

**BOARD OF COUNTY COMMISSIONERS**  
**SARPY COUNTY, NEBRASKA**

**RESOLUTION: SPECIAL USE PERMIT FOR WATERFALL LOUNGE**

WHEREAS, pursuant to Neb. Rev. Stat. § 23-104 (Reissue 2007), the County has the power to do all acts in relation to the concerns of the County necessary to the exercise of its corporate powers; and,

WHEREAS, pursuant to Neb. Rev. Stat. § 23-103 (Reissue 2007), the powers of the County as a body are exercised by the County Board; and,

WHEREAS, the County Board of Commissioners has the authority to adopt a Zoning Regulation, which shall have the force and effect of law pursuant to Neb. Rev. Stat. § 23-114 (Reissue 2007); and,

WHEREAS, said Zoning Regulations require the County Board of Commissioners to approve Special Use Permits; and

WHEREAS, Rebecca Horner, Planning Director has reviewed the Drinking Establishment Special Use Permit application, inclusive of an outdoor seating area (sidewalk café) of the Waterfall Lounge for compliance with the Sarpy County Comprehensive Plan and the Sarpy County Zoning Regulations on the property generally located at 10208 S 168<sup>th</sup> Avenue #A #B and legally described as follows:

Lot 12, Tiburon Village, Sarpy County, Nebraska.

WHEREAS, the Board has previously approved the Special Use Permit application for Waterfall Lounge, inclusive of an outdoor seating area (sidewalk café) on July 21, 2009 by Resolution No. 2009-204, and required Waterfall Lounge to use shielded lighting to limit light pollution, have an eight (8) foot rod iron fence with balustrade spacing no more than three (3) inches on center enclosing the outdoor area, and not have any noise producing activities (i.e. no outdoor bands, no speakers, etc.) in the outdoor seating area.

NOW, THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS that this Board makes the following findings of fact:

- I. A public hearing regarding the Special Use Permit Application was held before the Sarpy County Planning Commission on July 15, 2009 and further, the Planning Commission gave their recommendation.
- II. A public hearing regarding the Special Use Permit Application was held by this Board on July 21, 2009 where the Board approved the Special Use Permit Application and required certain conditions as outlined in Resolution No. 2009-204.
- III. Board members wished to re-address the Special Use Permit Application for Waterfall Lounge and thus a public hearing regarding the Special Use Permit Application was held by this Board on September 15, 2009.
- IV. Notice of each of the Public Hearings described above was published at least once in the ten (10) day period immediately prior to each respective public hearing as required by Neb. Rev. Stat. §23-164 (Reissue 1997), and the proof of publication has been filed in the Office of the Sarpy County Clerk.
- V. The Planning Director has made a recommendation as noted in the attached Exhibit "A", which Exhibit "A" includes the Planning Director report dated July 21, 2009.
- VI. The Special Use Permit Application is in compliance with the Comprehensive Development Plan.

FURTHER BE IT RESOLVED THAT this Board in light of the above recited findings of fact, after due deliberation and consideration, rescinds those parts of Resolution No. 2009-204 which are in conflict with this Resolution and affirms those parts of Resolution No. 2009-204 not in conflict with this Resolution and further approves the Special Use Permit for a Drinking Establishment, inclusive of the outdoor seating area (sidewalk café) on the above described property with the following conditions:

1. The applicant use shielded lighting to limit light pollution;
2. The applicant have a 4 foot (not specified) fence with balustrade spacing no more than three (3) inches on center enclosing the outdoor area; and
3. The applicant not have any noise producing activities (i.e. no outdoor bands, no speakers, etc.) in the outdoor seating area.

Dated this 15<sup>th</sup> day of September, 2009.

Moved by Tom Richards seconded by Rich Jansen, that the above Resolution be adopted. Carried.

YEAS:

NAYS:

ABSENT:

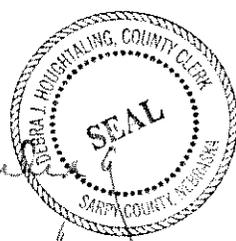
<u>Rich Jansen</u>	<u>none</u>	<u>none</u>
<u>Tom Richards</u>	_____	_____
<u>Patrick J. Thorne</u>	_____	_____
<u>Debra J. Hoventhal</u>	_____	_____

ABSTAIN:

none

Approved as to form:

Mark W. [Signature]  
County Attorney



Debra J. Hoventhal  
County Clerk

Sarpy County Board of Commissioners Report  
July 21, 2009

Subject	Type	By
Special Use Permit for Drinking Establishment located on the following described property to wit: Lot 12 Tiburon Village Sarpy County, Nebraska.	Resolution and public hearing	Rebecca Horner, Planning Director

This is a request for approval of a special use permit for a Drinking Establishment in the BG, General Business district at 10208 S. 168<sup>th</sup> Street, also known as "Waterfall Lounge".

Special Use Permit:

- o The BG district allows for Drinking Establishments as a Permitted Special Use. "On the Rocks" was established in early 2007, prior to the requirement for a special use permit. The request will allow the existing use to become conforming as well as allow for the expansion of the use for an outdoor seating area. The site plan is in conformance with the BG, General Business district zoning regulations.
- o The proposed drinking establishment is to be located in a commercial area as part of a retail strip building in a commercial center. The proposed outdoor beer garden/seating area is to be located at the front of the building partially within an existing oversized sidewalk aisle.
- o The sidewalk aisle is approximately 18' in width. The minimum design standard for sidewalk width is between 4' and 5'. The remaining width of the sidewalk, after the addition of the outdoor seating area is approximately 8'6" in width, which exceeds the minimum required width.
- o The proposed outdoor seating area is set back from the parking lot and it appears that protective bollards would not be necessary in this case. In the past, protective bollards were required when the seating area was in a driving aisle or in a parking lot.
- o The applicant proposes a 42" high aluminum fence to enclose the outdoor seating area/beer garden. At the planning commission hearing the applicant indicated the fence is proposed to be 48", however the site plan drawings indicate 42".
- o The applicant requests to use the outdoor seating area to serve liquor. The Nebraska Liquor Control Commission requires liquor to be contained in an area that will not allow the passage of alcohol under, over or through the area. The applicant requests the outdoor seating area to be fenced with a 42" tall aluminum fence. The liquor control commission occasionally allows sidewalk cafes to have shorter fencing when the architectural design of the area dictates that a shorter fence is more appropriate for the architecture of the area. Typically these types of cafes are in historic districts such as the Old Market. Shadow Lake Towne Center has two sites with similar fence heights.
- o Discussion with Russ Zeeb from the Sheriff's office indicated the request appears to be in conformance with the sidewalk café provision from the Liquor Control Commission.
- o Recently the County Board approved similar outdoor seating areas ranging from six to eight foot height and either solid wood fencing or black wrought iron fencing with balustrade spacing of no more than 3" on center. Both areas included structural bollards spaced no more than 4' on center along the outside of the seating area because the seating areas were in either parking or drive aisle areas. This request is to incorporate the seating area on a portion of a wide sidewalk and structural bollards do not appear to be necessary. If the Planning Commission believes structural bollards are necessary they would be recommended adjacent to the parking lot and spaced 4' on center

- Existing uses in the building include a variety of uses. There is an unoccupied bay adjacent to Waterfall Lounge. Other tenants in the retail building include a nail salon and coffee shop. Waterfall Lounge is located at the southern end of the retail building. The nearest existing residential is approximately 420' from the location of the proposed outdoor seating area.
- The outdoor area should be limited from having any speakers, live bands or similar noise producing activities or devices in order to limit negative impacts to surrounding uses. In the past the County Board has restricted all noise producing devices and allowed limited speakers in situations where opaque fencing partially blocked the noise from the speakers. The proposed fencing would not be able to provide noise reduction. Staff recommends that no noise producing devices, live bands or similar uses be allowed in the outdoor seating area.
- Lighting, if used, should be limited to fixtures with sharp cutoff shields in order to limit light pollution to the adjacent existing residential.
- The Sheriff's report history is attached.

Planning Commission Action

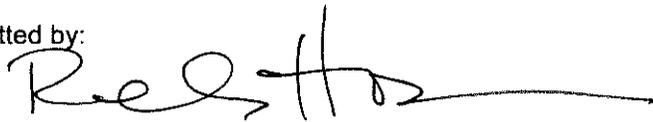
- On July 15, 2009, the Planning Commission voted unanimously (9-0) to recommend approval of the special use permit.
- *Dunbar moved, seconded by Bliss to approve agenda item A Special Use Permit for the Waterfall Lounge located and 10208 S. 168<sup>th</sup> Avenue as it complies with the Comprehensive Plan Zoning Code of Sarpy County. **Ayes-** Bliss, Courtney Dunbar, Fenster, Stuart, Marquardt, Torczon, Wear, Wees, Whitfield. **Nays – none. Abstain – None. Absent,** Greg Gonzalez and Stacen Gross –. **Motion carried.** (9-0)*

Recommendation

- For the above stated reasons, I recommend approval to the Special Use Permit with added conditions that the lighting be shielded to prevent glare on adjacent properties and the outdoor seating area be restricted from having noise producing devices (live bands, speakers, etc) in order to reduce the impact on adjacent residential uses, due to compatibility with the amended Comprehensive Development Plan, Zoning and Subdivision Regulations.
- If the County Board wishes to revise the proposed fence height, staff recommends the fence be six foot wrought iron with balustrade spacing of no greater than three inches on center.

Respectfully submitted by:

Rebecca Horner  
Planning Director



# **ADDITIONAL INFORMATION**

**SARPY COUNTY BOARD OF COMMISSIONERS**

**SEPTEMBER 15, 2009**

**RECONSIDERATION OF SPECIAL USE PERMIT**

**WATERFALL LOUNGE**



# Office of the County Attorney

Hall of Justice • 1210 Golden Gate Drive • Suite 3147  
Papillion, NE 68046-2889  
(402) 593-2330 • FAX: (402) 593-4359

L. Kenneth Polikov  
Sarpy County Attorney

## MEMORANDUM

August 28, 2009

TO: Planning Department  
RE: Waterfall Lounge; reconsideration of special use permit  
FROM: Nicole O'Keefe, Deputy Sarpy County Attorney

On July 21, 2009, the county board approved a special use permit application for a drinking establishment inclusive of an outdoor seating area. The county board approval required certain conditions of the applicant. Since the July 21, 2009, there is at least one county board member who would like to reconsider the special use permit. It appears the county board wishes to re-address appears to be one of the conditions the county board required of the applicant.

A matter already considered by the county board may be reconsidered if a county board commissioner wishes to place it on the agenda. Reconsideration by the county board is not a right of any applicant, but at the discretion of a county board commissioner. Additionally, the particular facts and circumstances surrounding the item to be reconsidered will determine whether or not the county board may reconsider an item without the item going through a new application process or the item's normal course of business.

In this particular case, the special use permit application for Waterfall Lounge, review of the record shows the planning commission recommended approval of the special use permit application as submitted by the applicant. The applicant requested a forty-two inch high aluminum fence to surround the outdoor seating area. However, the planning director recommended an eight foot high rod iron fence with balustrade spacing of no more than three inches on center to surround the outdoor seating area. The county board approved the special use permit application requiring the applicant to have an eight foot high rod iron fence.

The normal course of business for a special use permit application requires an applicant pay an application fee, appear before the planning commission for a public hearing and recommendation and then appear before the county board for a public hearing and approval or denial of the special use permit. The Waterfall Lounge application was heard before the planning commission on July 15, 2009 and heard before the county board on July 21, 2009. In this case, it is not necessary to require the applicant to return to the planning commission because the point of contention appears to be the fence, which the planning commission approved as submitted by the applicant. Additionally, the amount of time which has passed between the approval by the county board and the reconsideration of the fence condition has only been approximately one month. In this set of circumstances, it is appropriate, at the discretion of the county board to reconsider the Waterfall Lounge special use permit without requiring the applicant to return to

the planning commission. It would be necessary to follow the normal notice requirements of a special use permit application.

It should be noted that on the rare occasion when a county board member wishes to reconsider an item, it will be necessary for a legal analysis of the facts and circumstances surrounding the matter. Lastly, reconsideration by the county board is not a right of any applicant, but at the discretion of a county board commissioner.

# AFFIDAVIT OF PUBLICATION

State of Nebraska}

ss.

County of Sarpy}

Being duly sworn, upon oath, Shon Barenklau deposes and says that he is the Publisher or Kirk Hoffman deposes and says that he is the Business Manager of the **Bellevue Leader, Papillion Times, Gretna Breeze and Springfield Monitor**, a legal newspaper with a bonafided circulation of 300 copies published in Bellevue, Papillion, Gretna and Springfield, Nebraska; and said newspaper has been published for at least 52 consecutive weeks prior to publication of attached notice: that said publications are of general circulations: that the attached notice was published 1 times on:

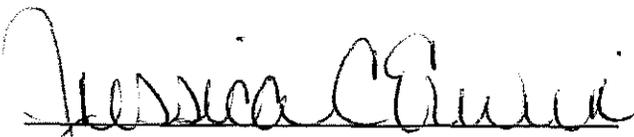
**Wednesday, July 8, 2009**

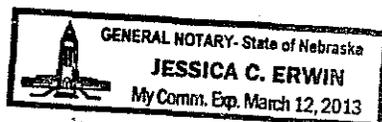
And that said newspaper is a legal newspaper under the statutes of the State of Nebraska. The above facts are within my personal knowledge.

  
\_\_\_\_\_  
Shon Barenklau      OR      Kirk Hoffman  
Publisher                      Business Manager

Today's Date 07-08-2009

Signed in my presence and sworn to before me:

  
\_\_\_\_\_  
Notary Public



## SARPY COUNTY DEPARTMENT OF PLANNING

Sarpy County Courthouse  
1210 Golden Gate Drive  
Papillion, Nebraska 68046  
Phone (402) 593-1555  
Fax (402) 593-1558  
Rebecca Horner, Director

## NOTICE OF PUBLIC HEARING SARPY COUNTY BOARD OF COMMISSIONERS

Notice is hereby given that a regular meeting of the Sarpy County Board of Commissioners will be held on Tuesday, July 21, 2009, at 3:00 P.M. in the Sarpy County Board Room, Sarpy County Administration, Papillion, Nebraska.

**WATERFALL LOUNGE, 10208 S. 168th Ave. Suites A and B, Omaha, NE 68136** request approval of a Special Use Permit to operate a drinking establishment on the following described property, to wit: Lot 12 Tiburon Village, Sarpy County, Nebraska (168th Avenue, south of Cheyenne Road)  
11999580; 7/8

Printer's Fee \$ 14.98

Customer Number: 000947

Order Number: 11999580

AFFIDAVIT OF PUBLICATION

State of Nebraska}

ss.

County of Sarpy}

Being duly sworn, upon oath, Shon Barenklau deposes and says that he is the Publisher or Kirk Hoffman deposes and says that he is the Business Manager of the Bellevue Leader, Papillion Times, Gretna Breeze and Springfield Monitor, a legal newspaper with a bonafided circulation of 300 copies published in Bellevue, Papillion, Gretna and Springfield, Nebraska; and said newspaper has been published for at least 52 consecutive weeks prior to publication of attached notice: that said publications are of general circulations: that the attached notice was published 1 times on:

Wednesday, July 1, 2009

And that said newspaper is a legal newspaper under the statutes of the State of Nebraska. The above facts are within my personal knowledge.

*Kirk Hoffman*

Shon Barenklau OR Kirk Hoffman  
Publisher Business Manager

SARPY COUNTY DEPARTMENT OF PLANNING

Sarpy County Courthouse  
1210 Golden Gate Drive  
Papillion, Nebraska 68046  
Phone (402) 593-1555-Fax(402) 593-1558  
Rebecca Horner, Director

NOTICE OF PUBLIC HEARING  
SARPY COUNTY PLANNING COMMISSION

Notice is hereby given that a regular meeting of the Sarpy County Planning Commission will be held on Wednesday, July 15, 2009, at 7:00 P.M. in the Sarpy County Board Room, Sarpy County Administration, Papillion, Nebraska.

WATERFALL LOUNGE, 10208 S. 168th Ave. Suites A and B, Omaha, NE 68136 request approval of a Special Use Permit to operate a drinking establishment on the following described property, to wit: Lot 12 Tiburon Village, Sarpy County, Nebraska (168th Avenue, south of Cheyenne Road)

JULIE NIELSON, 16410 S 180th St., Springfield, NE 68059 requests approval of a Special Use Permit to operate a kennel on the following described property, to wit: Tax Lot 8A in Sec. 29, Twp 13N, Rng 11E of the 6th P.M., Sarpy County, Nebraska (180th & Pflug Road)

PROPOSED AMENDMENTS to the Sarpy County Zoning Regulations to add regulations for Wind Energy Systems.

An agenda for the meeting, kept continually current, is available for inspection at the Sarpy County Planning Department office.

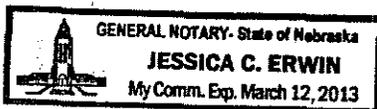
11999184; 7/1

Today's Date 06-30-2009

Signed in my presence and sworn to before me:

*Jessica C Erwin*

Notary Public



Printer's Fee \$ 18.83

Customer Number: 000947

Order Number: 11999184