

## BRIEFING NOTES

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Wednesday, March 9, 2011, 1:40 p.m., Room 113, 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, Brian Will, Tom Cajka and Teresa McKinstry of the Planning Department; Rick Peo and Jocelyn Golden of City Attorney's office; Chuck Zimmerman, Terry Kathe and Mel Goddard of Building and Safety; and other interested citizens.

**STATED PURPOSE OF MEETING:** Workshop on "Enforcing Local Development Regulations" and "Sureties"

Marvin Krout stated that the purpose of today's workshop is to discuss enforcement of special conditions. The key people involved in enforcement are Chuck Zimmerman and his staff at Building and Safety.

Chuck Zimmerman stated that generally speaking, Building and Safety has two different forces. One is the government red tape that is necessary because all people are not knowledgeable and the other part is the portion that needs streamlined and needs things done fast. They complete their reviews in ten days. They are pretty proud of the things they have done for the industry. Lincoln is a pretty well regulated community and a lot of that comes from the Planning Commission and City Council. We care about orderly development and our neighborhood. Nineteen years ago when Terry Kathe started for the Building and Safety Dept., the special permits consisted of two small file cabinets. Today, the special permit copies fill an entire room. He thinks the design community has come a long way in the last 10 to 15 years.

Terry Kathe stated that there seems to be the most questions regarding soil mining. He distributed a table of the current status of all the soil mining sites. Special permits and use permits that go through the system can get very complicated. Some, like Village Gardens, might have their own Ordinance. In 1990, there were approximately 1,200 special permits. Today, there are around 3,000. There has been a tremendous increase in special permits. Amendments after the fact can be numerous. Lately, the amendments have been more for cosmetic purposes, more along the lines of covenants. A permit might be required to

have more brick or more glass. When these issues are part of the permit, the city has to enforce those rules. We have gotten into cross parking agreements. All these things can make it tough for inspectors to verify if something is wrong. He printed off a list of different requirements that tend to be issues where it can be tough to prove. It is easy to come up with a standard setback, but when you get into relying on someone to be forthright and honest with you, it can be difficult.

Zimmerman stated that Fallbrook and Village Gardens are a zoning ordinance amongst themselves. Staff is sometimes uncomfortable with those because they are not sure if they are properly enforcing it or not.

Esseks wondered why Village Gardens is different. Kathe replied that Village Gardens has its own set of rules and setbacks. The setback might be dictated depending on what type of house is built. Typically an inspector drives by a house and can see if the setback is correct or not. At Village Gardens, each lot could have a different setback, and it is not necessarily different. Accessory buildings are different also. There are styles of houses that come into play. Parking numbers are different for different uses. Cross parking applies. What one person does on their lot might affect someone a half a mile away.

Rick Peo stated that their plan allows them to come in and establish their own zoning code individually. We enforce what we can, but it is a complaint driven basis.

Lust questioned if planned communities are relatively new. Kathe replied that a community unit plan has been around a long time, but they have gotten increasingly more difficult. It used to be only when they waived density or something like that. Now there can be 34 notes on the site plan and those can waive height, area, various items. They are not all the same.

Krout reiterated the problems with having to dig into each permit to discover the unique conditions and rules. Planning Commission had a workshop a few months ago that talked about the 76 different kinds of special permits. If some standards are established, maybe the process can be simplified.

Lust wondered if there is a way to encourage more private enforcement. Perhaps the association can regulate through covenants. Peo replied that ordinance requirements are adopted a lot of times to make everyone feel more comfortable with the condition.

Francis would like to see the neighborhood get more involved in what is approved in the neighborhood. Kathe noted that was tried in Village Gardens. Out of the first ten plans, five or six of them were wrong. They didn't obey their own rules. The more complicated these things get, the more contradictions there are. That means more amendments you have to do and that is more paperwork that you have to look at for each development.

Esseks is concerned with how to help Building and Safety enforce regulations. Are there some strategies that can be worked out? Regulation is a classic problem. It can be very discouraging.

Peo thinks it is always an evolution of activity. One path is the option of changing to make what you are doing legal. The other side is the abatement of the violations, have a fine and penalty imposed. Hopefully this brings them back into conformance. It is always a dilemma of how hard a hand do you take. Those are judgement calls. It is a discretionary choice on the prosecution side. Historically, a lot of compliance has been achieved through first warning letters. He can only think of one or two times that an injunction has been used in his 20 years with the city.

Esseks wanted to know about staff constraints.

Zimmerman responded that some things are easily quantifiable. Once we give up control with occupancy permits, we have to rely on a complaint system. The complaint system is what prioritizes something. We don't go out looking for violations. It can depend on the cooperation of the developer. If there is a violation of any city code, we can tie that back to you. You aren't getting any new building permits until this one is fixed. It is not used a lot on zoning, but it could be. It is very helpful in cleaning up building issues.

Taylor wondered if there are triggers other than complaints. Kathe responded that a title company or insurance company might call with a question; a daycare that needs a license from the State who passes it onto the Fire Inspector who is in the Building and Safety Dept.

Zimmerman stated that "complaint driven" is what drives this. Building and Safety works together with Planning all the time, but we don't see these at public hearings. We divide up the areas of the city with five inspectors.

Peo reiterated this has to be a complaint driven system. Zimmerman added that staff isn't driving around trying to see what business someone is doing in their garage. The Fire Prevention Bureau has one inspector on duty till 11:00 p.m. They have an advantage that they are on call and we can see what is going on after we all go home for the evening. A job well done is your only incentive and you end up with a better neighborhood.

Kathe cited an example of a special permit approved to attach a single family house to garage for someone who is physically handicapped. When the handicapped person moves out, the connection has to be gone. How do you know the handicapped person has moved out, how do you tell them to tear it down? A lot of ordinances are written for one special instance.

Krout stated that some simplification needs to be done to weed out these instances in the code.

Francis questioned if these are public records that come up on title search. Peo responded that it should show on a title search so the next owner is aware of the situation.

Kathe noted that there was an ordinance passed for a butler/nanny building in the back yard like a small house. There are three out there that he knows of. What happens when they move out and there is an extra dwelling out back? It will be rented out and how do we know whether they are a domestic employee or not?

Krout believes there are many violations that happen every day, but it doesn't have to be made more difficult with a complex zoning ordinance.

Esseks was walking yesterday in an area that was somewhat run down. Should we inform the public that they need to make a complaint if they want something done? Zimmerman doesn't think this is unreasonable. You can call your City Council member also. Complaints will be prioritized and Building and Safety will get to them. He encourages complaints. Areas with a strong neighborhood association tend to be more vigilant of their problem spots.

Francis wondered if there is an easier way to make complaints on the city website. Zimmerman replied the complaint system is through the Mayor's office section of the web. Cornelius believes it is called citizen action center or something similar. Francis would like to see a very clear "make a complaint here". Zimmerman noted that is a very good point.

Taylor believes it would be good to have a laundry list of things that could be complained about and departments that could be contacted to address the issues. Zimmerman responded that he will check and see what is currently available.

Jocelyn Golden stated someone can always use the search box on the front page of the city website.

Krout stated that in the past, some homeowner associations have complained that they weren't notified of a Planning Commission application. Planning staff was proactive and received a list from the Secretary of State of all the associations in Lancaster County. There were 264 additional associations listed, in addition to the 110 we already had. We sent invitations to join our notification list and be part of the process. Only 64 responses were received. It was a very disappointing response.

## Sureties

Krout would like to talk about public improvements installed versus private property improvements.

Steve Henrichsen stated that securities were made a priority by the Mayor.

Tom Cajka stated that new subdivisions submit sureties and bonds. The subdivision ordinance states when those improvements are to be installed. Most of the time, it is two years. Sidewalks and street trees have four years. There is a lot of money that has not been released. When staff started looking into it, there was 23 million dollars that needed to be released. Sometimes the developer has not contacted the city. Public Works was relying on the developer to contact them to say it was done. This wasn't happening. Sometimes the work had not been completed. Around 70 percent of the work was sidewalks and street trees. A big part is the lot has gone to the homebuilder. They don't want to install improvements until the house is built. In the last one and a half years, 10 million dollars has been released. Four to five years past due were the first ones we looked at. These have been wiped out almost completely. Staff is continuing to work on this. We keep working our way forward. Some are ten years past the time the improvement should have been installed. Time extensions can be done administratively now. This gives them up to two years. Old subdivisions still have some vacant lots in them. 21 time extensions have been approved, with about 7-10 in the process now. The old guarantee is released and a new one given with a time extension.

Golden was supplied reports on past due improvements. Letters were sent out. Any of those that couldn't be released because they were not complete, received a letter. Because this is a breach of contract claim, the city has five years to file a lawsuit. They concentrated on that group first. They have been sending out letters for much older improvements. If a complaint is received, we will check and see if the deadline is passed.

Lust wondered what happens if something is beyond the five years. Golden replied that we still attempt to contact the party. Occasionally we have gotten some sureties paid. In some situations, the developer has stepped up to the plate and installed the improvement.

Cajka stated that we have been very lucky on voluntary compliance.

Henrichsen stated that there will be a text amendment before the Planning Commission in four weeks. Street trees usually only get planted in bunches in spring and fall. A lot of these projects go beyond the four years listed. With the slower economy, lot sales have slowed down. The amendment extends this to six years for street trees. After that, money can be placed into the buyout voucher program. This provides a safeguard that if you move in, the tree needs to be planted within a year. Another part is sidewalks for residential subdivisions. Hundreds of bonds for sidewalks are still sitting there. But sidewalks are required to be done with the Certificate of Occupancy. The proposed

amendment would eliminate the bond being posted to begin since this must be done prior to getting the occupancy permit. Or during cold weather, the builder can show us there is some other way the sidewalk has been guaranteed. If an escrow has been done as part of closing, a temporary occupancy permit will be issued and the final permit will be issued when the property can be inspected in spring. Building and Safety says there are no sidewalks that haven't been installed, so this has not been a problem. The last change is that detention facilities will have to be installed in two years. Different parts of the ordinance say this can't be released until the subdivision is done. This could be maybe ten years in the future. The majority of the thirteen million dollars is for sidewalks. Staff feels there are enough safeguards for sidewalks to be installed. Most developers have been great to work with.

Esseks thinks the elaborate enforcement program should be applauded.

Meeting adjourned at 3:00 p.m.

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