

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, November 7, 2007, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Leirion Gaylor-Baird, Gene Carroll, Michael Cornelius, Dick Esseks, Wendy Francis, Roger Larson, Robert Moline and Lynn Sunderman (Tommy Taylor absent); Marvin Krout, Brian Will, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Chair Gene Carroll called the meeting to order and requested a motion approving the minutes for the regular meeting held October 24, 2007. Motion for approval made by Francis, seconded by Cornelius and carried 6-0: Gaylor-Baird, Carroll, Cornelius, Esseks, Francis and Larson voting 'yes'; Moline and Sunderman abstained; Taylor absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

November 7, 2007

Members present: Gaylor-Baird, Carroll, Cornelius, Esseks, Francis, Larson, Moline and Sunderman; Taylor absent.

The Consent Agenda consisted of the following items: **SPECIAL PERMIT NO. 07049.**

Ex Parte Communications: None.

Item No. 1.1, Special Permit No. 07049, was removed from the Consent Agenda and scheduled for separate public hearing.

REQUESTS FOR DEFERRAL: None.

SPECIAL PERMIT NO. 07049
FOR AUTHORITY TO SELL ALCOHOLIC BEVERAGES
FOR CONSUMPTION ON THE PREMISES
ON PROPERTY LOCATED AT 710 HILL STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

November 7, 2007

Members present: Cornelius, Larson, Esseks, Francis, Gaylor-Baird, Moline, Sunderman and Carroll; Taylor absent.

Staff Recommendation: Conditional approval.

Ex Parte Communications: None.

This application was removed from the Consent Agenda due to a letter in opposition.

Staff presentation: **Brian Will of Planning staff** explained that this is a request for a special permit for on-sale alcohol at 710 Hill Street. It does meet all of the code provisions for the special permit for on-sale alcohol and staff is recommending conditional approval.

Proponents

1. Dan Lesoing, 6001 The Knolls, testified on behalf of Courtside as the applicant. Alcohol has been allowed in the banquet hall on the premises for 2.5 years. He does not plan to change the type of business that is currently being conducted on the premises. The Courtside Banquet Hall is in the front half of the building with the athletic gym in the back half. He is not requesting to sell alcohol during sporting events. The banquet hall is for wedding receptions, etc., and has been occurring for 2.5 years. The first year, people were allowed to provide their own alcohol as a private party rental, making the customer liable. The second year, in 2007, under DJ's Bartending, the applicant got a liquor permit and did 15 SDL's, with no problems. In 2006, they held 31 Courtside events and 24 athletic events. In 2007, they have had 36 Courtside events and 26 athletic events. He currently has reservations for 30 Courtside events scheduled for wedding receptions, graduations, etc., and 26 athletic events in 2008.

The purpose of this application for a liquor special permit and liquor license is to give the applicant more control for safety and consumption purposes. The owner will be able to monitor the situation more closely and monitor the clientele that is brought into the premises, including serving time, consumption, safety for the attendees, etc.

Lesoing indicated that he would agree to an amendment to the conditions that no liquor could be sold during sporting events. He has no intent to do so and he has never done so. They do not normally have sporting events at the same time as a Courtside event. The banquet hall is used as a concession hall during sporting events. They have never had two events at the same time.

Moline inquired whether there have been any safety problems. Lesoing indicated that there have only been three times during an event that the Police Department has been called, and all three times it was during a private rental event. They have not had any Police Department calls since they began doing SDL's.

Esseks wondered about young people from the separate gym facility trying to crash the wedding reception to get alcohol. Lesoing believes the special permit would prevent this type of activity because the owner would be responsible for the bartending. Uninvited guests would be asked to leave. It would be very easy to point out teenagers, plus they would be asked for an ID if they appear to be under-age.

Opposition

1. Danelle Catlett, owner and head coach of Solid Rock Gymnastics, located at 610 Hill Street, testified in opposition. She cannot support this application because she believes it does increase the potential for accidents and liability at her facility. It increases the potential for an already bad parking situation. She knows that they do not intend to serve alcohol during their sporting events, but Solid Rock operates all evening on Saturdays and Sunday afternoons, so there are children constantly coming and going from Solid Rock during those times. She has no reservations about the integrity and character of the operators of this building, but this is a permit that stays with the property. There is no way to prevent it from becoming a sports bar, etc., in the future.

Cornelius asked whether Catlett has noticed any specific problems when there are wedding receptions as opposed to sporting events. Catlett acknowledged that she has not had any intoxicated patrons from the facility, but it is an area of town where they do experience some vandalism. The main issue has been the parking, primarily during the sporting events, but sometimes when there is a reception, also. They use her parking lot for overflow.

Catlett referred to the social hall on the north side of town where the Planning Commission restricted the permit to only activities held in the social hall. In this situation, she does have a concern that some future tenant might allow it to become a sporting activity with parents consuming alcohol in the banquet area. She understands that is not this applicant's current intent, but she is concerned about the future use. She does now know what the future holds for this building.

The students at Solid Rock range in age from three to eighteen. Solid Rock is open on Saturdays from 9 a.m. to 9 p.m. and Sundays from 12:00 Noon to 5:00 p.m. They host birthday parties during this time. 99% of the children are brought by their parents. Only two of the students at Solid Rock are currently of driving age.

2. Steve Herrmann, 2651 S. 8th, testified in opposition. He has witnessed people leaving their beer bottles in the parking lot and the field next to his house, and he has also

witnessed drunk drivers. He believes that a lot of his neighbors would be here in opposition if they did not have to work. "This is our neighborhood and we do not want people serving alcohol as they have for the past two years." His back porch overlooks the front door and he has noticed many people coming out drunk and leaving their trash. He is not happy with alcohol being served around the corner from his home.

Cornelius inquired whether the police have been called when drunk driving was witnessed. Herrmann stated, "yes", but they do not get there in time. He is not sure whether anyone has reported the litter.

Moline asked Herrmann whether he is certain that all of this is coming from the banquet hall. Herrmann stated that he stands on his back porch and watches it regularly.

Moline suggested that if the owner were serving the alcohol, he may have more control of this situation. Herrmann agreed that it could be an improvement but it is a youth sports complex serving alcohol. He has never approached the owner because he speeds down the street at 35 mph.

Staff questions

Cornelius asked staff to respond to the request to limit this special permit to the intended use and this applicant. Will confirmed that the special permit runs with the land and it stays with the land. He acknowledged that the Planning Commission did impose such a condition on the Hinky Dinky building, but staff has discussed this with the Law Department and the City Attorney is suggesting that such condition could be better handled by a private agreement between the owners of the two businesses versus being attached to the special permit. We need to avoid establishing the precedent of attaching very limiting and very specific conditions to these permits.

Esseks suggested that with the youth athletics, this might be a unique situation where the activities should not occur at the same time. Will stated that the Planning Commission has the discretion to make a finding and impose that condition. The staff is concerned because a liquor special permit is almost a conditional use. There is already a list of criteria that is fairly restrictive, and if the application meets that criteria, they should be granted the special permit. Will clarified that this is just a special permit for the sale of alcohol for consumption on the premises. No off-sale. It should also be remembered that the property in this case is zoned I-1 Industrial, which is a very permissive zoning district. There are certain uses that are prohibited. In fact, the Health Department often raises the question and concern about locating an athletic club or private school or the activities of such in an industrial district.

Larson does not believe there should be any litter outside of the building. Will agreed that it should be fully contained. On-sale defines the area where alcohol can be stored and consumed. Larson confirmed that with this special permit, the operator would be doing the

liquor business part and would not open the facility for a SDL. Will clarified that if this permit is granted, the applicant would then apply for a permanent liquor license with the state and he could no longer allow private individuals to provide the liquor.

Will also clarified that there is no limitation on the number of SDL events. They could apply for an unlimited number, but they have to apply for each event separately.

Gaylor-Baird asked for an explanation of the zoning regulations for sale of alcohol. Will recited the requirements, including 1) on-street parking of 1/100 sq. ft. of gross floor area (the most restrictive parking requirement in the zoning ordinance and equivalent to a restaurant); 2) does not include off-sale; and 3) area designated as the licensed premises has to be located at least 100 feet from a day care facility, park, church, state mental health institution or residential district (in this case, there is a residential district to the east but it is more than 100 feet, and a park to the north, which is more than 100 feet).

Will stated that Solid Rock is across the parking lot so he would estimate that it is perhaps 60-70 feet away. There is no zoning regulation that restricts a special permit for alcohol in close proximity to a youth sports facility. Will also pointed out that a special permit is required to locate a private school in an industrial district.

Will also advised that there are requirements in the state statute for a liquor license separate and apart from this special permit requirement. The state regulations have different requirements, so there is another set of hoops before this will be approved.

Esseks noted that the opposition indicated that the principal concern is parking. Do we have some grandfather situations? Will stated, "no", they have to meet all of the parking requirements. This facility meets the requirements of the ordinance now. It is in the I-1 district. The use is subject to the parking requirements of 1/1,000 sq. ft. of floor area, with the exception of the license premises being subject to parking at 1/100 sq. ft.. Given even that, this application is showing 107 parking spaces, which meets this requirement in combination with the rest of the building. Will doesn't disagree that parking might be an issue on a very busy night; however, they do meet the requirements of the zoning ordinance.

Carroll observed that the City Council can revoke the special permit if there is any violation such as vandalism, drunkenness or litter at any time. Will concurred that for good cause shown, the City Council can revoke the special permit.

Response by the Applicant

Lesoing reiterated that he has been conducting this same business at this location for the last 2.5 years. There have been events with alcohol at the Courtside banquet hall for 2.5 years. He is not asking to do anything he has not been doing. If the liquor license is not granted, he can continue to do the SDL's. He started doing SDL's to have more control.

This special permit will give him even more control. He has never had a complaint. The Bison Youth Sports Complex is mission-driven. It is not an income-generating business. The banquet hall allows he and his partner to potentially break even with this endeavor. Lesoing is a youth sports advocate. He would never jeopardize the integrity of youth sports. He has never had a complaint from a parent about the use of the Courtside for receptions. If he does not get a liquor license, that does not mean there will not be alcohol served, but instead, whoever rents the banquet hall will be in charge of that liquor. He would rather be in charge of the liquor. He wants to be in control of the safety issues and the litter. People will not be allowed to bring in their own alcohol.

As far as children playing in the parking lots, Lesoing has never witnessed people driving drunk, but people should not be playing in the parking lots and trespassing. There was a lot more vandalism and more trespassing when the skating rink was at this location. He believes he could have brought people to this hearing in support had he known there was going to be so much opposition. He did have two phone calls in support.

Lesoing believes that 60' to the edge of the Solid Rock building is accurate, but their front entrance is probably more than 150' around the corner of the building. He does the best he can to clean up any litter. With the special permit he will have more control because people will not be allowed to take alcohol in and out of the building.

Cornelius inquired whether neighbors can get in touch with Lesoing. Lesoing acknowledged that he probably does drive 35 mph when he is going home, but when his car is parked at the facility, anyone can come over and find him. He does not hide. The staff people will know how to reach and find him. He has been doing youth sports for 12 years on a volunteer basis with Cornhusker Shooting Stars. If there is a problem in the neighborhood, he wants to fix it.

Lesoing indicated that he understands the position of Solid Rock about any future use. And he would not object to a condition that during a sporting event, alcohol would not be allowed to be sold. He does sometimes bring the basketball team in to practice while there is a reception going on, but there are separate entrances and the doors can be locked.

ACTION BY PLANNING COMMISSION:

November 7, 2007

Larson moved to approve the staff recommendation of conditional approval, seconded by Cornelius.

Larson believes that the operator wants to operate this in the proper manner and he has to have control. If there are complaints or violations, the City Council can revoke the permit.

Esseks made a motion to amend that there be no concurrent "competitive" youth sporting event and social gathering with on-sale alcohol within the building, seconded by Cornelius.

Esseks does not have a problem with teams being brought in to practice, but he does have a concern about unsupervised participants during a competitive youth event.

Carroll pointed out that the Law Department would prefer this condition not be imposed. Esseks believes it is the Planning Commission's obligation to protect the public welfare. He does not believe that this rather limited constraint should be a problem.

Gaylor-Baird agreed. The spirit of the laws indicates that we do not want alcohol close to where our children are engaged in activities.

Cornelius believes this is a unique situation where we have both of these uses under one roof.

Carroll commented that since the two sections of the building are separated by locked doors, he does not believe there should be a limitation on use of the building. They are asking for the special permit for one section of the building only, and we are trying to dictate what they can do in the rest of the building. We should not take away this right. He is against the amendment.

Moline stated that he will also vote against the amendment. The applicant will still need to get a liquor permit from the state that will have more control over how the liquor is dispensed. The Law Dept is correct – sometimes we try to micro manage just a little bit too much.

Motion to amend failed 3-5: Cornelius, Esseks and Baylor-Baird voting 'yes'; Larson, Francis, Moline, Sunderman and Carroll voting 'no'; Taylor absent.

Motion to approve the staff recommendation of conditional approval carried 8-0: Cornelius, Larson, Esseks, Francis, Gaylor-Baird, Moline, Sunderman and Carroll voting 'yes'; Taylor absent. This is final action unless appealed to the City Council within 14 days.

WAIVER NO. 07008
TO WAIVE REQUIRED SIDEWALKS
ON PROPERTY GENERALLY LOCATED
AT NORTH 70TH STREET AND MCCORMICK DRIVE.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

November 7, 2007

Members present: Cornelius, Larson, Esseks, Francis, Gaylor-Baird, Moline, Sunderman and Carroll; Taylor absent.

Staff Recommendation: Denial

Ex Parte Communications: None.

Staff presentation: **Brian Will of Planning staff** presented the proposal to waive a portion of the sidewalk in conjunction with an approved final plat. Staff is recommending denial in that the applicant has not provided sufficient justification to grant this waiver.

Proponents

1. Mike Johnson of Olsson Associates, presented the proposal on behalf of the owner and applicant, **LRC, Inc.** His client is not opposed to installing sidewalks; however, this is an industrial tract. There are no sidewalks to the north. He drove north of Abbott Sports Complex and across the Interstate another mile all the way to the LES wind turbines and there are no sidewalks. The nearest sidewalk to the south is 1,250 feet away at the GM Auto Parts dealer, and that piece of sidewalk is just along the one building that abuts 70th Street and approximately 100 feet long. A sidewalk that actually goes somewhere is another 550 feet further south to get to Custer Street. The segment of sidewalk in front of the GM Auto Parts dealer is on a triangular piece of property located between Cornhusker Highway and the Burlington Northern tracks. If someone wanted to walk north to Abbott Sports Complex, it is all two-lane asphalt rural section with a bridge over Salt Creek, with no pedestrian way. There are no sidewalks on the Abbott Sports Complex property. As far north as you can see, the property is zoned industrial or agricultural. There might be some residential way to the north. Overall, from the southeast corner of this property to the nearest sidewalk that actually goes somewhere is 3,270 feet (.62 mi.).

Johnson advised that his client has posted the escrow for the sidewalk and his client is looking to sell the property. Johnson suggested sometime in the future, when the city widens 70th Street, this sidewalk would get destroyed during that construction and would have to be rebuilt.

Johnson explained that the developer is required to build the sidewalk within 2 years of approval of the final plat. If not built, the city holds the escrow and the developer could apply for an extension of time at the end of two years, but that is time consuming and costly.

Johnson reiterated that this would be a sidewalk to nowhere. If it were built now, his client would be responsible for shoveling snow on 600' of sidewalk that no one will use and that goes nowhere. There are no residents. No one will be walking there for recreation. The two-lane bridge to Abbott Sports Complex is a 2-lane bridge with no pedestrian way. There is a purchase agreement in process. The buyer is ready to begin construction of a building.

There was no testimony in opposition.

Esseks asked staff to discuss the issue of this "sidewalk going nowhere". He believes that waivers are sometimes justified but staff is recommending against this one. How do we respond to the applicant's argument? Will indicated that in those cases where there are circumstances that justify the waiver, staff would support it. This lot is part of a larger

preliminary plat. The sidewalks internal to that plat were waived during the process of the preliminary plat. The sidewalks adjacent to N. 70th Street were not waived at that time. When the preliminary plat was reviewed, staff agreed to waive the internal sidewalks for a large industrial center; however, 70th Street does go somewhere both north and south, and one of the ways that we get improvements such as sidewalks in an area where we don't have sidewalks is when the land adjacent subdivides. Currently, the lot immediately to the north, which is part of the same preliminary plat, has posted their surety and guaranteed the sidewalk adjacent to the property on 70th Street. There is also a preliminary plat on the east side of 70th Street, which also requires sidewalks on 70th Street. As we look at this area and as it continues to develop, staff believes it important to have the sidewalk network continue along 70th Street. The more intense use does not diminish the need for sidewalks. It is anticipated that Abbott Sports Complex will generate some pedestrian circulation in the future.

Gaylor-Baird confirmed that it would be inconsistent with the properties to the north and east if this waiver were granted. Will agreed.

Moline asked staff to confirm or dispel whether the sidewalk would be destroyed and have to be rebuilt in the event of the widening of 70th Street. Will suggested an alternative where the developer can pay the cash amount to the city as opposed to waiving the sidewalk. The city would then be responsible for building the sidewalk either now, in the near future or when 70th Street is widened. He agreed that the sidewalk would be destroyed when 70th is widened.

Dennis Bartels of Public Works also responded, stating that it is not necessarily a given that the sidewalk would be destroyed but it does happen frequently. He advised that Public Works, however, does not have a project identified to widen N. 70th Street in this area for at least 10 years.

Moline inquired how far south someone has to go before finding a sidewalk that would connect with this sidewalk. Will did not know.

Moline inquired whether there would be any way the public could force sidewalks to the south. Bartels stated that the City Council has the authority to create a sidewalk district and force sidewalks to be constructed anywhere within the City Limits. Public Works will typically monitor areas that are high traffic areas and will bring those areas forward determined to need sidewalks to the City Council once a year. Then the property owner is given a timeframe to build the sidewalk, and if they do not, the city will create an assessment district with the cost assessed against the property owner. Bartels also agreed that another alternative would be for the applicant to put up a cash bond based on today's value and the city will have the obligation to build the sidewalk at the point in time that it is deemed necessary.

Esseks suggested reviewing the function of public sidewalks – it is not just to walk a mile north and a mile south. Isn't there public convenience to walk from one part of that park around to another part? Will agreed. In the absence of the sidewalk you are left with walking across the yard, the grass or walking in the street or ditch.

Response by the Applicant

Johnson reiterated that there is no sidewalk along 70th Street at Abbott Sports Complex and there are no sidewalks within Abbott Sports Complex. Over a year ago, the owner did provide a cash bond for the sidewalk on the property across McCormick, and the city has not yet built the sidewalk. Johnson inquired of Planning staff about the alternative of a cash contribution instead of posting a bond or escrow, and he was told that that was not an option at this time. If push comes to shove in this situation, Johnson believes his client would rather give the city the cash as opposed to building the sidewalk and posting the surety, but they were not previously given that option.

Johnson also reiterated that the nearest sidewalk in a residential neighborhood or anywhere is 3,270 feet (.62 mi.). That is down on Custer Street. There is no sidewalk all the way to 56th Street, and no sidewalk on Fletcher to the east or to the north. It is a sidewalk that would go nowhere.

Bartels acknowledged that Public Works requested the bond because a sidewalk could be built in this situation. We would typically ask for a cash contribution in rural sections where it is impossible to build a sidewalk. A cash contribution would be four times the bond amount.

Esseks inquired whether Public Works would accept the cash contribution in this situation so that the city has the flexibility to put the sidewalk where and when it is needed. Bartels indicated he would accept that compromise. The bond was required because there is no physical reason why the sidewalk cannot be built.

Moline inquired whether the city invests these funds. How many of these projects where they have written a check does the city build the sidewalk? Bartels stated that the money is turned over to Public Works and put in a separate account. The money is invested. This is a relatively new procedure in the subdivision ordinance. The subdivision and location have to be clearly identified.

ACTION BY PLANNING COMMISSION:

November 7, 2007

Cornelius moved to deny, seconded by Esseks.

Cornelius believes that the Comprehensive Plan is clear on the matter of sidewalks and he hears that we have a compromise that is agreeable to both Public Works and the applicant in this case. For that reason, he believes the Commission should honor the work that is put in the Plan to call for sidewalks in developing areas and encourage it in this case.

Motion to deny carried 5-3: Cornelius, Esseks, Gaylor-Baird, Sunderman and Carroll voting 'yes'; Larson, Francis and Moline voting 'no'; Taylor absent. This is a recommendation to the City Council.

ITEMS NOT APPEARING ON THE AGENDA:

November 7, 2007

Members present: Cornelius, Larson, Esseks, Francis, Gaylor-Baird, Moline, Sunderman and Carroll; Taylor absent.

Danelle Catlett again came forward and thanked the Commission for their service. She encouraged that a joint committee be appointed to study and address the lack of consistency within the codes and the zoning as to all of the recreational facilities. She understands the history and she knows how gymnastic, cheerleading and dance are private schools, but why are basketball and volleyball defined as a recreational facility? She does not understand the difference. Why are they being treated differently? Why do I have one parking stall per three students in the building at any one time, and another sporting activity is only required to have one stall per 1,000 sq. ft. of industrial space? At some point, this must be fixed. There needs to be some equity.

Carroll advised that during the Comprehensive Plan update a year ago, a joint group did review this issue about locating certain uses in industrial areas. Some of those recommendations were approved and some were not. The Commission will again be looking at this issue in the next update of the Comprehensive Plan next year.

The Commission then adjourned at 2:15 p.m. and proceeded with a briefing by Watershed Management on the Deadmans Run Watershed Master Plan, followed by an audio/Web conference sponsored by the American Planning Association at 3:00 p.m.

There being no further business, the meeting was adjourned at 2:15 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on November 21, 2007.