

BRIEFING NOTES

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, June 30, 2010, 1:10 p.m., Room 113, First Floor, County-City Building, 555 S. 10 th 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, Christy Eichorn and Jean Preister of the Planning Department.
STATED PURPOSE OF MEETING:	Workshop on "Zoning Districts and Uses"

Chair Lynn Sunderman called the meeting to order and acknowledged the Open Meetings Act posted at the back of the room.

Steve Henrichsen, Development Review Manager in the Planning Department, stated that the purpose of this workshop is to discuss the 27 zoning districts in the Zoning Ordinance, where they have been used and the differences between them. Henrichsen likened the Zoning Ordinance to a 30-year-old truck – it gets us where we want to go, we use it every day, we've replaced the tires and the engine, etc., and we've painted it but it is still a 30-year-old truck. He advised that the Planning Department is working on a project called "use groups" to address how to deal with the 270 different uses contained in the Zoning Ordinance.

Henrichsen stated that he would talk about the original intent for the different zoning districts back in 1979, and how they have been used over time. For example, the B-1 or B-3 districts were intended for older neighborhoods, but we have located these districts in a brand new neighborhood because one or the other fit one particular circumstance. A lot of the zoning ordinance language and the different uses goes back to the 1950's, even though it was updated in 1979.

AG Agricultural District:

- ◆ requires 20-acre lot size; less acre requirement would not allow farming and it is hard to urbanize lots smaller than 20 acres; have talked about increasing the minimum lot size to 40 or 80 acres.
- ◆ located primarily outside of the city
- ◆ primarily used for farming
- ◆ the area where the city will grow

Esseks inquired about the “build-through”. Henrichsen acknowledged that the build-through ordinance is located in the city zoning ordinance – it is by special permit for a community unit plan (CUP). AG and AGR zoning do not require build-through. The City does not want the area surrounding the city to be broken up into parcels making it difficult for the city to grow into the area.

Henrichsen then explained that every zoning district has permitted uses that are allowed by right with a building permit. There are also conditional uses, and some that are only allowed by special permit. He reviewed the permitted uses, conditional uses and special permitted uses in the AG District. Again, the build-through requires a special permit for community unit plan (CUP).

AGR District:

- ◆ Minimum 3-acre lot size.
- ◆ No agricultural uses going on within the AGR zoning district.

There are eight residential zoning districts. The Planning Commission deals primarily with R-3 in the new areas and downzoning from R-4 to R-2.

R-1 District:

- ◆ Primarily some larger lot neighborhoods found in the Country Club neighborhood, e.g., and in the 1960's and 1970's neighborhoods including Arnold Heights.
- ◆ There are not any new areas that have applied for R-1 because of the minimum lot size of 9,000 sq. ft.
- ◆ Least dense of all residential zoning districts, ranging from 3-4 dwelling units per acre.

R-2 District:

- ◆ 6,000 sq. ft. lot size.
- ◆ R-2 and R-3 are very similar.
- ◆ The staff had previously proposed combining the R-2 and R-3 districts, but it was not popular because there are different setbacks. Decided R-2 would be for older neighborhoods and R-3 for newer areas, with about the same lot size and setbacks, the main difference being the front yard setback and the new provision for small lots by right.

All residential districts allow single-family or duplex by right. The main differences are the lot sizes required to build a duplex, resulting in far fewer duplexes or townhomes in R-1 because of the lot size.

All residential districts allow special permit for a community unit plan, which can be used for build-through but also to add townhomes or apartments to a district that otherwise wouldn't allow it.

R-3 District:

- ◆ Primarily in newer areas.

R-4 District:

- ◆ Little more dense than the R-3.
- ◆ Primarily found in older neighborhoods, i.e. Near South, Clinton, and others.

Sunderman wondered why there appears to be some R-4 below Yankee Hill Road. Henrichsen acknowledged that in 1979, the map would have only shown R-4 in older areas, but we have started to see some developers zone parts of subdivisions as R-4 to allow smaller townhome lots by right. Thus, we are starting to see R-4 being used in the newer areas. There are very few of the 27 zoning districts that have prohibitions on location. There is a purpose statement at the beginning of each district in the ordinance, but that purpose statement does not prohibit using the zoning district in a certain circumstance.

R-5 District:

- ◆ also found in older neighborhoods, but recently the Heritage Lake Apartments came forward with R-5 to do higher density apartments. This was a way to be more flexible to allow the apartments to be done by right.

Esseks assumes that some place there are justifications for each of these zoning districts. For example, if the Planning Commission were asked to make an exception for a particular parcel, we could go to those justifications and not have to reinvent the wheel. Henrichsen acknowledged that there are "catch-heads" containing purpose statements at the beginning of each zoning district in the zoning ordinance which provide some general guidance. The purpose of the "catch-head" is found at 27.81.030, where it states that the "catch-head" is to be used for general reference only and cannot be used in construing the terms and provisions of the ordinance.

Esseks wondered whether courts would find it reprehensible if the Planning Commission wanted to use the "catch-head" as a guide for individual decisions. Lust suggested that it would depend on what is being decided. If one were to announce at a hearing that they were relying on the "catch-head", she thinks it will be a problem because of Section 27.81.030. She agrees that the "catch-heads" can serve as a general reference, but one cannot base their decision on the "catch-head".

Henrichsen suggested that the Planning Commissioners really need to rely on the goals and policies of the Comprehensive Plan and should not rely solely on the "catch-head".

R-5, R-6, R-7 and R-8 Districts:

- ◆ Allow multi-family (apartments) by right.
- ◆ Used to only be found near the Downtown and the college campuses. A lot of the R-5 and R-6 had a lot of single family and duplex uses, and the original idea was to have this greater density in these areas with the single family converting to multi-family.
- ◆ Starting to see developers use the R-5 in some newer areas because it allows a much greater density for apartments without having to do a community unit plan. For example, on North 27th Street, there are nearly 1,000 apartments in the area just north of North Star High School zoned R-5 which allows the apartment development to be done by right. R-1 through R-4 require a special permit community unit plan to do apartments and mix of housing with an overall lower density than just apartments.
- ◆ R-7 and R-8 have greater density allowed and they are generally found only in the area adjacent to the Downtown and to the south of the Capitol.
- ◆ Largest area of R-7 and R-8 is immediately adjacent to the Capitol.
- ◆ R-7 and R-8 have not been used in the newer areas because they are such dense districts.
- ◆ R-8 starts to allow minimum amount of office use.

Sunderman inquired whether there are density targets for each one of the districts. Henrichsen stated that very few people use the community unit plan in the R-5 through R-8 because they can do the apartments by right.

O-1 Office District:

- ◆ A district with very specialized use, only found around the Capitol and Lincoln Mall.
- ◆ Much higher density office district found in the Downtown because there are low requirements in terms of parking and deemed to be appropriate in a downtown setting.
- ◆ Meant to be a very dense office district, but to not have a lot of free-standing commercial/retail uses.
- ◆ Encourages only having office uses in the area around the County-City Building and around the State Capitol.

O-2 Suburban Office District:

- ◆ Allows office at the edge of a commercial district.
- ◆ Almost all of the O-2 areas are one or two lots in size and are typically found where there is an older zoning district of commercial and residential with O-2 being a good buffer between the two.

O-3 Office Park District:

- ◆ Main office park district for newer neighborhoods, such as Pine Lake Plaza, Williamsburg Village, Highlands.
- ◆ Must have minimum of 2 acres.
- ◆ Requires a use permit with appropriate conditions.

R-T (Residential Transition) District:

- ◆ Similar to the O-2 district in that it was meant for smaller areas between commercial and residential, but it requires a use permit.

Henrichsen cautioned, "If you don't like the use allowed, don't approve the zoning district." In the past, Henrichsen explained that the use permit was used more to limit some of the uses that were otherwise allowed in the district. But, to unilaterally eliminate uses that are already allowed by right in the use permit heads off into a gray area. The use permit looks at the arrangement of the buildings, the access points, the buffers, the amount of square footage approved, traffic issues, etc. Addressing the impact of the uses is appropriate, but banning a use without a developer's agreement is discouraged.

Marvin Krout, Director of Planning, also pointed out that there is a tool called "zoning agreement" that can be signed and enforced limiting the uses on a particular site. Some uses have been prohibited or limited by zoning agreements. We don't encourage it all the time with separate rules on separate pieces of land, but it is available in certain cases. The zoning agreement stays with the land.

Henrichsen then advised that the Planning Department has been discussing proposing to change the use permit process whereby the use permit becomes an administrative process rather than a public hearing process since it is basically a site plan review.

Krout also pointed out that the use permit process allows requests for waivers to setbacks, parking, height, etc., which would still be done through a public hearing process. If the use permit is living within the zoning standards and within the design standards for buffers, lighting, landscaping and noise, and if those are adequate, why should every new development go through this process of having to do a site plan in a public review with public hearing? Especially, when it is something that may change over time.

Esseks thinks that makes a lot of sense as long as the published setbacks and conditions are met. But let's stay the site plan had a deviation that was somewhat objectionable – the Director would have to bear the political consequences if people were really upset. Krout agreed that he would have to take care in reviewing that waiver before agreeing to do it administratively. When waiving a zoning standard, there is some ability to condition that waiver.

Cornelius inquired whether there is something that makes R-T inappropriate for older neighborhoods. It seems like a use permit would be a good tool. Henrichsen stated that R-T has been used on 56th Street south of O Street in some older neighborhoods, but it is primarily used in the newer neighborhoods. R-T does require a pitched roof, placement of air conditioning unit, and other issues with the building itself. It could be used in older neighborhoods as well.

B-1 Local Business District and B-3 Commercial District:

- ◆ Both are found in older neighborhoods.
- ◆ B-3 is also used in some of the older towns like University Place, Havelock and College View.
- ◆ B-3 is a little more intense in terms of some of the uses that are allowed.
- ◆ Part of the confusion between the two is that the B-1 actually requires 20' front yard setback for buildings, versus B-3 allows a setback of zero for the buildings.
- ◆ In all cases our zoning districts are not "build to" lines but minimum distances for setback of the building.
- ◆ B-1 allows service stations and is supposed to be a more restrictive district, but in B-3 service stations are conditional with no repair within 100' of residential. Henrichsen suggested that we might want to address why service stations are treated differently in one district versus another.
- ◆ B-1 and B-3 are similar in terms of some of the other uses, although B-3 allows car sales.
- ◆ B-1 requires one parking stall for every 350 sq. ft. of a store, and the B-3 requires fewer stalls. Both allow parking anywhere up to 300' away from the site.

B-2 Planned Neighborhood Business District:

- ◆ Primarily found in newer neighborhoods.
- ◆ Use permit district requiring 5 acres.
- ◆ Previously used only for neighborhood business districts – typically very small and not used for big commercial areas.

- ◆ Starting to see some large areas being zoned B-2 with a PUD overlay, which you wouldn't have seen 20-30 years ago.
- ◆ There are only six areas in town zoned B-5 and meant to be the large planned regional shopping centers like SouthPointe, Edgewood, Gateway, Prairie Lake Plaza, etc.
- ◆ Largest setback in terms of setback to the residential area.
- ◆ Only district that allows indoor movie theaters by special permit. Indoor movie theaters are only allowed by right in the B-4 and by special permit in the B-5, as set forth in the city's theater policy.

B-4 Lincoln Center Business District:

- ◆ Downtown zoning district. Not found anywhere else.
- ◆ Unique in that it allows anything that is not specifically excepted.
- ◆ Minimal setbacks and minimal parking requirements.
- ◆ Very different set of rules east of 17th Street and west of 17th Street – only district that has any kind of geographical split.

H-1 Interstate Commercial District:

- ◆ Would consider eliminating in the future.
- ◆ Only found in a couple of small places and only allows four or five uses such as for the traveling public along the interstate. In 1979 there were very few uses along the interstate and this was to limit the number of uses along the interstate. There is now a tremendous amount of H-3 zoning and others around the interchanges and no one applies for H-1. It is in some cases surrounded by H-3 and there is little reason to have it.

H-2 Highway Business District and H-3 Highway Commercial District:

- ◆ Primarily found in the area of 48th and O Street.
- ◆ H-2 and H-3 are very similar in terms of types of uses, with minor variations. For example, nonprofit philanthropic institutions are allowed in H-3 but when adding that as a use later, it did not get added to H-2. Warehouses are allowed in H-3 but there are limitations in the H-2. Outdoor theaters are allowed by right in H-3 but by special permit in H-2.

- ◆ Both districts allow retail stores. The H-2 does not allow stores over 20,000 sq. ft. of floor area in one single store (such as Target, Super Saver). The H-3 has the same limitation but it does allow a special permit to exceed the square foot limitation.
- ◆ The idea with H-2 was not to allow big box stores. All of the big box stores sit outside of the H-2 zoning but the parking lots are zoned H-2. So people have gotten around the limitation of the big box store by zoning to B-1 or B-3. It appears that the concern about big box stores has lessened.

H-4 General Commercial District:

- ◆ Heavier commercial district.
- ◆ Also found along the highway interchanges.
- ◆ Has been used in newer neighborhoods for heavier commercial uses.
- ◆ Has a greater setback next to residential.

I-1 Industrial District:

- ◆ Probably the most permissive of all zoning districts, allowing not only industrial uses, but retail and office, but excludes residential.
- ◆ Requires special permit for some of the heaviest uses.

I-2 Industrial Park District and I-3 Employment Center District:

- ◆ Have been used in some of the newer industrial areas to allow some industrial closer and next to residential.

Krout then asked the Commission whether they are interested in another session like this on July 14th after the regular meeting. After discussion, the Commissioners agreed to meet from 11:00 a.m. to 2:30 p.m. on July 14th (LPlan Advisory Committee at 11:00 a.m.; regular meeting at 1:00 p.m., immediately followed by another workshop until 2:30 p.m.).

Meeting adjourned at 2:30 p.m..

Respectfully submitted,

Jean Preister
Administrative Officer

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