

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, July 28, 2010, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Wendy Francis, Roger Larson, Jim Partington, Lynn Sunderman and Tommy Taylor (Leirion Gaylor Baird, Michael Cornelius, Dick Esseks and Jeanelle Lust absent); Steve Henrichsen, David Cary, Christy Eichorn, Jean Preister and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

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

Sunderman then requested a motion approving the minutes for the regular meeting held July 14, 2010. Motion for approval made by Francis, seconded by Larson and carried 5-0: Francis, Larson, Partington, Sunderman and Taylor voting 'yes'; Gaylor Baird, Cornelius, Esseks and Lust absent.

CONSENT AGENDA **PUBLIC HEARING & ADMINISTRATIVE ACTION** **BEFORE PLANNING COMMISSION:**

July 28, 2010

Members present: Francis, Larson, Partington, Sunderman and Taylor; Gaylor Baird, Cornelius, Esseks and Lust absent.

The Consent Agenda consisted of the following items: **COMPREHENSIVE PLAN CONFORMANCE NO. 10004, CHANGE OF ZONE NO. 10015, SPECIAL PERMIT NO. 10027 and COUNTY SPECIAL PERMIT NO. 07024B.**

Ex Parte Communications: None

Taylor moved to approve the Consent Agenda, seconded by Francis and carried 5-0: Francis, Larson, Partington, Sunderman and Taylor voting 'yes'; Gaylor Baird, Cornelius, Esseks and Lust absent.

Please Note: This is final action on Special Permit No. 10027, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days.

COMPREHENSIVE PLAN CONFORMANCE NO. 10005
AMENDMENT TO PUBLIC WORKS & UTILITIES
2010/2011 - 2015/2016 CAPITAL IMPROVEMENTS PROGRAM.
REQUEST FOR DEFERRAL:

July 28, 2010

Members present: Larson, Taylor, Francis, Partington and Sunderman (Gaylor Baird, Cornelius, Esseks, and Lust absent).

The Clerk announced that the applicant has requested deferral until September 8, 2010.

Larson moved to grant the request for deferral, with continued public hearing and action scheduled for Wednesday, September 8, 2010, seconded by Francis and carried 5-0: Larson, Taylor, Francis, Partington and Sunderman voting 'yes'; Gaylor Baird, Cornelius, Esseks and Lust absent.

MISCELLANEOUS NO. 10006
TO RELEASE A PORTION OF AN EXISTING PUBLIC ACCESS
EASEMENT ON PROPERTY GENERALLY LOCATED
WEST OF S. 6TH STREET AND CALVERT STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 28, 2010

Members present: Larson, Taylor, Francis, Partington and Sunderman (Gaylor Baird, Cornelius, Esseks, and Lust absent).

Ex Parte Communications: None.

Staff recommendation: Approval.

Staff presentation: **Christy Eichorn of Planning staff** reviewed the facts of the application. This is an application to vacate what is currently a public access utility and sewer easement located west of S. 6th Street on Calvert Street. Calvert Street is only a 33' right-of-way at this location. The easement lies directly south of the 33' right-of-way of Calvert. The applicant is asking to have a portion of the public access easement released. They are asking that the public access portion be released on all of it, except retain a common access easement over 70' of the eastern portion. Eichorn showed the location of the driveway entrance for the property to the north on the map – if they were to put in a curb cut, then they would need at least 70' of space in order to access their property. The common access easement would be retained so that the property owner to the north could access their property, eliminating the rest of the access easement. The utility and sewer easement remains over the entire piece of property. The request is only to release a portion of the public access easement and keep a common access easement over the easternmost 70'.

Eichorn then advised that there is new information that the railroad may be using a portion of this easement to get to their property. There is a well-worn rock road which definitely appears to be used. The problem is that the railroad was just notified of this application within the last two days. Eichorn suggested that there may need to be some alterations made to the actual legal description as to which portion of the easement would be released to make sure that the railroad retains the right to cross the property to get to their driveway to access the railroad.

Eichorn asked the Planning Commission to recommend approval of the release of the public access easement, with a portion remaining as a common access easement, with the actual legal boundaries to be determined before this application proceeds to the City Council.

The difference between a “public” access easement and “common” access easement is that under a “public” easement, any public can go on that property. “Common” means that it might only have access to the property to the north, to Burlington Railroad and to the property to the south. If all three owners wanted to chain off that access, they could do so.

Sunderman inquired about ownership. Eichorn stated that the easement request came from the owner of the lot to the south, Morningstar Development. The Calvert right-of-way is dedicated to the public. There is a separate owner on the north side of that right-of-way. The right-of-way is not paved and does not have curb and gutter but is designated as public right-of-way.

When the area to the north was platted, the right-of-way had to be dedicated for the street. When the south subdivision came in, the staff had asked that the right-of-way be vacated. That owner, who is not the owner of the property today, chose not to sign the petition to vacate the Calvert Street right-of-way. To make full use of the right-of-way, the city asked for a public access and utility easement – the same access and rights to the property given to the public without having to pave the road with curb and gutter. There is right-of-way on the north and only an easement on the south. The south portion of Calvert has been vacated. When the easement was put in, there was talk that they would build a driveway for the property to the north, potentially off of 6th Street, but there are utilities – a fire hydrant, LES box and another box – which makes having that driveway off 6th Street problematic. The applicant does not intend to build on the easement property but they want the ability to fence it off. It will not be a buildable piece of land even when part of the public access is released.

Larson inquired as to the ownership of the portion of Calvert Street going west that is vacated. Eichorn stated that it is owned by the railroad and they asked to have it vacated, meaning that the City is giving up their rights and responsibility to that property. It no longer belongs to the public but to the abutting property owner.

Proponents

1. Jeff Mann, Morningstar Investments, the applicant and property owner to the south, stated that Morningstar has made this application because they have a concern with public access and the liability issues since the only public they have noticed using it are bicyclists using the path to get to Wilderness Park. They want to clean up the ditch and make that portion of the easement look nicer. They have no need to fence it off – they just want to get in there, clean it up and cut down the vehicular traffic.

Opposition

1. Darrell Stock, 1115 K Street, #104, appeared on behalf of **Terry Bogle**, who is the owner of Lot 1, Progress South, the lot just to the north. Mr. Bogle is not really opposing the request, but is requesting a modification of the area to be affected. Mr. Bogle is in the building designated as Lot 1. The road next to the railroad tracks is a single path through the trees and it crosses a concrete culvert so the railroad is not likely to want to cross anywhere else. His concern is that this is likely to run afoul of what Burlington has used as access forever. They are also concerned that the fencing may block off the access they are currently using and Burlington would have to go further north onto Mr. Bogle's area. Stock suggested that the public access remain on the south edge of the Burlington access to give them a straight shot west into that access without having to go over north onto the Bogle property. All of the tenants of Bogle's property are tradesmen with trucks, trailers, etc. They need a considerable amount of space for all of the commercial vehicle traffic. If this would be modified to put the fence 20' further south, it will solve the railroad problem and it will accommodate Mr. Bogle's needs for the additional space for trucks and vehicles in and out of his property.

Sunderman confirmed with Stock that if the railroad is guaranteed their access, then Mr. Bogle's concerns are resolved. Stock agreed, and he believes 20' will take care of it. Moving the line 20' south should accommodate the railroad and it will not encroach on the property owner to the north.

Dennis Bartels of Public Works clarified that he has a copy of the approved curb cut permit, for the property to the north, that is within 70' west of the west line of S. 6th Street off of the 33' of Calvert Street right-of-way. The curb cut was never installed. The property to the north of the Calvert Street right-of-way is required to have a front yard setback. The parking lot may be required to be landscaped, thus the building to the north may not meet zoning requirements.

Eichorn reiterated that the staff recommendation to the Planning Commission is that the Planning Commission recommend approval of the vacation of the public access easement, with the understanding that the legal description would be determined before

the application is scheduled on the City Council agenda. That would give staff some time to look at whether the 20' proposed by Mr. Bogle is adequate. Staff only became aware of the proposal to change the 20' just before this meeting.

Larson suggested that this should be deferred.

Eichorn also clarified that even though it is a public access and utility easement, the property owner to the north is not allowed to store cars or to store any kind of other items that are associated with his business in that public right-of-way. Perhaps that has been an issue of concern. Unfortunately, there is no curb cut so it makes it difficult to know where the Calvert Street right-of-way and where the pavement starts for the building. Technically, this is a street, so there should be a front yard setback with landscaping that should have been put in at the time the business was opened. It will remain public right-of-way, so they cannot store cars, equipment or personal items related to the business in the street or use it as part of their own personal property – they can only use it for access to the property to the north.

Response by the Applicant

Mann indicated that the applicant is more than happy to defer to the railroad's needs. Personally, he has never seen a vehicle from the railroad using that access. They use Pioneer Boulevard four miles down the road. However, Mann stated that he would take issue with reducing what was requested by 20' for the sole purpose of the tenant to the north using it as a driveway.

ACTION BY PLANNING COMMISSION:

July 28, 2010

Larson moved to defer two weeks so that the information that just became needed can be gathered and revealed at our next meeting, seconded by Partington.

Taylor believes that the decision can be made now and they can go before the City Council and get everything clarified. He does not see why the Planning Commission cannot make a decision today.

Larson stated that he really does not know what decision to make because he does not have all the information.

Taylor thinks there is enough information to make a decision.

Larson believes there is a conflict between the applicant and the opposing party, and he does not know which way to vote.

Rick Peo, City Law Department, suggested that what was presented today raises a different issue. We are talking about reserving a common access easement over the

property for the benefit of the two abutting properties. The railroad abuts at the far end. It sounds like we do not know what the railroad needs. He would be more inclined to suggest that the common access be preserved for the north and south property owners and that Morningstar enter into a private agreement with the railroad for any access they might need.

Sunderman confirmed that the public access also goes to the railroad. Peo stated that the public access easement would not be released until Morningstar agrees to grant the railroad any access they might need in a private agreement. It is Morningstar's property. It has come to our attention late that the railroad might be utilizing something. Initially, we did not know they were using the property for access..

Taylor suggested that the Planning Commission could require an agreement with the railroad as a condition of approval and then let it go forward. Taylor stated that he will vote against the deferral.

Francis stated that she is in favor of deferral until staff can find out what the railroad needs as opposed to putting the burden on Morningstar to contact the railroad.

Sunderman indicated that he is on the fence. A lot of things have come up at the last minute and the Commission has run into problems in letting things go forward when that happens. However, with the Law Department's legal advice, it appears to resolve quite a bit with the suggestion of releasing the public easement, retaining the common access, and requiring an agreement with the railroad. That takes care of all the issues as far as the property owner to the north. There is also the issue of using the front yard as a driveway, but that is not an issue before the Commission with this application. He will vote against deferral.

Motion to defer carried 3-2: Larson, Francis and Partington voting 'yes'; Taylor and Sunderman voting 'no' (Gaylor Baird, Lust, Cornelius and Esseks absent).

This application will be scheduled for continued public hearing and action on August 11, 2010.

There being no further business, the meeting was adjourned at 1:35 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on August 11, 2010.