

MEETING OF THE BOARD OF ADJUSTMENT 12-16-03

The December 16, 2003 meeting of the Norwalk Board of Adjustment was held in the Council Chambers of Norwalk City Hall, 705 North Avenue, Norwalk, Iowa. Chairperson Joe Smith called the meeting to order at 6:30 p.m. Present at roll call: Joe Smith, Jan Sparks, Christin Grant, Steven Davidson and Chad Stevens. Absent none.

City Staff present: Jeff Wren, Community Development Director/Planner; Mark Miller, City Administrator; James Dougherty, City Attorney; Alice Powers, Administrative Assistant; Councilmembers; Dave Hixenbaugh and Bruce Cheek.

03-25 – Motion by Sparks, seconded by Grant, to approve the agenda as presented. Approved 5-0.

Continuation of Public Hearing on June 23, 2003; BOA Docket #03-01 – Request by MidAmerican Energy for a special use permit to construct an electrical substation located at 4539 Highway 28.

Chairperson Smith requested that any documents to be presented to the Board be presented either now or at the time the presenter is speaking. He added anyone wishing to speak must come to the podium and give their name and address.

Dougherty stated that if the person presenting the documents wished to have them considered as part of the proceedings, the documents must be retained by the City.

Wren explained that the packet received by members is bigger than the one received in June. This is a request for a special use permit for an electrical substation located at Delaware Street and Highway 28 south of Wright Road in a newly annexed portion of the City. John Kern, 4539 Highway 28, currently owns the property. He showed the Commission members the location of the area on the land use map and pointed out the land is currently zoned M-1 (industrial) with the area to the north zoned R-5 or for a mobile home park. This proposed substation would be directly under the overhead 345-volt transmission lines presently going thru the area. The site plan for the area was looked at and approved by the Planning and Zoning Commission at their meeting in June 2003. This area to be annexed is approximately 120 acres; it was a voluntary annexation and was acted upon by the City Council on December 4, 2003.

Wren explained that the items on the desk in front of the Board members included a picture of a type of tree that they are proposing for screening purposes, along with a news article and pictures of the proposal. A copy of the letter from Chuck Dowler, 503 Lewis Avenue was received by the Board and also addressed to Chris Pose, attorney for Mid-American.

Time was given for the Board members to read the letter from Dowler as it was received this evening. Smith asked if anyone else would like a copy of the letter. Jim Becker, 1325 Main Street, requested a copy.

Chris Pose, attorney for MidAmerican Energy, stated:

- He was here in June when the meeting did not take place because there were a lot of questions. Considerable effort has been expended to answer these questions.
- This could have been approved by the County last summer, as the property was not part of the City at that time. However, MidAmerican felt it was better to have it approved by the City as it was going to be part of the City before the substation was built.
- Sub-Station by definition transfers power down from large voltage lines to low voltage lines so that consumers can use it.

- Showed a map of the Greater Des Moines area and the location of the substations in and around Des Moines. There are none for the Norwalk area.
- The substations in Greenfield Plaza and on Army Post Road now serve Norwalk. Norwalk needs to have one for current and future development.
- The Kern family currently owns the land for the proposed substation. John Kern will continue to live in his home when this is built.
- The question has been asked, “why is the proposed substation not on lower ground?” The answer is this is not the highest land in the area but not the lowest either.
- Showed a site plan and explained there will be landscaping around the site and they have added the additional evergreens that Wren requested in his Board notes.
- Pointed out that the article in front of the Board members is from Council Bluffs and it states the Business Park with a sub-station in the area has developed rapidly. All pictures showed development around the substations.
- Explained the pictures that were submitted to the Board this evening. There will not be a microwave tower in the Norwalk site.
- The site will be 6.6 acres but the landscaping will be around the entire 10 acres that will eventually be the total site when phase 2 and phase 3 are completed.
- Pose stated that this site conforms to all requirements of the City Code.

Marty Dostalík, the engineer for the site, explained:

- The site would be 6.61 acres with the final total build out being 10.1 acres. This site on the land purchased by MidAmerican was chosen, as it stayed clear of the sewer line that runs through the site, and it is under the high voltage lines that run through the area. This will minimize the impact on the surrounding area.
- The surface of the drive will be crushed limestone rock base, with the surface of the site being covered with ground up asphalt road material. This should keep the dust to a very minimum. The fence will be 7’ high with 3 strands of barbed wire around the site. The drainage will be directed into intakes with holding areas so that the water does not rush off the site. Highest point of the site will be 13’ below the elevation of the house and about 5’ below the elevation of the road.
- The landscaping will consist of a dwarf variety of Colorado spruce, swamp white oak, fairly large overstory trees and evergreens. Evergreens will be 8’ tall with the overstory trees being about 2 1/2’ in the trunk at time of planting. The planting will be done now so that by the time the first phase is complete the trees should be fairly well established.
- Substation is located in the area that it is because of the two large sewer lines that run thru the area and they cannot build over the sewer lines. The overhead lines in the area will be removed.
- The closest residence is Bob Dunn residence at 4550 Highway 28. There have been meetings with this family and MidAmerican has offered to plant large trees in their front yard in order to block this from their site.
- KWKY has been meeting with MidAmerican and MidAmerican has agreed to install some equipment that will eliminate any problem for the transmission of the radio station. A letter to this fact has been provided to the City.

Bruce Gunderson, commercial appraiser, 800 Midland Building, Des Moines, stated he has looked at the impact of substation on the value of the surrounding property. Prices here are well above the average agricultural land. 100th Street and 154th Street substations have development right up against them and there is very little or no impact on commercial values. Residential properties located 400' or a block and half from the substation shows no impact on the value of the land.

Pose stated the distance to the Dunn residence is approximately 700' from substation and so should show no decrease in value.

Larry Davis, Substation engineer for Mid-American, the sound issue was questioned by the City Council. There will be sound generated from this. The farther you are away from the substation the less sound. At 500' from the Southeast Polk substation there is no sound. The proposed substation will have no impact as everything is farther than that.

Pose explained:

- There would be line taps going in and out of the site
- A 161 voltage feeder line could go up Highway 28. It will be aboveground; this will be sometime in the future.
- At the four corners of the sub station will be 65' in height with lightning rods on them, for obvious reasons.
- The amount of land developed in each stage of development would be, 6.1 acres for phase 1, 4.4 acres for phase 2 and 2.9 acres in phase 3.
- There will be landscaping around the entire site with fencing around phase 1 at the present time. The valuation for tax purposes for the site will be approximately nine million-dollars. The tax money goes to the state and is divided up among the cities that have substations. There is a bill in the legislature that would allow the cities to add the entire nine million to the city's valuation.
- The Kern family or MidAmerican Energy has no plan to develop the land around the sub station at this time.
- This will be an advanced substation with advanced screening.

Pose asked for questions:

Grant questioned the distance from Highway 28 to start of the fence is 600'. Pose answered the transformer is 900' from the road.

Smith asked if anyone else wanted to speak for or against the proposal. He also questioned if the Vandalia Road, SE Polk Substation is the same size? Pose stated the proposed Norwalk substation is slightly smaller than the Vandalia Road, SE Polk Substation.

Jim Becker, 1312 Main Street, questioned if the proposed substation could have a wall as the substation that is within a couple blocks of police station in West Des Moines. Becker liked the wall as it hides the entire site from the road. The wall is about 30' high. Becker would like to see a wall installed around the entire site of this proposed substation.

Becker asked what is the voltage of the Army Post substation? Pose answered 161 volts and it does have a brick wall. Grant stated this is a lot smaller than Norwalk would be.

Becker questioned the reason for the higher land? Pose answered this land is the middle elevation of the Kern farm. This land is the land that Kern would sell them.

Becker questioned if it would be possible to move the sewer line and move the substation farther off the highway? Pose stated the easements that run thru the property and the proposed street that runs through the area would make it cost prohibitive.

Becker asked if a brick wall would help eliminate sound or would it make it worse. Wren stated that it might make the sound worse.

Becker asked if this is approved tonight how soon will construction begin? Pose stated spring to summer with completion of phase 1 completed in fall of 2004.

Summation by Becker was that he felt it needs a brick or wall of some type screening the site from Highway 28 and Wright Road.

Ruth Dunn, 4550 Highway 28, lives directly across from the site, stated they are not against the project, but think the brick wall is better. With the wall at least it would be permanent, trees die. There will be dead trees around the site. Mrs. Dunn expressed concern about the amount of taxes that it is bringing in. Mrs. Dunn stated her family has 260 acres directly across and this has devalued their life if not their land. She questioned if there will be more commercial development? Norwalk has not been real good at getting commercial development up to now. Mrs. Dunn felt that Mid-American are not the people we should be turning to for answers about the impact of this project. Mrs. Dunn feels that if this is approved this will be the legacy of the Board.

Mrs. Dunn feels some one should have approached them to find out how the Dunn family felt about this before it came before the Board.

Robert Dunn, 4550 Highway 28, expressed suspicion about the fact that Mid-American is purchasing 40 acres and they will only use 18.7 acres. When MidAmerican approached the Dunn's on this MidAmerican said it would be 18 – 20 acres. Mr. Dunn showed pictures that he took of the Booneville sub-station where a friend of his lives across from it. Mid-American makes it sound like roses. His friend has a lot of noise from this substation.

Sparks asked how far the house is from the road. Mr. Dunn stated approximately 30'. He stated he agrees with his wife, Jim Becker and Chuck Dowler. Dunn stated he is a small hog producer and most people can drive by his place and not notice the hog lot is there. This is to Mr. Dunn a city's version of a large hog confinement. Dunn thinks it will be a monument of poor judgement if this project is approved.

Pose stated the Booneville sub-station is approximately 11 acres and was built in the 1970's. It will be a lot noisier than the one proposed for Norwalk.

Davidson asked who is taking noise level readings. Wren stated this information is included in the four Seasons Car Wash files.

Stevens asked if there would be more noise as the load increases. Larry Davis, Engineer, stated there would be a small increase but not much. Davidson asked how much of an increase. Davie stated about two decibels increase.

Smith asked what the level of noise is at about 500' Davis stated about what is there now with the overhead lines.

George Meinecke, 4199 Arthur Trail, Cumming, stated he agrees with Jim Becker, the brick wall should be considered strongly.

Scott Clary, 923 Hunter Drive, Norwalk, asked why put in a substation if you don't have any outfeed lines. Pose stated there would outfeed lines and showed Mr. Clary on the site plan for the area.

Steve Haacke, manager of the sub-station division, stated that phase 1 is the total build out for the foreseeable future He would be very surprised if the south build out occurs in the next 10 years. The north build-out would not ever be built in his opinion. There will be a line coming in on each side of the site. This sub-station is absolutely critical if the City is going to grow because Mid-American can not now supply the power that would be needed if the City grows as proposed.

The lines in and out of the proposed substation could be overhead or underground. Clary asked if the power would be on the existing poles. Haacke stated yes and there will be additional poles.

Clary stated he was concerned about this supplying the Business Park north of Norwalk in Des Moines. Haacke stated no that will never happen. The proposed substation can only supply power within a 3-mile area.

Smith asked why the 40 acres. Pose stated that is the amount of land the Kern family would sell them. Haacke stated there would be no further development on this site than is already proposed. It also provides a buffer around the site.

Sparks asked what would happen with the remaining 30 acres. Haacke stated it would be farmed. John Kern will live in his house until he no longer requires it.

Board members asked if the additional 30 acres were developed would MidAmerican have to come back to the City for approval. Wren stated yes.

Wren asked about the voltage lines along Highway 28. Haacke answered they will be the same as other lines going thru the City.

Haacke stated that beyond the 500' the sound levels would be nil, but if this becomes a problem at any time in the future, this can and will be fixed.

Davidson asked how much the landscaping would reduce the sound in comparison to the wall that was discussed. Haacke stated the landscaping would do a good job. The wall may make the sound worse by deflecting it.

Pose stated that Mid-American does not have a wall around any sub-station of the same size anywhere in the state of Iowa.

Stevens asked why none of the sub-stations shown in the pictures have any landscaping as shown on the proposal. Pose stated they were all built at a time when that was not required.

Davidson asked how tall the trees would get. Haacke stated up to approximately 80'.

Smith asked about dead trees. Wren stated that is a requirement of our ordinances that MidAmerican must remove and replace them. This is true of any property owner in the City.

Grant questioned if the Dunn's would be satisfied if the sub-station was moved back. Mr. and Mrs. Dunn answered yes.

Grant asked if they would prefer a brick wall? Dunn's answered yes.

Bob Dunn stated the wall does work. Showed picture again.

Mr. Dunn stated at least a wall along the front. Mrs. Dunn stated along the front and along the proposed Delaware Street. Mrs. Dunn stated they could hear the football field at the high school from their residence and so felt that they would hear the substation.

Wren gave the Board copies of the decibel study that was done at the Four Season's Car Wash. The Board could require an acceptable sound level at the property line. A hard surface can reflect back the sound from the surface.

Davidson questioned Mrs. Dunn as to the concerns she expressed about the rest of the 30 acres. She stated that she finds it hard to believe that they will construct a 9 million-dollar structure and do nothing with the remaining land.

Dunn stated he was approached by Mid-American and they wanted 40 acres. He turned down the offer for the reasons stated.

Davidson asked is the need there now? Haacke stated yes, the need is there now. There is a problem seen on the grid that could overload the system now. There is an immediate need and the solution is one that will serve the City in the future.

Smith closed the meeting to the audience to have a Board discussion.

Smith stated he wanted to clarify that this is an emotional issue and the solution must be a legal one. He stated he had requested that the City staff not give a recommendation so Board Members could make up their own minds

Dougherty stated that the legal requirements are what are stated in the City of Norwalk Zoning Code. If the proposal is approved or denied the Board must lay out the reasons for their decision.

Grant stated she had gone through the Code and read the portion of the ordinance that states it must meet the requirements of that zoning classification. Grant feels that she is uncomfortable with relying on the information given only by Mid-American.

Wren stated that this is zoned industrial and there is only agricultural use around it at the present time. The City is planning when the area builds out that it will be industrial in nature.

Stevens read what was allowed in the industrial zoning. Wren read to the Board the uses that would require a hearing before this Board. It states that there must be at least 200' separation between this usage and any residential uses. This more than meets the requirement within the M-1 district

Stevens stated that a condition could be put on it as to sound levels. He would like to see some type of wall around it. Sparks asked if this would be all the way around. Stevens stated yes and 30' in height with the landscaping already proposed.

Davidson stated another alternative would be an earth berm with shrubbery on top of it. He did not feel a wall would be a good idea.

Grant questioned how far apart would the trees be planted. She thinks there should be something else in addition to the trees.

Sparks said the wall looks good but there is no pictures showing landscaping.

Wren stated there could be industrial uses between the site and the highway. Grant stated she was not going use that as a basis of her decision.

Davidson questioned if there was a sound level reading that would be acceptable. Wren stated no as there is no way to determine acceptable sound levels for everyone.

Dougherty told the Board that the fact finding should rely on the information given to them.

Stevens questioned what was the definition of a visual nuisance? Dougherty stated that those are defined in both in the City and State codes. It is something that is offensive to the senses.

Dougherty reminded the Board that they must make their decision based on the code and not emotions.

Stevens stated he would not feel comfortable voting no based on the Code. The only thing would be a wall that would better serve the way it looks.

Smith asked Stevens if a wall would be better in his opinion than the landscaping. Stevens stated yes.

Sparks questioned the barbed wire. Dougherty stated no barbed wire is allowed in the City of Norwalk.

Grant feels that a discussion be held as to where the wall would be located. Smith stated where do you quit? Sparks said not on the East Side.

Davidson asked Stevens if his request for a fence is from development or landowner point of view. Stevens stated from the surrounding landowners.

Dougherty read the definition of a nuisance is according to the City Ordinances, which goes along the lines of the State code also.

Stevens feels that there will not be any other chainlink surrounded areas in the industrial area. These would all be brick or stone and no chainlink fences surrounding them.

Smith asked Mid-American what their feelings on the wall on the West Side. Pose stated they would agree to work with the City on the westside only. A wall around the entire site would not or could not be an option.

Stevens asked how high a wall. Pose stated an 8' wall.

Davidson could go either a way, but landscaping could be a lot more of a buffer in his opinion.

Sparks asked how fast the landscaping would grow? Pose stated anywhere from 2' to 6' a year. Evergreens will be 8', overstory 2" caliper or 12' high; crabapple would be 8'.

Smith stated that if they do put up a wall they would reduce the number of trees. Sparks stated that you would not hide the sub-station. Davidson questioned what would be more of a good thing 20 years from now.

Pose asked if they could make a suggestion. He stated the MidAmerican group present at the meeting did not feel that the wall would be visible on the northwest side. And so if they would berm along the West Side and plant the trees on top of it.

Dostalick stated that on the north end they would leave the trees on the ground and then berm the southwest end of the site.

Mrs. Dunn asked who would be responsible for maintaining the site. Smith stated Mid-American would be.

Smith called for a vote of the Board.

03-026 – Motion by Davidson, seconded by Stevens, to approve BOA Docket #03-01; MidAmerican's request for an electrical substation located at 4539 Highway 28. With the stipulations as follows: 1. The

applicant shall incorporate a five- (5) foot berm on the South end of the western edge of the substation compound from the proposed drive extending South. This berm shall be tapered to form a uniform appearance of the Western Edge of the compound. 2. No additional ambient noise shall be produced by the facility when monitored from the Eastern edge of Highway 28. Approved 5-0.

03-027 – Motion by Grant, seconded by Sparks, to adjourn at 9:25 p.m. Approved 5-0.

Joe Smith, Chairperson

Jeff Wren, Community Development/Planning Director