

**CITY OF MITCHELL
PLANNING COMMISSION MINUTES
MINUTES
NOVEMBER 8, 2010**

Presiding: Chairman Meyers

Present: Meyers, Griffith, Larson, Fergen, Molumby, Everson, Smith

Absent: Schmucker

Others: Lyndon Overweg, Tim McGannon, John Hegg, Neil Putnam, Mayor Lou Sebert

Agenda: Motion by Everson, seconded by Griffith to approve the agenda as printed. All Members present voting aye, motion carried.

Minutes:

Motion by Molumby, seconded by Griffith to approved the minutes of October 25, 2010. All members present voting aye, motion carried.

Next Meeting:

Motion by Larson, seconded by Everson to schedule the next Planning Commission meeting for the November 22, 2010 at 12:00 pm subject to the chair for hearings on petitions for rezoning and applications for variances and conditional use permits for publication and the Finance Officer be directed to give notice according to statute. All members present voting aye, motion carried.

Rezoning:

LAB LLC, on the matter of rezoning property described by Lots 11 & 12, Block 13, Gleeson's, which shall be known as 1218 E 1st Ave, Mitchell, SD from its present use and now designated R-4 High Density Residential District to NS Neighborhood Shopping District as defined by the ordinances of the City of Mitchell, South Dakota.

Applicant Robin Ackman testified before the commission and asked for the property to be changed from R-4 to NS to be compatible with Rob's Short Stop. The applicants are interested in pursuing an off-sale alcohol license.

Neighbor Martin Eilts stated the existing variance and conditional use permit approved by the city was to put it 'as was'. He stated rezoning process is a burden on the neighbors. He stated this may be spot zoning.

Attorney Don Petersen, representing the applicants, stated the request is in line with Rob's Short Stop. R-4 doesn't allow off-sale package alcohol sales. He mentioned the vicinity of this

property on Foster Street is close to Toshiba and the hospital. Petersen said the NS district is a 'transitional zone' from residential to commercial uses. He stated the neighborhood is not totally residential. He indicated that sometime Foster Street will be enhanced. First Avenue is still a state highway.

Chairman Meyers questioned Petersen in regards to Petersen's interpretation of the whether off sale alcohol sales are available under the NS zoning. Petersen's response was that in NS this type of activity is silent. However, he stated that there is precedent in other parts of the city. It is explicit in the HB district according to Petersen. Examples were provided by Petersen.

Meyers noted the distinction between convenience stores that provide fuel sales. He provided a brief history of 'Robinson's Grocery Store'.

Petersen stated the applicants want to improve the corner and be good neighbors. They want to improve their investment.

Dean Ulmer, stated he believes in free enterprise and wishes the applicants success. He read the standards set forth in the NS district code. He lives 8 blocks away. He reminded the commission of the location of the pool and school. He is concerned about the children in the area. Ulmer thought the applicants had poor planning. He asked the commission to reject the application.

Kathy Gouin, Family Christian Center testified in opposition of the application. She is concerned about the number of children in the area. The kids may have more freedom to roam in this area.

Geri Beck testified as Business Owner. She is the owner of the Cornerstone in downtown. She is supportive of the applicants' request.

Dean Ulmer again spoke in opposition of this application.

Jane Goldammer, neighbor, said don't need alcohol or video lottery near the park and school.

Greg Lyman, an applicant, testified for the purpose to rebut claims of the opponents. He stated all the convenience stores in Mitchell provide off-sale alcohol sales. Zoning is confusing. "Why are we different?" They are looking for options to make money. He said the town is anti-business. He addressed the concerns about children in the area.

Kathy Gouin, again addressed the commission in regards to concern about children in the vicinity.

Ray Borgen, a neighbor, provided a summary of past planning commission actions in regards to this project. He read aloud excerpts of the minutes, notices, and other documents. He

reminded the commission of a discussion at a previous planning commission in which the city attorney offered opinions on zoning and alcohol sales. He reminded the commission the applicants have been approved for a convenience store and gas station by a conditional use permit. Borgen also reminded the commission there is neighborhood opposition. He also provided quotes from the applicants that were published in the *Daily Republic*. He stated the NS district doesn't say anything about alcohol sales. He stated this action is referable. He also expressed concern about spot zoning.

Planning Commission Discussion:

Everson thought this request is still 'spot zoning'. Larson agreed and noted this property is only two lots. Meyers provided excerpts from the 1990 City of Mitchell Comprehensive Plan in regards to spot and strip development. Meyers asked if the applicants have made a request to the council for an alcohol license. The response was no. Meyers reminded the audience that licensing is a council decision. Attorney Petersen and Applicant Backlund also responded to questions.

The planning commission examined the city zoning map and noted the location of applicant's property in relation to neighboring residential property. They noted the location of other commercial zoning districts. The commission considered testimony provided at this hearing and previously held hearings and submitted documentation. The commission considered the vicinity to residential, current zoning status, traffic impact, comparison to other properties, appropriateness of alcohol sales, compatibility to the comprehensive plan and objections of neighboring residents.

Based on testimony and other considerations concerning the appropriateness of the rezoning.

Motion by Larson, seconded by Everson to recommend to the city council the application for rezoning the property to be denied. Roll Call: Griffith yes, Everson yes, Larson yes, Fergen yes, Meyers yes, Molumby no. Motion carried.

Motion by Larson, seconded by Molumby to adjourn. All members present voting aye, motion carried.