

**MINUTES**  
**EVANS CITY COUNCIL**  
Regular Meeting  
September 3, 2013 - 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, Burmont, Neibauer, Rudy and Schaffer

**AUDIENCE PARTICIPATION:**

There was no audience participation.

**RECOGNITIONS**

**A. Safety Event Presentation to Officer Mike Yates.**

Police Chief Rick Brandt presented the proclamation for the City Safety Event to Officer Yates, which thanked him for his efforts and professionalism. Mayor Achziger also expressed his appreciation for Officer Yates efforts and the leadership he displayed.

**B. August Yard of the Month**

Zach Ratkai, Building & Development Manager, presented the Yard of the Month for August.

**APPROVAL OF AGENDA:**

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

**CONSENT AGENDA:**

**A. Approval of Minutes of the Regular Meeting of the August 20, 2013**

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

**OLD BUSINESS**

**A. Resolution No. 29-2013 for USR Bell Supply**

Mayor Achziger stated that the public hearing is a continuation and asked to hear from staff.

Zach Ratkai, Building and Development Manager, reported the following to City Council:

Mr. Ratkai explained that the hearing was for a Use by Special Review (USR), which was requested by Borchert Pointe, LLC, who owns property in the City where outdoor storage exceeds the allowed 20% in the City of Evans Municipal Code. The owner originally requested to be approved to utilize up to 68% of the site for outdoor storage, since the Planning Commission hearing on August 5<sup>th</sup>, 2013, the request has been changed to utilize up to 60% as outdoor storage.

Mr. Ratkai stated that staff was recommending approval with conditions in order to meet the criteria for the approval of the special use. The conditions are to allow the outdoor storage standard to be exceeded for a five (5) year period with an automatic expiration at the end of the five (5) years. Staff is recommending some screening and landscaping as conditions of approval as well.

He stated that, Borchert Pointe, LLC approached the city in the spring of 2013 with the plan to construct an office/warehouse building to serve as the Evans base for Bell Supply. As part of this plan, a site plan was submitted and is currently under administrative review by staff. The zoning for the site limits allowed outdoor storage to 20% of the total site area. The site plan, and intentions for the property, show a storage yard. The applicant is requesting a Use by Special Review approval to allow outdoor storage in excess of that allowed in an I-2 zone – 20% is the allowed amount of outdoor storage, the request is for 68%.

Mr. Ratkai proceeded to read the criteria and staff's findings from Section 19.44 of the Municipal code. They are as followed:

***1. The proposed use is found to be unlikely to harm the health, safety, or welfare of the City or its residents.***

The use could certainly harm the welfare of the City and our residents by eliminating the compatibility with the commercially zoned properties to the south. With heavy industrial use (60% outdoor storage) commercial uses to the south would be limited, which affects the long term financial sustainability of the City.

***2. The proposed use would benefit the City in terms of employment, tax revenue, or other similar effects, as compared to the absence of the proposed use.***

This type of storage allotment is associated typically with heavy industrial use and is best located in areas of I-3 zoning that are well removed from the public right of way and away from commercial uses. Even in the I-3 zone the code states 30% is the maximum for outdoor storage. In urban areas such as the City of Evans, uses such as outdoor storage should be limited (as the code intended) in order to fulfill the goals of the 2010 Comprehensive Plan and long range planning and sustainability issues.

***3. The proposed use shall be consistent with the Evans Comprehensive Plan and shall be compatible with the surrounding area.***

The use is NOT consistent with the Evans Comprehensive Plan nor is it compatible with the surrounding area. Much of the surrounding area is developed as industrial, with similar office/warehouse/storage use. The proposal from the applicant is a request to meet a similar standard to existing conditions in the area; however many of these sites are out of compliance. The City is in the process of issuing notices of violation to the remaining land owners in violation of the outdoor storage code.

- 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 current and future land uses in that site are not compatible with outdoor storage of this intensity on this size of property. It will create a situation/condition that will negatively affect other property owners in the area, especially the commercial properties to the south. Additional screening throughout the perimeter and the requirement for a landscape buffer-yard and a different kind of fencing will be required to mitigate impacts.

- 5. The site shall be physically suitable for the type and intensity of the proposed land use.***

The site is physically suitable for outdoor storage, except for the zoning, the compatibility with surrounding uses to the south (commercially zoned) and proximity to the public right of way.

- 6. The proposed land use shall not adversely affect traffic flow and parking in the neighborhood.***

The outdoor storage use proposed would not adversely affect traffic flow and parking in the area.

- 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.***

The applicant has pointed out that in the area; there are storage yards in which outdoor covers a substantial area of the property. However, the sites referenced are out of compliance with the Municipal Code. Staff is currently issuing letters of violation in the area to other land owners that may not be aware of the code related to outdoor storage.

In consideration of surrounding uses, currently the approval on 1470 42<sup>nd</sup> Street is for up to 50%, and that was allowed as it could be screened from 42<sup>nd</sup> Street and was a much smaller piece of land, and hence a much smaller impact on the neighborhood. Most recently, 1461 43<sup>rd</sup> Street to the south of this property was approved to have 60% outdoor storage, with conditions placed on the property for the addition of substantial screening as well as a temporary, revocable time period during which excess storage would be allowed. Those approvals, which will stay for that legal description on that site, will remain in place and anything other would be an over concentration of the outdoor storage use in the area.

Mr. Ratkai explained that the main concern with the application is the adjacency and compatibility

with commercial and other industrial zoning. The property is located near 42nd Street, which is a major thoroughfare for the City of Evans and therefore compatibility with existing industrial uses and future commercial uses is critical to the future development and sustainability of the City. With 60% of the lot being used for outdoor storage that issue becomes even more important to the long term compatibility issues in the neighborhood.

The precedent set by allowing a USR for additional outdoor storage in this I-2 zone at this location could lead to other land owners requesting the same USR for the same reasons (business oriented). That would essentially mean the land in this area would exceed even the highest use allowed in the I-3 zone (currently 30%).

The land sits higher than the adjacent commercial lots along 42nd Street and no amount of screening allowed under the code would allow compatibility to exist with other uses in the area. There is no fence or landscaping allowed by the code that could be installed on site to improve the compatibility for 42nd Street, the commercial properties to the north, and the Highway 85 corridor to the east.

Additionally, this land is zoned I-2 for a reason. The premise behind appropriate zoning includes the issues of land use. Zoning permits certain uses on land and usually move from the least intense uses to the most intense uses, protecting land and the public from more intense uses by placing that zoning away from areas of commercial, residential, or lower uses land zoning. The land uses should move from least significant impact to higher impact, especially along major arterials and areas of importance to the City.

Other land in the area is zoned either I-1 or C-3 (lowest industrial zoning in our code, highest commercial zoning in our code, which would be compatible uses). This land is visually adjacent to Highway 85, and also adjacent to other I-1 and C-3 sites that comply with the code.

Notice of this public hearing was provided in accordance with Chapter 19.64 and 18.28.125 of the Municipal Code.

After reviewing the Bell Supply USR for outdoor storage that exceeds the 20% and a security residence on property located at 4101 Carson Avenue, the following findings of fact and conclusions have been determined:

The review criteria in Sections 19.44 of the Evans Municipal Code can be appropriately and sufficiently met with conditions to allow approval of this special use would be consistent with the 2010 Comprehensive Plan and with the surrounding land uses.

Mr. Ratkai stated that he recommends that the Planning Commission forward a recommendation of approval with conditions of the requested USR with the findings and conclusions listed above as well as the following conditions:

1. The approval for excess storage is for a period of five (5) years and will expire on August 20, 2018, this approval period is renewable at time of expiration. The said renewal is not automatic and must be initiated by the property owner at the time of

expiration or if the nature of the land use warrants review of the USR conditions approved herein, and;

2. The approval is contingent upon a landscape buffer of fifteen (15) feet surrounding both the northern and southern sides of the subject property, and a twenty (20) foot landscape buffer on the rear of the property (review to be secured through the site plan process).
3. The approval is contingent upon in installation of a fully opaque, six (6) foot tall cedar privacy fence to screen the storage yard as shown on the preliminary site plan.

Council member Schaffer asked what businesses south of the property would be affected.

Mr. Ratkai answered that the property to the south is vacant and there are no business with buildings adjacent to this property.

Council member Clark asked about the properties currently out of compliance with City Code and if they have the same opportunity to go through a USR.

Mr. Ratkai stated that the violation letters provide for the USR process as an option to those violating properties.

Mayor Achziger stated that is how he understood USR process as well.

Mayor Achziger asked how the businesses located to the south would be impacted without the improvements.

Mr. Ratkai explained without the conditions other businesses looking for property to the south may not be interested.

Mayor Achziger asked to hear from the applicant.

Todd Bloom, Director of Development, Tebo Development, 3111 28<sup>th</sup> Street, Boulder CO 80302, was present to represent the owners. Mr. Bloom stated the following to City Council:

That the properties owned by Borchert Pointe, LLC all surround 4101 Carson Avenue. He proceeded to explain that the improvements and conditions will only help the company with marketing their properties adjacent to the property. He described the landscaping plan, including storm drainage to help mitigate any storage and site issues. He also explained the intended use of the property is best described as a “lay down” yard. By having the 6 foot fence, the site of the property and impact on other properties would be minimal. He illustrated to council what the addition of landscaping, a storm water retention pond, and fence would look like.

Mr. Bloom stated that the biggest concern is the condition of the 5 year expiration on the USR. He explained that if a 15 year lease came in for the property, the condition will be a hindrance. The owner feels that the developments they will place on the property including water and sewer services in the equivalent to two million dollars is more than adequate to prove that they intend to stick to all the other conditions of the USR. He asked the applicant's attorney, Kent Naughton, from Witwer, Oldenburg, Barry & Johnson, LLP 822 7th Street, Suite 760 Greeley, CO 80631, to present the applicants issues with the conditions discussed by staff.

Mr. Naughton explained that the expiration is the biggest concern since Council has the ability to revoke a USR due to any violations at any time and the property owner plans on putting in \$2 million in development improvements. He felt that the need for the expiration of 5 years should not even be an issue under these circumstances.

He also stated that this is the first development in the area, and Mr. Naughton wanted to ensure that the property owners do not jeopardize any future development or relationship with the City. He pointed out that the development would have be a new building with landscaping and cedar fence that will enhance the area. He believed that this property would be a shining example of what the area should be.

Council member Schaffer asked about the steel pipe on the property and how high it is stacked.

Mr. Bloom explained that the property is used for a lay down yard and all the equipment is typically laid on the ground and only reaching 4-5 foot high.

Council member Schaffer asked about what kind of building they are proposing to build.

Mr. Bloom explained that the building is a prefabricated steel building, but it has the required masonry and stucco requirements of the City.

Mr. Ratkai mentioned that the building meets the City's industrial code including the masonry facade.

Council member Clark asked if the is the conditions listed by staff are deal breaker for them in this development.

Mr. Bloom explained that 5 year expiration is the deal breaker because of the risk of change in staff and council running against a 15 year lease with a business.

Council member Clark asked if council can extend the USR.

Mr. Ratkai and Ms. Trent stated they can at the time of expiration.

Mayor Pro-Tem Morris asked if the truck access is off of Carson Avenue.

Mr. Bloom responded that is was.

Council member Schaffer asked how big the building will be.  
Mr. Bloom said it would be 12,500 square feet.

Mayor Pro-Tem Morris asked if having the storage exceeded the height of the fence and if it is a violation.

Mr. Bloom could not answer that question.

Mayor Pro-Tem Morris said that the issue seems to be the ability to view the equipment on the site. He asked again if there was a possibility that this would happen under the new conditions.

Mr. Bloom stated that the intent for the site was for lay down storage where the equipment is placed directly on the ground and may never reach above 4-5 feet in height.

Mayor Achziger asked to clarify that the landscaping including the fence was to cover the area.  
Mr. Bloom said yes.

Mayor Achziger asked the City Attorney when the City Council could have the applicant come back for any violations and if Council could extend the USR at that time.

Scott Krob, City Attorney, stated that the Council can make a revocation on a legitimate complaint. He also reminded them that the initial term is 5 years and the USR can extend without complaints but under our City code we can bring them back at any time.

Mayor Pro-Tem Morris asked if an automatic renewal or review would help with the USR process.  
Mr. Bloom stated that no expiration would be the best solution.

Mayor Achziger asked about the investment of \$2 million if it was Tebo or Bell Oil.  
Mr. Bloom explained the investment would come from Tebo.

Mayor Achziger asked if there will be trucks or cranes parked on the property.  
Mr. Bloom explained that they may be parking trucks or cranes inside the fence.

Mayor Achziger wanted clarification that derricks are not being put up.  
Mr. Bloom explained that it is strictly a storage area.

Mayor Pro-Tem Morris asked for clarification from the City Attorney that the USR is tied to the property.  
City Attorney Scott Krob indicated that it was tied to the property.

Mayor Pro-Tem asked if Council can tie it to a business as well.  
Mr. Krob stated that council could attach it to the business as well.

Mayor Pro-Tem Morris asked Mr. Bloom if this would be okay with the applicant. Mr. Bloom said that should not be a problem but he requested that the language is broad enough for mergers and acquisitions.

Mayor Achziger asked if there was anyone in the audience to support this issue. There was none.

Mayor Achziger asked if there was anyone who wished to speak in opposition to this issue. There was none.

Mayor Achziger asked if there was anything else from the applicant. There was none.

Mayor Achziger asked if there were any issues that Council needed clarified by staff.

Council Member Neibauer asked where the 5 year expiration condition came from. Mr. Ratkai responded that it was based upon Council's previous discussions and direction to staff.

Mayor Achziger asked if staff has a problem with the recommendation of the approval based upon the USR being reviewed after 5 years versus automatic renewal.

Mr. Ratkai responded that staff has no issues either way with Council's direction and would rely on City legal staff to vet any changes to the USR.

Mr. Ratkai asked the applicant for clarification about the 3D rendering of the landscaping and the intent of the applicant to put large landscaping on the property.

Mr. Bloom stated that the rendering was used to illustrate 5-7 year old landscaping on the property.

Mayor Achziger closed the public hearing.

Mayor Achziger asked for Council discussion

Council member Schaffer asked if this is the type of business we want on the 42<sup>nd</sup> corridor considering its future as a major corridor.

Mayor Achziger expressed that he does feel it meets the criteria of the corridor.

Mayor Pro-Tem Morris felt it is appropriate attaching the business to the USR as well as the property because we will be seeing this more and more. He expressed concerns about the future of the property, and stated that in 20 years the oil business may no longer be booming and the City needs to be aware of how that affects the property.

Mayor Achziger clarified that if the City ties the agreement to the use of the property, then the lease

will not be a concern.

Mayor Pro-Tem Morris agreed.

Mayor Achziger asked if there were any other questions or discussion.

Mayor Achziger clarified that the applicant is applying for a specific use for the property and that council is asking to tie the USR to the use of the property, since the business ceasing would terminate the USR as well.

Council Member Neibauer stated she would be hesitant to be more specific about the USR.

Councilmember Schaffer made the motion, seconded by Councilmember Rudy, to adopt Resolution No. 29-2013, which supports the conditions, with exception of the 5 year review, and ties the USR to the type of business on the property. The motion passed with all voting in favor thereof.

#### **NEW BUSINESS:**

##### **A. Request for Full-Time Position Increase**

Jessica Gonifas, Deputy City Manager reported the following:

Historically, IT in the City has not had any dedicated staff with the exception of a contracted systems administrator who works for the City about one day per week. The previous City Clerk coordinated the IT efforts and provided some customer support. But, for the most part, IT has essentially been decentralized with the departments handling much of their own IT needs for both purchasing and support.

She explained that, in 2012, the City developed a five year strategic plan for IT with the goal of providing a framework and set of strategies for the effective utilization and management of information technology throughout the City. One of the areas of focus in the study was staffing and a key recommendation was to create a centralized IT division lead by an IT Manager. This department is now located within Administrative Services and reports to the Deputy City Manager.

Earlier this year, the management team recommended to the City Council that the IT Manager position be funded in 2013 as a temporary full time position authorized through the end of the current year. At that time, the team felt it was a conservative approach avoiding adding long term fixed costs. After approval by the City Council, staff first searched for a firm to provide this support. We were not able to find a third party that was able to commit this level of resources for a limited period of time. The next attempt to hire for the position was made through the City recruitment process as a direct hire by the City for the temporary position. The City did offer the position to the top candidate who rejected the offer due to not wanting to take a temporary assignment not knowing if it would be extended long term. Finally, an IT Manager was identified through an IT staffing

agency. Although the manager worked for a couple of weeks, the fit and technical skill set was not what the City needed. The position is currently vacant. After much discussion, the management team felt the difficulty in hiring the right IT manager for the City was due to the temporary nature of the position and that it was unlikely a person at this level in an organization was going to leave their current long term position for a temporary position.

As was presented in the budget work session on August 27th, staff is recommending funding the IT manager position long term, starting in the 2014 budget.

Due to our difficulty in recruiting for the position as temporary and the fact that the position was going to be recommended as an addition in 2014, we are respectfully requesting you consider approving an increase in the full time equivalents for the long term recruitment of the IT Manager now, rather than waiting until 2014.

She explained that this decision was for City Council's consideration, pursuant to Section II.C.a. of the Financial Policies, which outlines that the City Council will approve: "The number of full time positions and dollar amount for total regular staff."

Council Member Schaffer asked if we can possibly get back the top candidate.

Ms. Gonifas responded that if she is available she would be able to reapply through the new recruitment process.

Mayor Pro-Tem Morris commented that he is in full support of this, stating that the City needs the skill set of a full time IT person.

Councilmember Clark asked if the City will need to have more staff or if one person will suffice.

Ms. Gonifas stated that the 5 year strategic plan forecasts that the City will eventually need a technician and move GIS under IT, but the plan does not add another FTE.

Mayor Achziger stated that he agrees that we need the position and compelled staff to budget appropriately to be competitive and retain this person in order to help the City remain a leader in the region.

Councilmember Schaffer made the motion, seconded by Councilmember Clark, to the increase the full time position in the City's Information Technology Division by one. The motion passed with all voting in favor thereof.

#### **REPORTS:**

The Deputy City Manager, Jessica Gonifas reported on the following:

She highlighted the update on the gravity flow irrigation system repair from the Monitoring Report. She then asked for Zach Ratkai to report out on code enforcement activities on the east side of town.

Mr. Ratkai reported on the code enforcement data on properties east of highway 85 at the request of

the Mayor from the previous meetings.

Scott Krob, City Attorney, reported that he is finishing up the documents on the closing for the Library which will be finalized on September 5<sup>th</sup>. He indicated that he is also working on land use items with the Development Review Team and on EQR's with the Public Works Director.

**AUDIENCE PARTICIPATION:**

There was no audience participation.

**ADJOURNMENT:**

Mayor Achziger adjourned the meeting at 8:55 p.m.



Raegan Robb, City Clerk