

## BRIEFING NOTES

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Wednesday, June 2, 2010, 11:30 a.m., Room 113, First Floor, County-City Building, 555 S. 10<sup>th</sup> Street, Lincoln, Nebraska

**MEMBERS IN ATTENDANCE:** Leirion Gaylor Baird, Michael Cornelius, Dick Esseks, Wendy Francis, Roger Larson, Jeanelle Lust, Jim Partington, Lynn Sunderman and Tommy Taylor. Marvin Krout, Steve Henrichsen, Mike DeKalb, Ed Zimmer, Brian Will, Christy Eichorn, Jean Preister and Teresa McKinstry of the Planning Department; Rick Peo of City Attorney; Tom Fox of County Attorney; Fred Hoke of the Development Services Center and Mike Lang of Economic Development.

**STATED PURPOSE OF MEETING:** Ex Parte Communications

Chair Lynn Sunderman called the meeting to order.

Marvin Krout explained that he felt it would be useful to go back and look at the history of some of the recommendations made by Planning staff and the Planning Commission in recent years. The Commission has agreed with staff about 97 percent of the time.

Development is about 15 percent of the economy. Our responsibility goes farther than trying to get an application through the process. Until recently, Planning was just one of many departments. We may not see the final results yet, but the whole idea of the Development Services Center is to get more integration and cooperation between departments. With the concept of the DSC, he sees a more deliberate approach. This should further improve the way that applicants and staff work together.

Sunderman questioned the length of time for an application to be submitted and come before the Planning Commission. Krout replied that it takes four weeks after an application has been submitted to be heard before Planning Commission. This allows for notice to surrounding neighbors, city staff to review and comment, and staff reports to be written. This is a very short time frame. Planning Commissioners review staff reports one week before the public hearing. Staff encourages pre-application meetings and try to give advice

to applicants. Sometimes it could be months before an applicant submits a formal application.

Esseks questioned if there is a summary of the Planning Commission vote that goes to City Council and County Board. Krout replied that there is a factsheet that summarizes the staff findings and recommendation and Planning Commission vote and discussion.

Esseks questioned how he can find access to those documents. Krout replied that through the PATS application on the Internet, the staff report, factsheet and all information is available to be viewed.

Esseks wondered if there is a way to receive feedback on Planning Commission recommendations. Krout believes that the City Council and County Board review all the documents and pay a lot of attention to the Planning Commission findings and action. They are all pretty knowledgeable about what happened at the Planning Commission meeting.

Larson stated that during his years on the Commission, he believes as much as possible has been done. He believes the DSC can monitor the progress and correct any snags in the process. He thinks a lot of progress has been made and the establishment of the DSC takes some pressure off the staff so they don't feel like they have the full responsibility. If an application comes in with some deficiencies, is there some way to expedite the corrections? Krout replied that since last year, all applications are submitted electronically. This saves a lot of time compared to the past. This gives more quality control.

Lust wondered what the staff position is before the City Council and County Board when the staff and Commission disagree on the recommendation of an application. Krout noted that there are times when there are differences of opinion. Krout believes that usually a question is specific as to what the Commission discussed or what staff thought. He doesn't try to analyze the Commission recommendation, just gives the facts of what happened at their meeting.

Krout stated that sometimes further issues come up after an item has left the Planning Commission. There isn't much he can do to control that.

Francis takes great comfort in knowing that city staff is the first line of defense. It has been her experience that they have been very proactive and go above and beyond. She has nothing but the greatest respect for staff and thinks they are doing a good job.

Krout stated that we are seeing an increase in applications so far this year.

Sunderman agreed with Francis. It has been his experience that staff does a great job.

Sunderman stated that he believes the ex parte rule works very good as written. He does not see a need to change it. He thinks it may have been taken too far. Commissioners need to use their best judgement.

Lust reviewed the letter from Baylor Evnen regarding ex parte. She tried to look at the rule and think how it could be simplified. She agrees with Sunderman. Rule 17 gives guidelines to disclosing to other people when they have had that kind of communication. The Planning Commission does a lot of special permits. She thinks they have to be very careful about ex parte with regards to special permits. She thinks the Commissioners may have been using Rule 17 as an iron curtain to prohibit anyone from talking to them about everything. She doesn't think it needs to be that strict. She is anxious to hear Rick Peo's opinion. In perception of fairness, we should disclose all communications. But she does not think it is the end of the world if someone makes a comment to a Commissioner.

Krout thinks that there could be an improved clarification. He is still bothered that change of zone means two different things. There are text changes and a map rezoning of an individual property. Both of those are changes of zone. To him they are two different things. He would suggest an individual change of zone be treated just like a special permit. But a text change of zone is like a Comprehensive Plan Amendment.

Larson agrees that the ex parte rule should be left as is. He believes we have to be right and do right. Appearing to do right is not as important as doing right.

Sunderman believes that the value of the conversation needs to be weighed. Commissioners need to decide if it will be of value or just a hindrance.

Esseks wondered about the applicant who is concerned they didn't have enough time to speak. It looks as though we have to decide that day at the public hearing. Perhaps we need to stand back and take more time to consider all the elements before taking a vote.

Rick Peo stated that there is such a gray area about what is or isn't a legitimate amount of time. He doesn't want to see an application held up indefinitely. A couple of weeks to further investigate an issue is fine.

Larson questioned if the public hearing is closed if something is delayed. Peo responded that depends on how the Planning Commission deals with it. He would recommend to keep the public hearing open.

Sunderman stated it is his understanding that at a continued public hearing they would like to hear only new information.

Partington believes that keeping excess contacts to a minimum is kind of a meaningless statement. It does not give a clean understanding. It should be rewritten.

Lust believes that ex parte contacts should be avoided as much as possible.

Peo noted that someone can leave a voice mail on your telephone and when you play the message, it is hard to not listen. On legislative matters, ex parte is appropriate.

Cornelius wondered if there is any value to stating that ex parte should be avoided and differentiate between quasi judicial and other matters.

Taylor doesn't appreciate the term "avoid" ex parte. He believes they should be sensitive to those matters. He is concerned that if they are going to avoid it, they won't get information when it is needed.

Cornelius is confused about when it would be needed in a quasi judicial action.

Esseks sees that this discussion was started by a particular attorney wanting to talk about certain issues in general. It was perceived as being too close to a particular issue. In the future, he will suggest that it be submitted in writing to all the Commissioners. If we are worried about public perceptions, he believes it would be best to have comments submitted in writing.

Lust thinks the best response would be that you would be happy to talk about general issues after the particular issue was through the Planning Commission.

Cornelius doesn't think it would be inappropriate to talk about general issues, but if we approach issues that involve a particular application, then ex parte needs to be disclosed at the public hearing.

Lust stated that no matter what, it doesn't hurt to disclose anything that you think might be ex parte.

Krout agreed. It's good to share information with your colleagues.

In disclosing ex parte, Francis wondered about when to go into greater detail. Krout believes that the content of the discussion is what is important.

Francis noted that one person can have one impression of how the conversation transpired and another person can have a different impression. Krout replied that is why he believes Peo has advised that ex parte be avoided.

Peo doesn't believe that ex parte has been a problem over the years. He doesn't believe the rules need to be adjusted, just reviewed from time to time.

Sunderman agreed.

Krout stated that Commissioners are encouraged to call staff if they have questions. If general information is needed, they try to address it in a memo to all the Commissioners.

Lust questioned at what point the Commission is considered in a public meeting forum if she sends an email question to staff and there is a discussion? Peo believes that should not happen. Once a lot of Commissioners start to ask questions and function as a group, that can be ex parte.

Esseks has gotten into the habit of sending a question to a particular planner. Then it occurred to him that question should be shared with the other Commissioners and the applicant.

Gaylor Baird doesn't believe the applicant has an advantage. The staff serves the public and she doesn't think they are the same. Staff are the ones who do 99 percent of the work for Commissioners and she believes they should be treated as Planning Commission staff, not applicant staff.

Krout noted that the applicant is copied on correspondence so they are aware of discussions and questions.

Taylor thinks it is important to have the information available to help Commissioners make a better decision.

Larson believes this has been very helpful but that it needs to be recognized that Commissioners are not political appointees but advisors.

The meeting was adjourned at 12:50 p.m.