

Duncan
Planning and Zoning Commission
Minutes
July 18, 2016

The regular meeting of the Village of Duncan Planning and Zoning Commission was called to order at 7:30 PM, July 18, 2016 by Chairman Gary Schlesinger. The Chairman publicly stated to all in attendance that a current copy of the Nebraska Open Meetings Act was available for review and indicated the location of such copy in the room where the meeting was being held. Commission members present were Schlesinger, Jamie Frey, Betty Kropatsch, Travis Stempek and Abby Wright-alternate. Absent: Jamie Frey, Joe Runquist and Abby Wright-alternate. Also in attendance were Don Reves-Zoning Administrator, Josh Dahlberg, Dustin Schafer, Gene and Elaine Drozd and Chris Staroscik. Motion was made by Stempek and seconded by Schlesinger to approve the agenda. Vote was as follows to approve the agenda: voting aye-Schlesinger, Kropatsch, Stempek. Absent: Runquist, Frey, Wright. Voting nay-none. The Chairman declared the motion carried. Motion to approve the meeting minutes from April 18, 2016 meeting was made by Kropatsch and seconded by Stempek. Vote was as follows to approve the agenda: voting aye-Schlesinger, Kropatsch, Stempek. Absent: Runquist, Frey, Wright. Voting nay-none.

COMMUNICATIONS:

Zoning Administrator-none

Comments from the floor-Guests requesting to address the Planning and Zoning Commission- none

NEW BUSINESS:

Sale of portion of property at 960 Main Avenue and usage of property—Chris Staroscik and Eugene Drozd.

Schlesinger addressed this issue as a two-part process. Part A being “what if” and Part B, the sale of the property. Schlesinger allowed 15 minutes discussion on Part A and 15 minutes discussion on Part B. Schlesinger clarified that each person coming forward would be allowed 15 minutes followed by the Planning Commission’s discussion on Part A followed by Part B. Mr. Staroscik wanted to sell a piece of property located west of 960 Main Avenue to Eugene Drozd. Schlesinger clarified for Mr. Staroscik that Staroscik would like to build a garage on this recent purchased property. The property is across the alley south of Mr. Staroscik’s current residential property. Schlesinger continued that Mr. Staroscik had followed the steps to build on that property. *Schlesinger:* If Mr. Staroscik cannot build his garage, Eugene Drozd is interested in buying that property with a clause in it that Drozd can construct on the property what he wants to construct. Schlesinger stated that Mr. Staroscik purchased extra property to follow Zoning requirements of 5000 square feet for a lot. Mr. Staroscik has stated this in writing and it has been certified with the State of Nebraska. Schlesinger asked the Planning and Zoning Commission to discuss the pros and cons of this request because it would affect Part B (sale of property to Eugene Drozd). Kropatsch asked Mr. Staroscik if this garage would be for personal use and he answered to the affirmative. Kropatsch stated that he did not have street access, alley access only. Kropatsch’s interpretation of the zoning ordinance is that there must be

street access. Mr. Staroscik asked if he could have street access from across his property starting on 10th Street proceeding south and crossing the alley? Kropatsch asked if he applied for a garage permit and his response was, "no, not yet." Kropatsch continued by saying, "your reasoning for coming in front of the Commission for this is...?" *Schlesinger*, "because if he is given permission to build a building he can apply for a permit." Kropatsch said one of the first things you do is apply for a permit and *Schlesinger*, "no, because first of all, he has to verify that he can put a building on this property because of the question posed of accessing this property." *Schlesinger* asked where in the zoning ordinance it says that there must be street access? *Reves* located it as Section 3.09.02 Article 6 (Certificate of County Register of Deeds) Zoning Ordinance 09-164 Administrative Plats. *Reves* stated that this is not a legal lot because it does not abut a public street. *Schlesinger* said it is his belief that every owner owns half the alley. *Reves* replied to the negative. *Schlesinger* reiterated the question of ownership of the alley and the owner must maintain it, but the city has right to run an alley through there. *Stempek* asked Mr. Staroscik how he currently accesses his garage and Mr. Staroscik replied he can access it both from the street and the alley. *Schlesinger* asked how various property owners access their garages? From the alley. *Reves* pointed out that each of those property owners has an accessory building on their property with a principle building. *Schlesinger* said that the property Mr. Staroscik has right now is adjoining his property. Kropatsch pointed out that it is not adjoining because it is separated by an alley. *Schlesinger*, "where in the Village Code Book of Ordinances that the village owns the alleys?" The Code Book, Section 92.03 General Regulations, states that the Board of Trustees shall have the care, supervision, and control of all public Highways, bridges, streets, alleys.... *Schlesinger* stated that nowhere does it state the village owns the alleys. *Schlesinger* asked where it says that this garage is being built in this alley? *Reves* replied that it is not a legal lot. *Reves* agreed that it is registered with the Register of Deeds, Platte County, and he has questioned Register of Deeds numerous times, but their reply to him is that they, Platte County, are not the enforcers of our ordinances. *Reves* explained that an accessory building cannot be built on a lot that does not contain a principle building according to our zoning ordinance. *Schlesinger* maintained that the property in question is part of his current property because, according to *Schlesinger's* understanding, the alley belongs to Mr. Staroscik. *Reves* stated the lot never went through the plotting process because Mr. Staroscik filed with the Register of Deeds prior to *Reves*, Zoning Administrator, receiving any paperwork. *Schlesinger* asked if there is a reason that the ordinance cannot be changed? Kropatsch said it doesn't, but then everyone in town could do it. *Reves* stated that on the bottom of the zoning application it states if the applicant does not agree with the decision a zoning variance can be requested.

Continuing onto Part B, Mr. Drozd stated that Mr. Staroscik asked him if Mr. Drozd would like to buy the property from him. *Schlesinger* reiterated that if Mr. Drozd purchases the property from Mr. Staroscik, which would be adjacent to Mr. Drozd's current property and asked if Mr. Drozd puts up a garage for storage of personal property, would he be allowed to do this? He has street access from the south. Kropatsch said it could not be done because Mr. Drozd property is zoned commercial and this property in question is zoned R-2. *Schlesinger* wanted to have pointed out to him that the property in question would be just a continuation of Mr. Drozd's current property. Kropatsch stated that it would be crossing zoning districts. *Schlesinger*, "If Mr. Drozd requested a change of zoning, would he be stopped?" Kropatsch asked why would anyone want a commercial district in the middle of a residential district? *Schlesinger* said he would have a L-shaped piece of property. Kropatsch said if the Commission would go ahead with this there would have to be a public hearing. Kropatsch asked Drozd what he specifically would be using this property for? Drozd said he would build another self storage unit there. Kropatsch explained, according to current zoning regulations, self-storage units are not permitted in commercially zoned areas. *Schlesinger* said being an existing structure, expansion would be allowed. *Reves* stated the zoning regulations states that enlarging a current, non-conforming structure is not permitted because it does not meet the qualifications. *Schlesinger*

said if the new structure is not attached then it doesn't meet the definition of enlargement. Continuing, Schlesinger stated that if Drozd classifies it as a garage for storage for boats, cars etc. he has a street access from the south. Kropatsch stated that the lot in question has nothing to do with Drozd's current lot. Schlesinger said it would once he purchased it because it is adjoining property. Reves said it could not be done because the lot in question is a lot of record at the time zoning was passed, meaning it was zoned residential. Drozd then asked what he could do with the property other than mow the grass? Drozd asked if it could be rezoned and Kropatsch felt a legal opinion needs to be pursued prior to zoning change with an application for a zoning change before a public hearing could be arranged. Kropatsch felt by what is in the current zoning ordinance the Commission cannot say yes or no to the question without further inquiry. Mr. Staroscik stated the map he presented was accurate according to the surveyor as of July 31, 2014. Kropatsch restated that Mr. Staroscik purchased this property from Mary Koci with the intention of building a garage. Since discovering that garage could not be built Mr. Staroscik wanted to sell the property to Mr. Drozd. Kropatsch asked Mr. Staroscik when he purchased the property if he did any investigatory work to see if his intentions could be fulfilled? Mr. Staroscik replied to the negative because he had purchased other properties prior to zoning without asking if this was allowed. Kropatsch directed her statement to Schlesinger that she felt that an honest discussion could not continue with three members of the Commission absent. Stempek concurred. Stempek said Planning and Zoning has rules and these rules should be abided by. Stempek continued that arguments can ensue about nitpicking, but what matters is we need to go by the book. Schlesinger would look into rezoning, but Kropatsch said that it was just his point of view right now and that there are 3 absent members that do not have a point of view. Stempek said a lot of factors: alley, adjacent properties, must be looked at before any simple decision could be made.

Schlesinger said time was up and he advised Mr. Drozd and Mr. Staroscik to look into what they want to do and get it lined up for October Planning and Zoning meeting.

Kropatsch requested to have the October meeting date changed from October 17th to October 24th due to her absence unless someone else wanted to take minutes. Motion was made by Schlesinger to change the October meeting to October 24th. Seconded by Stempek. Vote was as follows: voting aye-Schlesinger, Kropatsch, Stempek. Absent: Runquist, Frey, Wright. Voting nay-none.

REPORTS/COMMENTS:

a. Commission Member Comments:

Stempek reported that nothing further has been given from the NDOR office in Norfolk regarding the intersection of Main Avenue and Highway 30. It is in front of NDOR, but they are looking at ways to finance it. Reves had a question of how far is the state right-of-way? CVA had a question for patching purposes. No one seems to know who the owner is. Stempek said the railroad owns majority of it from each side of the tracks and the county owns a small portion of it. Schaefer questioned who is responsible for maintenance and how far each entity is responsible for. Stempek said he would look into this.

b. Commission Chair Comments:

Schlesinger praised the discussion tonight of the Commission. Schlesinger continued with comments regarding paving the street in the Dahlberg Addition and requested the Village Board members to review the Code Book of Ordinances for the betterment of the community. Schaefer came forward regarding Schlesinger's comment of Village Board members reviewing the Code Book. Schaefer stated that Schlesinger's comments regarding paving the Dahlberg Addition is located in the village's Code Book and not the Planning and Zoning Book. Planning and Zoning came into being after the Dahlberg Addition was built.

SCHEDULING NEXT MEETING:

October 24, 2016 7:30 p.m.

ADJOURNMENT:

Motion was made by Schlesinger and seconded by Stempek to adjourn. Vote was as follows: voting aye-Schlesinger, Kropatsch, Stempek. Absent: Runquist, Frey, Wright. Voting nay-none. The Chairman declared the motion carried.

All meetings are open to the public and a current agenda for said meetings will be posted and available for public inspection at the office of the Village Clerk 10 days following the Commission meeting.

Minutes recorded and submitted by:

Betty Kropatsch, Commission Secretary