

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, September 17, 2014, 1:00 p.m., Hearing Room 112 on the first floor of the County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Cathy Beecham, Tracy Corr, Dennis Scheer, Michael Cornelius, Ken Weber, Maja V. Harris and Lynn Sunderman (Chris Hove and Jeanelle Lust absent); Marvin Krout, Steve Henrichsen, Sara Hartzell, Jean Preister and Amy Huffman of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission meeting

In the absence of the Chair and Vice-Chair, Michael Cornelius was appointed to act as temporary to conduct this meeting.

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

Cornelius requested a motion approving the minutes for the regular meeting held September 3, 2014. Scheer moved approval, seconded by Weber and carried 7-0: Weber, Sunderman, Harris, Beecham, Scheer, Corr and Cornelius voting 'yes' (Lust and Hove absent).

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

September 17, 2014

Members present: Weber, Sunderman, Harris, Beecham, Scheer, Corr and Cornelius; Hove and Lust absent.

The Consent Agenda consisted of the following items: **SPECIAL PERMIT NO. 06068A, amending The Bridges Community Unit Plan; and COUNTY SPECIAL PERMIT NO. 14029.**

There were no ex parte communications disclosed.

Item No. 1.2, County Special Permit No. 14029, was removed from the Consent Agenda due to a letter in opposition and had separate public hearing.

Weber moved approval of the remaining Consent Agenda, seconded by Scheer and carried 7-0: Beecham, Cornelius, Corr, Harris, Scheer, Sunderman and Weber voting 'yes' (Hove and Lust absent).

Note: This is final action on Special Permit No. 06068A, unless appealed to the City Council within 14 days.

COUNTY SPECIAL PERMIT NO. 14029
FOR EXPANDED HOME OCCUPATION,
ON PROPERTY GENERALLY LOCATED
AT NORTH 1ST STREET AND MILL ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

September 17, 2014

Members present: Weber, Sunderman, Harris, Beecham, Scheer, Corr and Cornelius; Hove and Lust absent.

There were no ex parte communications disclosed.

Staff recommendation: Conditional approval.

This application was removed from the Consent Agenda due to a letter received in opposition.

Staff presentation: **Sara Hartzell of Planning staff** presented this application for expanded home occupation. In the county jurisdiction, home occupations are allowed under certain conditions, i.e. generally for products that are grown on-site, consulting service, etc. The county also has provisions for a special permit for expanding those home occupations, allowing more of the area of the home to be used; a wider range of uses; use of the accessory buildings; and up to two employees rather than one.

In analyzing this special permit for expanded home occupation, the language in the regulations includes uses which staff considered to be similar to this requested counter top business, such as welding; heat treating or machine shop; manufacturing and assembly, including assembly of small mechanical or electrical devices or components; contractor's storage of vehicles, equipment and materials. This is a request for custom counter top manufacturing – doing measurements at the actual homes, but doing the actual cutting and milling of the counter top at the special permitted premises.

When considering the conditions for this special permit, the regulations provide that when selling a product, it must be grown, processed, manufactured, treated or assembled on the special permit premises. The counter tops will be manufactured on-site but installed in the homes. This is not intended to be a retail site but there will be occasional visitors; no more than two persons not living on the site can be employed – the applicant is requesting two employees, but he only has one now. The lot is over 27 acres; the driveway will be gravel

with a concrete parking pad; the actual home will not be used for the business other than the normal office uses found in a home; total floor area for the business will be 6,000 square feet (up to 10,000 square feet is allowed by the County zoning resolution). There are no outside areas proposed to be used for this business. All of the work will be done inside the building. There will be no outside activities. All other local regulations have to be followed; and building permits must be obtained.

With regard to traffic, Hartzell stated that the regulations only allow one large truck and four business vehicles. The application did not provide this information.

With regard to signage, Hartzell advised that only one non-animated or non-illuminated sign is allowed. The site plan does not currently show a sign on this site.

Hartzell pointed out that the home is still under construction, and in order to meet the definition of expanded home occupation, the applicant must be living in the home before starting the business.

Proponents

1. Viktor Didusenko, the applicant and owner of the property at 13300 N. 1st Street, testified that there are well over 20 acres. He has chosen to keep his business small and raise a family at this location. All of the work will be done on-site; all product goes through his hands. Didusenko's brother is helping him now and they may want one other employee. He does not plan to grow a major business on this site. He does all of the work himself. It is not a major operation. He acknowledged that there is equipment being used but it will not make any more noise than a lawnmower.

With regard to the noise concerns, Beecham inquired whether there will be a garage and whether the door will be open. Didusenko responded that most of the work will be indoors and his equipment will not be as noisy as a lawnmower.

Corr inquired about signage. Didusenko acknowledged that he does plan to put up a sign but it will be within the regulations.

Corr inquired about a delivery truck. Didusenko stated that it will basically be his Chevy truck that he uses now.

Opposition

1. **Dan Novacek**, 14200 N. 1st Street, testified in opposition with concerns. He has lived there since 1980, and his wife's family has been in the neighborhood since 1957. A lot of people have moved out into this area to raise their family in a country setting and he is sure they did not realize there would be a manufacturing facility in this neighborhood. Over the past 1 ½ years, Novacek has been questioned by a lot of the neighbors, so he is a self-

appointed representative for the neighbors. He submitted a petition of concerns signed by 100% of the property owners in the area. They were all in the dark and have no clue what's going on. The questions and concerns of the neighbors include:

- 1) the zoning change to allow a commercial manufacturing building should not be allowed;
- 2) there are no guarantees that the groundwater would not be affected by the use of saws to cut granite, etc.;
- 3) the roads, culverts and bridges are not designed to support heavy trucks—there is a concern about safety with large trucks and a narrow county road; the County will be stressed to maintain the roads;
- 4) there has been no study conducted on the noise levels of this business;
- 5) did the applicant obtain the appropriate buildings permits to build a commercial manufacturing facility with all the fire and safety considerations in place;
- 6) is the volunteer rural fire department equipped to handle a manufacturing facility emergency and still answer to an emergency if one arises with one of the other residents in the area;
- 7) water runoff would feed into the ravine flowing into the Salt Creek area where the Tiger Beetles are found;
- 8) if this business grows, what is there to prevent them from adding more employees and perhaps calling them subcontractors to circumvent the restrictions;
- 9) zoning laws are supposed to protect property owners from this kind of intrusion; and
- 10) decrease in property values.

Novacek stated that the neighbors expect the government officials to stand behind the zoning laws that were in place when the homes were built or purchased. There is plenty of commercial property in and around Lincoln that has the infrastructure to accommodate this kind of activity. If this special permit is allowed, it will be impossible to deny future manufacturing ventures.

Staff questions

Beecham asked staff to address the issue of runoff. Hartzell stated that she understands from the Health Department that all of the wastewater would have to be collected like any

other wastewater from a home or business. It will have to be collected and treated and there should not be any overflow. The hazardous waste or materials is controlled by the Health Department.

Hartzell also stated that she did have a conversation with the County Engineer's office about the roads. The County Engineer has determined that all of the roads and bridges will handle all vehicle loads.

Beecham then inquired about growth of the business. Hartzell reminded the Commission that the Comprehensive Plan supports home based business; however, the expansion of the home based business beyond the limitations set forth in the code would require the business to move to commercial zoned property.

Corr sought confirmation that this is a home based business and not a manufacturing facility. Hartzell concurred. The county allows manufacturing of certain materials on-site as a home based business.

Corr stated that she assumes all proper building permits were pulled. Hartzell stated that the Building & Safety Department reviewed the application and did not indicate that there are any violations.

Harris asked staff to address the issue of noise levels; are there any restrictions in the AG zoning district? Hartzell explained that there are noise limits in the city jurisdiction; however, the county jurisdiction does not have a noise code. There is a nuisance code in the county, whether it be noise, smell, lights, etc. Hartzell did have a conversation with the Health Department and they reviewed the application. Health determined that there should be relatively little noise if the work is done in an enclosed building.

Response by the Applicant

With regard to the water issues, Didusenko stated that he has a recycling system and a pit collecting the water. Nothing will be dumped and there will be no runoff.

Didusenko stated that he has an engineer's stamp for a building. The building was purchased at Menards and was approved for building in the county.

Didusenko also confirmed that there are no chemicals involved. And as far as growth of the business, he suggested that there is no way he can grow the business, especially next to a house he is building for his family. He noted that the building is limited to 10,000 square feet, and his building is only going to be 6,000 square feet. As far as storage or activity outside of the building, Didusenko stated that everything he has will be stored in the building. Literally every product goes through his own hands. Only he and his brother are working the business right now. It will not be a major business.

Beecham inquired about hours of work. Didusenko stated that it would be regular business hours, 8:00 a.m. to 5:00 p.m., with no nights or weekends.

ACTION BY PLANNING COMMISSION:

September 17, 2014

Beecham moved to approve the staff recommendation of conditional approval, seconded by Sunderman.

Cornelius commented that in the AG district, there is a limit on manufacturing; however, the county has ordinances regarding home based businesses and this appears to fit within those definitions and regulations. While the concerns of the neighbors are valid, he believes they have been addressed by the applicant.

Motion for conditional approval carried 7-0: Weber, Sunderman, Harris, Beecham, Scheer, Corr and Cornelius voting 'yes'; Hove and Lust absent. This is final action, unless appealed to the Lancaster County Board of Commissioners within 14 days.

**COUNTY CHANGE OF ZONE NO. 14006,
FROM AG AGRICULTURAL DISTRICT TO
AGR AGRICULTURAL RESIDENTIAL DISTRICT,
and**

**COUNTY PRELIMINARY PLAT NO. 14003,
WEST VAN DORN ESTATES,
ON PROPERTY GENERALLY LOCATED
SOUTHWEST OF S.W. 98TH STREET AND WEST VAN DORN STREET.**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

September 17, 2014

Members present: Weber, Sunderman, Harris, Beecham, Scheer, Corr and Cornelius; Hove and Lust absent.

There were no ex parte communications disclosed.

Staff recommendation: Approval of the change of zone and conditional approval of the preliminary plat.

Staff presentation: **Sara Hartzell of Planning staff** presented the proposal for a change of zone from AG to AGR as well as a preliminary plat for 24 units. West Van Dorn Street runs across the north of the property. Van Dorn Street is graded to a wider profile in anticipation of future paving. S.W. 98th Street runs along one side and has a fairly low traffic count at this time. There is not any adjacent AGR zoning; however, there is some AGR shown nearby S.W. 84th Street, which is a paved state highway. The Future Land Use map has shown this area for future low density residential for quite some time.

Hartzell explained that a zoning change from AG to AGR is evaluated according to certain criteria, one being paved roads. There are no paved roadways to access this development at this time, but Pioneers comes in along S.W. 84th Street and the paving ends at S.W. 98th Street but continues as gravel. Van Dorn is paved to 84th Street but not to the west. There has been some profiling adjacent to that roadway and it is in the County 1 and 6 Road and Bridge Construction Program for future paving. It is assumed that the increased traffic from this development would probably move that paving up in the priority list.

With regard to water quality and quantity, Hartzell pointed out that the applicant is always required to provide well information; however, in this case, there were not enough wells for Health to do a good evaluation. Therefore, the applicant did two test wells and that data has been reviewed by the Health Department and indicates that there are 20 gallons per minute, where 5 gallons per minute is the minimum recommended.

Hartzell noted that the soil conditions are typical for Lancaster County. The conditions of the preliminary plat do state that lagoons would be allowed if the perc tests did not come back positive, so there will either be lagoons or septic.

The closest emergency service is Pleasant Dale, but with the roads all being gravel, services from the Denton area may be closer by mutual aid.

As far as ag productivity, Hartzell stated that there is some prime farm land along the west side; however, the property as a whole does not score as prime.

Parcelization and pattern of development is also considered with the AG to AGR zoning. Although there are some acreages in the next section, this particular section is primarily in large parcels at this time. This property is not within the growth tiers of the City or of any of the nearby villages.

Based on review of the stated criteria, Hartzell stated that the staff is recommending approval of the change of zone to AGR.

Hartzell then referred to the preliminary plat, stating that it is also being recommended for approval. The property takes access from Van Dorn Street and from S.W. 98th Street. The access points have been approved by the County Engineer thus there is good sight distance. The internal roadways will either be gravel or asphalt. There is one block length exceeding the 1320' standard, and the applicant has requested a modification of this standard because of the cul-de-sacs. The staff is recommending approval of that modification because it is in a safe location for grade and visual.

Weber thought that there was a cluster standard for four houses. Hartzell explained that the applicant could do an AG CUP and not change the zoning, which could allow up to five

dwelling clustered in a smaller area and maintain the remainder for farming. The change of zone to AGR allows one dwelling per three acres, so the change of zone gives the applicant more dwellings.

Beecham expressed concern about the emergency response time for the dwellings in the cul-de-sac and on a gravel road. Hartzell assumes paved roads would be faster and easier to travel during adverse weather conditions; however, she hesitates to guess how much the gravel slows people down. She did, however, acknowledge that a road that has a little less reliable accessibility would be more susceptible to weather conditions and could slow the response time.

Proponents

1. Mark Palmer appeared on behalf of Bob Benes of Aspen Builders, the developer. The developer has owned this property for a number of years; he subdivided the parcels to the west and openly disclosed at that time that he was planning to do this 3-acre AGR style development. The recession slowed those plans and he is now ready to proceed. This is a planned location for this style of development in the Comprehensive Plan.

In terms of the road issues, Palmer indicated that the developer is still discussing whether the internal roads will be asphalt or gravel, but he is leaning toward asphalt. It has been in the County 1 and 6 year plan for the last five years. It is a matter of this development increasing the traffic counts and potentially move the Van Dorn road up in the priority list. The developer does not plan to develop the entire property at once, but rather a phased development over 5 to 8 years as the demand supports. The initial phase will be 12 lots.

Opposition

1. Doug Moore, 3750 S.W. 112th, testified, stating that he is only opposed to the density. His concern is that Van Dorn is a gravel road. It is wide and flat, but gravel. It is very dusty. 24 dwellings could mean 75 vehicles coming out of that property on Van Dorn, and he believes it could be a problem. He is also concerned about stressing the aquifer with 25 more wells.

Response by the Applicant

Bob Benes, the developer, showed photographs of his truck parked on a typical gravel road section 30 feet wide and on West Van Dorn. West Van Dorn is kind of like a super highway gravel road because it is actually designed and graded at 45' wide. It is flat; there is great sight distance; and it is ready to be paved.

Benes acknowledged that he purchased this property with the intention of building right away, but he waited for the demand. At this time, 3-acre acreages in southwest Lincoln just do not exist. We need to offer this opportunity.

Benes understands the concerns about density, but someone has to do it. Someone has to bring in growth; otherwise, we don't have jobs. It's a perfect location; it has been well-planned; it has been in the Comprehensive Plan; and it is nothing out of the ordinary.

Palmer then discussed the test wells, finding an abundance of water for single-family.

Corr noted that the Commission received two letters in opposition. She wondered whether these are neighbors that Benes had visited with. Benes believes that the opposition lives outside of this development. He did put the information in the purchase agreements.

COUNTY CHANGE OF ZONE NO. 14006

ACTION BY PLANNING COMMISSION:

September 17, 2014

Scheer moved approval, seconded by Weber.

Cornelius noted that most of the criteria was covered in the staff presentation. One of the critical items is the presence of paved roads, but this is a special case because Van Dorn is different from the typical county gravel road profile – it is larger and graded and ready for paving. We have heard that this density may bump it up in the paving priority list. This land use has been shown in the Future Land Use map as low density residential for some time and this development is the movement into that phase predicted in the Comprehensive Plan.

Motion for approval carried 7-0: Weber, Sunderman, Harris, Beecham, Scheer, Corr and Cornelius voting 'yes'; Hove and Lust absent. This is a recommendation to the Lancaster County Board of Commissioners.

PRELIMINARY PLAT NO. 14003

ACTION BY PLANNING COMMISSION:

September 17, 2014

Sunderman moved to approve the staff recommendation of conditional approval, seconded by Beecham

Corr stated that she normally does not support waiving the block length, but where this is out in an acreage type setting, she believes the waiver is appropriate.

Motion for conditional approval carried 7-0: Weber, Sunderman, Harris, Beecham, Scheer, Corr and Cornelius voting 'yes'; Hove and Lust absent. This is a recommendation to the Lancaster County Board of Commissioners.

CHANGE OF ZONE NO. 14025
HISTORIC LANDMARK DESIGNATION
and
SPECIAL PERMIT NO. 14028
FOR HISTORIC PRESERVATION,
ON PROPERTY LOCATED AT 727 SOUTH 9TH STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

September 17, 2014

Members present: Weber, Sunderman, Harris, Beecham, Scheer, Corr and Cornelius; Hove and Lust absent.

There were no ex parte communications disclosed.

Staff recommendation: Approval of the landmark designation and conditional approval of the special permit.

Staff presentation: **Ed Zimmer of Planning staff** made the presentation for landmark designation of the O'Connell/Galbraith house located at 727 South 9th Street. This is a very small house, built in 1880, which appears to be a brick house today, but it has a stucco covering over the brick but still retains very legibly its appearance from earlier views. The appearance is recognizably an early house in its form and window trim. In landmark terms, this house gives us an early structure but also a progression of families and it is the pattern of that neighborhood. It meets the character for landmark designation and is recommended for such by the Historic Preservation Commission.

Zimmer then referred to the accompanying special permit request for use of the landmark as a restaurant. This is a use permitted in this O-1 Office district, with a condition to only occupy 20% of the building. Obviously, the applicant could not operate this permitted use in 20% of this building, but it is a use otherwise allowed in the district. The applicant is seeking relief from the condition of the 20% limitation. He is not changing the building on the exterior. Those pieces not yet planned include a sign which will meet the O-1 character and will be reviewed by the Historic Preservation Commission. Mr. Mitchell's plans are a take-out restaurant but the recommended conditions do not mention "take-out" so that he could put a chair and table in the restaurant, if he so desired.

Proponents

1. Anthony Mitchell, 2245 South 15th Street, the applicant, stated that he was living in Florida and ended up in Nebraska for a kidney transplant. He has committed to a self-employment program through his rehabilitation and received funding from the State for his business; however, he could not find a place he could afford to rent. This house has history; he is a cook; and he wants to bring some southern cooking to Lincoln. He is hopeful that his business will do really good and will grow with Lincoln.

Beecham inquired whether there is anything historic surviving on the inside of the building. Zimmer's response was, "not much".

Harris inquired about the 20% rule. Zimmer explained that the O-1 Office District is a fairly limited zoning district in proximity to the State Capitol and the County-City Building. It is a mixed use district with some large structures including office and residential. What we have in this case is an unusual building, which is also very small, in the O-1 district. It is a remnant from an earlier time.

There was no testimony in opposition.

CHANGE OF ZONE NO. 14025

ACTION BY PLANNING COMMISSION:

September 17, 2014

Corr moved approval, seconded by Beecham.

Beecham thinks this is a win-win – it will help save a unique little building and she believes the neighborhood could be well-served by a restaurant.

Motion for approval carried 7-0: Weber, Sunderman, Harris, Beecham, Scheer, Corr and Cornelius voting 'yes'; Hove and Lust absent. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 14028

ACTION BY PLANNING COMMISSION:

September 17, 2014

Scheer moved to approve the staff recommendation of conditional approval, seconded by Beecham and carried 7-0: Weber, Sunderman, Harris, Beecham, Scheer, Corr and Cornelius voting 'yes'; Hove and Lust absent. This is final action, unless appealed to the City Council within 14 days.

WAIVER NO. 14008

**TO WAIVE THE REQUIREMENT FOR
PEDESTRIANS EASEMENTS ON PROPERTY
GENERALLY LOCATED AT NORTH 87TH STREET
AND LEIGHTON AVENUE.**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

September 17, 2014

Members present: Weber, Sunderman, Harris, Beecham, Scheer, Corr and Cornelius; Hove and Lust absent.

There were no ex parte communications disclosed.

Staff recommendation: Approval.

Staff presentation: **Tom Cajka of Planning staff** presented the application to waive some pedestrian easements basically between N. 87th Street and N. 88th Street in the Prairie Village subdivision. The Planning Department is co-applicant. Originally, the builder requested the waiver to the easement between two lots; and looking at the larger area, the Planning staff noticed that there is also no pedestrian easement on the lots leading over to the LPS site. At the time of the preliminary plat of Cedar Cove, there was no pedestrian easement required.

LPS has indicated that at this point in time, it is highly unlikely that they will be building a school at that site and will most likely sell it off for development in the future.

The intent of the pedestrian easement was to allow a through pedestrian easement all the way over to the LPS site to make it shorter for students to walk to the school. But with the school site being gone and no easement in Cedar Cove, the easements in Prairie Village have very little value in providing any shorter distance.

Corr inquired about the zoning to the west. Cajka believes it is a R-3 CUP.

Proponents

1. Travis Frazier of Frazier Construction Company, 1380 Percheron Drive, testified as the applicant and contractor for the townhouses on N. 87th Street. Frazier knew that the pedestrian easement was there, but there is a 10' no-build area and the townhouses were 16 inches into the no-build area. The choice is to redesign half of the townhouses, which didn't make sense, so Building & Safety recommended that a waiver be requested from the Planning Commission. The sidewalk leads to nowhere. Even if the school was going to be built, the sidewalk really doesn't help that purpose either. The buildings and townhouses have been designed to look the same as what is already built.

There was no testimony in opposition.

Cornelius inquired whether the staff would be in support of this waiver if the townhouses were already built and not within the no-build zone. Given these same circumstances, Cajka stated that the answer would be yes.

ACTION BY PLANNING COMMISSION:

September 17, 2014

Sunderman moved to approve the staff recommendation of conditional approval, seconded by Weber.

Cornelius stated that he is generally not in favor of waiving pedestrian easements because they do serve a function in many cases. Frequently, when we hear about sidewalks to nowhere we are looking at something that is not built out and anticipating connections to future sidewalk networks. In this case, things do not line up so there is not an easement

that would actually be useful to the residents. Were this easement allowed to stay in place, the plans for a school are unlikely so there is really not a need for it. It does not appear that this easement would improve the access or the network to connect with any future subdivision.

Motion for approval carried 7-0: Weber, Sunderman, Harris, Beecham, Scheer, Corr and Cornelius voting 'yes'; Hove and Lust absent. This is final action, unless appealed to the City Council within 14 days.

There being no further business, the meeting was adjourned at 2:10 p.m.

Note: These minutes will not be formally approved by the Planning Commission until the next regular meeting on October 1, 2014.

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