

**Wagner Planning and Zoning Commission Meeting**  
**Tuesday, September 2<sup>nd</sup>, 2014**  
**Wagner City Hall**  
**5:30PM**

Meeting called to order at 5:30 pm.

Members stood and recited the Pledge of Allegiance.

Members Present: Dale Petrik, Vern Twitero, Jean Pirner and John Greger. Others present: Becky Brunsing, Finance Officer, City Attorney, Ken Cotton and Brian McGinnis, Planning and Development District III. Absent: Chad Peters.

A motion was made by Greger, second by Pirner to approve the agenda. All voted aye, motion carried.

Rachel and Dave Woods were present to give some information to the zoning board. Mrs. Woods is going to be starting her own embroidery business in her home. The proposed use is defined as a Home Occupation therefore allowed under as an accessory use in the Residential (R-1) District. She stated that she has no employees, there will be no excessive traffic coming and going to her house and deliveries will be what a normal household would expect. The zoning commission thanked Mrs. Woods for the information and wished her well in her new endeavor.

The second application was for rezoning a property for Fousek Grain, LLC located at the corner of Hickory Avenue SW and 2<sup>nd</sup> Street SW described as Lots 1 & 2, Block 23, Fourth Addition, City of Wagner, Charles Mix County, South Dakota. Sam Fousek had submitted a building permit for replacing 2 bins and grain leg. The property is currently zoned Residential (R-1) District. The building permit was denied, due to the current activity being a nonconforming use of land and structures within an R-1 zoned district. Mr. Fousek then submitted an application requesting a rezoning of the property from R-1 Residential to Highway Commercial (HC) District. The board reviewed the rezoning application made by Fousek Grain, LLC.

Acting Chairman, Twitero, asked Mr. Fousek to explain why he wanted the property rezoned to Highway Commercial (HC). Mr. Fousek said he would like to move the older damaged bin over to the northwest and put up a new 100,000 bushel bin. He further stated the new bin grain leg will be better and bins are tighter and there will be some improvement in grain dust.

Twitero asked if there citizens present that wanted to voice their concerns or opposition:

Dave Woods stated that the kids walking past the bin site to and from the school with no sidewalk is a concern.

Jim Reinbold asked if there was an adapter for elevators where the dust can be kept in the truck rather than the atmosphere. He stated that everyone in the community is affected by the grain dust.

Nancy Reinbold made reference to the 1996 conditional use agreement. She stated nothing in the agreement had been followed to her knowledge no penalties or fines had been imposed upon Mr. Fousek.

Mr. Fousek stated that he would have never thought that he would need more grain storage. He said that 20 years ago, the six bins and the size that they are would have been adequate, but with farming technology, and seed advancement, the yields are triple what they would have been years ago.

Darol Hall stated that where the Mr. Fousek wants to move the bin is very close to the curb and may impede visibility of traffic from the south. Mr. Fousek responded that he will not build that one there and just replace the damaged one with a new one.

Dianna Schroeder asked what the difference is if it is zoned R-1 or Highway Commercial. Brian McGinnis was present and explained that since it is zoned R-1 Residential, replacing, repairing or rebuilding a grain bin is a nonconforming use of R-1. He did explain that he has seen other properties in other communities be rezoned with exceptions or conditions put on the property.

An individual that lives in one of the new homes in Wagner Heights was concerned about increased dust and the noise level.

Dianna Schroeder stated that the bins were already there before most of the opposing members had their home bought. One member spoke up and said that the bins were not there when they purchased their house.

General discussion followed including the fence that is in disrepair. Mr. McGinnis answered questions that citizens had about the proposed rezoning. He did state that a rezoning of property was a legislative act, and would have to be put in ordinance format, have a first and second reading, publication, and 20 day wait period after publication to become effective.

There being no other comments from parties present, a motion was made by Greger, second by Petrik, to rezone the property from Residential (R-1) District to Highway Commercial (HC) subject to the following conditions:

1. No on-ground storage of grain on the property.
2. No chemicals, fertilizers or equipment shall be stored or allowed on the property.
3. That six grain bins are the maximum amount to ever be put on property.
4. No abandoned or unusable equipment allowed on property – no rubble of any kind on the premise.
5. No spilled or rotting grain on premises.
6. No parking of grain or truck equipment on neighboring properties without permission.
7. Must meet all setbacks required.
8. City of Wagner shall have all enforcement powers given to it by this ordinance, the Wagner Municipal Code and South Dakota.

9. That Fousek Grain be allowed to construct the grain leg up to the replacement bin that has been constructed for use in 2014 harvest and; subject to Fousek Grain LLC and Sam and Angie Fousek granting to the City indemnification and hold harmless agreement releasing city from any liability for cost of grain leg construction, in the event, for whatever reason the rezoning does not occur.
10. Bin footing in the northwest corner will be removed and no bin will be constructed on that site.
11. Property is for grain storage only.

Upon roll call vote being taken, the following voted AYE: Petrik, Pirner, Greger and Twitero. The following voted NAY: None. The following were absent: Peters. The following abstained: None. Motion carried.

The meeting was adjourned at 8:10 pm.

Respectfully submitted,

Ken Cotton  
City Attorney

Rebecca Brunsing  
Finance Officer