

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, January 31, 2007, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Jon Carlson, Gene Carroll, Michael Cornelius, Dick Esseks, Gerry Krieser, Mary Strand, Lynn Sunderman and Tommy Taylor (Roger Larson absent); Marvin Krout, Ray Hill, Mike DeKalb, Brandon Garrett, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Chair Jon Carlson called the meeting to order and requested a motion approving the minutes for the regular meeting held January 17, 2007. Motion for approval made by Carroll, seconded by Krieser and carried 7-0: Carlson, Carroll, Cornelius, Esseks, Krieser, Sunderman and Taylor voting 'yes' (Strand abstaining and Larson absent).

There was no Consent Agenda.

ANNEXATION NO. 06022,
CHANGE OF ZONE NO. 06082
FROM AGR AGRICULTURAL RESIDENTIAL
TO R-3 RESIDENTIAL,
and
PRELIMINARY PLAT NO. 06011,
WOODLAND VIEW 1ST ADDITION,
ON PROPERTY GENERALLY LOCATED
AT S.W. 40TH STREET AND WEST A STREET.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: January 31, 2007

Members present: Sunderman, Krieser, Esseks, Taylor, Carroll, Cornelius, Strand and Carlson; Larson absent.

Ex Parte Communications: None.

The Clerk announced that the applicant has requested an additional four-week deferral.

Strand moved deferral, with continued public hearing and action scheduled for February 28, 2007, seconded by Carroll and carried 8-0: Sunderman, Krieser, Esseks, Taylor, Carroll, Cornelius, Strand and Carlson voting 'yes'; Larson absent.

There was no other public testimony.

CHANGE OF ZONE NO. 07001
AMENDING TITLE 27 OF THE LINCOLN MUNICIPAL CODE
RELATING TO FLOOD REGULATIONS FOR
EXISTING URBAN AREA AND ADOPTING STANDARDS
FOR DEVELOPMENT WITHIN THE
SALT CREEK FLOOD STORAGE AREAS.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

January 31, 2007

Members present: Sunderman, Krieser, Esseks, Taylor, Carroll, Cornelius, Strand and Carlson; Larson absent.

Staff recommendation: Approval, as revised on January 26, 2007.

Ex Parte Communications: None.

Additional information for the record: Mike DeKalb of Planning staff submitted a letter from the Lower Platte South NRD in support of the proposed legislation.

Staff presentation: **Mike DeKalb of Planning staff** explained that this is new language to the floodplain regulations of the zoning code which reflects a new approach. If this reach of Salt Creek were mapped in the traditional method, the floodway would extend into existing neighborhoods with significant impact to existing land owners. The use of this approved storage technique will allow the official FEMA mapped floodway to remain within the banks of the existing levees. Staff recommends approval.

Proponents

1. Nicole Fleck-Tooze of Public Works & Utilities and Glenn Johnson of Lower Platte South NRD gave the presentation as the applicants. **Fleck-Tooze** explained that the proposal includes the Salt Creek floodplain mapping update and ordinance changes. This is the fifth floodplain in the Lincoln area where updated mapping has been completed. The city has adopted these mapping updates as the "best available information" for floodplain administration. The Salt Creek Floodplain Study was updated because the old study was at least 20 years old and some of the information was older than that. Technology has changed and a lot of additional information has become available. This updated study is as current and as accurate as possible and is consistent with the Mayor's Floodplain Task Force recommendation that the Salt Creek Floodplain study be updated.

Glenn Johnson further explained that Salt Creek is a little unique because it has a system of levees that run along from Calvert to Superior Street on both sides of the channel, and those levees create a different kind of flooding situation and flood protection. In this case, when the flood waters come up to a certain point, the 100-year flood will overtop the levee with a storage area on either side of the levee that will be filled with some degree with flood waters. The center part is the floodway.

Johnson went on to state that the study took place from Saltillo Road to 98th Street. The floodway part is broken into three different pieces: 1) the southern portion from Saltillo to Calvert is unchannelized, does not have levees and basically goes through Wilderness Park. This portion is conventional floodplain and the floodway will be regulated by a conventional type method; 2) from Calvert to Superior Street, there is a system of levees; and 3) from Superior to 98th Street we get back to the conventional type of floodplain/floodway with no levee system.

Johnson noted that the levee system approach is consistent with FEMA. It is also consistent with how the map was reviewed in the past. In this case, there are 20 different storage areas along both sides of the Salt Creek levee, being the storage basins that fill up to some extent with water when the 100-year flood would occur. The approach in this study is to keep the floodway (the more restrictive regulatory component) within the levee system and then restrict the amount of fill that could take place in those storage areas (flood fringe). The conventional approach was also studied through the levee system, which showed extensive area on either side of the levee system that would be put into the floodway under the conventional method – shrinking the floodway down to the levee system and restricting the amount of fill that can take place in the storage areas on either side.

Fleck-Tooze explained the proposed amendments to the zoning ordinance, which represents what is required to meet the minimum FEMA regulatory standards in order to make this approach to the floodplain mapping work. It is an alternative to a much wider traditional floodway, and in this alternative each flood storage area is assigned a percent of allowable fill, allowing more flexibility than a traditional floodway approach through this area. The fill allowable is based on total volume between ground surface and 100-year flood height. What is before the Commission today is adoption of the updated maps via local regulations through the ordinance. The formal FEMA adoption process is anticipated, but that won't happen for another year. In the meantime, the applicants are proposing that the map be adopted for local regulation. This is consistent with how other watersheds have been treated. The Council will adopt the updated map along with the companion ordinance.

Fleck-Tooze also advised that there was a very, very extensive public process on this legislation. Surveys were offered to homes and businesses and the information will be provided back to those people. The minor revision to the text submitted on January 26, 2007, addresses a conflict with the definition for single family dwelling.

Concerning the existing levees, Carroll believes that there was discussion over the years that the design and construction was not as adequate as the Corps thought and there might be a failure of some of those levees. Johnson responded, suggesting that there were two issues with the levee system. 1) One of the things unique to Lincoln is that these levees were not built necessarily from scraps. In its history, Salt Creek had been straightened during several decades and the material from the straightening was piled on the side of the channel. Part of the system of levees was simply reshaping and creating the elevation of those bank levees. They functioned very well since 1965 when the first ones were completed. The Corps was concerned because of some dispersive clay. This problem has been addressed all the way through with maintenance operations. Detailed testing has been done and there is no longer a concern. 2) The other concern is the overtopping. The Corps looks at how much freeboard there is at the top of the levee above the 100-year elevation. If you are going to have a certified 100-year flood protection levee system, the top has to be three foot higher than the 100-year floodplain elevation. These levees do not have that additional three feet. It is not that they are failing, but part of the probability analysis because they don't have that freeboard. The levees are structurally sound. They function very well for the limit of the storm from which they can protect.

Strand commented that, as a realtor, she is always concerned when houses get put in floodplains because the value drops. How many houses will be affected and be required to pay flood insurance? Fleck-Tooze did not have a total number of houses – there were areas that came in and others that came out. Surveys were done of those homes on the fringes. Surveys were offered to 526 buildings that were on the fringe, and of those 139 were surveyed. Of those that were surveyed, 76 were out and 63 were in. Fleck-Tooze offered to provide an actual number.

Strand asked for a quick synopsis of the steps a business or homeowner would have to go through if they added onto an existing business or house, etc. Fleck-Tooze advised that if the owner wanted to make some changes, a floodplain permit would be required. If they are going to make a substantial improvement of more than 50% of the property, then they are required to bring that improvement into compliance with the standards. Minor improvements can be done without that change. More substantive improvements would require compliance.

Esseks asked for a restatement of the reasons for the one-foot rise as opposed to, for example, ½ foot. Fleck-Tooze explained that the effort was to bring updated maps with the best available information. Because of the uniqueness of Salt Creek, that effort has resulted with this companion ordinance, which is simply to meet the minimum requirements to allow up to one foot above the floodplain. We have adopted a “no rise” standard, and the task force had also recommended a similar standard for the existing urban area. Within the existing urban area, the Salt Creek floodplain comprised about 60% of the total. The reason this is before the Commission today is simply reflecting the minimum FEMA floodplain standards.

For the non-expert, Esseks wondered what a one-foot rise can do? Fleck-Tooze believes it would be a significant impact. Now that we have this model, we have the ability to answer some of those questions. Johnson further responded, stating that in the new study, we are not seeing significant changes in the 100-year floodplain elevation, so even today that one foot applies. If you don't change the floodplain elevation, this ordinance doesn't really change that risk because you still have the ability today to go in and fill more than the 35 or 45% up to 100%. There is a greater risk out there today because they could literally fill the entire flood storage area, which would most likely result in much more than one foot of rise. The impact is on those structures that were pre-existing before the last floodplain map was done. Ever since that map was put in place, any new structure has their first floor elevated the one foot above. Even with a one foot rise, it still stays right at or slightly below. It is really the existing structures.

Esseks inquired as to how accurate and how predictable the tool is that would be used in allocating the 35% and 40% storage areas. What are we relying upon? **Pat O'Neill with CDM**, project manager of the study's technical analysis, explained that over the last five to six years, FEMA has put together standards and requirements for conducting these studies. Those standards and guidelines were followed. Basically, there is a selection of different types of computer models and there are very strict standards on the type of topographical data and data on particular structures that are used in the model. The standard models were used to predict or estimate the floodplain elevations.

Esseks wanted confirmation that these processes are professional and can be trusted. O'Neill acknowledged that FEMA's record has not been outstanding; however, he believes the processes used are very defensible. He has practiced in this area for 15 years and this has been the most thorough engineering study that he has been involved with. He believes it is the best tool that is being used by engineers. It is the latest tool that is the most complex and handles the most difficult situations. He is very comfortable with the results.

There was no testimony in opposition.

DeKalb reiterated that the language for the new approach is not in the code today. This legislation adds provisions to the zoning code to be able to utilize this technique.

ACTION BY PLANNING COMMISSION:

January 31, 2007

Carroll moved to approve the text amendment, as revised on January 26, 2007, seconded by Sunderman and carried 8-0: Sunderman, Krieser, Esseks, Taylor, Carroll, Cornelius, Strand and Carlson voting 'yes'; Larson absent. This is a recommendation to the City Council.

**CHANGE OF ZONE NO. 06062 (CITY ZONING ORDINANCE),
COUNTY CHANGE OF ZONE NO. 06070 (COUNTY ZONING REGULATIONS),
MISCELLANEOUS NO. 06012 (CITY SUBDIVISION ORDINANCE),
MISCELLANEOUS NO. 06014 (PLANNING COMMISSION RULES & PROCEDURES),
and
COUNTY MISCELLANEOUS NO. 06016 (COUNTY SUBDIVISION REGULATIONS).
PUBLIC HEARING BEFORE PLANNING COMMISSION:** January 31, 2007

Members present: Sunderman, Krieser, Esseks, Taylor, Carroll, Cornelius, Strand and Carlson; Larson absent.

Staff recommendation: Approval

Ex Parte Communications: None.

Staff presentation: **Ray Hill of Planning staff** presented the proposal as follows:

1. Change of Zone No. 06062, amending Title 27 of the Lincoln Municipal Code to set a 12 week time period from the initial hearing date for the Planning Commission to act on applications unless the applicant consents to the deferral; and to set a one-year period within which applications that have been deferred at the applicants' request are presented to the Planning Commission or City Council for final action or they automatically expire.
2. County Change of Zone No. 06070, amending the Lancaster County Zoning Regulations to 1) set a 12 week time period from the initial hearing date for the Planning Commission to act on applications unless the applicant consents to the deferral; 2) set a one-year period within which applications that have been deferred at the applicants' request are presented to the Planning Commission or County Board for final action or they automatically expire; 3) to change public hearing notice dates when signs are posted and notices appear in the newspaper to be consistent with the City's notification requirements; 4) to clarify procedures for special permits and community unit plans; to 5) clarify that no buildings or uses may be permitted in a yard via an administrative amendment by the Planning Director; and to relocate the provisions for pre-existing special permits.
3. Miscellaneous No. 06012, amending Title 26 of the Lincoln Municipal Code relating to the Land Subdivision Ordinance to 1) set a 12 week time period from the initial hearing date for the Planning Commission to act on applications unless the applicant consents to the deferral; 2) to set a one-year period within which applications that have been deferred at the applicants' request are presented to the Planning Commission or City Council for final action or they automatically expire; and 3) to delete the reference to

the filing deadline before a preliminary plat may be scheduled on the Planning Commission agenda.

4. Miscellaneous No. 06014, amending "Rule 2. Filing of Applications" of the Lincoln City-Lancaster County Planning Commission Rules and procedures, to change the filing deadline from 12:00 noon four Thursdays before Planning Commission public hearing to 4:00 p.m four weeks before Planning Commission public hearing.
5. County Miscellaneous No. 06016, amending the Lancaster County Land Subdivision Regulations to 1) set a 12 week time period from the initial hearing date for the Planning Commission to act on applications unless the applicant consents to the deferral; 2) to set a one-year period within which applications that have been deferred at the applicants' request are presented to the Planning Commission or County Board for final action or they automatically expire; 3) to delete the filing deadline before a preliminary plat may be scheduled on the Planning Commission agenda; 4) to delete the provision that a preliminary plat shall be effective for only 10 years and authorize the Planning Director to determine if a new preliminary plat may be required after 5 years rather than the County Board; 5) to reword procedures regarding filing the Planning Commission's findings within 7 days with the County Clerk; and to change public hearing notice dates when signs are posted and notices appear in the newspaper to be consistent with the City's notification requirements.

Hill recalled that at the briefing on these proposed amendments, it was staff's understanding that the members would entertain a proposal adopting a 12-week time period within which the Planning Commission should act and make its recommendation to the City Council or County Board, unless the applicant consents to such a delay. It was also agreed that the Planning Commission members would entertain a proposal adopting an expiration date for applications which do not get scheduled for some reason or another. The proposal also requires that the Planning Director would notify all applicants that have pending items within 30 days of expiration so that they have some knowledge that if they do not act their application would expire.

Carroll noted that the staff report in support of the 12-week limitation for Planning Commission action refers to the downzoning request which precipitated this proposed legislation. He pointed out that the state statute requires action by the Planning Commission on zoning petitions. Therefore, this proposal would have no affect on zoning applications. Hill agreed that the time limitation does not apply to zoning changes, but he believes this proposal does give everyone a guideline for action on all other applications. As a general rule, the Planning Commission should be able to come to a conclusion within a reasonable period of time. When this was discussed, Hill thought the Commission as a group thought the 12 weeks after the first public hearing would be sufficient time for the

Planning Commission to act. This is what the staff was guided to present, but the decision is still with the Planning Commission. The proposal provides that the applicant has a right to appeal to the City Council or County Board if the Planning Commission does not act within 12 weeks after the first public hearing.

Cornelius wanted to know just how often this actually occurs – how often does the Planning Commission defer action beyond 12 weeks without the consent of the applicant? Is this a real problem? Hill suggested that there have been two recent situations, and over the 30+ years that he has been in the Department, there have been other occasions where applications have been deferred for various reasons. He believes 12 weeks is a long time.

Cornelius recalled that the worst case scenarios were discussed during the briefing, and what the Commission arrived at was that the Planning Commission is being directed by this ordinance to find for denial of an application that needs to be deferred for that length of time. Hill explained that the way the proposal is written, the Planning Commission has 12 weeks to make a decision, and after that period of time the applicant has a right to appeal. If the applicant has no problem with the deferral, the appeal does not come into play. If the applicant believes there needs to be a decision, this gives them an avenue to appeal on up to the governing body.

Esseks asked staff to clarify paragraph #3 of the Analysis on page 2 of the staff report for Change of Zone No. 06062, where it states that,

....The provision that the Planning Commission shall act in 12 weeks will apply to change of zone applications but the applicant will not have authority to appeal the application forward to the City Council without a report and recommendation from the Planning Commission.

He is fearful that as long as this sentence stands, someone could file a suit against the Planning Commission claiming that there still is a prejudice of 12 weeks. Hill clarified that the Planning Commission could not be forced to make a decision on a change of zone. He will change this language before it moves on to the City Council or County Board, if necessary, to make it clear.

There was no testimony in opposition.

CHANGE OF ZONE NO. 06062
ACTION BY PLANNING COMMISSION:

January 31, 2007

Carroll moved approval, with amendment to delete the 12-week time period provision, seconded by Strand.

Hill suggested that if the word “shall” is bothersome, the Commission could add language that the Planning Commission “shall use its best efforts to make a decision within the 12 weeks.”

Carroll reiterated that state statute requires the Planning Commission to act on zoning issues. Therefore, he believes that the Planning Commission should act on everything that is in front of the Commission, whether it takes times or not, and not allow it to go forward without the Planning Commission recommendation. He believes that the state statute clearly defines that this should be controlled by the Planning Commission. He agrees with the one-year expiration date on applications that do not go forward. He believes that the 12-week time period gives the Planning Commission powers away.

Strand concurred with Carroll.

Esseks did not disagree, but he also believes there should be some rule to make things move with a fair amount of speed. Applicants deserve an up or down decision, and 12 weeks seems to be a more than liberal allocation of time. Some discipline should be imposed. He agrees with the 12 weeks.

Cornelius agreed with Esseks, but he believes that there is self-discipline exercised and for that reason this ordinance is not necessary. He believes that the Planning Commission does move things through relatively quickly and he will support the motion.

Kristy Bauer, Deputy County Attorney, clarified that the provision that the Planning Commission shall act in certain cases relates to changes of zone. There is no statutory authority that the Planning Commission must act in regard to special permits, community unit plans, etc. The Commission cannot be required to act within 12 weeks on changes of zones. There must be a report and recommendation from the Planning Commission before the City Council or County Board can act on a change of zone.

Carroll also pointed out that the two times that this came up in the last long number of years was on a change of zone application, and this legislation does not affect a change of zone. The Planning Commission can hold a change of zone as long as it wants. Why change part of the rules and not all of the rules? The Planning Commission should act on everything and not have a time constraint on part of it. It’s either all or nothing. He believes the Planning Commission has done things correctly over the years and there has not been a terrible situation. He does not see the reason for this legislation.

Esseks commented that in Illinois, there were time constraints, and he believes it is a good idea to protect future applicants. Maybe this group should be trusted with complete freedom of action, but he would rather have a liberal standard such as the 12 weeks to act on those issues where state statute does not require it.

Sunderman pointed out that of the two downzonings, only one of them was a deferral at the request of the Planning Commission. The other deferral was requested by the applicant.

So we're really only talking about one situation in three years. He does not believe there is any abuse.

Motion to approve, with amendment deleting the 12-week provision, carried 7-1: Sunderman, Krieser, Taylor, Carroll, Cornelius, Strand and Carlson voting 'yes'; Esseks voting 'no'; Larson absent. This is a recommendation to the City Council.

COUNTY CHANGE OF ZONE NO. 06070

ACTION BY PLANNING COMMISSION:

January 31, 2007

Carroll moved approval, with amendment deleting the 12-week time period, seconded by Cornelius.

Strand asked staff to explain the change to require that no buildings or uses may be permitted in a yard via an administrative amendment by the Planning Director. Ray Hill of Planning staff provided the explanation and indicated that this will make the county and city regulations more uniform. It allows the Planning Director to reduce the building setback down to the minimum of the zoning district without going through the whole process.

Motion for approval, with amendment deleting the 12-week time period, carried 8-0: Sunderman, Krieser, Taylor, Carroll, Cornelius, Esseks, Strand and Carlson voting 'yes'; Larson absent. This is a recommendation to the County Board.

MISCELLANEOUS NO. 06012

ACTION BY PLANNING COMMISSION:

January 31, 2007

Carroll moved approval, with amendment deleting the 12-week time period, seconded by Strand and carried 7-1: Sunderman, Krieser, Taylor, Carroll, Cornelius, Strand and Carlson voting 'yes'; Esseks voting 'no'; Larson absent. This is a recommendation to the City Council.

MISCELLANEOUS NO. 06014

ACTION BY PLANNING COMMISSION:

January 31, 2007

Carroll moved approval, seconded by Strand and carried 8-0: Sunderman, Krieser, Taylor, Carroll, Cornelius, Esseks, Strand and Carlson voting 'yes'; Larson absent. This is final action.

COUNTY MISCELLANEOUS NO. 06016

ACTION BY PLANNING COMMISSION:

January 31, 2007

Carroll moved approval, with amendment deleting the 12-week time period, seconded by Strand and carried 7-1: Sunderman, Krieser, Taylor, Carroll, Cornelius, Strand and Carlson voting 'yes'; Esseks voting 'no'; Larson absent. This is a recommendation to the County Board.

Regular meeting adjourned at 2:04 p.m.

The Commission then met for a briefing by Brandon Garrett of the Planning staff on proposed "clean-up" amendments to the parking provisions in the zoning ordinance, which are tentatively scheduled to come before the Commission for public hearing on February 28, 2007.

There being no further business, the meeting was adjourned at 2:25 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on February 14, 2007.