

REVISED MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, May 24, 2017, 1:05 p.m., Hearing Room 112 on the first floor of the County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE Tom Beckius, Tracy Corr, Tracy Edgerton, Deane Finnegan, Maja V. Harris, Chris Hove, Dennis Scheer, S andra Washington and Ken Weber; David Cary, Steve Henrichsen, Andrew Thierolf, George Wesselhoft, Brian Will, Collin Christopher, Tom Cajka, 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 room.

David Cary, Director of Planning, came forward to introduce new Planner, Collin Christopher. Mr. Christopher will serve as Landscape Reviewer and he will work on a range of things related to landscape design, enforcement of standards, and public right-of-way projects.

Collin Christopher thanked Commissioners for their kind welcome. He is excited to facilitate place making and creative spaces and looks forward to working with the Planning Commission.

Hove requested a motion approving minutes for the regular meeting held May 10, 2017. Motion for approval made by Beckius, seconded by Edgerton and carried 9-0: Beckius, Corr, Edgerton, Finnegan, Harris, Scheer, Washington, Weber and Hove voting 'yes'.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

May 24, 2017

Members present: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Scheer, Washington and Weber.

The Consent Agenda consisted of the following items: **ANNEXATION NO. 17004, CHANGE OF ZONE NO. 3134E, CHANGE OF ZONE NO. 17009, PRELIMINARY PLAT NO. 17004, SPECIAL PERMIT NO. 1627B, COUNTY SPECIAL PERMIT NO. 08004B, and STREET AND ALLEY VACATION NO. 17004**

There were no ex parte communications disclosed.

Preliminary Plat No. 17004 and **Special Permit No. 1627B** were removed from the Consent Agenda to have separate Public Hearing and Action.

Washington moved approval of the remaining Consent Agenda, seconded by Weber and carried 9-0: Beckius, Corr, Edgerton, Finnegan, Harris, Scheer, Washington, Weber and Hove voting 'yes'.

Note: This is Final Action on Preliminary Plat No. 17004, Special Permit No. 1627B and Special Permit No. 08004B. This is a recommendation to the City Council on all other items.

Hove called for Requests for Deferral.

CHANGE OF ZONE NO. 17008 FROM R-1 (RESIDENTIAL DISTRICT) TO O-3 (OFFICE PARK DISTRICT) ON PROPERTY GENERALLY LOCATED AT 6969 SOUTH STREET AND 2215 SOUTH 70TH STREET: **May 24, 2017**

Members present: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Scheer, Washington and Weber.

Staff recommendation: Approval.

There were no ex parte communications disclosed on this item.

CHANGE OF ZONE NO. 17008
ACTION BY PLANNING COMMISSION: **May 24, 2017**

Corr moved deferral of Change of Zone No. 17008 to the regular Planning Commission meeting of June 21, 2017; seconded by Finnegan and carried 9-0: Beckius, Corr, Edgerton, Finnegan, Harris, Scheer, Washington, Weber and Hove voting 'yes'.

There was no public testimony on this item.

PRELIMINARY PLAT NO. 17004 FOR 5 ACREAGE LOTS AND ONE OUTLOT ON APPROXIMATELY 20 ACRES, GENERALLY LOCATED AT SW 27TH STREET AND WEST ROXBURY LANE: **May 24, 2017**

Members present: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Scheer, Washington and Weber.

Staff recommendation: Conditional Approval.

There were no ex parte communications disclosed on this item.

Staff Presentation: **Tom Cajka of the Planning Department** stated this is a preliminary plat application for 20 acres on SW 27th Street, west of Denton Road. SW 27th Street is paved from Denton down to Cardwell Road. There are other acreage developments in the surrounding area and the area directly south is already zoned AG-R. The preliminary plat is for five lots. SW 24th Street would be extended north with three lots on the west and two on the east. The street extension would be in the future when the area is annexed. It is shown now as part of the required build through showing how lots might convert to smaller lots easily in the future. Each lot will have its own private well and septic system. The area to the west along SW 27th Street will remain an outlot as it is floodplain and unbuildable.

Proponents:

1. Mike Eckert, Civil Design Group, came forward on behalf of the property owner, Ryan Omel, who is also on hand to answer questions. Mr. Omel bought this property and lives in the existing house on the site. He is just platting the two to the south and will remain on his 13-acres. A phasing plan was created for this project with the last three lots subdivided when the area is urbanized. There was communication with the neighbor to the south that the street stub would remain gravel. That is the prerogative of the owner during preliminary platting.

2. Ryan Omel, 6001 Rebel Drive, stated the process for this property is more involved than expected. Letters were sent out to surrounding owners and two calls were received. The owner to the northwest did not want a through-street now or in the future. The owners directly to the north are concerned about the addition of streetlights and that there is no connecting street to Roxbury Lane, which is a short stretch of road off the northeast corner. His property is along the north edge of the property and takes access from SW 27th Street.

Opponents:

1. Tom Brookhouser, 8101 SW 24th Street, stated the residents in the area like their privacy. There is concern that there is nothing to prevent someone from putting in a trailer house and negatively affecting property values. They also want to make sure a water study was done so water quality will not suffer. A paved road would be preferred to gravel. He would also like his established shelterbelt to remain.

2. Rober Wermeskerch, 8100 SW 24th Street, wondered if there will be another entrance to the 20 acres, or only the single access.

Staff Questions:

Cajka said the subdivision ordinance allows for streets outside the City and not being annexed to be gravel, so that is an option open to the property owner. There are no regulations about what a house on a property must be valued at; however, a mobile home would have to be hooked up to permanent utilities and on a permanent foundation with HUD's seal of approval. Street lighting is not required. For the street connections, SW 24th dead ends with a hammerhead turnaround. It was intended that the roads will continue in the future. The number of access points onto main county roads should be limited. It is up in the air as to when Roxbury will continue. With the subdivision to the south, we will ask for a final plat to dedicate half of the right-of-way. The connection would not take place until the property to the north might be developed in the future. The engineer shows conceptual layout of future streets, but that is not set in stone. There was a water study done and there were no issues. Staff from Health Department is on hand to answer question.

Hove asked about the entrances to the area. Cajka said the only entrance will be on SW 24th Street until later when Roxbury is built. Corr asked if Roxbury will not be connected until property is annexed. Cajka said probably not until the property to the north is developed.

Corr asked about rules regarding mobile homes and if a special permit is required. Cajka said that is only in the county; this is within the City 3-mile jurisdiction.

Washington had questions about the phasing. She likes to see the conceptual build-through plans. She asked if the separate well and sewer systems will be for all of the eventual lots, or only the ones planned in the early phases. Cajka replied that it is for all five lots, each one being about three acres. The water study also covered all five lots.

Beckius asked if the applicant will take access from SW 24th Street immediately. Cajka said the owner is interested in doing the two south lots with street up to the mid-point. Then sometime in the future, he will come in and do another final plat over the north section to divide one lot into three. Then SW 24th will continue up to the edge where it would turn to Roxbury Lane. Beckius asked if the property owner would then give up access to SW 27th Street. Cajka said yes, but the access will remain for the two lots to the north who use it.

Applicant Rebuttal:

Eckert explained that the Phase I layout includes access to his home and the two lots to the north from SW 27th Street. A small portion of SW 24th Street will be built. When Phase II happens, SW 24th will be completed up to where it is wholly contained on his

property. At that time, he will give up the SW 27th access. The neighbors would like that access to remain. The client has accepted Staff's request for an escrow to grade and rock the road in the event that neighbors come forward. The evidence from the water study was conclusive. There is ample water and this use is far less than what a farmer would pump per minute.

Hove asked if there are any restrictions on what types of homes can be built in the area. Eckert said no, the City is not involved in private covenants, but noted that Mr. Omel is not a third party developer; he is a home owner developer so he will make sure they are in place.

Corr asked when the circle will be constructed. Eckert said that is part of Phase III. Omel Circle only happens when there is City sewer, water, and annexation.

Corr asked for clarification on the changes to access for the developer. Eckert explained that eventually the owner will make a long drive to go to SW 24th Street. There is no right to take the access away from the owners to the north.

PRELIMINARY PLAT NO. 17004

ACTION BY PLANNING COMMISSION:

May 24, 2017

Corr moved Conditional Approval; seconded by Beckius.

Hove stated he will support this motion. The area is surrounded by Ag-residential and hopefully the questions of neighbors have been addressed.

Motion carried 9-0: Beckius, Corr, Edgerton, Finnegan, Harris, Scheer, Washington, Weber and Hove voting 'yes'.

Note: This is Final Action unless appealed to the City Clerk within 14 days.

SPECIAL PERMIT NO. 1627B TO EXTEND AN EXISTING WIRELESS TELECOMMUNICATIONS MONOPOLE BY APPROXIMATELY 10 FEET, GENERALLY LOCATED AT 921 FLETCHER AVENUE:

May 24, 2017

Members present: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Scheer, Washington and Weber.

Staff recommendation: Conditional Approval.

There were no ex parte communications disclosed on this item.

Staff Presentation: Brian Will of the Planning Department stated this is not an application for a new tower, but an extension of an existing tower from 105 to 115 feet. A prior amendment had raised the tower by ten feet, so this would be the second major

amendment. Staff asks carriers to look for new tower locations to make sure there is nothing in the area that could be easier than extending. There are others in the area but they are fully loaded. Of the four in the area, this one worked and even at the new height, it will be significantly shorter than the others.

Proponents:

1. Richard Krueger, Crown Castle, came forward on behalf of T-Mobile. Towers show their assets on their website. They encourage co-locations because they can make money. This extension is necessary to meet coverage needs and was the best option in the area due to various reasons.

There was no testimony in opposition to this item.

SPECIAL PERMIT NO. 1627B

ACTION BY PLANNING COMMISSION:

May 24, 2017

Beckius moved Conditional Approval; seconded by Washington and carried 9-0: Beckius, Corr, Edgerton, Finnegan, Harris, Scheer, Washington, Weber and Hove voting 'yes'.

Note: This is Final Action unless appealed to the City Clerk within 14 days.

TEXT AMENDMENT NO. 17006 AMENDING TITLE 26 SUBDIVISION ORDINANCE, TITLE 27 ZONING ORDINANCE AND TITLE 3 DESIGN STANDARDS AND

DELETING APPROPRIATE SECTIONS AS HITHERTO EXISTING:

May 24, 2017

Members present: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Scheer, Washington and Weber.

Staff recommendation: Approval.

Corr disclosed that this Text Amendment was presented at the Mayor's Roundtable Meeting of May 8, 2017.

Staff Presentation: **George Wesselhoft of the Planning Department** stated these are primarily minor cleanup items. The proposed amendments have been circulated to the public since March 20, 2017, including all neighborhood and homeowner organizations, developer representatives, and at the Mayor's Roundtable.

There are a few more substantive changes. In Chapter 26.23 pertaining to lots, there is a provision for a threshold of 10 dwellings to avoid issues where the owner might find it beyond their financial capability to maintain the structure. The 60-foot width requirement provides space for roadway sidewalk, trees, and utilities and avoid problems that have come up in the past. In Chapter 27.62.030, changes were made pertaining to urban

gardens and what districts they are allowed. No commodity can be sold on premises and approval must be obtained from the Health Department. Plants are allowed in front for cultivation, but no structures are allowed. In Chapter 27.65 of the Zoning Ordinance, there are density penalties in place. These have been relaxed to encourage redevelopment in older areas. Some projects were proposed and abandoned in the past due to the inability to meet previous density requirements.

Harris asked about notice of public hearings and the change from the 8-day requirement to a 5-day requirement. She wondered how this reduction was reconciled with the fact that a common complaint heard by this body is lack of notification time. Wesselhoft responded that there are three general ways the public is notified. The first is a sign posted on the property. Second, a notification letter is sent out to surrounding property owners and neighborhood organizations, and the third is the legal advertisement. The current practice will still be adhered to; however, the extra time is to allow for reaction time in cases where the legal ad deadline is missed. This happens only on very rare occasions.

Corr asked about 27.60.020 and the classification of use types crossing over into different districts. Wesselhoft said this could apply in PUD situations where more than one district is included in the development area. The intention for this change was to codify the rules to allow this for the sake of Building and Safety review. Corr noted that this was really about access roads and easements from public streets to private roads. In answer to a question from Corr regarding uses changing, Wesselhoft said the changes mainly move provisions around to bring them in-line as far as where they can be more appropriately located within the code. Those are not substantive changes.

Corr went on to wonder why height waivers are granted in AG Districts. Wesselhoft said it is related to AG community unit plan (CUP) waivers that have been granted in the past. This will streamline the process. **Steve Henrichsen of the Planning Department** stated the height allowed is 36 feet. In an AG CUP, it keeps AG zoning. When lots are created in a cluster and are smaller lots, they will follow the setbacks and heights of the AG-R District so a waiver is needed. In this case, the height requirement is the same.

Corr asked how changes in the sign codes align with how signage is treated in other districts. Wesselhoft said this particular change was prompted by a specific property. In certain districts, multiple wall signs will be allowed while still maintaining the 25-foot maximum. Corr explained that she wants to be sure that the code is not being changed for a single property owner. Wesselhoft said these districts are not usually as permissive. Henrichsen said this does not change the total square footage allowed. It was just found that if the first person went in and put up a sign, it could lock everyone else and that should be avoided. The 25 feet allowed is relatively small when compared to some other districts.

There was no public testimony on this item.

TEXT AMENDMENT NO. 17006

ACTION BY PLANNING COMMISSION:

May 24, 2017

Beckius moved Approval; seconded by Corr.

Hove expressed his appreciation for efforts of Staff in their review of the ordinances.

Motion carried 9-0: Beckius, Corr, Edgerton, Finnegan, Harris, Scheer, Washington, Weber and Hove voting 'yes'.

Note: This is a recommendation to the City Council.

COUNTY TEXT AMENDMENT NO. 17009 TO AMEND AG DISTRICT, ARTICLE 4, SECTION 4.003 PERMITTED USES TO MOVE CERTAIN USES TO PERMITTED SPECIAL USES UNDER SECTION 4.007:

May 24, 2017

Members present: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Scheer, Washington and Weber.

Staff recommendation: Denial.

There were no ex parte communications disclosed on this item.

Staff Presentation: Tom Cajka of the Planning Department explained that the applicant in this case requests to move certain uses that are currently allowed by right as conditionally permitted uses to only being allowed by special permit. Permitted uses in districts are allowed by right. Conditionally permitted uses are allowed, but under conditions that are tied to the use. As long as those conditions are met, there is no review by Planning Commission or County Board. Some uses have been allowed by right since 1968. In AG-R, cemeteries are listed among the conditionally permitted uses. There have been no issues with the uses allowed under current districts because they are compatible. Staff recommends denial of these proposed changes.

Harris asked for a brief explanation of how the process would change for an applicant should these be changed. Cajka said if a use needs to be approved by special permit, an application would need to be submitted to the Planning Department, including a filing fee. Staff would review the application and prepare a report and finally the application would go before Planning Commission or County Board. Harris noted it is potentially a financial burden and the time frame would be longer. Cajka said that is a fair statement.

Scheer asked what the time frame from application submittal is to approval. Cajka said it is four weeks from deadline date to Planning Commission and then an additional three weeks for County Board.

Edgerton asked if there has been any additional communication with the applicant in this case. Cajka said only a letter.

Proponents:

1. Michael Williams, 7820 112th Street, Malcolm, NE, came forward as applicant. The reason this request has been made is because there is a cemetery and temple or mosque being developed and the public should have a say over what is being developed. He understands allowing shelters and homes for children, but for things like kennels, airports, cemeteries and religious facilities the community should have a say. There are other considerations like contamination to water and soil, land value depreciation, and increased traffic and noise. Mr Williams stated he is willing to make compromises on some of his suggested changes. He noted that in the previous text amendment at today's hearing, mausoleums were allowed by special permit which shows that the type of use is intrusive and should be reviewed more carefully. He reported that his neighbors are also upset by this.

Washington asked for clarification about the location of the cemetery to his property. Williams stated it is approximately 300 feet from the corner where the cemetery is developing.

2. Kathy Williams, 7820 112th Street, Malcolm, NE, reiterated that mausoleums were just approved as a special use in the City text amendments. What they are requesting as applicants is to have the same ability to speak about what can be allowed in their backyards. The seven weeks it would take to go through the public process is not too long for the public to have a say.

Opponents:

1. Greg Greder, 819 O Street, came forward as an attorney working with the United Yazidi organization for the past year. The applicant has concern about the cemetery going in on the 20-acre plot near them. The cemetery is a permitted use of the property that they purchased for this purpose. There will not be a structure built for a long period of time, but there will be a cemetery. To set the record straight, the Yazidi is a Christian-based organization. The Religious Land Use and Institutionalized Person Act is a federal act that prohibits unduly burdensome zoning regulations such as the one proposed by the applicant. These folks are a peaceful people who want a cemetery. They purchased the land and are more than happy to discuss concerns with neighbors. The previous use of the land was farming which most likely created more activity and dust than a cemetery where there will be activity a few times per year when someone is buried. There is misinformation about what is going on at this location. If the text changes were to go forward, there would be legal implications and strong opposition. There is not need to change regulations that have never caused problems.

Staff Questions:

Washington asked for explanation of the difference between the City text amendments adding mausoleums as a specially permitted use versus in the County.

George Wesselhoft of the Planning Department stepped forward to say that the other changes referred to by the applicant were within the corporate City limits. This project is outside of that jurisdiction. Cajka said this falls under County zoning. The owners of the property did not have to go through a public process because they have the 20 acres needed for this use and they were issued the building permit.

Harris asked what avenues anyone living in the County can pursue if they are in opposition to these types of developments. Cajka said this use is allowed by right. Even if it were a conditional use, the only thing that could be reviewed is whether the site meets the conditions and, if it does, then it would be allowed. Harris clarified that she wondered what means the general public would have to express their opposition. Cajka said there is no opportunity for that because the use is allowed.

Applicant Rebuttal:

Mr. Williams wanted to make it clear that they are not asking anyone to stop developing. They only want the community to have a voice. Having spoken with attorneys on this matter, he understands that it would be an uphill battle to fight this particular project. The Yazidi practice Islam and their burial practices include burying the deceased wrapped in a cloth. This could cause issues with water and soil contamination. They are planning to build a temple. It is a religious facility and it is possible it could be a mosque. The point is simply that the community should have a say in what is going on.

COUNTY TEXT AMENDMENT NO. 17009
ACTION BY PLANNING COMMISSION:

May 24, 2017

Harris moved Denial; seconded by Corr.

Harris said she respects the applicant for coming forward because this was the way to bring their concerns to the public. Ordinances come into fruition through lots of research, planning and consensus. Making a change across the board like this would be traumatic and would go against the Comprehensive Plan, which encourages predictability. She appreciates the applicant's willingness to compromise; however, the particular concern in question is a land use that is ~~already permitted~~ federally protected, which is a whole other ballpark.

Scheer commented that he appreciates the idea of public process and public hearings. There is a flip side to public process which is protection to property owners and their rights. Both sides must be weighed. It is never a good idea to address a specific site problem with a broad text change. He will support denial of this application.

Beckius stated he will also support the denial. In a broader context, it is important to allow community and culture to flourish in an area, including cemeteries and places of religious assembly. The bottom line is the property owners have the opportunity to use their property rights as they see fit and to build a community for themselves.

Finnegan stated she echoes many of the thoughts of her fellow commissioners. There is a danger in opening up changing ordinances for something specific to one property. Perhaps if there had been a stampede of people from the greater community things would be different, but to make a broad change for one small group is not reflective of good government.

Washington said she was interested in this proposed amendment because what she could not discern from the applicant letter was their motivation for requesting a change. She is glad this hearing brought clarity to their request. To make a broad text change without having a wealth of information about how it could affect things is unwise. There appears to be misconception about what is allowed as a permitted use in the county. The public hearing is a good place for conversation; she thanked the applicant for bringing this to light. Communities need to allow cultures to flourish for themselves and how they honor the dead is very important and individual.

Hove stated he will support the denial. The rights of the property owner is an important aspect of this and a text change would add a layer that is unwanted. The proposal is focused on one property and not the county at large.

Motion carried, 8-0: Beckius, Corr, Edgerton, Finnegan, Harris, Scheer, Washington, and Hove voting 'yes'; Weber abstaining.

Note: This is a recommendation to the County Board.

TEXT AMENDMENT NO. 17010 TO AMEND VARIOUS SECTIONS OF THE LINCOLN MUNICIPAL CODE RELATED TO COMMERCIAL SOLAR ENERGY CONVERSION SYSTEMS:

May 24, 2017

Members present: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Scheer, Washington and Weber.

Staff recommendation: Approval.

Corr disclosed this item was presented at the Mayor's Neighborhood Roundtable meeting.

Staff Presentation: Andrew Thierolf of the Planning Department stated that Special Permit No. 17012 relies on passage of this text amendment. This amendment is about solar conversion systems, or solar panels. They are allowed as an accessory use in any district and as a primary use in AG District by special permit. This amendment would

increase opportunities for solar conversion systems throughout the City and amend definitions by clarifying the differences between large and small systems. There are some conditions for solar systems in residential districts. One is that the owner or owners needs to reside in the community to support the project. The other is that the panels must be located in an outlot where other uses are not likely.

This particular project is at Capitol Beach. They are looking to have a community solar facility located on the west side of West Lakeshore Drive. They would install a 100-kilowatt array in an outlot that is designated as floodplain and flood way and not suitable for any other use. The applicants have formed an LLC that would have up to 20 members, all residents of Capitol Beach. They worked with LES to work out details.

It should be noted that the applicant would like to request a reduction to the yard along the property line. As noted in the Staff Report, the setback would be 25 feet, as per the district. The applicant would like to take it down to less than that, which would need to be added as a waiver. Therefore, a deferral of the special permit is requested to allow for readvertising.

Thierolf clarified that the text amendment can be acted upon today.

Corr asked if I-80 is considered an entryway corridor. Thierolf said he believes so. Corr asked about trees and grade changes and if there is a berm at the site. Thierolf said there does appear to be a berm that would screen the lower 6-8 feet of the panels. Corr wondered if it is an entryway, if there needs to be additional screening with trees. Thierolf explained this is considered a positive by LES and the City, so it should not necessarily be hidden from I-80. Corr noted her concern about glare from the panels impacting traffic. Thierolf said Nebraska Department of Roads will review that aspect. If they have concerns, that would be of interest.

Washington wondered if the Airport Authority had any comment. She also wondered about the original purpose of the outlot in this community and if it will continue to function the same way. Thierolf said these are floodplains and wetlands so they are not developable. A determination was made that there would also be no impact to the waters and there would be no displacement of potential flood storage.

Beckius expressed his concerns that as an outlot, this property is currently not taxable. He expressed concerned about placing an income-generating entity on the property and whether that will change the lot's taxable status. Thierolf said the Assessor said it would not affect the value. They do not view these panels as commercial uses for taxable purposes.

Corr asked for information about flood-proofing panels. Thierolf said the electrical elements are above flood elevation. They will need to comply at the time of building permit.

Beckius asked for another example of uses of outlots, noting that his homeowners association installed a well. Thierolf said irrigation wells are a common use. Some have sheds for stowing mowing equipment; though, typically, they do not have structures. Beckius said that it is the City and County position that even though it would have a use, it would still be “unusable” and would not be taxed. Thierolf said that is his understanding.

Hove asked about the change to the setback and confirmations from Department of Roads and the airport. Thierolf said right now, the Staff Report states there should be a 25-foot setback off the fence-line. There would still be a large setback even with the reduction, but confirmation from Department of Roads is needed. The Airport Authority made a general statement that it will not impact pilots.

Scheer asked if this information will be available by the next meeting. Thierolf said we included them as Conditions of approval.

Washington noted that one condition was to not require a decommission for small facilities. She asks that the condition be stricken to account for a time when the panels may no longer be of use in order to restore the floodplain to its original state. Thierolf made note of this and will mention it to the applicant.

Rorabaugh noted that due to legal advertising, the associated special permit would not advance until the regular Planning Commission hearing of June 21, 2017.

Proponents:

1. Terry Wittler, 1930 Surfside Drive, stated LES has a favorable program for solar energy in Lincoln. Solar panels on homes do not currently require any approval. His neighborhood is looking for an allowance for freestanding solar panels, which the codes do not currently allow. The City suggested an amendment, with the conditions. The land for this proposed site is too low to ever be developed. The property extends approximately 150 feet to the fence line, and then an additional 200 feet to the interstate, so it is unlikely there will be issues with distance to the road. Solar panels are designed to absorb the sunlight and are not reflective, so that should also not cause concern. They will be oriented to the south and west and will not face drivers on the interstate. The reason for the waiver request is that we would like to have as few rows as possible so the panels need to be wider.

Beckius asked why the neighborhood chose to utilize an LLC for the creation and ownership of this project. Wittler said that was primarily for administrative convenience. LES indicated they would not want to deal with 25 individual owners. The same applies to insurance. It is easier to have a single policy for one group of investors. It is also a goal to avoid conflicts relating to which panels are generating electricity should any part of the panels gets damaged.

Beckius asked how the idea of using an outlot came to fruition versus using a regular lot that could otherwise be developed. Wittler said there are very few available and they are around a quarter million dollars.

Hove asked if there is a plan with LES in place. Wittler said the agreement with LES is that its program guarantees it will purchase electricity at current rates for 10 years. There is currently no decommissioning plan. The panels could be removed and located elsewhere if operational.

Hove asked if the LLC will maintain the panels. Wittler said they will. They live in the neighborhood so there will be monitoring and there is a system to tell us how much is being generated.

There was no testimony in opposition.

Staff Questions:

Beckius asked what would happen if someone were to buy an outlot and then build. Thierolf said they would have to apply to have it treated as a lot first. Beckius expressed his concern that a company is making an improvement that is taxable, noting that otherwise he loves the project. This is an outlot that isn't taxable that has an income-producing structure on it. Thierolf stated that is why he reached out to the Assessor to verify the information. Beckius said he hesitates as a Planning Commissioner to say it is fine to use an outlot to generate income, and yet, it will not be taxed. It does not seem equitable to others in the community.

Hove asked if approval of this will set a precedent. Thierolf said that outlot uses are viewed differently from buildings. They usually have minor structures. This is a unique use. If anyone were proposing some other type of business, it would be easy to argue that they should be on a lot. That is not necessary here because this is a unique type of commercial use.

Washington said she understood the point made by Beckius. She loves the idea of alternative energy and this is a great use for an outlot. She does believe this will set a precedent in that other outlots could be used this same way. The question is whether this is so beneficial to the community that it will not be taxed, or will it eventually if the use becomes more common.

Henrichsen pointed out this particular item is not under debate, in terms of the taxation. As with other special permits, this is a unique set of circumstances for this residential area. The Assessor may decide it makes sense to tax in the future, but in terms of the planning principles, there is no benefit to changing this to a lot because we don't want to give the impression that it is buildable. You could say the panels are a structure, but there is no floor area. Staff did discuss the taxation issue.

Harris asked if there is a staff position on striking the exclusion of the decommissioning plan. Thierolf said staff is not wildly opposed to that, but it was looked at in terms of low cost of removal and salvage value, which is worth more. If a plan is necessary, we would be fine with that. In other cases, we have required a cost estimate for removal and an estimate for salvage value and required a bond or assurity to cover that gap. In this case, the materials would cover the cost.

COUNTY TEXT AMENDMENT NO. 17010 9
ACTION BY PLANNING COMMISSION:

May 24, 2017

Corr moved Approval, seconded by Edgerton.

Corr said it is smart as a community to promote renewable energy. It is also smart to separate out the large operations from the small. The one problem might be the Planning Commission allowing additional uses of outlots in a way that does not benefit the greater community when it comes to equitable treatment on land use. In this case, we are saying this is a private entity that can use the outlot for private gain. It is a great use, but the improvement won't be received well if we are allowing a use that is not equitable.

Edgerton said that the role of Commissioners is to look at projects within the per view of what the Planning Commission is asked to do. It is exciting that the neighborhood has come together and worked with Planning to increase opportunities for sustainable energy.

Hove said he will support this great project but does agree that it may need to be reevaluated by the Assessor to decide the best course of action.

Motion carried, 7-2: Corr, Edgerton, Finnegan, Harris, Scheer, Washington and Hove voting 'yes'; Beckius and Weber voting 'no'.

Commissioner Weber exited the meeting at 3:15 p.m.

SPECIAL PERMIT NO. 17010 FOR AN INDOOR KENNEL WITH AN OUTDOOR
AREA THAT PERMITS MORE THAN THREE ANIMALS, ON PROPERTY
GENERALLY LOCATED AT 222 N. 44TH STREET:

May 24, 2017

Members present: Beckius, Corr, Edgerton, [Finnegan](#), Harris, Hove, Scheer and Washington; ~~Finnegan and Weber~~ absent.

Staff recommendation: Conditional Approval.

Harris disclosed that she spoke with ~~Charlie~~ [Charley and Herb Friedman](#) at a social function. They did not talk specifically about this application, but did discuss Planning Commission process in general.

Chair Hove announced that new information may be presented.

Proponents:

1. Leon Kilmer, 1531 Kingston Road, came forward as applicant to state that in September 2016, Camp Bow Wow received approval of Special Permit 1013K, which allowed an unlimited number of dogs outdoors. Our original request was for unlimited, but Planning Staff requested a number, so we provided 30.

Opponents:

1. DaNay Kalkowski, Seacrest & Kalkowski, came forward as legal representative for three property owners in the area including Tanglewood Apartments to the west, the Friedmans, who own property to the south, and Ron Wilhelm, who owns the lot to the northeast. Uses that require special permits are typically not compatible with the surrounding area. Because of this, the burden falls to the applicant and Planning to impose conditions to protect abutting property owners. The allowance of 30 dogs outdoors on any given day is not supported by the majority of property owners. That many dogs could affect existing businesses. The applicant did go around and talk to area businesses but not to property owners themselves. He said Tanglewood Apartments supported them, but that is not the case. He only spoke with a manager who does not have enough information or the right to make a decision like that. In fact, the owner of the apartments reached out and wanted to convey that they do not support this request with 30. This application does not support the goal of the Comprehensive Plan, which encourages mixed-use development. This area is specifically identified as an area prime for this type of development. The proposed development of the applicant may be beneficial to their parcel, but it does not support redevelopment of the entire area, which might include residential units.

Harris asked for clarification that Ms. Kalkowski's clients are not asking for a full denial of the special permit, but only that the number be kept within the currently allowed 3-dog maximum. Kalkowski agreed that the use is not incompatible, just the number.

Harris asked if there is room for compromise. Kalkowski said her particular clients are not willing to accept something more than what is already allowed because of the impact it would have on their property, even if there were a limited number of larger events per year.

Staff Questions:

Beckius noted the Staff Report indicated the applicant is willing to comply. Wesselhoft said the number of dogs was chosen by the applicant.

Corr said the earlier change of zone on the property was done to meet parking standards. She wondered what number of animals would be allowed outside if the

property were still in H-2 zoning. Wesselhoft said it would make no difference. The only place unlimited animals are allowed would be the B-4, AG, and H-4 Districts. The special permit referred to earlier is in the Trade Center located in H-4.

Henrichsen said the application in the H-4 District is a commercial space surrounded by parking. The outdoor area is to allow the dogs to stretch their legs, but it is a very narrow, limited area and that factor itself creates a self-evident cap on the number of dogs outside at one time.

Harris wondered if the condition regarding repeated violations of the noise violations and revocation of the special permit serves as an added protection. Wesselhoft said it is an added protection. It is rarely used, but if there is a problem, it gives greater ability to revoke. Harris asked how many complaints over what amount of time would be enough to determine the special permit should be revoked. Henrichsen said Planning would be notified of violations. The number is deliberately subjective because measures could be taken to control noise. The condition does make a difference. If there is truly a disturbance of the peace, it shows the number really did have an impact.

Steve Beal, Animal Control, came forward to address a question from Corr regarding how this situation differs from repeated complaints about animals in a residential home. Beal indicated that if a neighbor reports a situation to animal control, a letter is sent to the dog owner and the person who made the complaint. The owner has 10 days to remedy the situation. If it becomes known to us that the problem is not resolved, Animal Control will do more investigation and determine whether a citation needs to be issued. Corr asked if animal control must witness the noise while it is occurring. Beal said that is preferable but not always possible. The noise complaints are logged. The documentation becomes important if a case goes to court.

Applicant Rebuttal:

Christy Schroff, 300 N. 44th Street, came forward as legal representation for the applicant. The number of 30 was selected after a request from Staff. When the applicant applied for the change of zone two years ago, the intended use of this property was clear. It is not contrary to seek a special permit for this use; it is an option suggested by the City ordinances.

Hove asked if most kennels allow 30 dogs outdoors. Schroff said many other kennels in Lincoln are in districts that do not require conditional permits.

Kilmer said that Tanglewood Apartments is dog friendly. They have an outdoor dog park for their residents to use on their property and most of those residents are not trained in animal behavior the way his staff is. Any mixed-use development coming in might also be dog friendly and will need an outdoor area. Many existing kennels do allow an

unlimited number of dogs outdoors. There has never been a noise complaint at any of the kennels. We understand the concern, but it is also a concern for us; we do not want barking dogs.

SPECIAL PERMIT NO. 17011

ACTION BY PLANNING COMMISSION:

May 24, 2017

Corr moved Conditional Approval, seconded by Scheer.

Washington thanked everyone for allowing the extra time to allow their understanding to be more complete.

Beckius agreed. He has problems with the concept that outdoor areas could have unlimited numbers since in other areas of the code, only a certain number is allowed per square foot or dwelling unit. While those rules do not apply to this district, it seems relevant that there is recognition of the fact that animals can create problems for adjacent property owners. He would never think an unlimited number of animals would be appropriate. That said, the number provided today is 30 with over 3,000 square feet of external space. He cannot say if that number is appropriate for that amount of space, but that is what is before this body and it is better than unlimited, so he will support the motion.

Harris said that as she said at the last hearing, she is inclined to be more generous with the additional information that has been provided. She had asked Staff about the possibility of limiting the number of large gatherings, but kept running into the enforcement issue. Because of that, the number would become meaningless. Additionally, it does not mean that it would mitigate the concerns of the opposition. As stated by Health Department, quantifying the number of dogs that would also be appropriate is difficult. She has come to the conclusion that the added condition of revocation in the case of repeated violations is the best protection that we will get. The applicants have stated they will be a good neighbor. The process used by animal control may not be an overnight solution to problems, but it is a real avenue to protest any problems.

Scheer said Beckius made good points about the number of animals and that cannot be decoupled from the discussion. The number is tied to a plan. Two weeks ago, he heard a good management plan for control of noisy animals. It would be best to take complaints to the management first, even before animal control. He will support the motion.

Finnegan noted her absence from the last hearing but stated that she did listen to the entire public hearing and also drove around the site. She comes from a dog-friendly family and understands that people who use doggie daycares tend to be very particular about their dogs. Because of that, dogs that stay at this facility will effectively self-select; only the dogs who can handle it will be there. She was very impressed with the

management plan. She also stated that she is excited to have the doggie diving events. It is wonderful to have that activity closer than the event center. She will support the application and hopes that this succeeds.

Hove will also support the application. This project does not hinder development and it helps that the animals will be taken care of. The area was not developed for quite some time. The enforcement is easy in this case.

Motion carried, 8-0: Beckius, Corr, Edgerton, Finnegan, Harris, Scheer, Washington and Hove voting 'yes'; Weber absent.

**MISCELLANEOUS NO. 17001 TO ADD THE LINCOLN SOUTH BELTWAY
AMENDMENT TO THE LINCOLN METROPOLITAN PLANNING ORGANIZATION
2040 LONG RANGE TRANSPORTATION PLAN: May 24, 2017**

Members present: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Scheer, and Washington; Weber absent.

Staff recommendation: Approval.

There were no ex parte communications disclosed on this item.

Staff Presentation: Mike Brienzo of the Planning Department stated the LRTP Plan was just adopted by the MPO on January 13, 2017. The State has requested the plan be updated to include the cost of the South Beltway as identified with the Long Range Plan. This will allow time for public interaction and will also allow the programming of the project for construction. The project history goes back to 1991 but stalled for a time in 2009 since there were no resources to continue as designed. The East and South Beltways were studied separately and now we are just looking at the South. Funding for the project resumed in 2013 with the price of \$290 Million. The Department of Roads is the leading agency now. We now have a clearer image of the design footprint and the cost estimates. Now the focus is not right-of-way and design. The beltway is still on schedule for 2020 construction.

Proponents:

1. Noel Salac, Nebraska Department of Roads, came forward to state this is the second component, along with the NDOR's State improvement plan. The project was delayed in 2008 due to the economy and revived in 2013. We were in the middle of developing the environmental document for Federal Highways. That document expired and had to be refreshed. At this point, the documents for permitting through Federal Highways and cost estimates are almost complete. As we are now further along in the

process, there is better understanding of the environmental impacts, design considerations, and the substantial right-of-way process. It is on the State improvement plan and we mean to build it.

2. Brendon Schmidt, Nebraska Department of Roads, was on hand to answer questions. He added that the environmental aspect took longer than expected.

There was no testimony in opposition to this item.

MISCELLANEOUS NO. 17001

ACTION BY PLANNING COMMISSION:

May 24, 2017

Finnegan moved Approval; seconded by Washington and carried 8-0: Beckius, Corr, Edgerton, Finnegan, Harris, Scheer, Washington, and Hove voting 'yes'; Weber absent.

MISCELLANEOUS NO. 17002 REVIEW OF THE LINCOLN METROPOLITAN ORGANIZATION (MPO) FY 17/18 - FY 20/21 TIP AS TO COMPLIANCE WITH THE MPO 2040 LRTP:

May 24, 2017

Members present: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Scheer, and Washington; Weber absent.

Staff recommendation: Conformance with the 2040 LRTP.

Washington disclosed that she attended the MPO meeting.

Staff Presentation: **Mike Brienzo of the Planning Department** said this is the implementation element of the LRTP. This programs four years worth of projects and studies. This document programs any projects that require funding or oversight from Federal or State, County, and City agencies. There is significant emphasis on projects that seek fderal funds since this is the document that is reviewed when considering how to allocate funds. We ask for review and comments from the public, from MPO advisors and Officials Committees which include two City Council members, two County Board members, State Director of Transit, the Mayor, among others. Our recommendation is compliance subject to the adjustment for the South Beltway amendment. This is a good combination and product, and we feel we can move forward with the rest of design of all projects listed to receive federal funding. This requires support from the public and this body.

Washington asked generally about the process. Brienzo said Notice was published on May 15, 2017. It was posted in several public buildings and an email blast went out to our library of around 1,800 individuals. Those emails are then forwarded on. Neighborhoods and businesses are notified and it is published in the Lincoln Journal Star. All input received is included in the document.

MISCELLANEOUS NO. 17002

ACTION BY PLANNING COMMISSION:

May 24, 2017

Beckius moved Approval; seconded by Finnegan and carried 8-0: Beckius, Corr, Edgerton, Finnegan, Harris, Scheer, Washington, and Hove voting 'yes'; Weber absent.

There being no further business to come before the Commission, the meeting was adjourned at 4:19 p.m.

Note: These minutes will not be formally approved by the Planning Commission until their next regular meeting on Wednesday, June 7, 2017.

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