

REVISED MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, November 28, 2018, 1:00 p.m., Hearing Room 112 on the first floor of the County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Tom Beckius, Dick Campbell, Tracy Corr, Tracy Edgerton, Deane Finnegan, Maja Harris, Christy Joy, Dennis Scheer and Sändra Washington. David Cary, Steve Henrichsen, Paul Barnes, Tom Cajka, George Wesselhoft, Andrew Thierolf, Geri Rorabaugh and Amy Huffman of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Hearing

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

Scheer requested a motion approving the minutes for the regular Planning Commission hearing held November 14, 2018. Motion for approval made by Campbell, seconded by Beckius and carried 9-0: Beckius, Campbell, Corr, Edgerton, Finnegan, Harris, Joy, Washington and Scheer voting 'yes'.

CONSENT AGENDA **PUBLIC HEARING & ADMINISTRATIVE ACTION** **BEFORE PLANNING COMMISSION:**

November 28, 2018

Members present: Beckius, Campbell, Corr, Edgerton, Finnegan, Harris, Joy, Scheer and Washington.

The Consent Agenda consisted of the following item: **SPECIAL PERMIT 18043 and STREET AND ALLEY VACATION 18004.**

There were no ex parte communications disclosed.

Both items were removed from the Consent Agenda to have separate Public Hearing.

Requests for Deferral:

SPECIAL PERMIT 16004A, FOR THE RENEWAL OF A SPECIAL PERMIT FOR A SOIL MINING OPERATION, GENERALLY LOCATED AT SOUTH 68TH STREET AND SALTILLO ROAD;

PUBLIC HEARING:

November 28, 2018

Members present: Beckius, Campbell, Corr, Edgerton, Finnegan, Harris, Joy, Scheer and Washington.

Staff Recommendation: Conditional Approval.

There were no ex parte communications disclosed on this item.

There was no public testimony on this item.

SPECIAL PERMIT 16004A

ACTION BY PLANNING COMMISSION:

November 28, 2018

Corr moved for a 2-week deferral, as requested by the applicant, to the regular Planning Commission hearing of December 12, 2018; seconded by Campbell and carried, 9-0: Beckius, Campbell, Corr, Edgerton, Finnegan, Harris, Joy, Washington and Scheer voting 'yes'.

SPECIAL PERMIT 18043, TO ALLOW FOR A PARKING LOT WITH WAIVERS, GENERALLY LOCATED AT 11640 A STREET;

PUBLIC HEARING:

November 28, 2018

Members present: Beckius, Campbell, Corr, Edgerton, Finnegan, Harris, Joy, Scheer and Washington.

Staff Recommendation: Conditional Approval.

There were no ex parte communications disclosed on this item.

AND

STREET AND ALLEY VACATION 18004, TO VACATE APPROXIMATELY 10 FEET OF RIGHT-OF-WAY ADJACENT TO PROPERTY GENERALLY LOCATED AT 11640 A STREET;

PUBLIC HEARING:

November 28, 2018

Members present: Beckius, Campbell, Corr, Edgerton, Finnegan, Harris, Joy, Scheer and Washington.

Staff Recommendation: Conformance with the Comprehensive Plan.

There were no ex parte communications disclosed on this item.

Staff Presentation: **George Wesselhoft, Planning Department**, stated this is the site of Grace Evangelical Lutheran Church. When the church submitted an application for a building permit, a review revealed that there was no special permit issued for the existing parking lot to the east. The special permit is necessary in this zoning district. There are two waivers requested. The first is to reduce the front yard setback to eight feet. The second is a waiver from design standards related to the landscape requirement for screening.

Corr asked for clarification about which drive was an alley or a street. Wesselhoft said there is unnamed right-of-way on the west side; it is not a street.

Tom Cajka, Planning Department, stated this was pulled from the Consent Agenda due to a letter received in opposition. The opposition is not due to the vacation, but expressed concerns about County maintenance of the alleys and streets. There is also a drive that comes across his lot that people use as an alley. He would like to fence the area off, but since it is right-of-way, he cannot. There is also a garage to the north that is built into the alley. Staff would like to maintain the right-of-way with the partial street vacation, so the church will deed 10 feet on the east side of the road so that the 25 feet will still be maintained. There are no utilities in the area so there is no need for easements. The reason for this change is for an addition the church would like to make on the east side.

Corr asked if 117th Street will be better aligned. Cajka said it may not be exact, but it will be closer.

Washington asked if there was an option to give a waiver on the building addition. Cajka said they would have needed to go to Board of Zoning Appeals for that type of variation.

Corr wondered if there was any solution for the homeowner who wrote the letter. Cajka said if he could get all of the surrounding homeowners to agree, he could seek a vacation. They would have to pay the fee for that application but, if granted, he would be allowed to install a fence.

Washington asked if the City or County will end up having to maintain 117th Street so people could access the north lots. Cajka said this is within the City 3-mile area, but the County would still maintain the road. There is right-of-way even in the city that is only on paper and not even developed. Washington wondered if each owner to the north could access from 117th or 118th if the alley was vacated. Cajka said that is correct.

Corr asked if the lot will remain gravel. Wesselhoft said yes. They were granted a waiver from servicing requirements many years ago by the City Council.

Proponents:

Lowell Provancha, 4501 S. 80th Street, came forward as a member of the church council and representative of the applicant. This project does not affect the alley or trespass on the property of the person who submitted the letter in opposition. We have always allowed access to the right-of-way for Lots 7-12 and this will not limit access. It is possible he would not have problems if the alley to the north was not closed.

Edgerton asked if the alley went through to the north at one point. Provancha said yes, it has been closed for a number of years now.

There was no additional public testimony.

SPECIAL PERMIT 18043

ACTION BY PLANNING COMMISSION:

November 28, 2018

Beckius moved approval; seconded by Finnegan.

Beckius said this seems appropriate and will allow 117th Street to get closer to proper alignment. The complaints from the neighbor are unrelated to this application.

Corr agreed. She encouraged the property owner with complaints to speak with neighbors to seek the vacation of the alley. Putting up signs could also help.

Campbell commented that the property with the garage in the alley may lose access and need to change the orientation of the garage. Corr noted that it is possible the garage should never have been built in that location.

Motion carried, 9-0: Beckius, Campbell, Corr, Edgerton, Finnegan, Harris, Joy, Washington and Scheer voting 'yes'.

STREET AND ALLEY VACATION 18004

ACTION BY PLANNING COMMISSION:

November 28, 2018

Campbell moved approval; seconded by Washington and carried 9-0: Beckius, Campbell, Corr, Edgerton, Finnegan, Harris, Joy, Washington and Scheer voting 'yes'.

COMPREHENSIVE PLAN CONFORMANCE 18018, A PROPOSED AMENDMENT TO THE LINCOLN CENTER REDEVELOPMENT PLAN TO ADD THE LIED PLACE RESIDENCES, GENERALLY LOCATED AT 1133 Q STREET;
PUBLIC HEARING: **November 28, 2018**

Commissioner Scheer declared a Conflict of Interest and exited the chambers.

Members present: Beckius, Campbell, Corr, Edgerton, Finnegan, Harris, Joy, and Washington.

Staff Recommendation: Conformance with the Comprehensive Plan.

Commissioner Harris disclosed that several people have approached her to ask if this project was going to happen, but no details about the specific agenda item occurred.

Staff Presentation: David Landis, Urban Development Department, this application is on Lied Place to be located in the space formerly occupied by old Applebee's across from the Lied Center. Many years ago, the City created a notch in the garage so that a building could be constructed in this location because the Lied Center expressed that they would prefer that their view was not a parking garage. The winning bid for the project would be the highest building in downtown Lincoln at 20 stories. It will include a mix of uses including a vibrant restaurant at street level, 3 levels of Class A office space and 40 dwelling units in the upper floors. The developer is investing \$25 million and \$5 million in TIF funds will be dedicated to site acquisition, façade quality, and various streetscape improvements, particularly to enhance pedestrian quality. This project is consistent with the goals of the Comprehensive Plan.

Washington wondered about the small discrepancy in the number of bedrooms included in the dwelling units. Landis said the original concept was for 1- and 2-bedroom units, but there has been interest in combining units for up to 3-bedroom dwellings.

Beckius asked for more information about the air rights. Landis said the parking garage has many years of life left and meets a crucial need downtown. There are air rights above the garage that interfere with the building codes to allow for windows on that side of the building. The rights have been granted to allow enough space between the building and any potential future building, though there is no intention for that to happen for many decades.

Edgerton asked how many stories the garage is and where the apartments begin. Landis said the garage is 6.5 stories so there are some apartment levels that do not rise above the top of the garage. The south side is the location of the single hallway for all of the units.

Corr noted the Comp Plan talks about using TIF funds if it is necessary to relocate businesses. She wondered if that will be applied here. Landis said it will not. Corr wondered about the property line since the building will be built to that line. Landis said there is a vestibule that protrudes in the old building and that can be thought of as the property line or front door of this building.

Campbell asked if the canopy is shown in the right-of-way. Landis said yes, adding that there are also arrangements made for balconies that extend into right-of-way when necessary.

Proponents:

Tom Huston, 233 S. 13th Street, Suite 1900, came forward as legal representation for the applicant. The question today is conformity with the Comprehensive Plan. Staff has shown how this is consistent with the goals of establishing a vibrant mixed-use and residential development downtown. This concept is also consistent with the Downtown Master Plan and is actually the fulfillment of the original design for the site. The State Legislature has enacted new legislation relating to the use of TIF funds and those requirements, including the cost-benefit analysis, and impact to local employees and local school districts, among other things, have all been met and are shown in the report. This will be the first new construction of for-sale units. The intention is to schedule demo of the current building in spring.

Campbell asked if a lane of traffic will be closed during construction. Huston said a lane will close permanently since Q Street has five lanes at this location. This will expand the public space and enhance pedestrian activity. The Urban Design Committee saw the general building concept in November and will see more detail about the streetscape in January.

Corr asked if the garage is at full capacity right now. Huston said it has the capacity to enable the negotiation of 100 stalls. Though there is a limit to how far you can go, there are different treatments for office, residential, and commercial parking needs in garages.

Corr asked how 20 stories was decided upon and if there is a top level that hides the mechanical components of the building. Huston replied that the project started at 18 stories and has grown. This is an unusual construction that allows this height on such a narrow site. It is the optimum height and there is a ready market. There is an additional level above that is being screened. The total height is 230 feet including the rooftop equipment, so well under the allowed 275 feet. Corr asked what sector of the market is being targeted; there have been many comments on the lack of affordable housing downtown. Huston said it would be fair to say there will be a mixture of units at different price points.

Tam Allen, 1045 Lincoln Mall, Suite 300, stated there was an RFP for this site in 1994 and there were no takers at that time. The garage is the only unadorned garage downtown. The site is very narrow and only allows for a single hall so the configuration is a dumbbell, narrow on one side, with end units that have views in three directions. The units have not been marketed yet, but there has been unsolicited interest expressed for units of various vertical and horizontal configurations. The size of the footprint limits the building to three units per floor which is the reason for the height. This is an expensive form of construction compared with the light steel on masonry seen in many of the new construction projects, but it is necessary and the lifespan of the building will be very long. We have been working with staff for a long time and have been careful not to announce plan prematurely.

Beckius asked for more information about the views. Allen said the configuration creates the opportunity for wider units on the sides. On some stories there will be 2-story units on the ends and those will extend around and have the south views. Beckius noted his concern that someday there could be a building replacing the garage and it will be close. Allen said that is a good point, but the City indicated the garage will be there for many years and we are willing to bet on this design.

Campbell asked for more information about the depth. Allen said the 34 feet sounds shallow, but with single-loaded apartments, it is typical depth and everyone is guaranteed a good view and frontage. The hall is 5-feet wide. We have also been careful in considering loading to the building and have two passenger elevators and one off to the side for loading.

Corr asked about refuse collection. Allen said since there is no "back" of the building, the trash will be located in the cores with a service elevator leading to a trash room. This will entail more frequent trash service and it will be easily serviced.

Corr asked for more information about the subsidization of the restaurant. Allen said they will retain ownership of the restaurant floor, including the equipment because we want to create the best deal possible for a great operator. The restaurant will be an amenity to our building. Corr noted that Applebee's couldn't make it in that location. Allen responded that the Applebee's business model is intended more for standalone restaurants and, in fact, he was told that the location was opened simply to prevent other large chains from taking hold in the location. We are looking into an entirely different business model.

There was no further public testimony.

Staff Questions:

Washington asked for information about the parking lot and forecasted agreement with Lied Place. Landis said the entire parking system is connected and is close to capacity. The staff is very good at estimating, over time, the needs of the garages. There is a 2-year natural attrition that occurs when people get jobs outside of downtown or stop using that monthly capacity. That turnover is analyzed and staff can hold back spots until the day projects open so that capacity matches needs. It is notable that it is not the same users over a 24 hours period, but needs change throughout the day. The City hopes to take control of the Eagle garage someday which will add 1,200 stalls. Parking is an expensive business and Lincoln does not lose money on it the way many cities do; this is due to good management. Beckius commented that there are other users of this garage including the new boutique hotel and Embassy Suites. Landis said the Kindler's needs are modest and Embassy uses more than one location. It is likely there is a waiting list for Que Place today, but that is not unusual given the parking system is operated collectively. A parking system can be a potential inhibitor of development if not operated efficiently.

Applicant Rebuttal:

Allen said they are very conscious of the parking needs and will not bump long-time users of any garage.

COMPREHENSIVE PLAN CONFORMANCE 18018
ACTION BY PLANNING COMMISSION:

November 28, 2018

Beckius moved Conformance with the Comprehensive Plan; seconded by Washington.

Beckius said this is a great project on this limited site and the developer is presenting a concept grander than what was original envisioned by the City. It appears to have an appropriate amount of cushion with the air rights to make the building useful and pleasing, while preserving the right to build taller in adjacent areas. There may not be a large impact on the parking, but it was important to hear that the developer and the City are cognizant of those needs.

Harris said it is fitting to have this project come forward the same day as the Downtown Master Plan. This project embodies many of the principles of redevelopment and mixed use the master plan encourages, and it is in conformance. This could have a catalytic effect and be transformative for Q Street.

Washington said this is a wonderful project and she is pleased to see the density increasing. She looks forward to seeing the vibrancy this will create.

Finnegan said she recalls this project being discussed with past Mayors. This space has always been in question and she intends to support this item.

Corr agreed with her fellow Commissioners. It is clear that project fits the goals of the Comprehensive Plan.

Motion carried, 8-0: Beckius, Campbell, Corr, Edgerton, Finnegan, Harris, Joy, and Washington voting 'yes'; Scheer declared a conflict of interest.

Commissioner Scheer returned to the chambers.

COMPREHENSIVE PLAN AMENDMENT 18003, TO AMEND THE COMPREHENSIVE PLAN TO INCLUDE THE "DOWNTOWN LINCOLN MASTER PLAN" BY REFERENCE, GENERALLY BOUNDED BY G STREET, PINNACLE ARENA DRIVE, SALT CREEK ROADWAY AND ANTELOPE CREEK;
PUBLIC HEARING: **November 28, 2018**

Members present: Beckius, Campbell, Corr, Edgerton, Finnegan, Harris, Joy, Scheer and Washington.

Staff Recommendation: Conformance with the Comprehensive Plan.

There were no ex parte communications disclosed. [At a later time during the Public Hearing, Corr disclosed that she attended a Mayor's Neighborhood Roundtable meeting where this topic was presented].

Staff Presentation: Paul Barnes, Planning Department, stated Staff is excited to present the 2018 Downtown Lincoln Master Plan. It represents over a year's worth of work including outreach and discussion. Planning Commission has been involved in the process and has been briefed regularly, most recently on November 14, 2018. The plan covers a wide variety of topics and incorporates community vision within a defined area. The history of having a plan dates back to 1974, with several subsequent efforts since then. This plan was done in partnership with the Downtown Lincoln Association (DLA) and with a consultant hired to help us with market assessment, development forecasting, and global trend forecasting. The public and stakeholders have been involved throughout the process. The plan is called the "Center of Opportunity" which builds on the national trends showing that many are moving from expensive cities to smaller opportunity markets like Lincoln.

Terry Uland, DLA, 206 S. 13th Street, stated the DLA has submitted a letter in support (see Exhibit "1") of this plan and has warmly welcomed the partnership formed with the City. He thanked the City and the consultants for their transparency and public outreach throughout the process. This was the top of the line in terms of collaboration.

The plan provides a workable, successful vision and builds on the 13 years of successful growth since 2005. The Board of Directors of DLA endorses this plan and respectfully urges the Planning Commission to do the same.

Andrew Thierolf, Planning Department, said this plan would be added to the 2040 Comprehensive Plan by reference if approved. The plan outlines a number of catalyst projects including the Community Commons on the Pershing block, O Street enhancements, linear greenways along 11th Street and M Street, the West Park area south of the Haymarket, and highlighting the local music scene, and completing projects from the 2005 plan.

The mobility aspect of the plan has gotten a lot of attention recently. The plan proposes to evaluate the efficiency of the one-way streets and to consider their conversion to two-way streets. The current configuration can be confusing and potentially dangerous. Two-way traffic can balance traffic flow, reduce speeds, and provide economic benefit by improving access to businesses. 9th, 10th, K and L Streets will be excluded from the review since they remain appropriate one-way streets. All others would be considered according to a phasing plan and implemented incrementally, if it makes sense to do so after analysis.

Finnegan asked how this will be publicized since past changes have been difficult for the public. Thierolf said that the streets will be considered in one-way pairs, as necessary. The strategy is to look at downtown as a network.

Harris asked the cost of addressing the remaining one-way portion of 13th Street. **Mark Lutjeharms, Public Works**, said Public Works endorses this concept with caveats. There is a hierarchical process for assessing the changes, beginning with less impactful areas and working up to streets like 16th/17th. This will also require more detailed traffic studies to ensure the right streets are converted. In addition to the positive benefits, it will be important to look at other details such as delivery vehicle flow, parking, retrofitting of traffic signals, and changes in curbs, among other things. It will be an intensive effort. Harris asked what funding mechanisms are available for such a project. Barnes said there are several potential funding sources mentioned in the plan.

Corr asked about the maintenance of the new green spaces. Barnes said at this master plan level, concepts are outlined. Once they become official projects, they enter into the public process and that level of detail is worked out and incorporated into the plan as it is designed. The specific responsibilities are yet to be decided. It is a balancing act to incorporate the greenspaces downtown since parks are also planned in areas of growth at the edges of the city.

Edgerton asked staff to touch on the conceptual path that runs around downtown. Barnes said the concept is a shared path for pedestrians and bicycles that would encompass downtown, connecting surrounding neighborhoods with downtown and its various districts. The discussion has included the use of existing facilities to connect, including trails. Other cities have done this, incorporating a cultural aspect, and they have been very well received and have served as an economic engine. Similar to other items discussed today, this would have an entire public process and more detailed planning when it moves to the status of a project.

Corr wondered about the future of the skywalks. Barnes said the history of the skywalks is mentioned but there is no recommendation one way or the other. That matter is under discussion between public and private entities.

Proponents:

Tom Huston, 233 S. 13th Street, Suite 1900, said he served as the chair of the steering committee. The outreach process for this plan was impressive and there was very good input from multiple parties, including the public. One reason he got involved was because many of those projects from the 2005 plan were accomplished and it is remarkable. A goal is to focus efforts and encourage investment in downtown and that has been a successful endeavor. The master plan is a key ingredient to that success.

Angie Tucci, 122 N. 11th Street, #404, said she has been a downtown resident for seven years and has served as a DLA board member. She also served on the steering committee. As someone who lives, works and plays downtown, she and her family are impressed by the amount of growth and encouraged by the proposed catalyst projects. Reviving the library and expanding the arts and music scenes are important. She is excited and proud to be a downtown resident.

Nancy Gade, 1000 Evergreen Drive, said that she is a member of the DLA. Her family company has an interest in downtown. She moved downtown in 1983 and has seen its evolution. A good plan looks both forward and backwards and continues to support past investments. She loves that downtown is defined as multi-dimensional, with concentrated diversity. These projects have the power to be transformational. Conversations with the public will continue. She is happy the focus on cars is diminishing. As a citizen, she has confidence in City staff that concerns will be addressed.

Michele Tilley, 1314 O Street, said she is a new downtown resident and loves it. She is also here as a Lied Center employee. She proposed that a designated arts district be included in the master plan to connect with other districts (see Exhibit "2). The Lied

Center serves as an anchor to many including Sheldon, the Great Plains Museum, Kiechel, to name a few. We believe the designation of a district will be a perfect solution to round out the connectivity of the downtown district.

Washington asked if an arts district is not included at this point. Tilley said there the music district at 14th and O Streets is called out, and an arts district would be a natural zipper between Union Plaza and the Haymarket.

Campbell asked if this was brought up to the task force. Barnes said there have been conversations with the Lied Center regarding this designation and the concept is mentioned in the plan in the discussion about the contributing facilities, their contribution and how to recognize them in a district. Tilley said it would be a perfect fit. An arts district does bring people downtown, makes it a more satisfying place to live, revitalizes areas, and draws people from out of town. The music district is called out for the area at 14th street, but it stops there. There is a wealth of arts in the area, so why not give it a designation.

There was no testimony in opposition.

Staff Questions:

Corr asked staff how they feel about the arts district designation. Barnes said it is welcomed. The City hopes to be involved in the university's campus master plan. The area mentioned is between campus and downtown and could easily blossom into a full-fledged district. Beckius thought the district was already inclusive of the idea. Barnes said the facilities are included and acknowledged. Cary said that there have been discussions with the Lied Center and language was added that was onboard with what is a strong idea. There is also that relationship with the campus plan, to be updated soon, and staff feels there should be coordination.

COMPREHENSIVE PLAN AMENDMENT 18003

ACTION BY PLANNING COMMISSION:

November 28, 2018

Corr moved Approval; seconded by Finnegan.

Beckius thanked staff, community leaders, and the public for the feedback. The plan sets forth clear priorities with avenues for achieving them. It is aspirational, but also takes into account the challenges of implementation. It has been an open and honest discussion. This is a valuable document to guide implementation and he looks forward to seeing the process as the years pass.

Harris appreciated how fun the process was with the inclusion of the public and public meetings held in vibrant locations. She is excited about the music district. The local music scene has grown organically here and is a treasure. She is excited to promote it to people who are not from here. She offered a practical suggestion that a designated rideshare pick-up and drop-off location would help traffic flow, be more convenient, and safer.

During approval of the minutes at the regular Planning Commission meeting of December 12, 2018, Harris proposed the following clarification to her statement. The revised minutes were approved by Planning Commission by a vote of 8-0; Commissioner Joy absent.

"Harris later clarified that she is aware that Uber drivers are technically permitted to drop off in the designated taxi area outside Duffy's. Her suggestion is to create a separate ride sharing spot that is not shared with taxi cabs. The reason, she stated, is that ride sharing is an inherently different business model than the taxi business, and successful ride sharing depends upon the ability to make frequent short stops in order to pick up and drop off passengers. Conversely, the taxi model is based upon waiting in place for passengers, and as a result, Uber and Lyft drivers are often not able to park in the taxi area outside Duffy's because it is occupied by taxis. A separate designated ride sharing spot would benefit patrons of the bar scene and increase public safety."

Corr commented that this is a well fleshed out plan. She is happy to hear that so many people were involved and that the process was better than ever. We are learning as we go. She supports the change in the one-way streets.

Joy thanked everyone for making this a fun and educational process with excellent outreach and participation. There are ways to be fiscally responsible with this plan and to look at opportunities to encourage private investment to achieve continued success.

Washington said she encourages thought about the greenspaces and the amenities that can be provided. People living downtown deserve access to parks and a pedestrian-friendly environment. If that means converting streets, that is fine.

Scheer said these plans are based on a solid foundation. Process is the key for addressing concerns. The amount of data compiled in this plan is impressive and these projections very often turn out to be true, so he has very few concerns about what will happen. We have a great track record for being accurate in our assumptions.

Motion carried, 9-0: Beckius, Campbell, Corr, Edgerton, Finnegan, Harris, Joy, Washington and Scheer voting 'yes'.

[Break 3:05

Resumed 3:15]

TEXT AMENDMENT 18011, TO AMEND COUNTY ZONING REGULATIONS RELATING TO COMMERCIAL WIND ENERGY SYSTEM TO ADD A NOISE LIMIT FOR PARTICIPATING LAND OWNERS;

PUBLIC HEARING:

November 28, 2018

Members present: Beckius, Campbell, Corr, Edgerton, Finnegan, Harris, Joy, Scheer and Washington.

Staff Recommendation: Approval.

There were no ex parte communications disclosed.

Staff Presentation: Tom Cajka, Planning Department, stated this amendment is to add a single amendment to change the noise limit for participating landowners to 50 dBA for all hours. This is the only change requested and all other current conditions would remain. Cajka reviewed the current conditions.

Chris Schroeder, Heath Department, stated the basis for recommending approval was based primarily on the distinction in perception of annoyance by participating versus non-participating landowners. Schroeder presented a detailed PowerPoint presentation on various studies which served as the basis for their recommendation (see Exhibit "3"). He stated that in 2015, Staff went through an extensive process to establish science-based limits, including countless hours of research on exposure and potential negative outcomes. The sensation of annoyance causes stress and stress leads to sleep disturbance, which can lead to negative health outcomes. Since 2015, the studies have analyzed outcomes in more depth. The significant finding is that participating landowners effectively reported zero aggregate annoyance. Turbines produce complex noise with many variable factors. Likewise, annoyance factors can vary and include participation, length of exposure, perceived ability to escape the noise, among other things. Those who report economic benefit report virtually no annoyance.

Edgerton asked if staff spoke with people in charge of the studies. Schroeder said they had a lengthy conversation with the authors about the findings of the Health Canada Study.

Harris noted that in 2015, it was determined there could be a different standard for those who participate and those who do not, but Health Staff said that because it is a matter of public safety, the standard should be the same for both groups. Schroeder said that the Health Department would not allow people to voluntarily accept higher risk in exchange for payment. But since that time, the studies have shown that participants report no annoyance and therefore would not experience the negative

health impacts associated with that cause of stress. Harris noted that the supporting evidence was broadened and that cause a reevaluation of findings. Schroeder agreed that is accurate.

Campbell asked what distance one needs to be to get the noise level down to the original 40/37 dBA levels. Schroeder said a minimum of one mile, so a fairly large setback.

Corr asked how these studies were chosen from among all information available. Schroeder said these studies specifically addressed that there are participating and non-participating groups and the data used was reliable. Corr asked if permission was obtained from the applicant at that time to review this data. Schroeder said yes. Corr said the data has not changed. Schroeder said it is the same data, but only a summary was available at that time. Corr asked if the manufacturers have noise limitations for their own products. Schroeder said he cannot answer that. Corr asked if Schroeder had any knowledge about endangered bats. Schroeder said he did not. Corr asked about the potential for oil leaks from the turbine engines. Schroeder said he is unable to speak to that.

Corr asked if it is possible for a landowner to participate without having a turbine on their own property. Schroeder said that is correct. Cajka said his understanding is that to meet the other conditions, it would be necessary to have multiple adjacent landowners participating. Washington asked if participating landowners with no turbine receive economic benefit. Cajka said yes.

Washington asked why the primary concern with the recommendations made in 2015 was annoyance. Schroeder said that was the only negative health outcome that could be substantiated through scientific review. Washington asked if self-reported annoyance and sleep disturbance are health concerns. Schroeder said it is a health concern if annoyance is reported because it has a connection to negative health outcomes. Washington asked if that is the only concern. Schroeder said it was the only one that could be identified with peer reviewed, scientific data.

Scheer noted that the comments imply there is other data that is not peer reviewed that draws other conclusions. He asked if Staff stuck with peer-reviewed material. Schroeder said that is correct. It is not a sound approach to use non-peer reviewed studies.

Joy asked if there has been follow up to see if opinions changed over time. Schroeder said he did not see any. Joy asked if there is a way to evaluate information that is not self-reported. Schroeder said they did objective measurements of sleep disturbance and did not find any.

Proponents:

Philip Clement, 1700 Universal Blvd., came forward as applicant and said their company acquired the contracts from Volkswind. He referred to a slide presentation (see Exhibit "4"). They have over 120 wind projects throughout the United States. They also work in solar and nuclear energy, and gas turbines. The company has been around almost 100 years. Since 2013, they have invested \$400 million. Their core values include treating people with respect and striving for excellence. This amendment is consistent with other regulations throughout Nebraska. Non-participants are still amply protected with the same regulations that passed in 2015. The goal is to strike a balance between those who choose to make extra income from their land and those who do not. They held public meetings in September and October. The noise at Steele Flats is low and tolerable and he is not aware of any complaints.

Harris said that when Volkswind was here, she asked if it would move the needle in terms of economic viability to differentiate between participating and non-participating. Their answer was probably not. She asked what has changed. Clement said that the technology is increasing rapidly. There are new turbines and noise reduction has been factored into the design. The 50 dBA is still challenging to meet so there must be significant participation. We consider a participant to be anyone who has signed the contract and who receives definitive payment.

Washington asked how many turbines could be installed if the regulations stayed the same versus if changed. Clement said that if it stayed the same, the number is zero. If changed, it would depend entirely on how many participants there are. If many signed up, more. Washington asked how long participating status lasts. Clement said it usually is the length of the windfarm. A typical farm expects to operate around 30 years. Washington asked if a participant can stop their participation any time. Clement said that the contract is binding. Washington asked if the contract transfers to the new landowner if the original owner moves. Clement said yes. Scheer said that at this point, it is unknown how many wind turbines this change would allow for. Clement said that is correct. With the acquired Volkswind contracts, there are still not enough participants to allow for a viable project.

Corr asked what other projects Clement has done recently. He said there is a site in Webster County and one in Wayne County. Corr asked if there is a manufacturer recommendation for noise. Clement said he would have to confirm that information, but regardless of their limitations, the lowest they go in terms of a minimum distance for setback is 1,600 feet, even for participants. Corr asked Clement to address the letter regarding oil leaks. Clement said he is not familiar with that happening. They are relatively low maintenance and do not use much oil.

Harris said she is from Sweden where there are turbines everywhere and the noise limits are lower than here [what is being proposed](#). She wonders why it is possible to have a thriving industry when Commissioners are being told the noise limits are regulating wind energy out of business. She wondered if it was related to density or proximity to coasts. Clement said he does not know the details, but it is a matter of distance. In a place where lots are 10,000 acres, there is more flexibility.

Washington asked why the proposed change in setback was withdrawn. Clement said they were trying to balance the needs of participants and non-participants. The sound in the room today is probably around 60 dBA; 40 dBA is very low.

Harris said the staff report cited Oregon as an example and she wondered if they are regulated state-wide, rather than by county. Clement said it may be referencing a location that has a model closest to the one in Gage County.

Joy asked how many participant there are in Gage County. Clement said he can only approximate that there are around 50.

John Atkeison, 2601 N. 44th Street, came forward representing 3,000 member of Sierra Club. The requested amendment is reasonable and is a step closer to accommodating everyone. There is an urgency to encourage clean energy, particularly with the reports about climate change that were just released. Climate change is caused primarily by the burning of fossil fuels and wind and solar energy can help offset those effects.

Kenneth Winston, 1327 N Street, Ste. 300, came forward representing the Nebraska Interfaith Power and Light and provided a letter of support (see Exhibit "5"). This is a common sense change. Climate change is the moral issue of the 21st Century and could impact every human on the planet. Faith commands us to protect the vulnerable. Fossil fuel emissions are objectively linked to negative health outcomes. The studies show that the main issue with opposition is annoyance; there are ways to mitigate annoyance and this amendment balances those demands.

Matt Gregory, 632 N. 25th Street, came forward representing Nebraska Farmer's Union. They advocate for wind energy. Studies show that 70% of the population trust climate sciences and 80% agree more needs to be done to create energy alternatives. The correlation between annoyance and wind energy has been found to be linked not by age or chronic health conditions, but by opinions about renewable energy.

Mary Pipher, 3150 S. 58th Street, said that she is in favor of all efforts to produce clean energy and even looked into a private wind conversion unit. She sympathizes with the issues raised by opponents but questions the idea that exposure to annoyance is worse than the hazards of climate change. Every step should be taken to avoid climate catastrophe.

Josh Moenning, Mayor of Norfolk, NE, came forward to state that his community has recent experience as this process has unfolded over the last eight months. Their commissioners visited with farms and studied concerns. At the end of a 6-month moratorium, they adopted no noise limits and setbacks respectful for neighbors, but still conducive to development. Property rights work both ways and landowners have a right to pursue opportunities. This will create energy efficiency, new jobs, new tax bases and is a reasonable, responsible way to move forward.

Egerton asked how many turbines are in Mr. Moenning's county. He said there are two projects under development and there are wind farms in surrounding counties.

Lou Nelson, 145 Main Street, Lyons, NE, stated he is a policy associate for the Center of Rural Affairs in Alliance. He was part of the 2015 working group and echoes the benefits of pursuing wind energy. There are clear reasons to adopt this amendment.

John Hansen, 1305 Plum Street, came forward as president of Nebraska Farmers Union and chair of the Nebraska Wind and Solar Conference, and provided handouts (see Exhibit "6"). They are in strong support of this amendment. He has worked in zoning for 45 years. Wind energy is an agricultural use and not an industrial one. It provides an opportunity to use another one of our natural resources in order to maximize farm business. Adding a turbine is like adding a part-time job to a farmer. Nebraska has added 1,000 megawatts and is positioned to add 732 more next year. This is a good company and this proposed amendment provides balance.

Larry Oltman, 899 E. Gage Road, Cortland, NE, stated his family farm has been in operation for six generations. Windfarms are necessary for farms to continue on financially and to offset high taxes. It will be a benefit for the next generations. We have always worked together as a farming community to help each other. Wind energy is the harvesting of a natural resource. The science was ignored last time and the regulations became very restrictive. This is important to those of us who want to participate.

Corr asked Oltman if he had any turbines on his property. He said he has acquaintances who participate in the Steele Flats and he has heard no major complaints.

Opponents:

Craig Andresen, P.O. Box 673, Woodlake, NE, said there is a notion that there are no peer-reviewed studies showing different outcomes, but he has found many. The dBA system was not designed to measure low frequency noise. The best way is through raw, unweighted measure not averaged across time. This factor makes standards used around the world irrelevant since they use dBA. The wind industry has worked for many years to ensure that health impacts are never properly measured. The World Health Organization said there is a study linking exposure to noise with adverse health effects. He provided a notebook referencing many different studies but did not specifically cite any of the studies. In other countries, infrasound has been found to have negative impacts on the heart. He found peer-reviewed studies pulled from the Lincoln-Lancaster County website that found negative health effects. A ten point bump in dBA equals double the noise. If adopted, a much larger setback should also be adopted.

Beckius asked about the studies pulled from the website. Andresen said there are links to studies that discuss the harmful effects.

Kyle Carroll, 2665 S. Sheridan Rd. Maysville, MO, stated their experience in their own county have shown that this company is unethical. This solution they present will not be workable, especially due to variable levels. If you don't approve this, the company will sue you as they did one township in our county. You hear the technology is better, but when turbines are taller, they are noisier. It is unlikely that the regulations can be met. There is a Harvard study that says it will be 100 years before we see benefits from wind energy in the offset of carbon emissions. Wind energy is not the answer.

Adam Alspaugh, 1325 SW Olmsly Rd. Osborn, MO, said he worked in Beatrice last month and saw articles in the paper and wrote a letter to the editor describing his experiences. They put up ninety-seven 500-foot turbines up a mile from where he lives and it is a nightmare. It has torn residents of his county apart. Good friends do not even speak anymore. Landowners do have rights, but not when they infringe on everyone else. Our setbacks are 500 feet to the property line, and 1,600 to residence. He has an 80-acre farm, but if it comes up to 500 feet of his property, it trespasses on the property. He wants to leave his land to his kids to build wherever they want to. One neighbor has recorded a dBA of 92. This company is not all they say they are. His father has been bullied and sued. It is refreshing to see questions being asked; they did not have that luxury.

Joetta Schwaniger, 3750 Hallam Rd, Hallam, NE, said Commission has received a letter from Mariana Alves talking about infrasound and health effects. They are pressure waves bombarding the body and studies show that prolonged exposure causes various

negative health effects, including to the lungs and ears. The infrasound produced by turbines travels long distances. She wonders how her grandchildren will be affected. This is much more serious than just annoyance.

Terry Madsen, 3427 Road T, Nelson, NE, said his daughter lives here. The problem is more than annoyance. In the UK, there was a major study that found increased cortisol levels in badgers exposed to the sound from a mile away. At high levels, this hormone can suppress the immune system. The animals did not acclimate over time. Energy companies like NPPD are already investing in non-carbon sources. The good neighbor agreement mentioned by the wind company includes a clause that once signed, prevents the owners from speaking ill of the turbines. He knows a person who had so much shadow flicker on their property that they are considering moving. Turbines also do not provide any positive contribution to tax values. There are also safety concerns about high-voltage buried lines.

Johnny Walker, RR 1, Osborn, MO, noted that none of the studies mentioned the height of the towers. Those who sign contracts to participate cannot make complaints about the towers due to a confidentiality clause. As a third generation farmer, he has towers surrounding his land and it has been devastating to his community and to him personally. The noise is unbearable, no matter what level it is set at. People move to the county valuing the quiet environment and views; turbines will decrease property values. The book "Paradise Destroyed" details the damage the wind industry has done, while they collect huge subsidies from the government. There is destruction to wildlife, particularly when near conservation areas. In his county, a 3-mile setback was requested to a nature conservancy; they put turbines within one mile of the boundary line. That is not being a good neighbor. There are 80 hours of sworn testimony from his area about the many concerns. Wind energy is not efficient and does not boost the economy or job market.

Yvonne Mihulka, 2331 Ash Rd., Cortland, NE, read personal experiences from other counties from three years ago. The answers received to questions, after only being given a short amount of time to review information, were all lies. She regrets not saying 'no' to the wind energy representatives at that time. The towers were closer than they said and the sound is disturbing. A letter from Stephanie Hamill states that the thumping and whooshing sounds are terrible, not to mention the shadow flicker. She does not participate but still lived with traffic, semi-trucks, and cranes, day and night. The turbine directly north of her has the worst impact, operating at 55 dBAs day or night, with a setback of only 1,000 feet. We tried to get this changed, but the county was already under the influence of NextEra. Protect the citizens of your county.

Judy Daugherty, Prairie Wind Watcher, 1333 W. Hallam Rd. She provided handouts (see Exhibit "7"). Her property is surrounded by participating owners. She went through a year-and-a-half battle regarding regulations. They have hired a supposed expert who

had no experience in infrasound health effects. The study is very flawed and controversial. In her career, she has been taught how to evaluate studies and studies issued by the company itself, should never be trusted. The studies also do not include effects on children and the vulnerable. The standards should be left where they are.

Curtis Schwaniger, 3750 W. Hallam Rd, said many of his concerns have already been stated. The studies used in 2015 are outdated. In Wisconsin, after four years of complaints from citizens, they voted 4-0 to declare wind farms a health hazard. Infrasound impacts acute and chronic illness. The Wall Street Journal mentions NextEra as a company feeding off of American families. The WHO came out with a study saying wind farms cause health problems. No amount of money can offset these problems. Lancaster County is too densely populated. One family had trouble with dishes rattling and sleep disturbances. They ultimately moved, sued the developer, and won, with the court of law declaring the towers a health hazard. Turbines produce a noise that people cannot get away from. Please don't let that happen in our county.

Finnegan asked about the Wall Street Journal Article. Schwaniger said it is dated June 19th.

Charlotte Newman, 1500 Pella Rd, Martell, NE, reiterated concerns about health and infrasound. She thinks that it makes an impactful statement that citizens who had nothing to gain came here from Missouri to testify in opposition today. She likens the difference between participants and non-participants to the days when smoking was allowed in public; even if you chose to sit in a non-smoking area, the smoke still trespassed on your space, and that was a hazard. Turbines are an intrusive, industrial use. Beautiful night skies are ruined by the constant flashing red lights. There is no relieve from the sound, even from 6,311 feet away. She invites anyone to come and verify this for themselves.

Larry Newman, 1500 Pella Rd., Martell, NE, said he is concerned about the junkyard the huge towers leave behind when they are no longer useful. The responsibility just keeps getting passed down the line when contracts are purchased by others. There needs to be a decommissioning bond in place.

Larry Ailder, 2498 W. Ash Rd. Cortland, NE, urged people to get answers in writing because the numbers issued by NextEra do not add up. The taxes they claim will be added is not accurate. When people buy land and live in the homes, they pay taxes on that property, their cars, gas, and purchases. They contribute to the community in many ways. Hallam is growing. Everyone's property rights should be protected. The setback should be set to the property line, not the dwelling. He wants to be able to use all of his property. He has owned it for 35 years and wants to leave it to his daughter and grandchildren.

Mark Hunzeker, 1248 O Street, came forward representing the Allders. This amendment is clearly designed to make things easier for developers of wind farms. Wind farms are a hideous blight on the landscape. This is a zoning issue, not a matter of energy policy. In 2015, the issue of setbacks was discussed over and over again, often excluding other important issues that deserve discussion, including trespass zoning issues. As currently written, the policy substantially impacts adjoining property if they do not already have a house built but limiting where building can occur. The only thing that happens to an existing turbine is it becomes non-conforming. The special permit process does not include pre- and post-construction noise testing, requirements for monitoring, and represents a weak system of enforcement based on complaints. Contracts with landowners should all be made public information. An amendment is prepared to address these issues. Health Department does not have the budget or equipment to carry out these noise studies. These are industrial uses on a massive scale, impacting huge areas of land.

Harris asked if any counties make the contracts public. Hunzeker said he does not know. If he were representing a company collecting these contracts, he would draft them in such a way as to heavily penalize participants who made complaints without consulting the company first.

Ann Post, 1248 O Street, said the focus has been on noise and setbacks but we want to look at other parts of Article 13 in the codes to address other shortcomings. She presented several proposed amendments to the County Zoning Regulations (see Exhibit "8"). She is aware that the County Attorney has stated that amendments offered outside of the scope of the applicant's proposal should not be considered. We argue that their proposal opens up Article 13. The trespass zoning should be reduced to protect from noise and visual disruptions on other property. We suggest moving the setback to one mile as a minimum distance. If measured to the property line instead of the dwelling, there is no need to include language about a non-conforming use. There should be an ambient noise study conducted and submitted as part of the application as well as within 6 months after construction and then every two years to ensure ongoing compliance.

Washington asked if the suggestion is for the special permit holder to select the company to do the noise study, in addition to paying for it. Post said the Health Department would set those parameters regarding the procedure of studies since it could vary based on time of year and other factors. The developer should pay for it.

Harris asked if the applicant has seen the proposed amendments. Post said no. Harris asked if "trespass zoning" applies with smaller conversion units in town. Post said she is not as familiar with those codes. Their proposed amendment creates more detailed procedures for ensuring ongoing compliance.

Beckius asked for more information about removal of certain language. Post said that increasing the setback removes the need to address shadow flicker and the related modeling.

[Break 5:55

Resumed 6:00]

Staff Questions:

Washington asked about the ability of the Commission to consider the further amendments proposed by the private attorneys. **Steve Henrichsen, Planning Department**, said no. Mr. Hunzeker let staff know that he was interested in making an amendment. The opinion of the County Attorney is that only what was advertised may be addressed today. If he would like to submit his own text amendment, he has that ability.

Harris asked about whether regulations in Oregon, which was used as an example in the staff report, are statewide. **Scott Holmes, Health Department**, said that they have a statewide siting process. He is not sure whether counties are allowed to adopt more stringent regulations. Harris asked if rules for smaller turbines within the city limits are comparable. Holmes said they are required to meet the noise ordinance. Those smaller units do not generate the additional sounds that cause concern with the large turbines. It is a less complicated matter of having to meet the noise limits.

Harris asked for thoughts on measuring to the property line instead of the dwelling. Cajka said staff would not support the proposed changes, particularly since they only just saw them. The focus today was only on what was before us, which is the change in noise level for participating owners.

Harris asked if staff considers wind farms an agricultural use. Cajka said yes, per zoning, it is an agricultural use.

Edgerton asked for more information about how noise levels are enforced. Schroeder said that if a complaint is received, we go to the County Board for instruction. If monitoring is required, we do not have the equipment. Holmes said they would have to go back to County Board to determine who pays. Our previous interpretation was that the developing company would be responsible, financially. The special permit is enforced through a political process and action can be taken in that regard and the permit could even be rescinded.

Campbell asked for Health Department's thought on the infrasound that has been mentioned. Schroeder said that is a low frequency measured on a dBC scale. Infrascala is on dBG; there is a strong correlation between that and dBA so dBA can be used as a reliable surrogate.

Corr asked staff to address the comment about decommissioning of wind turbines. Cajka said that is currently provided for in the existing regulations with a spelled out decommissioning plan and required bond.

Corr asked if there are any turbines in Lancaster County now. Holmes said LES has two small towers surrounded by public lands. They are probably half the height of the type we are talking about today.

Washington asked if there were issues with self-reported health effects. Schroeder said that was done by way of a survey. It is different from a complaint.

Washington asked if changing the distance measurement from the dwelling to the property line would help alleviate any of the trespass issues. Cajka said the distance is not as important as meeting the noise limit. Holmes added that Health Department considers the impact is on people living on the property, spending time there. Measuring to the property line would generally be more protective. Scheer recalled that was also related to how land could be developed in the future. Cajka agreed it was an issue when applied to vacant properties. There is the requirement to maintain at least a 3-acre area that is entirely outside of the impact of noise and flicker within which to build. That way, an entire, buildable lot is still there.

Applicant Rebuttal:

David Levy said the issue before the Commission tonight is the noise limit for participating owners. There are no special permit applications today. All zoning issues deal with intrusions on private property rights, and protection of health, safety, and welfare. It is not practical to over-zone to protect the public or to under-zone and leave the public at risk from development. The type of trespass zoning discussed this evening is largely an academic concept. All land uses have externalities; buildings cast shadows. These issues have already been addressed with what are very stringent regulations. There would need to be 80-90% participation to create a viable project. Wind developers do provide operating information and studies. To say they do not is false. Voluntary compliance is like any other special permit where a developer puts multimillion dollars into the ground. They leave room because they do not want to be non-compliant and lose their investment. With regard to the lawsuit that was mentioned, that township changed their rules after NextEra started construction and they chose to defend their vested rights. They are not in the business of suing counties.

TEXT AMENDMENT 18011

ACTION BY PLANNING COMMISSION:

November 28, 2018

Campbell moved Approval; seconded by Harris.

Campbell said the change we are looking at today is very specific and is not inappropriate. Some of the proposed amendments made by others do have some validity and could be pursued at a different time.

Finnegan said she is a listener and thanked everyone for expressing their concerns. These are difficult decisions and it is tough to know whether the right or wrong decisions are being made. We go on what we hear and process. She is not an expert on turbines. What she hears is that we should stick with what is in front of us. She believes the proposed change strikes the proper balance.

Harris said she wished to correct an idea that was mentioned. In 2015, Planning Commission actually approved a more permissive ordinance, though with a split vote. This body did not support the ordinance in place today, but one with 50 dBAs during the day and 42 at night. She supported that. She likes this language better because it protects those who choose not to participate while giving more chance for others to participate. A key question is whether wind turbines are an agricultural use. If so, it is fair to afford it some of the same allowance to create nuisance. This is coming close to a good solution.

Washington said she will support this amendment, though it was a hard decision. It is best to take a step in the direction of the new technology. I believe in protecting private property rights as best as we can and participants should be allowed to do that, while minimizing impact. If a special permit comes forward, that will be a time to make sure the appropriate costs of monitoring noise levels falls on the developer.

Corr feels this is striking a good balance in this difficult issue. She thank Commissioner Harris for reminding this body of its previous approval. This version is better.

Joy said she still challenged by the idea of where distance is measured and will vote 'no'.

Scheer thank everyone for their testimony. He trusts and takes stock in the data gathered and the research that was done. This comes down to dealing with land use and zoning. There are many issues surrounding wind turbines, even on a visual level. He voted against the higher sound limits last time and was in the minority. He likes this language because it provides the same protections that are in place for non-participants.

Washington added that if there were not the visual protection of the corridors in place, she would be against this.

Campbell said this does not seem to be a major change, but when a specific submittal comes in, we will be looking at it very critically.

Motion carried, 8-1: Beckius, Campbell, Corr, Edgerton, Finnegan, Harris, Washington and Scheer voting 'yes'; Joy voting 'no'.

Henrichsen announced that the Count Board will have a public briefing on December 6th, and a full public hearing on December 18th.

There being no further business to come before the Commission, the meeting was adjourned at 6:53 p.m.

Note: These minutes will not be formally approved by the Planning Commission until their next regular meeting on Wednesday, December 12, 2018.

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