

**PLANNING COMMISSION MEETING
October 18, 2022**

A regular meeting of the City of Gering Planning Commission was held in open session at 6:00 p.m. in the Gering City Hall Council Chambers at 1025 P Street, Gering, NE, on October 18, 2022. Present were Chairperson Bowman and Commissioners Miles, Kautz, Shimic, Kaufman, Hauck, Alvizar. Absent were Commissioners Holliday and Keener. Also present were Engineering Technician Sergio Rodriguez, City Engineer Annie Folck, and Planning Commission Secretary Carol Martin.

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

Chairperson Bowman called the meeting to order at 6:00 p.m.

1. Pledge of Allegiance

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

Chairperson Bowman 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. Approval of Minutes of the October 4, 2022, regular Planning Commission meeting.

Motion by Commissioner Kaufman to approve the minutes of the October 4, 2022, regular Planning Commission meeting. Second by Commissioner Alvizar. There was no discussion. The Clerk called the roll. "AYES": Miles, Kautz, Bowman, Kaufman, Hauck, Alvizar. "NAYS": None. Abstaining: Shimic. Absent: Holliday and Keener. Motion carried.

4. Current Business:

A. Public Hearing for a Conditional Use Permit for Ag Support Services located at Block 1, Schutte Subdivision, Scotts Bluff County, Nebraska

Chairperson Bowman opened the public hearing for a Conditional Use Permit for Ag Support Services located at Block 1, Schutte Subdivision, Scotts Bluff County, Nebraska at 6:03 pm.

City Engineer Folck stated that the City of Gering has received an application for a conditional use permit for an Agricultural Support Service to be located in the Ag zone. The project site is located at Block 1, Schutte Subdivision, which is located on the southeast corner of the Heartland Expressway and 14th Street (see attached map).

The application proposes developing the property into a facility that would be utilized for operations for his business to provide water services to farmers and ranchers. His current business is within City limits, and he

would like to relocate to outside of City limits. The applicant proposes to construct two metal buildings on the property. These would be pole shed construction, and would not have soffits or fascia, but would be used primarily for cold storage. There would be wainscoting on the bottom three feet of the buildings. In addition, there would be equipment parked on site, to include semi trucks, trailers, dozers, excavators, loaders, etc. There would also be raw materials stored on site, to include pipe, steel tanks, water tanks, and bottomless tanks. Some of these tanks are recycled tires. The applicant is licensed as a waste tire hauler with the State of Nebraska. A tree row would be planted along the Heartland Expressway to screen the facility from view of passing traffic.

The following criteria are required to be considered by Planning Commission when deciding whether or not to grant the CUP:

Access/Fire Safety: The property does not have access to 14th Street or the Expressway. Staff recommends that if a conditional use permit is granted, it should be conditional upon the applicant obtaining access to 14th Street, either by obtaining permission from the State of Nebraska to construct a new driveway or getting permission from Gering Irrigation District to utilize their driveway which is adjacent to the property.

Off Street Parking and Loading Areas: The site is large enough that there will be more than enough space for any parking/loading areas needed.

Refuse and Service Areas: The applicant is planning on having a dumpster on site.

Utilities: Due to the distance from the property to the City's utility lines, the property would be served by well and septic. It would have City electrical.

Screening and Buffering: The applicant proposes to plant a tree row along the property line adjacent to the expressway in order to screen the site.

Signs: There will be no signage at the facility.

Required Yards and Open Spaces: Due to the large size of the property, the site can easily meet all setback requirements.

General Compatibility: If equipment parked on the property is limited to operational equipment only, and if materials are limited to only raw materials (pipe, tanks, etc.), and if the property is properly screened from the expressway, it could be compatible with surrounding properties. If the appearance of the property is similar to the applicant's current location, then it will not be compatible with surrounding properties.

Staff has some concerns about the appearance of the applicant's current property (see pictures). The new proposed location is adjacent to the Heartland Expressway on one of the main entrances to the community. Policy 3.2.F is to "Enhance Gering's gateways and create a common vision for these areas." The applicant has stated that at his current facility, he has rented out space for other people to keep their stuff, but because this has caused the property to become unsightly, he will not be renting out storage space to anyone at the new facility. Staff recommends that if the Planning Commission chooses to award the Conditional Use Permit, it should be with the following conditions:

1. Only operational equipment will be parked on site.

2. The only materials stored on site will be materials which are directly related to the applicant's business of providing water services. These materials shall include pipe, tanks, and recycled tires.
 3. The buildings shall have wainscoting to improve their appearance.
 4. All recycled tires shall be stored behind the buildings, out of view from the Heartland Expressway.
 5. A tree row of evergreens shall be planted adjacent to the Heartland Expressway to screen the facility from view.
 6. The property shall be maintained in a neat and orderly manner. No waste, discarded or salvaged, shall be kept on site.
6. The applicant shall either obtain permission from the State of Nebraska to construct a driveway onto 14th Street or shall obtain an easement from Gering Irrigation District to utilize their driveway onto 14th Street for access.

Chairperson Bowman asked if there were any questions. Commissioner Miles asked how the City will police this area. Engineer Folck said that one of the benefits of a conditional use permit in C3 is that storage is allowed. It becomes a question of whether when storage crosses the line and becomes a salvage yard. Where it is in an AG zone, we have a little more authority here and because we would be doing this as a conditional use permit, that will give us a little more leeway legally as well but not as much of a judgment call when we specify what can and can't be stored on site. Commissioner Miles wanted clarification on how it will be policed. Is it on someone's radar to be patrolled or is it one someone complains about? Engineer Folck said that typically code enforcement is done on a complaint basis.

Commissioner Kautz asked what kind of trailer storage will he use. Engineer Folck said that is a good question and we do not know. Engineer Folck thought it would be primarily flatbeds for his equipment and pipes.

Commissioner Bowman wanted clarification from the map of where Gering Irrigation District is located and how the access would work. Engineer Folck said there is an existing small driveway on the map that is owned by Gering Irrigation District. Their property goes to a corner and then over to 14th Street and showed another property that has no direct access to 14th Street. Engineer Folck showed a portion of the property that is owned by the State of Nebraska.

Commissioner Kaufman asked what will happen if he does not get access. Engineer Folck said that if the conditional use permit has been granted then it becomes null and void.

Commissioner Kautz asked how long will it take the trees to grow, and will it be years while everyone is looking at that. Engineer Folck said it would take a while for the trees to grow. Commissioner Kautz said he just doesn't want it looking like the current property now in three years.

Commissioner Kaufman said she is just concerned that if it isn't policed then it would turn out like his current site. Engineer Folck said that if it became like his current site, we could send him a cease and desist based on the conditional use permit that was granted. We would have to go through the legal system and it is very difficult. Commissioner Kaufman said that is a good view and people drive that all the time and it is important that they see the area looking nice.

Commissioner Shimic asked if a restriction could be added on how many loads he has. Engineer Folck said that could be added. Commissioner Shimic asked if the position of the buildings on the east side, can the buildings be put on the north side to hide the back side of it. Engineer Folck said that it could be required but

could not speak for the applicant as to whether he would find that acceptable. Again, it is a very large lot and a lot of space to work with. Commissioner Shimic said the buildings could cover a lot of the things that we are concerned about.

Chairperson Bowman asked if there was anyone here that wanted to speak about this application.

Rodney Schutte is the current owner of the property. He said they had discussed with the State of Nebraska which does the official mapping, they indicated that there is access granted by the state and are looking for it. They were told by Lincoln and when we did this like 20 years ago, it was all donated by the state and they hope to receive that this week. They indicated that there is an easement for everyone involved, property owners and the ditch company. They were told that there was something on record for that.

With no further comments, the public hearing was closed at 6:24 pm. Chairperson Bowman entertained a motion regarding a Conditional Use Permit for Ag Support Services located at Block 1, Schutte Subdivision, Scotts Bluff County, Nebraska.

Motion by Commissioner Alvizar to recommend approval of the PC Resolution 10-22-1 with the additional condition to be added that equipment be parked to the rear of the buildings that are to be constructed and with the correction of a business name in the resolution. Seconded by Commissioner Miles. There was no discussion. The Clerk called the roll. "AYES": Miles, Shimic, Kaufman, Hauck, Alvizar. "NAYS": Kautz and Bowman. Abstaining: None. Holliday and Keener. Motion carried.

B. Public Hearing for an Adjustment through the Site Plan Review Process located at 1595 Spoke Drive

Chairperson Bowman opened the public hearing for an Adjustment through the Site Plan Review Process located at 1595 Spoke Drive, Scotts Bluff County, Nebraska at 6:25 pm.

City Engineer Folck stated that the City has received an application for Adjustment per zoning code Article 2, Regulation Administration, Section 2.2.3.C Adjustments, Subsection 1: Altering a building standard on Lot 10A, Block 5, Monument View Addition, otherwise known as 1595 Spoke Drive, in the City of Gering, Scotts Bluff County Nebraska.

The applicants, Bob and Vickie Nemnich, have requested relief from the maximum fence height allowance of 6' in a residential zone (Section 5.4.4 of the City's zoning code). The Planning Commission can grant relief of up to 20% under the City's zoning code, which would allow for a fence height of 82.4 inches. The reason for this request is to be able to build a deer fence in order to protect the fruit trees in the applicant's backyard.

In order to grant this relief, the Planning Commission should take into consideration review criteria specified in Section 2.2.3 B., which are as follows:

1. In general, any site plan in compliance with all requirements of this Code shall be approved.
2. In making a determination of compliance, or for site plans accompanying any discretionary review or administrative relief, the review body shall consider whether:

- a. The site is capable of accommodating the buildings, proposed use, access and other site design elements required by these regulations and will not negatively impact the function and design of rights-of-way or adjacent property.
 - b. The design and arrangement of buildings and open spaces is consistent with good planning, landscape design and site engineering principles and practices.
 - c. The architecture and building design uses quality materials and the style is appropriate for the context considering the proportion, massing, and scale of different elements of the building.
 - d. The overall design is compatible to the context considering the location and relationships of other buildings, open spaces, natural features or site design elements.
 - e. Whether any additional site-specific conditions are necessary to meet the intent and design objectives of any of the applicable development standards.
3. The application meets the criteria for all other reviews needed to build the project as proposed.
 4. The recommendations of professional staff.

After reviewing the application, staff has determined the following:

- a. The site is capable of accommodating the buildings, proposed use, access and other site design elements required by these regulations and will not negatively impact the function and design of rights-of-way or adjacent property. **The fence is located within the setbacks of the backyard. It will not negatively impact the function of surrounding lots.**
- b. The design and arrangement of buildings and open spaces is consistent with good planning, landscape design and site engineering principles and practices. **The proposed fence will not affect the design and arrangement of the buildings- only the layout of the backyard landscaping.**
- c. The architecture and building design uses quality materials and the style is appropriate for the context considering the proportion, massing, and scale of different elements of the building. **See the attached picture of the fence. The materials are appropriate for the location.**
- d. The overall design is compatible to the context considering the location and relationships of other buildings, open spaces, natural features or site design elements. **While in most areas of town, staff would have concerns about allowing fences in a residential zone to exceed the 6' design requirement, we feel that in this case the location and context of the fence must be taken into account. This property is located on the very edge of City limits. Everything on the other side of the alley behind the home is outside of City limits. It is also in close proximity to the National Monument, and there is far more interaction with wildlife, deer in particular, in this part of town than there is elsewhere. The proposed fence will be visible to very few other homes in the area. The appearance of the fence seems to be appropriate for the location (see photos).**

e. Whether any additional site-specific conditions are necessary to meet the intent and design objectives of any of the applicable development standards. Staff does not recommend any additional site-specific conditions for this project.

Staff recommends approval of an adjustment of the 6' height limitation to 7'2" for Lot 10A, Block 5, Monument View Addition, otherwise known as 1595 Spoke Drive.

Chairperson Bowman stated she is not going to recuse herself and stated for the record that she lives around the corner from where the applicant lives and can make an impartial judgment on this. Chairperson Bowman also wanted to clarify that Planning Commission is authorized to approve something that is up to 20% higher which would be 82.4 inches and request said it is 7.2 which is 86 inches. That would make the Engineers report say it 3.5 inches taller than what we are authorized to approve. Engineer Folck stated that the number in the Engineers report is incorrect and Planning Commission could approve up to 86.4 inches instead of 82.4 inches.

It was asked if there was a building permit issued for this fence. Engineer Folck stated there was not. When they applied for the permit is when we reviewed the height. The building permit cannot be issued until Planning Commission acts on this. Pending the decision from Planning Commission, it will either be approved for the 86.4 inches or require them to lower the fence to the six-foot standard.

Chairperson Bowman asked for clarification that part of the fence is on the property line, and if the property line adjoins the vacant lot. Engineer Folck stated that it is. Chairperson Bowman asked what recourse a neighbor has if they purchase that lot and the fence is right on the property line and they want to build a fence. Engineer Folck stated that a fence can be built on the property line. If they wanted a separate fence, they would have to put it right next to the one that is already there.

Commissioner Alvizar asked about the material of the fence and if there are covenant restrictions on the type of fencing that can be used. Engineer Folck said the city does not enforce covenants. If there are any covenants in that subdivision then that would be up to the private property owners. If there is an HOA, it would be up to them to pursue that.

Commissioner Shimic asked if this fence is over the property line. Engineer Folck said that we had checked that and with the equipment that we have, it appears to be within inches of the property line. If it is over the property line it would be by an inch or two.

Commissioner Alvizar asked if this is temporary or will they go back to the regular height. Engineer Folck thought the intent was to leave it permanently.

Mr. Nemnich, who is the owner of the property, stated that the reason he put the fence up before the hearing is to show that it can be lowered. He wanted to put it up so people could see what it looked like, there isn't much difference between six feet and seven feet. Mr. Nemnich talked with the main property owner that would look at it the most and looking at the monument, he didn't have a problem with it. Mr. Nemnich said that looking at this fence is like looking at the backstop of a baseball game, and when you get about 20 feet away it disappears. Mr. Nemnich stated that the orchard they are planning on putting in is a dwarf tree fruit orchard then put a dozen trees back there and they will grow five to eight feet tall. Once they reach about eight feet tall it is a non-issue of the fence being tall because you wouldn't be able to see it through the trees.

Mr. Nemnich stated the reason he wanted to put the fence up is that the deer can see up to seven feet and they can jump up to a seven-foot fence. If you put up a fence taller than seven feet, they are not able to see the top of the fence and will not attempt to jump it. Mr. Nemnich said they are on a wildlife urban transition area and there are some other houses in that area on the back side of these properties and they are the only ones that want to put in an apple orchard in our backyard. The deer would decimate if they don't keep them out of there. There are 30 deer that live right there and you can see them every night. Mr. Nemnich stated this is right on the edge of his property and you can see deer tracks all the time. Mr. Nemnich just wants to keep the deer out and doesn't want to go to the expense of putting in this orchard and having the deer eat them up.

Commissioner Shimic asked what is the fence material and how wide is the spacing. Mr. Nemnich said the bottom part is small to keep the rabbits out. It is about two inches wide and as you go up it is a 2x2 square. Mr. Nemnich also said it is a vinyl plastic fence. There is a cable that goes all the way around the top and bottom. Commissioner Shimic asked how long has the fence been up. Mr. Nemnich said about 30 days. It was also asked if he was going to spray to keep the weeds from intertwining in it. Mr. Nemnich said that he is going to plant buffalo grass and it will be maintained even on the outside of the fence.

Royann Unzicker said she and her husband own the empty lot and live just north of Mr. Nemnich. Mrs. Unzicker said this is the only lot left and they are trying to sell it. Mrs. Unzicker stated that their concern was wondering if they had a permit and noticed they do not have any pictures from the street looking to the back. Mrs. Unzicker said they do not have a problem with it but from the front looking in it is a cul-de-sac so the opening in the front is very narrow according to the back. When you look in it looks like his fence and the solar panels are encroaching on that lot. Mrs. Unzicker said the sell ability of that lot is their concern. They had spoken to their realtor who told them to make sure the easements are correct. Mrs. Unzicker stated it doesn't look bad, just looking in, it looks like it is on the lot line of the lot they are trying to sell.

Engineer Folck said it appears to be right on the lot line and we are not licensed surveyors. If it is off, it is off by inches. If the Planning Commission does not grant the adjustment for the taller fence, they would still be able to put up a fence at the six-foot height and would not be required to move that fence. It is just a question of whether height is making a difference in the sell ability of that lot.

Mr. Nemnich said if it is off a little bit, I could move it over a little bit. I don't believe the end poles are off, however I believe the line bows out a little. The poles set down in a sleeve, in the ground, so if there is a pole out of line 1-2", I could move it back into place. If it is out of line, there was no legal survey down, just that he was confident where the line sat.

Mrs. Unzicker mentioned the setbacks for the fence. Engineer Folck said there would be setbacks for the solar panels but not for the fence. Typically, the issue with the fences and the reason we allow them on property lines is because if one has a one-foot setback and the person on the other side has a one-foot set back then you have empty space in between and it is not beneficial to anyone.

Chairperson Bowman stated that all of the fences around the other properties are wood fences. Commissioner Miles added that there are some plastic fences in the neighborhood as well.

With no further comments, the public hearing was closed at 6:45 pm. Chairperson Bowman entertained a motion regarding an Adjustment through the Site Plan Review Process located at 1595 Spoke Drive, Scotts Bluff County, Nebraska.

Motion by Commissioner Hauck to approve the Adjustment for 1595 Spoke. Commissioner Kautz seconded the motion. There was no discussion. The Clerk called the roll. "AYES": Miles, Kautz, Shimic, Bowman, Kaufman, Hauck, Alvizar. "NAYS": None. Abstaining: None. Absent: Holliday and Keener. Motion carried.

6. City Engineer report

Engineer Folck stated that we did receive another Conditional Use Permit application so we will have a meeting on November 15th. We have a draft of the regulations that we had spoken about allowing more things to downtown sidewalks like park benches, planters, and things like that. We hope to have that on the same agenda as the Conditional Use Permit.


Commissioner Miles moved to adjourn the meeting. Commissioner Kaufman seconded the motion. There was no discussion. The Clerk called the roll. "AYES": Miles, Kautz, Shimic, Bowman, Kaufman, Hauck, Alvizar. "NAYS": None. Abstaining: None. Absent: Holliday and Keener. Motion carried.

The meeting adjourned at 6:47 p.m.



Mary Bowman, Chairwoman

ATTEST:



Carol Martin, Secretary