Secretary called the roll. "AYES": Crews, Miles, C. Kaufman, T. Kaufman, Hauck, and Alvizar. "NAYS": None. Abstain: None. Absent: Taylor, Keener. Motion carried.

The meeting adjourned at 6:22 P.M.



Jody Miles, Chairman

ATTEST:



Karen Heins, Administrative Secretary