

BRIEFING NOTES

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, May 10, 2017, Bill Luxford Studio, Room 113, County-City Building, 555 South 10th Street, Lincoln, Nebraska.

MEMBERS IN ATTENDANCE: Tom Beckius, Tracy Corr Tracy Edgerton, Maja Harris, Chris Hove, Dennis Scheer and Sandra Washington; (Deane Finnegan and Ken Weber absent).

OTHERS IN ATTENDANCE: David Cary, Steve Henrichsen, George Wesselhoft, Brian Will and Amy Huffman of the Planning Dept.

STATED PURPOSE: Briefing on “City Zoning Amendments” and “Review and Background of Alcohol Regulations” by Planning staff.

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

City Zoning Amendments:

Wesselhoft stated the proposed 2017 text amendments will appear before this body on May 24, 2017 at the regular Planning Commission hearing. These include changes to the Subdivision Ordinances, the Zoning Ordinances and the Design Standards. Most changes are just clean-up items, correction of errors and inclusion of omissions. These proposed amendments have been posted online since March 20, 2017. An email blast was sent out to the development community and neighborhood groups and the changes were summarized at a Mayor’s Roundtable meeting. Today, a few of the more substantive changes will be reviewed.

There are notable changes related to redevelopment in older areas and to eliminating penalties for smaller community unit plans for allowable density. The language is proposed at 10%-20% reductions. The intent is to foster redevelopment of smaller areas. This body may recall the Cordner Court project, which was an infill project where one or two houses could have made a difference in terms of viability of the project. For the R-7 and R-8 Districts, a stipulation was removed where a building would exceed 35 feet in height. These are mostly in areas close to downtown. Finally, urban gardens will be allowed in front yards, excluding structures. There was support heard for these changes at the Mayor’s Roundtable.

Harris asked if there has been any opposition. Wesselhoft said there were no negative comments.

Hove asked if any conversations took place with the development community. Wesselhoft said there were no face-to-face meetings, but there was a complete listing that went out to all developers and neighborhood organizations.

Washington asked about attendees at the Mayor’s Neighborhood Roundtable. Henrichsen said there were around 25-30 people in attendance. Staff also asked a few attorneys, and Mike Eckert of Civil Design Group to look for anything that would cause concern. If any additional major changes need to be made, they would come back through the entire public process.

Washington asked for confirmation that the changes will appear at the May 24th hearing. Wesselhoft confirmed.

Harris asked about the change to the appeal period from 60 days to 90 days. She wondered if people were missing the deadline at 60 days. Wesselhoft said that is correct. It is to allow more time to file an appeal in case anything isn't identified in the first 60 days.

Corr wondered about the change in legal advertising from 8 days to 5 days and the origin of the 8 days. Henrichsen said the goal will continue getting the ad out as quickly as possible, at the 8 days. The deadline for applications is 4 weeks before the meeting. 8 days was a doable amount of time for the Journal Star. The reduction is simply to make sure there is enough time to react should the publication date be missed for any reason.

Review and Background of Alcohol Regulations:

Cary stated that often, text amendments are basic updates and clean-up items. There are a few areas that are more complicated, and one of those is alcohol regulations. This is by no means a comprehensive history, but rather, a basic overview of what has been done and what Lincoln has in the books. There has been a lot of interest recently and many ideas that have merit. Staff proposes that the Planning Commission be the public body throughout the summer. There will be around one briefing per month, or as many as necessary. This is an effort to make sure this body, staff, and stakeholders, such as groceries and neighborhoods, are as up to date as possible. Announcements will be made about the briefings which will provide an opportunity for public discourse without a specific application about which a decision needs to be made. The expectation is that by the end of the process, a good discussion will have occurred.

Hove said the goal of these briefings is to make Commissioners more informed. Cary agreed and noted that it is also an opportunity to get information out to the public. Commissioners should be able to make the best decision possible. It is possible that by August, after discussion, a decision may be made to update alcohol regulations.

Beckius observed there appears to be growing sentiment that these need to be looked at. Cary agreed and added that without these sessions, decisions could be made in a vacuum or haphazardly.

Washington expressed her appreciation. She has recognized tension in the community about past applications involving alcohol sales.

Hove asked if any applications related to alcohol will come forward in the meantime. Cary said the hope is they will be held off, but these discussions certainly do not preclude them from coming forward.

Brian Will said that prior to 1994, there were no regulations specific to alcohol sales in the ordinance. Applications were treated just like anything else, where liquor sales were another retail use. Several events came together around that time that changed things. A State Supreme Court ruling changed who could sell alcohol by opening sales up to businesses like groceries, pharmacies, and convenience stores. Prior to that, only bars and liquor stores could sell. Liquor stores opposed the expanded sales. There were also cases where local municipalities would recommend denial of alcohol sales, but then the State Liquor Commission would approve sales stating the rationale for objections to sales were not strong enough. Controlling proliferation was a major issue for some City Counselors at that time. The outcome of all of these factors was the creation of the special permit process for alcohol sales that is in place now.

In the City of Lincoln, a business needs a liquor license approved by the State Liquor Commission. They also need proper zoning, which is unique to Lincoln. This means more than just having retail zoning; they also require a special permit. The on-sale regulation allowed sales in B-1, B-3, H -1 thru 4, I-1 and I-2 Districts and when associated with a restaurant in O-3 Districts. Off-sale excludes I-2, indicating that there are several highways and interstates along that zoning district. The idea is to prohibit drivers from

stopping for alcohol and then getting back on roads. A special permit is required for both types of sales, even if on the same premises. Beyond those districts, it is allowed in B-4, downtown. On- and off-sale is a conditional use in B-2 and B-5. It is not allowed in AG, AG-R, or R-1-8 Districts.

Harris asked if a license is still required in the B-4 District where sales are permitted. Will said yes, the liquor license is still required, but not the special permit. The license from the State would authorize both on- and off-sale.

Will went on to say that there are parking requirements and restrictions regarding proximity to other uses. A premises must be at least 100 feet away from daycares, residential districts, and other sensitive uses unless appropriately mitigated through screening.

Hove noted that the distance is not from front door to front door. Will said that is correct. The distance is measured to the licensed premises. Hove added that the distance as measured does not include changes in elevation between properties, which could be a mitigating factor. Will agreed that is the case. Washington offered that perhaps something like that could be managed at the discretion of the Director.

Will said there were other more minor changes related to lighting, vehicle stacking for drive throughs, and amplified noise. There can be no front access door facing a residential district within 150 feet and no access to a local street. B-2 and B-5 were conditional from the beginning. Hove asked if there were any drive through liquor stores. Will said there used to be one on O Street.

Will noted several revisions that have taken place over the years. Changes were made to limit access to local streets as much as possible. Another change allowed an internal expansion of a business without going through the entire permit process again. City Council was given the authority to waive conditions. In 1997, on-sale was allowed by special permit in the I-3 District. There was a court case in 2001 brought by a convenience store. That went to the State Supreme Court who ruled in favor of upholding the City regulation and confirmed that yes, a city can regulate in addition to the State liquor license. The separation criteria were added to daycares and mental health facilities in 2004. That year, the Council lost the authority to waive conditions, essentially making it clear that if a request for a special permit for alcohol sales came in, it must meet all criteria and there is no flexibility. This offered more consistency, but the flipside is that if anyone meets all of the criteria, it is difficult to find a reason to deny recommendation.

Harris remembered touching on that aspect of alcohol sales. Will said that it did not work to pick and choose various conditions for certain properties because no one knew where the standards stood. That put the Planning Commission and the City Council in a difficult position. The line was too fuzzy; it was a practical dilemma. The standard distance was the 100 feet. It became clear that it was too difficult to determine what mitigating factors make 50 feet okay for one business, but not another. Harris asked if there was community discussion or working group to determine what would work. Will said yes, but he is unsure whether it was as expansive as working groups are today. Cary confirmed that the issue was related to the lack of clarity in approving an application at one location, and denying in another. City Council felt they were being put in the middle of contentious situations and wanted a standard.

Will went on to briefly describe several other updates. Since April of 2004, the 100-foot separation has been measured to the door, except for in B-2 and B-5 Districts, which are intrinsically different in their design. An exception was added for restaurants in 2008 to reduce the separation distance from residential areas to 25 feet when it is clear the primary use of the business is food sales and several criteria are met. In 2011 and 2012, minor changes were made regarding farm wineries and market gardens and by-right uses like golf courses. To sum up, today, there is a parking requirement of 1 to 100-feet of floor area, the requirement of the special permit, and a distance of 100 feet from 1st floor residences, parks, churches, daycares, and mental health facilities, or 100 feet from a residential zone, except for golf courses.

In measuring the distance, the licensee gets the benefit of the doubt so the measurement starts at the far side of residential, then a straight-line distance is measured to the back wall of the building of the licensed premises. In B-2, the measurement is different in that it goes to the door. The rationale is there is not parking in the back and new centers tend to have screening with a 50-foot setback built in to the site plan. Design standards and zoning regulations inherently build a center more conducive to this eased regulation and it is not like an older district where a building could back immediately to a residential neighbor.

Washington asked if in some cases, such as in north Lincoln, there are businesses that may predate regulations and have only a small amount of space to a residential zone. Will said there are many uses out there and it can depend on if the business has a pre-existing special permit, or is non-conforming. There is the special permit that allows property to ask for expansion or modification.

Hove wondered about the different standards for different districts when the whole point of the regulations is to keep things consistent. Will said if you compare districts, those with zoning overlays have site plan review coming through Planning Commission. The setbacks are much greater, the screening and landscape standards are greater. Some older business districts were built without zoning standards, so you can find places without the built-in separation. With regard to the exception for restaurants, the permittee agrees that the license will be voluntarily surrendered should the special permit be revoked. Alcohol sales must not exceed 40% of gross sales and they must serve full-course meals. The thinking is that a restaurant is not the same as a bar, when it comes to on-sale.

Will went on to describe exceptions in more detail. As mentioned, on-sale is allowed as an accessory use to a golf or country club, farm winery or market garden where allowed by permitted use. Council can revoke a license for repeated violations or bad behavior. No permit is needed for an internal expansion of an existing license. Parking is also different for off- and on-sale. There are a number of outlets around the city that do not meet the requirements. They pre-existed the 1979 regulations, or became non-conforming if established between May of 1979 and April of 1994.

There are currently 620 liquor licenses across all classes in the county. 485 are on- and off-sale in Lancaster County, 470 of those in Lincoln. There have been 89 new on-sale and 71 new off-sale established since the 1994 special permit rule.

Scheer wondered about the approval process including mitigations steps and monitoring as a condition to continued use. Will said he does not know of any that operate that way, but it is the responsibility of the business.

Washington asked if there is a diagram that shows the trend in on- and off-sale against population. Cary asked if that meant since the 1994 changes. Washington said she would like to see how many establishments opened during certain timeframes. Will said it is not like the larger the city gets, the more licenses are issued; it is only a few are added per year.

Edgerton asked how CUP and PUD overlays affect the rules. Will said a CUP only applies to residential, so there are no alcohol sales. PUDs include a mix of commercial and residential uses. Cary said PUDs are set up for flexibility. People want the rules to be simple, but they are not. There is always a risk for nuisance. Edgerton noted that a liquor license must still be approved. Cary agreed that was the case as long as the use was approved in the PUD.

Hove asked how tasting rooms fit within the regulations. Will said it depends. There are 34 different types of liquor licenses for a multitude of uses. Henrichsen noted an example where a license came through, and even though it allowed on-sale, this business was just filling growlers for people to take

home, which is not the same as regular off-sale. Will noted there can be many complicated nuances such as that.

Cary let Commissioners know they are free to contact Staff at any time if they think of questions. Staff will contact stakeholders with a known interest in this topic, and information will eventually be launched on the Planning website. The intention is to provide for a public comment period so citizens have the opportunity to express their ideas. There is enough built-in limitation on what can be done, so it is realistic to plan that the basics can be covered by September.

Harris asked that information be provided about regulations in similarly sized communities to see where Lincoln falls on the spectrum. She wondered if Lincoln was conservative or lenient when it comes to alcohol licensing. Will said there are examples. He interviewed all Big 10 Communities and the regulations run the gamut; there is no standard. Washington followed up with a question regarding where Lincoln stands in comparison to other communities in Nebraska. Will said Lincoln is alone in Nebraska in terms regulating alcohol through zoning regulations, but it does occur in other states.

Harris asked if any conversations Commissioners have about this topic should be declared as ex parte communications. Cary said there is one specific application from Open Harvest, so discussion specific to that application needs to be declared. Otherwise, this is generally an open discussion for the purposes of education, and is always open to the public.

There being no further business, the meeting was adjourned at 4:12 p.m.

F:\Boards\PC\Minutes\2017\pcb051017.doc