

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, February 5, 2014, 1:30 p.m., Hearing Room 113 on the first floor of the County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Cathy Beecham, Michael Cornelius, Tracy Corr, Maja V. Harris, Jeanelle Lust, Dennis Scheer, Lynn Sunderman and Ken Weber. Marvin Krout, David Cary, Steve Henrichsen, Brian Will, Christy Eichorn, Brandon Garrett, Stacey Groshong Hageman and Teresa McKinstry of the Planning Department; and other interested citizens.

STATED PURPOSE OF MEETING: Briefing on “reFORM proposals”, “Zoning Regulations on Alcohol” and “Lincoln Theater Policy”

reFORM PROPOSALS

Stacey Groshong Hageman stated that she is here today to explain what went into developing the design standards. Staff looked at a lot of other communities in detail. They also looked at some planned unit developments in Lincoln that have some standards as well. She also has some pictures of examples from Omaha to how they are doing their commercial centers. She showed the shops of Legacy in Omaha and the Shadow Lake Towne Center in Papillion.

Harris wondered if a pedestrian oriented route means there has to be sidewalks or an area for people to walk. Brandon Garrett responded that the route in centers is more of a designation. A minimum would be some kind of pedestrian flow. More often than not, the general idea is to have a flowing street with streetscape and street trees.

Beecham questioned if that is a requirement, or if it is up to the developer to design. Garrett stated that we have some descriptions on minimum requirements. If they want to embellish it with more, we don't mandate how many benches, the look of street lamps, etc.

There was a discussion of buildable frontage and how it is calculated.

Cornelius had some assumptions about what a pedestrian oriented route was. He questioned if it can branch out. Garrett replied yes.

Marvin Krout stated that we are almost creating blocks within the development.

Hageman stated that the Neighborhood Design Standards were adopted in 1989, and more broadly in 2000 when the Downtown Design Standards were adopted . She presented some examples of projects that followed the design standards. Staff learned that the reviews are quick and predictable. The base standards are based on best local examples.

Beecham wondered if there had been any challenges to the standards. Krout replied just The Foxy. They made some refinements to the standards with regard to materials. Staff has a lot of flexibility to do things administratively. Assurity is an example. Waivers were required, but it is a unique site.

Garrett has studied drive throughs a lot in the last couple of years. He found some examples. He categorized them into about ten different ways. At the last briefing on this topic, there was mention of an undesirable situation of parking and walking across a drive through lane designation. McDonald's likes to do it that way. Runza also does it that way. Flexibility should be considered on a site to site basis.

Lust would like staff to remind us again what was found to be problematic. Garrett responded that there is a standard that says to place the drive through between the building and the streetscape. There are so many different ways to do a drive through.

Garrett continued that with buildings along the pedestrian oriented route, it is the same as corridors. The proposed standards are just for the centers and corridors. There are a lot of other places where there are no standards in place.

Harris questioned if this is an aesthetic or safety issue. Garrett believes you could say both.

Beecham would like to know if there are there rules as to how the rest of the parking is situated. Part of the problem is they create somewhat of a chute. Drivers don't think of pedestrians sometimes, if they have a kind of tunnel vision. Garrett stated there is nothing in the standards that speaks to that.

Lust hates to encourage those types of pedestrian behavior. Garrett doesn't believe we are. We are trying to be flexible.

Krout stated that 33rd St. and Yankee Hill is an example. We try to encourage certain ideas, but recognize that there might not be as much pedestrian oriented traffic on Yankee Hill Rd. as compared to a quieter street.

David Cary explained the next steps in the reFORM process. He prepared a summary of the comments made throughout the process. There are a lot of questions from everyone, staff included. Staff felt it would be helpful to draft what the proposal would be, in informal language. It will let us make sure we aren't proposing something that won't work in the

end. We are going to take some time to get everything worked on. There will be continued discussion when that is done. He wants to point out, we have a number of items that were changed and will be incorporated into the new version. Staff is going to take the opportunity to see what other things we think of. We believe it is going to take several weeks for the initial draft. The City Attorney's office will review the language. Staff will bring the proposal back to Planning Commission after that. He would like to hear any other suggestions or feedback.

Hove wondered about the public input process. Cary replied that staff isn't even going to get to that until the initial draft goes back to Planning Commission for the first review.

Cornelius understands that there won't be any public outreach until after there is a specific draft. Cary agreed. After that, staff will come back through the formal process.

Scheer questioned if there is a process where other departments look at this. Cary replied that outreach would involve other departments as well. Scheer thinks that some of these projects could use TIF, tax increment financing. He would suggest contacting the City Purchasing Dept. as well. He believes they need to be engaged in the process and the effect on streetscape.

Harris is curious if this process includes a financial component. It seems that this comes down to how much more this will cost developers. Cary thinks there are two things going on. From a staff perspective, the biggest pushback is on the layout of the centers. That gets into how you market a site and the signing. He doesn't believe there is nearly as much on what we are proposing for the building design standards. The challenge on coming up with a cost, is the variability of construction materials. It depends on what you are trying to accomplish on the site. He can't give a number. It depends on what you are trying to do.

Cary stated that staff did an exercise with the committee on The Still on Highway 2. If you were to apply these standards to this building, this is what it would look like. The challenge is if you apply a number, it may not be what is on the market today. Our experience is that it is so uncertain.

Scheer believes you need to be really careful if you do that. If an architect knows the guidelines going in, it won't cost anything. Cary agreed. It is not really a difference because you are starting from a different expectation.

Krout stated there are so many ways to work with the standards. We are going to talk with developers and architects.

Hove would like to see some examples of buildings around town and if they comply or not.

Krout stated that staff has tried to show examples. People have said on average this might cost three to four percent more. It is not that much. The issue has more to do with the visibility of the building or signs. With a national corporation, it can be harder to work with them. They have the branding of their design. Right now, we are in a transition period. Corneluis believes this is due to the fact that the standards aren't uniform.

Beecham believes it would be helpful not to separate the zoning and design standards into two sections. She thinks they are all part of a whole picture. She thinks they work as a balance.

Krout noted in presentation, we can do that. In application, there is the zoning ordinance and the design standards.

ZONING REGULATIONS ON ALCOHOL

Brian Will stated that most Commissioners have probably seen a special permit for alcohol. Reading some of the reports, each one of these are site specific. Alcohol used to be sold only at liquor stores, bars and with off-sale. The State Supreme Court ruling in 1992 allowed alcohol to be sold at grocery stores and convenience stores. Liquor stores opposed the expanded rules. They saw this as a threat to their livelihood. There had been a spotty history of licenses approved that the City opposed. This was a really big personal issue with some Council members.

To sell alcohol in Lincoln, you must have a license issued by the State Liquor Control Commission and proper zoning by the City. In 1994, the zoning ordinance was amended to regulate the sale of alcohol. A separate special permit is required for on-sale and off-sale. The sale of alcohol in B-4 is a permitted use and a conditional use in B-2 and B-5. The applicant has to meet a pretty long list of requirements from the State Liquor Control Commission. The licensed premises must be more than 100 feet away from a day care, residential use or district, unless a reduced distance can be mitigated. There are also other conditions that speak to lighting, vehicle stacking, noise and access.

There have been many revisions over the years. In July, 1994, the access language was softened a little. In February, 1995, it was changed to not require a special permit for an interior expansion of an existing licensed premises. In November, 1995, any condition could be waived by City Council. In August, 1997, on-sale in I-3 zoning was allowed. In May, 2001, the Nebraska Supreme Court affirms the City's authority to regulate the sale of alcohol by special permit. In March, 2004, day care facilities and State mental health institutions were added to the list of separation criteria. The City Council's authority to waive conditions was removed. It is now a hard and fast 100 foot separation. These are now 'final action' at Planning Commission and no longer go onto City Council. There have been several other minor changes over the next few years. In April, 2004, 100 foot separation to be measured from the door in B-2 and B-5 is allowed. In January, 2008, on-sale in conjunction with a restaurant is allowed, to within 25 feet of a residential district.

In June, 2010, a provision requiring 100 foot separation to a first floor residential use is added. In July, 2011, a provision is added for 100 foot separation in the B-2 district to be measured from parking, located in the side yard. In September, 2011, on-sale is allowed for farm wineries, and in April, 2012, on-sale is allowed for market gardens.

Today, you shall provide parking 1:100. The permit is for on-sale and off-sale. You have to be more than 100 foot away from the property line, except when accessory to a golf course, country club or farm winery. Most of the other conditions remain the same.

If this is a special permit for a restaurant, you agree to voluntarily surrender the liquor license if the special permit is revoked, you must be at least 25 feet from a residential zoning district, the alcohol sales shall not exceed 40 percent of the gross sales and you shall serve full course meals.

Lust questioned who is policing the compliance with these conditions. Will replied this is not monitored on a daily basis, but can be investigated in the case of a complaint.

Will stated that the restaurant hours of operation are limited. Outdoor facilities are limited. there can be no vending or gaming. No drive through windows are allowed. City Council can revoke the special permit for revocation of a liquor license, repeated violations or repeated failure to control bad behavior.

Corr left.

Will stated that a permit is not needed for an internal expansion of an existing licensed premises. On-sale is allowed in O-3 zoning for a restaurant. Today, there is a range of conditions across the city. They basically exist in three categories. 1) Pre-existing where the use must have been established prior to May, 1979, and you meet all requirements; 2) Non-conforming if you established from May, 1979 to April, 1994 or established prior to May, 1979, but do not meet today's requirements; 3) Separation was reduced via mitigation.

Beecham knows there is a different liquor license for beer and wine versus hard alcohol. Will replied the distinction is on-sale and off-sale for City zoning. The Liquor Control Commission has many different licenses for beer, wine and spirits and on and off-sale. There are some licenses for catering, but nothing relative to catering in zoning.

Krout added there are other communities that limit the kind of container. There are some communities that have spacing requirements. It excludes a lot of older sites and older neighborhoods. In Piedmont, there was some discussion about alcohol and using the planned unit development to use the other set of rules for suburban areas.

Garrett observed that craft breweries are gaining in popularity. He questioned how this fits into the permitting. Granite City is in B-5 zoning and has their own brewery. Will replied

that craft breweries are listed and discussed in the zoning ordinance. You could have a craft brewery without an on-sale or off-sale component. Zip Line Brewery on West "O" Street has an on-sale and off-sale.

Garrett wondered if any districts prohibit the manufacturing of alcohol because it would be an industrial use. Will replied that so far, the breweries have all been in B-5 or B-4 zoning. It hasn't been an issue yet.

Harris questioned what would happen if a restaurant expanded for a wine bar, and the 40 percent of food sales dropped to less than that. Will replied the 40 percent requirement is 40 percent.

Weber asked if there are any exceptions to the special permit. Krout replied that in B-4 zoning, a brewery is a conditional use. You meet the conditions, you can sell alcohol. You still have to go through the State for your license.

Krout remembers when Cecil Steward came to Planning and stated that homeownership was becoming more prevalent downtown. There was a lot of discussion and in the end, he withdrew his request. The City Clerk is now posting notice of these changes and someone can comment to the State Liquor board.

Sunderman is surprised this is a special permit. If you meet the conditions, there is an assumption of approval. Will stated that you have to look at the special permit process. Although there is a presumption it will be approved, there is a fair number of conditions and they are still discretionary.

LINCOLN THEATER POLICY

Will stated that the theater policy is a goal to limit new theater complexes outside the downtown area to B-5 districts, and not more than six screens. From a historical perspective, downtown was at one time, the shopping center of the city. There was a lot of major retail and other shops. There was a slow exodus to retailers in the suburbs. There has been years of discussion in the City regarding this issue. The Comprehensive Plan today says the role of downtown as a key element, has been the longstanding success of the theater policy.

Theaters are allowed as a permitted use in B-4 and by special permit in B-5. The special permit says the approved use must be over 400,00 square feet, more than 300,000 square must be occupied and no more than one theater. From 1979 to 1984, theaters were a permitted use in B-1 through B-5, I-1 and I-2. H-2 was by special permit. In 1982, the Planning Dept. completed a theater location analysis. In 1984, the zoning ordinance was amended to allow theaters in only B-4 and B-5 zoning districts. The Design Standards were modified to require a market study that assesses the impact of the new theater.

Weber doesn't understand why a larger retailer isn't required to do a market analysis when they locate two stores close to each other. Will responded that theaters are separated out and treated differently. There was a large discussion on the role for downtown. There has been a changing of gears. We have local and state government, and the University. There were concerns that resulted in special consideration for theaters. There was a desire to preserve the theater element in the downtown district.

Cornelius believes there was a sense of panic in the 80's that the downtown was dying.

Scheer agrees that policy was also about the urban design. Theaters have multiple locations now. We are down to two theaters in downtown. Now we are protecting the use.

Harris wonders if this was prompted by a proposal. Krout stated that there are very few downtown areas that have theaters anymore. This was a way to preserve the vitality of downtown. It wasn't until the year 2000 that some theaters consolidated.

Will noted that in 1989, City Council adopted a Resolution reaffirming the theater location policy. In 1992, the zoning ordinance was amended allowing theaters in the B-5 by special permit, instead of a permitted use. There are added restrictions. The B-5 center must have 400,000 square feet of space and be 75 percent occupied. You are also allowed only one theater. In 1994, language was included in the Comprehensive Plan. In 1996, the zoning ordinance was changed again limiting the B-5 district to six screens per complex and changed 75 percent occupancy to a minimum of 300,000 square feet of occupied floor area. In 1996, East Park expanded from three to six screens. In 2002, Edgewood Theater expanded from three to six screens. Later in 2002, a special permit was approved for N. 27th St. and Folkways for a six screen theater complex. It hasn't been built, but a special permit is in place,. In 2003, the Downtown Entertainment Center Redevelopment Agreement was approved. There are statements that the developer entered into the agreement, at least in part, due to the theater policy. The City agreed to use their best efforts to enforce the policy. The City was liable for loss of income if the City approved a complex in excess of six screen. The City's liability goes until the end of this year. For example, should a large 16-plex be approved, the Grand Theater would have to demonstrate a loss of income. In 2004, the Grand Theater opened. In 2005, two applications came forward and wanted to delete the theater policy and modify the zoning ordinance. They were proposing a large movie theater at S. 84th St. and Highway 2. The application was denied by the City Council. The Planning Dept. hired a consultant to perform the market analysis which the applicant declined to do. The study was provided to the Planning Commissioners. It stated that Lincoln was already over screened, 79 percent of customers would have come from the existing theaters and an 18-plex at Prairie Lakes would mean a 28 percent decline in attendance for existing theaters.

Krout stated there are new, smaller theaters being built. They are all fighting for customers. There are a lot of other options these days.

Hove doesn't believe six screen complexes are large enough anymore.

Lust believes if we change the policy, it risks the investment that these companies have made.

Hove believes we should sunset this policy. The market should be opened up in a set number of years.

Will noted that originally City staff opposed this because theaters were still an important component to downtown and the City was financially liable for a loss of rental income. In 2013, two applications were submitted that were identical to those submitted in 2005. They were withdrawn at public hearing before Planning Commission. Planning suggests we need to think about the role of the B-5 center which was traditionally for distribution of goods and services. However, today theaters are now an integral part of those centers and we need to consider how regional centers are developed.

Lust left.

Cornelius pointed out the study that says Lincoln is over served with theater complexes. Krout does not believe this is a growing market. This is a shrinking market.

Cornelius added that televisions are larger and movies are more easily accessible at home.

Beecham wondered how easy it would be to develop a site with six screens, and could it be expanded. Hove was involved with the financing for the construction of Edgewood and the Grand. This is a large investment for those companies and they followed the rules. Purchasing ground for expansion can be a problem. We just can't let this policy go on and on forever. We should set a future date when the rules would change. The problem is, Marcus is the only game in town. No one will come in, if this doesn't change.

Krout stated there may be a possibility that this issue would come in front of Planning Commission again. Marcus might be interested in further investment. We are about a year and a half away from beginning the next update to the Comprehensive Plan. It would be the time and place for this issue to be discussed.

The briefing was adjourned at 3:45 p.m.