

MINUTES
EVANS CITY COUNCIL
Regular Meeting
March 15, 2011 - 7:30 P.M.

CALL TO ORDER

Mayor Achziger called the meeting to order at 7:30 p.m.

PLEDGE

ROLL CALL:

Present: Mayor Achziger, Mayor Pro Tem Morris, Councilmembers Brown, Proctor, Schaffer and Wells

PRESENTATION:

Mayor Achziger presented a plaque of appreciation to Debbie Lambert for her dedication and service to the City of Evans.

PROCLAMATION:

Americanism Day

AUDIENCE PARTICIPATION:

There was no audience participation.

APPROVAL OF AGENDA:

Councilmember Schaffer made motion, seconded by Councilmember Brown to approve the agenda as presented. Motion passed with all voting in favor thereof.

CONSENT AGENDA:

A. Approval of Minutes of the Regular Meeting of March 1, 2011

Councilmember Wells abstained from voting on the approval of the minutes due to being absent from the March 1 City Council meeting.

Mayor Pro Tem Morris made motion, seconded by Councilmember Brown to approve the Consent Agenda as presented. Motion passed with all voting in favor thereof.

NEW BUSINESS:

A. Public Hearing – Resolution No. 03-2011 - Use by Special Review – Auto Repair in the C-3 Zoning District – 1006 36th Street (M.Y. Garage)

Mayor Achziger opened the Public Hearing.

Sheryl Trent, Community and Economic Development Director, reported the following:

The City received an application from Kelvin Kerst, property owner, and Marwan Yasin, tenant, for a Use by Special Review for an auto repair shop at 1006 36th Street. This is the third application for this same use on the same property. The property is zoned C-3 but also contains a

legal, nonconforming, single-family house, which is rented by another tenant. This application was first reviewed and denied by the Planning Commission on April 23, 2010. The application was again reviewed and approved by both the Planning Commission and the City Council with conditions on May 27, 2010. Those conditions were not met due to a variety of reasons, including economic and permit related reasons.

Mr. Yasin also had a U-Haul business on the property, which is no longer active. The shop building was constructed in 1995. The building permit describes it as a "pole structure for retail business with attached storage." Business license records indicate the property housed AAA Quality Lawn Care Service between 2000 and 2006.

Section 19.44.020.B of the Evans Municipal Code lists the following criteria for consideration of Uses by Special Review, followed by staff's assessment:

1. "The proposed use shall be found to be unlikely to harm the health, safety, or welfare of the City or its residents."
 - In order to protect the health, safety, and welfare of the City or its residents, the property needs to be kept clean so that there is no outdoor storage of parts. The number of vehicles allowed on the property at any time needs to be limited as well. The property is within the U.S. 85 Overlay District, described in Chapter 19.62 of the Evans Municipal Code. Most of the standards in the Overlay District Design Standards do not apply because it is an existing building and no changes to it are proposed; however, Section 19.62.200 states, in part: "Outdoor storage areas, where permitted, shall be kept orderly and free of junk."
2. "The proposed use shall benefit the City in terms of employment, tax revenue, or other similar effects, as compared to the absence of the proposed use."
 - The proposed business would be run by Mr. Yasin. Other uses of the property are likely limited.
3. "The proposed use shall be consistent with the Evans Comprehensive Plan and shall be compatible with the surrounding area."
 - The area is designated as "Urban Residential" on the Future Land Use Plan Map of the 2010 Comprehensive Plan. "Urban Residential" is primarily single-family residential, but urban residential neighborhoods are also "encouraged to include a mix of uses including multifamily residential, neighborhood-scale commercial and employment uses (determined by location criteria), and public and civic uses." The property and surrounding area are zoned C-3, High-Intensity Commercial, and the intent of this zoning district is stated in Section 19.26.010. "It is the intent of the City of Evans, when establishing the C-3 zone district, to provide an area for serving the daily needs of the total community." Repair shops are allowed by special review in the C-3 zone district and are defined as "[a]ny building, premises, and/or land in which or upon which buildings used for the repair or servicing of major appliances, vehicles and equipment, such as plumbing shops, electrical shops, sheet metal shops, and automobile garages and similar uses." The surrounding properties contain a mix of uses. To the east across an alley is a legal, nonconforming, single-family home and a six-plex. Directly to the south is a legal, nonconforming, single-family home. To the west across the unimproved right-

of-way of St. Vrain and the Evans Ditch is Corman Mechanical, a warehouse-type building built in 1999. To the north across 36th Street are two four-plexes. Multifamily buildings used to be allowed by right in the C-3 district but now require a Use by Special Review approval.

4. "The location, size, design, and operating characteristics of the proposed use shall be compatible with the existing and proposed future land uses within the general area in which the proposed use is to be located and will not create significant noise, traffic, or other conditions or situations that may be objectionable or detrimental to other permitted uses in the vicinity. Reasonable conditions may be placed on uses by special review to protect the public health, safety, and welfare by mitigating impacts."
 - The appearance of the building would not be changed. There is no landscaping on the property and the parking area is unpaved.. There are numerous cars on the property at any given time. The application states the hours of operation would be Monday-Friday, 9:00 am to 5:00 pm. which would prohibit business being conducted outside of those days and hours (no weekends, for example). Noise and traffic during the hours of operation would likely be compatible with the C-3 zoning of the area; however, the business is somewhat incompatible with the "grandfathered" single-family homes in the area.
5. "The site shall be physically suitable for the type and intensity of the proposed land use."
 - It is staff's opinion that the site appears to be physically suitable for limited repair use. The topography of the site makes it difficult to landscape. Other suitable uses are limited.
6. "The proposed land use shall not adversely affect traffic flow and parking in the neighborhood."
 - A condition on the number of vehicles allowed to be on the property at any given time is necessary to address parking issues.
7. "The location of other approved uses by special review in the neighborhood shall be determined, in order to avoid an over-concentration of such uses."
 - There is a repair shop that was issued a USR in 2005 for Lugnut Auto at 3723 West Service Road, which is about 400 feet south of 37th Street on West Service Road.

Given the history of the applicant and his use of the property, staff recommended conditional approval of the USR with the stipulation that if the applicant does not comply with the City's municipal codes related to storage, junk, trash, weeds, brush and other issues, his USR can be revoked at any time. The additional conditions placed on this business are as follows:

1. Hours of operation for public business shall be between 8:00 am and 6:00 pm Monday through Friday.
2. Erosion control of the land and sloped areas, in the form of live groundcover acceptable to the City, shall be installed prior to one year.
3. No outdoor storage of items on the property.
4. Any vehicle parked on the street shall be licensed, fully operable and removed within twelve (12) hours.
5. No more that two (2) vehicles owned by the applicant may be parked on or near the property at any time.

6. No more than four (4) vehicles awaiting repair shall be on or near the property at any time (any number of vehicles can be inside the shop).
7. No vehicles related to a U-Haul business, including trucks or trailers shall be on site at any time.
8. The USR shall be in effect until February 21, 2012 at which time it shall be reviewed for approval by the City Council.
9. Should any of these conditions or any other sections of the code be violated at any time the USR can be immediately revoked and any business licenses will be revoked at the same time. Application may be made through the regular process for another business license and/or USR.

The applicant will need to submit a landscaping plan for staff's review prior to installation of the ground cover.

The Planning Commission recommended approval with the conditions recommended by staff to include the hours of operation from Monday-Saturday 8:00 am to 6:00 pm and on Sunday from 8:00 am to 12:00 pm.

Mr. Yasin, applicant, stated he would like to keep this current location because the rent is very cheap and is suitable for him. His tools are already at this location and his customers know where he is located. He indicated he no longer has his U-Haul business. He stated he understands the conditions placed upon this location and his business.

Mayor Achziger asked if anyone in attendance wished to speak in favor of the Use by Special Review. No one responded.

Mayor Achziger asked if anyone in attendance wished to speak in opposition to the Use by Special Review. No one responded.

Mayor Achziger closed the Public Hearing.

Councilmember Proctor made motion, seconded by Councilmember Schaffer to adopt Resolution No. 03-2011. Motion passed with all voting in favor thereof.

- B. Public Hearing – Resolution No. 04-2011 - Use by Special Review – Oil and Gas Well Drilling Operations – located in the SE ¼ of Section 22, Township 5 North, Range 66 West of the 6th P.M., in the City of Evans, Colorado - T-Bone Directional Drilling – (**CONTINUED UNTIL APRIL 5, 2011**)

Mayor Achziger opened the Public Hearing.

Sheryl Trent, Community and Economic Development Director, reported the following:

The applicant has requested that the City Council continue the Public Hearing until the April 5, 2011 City Council meeting.

Councilmember Brown made motion, seconded by Councilmember Wells to continue the Public Hearing until April 5, 2011 at 7:30 pm. Motion passed with all voting in favor thereof.

C. Public Hearing – Ordinance No. 509-11 - Approval of proposed Evans Fire Protection District Service Plan and Intergovernmental Agreement (1st Rd)

Mayor Achziger opened the Public Hearing.

Warren Jones, Fire Chief, reported the following:

This ordinance is the culmination of six months' work by the Fire District Taskforce appointed by City Council in July, 2010. It will approve the Evans Fire Protection District Service Plan and Intergovernmental Agreement (IGA) between the City of Evans and Evans Fire Protection District. If approved, it will be forwarded to the Weld County District Court for review. All of the procedures outlined in State law have been followed, including the required public, property owner and governmental notifications. Because the proposed District would be fully contained within the City of Evans municipal boundaries, the Evans City Council is the approval body required by state law. Action on this ordinance does not create the proposed District nor increases property taxes. It does however allow the proposal to move forward with the eventual election of Evans residents and property owners who are eligible to vote to organize the district and adopt a new 5.5 mill levy property tax in November 2011.

Out of the 8,000 property owners notified, 14 letters were received from property owners requesting exclusion of their property from the proposed Fire District. It was demonstrated during the Public Hearing that the exclusion of the above described properties is not in the best interest of the proposed Fire District, because such exclusion (i) would undermine the Fire District's identity with the City as established by the Service Plan and the attached IGA; (ii) would cause the Fire District undue administrative and operational complications in providing continuity of services to the City and the community; (iii) would leave the excluded properties without Emergency Services coverage; (iv) would expose the Fire District to legal uncertainty and liability regarding its lack of obligation in responding to Emergency Services calls from the excluded properties; (v) would create a public health and safety hazard in the event that the excluded properties experience a structural fire, hazardous materials release, or other emergency; and (vi) would impair the Fire District's ability to enforce a uniform Fire Code within the City and to detect and correct hazardous conditions.

Mayor Achziger asked if anyone in attendance wished to speak in favor of the proposed Evans Fire Protection District Service Plan and Intergovernmental Agreement.

Trish Watson, 3919 24th Avenue, stated that she is in support of the formation of the district. The fire department has responded to her neighborhood to put out a fire and they support the community by showing up to the block parties.

Marty Schanwolf, 3611 Empire Street, stated he joined the volunteer fire department 28 years ago but is now retired. He indicated that over the years the needs of services has increase and believes the formation of the Fire District will in turn benefit the citizens greatly. The department is in need of updated equipment and personnel.

George Osborne, III, 3018 Lakeside Drive, believes this is a good plan since the equipment would be upgraded. He believes they need to work towards the future to watch Evans grow.

Terry Uhrigh, owner of Terrace Park - 2200 37th Street, stated that being a business owner in Evans, he supports the formation of the Fire District. He indicated he was part of the task force so he was involved and asked for Council's approval.

Mayor Achziger asked if anyone in attendance wished to speak in opposition to the Evans Fire Protection District Service Plan and Intergovernmental Agreement. No one responded.

Mayor Achziger closed the Public Hearing.

During Council discussion, members of the task force were thanked for all their hard work on this project. Council believes that the formation of the Fire District will allow the outdated equipment to be replaced. Under the current structure, the fire department is part of the City bud and over the last several years, there has been budget constraints placed on the City which had not allowed upgrades to either the equipment or personnel for the fire department which is much needed.

Councilmember Proctor felt that it was appropriate to allow the citizens of Evans to decide for themselves if they want the formation of the Fire District.

Fire Chief Jones mentioned that there were minor changes to Service Plan which have been agreed upon between the City's legal counsel and the project attorney. These minor changes do not change the intent of the Service Plan.

Councilmember Wells made motion, seconded by Councilmember Schaffer to approve Ordinance No. 509-11 on first reading with the minor changes agreed upon by legal counsel. Motion passed with all voting in favor thereof.

- D. Ordinance No. 510-11 - Approving the annexation of two sections of land and the de-annexation of two sections of land designated to be re-annexed by the City of Greeley (1st Rd)

Sheryl Trent, Community and Economic Development Director, reported the following:

In August of 2010 the City of Evans and the City of Greeley approved an Intergovernmental Agreement (IGA) for the disposition of various portions of right-of-way either within Evans or Greeley. As specified in the IGA, certain rights-of-way, streets, and roads are located within Evans or Greeley and it is necessary to identify which jurisdiction should be responsible for law enforcement, public safety and maintenance in the future by providing either Greeley or Evans exclusive responsibility for maintenance and improvement thereof.

Pursuant to their City Charter, the City of Greeley placed this issue on the November, 2010 ballot for a decision from the citizens of Greeley, who approved the annexation and de-annexation (detaching) of those various parts of rights-of-way. Subsequent to that ballot approval, the City of Greeley passed an ordinance de-annexing (detaching) those pieces of land.

At this time, the City of Evans needs to annex those rights of way and de-annex the remaining pieces. All of these actions are in existing public rights-of-way, and none affect any parcel of private property. This will clean up several issues of maintenance, public safety response, and traffic issues in these locations.

There are five locations covered by the adopted IGA and the proposed ordinance. This action defines the ultimate right-of-way configuration and the result is a logical break in jurisdiction that should be easily understood by emergency responders and maintenance personnel.

Councilmember Schaffer made motion, seconded by Councilmember Proctor to approve Ordinance No. 510-11 on first reading. Motion passed with all voting in favor thereof.

E. Ordinance No. 511-11 – Adoption of Official Zoning Map (1st Rd)

Sheryl Trent, Community and Economic Development Director, reported the following:

City Staff has completed the annual update of the Official Zoning Map for the City, which will be recorded at the County after Planning Commission and City Council approve it. No properties have been annexed or rezoned since the adoption of the 2010 Official Zoning Map, but the map is traditionally adopted and recorded every year.

Councilmember Proctor made motion, seconded by Councilmember Brown to approve Ordinance No. 511-11 on first reading. Motion passed with all voting in favor thereof.

F. Ordinance No. 512-11 – Amending Chapter 3.04 - Sales and Use Tax amendment related to self-collection (1st Rd)

Russ Anson, City Attorney, reported the following:

This ordinance amends Section 3.04.210 by inserting subsection (i), rooms or accommodations and amending Section 3.04.030 by the addition of the definition for accommodations, and by amending Section 3.04.260 by the addition of a new subsection (w), sale or accommodations to

permanent residents. These changes relate to the provision of tax on accommodations within the City.

Mayor Pro Tem Morris made motion, seconded by Councilmember Schaffer to approve Ordinance No. 512-11 on first reading. Motion passed with all voting in favor thereof.

REPORTS:

The City Manager reported on the following:

NFRMPO: The NFRMPO Council met in early March to discuss the 2012-2015 call for projects. Evans will be receiving funding for US 85 Access Control at 37th Street and US 85 Access Control at 31st Street. The 37th Street project should receive funding starting in 2012 for design and the 31st Street project is scheduled to begin receiving funds in 2013.

Spring Cleanup: Spring Clean-up will be located at 3323 1st Avenue and will be conducted for two weekends: April 9 and 10 and April 16 and 17 from 8:00 am to 4:00 pm.

Employee Recognitions: On March 4th, the City Manager recognized several people and work groups for their outstanding work in 2010 as part of the City Manager Award event.

The City Attorney reported on the following:

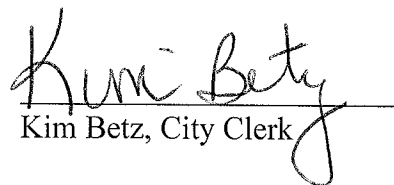
Bonding Requirements: An attorney representing an oil and gas company sent a letter expressing their disagreement concerning the City's bond requirements for their oil and gas operations. They felt the Oil and Gas Commission has sole authority. Mr. Anson stated he disagrees with this statement because the City needs to have regulations regarding land use issues so the environment in the City can be protected. He will be responding in writing and will forward a copy of his letter to City Council.

AUDIENCE PARTICIPATION:

There was no audience participation.

ADJOURNMENT:

Mayor Achziger adjourned the meeting at 9:40 p.m.


Kim Betz, City Clerk