

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, June 6, 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, Roger Larson, Mary Strand, Lynn Sunderman and Tommy Taylor; Marvin Krout, Ray Hill, Mike DeKalb, Brian Will, Tom Cajka, Christy Eichorn, 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 special meeting on the Capital Improvements Program and Transportation Improvement Program held May 16, 2007. Motion for approval made by Carroll, seconded by Strand and carried 8-0: Carlson, Carroll, Cornelius, Esseks, Krieser, Strand, Sunderman and Taylor voting 'yes'; Larson abstaining.

Carlson then requested a motion approving the minutes for the regular meeting held May 23, 2007. Motion for approval, as corrected, made by Carroll, seconded by Strand and carried 8-0: Carlson, Carroll, Cornelius, Esseks, Krieser, Strand, Sunderman and Taylor voting 'yes'; Larson abstaining.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

May 23, 2007

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

The Consent Agenda consisted of the following items: **COMPREHENSIVE PLAN CONFORMANCE NO. 07010; CHANGE OF ZONE NO. 07029; SPECIAL PERMIT NO. 07013; and SPECIAL PERMIT NO. 07014.**

Ex Parte Communications: None.

Carroll moved to approve the Consent Agenda, seconded by Strand and carried 9-0: Carlson, Carroll, Cornelius, Esseks, Krieser, Larson, Strand, Sunderman and Taylor voting

'yes'.

Note: This is final action on Special Permit No. 07013 and Special Permit No. 07014, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

REQUESTS FOR DEFERRAL: None.

COMPREHENSIVE PLAN CONFORMANCE NO. 07012

SOUTH STREET REDEVELOPMENT PLAN.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 6, 2007

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

Ex Parte Communications: None.

Staff recommendation: A finding of conformance with the Comprehensive Plan.

Staff presentation: **Ernie Castillo, Urban Development**, explained that the South Street Redevelopment Plan is the follow-up to the Blight and Substandard Determination Study done in July of 2006, and adopted by the City Council. This proposed Redevelopment Plan is in response to concerns and issues brought to the city from business owners, property owners and neighborhood residents. Also, in response to addressing the needs of this area, a group of business and property owners and residents formed the South Street Business & Civic Association, who have been very helpful in this process. The Saratoga School and Learning Center have also been represented on this Association.

Castillo advised that the unique feature in this Plan is a set of commercial design principles. A committee from the South Street Business & Civic Association worked with the City staff to identify the five goals listed in the Plan and to give some guidance to future redevelopment. The principles take into account the goals mentioned in the Plan while trying not to deter or detract from any redevelopment opportunity.

Castillo observed that six potential redevelopment areas are listed in the plan. There are a number of activities that could take place in those areas by redevelopment agreement.

Castillo advised that the proposed Plan has been presented to the Irvingdale, Near South, Everett and South Salt Creek neighborhoods to provide information and receive input.

Castillo pointed out that the South Street improvement project is currently underway and aspects of this proposed plan, i.e. the streetscape beautification, will take place in this construction phase. The South Street Business & Civic Association has been very helpful in getting this put together and have been very supportive. At the end of August, the Association is planning a “welcome back” celebration after the road improvements are completed.

Castillo explained that the design principles are intended for future commercial redevelopment projects, i.e. those developers that work with the City toward redevelopment agreements. Not everyone that would come forward to develop would need to comply, but those working with Urban Development on a redevelopment agreement would need to comply.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

June 6, 2007

Taylor moved a finding of conformance with the Comprehensive Plan, seconded by Carroll and carried 9-0: Strand, Larson, Carroll, Cornelius, Krieser, Sunderman, Esseks, Taylor and Carlson voting ‘yes’. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 07032,
TEXT AMENDMENT TO TITLE 27
OF THE LINCOLN MUNICIPAL CODE
TO PROVIDE FOR MORE FLEXIBILITY
OF USES AND BUILDING ARRANGEMENTS ON
RESIDENTIAL-ZONED LOTS.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 6, 2007

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

Ex Parte Communications: None.

Staff recommendation: Approval.

Staff presentation: **Brandon Garrett of Planning staff** submitted an amendment to Section 27.71.130 of the proposal as follows:

27.71.130 More Than One Main Building on Business, Commercial, or Industrial Tract or Use on a Lot or Tract in R-5, R-6, R-7, R-8, O-1, O-2, O-3, R-T, B-1, B-2, B-3, B-4, B-5, H-1, H-2, H-3, H-4, I-1, I-2, or I-3 District.

Where a lot or tract is used for a business, commercial, or industrial purpose, located in the R-5, R-6, R-7, R-8, O-1, O-2, O-3, R-T, B-1, B-2, B-3, B-4, B-5, H-1, H-2, H-3, H-4, I-1, I-2, or I-3 district may have more than one main building or use may be located upon the lot or tract, but only when such buildings or uses conform to all open space and parking requirements around the lot for the district in which the lot or tract is located. ***The exception is that no more than two single family dwellings may be on a lot or tract.*** In addition, in the R-5, R-6, R-7, and R-8 districts, the lot or tract must meet the requirements and conditions in said district for each main building or use.

The bold, underlined and italicized language in Section 27.71.130 was added to avoid a single family subdivision being built without going through the subdivision process. The intent is to allow flexibility for things such as “granny flats” where there would be the ability to have a single family residence and another single family residence on the same lot in the R-5 through R-8 areas.

Garrett then explained the proposal. The proposed amendments to Section 27.63.580:

27.63.580 Permitted Special Use: Nonprofit Religious, Educational and Philanthropic Institutions; R-6, R-7 and R-8 Districts.

Nonprofit religious, educational and philanthropic institutions may be allowed by special permit in the R-6, R-7 and R-8 zoning districts under the following conditions:

(a) The amount of parking required shall be equal to the amount which would otherwise be required for the use as set forth in Chapter 27.67 which is most analogous to the use proposed in connection with such religious, educational or philanthropic institution as determined by the Planning Director. All required parking shall be located on the lot unless otherwise specifically approved by the Planning Commission, but in no event shall required parking be located more than 300 feet from the lot upon which the use is located.

(b) No such use shall be a retail store, render a service which is customarily carried on as a business nor shall any such use be approved which involves printing, publishing, manufacturing, or other industrial uses on the premises.

(c) All signage shall be in conformance with the district regulations as set forth in Chapter 27.69 of this code.

came out of discussions about nonprofit organizations. This section provides for a special permit for nonprofits in the R-6, R-7 and R-8 districts. The way the ordinance is currently written, these nonprofits would be limited to nonprofits that do not render a service which is customarily carried out in the business. This language is proposed to be stricken to avoid a retail type function such as Salvation Army so that there would not be a high traffic retail type of business going on as a part of this special permit provision.

The second part of the proposal is the proposed amendment to 27.71.130:

27.71.130 More Than One Main Building on Business, Commercial, or Industrial Tract or Use on a Lot or Tract in R-5, R-6, R-7, R-8, O-1, O-2, O-3, R-T, B-1, B-2, B-3, B-4, B-5, H-1, H-2, H-3, H-4, I-1, I-2, or I-3 District.

Where a lot or tract is used for a business, commercial, or industrial purpose, located in the R-5, R-6, R-7, R-8, O-1, O-2, O-3, R-T, B-1, B-2, B-3, B-4, B-5, H-1, H-2, H-3, H-4, I-1, I-2, or I-3

district may have more than one main building or use may be located upon the lot or tract, but only when such buildings or uses conform to all open space and parking requirements around the lot for the district in which the lot or tract is located. ***The exception is that no more than two single family dwellings may be on a lot or tract.*** In addition, in the R-5, R-6, R-7, and R-8 districts, the lot or tract must meet the requirements and conditions in said district for each main building or use.

to allow more than one main building. The ordinance as currently written would apply to business, commercial or industrial tracts, and that was interpreted to mean that you could not have more than one building or use on any residential lot or tract. The Comprehensive Plan encourages opportunity for some mixed development where there would be some opportunity to combine some uses on a lot if you met the lot requirements for each individual use. So if you had a larger lot, you could potentially carry on more functions on that lot if you met those requirements. The presumption is that a smaller lot would likely not meet the requirements in order to have additional uses.

The proposed amendment to Section 27.71.140:

27.71.140 Two or More Buildings for Two-family Dwellings, Multiple-family, Institutional or Hotel Purposes.

In the event that a lot is to be occupied by a group of two or more buildings to be used as a unit for any combination of two-family dwellings, multiple-family dwelling, institutional, or hotel purposes, there may be more than one main building on the lot.; provided, however, that the open space between buildings shall have a minimum dimension of twenty feet, ~~for one-story buildings, thirty feet for two-story buildings, and forty feet for three-story buildings.~~ unless modified by an official from the Building and Safety Department based on the building code.

has to do with the spacing between buildings in the residential districts, and adds a provision to allow Building & Safety to modify this provision based on the building code.

Garrett then submitted Exhibit A, illustrating the “before and after” aspects of more than one main building on a lot, and more than one main use on a lot, using R-5 as an example.

Garrett also submitted Exhibit B, illustrating the “before and after” aspects for the amendment to 27.71.140 for the separation of buildings. We want to plan for more larger and integrated developments.

Larson presumed that there are blocks that are existing now that would not meet these proposed standards. Ray Hill of Planning staff advised that these proposed amendments are less restrictive. Therefore, anything that was built as of today would have met these requirements.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

June 6, 2007

Carroll moved approval, as revised by staff today, second by Taylor and carried 9-0: Strand, Larson, Carroll, Cornelius, Krieser, Sunderman, Esseks, Taylor and Carlson voting 'yes'. This is a recommendation to the City Council.

**PRELIMINARY PLAT NO. 07002,
WATTS ADDITION,
ON PROPERTY GENERALLY LOCATED
AT N. 70TH STREET AND ALVO ROAD.**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 6, 2007

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

Ex Parte Communications: Esseks disclosed a discussion he had with Brandon Garrett of the Planning staff this morning regarding this application.

Staff recommendation: Conditional Approval.

Staff presentation: **Brandon Garrett of Planning staff** presented the proposed preliminary plat. This area was annexed on January 31, 1996, and there was a change of zone to I-1 on this property on June 19, 1995. Therefore, the change of zone occurred prior to some of the current floodplain regulations. The comments attached to the staff report from Ben Higgins of the Watershed Management Division of Public Works & Utilities request that the applicant add a note that,

The area was filled and raised above floodplain elevation in 2006. However, the area is still mapped as a floodplain area currently by FEMA and a LOMA/LOMR process will be required for removal from the floodway/floodplain designations.

Carroll noted that the staff Analysis #4 indicates that the property is still in the floodplain and city proposed floodway. Garrett clarified that the property is on the newly mapped floodway, according to the Planning Department's GIS map. He did not receive any comments from Watershed Management indicating a problem with this. They do require a Letter of Map Revision to correct this area now that it has been filled. Carroll found it confusing that it is in the floodplain or floodway if it has already been filled. Garrett explained that to be the reason they need to get a Letter of Map Revision from FEMA to make it current. The maps have not yet been changed to show that the property has been filled.

Esseks then referred to Chapter 27.52 of the Lincoln Municipal Code, where it refers to the Letter of Map Revision from FEMA. Esseks does not believe the ordinance indicates what the letter has to demonstrate. If you look up what had been a floodway with additional fill,

there would have to be consequences both upstream and downstream. Does FEMA have to have some type of criteria such as, this fill being added will not significantly affect property values, use of property, safety, etc.? There was no staff available from Watershed Management, but Chad Blahak of the Engineering Services Division of Public Works and Utilities stated that he understands that if there was a pre-approved fill permit, it supersedes the current requirements. As to whether or not the property is in the floodway, Blahak suggested that it depends on whether it was with the original floodway or the new Salt Creek floodway. If it was in the new floodway, then the fill permit probably would stand and they do need to submit the Letter of Map Revision to FEMA to update the maps and reflect what exists today. Esseks inquired whether there is any way to determine that this is in the best interest of the community. Blahak stated that, comparing the current grading out there with the new Salt Creek mapped flood study, he does not know if the new map included this fill or not. Watershed Management would need to address that issue. He observed, however, that there is development to the north that is filled that is even closer to the creek.

Esseks inquired whether there will be compensatory storage on-site or on some other property that this applicant owns. Blahak noted that the plan is showing detention on-site that can serve as compensatory storage for the minor year storms. The fill took place prior to any development plans and it puts the city in a difficult position to enforce the standards.

Carlson noted that condition of approval #1.1.23 requires the developer to submit a hydrologic and hydraulic report. Blahak explained that a hydrologic and hydraulic report addresses the local situation of on-site detention and storm sewer design. The floodplain issues are usually independent of this report. There is not an actual flood corridor going through this property. That condition refers to the local hydrology for the development or anything that passes through the development.

Esseks reiterated that the Ben Higgins memo indicates that the property is in the floodway. Blahak stated that he has not seen the new Salt Creek map. If the map has not been adopted by FEMA, then technically there is no floodway.

Esseks questioned then the statement that there has to be a process requiring removal from the floodway/floodplain designations. Can the public be protected through that process? Blahak referred to the process to get the Letter of Map Revision approved through FEMA.

Esseks wondered whether the City can ask the Corps of Engineers to take into account the City's concerns about this being likely to be mapped as floodway. Marvin Krout, Director of Planning, explained that that study has not been accepted, so until that happens, this property owner still has to go through the technical process of removing this land from the floodway and floodplain according to the old study that is still the official adopted FEMA map. If this were two years from now, we would have an updated FEMA map and this requirement would not be here today. We are in the process of adopting a new map. The

new study took into account that this property was going to be out of the floodplain. This development will not have an impact on the floodplain area as we intend to amend the FEMA map in the future. Krout will try to confirm this with Watershed Management.

Carlson believes that possibly there is some confusion. He believes that Watershed Management is requesting some documentation. Condition #1.1.19, also requested by Watershed Management, requires the addition of a clear statement on the site plan that the entire parcel is within the floodplain and floodprone floodway.

Proponent

1. Dave Watts, Watts Electric, the developer of this property as an industrial site, responded to the Commission's questions about the floodplain. He applied for the fill permit in September of 2006. When he purchased the property, he was told that FEMA was going to map the area and that he could still apply for a fill permit because it is floodplain, not floodway. He then applied for the fill permit before the proposed floodway maps were available, and the city issued the fill permit. Watts understands that the property is in the City's proposed floodway; that the map has been sent to FEMA; and that it will be remapped this fall. But until that time, the property is still in the floodplain. It will not be a floodway until that is adopted by FEMA. FEMA told Watts that he needed to apply for a permit to take it out of the floodplain first. Once the property is out of the floodplain, it will be remapped into the final floodplain/floodway Salt Creek map and at that time it will be taken out of the floodway on the map.

Esseks wants to know where the water goes that used to be on the property that is now filled. Watts believes that will show up in the new study. In the fall, when they do the final map, they will take into account for any missed properties, and then that will go on the final map and that will constitute the final floodway. FEMA told him that if he does not have this completed prior to the final mapping, he won't be able to get it out of the floodway. He can get it out of the floodplain now and then it will be mapped out of the floodway this fall. The elevation will be above the floodplain with the fill. Watts also pointed out that the Rogge property to the north of Salt Creek has all been filled and included in the original mapping. The Watts property has not been included in the mapping process. He must make application to get out of the floodplain. He plans to get that done before the final map revisions this fall.

Esseks asked the applicant whether he has made provision for compensatory storage. "Your property used to be available for flood storage and floodway." Watts reiterated that this property is not in the current floodway. The current floodway is the banks of the Salt Creek. He believes this property will be an island in the floodway in the final mapping.

Esseks understands that the developer has this right, but it would be nice for the community if there is some compensatory storage there. Watts stated that he put in a holding site. The hydraulic studies have been done on that and the holding site is to

accommodate the neighbors, i.e. Nebco and HDS. The holding area was put in there for any major rains, not flooding, to retain water so that it does not spill over.

Carroll pointed out that the conditions of approval require that there be a statement that the entire parcel is within the floodplain and the floodprone floodway. Watts would like to have that condition deleted.

Strand believes there is a problem with interpretation of Mr. Higgins' comments. She believes that Higgins' intent is that it is incorrectly marked. He is wanting it to be shown until they get FEMA to write a letter saying it is not. Krout clarified that this would be a statement on the preliminary plat, and the final plat still has to be filed. Watershed Management's expectation is that the removal of the floodplain designation would be done before we would approve a final plat. Krout believes it is just a note on the preliminary plat, and not on the final plat.

Esseks sought guidance from the Law Department. Our best sources of information say that this is in the floodway, which means you are diverting water as it goes up or down stream. What do we do? He believes that we should acknowledge that we are likely to reduce the floodway. Is there anything we can do to promote the community's interest while respecting the applicant's right? Rick Peo, City Law Department, acknowledged this to be a problem that the City has struggled with. The Law Department's interpretation is that we could not prohibit the fill permit because it pre-dated the regulations. That being said, the applicant indicates that he is only being identified as being in the floodplain under an official map of the city. We may have high expectations for the proposed map, but it is still only a proposal until adopted by FEMA, and we cannot enforce a proposal. At the present time, Watts has to show that he is in the floodplain, even though we know his elevations authorize a Letter of Map Revision to show that the property is no longer in the floodplain. Peo does not think that FEMA would be looking at compensatory storage if the property is no longer in the floodplain. When we actually do adopt an official map, the boundaries of the floodplain/floodway might be different than they are at the time we did the study. The fill is already in place. We are really only in a position of protecting future developments under an official map. There is not much we can do today.

Ray Hill of Planning staff talked with Devin Biesecker of Watershed Management by phone. Watershed Management did contact all of the property owners and advised that if they wanted to remove their land from the new proposed floodplain maps, they should contact Watershed Management. Watts did not contact them in the time given to have his property included in the study for the new map. However, the map is not officially adopted. The developer would have to ask for a map revision after the official map is adopted. The developer must recognize that the proposed map would put them in a floodplain and they would have to then seek a map revision to show that the land is no longer in the 100-year floodplain because of the fill.

Esseks wants to know how to avoid this problem in the future. Hill reiterated that Watershed Management did give the property owners an opportunity to come in and show that they had raised their land above the 100-year floodplain and to ask for that to be considered as a part of their study, and this applicant did not respond to that opportunity.

Watts explained that he had applied for the fill permit before that went to the City Council. Watts believes he is one of the last fill permits that was issued.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

June 6, 2007

Strand moved to approve the staff recommendation of conditional approval, seconded by Sunderman and carried 9-0: Strand, Larson, Carroll, Cornelius, Krieser, Sunderman, Esseks, Taylor and Carlson voting 'yes'. This is final action, unless appealed to the City Council within 14 days.

There being no further business, the meeting was adjourned at 2:00 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on June 6, 2007.