

REVISED MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, September 14, 2016, 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 Tracy Corr, Michael Cornelius, Maja Harris, Chris Hove, Jeanelle Lust, Dennis Scheer, Lynn Sunderman , and Ken Weber; David Cary, Steve Henrichsen, Andrew Thierolf, George Wesselhoft, Brian Will, Geri Rorabaugh and Amy Huffman of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission meeting

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

Hove requested a motion approving minutes for the regular meeting held August 31, 2016. Motion for approval made by Harris; seconded by Scheer and carried 8-0: Cornelius, Corr, Harris, Lust, Scheer, Sunderman, Weber and Hove voting 'yes'.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION

BEFORE PLANNING COMMISSION:

September 14, 2016

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

The Consent Agenda consisted of the following item: **SPECIAL PERMIT NO. 16041.**

Item 1.1, **Special Permit No. 16041**, was removed from the Consent Agenda and had separate public hearing.

There being no other items on the Consent Agenda, no action was necessary.

Hove called for Requests for Deferral.

COMPREHENSIVE PLAN CONFORMANCE NO. 16005

TO REVIEW AS TO CONFORMANCE WITH THE 2040 COMP PLAN THE REQUEST TO DECLARE A CITY-OWNED PARKING LOT SURPLUS FOR ZOO EXPANSION, ON PROPERTY GENERALLY LOCATED AT 2847 A STREET.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

September 14, 2016

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

There were not ex parte communications disclosed on this item.

Corr moved for a 4-week deferral of Comprehensive Plan Conformance No. 16005 to the October 12, 2016 meeting, seconded by Cornelius and carried 8-0: Cornelius, Corr, Harris, Lust, Scheer, Sunderman, Weber, and Hove voting 'yes'.

**COMPREHENSIVE PLAN CONFORMANCE NO. 16007
TO REVIEW AS TO CONFORMANCE WITH THE 2040 COMPREHENSIVE PLAN
THE ACQUISITION OF A PERMANENT CONSERVATION EASEMENT,
ON PROPERTY GENERALLY LOCATED AT SW 98TH STREET AND KOLBROOK RD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: September 14, 2016**

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

There were not ex parte communications disclosed on this item.

Corr moved for a 2-week deferral of Comprehensive Plan Conformance No. 16007 to the September 28, 2016 meeting, seconded by Cornelius and carried 8-0: Cornelius, Corr, Harris, Lust, Scheer, Sunderman, Weber, and Hove voting 'yes'.

There was no public testimony on either of these items.

**SPECIAL PERMIT NO. 16041
FOR SALE OF ALCOHOL FOR CONSUMPTION BOTH ON AND OFF THE PREMISES,
ON PROPERTY GENERALLY LOCATED AT 252 N. 134TH STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: September 14, 2016**

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

Staff recommendation: Conditional Approval.

There were not ex parte communications disclosed on this item.

Staff Presentation: **Brian Will of the Planning Department** stated this site is east of the corporate City limits but within the 3-mile jurisdiction. It is located at the northeast corner of the intersection of 134th and O Streets at the former Parker Hannafin plant. The license is only for the south portion of the building in conjunction with a bar and grill and outdoor dining area.

The area is zoned I-1, which is unique outside of City limits. There is a commercial development to the east with some retail and mini-storage, also zoned I-1. As Planning evaluated this application, based on special permit requirements, there is adequate separation to residential zoning and daycare. There are two letters in opposition, both with concerns about the discharge of firearms on this property during daylight hours combined with alcohol sales.

Lust said that the first letter indicated there is an outdoor shooting range. Will said he cannot verify that but the applicant is here. He added that this application is considered by Planning Commission because the area is within the 3-mile zone. It is not considered by the City Council, but by the County Board. The discharge of firearms is allowed outside of City limits. Additionally, an "outdoor recreational" use, like an outdoor shooting range, would be allowed in the I-1 zone and would not have to come before Planning Commission for approval. Lust asked if that applied to an outdoor shooting range operated for profit. Will said yes. There is help from the State Game and Parks in terms of range operations, and there are guidelines set, probably by the National Rifle Association.

Lust said that both the letter and the Staff Report indicate potential plans for an indoor shooting range. Will said he heard that suggestion from the applicant, along with other possible commercial applications. Additional business interests could wind up there. The old manufacturing facility is conducive to a use like an indoor shooting range. It has not been approved for any building permits.

Lust asked if it would come before Planning Commission at that point. Will said that it should be noted that the I-1 District is the most permissive and intensive of use districts. The fact that it requires a special permit for alcohol sales is probably more just a matter of consistency. Lust asked if it is fair to say that this is the only time this will be in front of this commission. Will said that from what he knows at this point, yes.

Proponents:

1. Derek Broman, 4931 Sinclair Court, came forward as applicant to state that opposition comes from fear that people would consume alcohol and discharge firearms in an unsupervised environment. At this time, there is not a public shooting range. There may eventually be one indoors, but that will be a very controlled environment and any safety issues will be addressed at that time; that is a separate concern.

Hove asked if there has been shooting on the property. Broman said there has been, but the property is outside of City limits and the shooting was done within the accepted rules.

Lust asked if it was open to the public. Broman said it was private and there is no plan to have an outdoor range in the future.

Corr asked what the plans are for the property, as a whole. Broman said it will be retail similar to a small shopping mall with mostly sporting goods and a small restaurant. Corr asked if there may be more than one store. Broman said yes. Corr asked if it could be compared to a mall with more than one merchandiser and separate stores. Broman said that would be a fair description. He added that anyone with concerns is welcome to stop by and he would be happy to address their questions.

Corr asked if there is storage on the property. Broman said not open to the public, but there are contractors who store equipment. He hopes that the restaurant could be open by the end of next year.

Hove asked if Broman owns existing retail in town. Broman said he does. Hove asked if that will relocate to this location. Broman said it will not at this time. This will be a sister store, or portions will be leased out to other entities.

Corr asked if the location in town will move to this location eventually. Broman said eventually it could, just for convenience.

Corr asked if there are plans for indoor shooting. Broman said it is possible, but the cost is so great and there must be interest. There is no definitive answer at this point.

Lust asked if he was the property owner and if there would be people shooting when the restaurant is there. Broman said he owns the property. Once the restaurant is there, shooting would be a sound nuisance, especially since there will be an outdoor patio.

Opponents:

1. Sandra Roche, 251 Pebble Beach, stated she hoped a response to her letter in opposition would help to address concerns. She does not know what this business is to be. It seems it is starting with a permit for alcohol sales, then adding a restaurant, and then there are no more details. The applicant's current business includes gun sales, so it seems a gun range could be in the plans. She wonders how this type of activity would be regulated and feels even more uncomfortable now, if alcohol is approved without knowing the applicant's long-term goals.

Cornelius asked what the concerns would be if this were just for the special permit to sell liquor. Roche responded that there are alcohol sales in the area, such as at the golf course, and that by itself does not cause concern. The concern is what the applicant plans to do next. Cornelius noted that the alcohol sales are what this body is being asked to approve, so other factors may be taken into consideration, but he would like to gauge the response to the alcohol sales separately.

2. Jennifer Lengel, 925 Goodhue Boulevard, stated she is here on behalf of herself and her daycare provider. Her main concern revolves around the sale of alcohol in close proximity to the discharge of firearms. Her 3-year-old son attends daycare very close to the property and there is a preschool just east. She is not against gun use and learned

gun safety herself. One thing emphasized is to avoid mixing alcohol use and guns. It is troubling that this may be the only time this item appears before Planning Commission.

Corr asked where the daycare is located. Lengel said it is just to the east. From the play area behind, the applicant's building can be seen. The preschool is just a little farther up the road to the east.

3. Mike Osterhoudt, 1100 Plum Ridge Road, stated he is also opposed to this application because of its proximity to the daycare and preschool. The children can't go outside and can see the shooting going on. He has seen targets in the back of the building. He is a Marine and knows how far bullets can ricochet. They could reach the house and daycare. Mixing alcohol in would make the situation worse. It is his belief that the intention is to sell guns. He was on the adjacent property and took his 5-year-old to see ducks at the pond. A shooter approached them and told them to leave because it was not safe.

4. Mark Jacobsen, 14040 O Street, said that his wife runs the daycare from their home, which is approximately 400 yards from where people are shooting. She has had the daycare for 10 years and feels this activity is jeopardizing her business. She used to take nature walks down to the pond but does not anymore. They should not have to feel unsafe on their own property. He was also told by shooters that they were not safe. Campbell's is across the street to the other side. There are residences nearby and a golf course. This property is surrounded by businesses. It seems like it is only a matter of time before something happens, especially if alcohol is added to the mix. Jacobsen acknowledged that this is not about a shooting range but, based on what has been heard, there is a general lack of supervision and a high level of shooting. Most shooters are responsible, but it only takes one accident.

Cornelius asked if it would be accurate to say that he does not feel safe on his own property today. Jacobsen replied that shooters on that site have told him he is not safe, so he does not feel safe, though he admitted that before that time, he did not feel unsafe. He certainly does not feel it is safe allowing kids close to the site. There are people who store campers and they are looking for other locations because they are afraid of getting hit.

5. Mike Dieger, 14332 O Street, stated that he is the owner of the preschool that is approximately 900 yards away. He has purchased guns from the applicant and thinks it would be nice to have a restaurant nearby, but he would like to hear assurances to the neighbors that proper safeguards are in place. Having served in the military for 30 years, he does not shoot on his own property out of concern for the safety of his neighbors, even though there is plenty of space. He would like the business to be successful and the factory has stood empty for too long, but he is also concerned about the collision of alcohol and firearms.

Staff Questions:

Lust asked if a condition could be applied that there be no outdoor shooting on the property. Will said he did not know and legal counsel is not present. There are many conditions to meet to even apply for the special permit.

Steve Henrichsen, Planning Department, suggested that if Commissioners needed additional information, they have the right to continue hearing on this item to a later meeting.

Corr asked for confirmation that County Board already approved this item. Will said they make a recommendation to the state. Their finding was a recommendation of approval.

Corr said she wants to know for sure if, in the County, it is legal to shoot outside any time, even if there is a business on the site. Will said that the zoning ordinance would be applied. Outdoor shooting would be considered and outdoor recreational use would be allowed in the I-1 zoning. The other aspect to consider is that outside of corporate City limits, people are free to discharge firearms. It is possible that some laws could be applied by County law enforcement, but those are separate issues.

Weber asked about the possibility of noting that there could be shooting at the site. Will said that today, this body is only considering the alcohol sales. Weber responded that the reason for all of the discussion today is because of the other factors that are present.

Corr asked if the applicant would appear before Planning Commission to run an outdoor shooting range. Will said he would need a permit, but not from this body.

Harris noted that within City limits, this would go to City Council. She asked if there are options in those cases to revoke if the owner fails to keep order. Will said that City Council could reconsider the item if there were repeated failure to take responsibility to prevent violence, inappropriate alcohol sales, etc. The State could withdraw the liquor license. Harris asked if that would cover sales to people who may purchase alcohol and go shoot. Will said it would relate to both on and off sale.

Harris asked if there is potential for review if complaints are made. Will said yes. It could be requested that complaints be investigated and deemed to be in violation. In his time working with these alcohol permits, he is not aware of any being revoked. Harris asked if the burden of proof for complaints would fall upon the neighbors or the owner. Will said both. The investigation would be thorough and the complaints would have to be substantiated to go through that process.

David Cary, Director of Planning, came forward to say that based on the questions today, it is appropriate to delay this item to gather more information and to have the appropriate legal department representatives present. There is both City and County law at play.

Corr noted this is an odd situation involving both the City and the County. Cary agreed that it is important to be able to have the appropriate departments on hand to address questions.

Applicant Rebuttal:

Broman stated that right now, the building is under construction and there is no occupation. Clearly, there will not be shooting once a restaurant occupies part of the space, so it is counterproductive to slow the approval of the restaurant when that would alleviate concerns about shooting.

Cornelius asked if he would have any objection to adding a condition that there be no shooting outside, since he just stated that the problem will solve itself. Broman said he would have concerns because if he opened a gunsmith shop at the location in the future, it would be necessary to test firearms by shooting into the ground. Right now, there are guests shooting on a private property. That is no different from the hunting blind on the neighbor's property.

Cornelius said that what he heard from the testimony today was that people do not object to the shooting, but they are concerned about the mix of alcohol and shooting. Broman said he is also concerned about that and it was the first thing he addressed.

Hove asked about the safety of those living close by with the discharge of guns in the vicinity. Broman said he has never told anyone that they were unsafe on their own property and he is not sure where that came from.

Corr asked if he allows people on the property to shoot at any time. Broman said not at any time, but there are people who come to the property to shoot.

Weber asked whether there will or will not be an outdoor shooting range, adding that he does not have any issue with an indoor range. Broman said that outdoor shooting would not be open to the public. It would be no different from someone going to a restaurant and then going out and shooting. Weber said it is different if a customer goes out to shoot. He does not have a problem with people doing it personally, but mixing guns and alcohol at a commercial establishment could be problematic. Broman said there are places that allow both. One that stands out is the Dallas Gun Club, which has a country club atmosphere.

Cornelius moved to continue Public Hearing for two weeks to the September 28, 2016 Planning Commission hearing, seconded by Lust.

Cornelius stated there are still questions as to whether or not a condition restricting the use of firearms outdoors on the property would be allowed.

Hove indicated that it would be best to have both City and County legal staff present.

Motion carried 8-0: Cornelius, Corr, Harris, Lust, Scheer, Sunderman, Weber and Hove voting 'yes'.

**COMPREHENSIVE PLAN CONFORMANCE NO. 16006
TO AMEND THE UNIVERSITY PLACE REDEVELOPMENT PLAN
ON PROPERTY GENERALLY LOCATED BETWEEN
HUNTINGTON AND LEIGHTON AVENUES AND N. 44TH TO N. 48TH STREETS.
PUBLIC HEARING BEFORE PLANNING COMMISSION: September 14, 2016**

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

Staff recommendation: Conformance with the Comprehensive Plan.

AND

**CHANGE OF ZONE NO. 16024
FOR A MIXED-USE REDEVELOPMENT PROJECT,
ON PROPERTY GENERALLY LOCATED BETWEEN
HUNTINGTON AND LEIGHTON AVENUES AND N. 44TH TO N. 48TH STREETS.
PUBLIC HEARING BEFORE PLANNING COMMISSION: September 14, 2016**

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

Staff recommendation: Conditional Approval.

There were not ex parte communications disclosed on this item.

David Landis, Director of Urban Development, stated the applicant is asking this body whether or not the proposed project is an appropriate amendment to the existing redevelopment plan for the area. Staff believes it is. The Urban Design Committee gave unanimous approval. There are two buildings proposed at the location, with a total of 184 market-rate residential units and approximately 28,000 square feet of either commercial or retail space. There will also be updates to an existing strip mall. The site today has a good deal of unoccupied space and that has started to fall apart; landscaping has deteriorated, and infrastructure is not in use.

The Comp Plan identifies this as the kind of area valuable for mixed use. There are only a couple of areas like this in the city. The design has been warmly regarded by the neighborhood and the developer has reached out to them, including a meeting last week with around 50 in attendance. They have also met with individuals. The response has been uniformly positive.

The project includes a 5-story and a 4-story building and refurbishment of the strip mall. The developer has also identified the need for green space and improved walkability and will incorporate those ideas to make this more neighborly and pedestrian oriented.

Lust asked what the blank square on the preliminary site plan represented. Landis said that is an existing bank that is not part of the project. He said that most of the changes occurring will happen in the predominantly empty area. Lust asked if the bank has expressed any objection. Landis said not that he is aware of.

Cornelius asked if there might be a grocery store on the first floor. Landis said there is a clause that remains that binds the use of the land, so not at this location. The City owns some land where we would love to have a grocery store.

Corr asked if there will be a separate staff report for the PUD. Landis said yes. He said that \$4 million in TIF funds is anticipated for this \$30-40 million project.

Proponents:

1. Tom Huston, 233 S. 13th Street, Suite 1900, stated the original redevelopment plan was adopted 18 years ago. The change of zone to the B-3 district is required for mixed-use. The primary focus today is to assess whether or not the proposed project and amendment to the redevelopment plan fits the vision of the Comprehensive Plan.

Phase I of the project will focus on the two center buildings. Build 1 to the south is oriented towards Leighton, with a pool area and a courtyard. Both buildings will have a total of 184 1- and 2-bedroom units, and some efficiency units. The 1st floor will be reserved for retail. There is a center area between the two buildings that will function as a common space that can be used as festival space or for farmers markets. The plan also describes Phase II, and though we are not sure what that will bring, it will be similar.

The area is in the flood plain and will be brought up. There are reasons outlined in the staff report as to why this plan conforms with the Comprehensive Plan. The area now is underdeveloped and he is not aware of any major street in Lincoln that has less activity than Leighton. In keeping with the Comprehensive Plan, the buildings are oriented towards the street and a street network, including a private drive throughout, will be established and will improve connection with the neighborhood to the north.

A motion to amend has been handed out. One contingency we are trying to plan for is an opportunity for an office use that we would like to be able to accommodate. This would permit the other building to be five stories instead of four, in case they decide to locate there. Staff agrees with the language of the amendment.

Harris asked where the residential units on the 1st floor will be located. Huston said in the north building. They are designed as row homes with exterior stoops and entrances for each unit. That is the potential area that could be replaced with the office uses.

Harris asked if ~~any special permits for alcohol sales will be affected~~ there are any nearby establishments with liquor licenses that would become non-conforming because of proximity to 1st floor residential. Huston said he does not believe so.

Lust asked if the offices would be on the ground floor. Huston said they could be on the first two floors. Permission is sought to increase to five stories in order to maintain the same density.

Scheer asked if that means the potential 5th floor will be housing. Huston said yes; the office would be on the first floor.

Corr asked if the residential units on the north go all the way from east to west. Huston said the residential would just be on the north wing.

2. Christopher Erickson, City Ventures, 905 Jones Street, Omaha, NE, said the residential units are truly walkout, 2-story units. We built a similar design in Omaha and received glowing reviews. The design of the units engages the neighborhood and provides a nice transition from residential to commercial.

Corr asked if there is a front and back door. Erickson said no, the units start mid-block. There are different units along the back. They are efficient and do not have garages in back. There is a secured parking area. Corr asked if garages are planned. Erickson said none are planned.

There was no testimony in opposition.

Staff Questions:

Harris asked for confirmation that staff is comfortable with the amendment. **Andrew Theirolf of the Planning Department** came forward to state that we have looked at it and are okay with it.

Corr asked about the outcome at the Urban Design Committee meeting. Huston said they voted unanimously in favor of the project. It is rare to come back with a good review on the first try.

Corr said she noticed only a few of the properties to the north seem to be owner-occupied. She wondered if they have expressed any concerns. Thierolf stated a letter was sent out and Planning staff has not heard anything back. Erickson stated they also sent out letters and had a public meeting. They have also been networking throughout the neighborhood to understand the goals of neighbors and how to best blend this project in. A lot of time and energy was spent gathering that feedback.

Corr asked for confirmation that the other building will just include facade improvements and how much of that strip mall is occupied. Erickson said 5,000 square feet of the 14,000 square foot area is unoccupied. This could change. The focus is to provide neighborhood retail, restaurant and entertainment venues where people can come together. Corr asked if the building is in good shape. Erickson said that it is in good physical shape but the facade needs work. That may not be addressed until we have a better idea of the tenancy in the building.

[Weber exited the meeting at 2:19]

Corr asked for explanation of the water issues. Erickson said the roof runoff drains through filters. This is a water quality solution that we have implemented in the past which uses land efficiently. We are bound somewhat by what the final structure will be, but essentially we treat the water at the point of falling. It is a lot more maintenance, but also cost-effective. Corr said that the water is basically being filtered before it comes down. Erickson said yes, and within the in-line system, as well.

Corr asked if a new business would have to apply for an alcohol permit. Thierolf said they would have to meet all of the conditions. Erickson added that they would also have to get the liquor license and satisfy those conditions.

Corr asked about the history of the lack of sidewalk along Huntington and the rezoning of the area to R-6. Thierolf said a large area had been rezoned to R-6. He does not know the reason why, but it looks like the area was just squared off. The sidewalk may be related to a special permit for parking from years ago. Something happened and the sidewalk was never put in and has not been needed until now.

Corr asked if University Place Community Organization has expressed support.

Mike DeKalb, 6015 Huntington Avenue, thanked the Commission for hearing his testimony. He is past president and a board member of University Place Community Organization. He is speaking for himself as a resident of the neighborhood of over 40 years. He fully supports the application and compliments Erickson for all of the conversations with the neighborhood. Erickson has met with neighbors multiple times and explained the vision of the project and what the mix would be. Last week, there was a 2-hour open house that was very positive. There are many things underway in the area and it is about time. He added that this area is a food desert, partly because of the lease restriction preventing a new grocery store at the site.

Corr asked if the bank on the corner has enough parking. Thierolf said they have a few spots on their site. Erickson said they also have a cross-parking agreement which has been worked out well. He noted the presence of underground drainage through the lot. If it were not there, the development would have been pulled close to 48th Street. They have worked closely with Wells Fargo Bank and have a good relationship with them.

COMPREHENSIVE PLAN CONFORMANCE NO. 16006

ACTION BY PLANNING COMMISSION:

September 14, 2016

Lust moved approval, seconded by Sunderman.

Corr said this project clearly meets the Comprehensive Plan goals.

Hove agreed and said this is an excellent project.

Motion carried 7-0: Cornelius, Corr, Harris, Lust, Scheer, Sunderman, and Hove voting 'yes'; Weber absent.

CHANGE OF ZONE NO. 16024

ACTION BY PLANNING COMMISSION:

September 14, 2016

Cornelius moved approval, seconded by Lust.

Scheer asked if the motion included the amendment offered by the Applicant. Cornelius and Lust both agreed that the motion was for approval, as amended by the Applicant.

Corr said she is very excited to see this project in an underutilized portion of the city. The area is a parking nightmare and very difficult to walk, so she is excited to see the reintroduction of streets and landscaping. This will be a great project.

Cornelius agreed and added that the project is interesting and he is glad it is not a proposal for more student housing.

Hove echoed the thoughts of other commissioners.

Motion carried 7-0: Cornelius, Corr, Harris, Lust, Scheer, Sunderman, and Hove voting 'yes'; Weber absent.

There being no further business to come before the Commission, the meeting was adjourned at 2:31 p.m.

Note: These minutes will not be formally approved by the Planning Commission until their next regular meeting on Wednesday, September 28, 2016.