

**PLAN COMMISSION**

**MINUTES**

Wednesday, July 22, 2020

**Present:** Bill Fitzsimmons, Jeff Nelson, Victoria Graves, John Wetzel, Craig Mack, Cindy Wermuth, Mike Crotty, Butch Trevor

**Absent:** Peter McDermott, Dennis Kelly, Ashley Pankey

**Staff:** Jeff Anderson, Chris Mathias

**Others:** None

**1. Call to Order**

Chairman Fitzsimmons called the meeting to order at 4:00 p.m.

**2. Approval of Minutes**

**Motion made by Commissioner Wetzel; seconded by Commissioner Crotty, to approve the minutes from June 24, 2020. Motion carried unanimously.**

**3. New Business**

**a. Zoning Code Update**

**Fence Update**

Mr. Mathias explained to the Commission that City Council passed the prohibition on chain link fences in the front yard. Mr. Mathias would now like to address three more matters based on Council's input and Staff recommendation. This includes fences taller than six feet, "grandfathered" fences and removal of chain link exceptions for "public service and utility cases."

**1. Fences Taller than Six Feet**

Mr. Mathias stated that fences taller than six feet are allowed per current City Code if the setbacks of a major accessory structure are met. Because of this, Staff believes there is an interest in reconsidering fence height. Staff would rework Table 35-3201.3 in the Code of Ordinances to not allow fences over six feet regardless of where they are in the backyard. Staff could also rework the non-residential table in the Code of Ordinances if that was the Commission's desire. Mr. Mathias stated in instances of unusual circumstances, a variance could still be requested to have a fence over six feet in height. The Commission discussed instances where exceeding the six foot height requirement may be used. Consensus of the Commission was for Staff to look into reworking the tables in the Code of Ordinances for both residential and non-residential fences to not exceed six feet.

**2. “Grandfathered” Fences**

Mr. Mathias stated when he brought the prohibition of chain link fences in the front yard to City Council, it was brought up whether “grandfathered” fences would be allowed to stay indefinitely or if a ten year amortization period would be appropriate to bring fences into compliance. Currently, City Code applies to when a fence is removed, or the fence needs major repair. Legal staff indicated that the City could have a 10 to 15 year amortization period for fences to be replaced based on fences generally becoming fully depreciated in that time period. The 10 to 15 year time period would begin from the date the ordinance was passed. The Commission discussed the difficulty in inventorying all nonconforming fences within the City and the difficulty in implementation. They also discussed at what point a fence could be repaired versus complete removal or replacement. Consensus of the Commission was not to pursue an amortization period.

**3. Chain Link Exceptions for “Public Service and Utility Cases”**

Mr. Mathias stated that when he brought the prohibition of chain link fences in the front yard to City Council, Alderman Wendt asked Plan Commission to consider removing the chain link exceptions for “public service and utility uses” (electric substations, phone companies, etc...). Mr. Mathias researched the topic with MidAmerican and their response was there that they need to follow Federal guidelines. Per those guidelines, MidAmerican is allowed chain link fences at their sites. They did indicate that at newer sites, some concrete wall/panel designs have been done. MidAmerican would rather not retrofit old sites but are not opposed to doing concrete wall/panel fences in lieu of chain link. Mr. Mathias stated this new requirement would be in all areas except Resource and Industrial Districts. The Commission discussed areas where this new requirement could cause concern, one example being City parks. Consensus of the Commission was to leave the current City Code as is.

**Personal Storage**

Mr. Mathis stated he is presenting recommendation to remove personal storage from the “B-4” district. This would still allow personal storage in the “I-1” and “I-2” districts. This is a simple change and impact would be mostly in the John Deere Road area. Mr. Mathias also stated City Council wanted Plan Commission to consider “tightening up” personal storage regulations. By eliminating personal storage from the “B-4” district, personal storage regulations could be left unaltered. Mr. Mathias would like to schedule a public hearing for the second week of August on this matter. Consensus from the Commission is to move forward with Staff’s recommendation of removal of personal storage from the “B-4” district.

**Building Color**

Mr. Mathias updated the Commission that Staff received new legal guidance on the issue of regulating building color. This matter was discussed at the last City Council meeting as issue was brought up with the “Rainbow House” at 1625 9<sup>th</sup> Avenue. The “Rainbow House” had several code complaints and the one given to Mr. Mathias was for the paint color of the house. Mr. Mathias issued a notice to change the paint color which became

a political issue. Mr. Mathias and Mr. Anderson explained that Corporate Counsel reviewed the Zoning Code and his opinion was painting a house does not meet the definition of “development” per City Code. The language in the code refers to development as being the trigger for enforcing or regulating the color scheme. This means if something required a building permit, it would be considered development, and color regulations could apply. Also, Corporate Counsel indicated with the evolution of “mural law,” case law is advancing in some geographic locations or jurisdictions where a house painted as Van Gogh’s Starry Night was exempt due to political, commercial and personal speech. A house painted with emojis was upheld on a First Amendment Constitutional basis that it was allowed expression of speech. and went back to the definition of “development.” From this opinion, Staff will no longer be enforcing paint color when it comes to painting a house. Mr. Mathias stated he wanted to be proactive on this matter by bringing this to the Commission’s attention and suggesting that City Code amendments may be warranted as current City Code seems ambiguous. The Commission discussed aesthetic enforcement on homes and property rights. Consensus from the Plan Commission was to research more on the topic and have Corporate Counsel attend an upcoming meeting.

**4. Old Business**

None.

**5. Public Comment**

None.

**6. Adjourn**

Chairman Fitzsimmons adjourned the meeting at 5:15 p.m.

Respectfully submitted,  
Fawn Schultz, Community & Economic Development Administrative Assistant  
Recording Secretary