

**MINUTES**  
**EVANS CITY COUNCIL**  
Regular Meeting  
Feb 5th, 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. Mayor Achziger recognized Randall Bisel for his service as the chair of the Evans Planning Commission.
- B. Mayor Achziger recognized Wayne Pickens for his service on the Evans Economic Development Advisory Council
- C. Mayor Achziger and Zach Ratkai, Building and Development Director, recognized Lorraine Kuchenski for "Yard of the Month" for the month of January, 2013. Ms. Kuchenski was given a gift certificate and a sign for her yard.

**PROCLAMATION**

- A. National Engineers Week  
Mayor Achziger read the proclamation designating February 17<sup>th</sup> through February 23<sup>rd</sup> as National Engineers Week. All engineers in the audience were recognized.

**APPROVAL OF AGENDA:**

The agenda was amended to strike item E. under New Business concerning an award of bid for combined non-potable/irrigation improvements. Councilmember Schaffer the made motion, seconded by Councilmember Brown, to approve the agenda, as amended. The motion passed with all voting in favor thereof.

**CONSENT AGENDA:**

- A. Approval of Minutes of the Regular Meeting of January 15, 2012
- B. Approval of Contract with City Manager

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

## **NEW BUSINESS:**

### **A. EEDAC Appointment for Jane Bruce**

Councilmember Burmont made the motion, seconded by Councilmember Rudy to appoint Jane Bruce to the Evans Economic and Development Advisory Council. The motion passed with all voting in favor thereof.

### **B. Public Hearing — Variance Request to Section 19.62.140.B of the Evans Municipal Code for Hours of Operation in the Highway 85 Overlay District - 708 31<sup>st</sup> Street, Evans, Colorado - (Gazelle Trucking Hours of Operation) – WITHDRAWN IN ACCORDANCE WITH THE MUNICIPAL CODE**

Mayor Achziger opened the public hearing.

Sheryl Trent, Community Resource Development Director, explained that the City's Municipal Code does not require the applicant to receive a variance in order to operate their business 24 hours per day. Ms. Trent stated that the agenda item for a variance request should be withdrawn.

Councilmember Schaffer made the motion, seconded by Councilmember Brown, to withdraw the variance request from the agenda. The motion passed with all voting in favor thereof.

Mayor Achziger closed the public hearing.

### **C. Public Hearing – Resolution No. 04-2013 - Use by Special Review – Auto Repair in the C-3 Zoning District – 718 31<sup>st</sup> Street (Gazelle Trucking Repair Shop)**

Mayor Achziger opened the public hearing.

Ms. Trent explained Section 19.62 of the City Municipal Code, which applies to the Highway 85 Overlay District, and that the property owned by Gazelle Trucking, located at 718 31<sup>st</sup> Street, was designated as high intensity commercial (C-3) zoning. She explained that the intended use of the property by the applicant was an industrial use, which required an approved use by special review (USR) from the City's Planning Commission, then subsequently by City Council. She also explained that the USR was approved by the Planning Commission under certain circumstances on January 8, 2013. Specifically, the Planning Commission approved the repair shop as a one-year USR with the hours of operation limited to 6:00 a.m. to 10:00 p.m.

Ms. Trent explained that staff was not recommending approval of the resolution. She provided some background about the repair shop operation, including some of the problems with the business that did not meet City Code. She explained that the applicant conducted

business without a business license or approved site plan. Ms. Trent discussed provisions of City Code covering the Overlay District and the City Comprehensive Plan, which both promote improvements in the Highway 85 corridor. Ms. Trent discussed examples of noise, traffic, and safety from the truck repair shop that were not compatible with surrounding residences and businesses.

Ms. Trent provided the criteria for approving a USR according to Section 19.44.020 of the Municipal Code and the criteria listed in the Highway 85 Overlay District for businesses along the highway corridor, and explained that the industrial uses of Gazelle Trucking did not meet the standards of the Overlay District. According to the Staff Report provided to City Council, the standards of the Highway 85 Overlay District meet minimum criteria in order to:

- improve the appearance and coordinate land uses along the US 85 Corridor;
- establish a unique identity for the City of Evans;
- improve economic vitality along the US 85 Corridor;
- maximize long-term property values and community benefits;
- minimize the impact of nonresidential development on residential areas;
- improve safety for automobiles, bicycles, and pedestrians;
- encourage the development of sidewalks and trails along West Service Road (WSR);
- encourage in-fill development to develop higher densities within the corridor; and
- facilitate the undergrounding of overhead utilities in the corridor.

Mayor Pro-Tem Morris asked Ms. Trent about the efforts made by the applicant prior to conducting business at the site. Ms. Trent discussed meetings with the applicant prior to operations on the property and subsequent meetings for business licensing, code violations, and the USR process. She explained that the applicant (was issued a temporary business license) has continued operation after their 2012 business license was revoked due to code violations, and a 2013 business license has not been issued.

Mayor Achziger asked about the communication between the applicant and the City about using this site as an auto repair shop. Mayor Achziger also asked about what types of materials are being carried by the truck traffic on the site. Ms. Trent talked about initial communication with the applicant, indicated that the site was not ideal for the intended use, and discussed the hazardous materials (predominantly diesel fuel).

Brett Payton, legal counsel for Gazelle Trucking, 1812 56<sup>th</sup> Avenue Greeley, expressed frustrations with the USR process, and explained that staff had recommended approval of the USR at the Evans Planning Commission on January 8, 2013. Mr. Payton discussed the criteria of approving a USR and explained that the business could meet these criteria. He also talked about the benefits of the Gazelle Trucking business to the City of Evans and the number of jobs contributed to the local economy. Mr. Payton explained that the business was committed to developing a site plan to improve the building and landscaping in order to become compliant with City Code. He also talked about the recent citation that was issued to the business, and explained that the only current use on the site was for truck parking, which

is a use by right allowed under C3-zoning. Mr. Payton also explained that the applicant has tried to work with the City and discussed the efforts made by the business to comply with the City Code.

Mayor Pro-Tem Morris asked Mr. Payton about the number of Gazelle employees that were citizens of Evans and the desired hours of operation for the business.

Mr. Payton indicated that at least two employees in the audience were citizens of Evans and talked about willingness to restrict the business hours of operation between 6:00 a.m. to 8:00 p.m.

Mayor Achziger asked Mr. Payton about the violations by Gazelle Trucking reported by staff, and the communication between the business and staff prior to purchasing the property for a truck repair operation.

Mark Antu, Gazelle employee from 1020 Wabash, Fort Collins, addressed City Council to talk about the business plan, and explained that the business was compatible with the area and surrounding businesses. Mr. Antu talked about communication between the applicant and the City and efforts made by the business to comply with City Code. He also discussed his frustrations from working with the City, and talked about problems receiving a receipt for the company's 2012 business license. Mr. Antu talked about some of the issues on the property that violated City Code, including issues with signage and fencing.

Mayor Achziger asked Mr. Payton about the request to have fencing removed from the property. Mr. Payton explained that the fencing was removed within a day.

Chris Ewing, Gazelle employee from 3310 15<sup>th</sup> Avenue, Evans, addressed City Council to defend the actions of the business and talked about surrounding businesses that also contribute to the noise and truck traffic in the area.

Clarence Walker, Gazelle employee from 3203 Central Street, Evans, addressed City Council to defend his employer and talked about other businesses surrounding the site that create significant noise.

Teresa Hansen, from 435 North 35<sup>th</sup> Avenue, Greeley, and General Manager of Petroleum Wholesale at 655 31<sup>st</sup> Street, addressed City Council to talk about the about the businesses surrounding Gazelle Trucking and the need to improve landscaping in the corridor area. She explained that Gazelle Trucking was willing to submit a site plan and would contribute to the needed improvements near the site.

Michele Jones, Executive Director of the Evans Chamber of Commerce, addressed City Council to talk about the benefits of allowing Gazelle Trucking to conduct business in Evans. She also talked about the contributions that Gazelle Trucking has made to other communities where the company has conducted business.

Bill Bartlet, 2836 West 5<sup>th</sup> Street, Greeley, Evans Chamber Member, talked about communication issues between the applicant and the City, and discussed the need to clarify several misunderstandings to get the USR approved.

Fran Hudgin, 3204 Birney Court, Evans, representing the Evans Chamber of Commerce, addressed City Council to speak in favor of Gazelle Trucking. Ms. Hudgin talked about benefits of oil and gas production in Weld County, and cited information published by an article in the Denver Post. She stated that the article estimated that there were nearly 18,000 oil and gas wells in Weld County, created approximately 4,000 jobs, and contributed over \$50 million in annual tax revenue to the County. She also stated that Weld County ranked 11<sup>th</sup> in national job growth during 2009-10, due to the oil and gas industry, according to the Department of Labor and Statistics. Ms. Hudgin also talked about the economic benefits of the oil and gas industry to every community in Weld County.

John Stapleton from Johnston and Manager of Country Inn & Suites at 2501 West 29<sup>th</sup> Street, Greeley, addressed City Council to talk about the economic benefits to the local community from business like Gazelle Trucking.

Tom Hamblen, 1995 42<sup>nd</sup> Street, Evans, talked about the City's Comprehensive Plan and the criteria of the Overlay. Mr. Hamblen talked about the history of the 85 Overlay District and the City's vision for highway corridor. He explained that the proposed use by Gazelle Trucking would benefit the area and could meet the criteria of the Overlay District. Mr. Hamblen also talked about the employment requirement placed on Gazelle Trucking and the number of employees that currently live in the City of Evans. He also discussed the high number of vacant businesses along the highway 85 corridor, and mentioned that some businesses were having difficulty working with the City.

Kenneth Ball, Gazelle employee from 6515 Black Mesa Road, Fredrick, addressed City Council to talk about the benefits of working for Gazelle and the benefits contributions

Jim Ells, 2435, 71<sup>st</sup> Avenue Greeley and property owner of 3303 8<sup>th</sup> Avenue, Evans, addressed City Council to talk about the benefits of having Gazelle Trucking in Evans and discussed other problems with crime and homelessness in the 85 Corridor,

Lee Johnson, 4662 West 23<sup>rd</sup> Street, Greeley, talked about the history of Evans and Greeley and the business connections between the two Cities. Mr. Johnson talked about the efforts made by Gazelle Trucking to comply with City Code.

Kelvin Kerst, 17765 Highway 392, Evans, talked about recent problems with businesses surviving in the City and the need for the City to be more conducive to businesses. Mr. Kerst stated that he warns some business owners about operating in Evans.

Russ Anson, City Attorney, addressed City Council to clarify the public hearing for the USR. He talked about the violations committed by Gazelle, the criteria that must be considered when City Council is considering a USR, and whether Gazelle Trucking could comply with

the conditions.

Mr. Payton, responded to issues raised by City Council Members and Mr. Anson. He talked about the criteria of the Overlay District, and expressed the need for the applicant to conduct business in Evans.

Mayor Pro-Tem Morris asked about the relationship between the 85 Overlay District and the City Comprehensive Plan.

Mr. Anson discussed the history and criteria of the Overlay District, which was adopted by Resolution 111-02 on December 17, 2002, to establish consistent development standards for new development, redevelopment, and renovation along Highway 85 in the City of Evans.

Mayor Pro-Tem Morris asked about the “use by right” allowed by C-3 zoning, which would allow Gazelle Trucking to park fuel trucks on the site without a business license.

Ms. Trent explained that the C-3 zoning allows vehicle parking, but trucks that are parked or transporting hazardous materials must be monitored by security as well as comply with City Code and Fire Code.

Mayor Pro-Tem Morris asked about the number of potential employees that could be employed by the applicant in the future.

Mr. Payton talked about the benefits of Gazelle Trucking to the local economy and the potential to employ more citizens from Evans.

Mayor Pro-Tem Morris asked about the site plan and the volume of truck traffic that could increase through the growth of the business.

Council Member Burmont asked about the site plan and if City Council could receive updates about the progress of the site plan, if the USR was approved.

Council Member Burmont asked whether the site plan could be a condition of approving the USR.

Mr. Anson explained that City Council could assign certain conditions to the USR.

Ron Lallo, President & CEO of Gazelle Trucking, 2203 Brighton Park Drive, Bakersfield, CA, discussed frustrations with working with the City, and talked about the efforts that would be taken to be granted a USR..

Mayor Achziger asked Mr. Anson about the parking use by right and conditions that could be placed on the USR to address hours of operation, parking, etc.

Mr. Anson explained that the site use of a truck repair shop required a USR under C-3 (High-Intensity Zoning).

David Sappington, 27508 County Road 54½, Kersey, requested clarifications about the number of violations by the applicant.

Ms. Trent provided explained that Gazelle had been cited for the following issues at that location:

- Conducting business without applying for a business license. The owner then applied for a business license, which has since been revoked.
- Continuing to conduct business without a business license – that license was revoked Wednesday, January 23, 2013 at 5:00 pm due to ongoing code violations.
- Using the business as an auto repair shop without approval from the City Council. The owner has been cited twice for this violation, which is ongoing.

Mayor Achziger closed the public hearing.

Mayor Achziger asked about the other businesses in Evans that have had their license revoked. He also asked about other industrial companies operating within the Highway 85 Overlay District.

Ms. Trent talked about the business operations that continued on the site, despite the revocation of the applicant's business license. She also explained that other current industrial businesses existed prior to the Overlay District. Ms. Trent also explained the process of zoning code violations and explained that the business owner will be required to appear in court on these issues.

Ron Lallo addressed City Council to explain the violations issued to Gazelle Trucking.

Mayor Pro-Tem Morris talked about frustrations over the violations committed by the applicant, and was not sure the USR would not improve safety, appearance, etc. for the site.

Council Member Burmont talked about the history of the Overlay District and his frustrations with the applicant. He also discussed his hesitation concerning the USR.

Mayor Achziger talked about the history of the Overlay District and the Urban Renewal Authority and discussed the priority for City Council to improve the Highway 85 Corridor, with an emphasis on commercial business development. He talked about problems with City Council approving USR when there are zoning conflicts with the proposed use. Mayor Achziger also discussed the criteria for a USR and the history of violations by the applicant.

Mayor Pro-Tem Morris moved to deny the USR and Resolution No. 04-2013, the motion was seconded by Councilmember Brown. The motion passed with a roll call vote of 5-2.

**D. Public Hearing – Resolution No 05-2013 - Use by Special Review for Outdoor Storage on Property Zoned I-1 - 1461 43rd Street in Evans Colorado – (Alpha and Omega Storage II)**

Ms. Trent explained the request for a USR by Alpha and Omega Storage for outdoor storage to exceed what is allowed in the City Municipal Code. Section 19.48 of the Municipal Code addresses accessory uses and outdoor storage. Ms. Trent explained that the proposed outdoor storage for Alpha and Omega would be over 10 percent of the property and would require a USR approval in accordance with Section 19.44 and Section 19.48. She also explained that the owner would like to be allowed to use 60 percent of the property for outdoor storage.

According to the Staff Report, the Alpha and Omega Storage was approved for a USR in 2011 for the property located at 1470 42<sup>nd</sup> Street to exceed the 10 percent limits on the outdoor storage. Since that time the applicant, Mr. Rudy Vanderwahl, has done a minor lot line adjustment to combine the two properties, and is now requesting a second USR to allow outdoor storage in excess of the 10 percent allowed in a I-1 zone.

Ms. Trent explained that the Evans Planning Commission held a public hearing on January 8, 2013 and recommended approval of the USR with conditions. The condition was for a two year period of the site use. She also explained that an additional condition may be for some screening and landscaping on the site.

She talked about criteria of a USR under Section 19.44.020 of City Code and explained that the use was unlikely to harm health, safety, and welfare of the City or its residents. She also explained that the use was consistent with the comprehensive plan and the current I-1 zoning.

Council Member Morris asked about the conditions requested by the Evans Planning Commission for a two year time period for the USR. He also asked about similar USRs in this area and why the request was made for two years.

Discussion ensued concerning the two year time requirement and other time requirements for USRs in the City.

Mayor Pro-Tem Morris asked staff about the number of outdoor storage businesses that would require more USRs to come before City Council. Ms. Trent explained that there could be several other outdoor storage businesses that are not compliant with City Code and may need to be approved for a USR.

Council Member Burmont asked about how to ensure compliance with applicants on certain conditions attached to a USR.

Ms. Trent explained provided some history of the business and the applicant, and indicated that the applicant has worked well with the City.

Rudy Vanderwal, applicant and owner Alpha and Omega Storage, 1461 43<sup>rd</sup> Street, Evans,

addressed City Council to explain the history of his outdoor storage businesses that he started in 2005. He explained that he has worked with the City since 2005 to improve his property and become more compliant with City Code.

He also talked about his future plans for his business and his preference for four year timeframe as a condition of the USR.

Council Member Burmont asked Mr. Vanderwal about his opinion about working with staff and about the conditions of the USR, including the two year timeframe and the request for screening along 42<sup>nd</sup> Street.

Mr. Vanderwal discussed frustrations meeting City Code, but explained that he has been able to work with staff. He also stated that he would comply with any conditions attached to the USR.

Mayor Achziger asked Mr. Vanderwal about his storage business and the state of the local oil and gas business. Mr. Vanderwal discussed the need to expand his storage business due to the state of the oil and gas industry, and mentioned that his storage business was currently occupied by Cimmaron to store oil/water separators.

Mayor Achziger asked Mr. Vanderwal about his experience working with the City.

Mr. Vanderwal talked about the amount of time he has spent working through the regulations of City Code and suggested revising zoning requirements in industrial areas above the 10 percent limit.

Scott Riley, 303 1<sup>st</sup> Avenue, Ault, addressed City Council to discuss the improvements of zoning changes to address outdoor storage businesses, but cautioned about over-regulating business owners.

Tom Hamblen, 1995 42<sup>nd</sup> Street, Evans addressed City Council to discuss the 10-20-30 percent requirement and talked about the need to lift the limitations on outdoor storage businesses in areas with industrial zoning. Mr. Hamblin had a question about the storage restrictions and asked staff for a copy of Section 19.48 of City Code.

Council Members Niebaur, Burmont, and Morris discussed their support for the USR and talked about the conditions placed on the applicant.

Mayor Achziger also discussed his support for the USR.

Council Member Burmont discussed possible code revisions to allow up to 30 percent of a property for outdoor storage, under certain conditions.

Council Member Burmont moved to adopt Resolution No. 05-2013, the motion was seconded by Council Member Niebauer. The motion was adopted with all members voting

thereon.

**E. Ordinance No. 551-13 Adding Section 9.16.095 to the Evans Municipal Code Prohibiting the act of urinating in public and amending Section .20.010 of the Evans Municipal Code**

City Attorney, Russ Anson, explained the need for the ordinance to City Council. He explained that the purpose of the Ordinance is to place the act of urinating in public as a separate offense in the Municipal Code so that a person is not charged with indecent exposure, which is a sexual offense.

Commander Hauge, Evans Police Department, addressed City Council to request their support for the ordinance.

The Council Members explained their support for the Ordinance.

Council Member Morris moved to adopt Ordinance No. 551-13, the motion was seconded by Council Member Burmont. The motion was adopted with all members voting thereon.

**F. Preliminary budget revisions related to carry forward of 2012 budget expenditures**

Jessica Gonifas, Deputy City Manager, addressed City Council to discuss a 2012 budget item that needed to be carried forward into the 2013 budget. This budget item relates to expenditures for the Retail Strategy Phase 2, which was originally budgeted for in 2012. Ms. Gonifas explained that the original budget for the Retail Strategy Phase 2 was \$1,600,000 and funds spent on this project in 2012 totaled \$1,338,602. The remaining \$261,398 for the project needed to be included in the 2013 budget.

Council Member Schaffer moved to adopt the preliminary budget revision, the motion was seconded by Council Member Brown. The motion was adopted with all members voting thereon.

**REPORTS:**

**A. The City Manager report**

Aden Hogen, City Manager, addressed City Council to explain the process for providing updates on the 2013 Colorado General Assembly to City Council.

**B. The City Attorney report**

Russ Anson, provided an update on the administrative hearing for Evans Liquor *LLC*, which was

rescheduled from February 6<sup>th</sup> to February 20<sup>th</sup>.

**AUDIENCE PARTICIPATION:**

Bill Bartlet, 2836 West 5<sup>th</sup> Street, Greeley, addressed City Council to express concerns over the Council's decision to deny the USR for Gazelle Trucking. Mr. Bartlet discussed the City's vision for Highway 85 Corridor and the need for council to be able to make tough decisions.

**ADJOURNMENT:**

Mayor Achziger adjourned the meeting at 7:00 p.m.



  
City Clerk

