**BRIEFING NOTES**

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| **NAME OF GROUP:** | PLANNING COMMISSION |
| **DATE, TIME AND PLACE OF MEETING:** | Wednesday, December 14, 2011, 12:00 Noon, Conference Room 113, County-City Building, 555 S. 10th Street, Lincoln, Nebraska |
| **MEMBERS IN ATTENDANCE:** | Leirion Gaylor Baird, Michael Cornelius, Dick Esseks, Wendy Francis, Jeanelle Lust, Greg Butcher, Ken Weber, Chris Hove and Lynn Sunderman; Marvin Krout and Jean Preister, Planning Department; Rick Peo, City Law Department; Brittany Behrens, Deputy County Attorney. |
| **STATED PURPOSE OF MEETING:** | Review of proposed Comprehensive Plan Amendments |

Chair Michael Cornelius called the meeting to order and acknowledged the posting of the Open Meetings Act in the back of the room.

Cornelius opened the floor for discussion on the proposed Comprehensive Plan Amendment to add introductory language to the 2040 Comprehensive Plan.

Francis is not in favor of adding the introductory language. She thinks, as a whole, it "muddies the water" more so than clears anything up. The Comprehensive Plan is a guideline. It is an ongoing process; we review it annually with a more thorough review once every five years. She suggested that the additional language just "opens up a whole new can of worms".

Lust completely agreed. She would prefer to have no introductory language, but at the last meeting it was her understanding that the City Council and County Board want the introductory language, so the Planning Department thought it would be advisable to propose language with which the Planning Commission is comfortable.

Marvin Krout, Director of Planning, advised that he did tell the City Council that he didn't think it was necessary, but there were several County Board and City Council members that asked us to put something together for consideration. You may decide it is not valuable enough to include but we thought maybe it was worthwhile for someone who is not familiar with the plan. We thought there was some value in having an introduction explaining the purpose of the plan, what it is, etc. Cornelius confirmed that the Planning Commission does have the option to recommend no. Krout agreed.

Lust wondered about recommending no, but suggesting alternative language if the City Council and County Board disagree. Rick Peo, City Law Department, suggested that to

be problematic, i.e. to determine what type of vote is required in order to amend the plan to adopt the language. If the Planning Commission recommends denial, the City Council lis required to have five votes to override that recommendation, but what does that do to the recommendation if you recommend no with preferred language? In any event, any change to the Planning Commission recommendation on the Comprehensive Plan requires a super-majority vote (5) by the City Council. The County Board does not have the super-majority requirement.

Esseks is in favor of having language of this nature. He finds it very useful. He thinks the alternate language proposed by Commissioner Lust is acceptable. He does not believe Jon Camp is going to let this be tossed aside. Esseks believes that the Commission needs to rise to the challenge.

Since there is a fair amount of consensus that the language is not absolutely essential but something we can live with, Gaylor Baird would like to vote to get it done and move on.

Upon further discussion about making decisions that may not be consistent with the Plan, Peo agreed with the not legally binding language, but there is still the requirement that zoning and subdivision regulations be in harmony with the Comprehensive Plan. Even though it is a guide, Peo believes that the Comprehensive Plan does have some weight and consideration in making decisions.

Esseks inquired about the Supreme Court finding in Holmgren v. City of Lincoln. Peo advised that there are a lot of Supreme Court cases that talk about the concept of "in accordance with the comprehensive plan", and in that case, the court found that there was no evidence to show it was not in conformance. The issue was that the comprehensive plan showed a development as single-family and the applicant requested and was granted commercial/residential. It basically said that the detail of whether it was single-family or multi-family was not that big of a distinction for saying it is not in conformance. That ruling then went into a spot zoning analysis. A lot of the other cases will say, "the evidence in this case does not show that it was not in conformance with the comprehensive plan." In other words, the evidence did not show it being arbitrary and capricious. It might be different if a person was asking for industrial and the comprehensive plan showed residential. It's always a case-by-case analysis. The law is espoused by the Supreme Court.

Lust inquired whether the County Board has had an opportunity to review the alternate language she is proposing. Brittany Behrens of the County Attorney's office stated that the County Attorney does not have any concerns but she does not believe the language has been reviewed by the County Board. Krout confirmed that he has not provided the proposed revised language to the County Board. The Planning Commission's purpose is to make a recommendation as deemed appropriate. He has not provided this language to Jon Camp either.

Gaylor Baird thinks it is good. If she would add any small thing it might be something about the Comprehensive Plan being developed through an extensive process that should not be disregarded – the idea that a lot of people have already weighed in on this plan. There ought to be good justification. Lust believes that is covered in the first paragraph. Lust also does not want to set up the city or the county if there is a legitimate reason to take action that is not in conformance with the Comprehensive Plan.

Francis pointed out that people submit all kinds of things that are not in conformance with the Comprehensive Plan. She suggested that it is the role of the Planning Commission to decide whether an application is a good or bad change and then make a recommendation. This body is to be separate from the City Council and County Board. We have often had a 9-0 vote where we thought something was not good for the county environment or whatever, and then the County Board has voted to override our recommendation. Francis does not know why we're spending so much time on this, when the role of the Planning Commission is to say whether something does or does not conform.

Cornelius observed that there are competing interests with regard to this introductory language. It is nice to open to a paragraph that says, "this is what this is and this is how we got there." There is the danger of misperception for someone to mistake it either as having force of law or as a brochure about how we wish Lincoln or Lancaster County to be. It is neither of those things. The attempt is to clarify its position between ordinance or statute and a simple wish list.

Krout pointed out that there are other places in the plan where it states that it is a general guide to decision makers, etc.

Sunderman stated that he is comfortable with Commissioner Lust's proposal. He finds the Comprehensive Plan to be fairly flexible anyway. You can find justification for economic development, environmental preservation, and so on.

Peo suggested that no one in the development community has a misunderstanding about what the Comprehensive Plan is. But, for the novice general public purposes, maybe it is just a simple introductory statement.

The Commission then proceeded to discuss the amendment related to the 20-acre rule. Krout advised that after more discussion with the County Board, they have indicated that their intent is not to increase the overall density but to provide opportunity for smaller lots. Staff is now more in harmony with the County Board. The staff met with the County Board during their staff meeting two weeks ago about increasing the density bonus in community

unit plans and other ways to do three lots or four lots, just like we do two 3-acre lots on 40 acres today, and the Board seemed pleased with the direction we are headed. The Planning staff will be preparing some zoning text amendments in the future.

The discussion then proceeded to the Bennet corner amendment. Krout advised that there have been discussions with the Bennet Village Board but there is nothing from them in writing. The Bennet Planning Commission did vote 3-2 a couple weeks ago to support the Planning Department recommendation on the Bennet corner, i.e. not to create any designation for commercial or industrial. A large part of the discussion centered around what's good for Bennet. He thinks that they were divided on that issue. In the end, all of the Village Board members said that they would support Option C, which is the commercial around the corners of that interchange and the 100+ acre industrial park area in the mile section to the north and west of the interchange. It basically came down to, what is the effect of having commercial and industrial development outside of Bennet's city limits – it is not something they will receive direct tax from, and it may be something in competition with their efforts in Bennet to encourage development. They recently went through a county rezoning for industrial for an employer to be located in Bennet and there were some people that thought they should promote Bennet. And some thought that maybe this designation would help Bennet with people coming into Bennet for services, etc. There is some thought that perhaps this will create some kind of boom of economic development and maybe indirectly Bennet would benefit from that. The Village Board all informally told four members of the County Board that they would support the designation of an industrial area and two of them said they would like to consider designating a strip of commercial development down further from the interchange to the border of their one-mile jurisdiction. It was suggested that Bennet should amend their plan first to show what they want before bringing it into the comprehensive planning process. Maybe the County Board wants to add the strip of commercial south along with Option C, but generally speaking the Village Board was supportive of commercial/industrial zoning at that interchange.

Lust confirmed that Bennet has its own Planning Commission that voted 3-2 to deny. But the Village Board has informally (with no vote) indicated that they would support it. Krout concurred.

Francis suggested waiting until Bennet has their plan updated in writing. Krout pointed out that their jurisdiction does not go beyond Hwy 2. They have no obligation to directly translate their plan outside of their own jurisdiction, so he believes the County Board is looking for the Planning Commission's recommendation.

Gaylor Baird is concerned about the potential effect it could have on Lincoln, i.e. competing industrial land and the designation of 200 acres that is in direct opposition to the growth

policies that have served Lancaster County for years. Krout agreed that it does potentially compete with Lincoln if it is successful. There are reasons in the staff report indicating why the Planning Department does not think it is a good idea.

Lust inquired whether there have been any comprehensive studies on what happens to towns like, e.g. Seward and York, where they have major development outside of their core city area. Krout believes that there have been a number of studies with different conclusions and it's almost like zoning in accordance with the plan - it becomes a case-by-case situation – largely he does not believe there is a consensus – and not always a very large impact.

Butcher wondered whether the expansion of the commercial area to the north and to the south might give the opportunity for eateries that would compete with the residual benefits to Bennet. Krout stated that to be one of the reasons people are struggling with it.

Lust does not think we can minimize the impact on where 90% of the county lives. There is a reason that Lincoln has a great economy and that is in part for smart planning where we don't ghettoize Lincoln by allowing major industrial development outside of the city. She understands Bennet's position, but she is not real sure that is what should ultimately happen.

Hove inquired whether Bennet would be required to do all the improvements. Krout does not believe Bennet is capable. Krout suggested that we would end up with that land being available to whomever can make their own individual on-site sewer and water service. It does have a rural water district running by it, but that does not give you the pressure for fire protection, etc.

Sunderman thought that this was supposed to be directed towards agricultural based industries. How do you control that? Krout suggested that would need to be an effort to limit the kinds of uses so that it would not compete with Lincoln or Bennet. It is possible. We do have the H-1 district that basically allows just travel services, repair related uses, service stations, hotels, and the things that travelers use. It is a very short list of uses. And it is possible that if the County Board wanted to try to limit those uses, they could use a zoning agreement to do that. The County's zoning districts for commercial and industrial are much simpler with very few development standards – no landscaping; very little sign control; industrial uses are allowed in commercial zones; there is no special permit process to review individual uses; nothing about noise, odor, lighting and other performance standards. The County has not had the need to have a more sophisticated set of zoning standards because there has been very little of that zoning.

Lust asked whether it would be the County Board's intent to adopt zoning regulations that would allow some control. Krout indicated that the County Board has not said that, and that would be a lot of work for the Department when there will not be much occasion to use it. We did put language in the Comprehensive Plan Amendment that says it should be reserved for a large industrial user. The County Board would not be obligated to zone the property with this amendment. They could wait for a large user and not just speculatively zone the land. Or they could, on a case-by-case basis, ask the Planning Department to apply some development standards that the city might apply. Krout reminded the Commission that this does not zone the property. The County Board is intending to designate it to let the world know that they will probably look favorably on certain zones and uses.

Esseks believes that the Planning Commission decisions on particular parcels or groups of parcels should be guided by the principles in the Plan. Granted, this is not approving the zoning at this point, but we're approving the real possibility of rezoning.

Weber does not want to see a possible business that would want to locate in an area like that go to Syracuse or another similar interchange rather than going to Lincoln. Krout stated that the philosophy in the Comprehensive Plan goes back 30-40 years with the City and County working through a joint plan. That philosophy has been "what's good for the city is what's good for the county". Every tax dollar generated in the city goes to the county and most commercial development should have a quality level of services for water, sewer, and fire, so it makes sense for commercial and industrial uses to go into the cities. There is always the possibility that if you don't approve something somewhere, it might go somewhere else. It also has to do with what kind of community you want. If this intersection develops, there will be a cost. If there are additional road improvement costs, the City of Lincoln will be paying 90% at the Bennet corner to support development from which the city gets no benefit. Weber suggested that it be the developer's expense. But, Krout suggested that where that gets difficult is when it develops piecemeal. We might require a traffic study to determine the improvements and at least make a recommendation to the County Board that it should not be approved without some contributions from the developer, etc.

Meeting adjourned at 12:55 p.m.

Respectfully submitted,

Jean Preister, Administrative Officer
Planning Department

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