**Duncan**

**Planning and Zoning Commission**

**and**

**Public Hearing**

**Minutes**

**October 24, 2016**

The regular meeting of the Village of Duncan Planning and Zoning Commission was called to order at 7:30 PM, October 24, 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, Joe Runquist and Abby Wright-alternate. Absent: none. Also in attendance were Don Reves-Zoning Administrator, Josh Dahlberg, Dustin Schafer, Gene 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, Frey, Kropatsch, Stempek, Frey, Runquist and Wright-alternate. Voting nay-none.  The Chairman declared the motion carried.Motion to approve the meeting minutes from July 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:**

Public Hearing for the purpose of hearing testimony of support, opposition, criticism, suggestions or observations for: proposed Amendment to Article 4, Section 4.09.03 of the Duncan Zoning Ordinance to add 'Storage Units' to the list of Conditional Uses.

Mr. Eugene Drozd discussed his being troubled with a letter he received from JEO to cease and desist within 30 day from continuing his storage business. He contacted an attorney to research options. Drozd continued that he purchased the building in 2011 from Jack Sokol which initially was a commercial building, not as commercial as Drozd has it now. Drozd saw various people extricating materials from the building prior to his taking ownership. Drozd stated that he was given permission by Dave Potter of JEO to put a storage unit there. Schlesinger*: Did you apply for a permit when you started this project?* Drozd said he had some kind of permit for $20. Schlesinger: *The village board ok’d it?* Drozd said permission was granted. Kropatsch: *Can you give me a date for that permit?* Drozd wasn’t sure of the exact date. Dustin Schaefer said the permit was issued in 2013. Kropatsch: *The permit was issued after the fact. That was when Mr. Schacher* (former Zoning Administrator) *said he had to have one* (permit). Schlesinger inquired of Mr. Drozd if he was ever contacted to put a halt to the project. Drozd said nothing was in writing. Kropatsch rebutted by explaining that at the onset of this project, a permit was not issued. Prior to the issuance of a permit Kropatsch stated, as Chairperson of the Village Board at that time, she inquired of Mr. Drozd his intentions and Drozd stated that his son was going to utilize the building as a machine shop, or something as such, which would be permissible because it is in a commercial district. He continued with the project and she asked again and Drozd replied with the same answer. When the project was near completion it was found out to be a storage unit. The Village Board took it upon themselves not to stop Drozd from proceeding because of his investment and allowed him to continue. Kropatsch continued that the village should have consulted JEO for an opinion and stopped him, but being a small town, and looking out for his business, the village board made the decision to allow him to pursue his project. Runquist questioned after three years what happened? Kropatsch continued that after attending a couple of Nebraska Planning and Zoning Association meetings in Kearney, she asked a couple attorneys about this situation. Their response was to shut this business down because storage units are not permitted in commercial districts. Kropatsch’s personal opinion is not to shut this down, but to take some kind of action where everyone could come to some kind of agreement. After speaking with the current engineer, Jeff Ray, from JEO, he too, agreed about shutting this down, but within the last few weeks a conditional use was suggested so Drozd could continue his business. Back and forth discussion between Kropatsch and Drozd as to what the property was initially used as—private garage versus storage shed. Runquist remarked, *No one can tell if there was compensation of some kind as far as use of the building as a storage unit*. Kropatsch said there is not documentation, and the former owner has passed away. Kropatsch continued that what is trying to be done now is to get this property as a conditional use. Everyone was in agreement that this project, initially, was mishandled and Stempek stated that we need to move forward. Schlesinger in the beginning was against this project, but after visiting with Mr. Drozd, Mr. Drozd went through the channels to get this approved. Schlesinger made the motion to approve Amendment to Article 4, Section 4.09.03 of the Duncan Zoning Ordinance to add 'Storage Units' to the list of Conditional Uses and seconded by Runquist. Vote was as follows to approve Amendment to Article 4, Section 4.09.03 of the Duncan Zoning Ordinance to add 'Storage Units' to the list of Conditional Uses: voting aye- Schlesinger, Frey, Kropatsch, Stempek, Frey, Runquist. Voting nay-none. Schlesinger closed the public hearing. Schlesinger will bring the amendment change to the Village Board at their November 14 meeting.

Schlesinger addressed the request by Chris Staroscik to get approval for an application for administrative plat. Jeff Ray, JEO engineer, said this item should be handled administratively and not brought before the Planning and Zoning Commission. This is handled by staff and that it is a checklist of yes/no items. From that point the plat is permitted or denied. Schlesinger asked if it permitted/denied by a board member. Ray replied that it was completed by the Zoning Administrator. The subdivision regulations clearly outline what is or is not permitted. Ray noted the purpose of an administrative plat is that it does not become a long drawn out process. It is quite cut and dried and the petitioner doesn’t have to wait a long time, going through public meetings, etc., for approval. Ray said there is always an appeal process if the petitioner does not agree with the denial of application. Schlesinger asked, *since Mr. Reves, Planning and Zoning Administrator,* *has adjacent property to the property in question, Reves would have a conflict of interest*. Ray concurred. Schlesinger explained that Mr. Staroscik, petitioner, has property north of the alley and property that he would like to acquire south of the alley, the properties would be adjacent to each other. Ray asked if a public alley separates them and the response was to the affirmative. Ray commented that the public alley does not constitute adjacency. Schlesinger asked, *who owned the alley?* Ray pointed out that, in the original plat the village owned the alley. Ray expressed that it appears that the alley is platted and not an easement. Property owners maintain the alleys, but the alley is still owned by the village. If Mr. Staroscik would want to acquire the property in question the village would have to vacate the alley. Vacating alleys is from street to street not from property owner to property owner according to Mr. Ray. Vacating the alley would have to provide easements for utilities. The lot in question was not a conforming lot because there is no street frontage. Mr. Staroscik asked if anything could be built upon the non-conforming lot? Ray said we would have to get creative with this lot. Schlesinger noted that nothing could be built upon it because of its restrictive size. Ray stated that the reason for zoning is so this type of situation does not get replicated in the village. Schlesinger asked Ray, *What can Mr. Staroscik do so he can build a garage on this piece of property?* Mr. Ray said he needs to work with Mr. Staroscik to see what Mr. Staroscik wants and then to get a variance. Schlesinger questioned, *Why should Mr. Staroscik get a permit to build a garage if he doesn’t even know if he can build anything on this property?* Ray reiterated that what Staroscik wants, is to make an argument to get a variance and the variance comes before the Board of Adjustment to get their approval and if approved than he can get a permit. Frey said, *If, in the future, there is an application for an administrative plat is there a process that the staff should have, in writing, to give to an applicant to let them know what the process is?* In this situation, continued Ray, *If this would have been handled as an administrative plat this would have been denied because of the alley separating the two properties. If this occurred again the applicant could go to the Zoning Administrator, Chairman of Planning and Zoning and they, in turn, would refer to Mr. Ray to see how to work this out.* Frey stated, *Applicants need to know where they stand prior to be approved or denied.* Mr. Staroscik asked if he sold this property to an adjacent property owner to the south, would that be permissible? Ray said it would then be classified as one lot because it has legal frontage. Ray said benefits could be determined by further investigations. Ray asked when the lot was created and Kropatsch replied after zoning was in effect, so it is an illegal subdivision? Schaefer was in agreement with the determination of the Zoning Administrator. Schaefer asked if Mr. Staroscik should appeal to the Board of Adjustment for approval or denial to deem it an illegal lot as the Zoning Administrator originally stated? Ray stated, *There is a reasonable timeframe for appeals, typically 30 days, not 18 months.* Mr. Ray asked Mr. Schaefer how he wanted to handle this; *with the subdivision, you could go back to the village attorney process and make it null and void, go back to the original property owners and becomes part of the house that was there, or this is an investment in community and something we want done and look at how else it could happen through a replatting or a variance.* Schlesinger felt the Commission was misinformed and that is why this is taking so long. Schaefer said that Mr. Staroscik was free to go before the Board of Adjustment. Mr. Ray concurred with Mr. Schaefer in that this is the process. Kropatsch felt that the misinformation was not intentional. Mr. Ray finalized that the property was illegally subdivided after the subdivision regulations were in place. Therefore, the Zoning Administrator denied the application because it was an illegal lot. Reves stated that no permit was requested. Schlesinger was not aware of this matter being done illegally, but was only brought up at this meeting. Mr. Ray’s recommendation was to apply for a permit, knowing it will be denied, then take it to the Board of Adjustment and they will determine if the Zoning Administrator interpreted it correctly according to regulations. Staroscik asked if street access could be attained by changing the alley a street. Ray’s reply is that in Duncan’s regulations is that the streets are 60 feet in width and there is nowhere in the alley 60 feet could be reached. Ray said it is up to the Commission on how to proceed. Runquist said he would like to see him build a garage on it. Frey feels that this is out of the Commission’s hand and it is up to the Village Board and ask for the denial of the application and then appeal it to the Board of Adjustment. Schaefer asked if that would be the direction the Commission would want to go?

Going forward, Schlesinger felt that Mr. Staroscik should go forward and appeal it. Mr. Ray said there is criteria that must be met before going to the Board of Adjustment and we need to make sure these criteria are met before proceeding any further. Since the Commission cannot act on it there is no need for any further discussion. Schaefer said that it is very clear that it is an illegal lot and he would like to look into a variance a little more, but he would dislike having Mr. Staroscik spend $50 that would end up being unproductive.

REPORTS/COMMENTS:

None

**SCHEDULING NEXT MEETING:**

January 16, 2017 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