

REVISED MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, August 30, 2017, 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 Tom Beckius, Tracy Corr, Tracy Edgerton, Deane Finnegan, Maja V. Harris, Dennis Scheer and Sandra Washington; Chris Hove absent. David Cary, Steve Henrichsen, Tom Cajka, Rachel Jones, Andrew Thierolf, Brian Will, George Wesselhoft, Ed Zimmer, Geri Rorabaugh and Amy Huffman of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission meeting

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

Scheer requested a motion approving the minutes for the regular meeting held August 16, 2017. Motion for approval made by Corr, seconded by Beckius and carried 7-0: Beckius, Corr, Edgerton, Finnegan, Harris, Washington and Scheer voting 'yes'; Hove absent.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION BEFORE PLANNING COMMISSION:

August 30, 2017

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

The Consent Agenda consisted of the following items: **COMPREHENSIVE PLAN CONFORMANCE NO. 17013, COMPREHENSIVE PLAN CONFORMANCE NO. 17014, COMPREHENSIVE PLAN CONFORMANCE NO. 17015, CHANGE OF ZONE NO. 16036A, SPECIAL PERMIT NO. 17029, and COUNTY WAIVER NO. 17003.**

There were no ex parte communications disclosed.

Finnegan moved approval of the Consent Agenda, seconded by Washington and carried 7-0: Beckius, Corr, Edgerton, Finnegan, Harris, Washington, and Scheer voting 'yes'; Hove absent.

Note: This is **FINAL ACTION** on **Comprehensive Plan Conformance No. 17013, Special Permit No. 17029** and **County Waiver No. 17003** unless appealed to the City or County Clerk within 14 days. This is a recommendation to the City Council on all items.

TEXT AMENDMENT NO. 17012, AMENDING CHAPTER 27.72 OF THE LINCOLN MUNICIPAL CODE RELATING TO THE ZONING ORDINANCE HEIGHT AND LOT REGULATIONS TO PROVIDE THAT ACCESSORY BUILDINGS ATTACHED BY UNENCLOSED DECKS AND WALKWAYS SHALL NOT BE CONSIDERED PART OF THE MAIN BUILDING:

August 30, 2017

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

Staff recommendation: Approval.

There were no ex parte communications disclosed on this item.

Staff Presentation: Brian Will of the Planning Department stated this proposed amendment adds one new line to a single section of the Zoning Ordinance. It was not initiated by Staff but it is supported. The Zoning Code treats a main house as the principle structure, which comes with its own set of rules regarding setbacks, heights, etc. A freestanding structure, such as a shed or detached garage, has its own separate set of rules. If the two are connected by way of an enclosed structure, then the setbacks of the principle structure apply. The intent of this rule was to prevent a situation where a homeowner might build an enclosed walkway to a detached garage and then use that space as a livable area. A need for clarification was discovered when a property owner applied for a building permit to connect a raised deck to an above-ground pool via an unenclosed walkway. The pool is treated as a freestanding structure, so under the rules as currently written, the setbacks of the main structure would be applied to the pool, and the building permit could not be issued. This property has a daylight basement and the owner is simply attaching the pool to the deck by means of a walkway.

Corr asked if the pool is considered an accessory building. Will said no, but it is a structure for the purpose of structures located on a property in the yard, so the setbacks for accessory buildings or sheds apply. Corr asked, hypothetically, if a property owner would still be prohibited from building a breezeway to a garage. Will said yes.

Washington commented that the dimensions shown on the site plan are confusing in relation to the distance from the house. She wondered if this was in violation now. Will said this is a proposed project and is not yet constructed. The walkway will be more than six feet from the house and is not considered attached, so it has been used as an example today.

Harris asked if this has historically been enforced. Will said Planning staff does not see every permit that goes through Building and Safety Department, but this example was flagged to be denied. It is his understanding that historically, the rule has been enforced.

Washington asked if a ground-level walkway would have been approved. Will said yes, anything less than 36 inches from the ground would be allowed.

Corr asked why a text amendment was preferred over a special use permit or waiver. Will said that it is Planning Department's view that this sort of attachment is not the sort of thing that

was intended to be prohibited. Had an appeal to the Board of Zoning Appeals been suggested, there is a chance it could have been denied and it would not fix the problem overall. This type of project is straightforward and should be allowed.

Corr said she has no problem with this particular situation, but wondered about a situation where a walkway is proposed to a garage with a 2nd story. Will clarified that as long as it is not enclosed, it would not constitute a physical joining of the two structures. Washington said she also wondered about the potential for unintended consequences. Harris said that this ~~was never intended to prohibit structures like open walkways~~ application itself is an example of an unintended consequence. Will agreed. This is simply a problem of the way the text was worded. This is a reasonable, customary thing a property owner might want to do.

Proponents:

Will said the property owners could not attend the meeting, but he would like to explain the reason for their application. The family would like to make the pool more handicapped accessible for a wheelchair-bound family member. A ramp was considered, but to meet the slope requirements was burdensome and unfeasible, so a walkway was proposed.

There was no testimony in opposition.

TEXT AMENDMENT NO. 17012

ACTION BY PLANNING COMMISSION:

August 30, 2017

Harris moved for Approval, seconded by Finnegan.

Harris said it is almost a stretch to call this an amendment since it is more of a clarification and is obviously necessary. It makes sense for the example applicant and as a general rule. It also shows how important it is to have periodic reviews of the Code and she applauds the efforts of Staff in creating a clear and simple Code. Sometimes a request from the public uncovers a flaw. She regrets that the applicant ~~had to apply for two different things~~ has to apply before two different bodies to do what was likely intended to be allowed in the first place.

Finnegan said she had this down as “common sense.”

Scheer agreed this is a common sense change and he will support the motion.

Motion carried, 7-0: Beckius, Corr, Edgerton, Finnegan, Harris, Washington, and Scheer voting ‘yes’; Hove absent.

Note: This is a recommendation to the City Council.

CHANGE OF ZONE NO. 17020, FROM P (PUBLIC DISTRICT) TO R-4 (RESIDENTIAL DISTRICT) WITH LANDMARK OVERLAY, GENERALLY LOCATED AT 2202 SOUTH 11TH STREET:

August 30, 2017

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

Staff recommendation: Approval.

AND

SPECIAL PERMIT NO. 17030, TO FOSTER PRESERVATION OF THE FORMER SAINT ELIZABETH HOSPITAL NURSES HOME (TRABERT HALL) BY PERMITTING ITS UTILIZATION FOR OFFICES OR DWELLING UNITS, GENERALLY LOCATED AT 2202 SOUTH 11TH STREET:

August 30, 2017

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

Staff recommendation: Conditional Approval.

There were no ex parte communications disclosed on either of these items.

Staff Presentation: Ed Zimmer of the Planning Department stated these two related items come from the County Board, in preparation for the sale of Trabert Hall. The P-Public zoning cannot continue once the property is sold. There are residential areas to the west and south, so the residential zoning seemed appropriate for the area, but not necessarily for the building, which has been used for offices. By creating the Landmark overlay, the building can convert to residential or continue as office, or some combination of the two uses. Trabert Hall could come back before Planning Commission if a buyer presents a specific project. There is a parking lot onsite and some of the parking in front of Trabert is public.

The 5-story building was perhaps the largest in square footage in the 1920s. It was behind what used to be a very large hospital and served as a dormitory for nurses. The building was attached to the main hospital by an underground tunnel. It is a handsome work of architect D.X. Murphy and Brothers, who specialized in hospital buildings. Trabert was director of the Welfare Department and would have been in charge of Trabert Hall. A provisional site plan is shown to give an idea of how a buyer might make adjustments. This is a typical landmark application, except that the seller will be the County. They have owned the property for years and hope to get a fair price.

Washington asked for more information about the easements. Zimmer replied that there is an easement for access from South Street associated with the underlying subdivision, and one for parking north of Trabert Hall, associated with the access easement across the grounds.

Harris asked ~~what the best guess is for what a developer might want to do~~ for confirmation that this is a placeholder permit intended to be a best guess of what a developer might want, and that the developer may come back with modifications within the realm of the permit. Zimmer said this change would allow for flexibility for a mixed use, or for a single office or residential use.

Finnegan asked if the building exterior must remain untouched as part of the historic overlay. Zimmer said yes, the standard guidelines from the Secretary of State apply. With the landmark overlay, just the exterior is addressed. Changing interior characteristics during a full redevelopment must follow the Secretary's standards.

Corr asked if a specific site plan must be provided as part of the special permit. Zimmer said that is the action this body would take. He mentioned that, though the special permit is final action before Planning Commission, it is contingent upon the passage of the Change of zone at City Council.

Scheer asked if Urban Design Committee would review any proposed changes. Zimmer said it would fall under the jurisdiction of the Historic Preservation Commission in this case.

Washington commented that she is pleased with these proposed changes and likes that anyone purchasing the property will be aware of what needs to be done in order to move forward.

Proponents:

1. Kerry Eagan, Chief Administrative Officer for County Board, stated this property was acquired by the County in 1969 as part of the purchase of St. Elizabeth Hospital. It has served as the office for numerous County agencies over the years. Both the County and the City Comprehensive Plans call for government consolidation in the downtown area. With the completion of work done in the former County jail building, offices were relocated to the downtown campus, so Trabert Hall is no longer in use. Through this process, the Board hopes to sell at the highest price possible for the benefit of the tax payers and the County. These applications provide the best means for accomplishing these goals.

2. Amy Fish, Lancaster Rehabilitation Center, came forward to state that LRC is thrilled at the prospect of new neighbors and are in support of the proposed changes. Their only concern is from those who own the campus. The parking easement was fine when the area was zoned for public use, but it raises a concern that it would be kept in place once it is privately owned. She just wanted to raise this as a concern for the record.

Harris asked for more information about the easements. **Tom Cajka of the Planning Department** came forward to say that there was a previous final plat that put Trabert Hall on its own lot. The easements are shown on the plat. There is a public access easement on the eastern end, off South Street. The first row of parking has a public access parking easement. Corr noted that since no changes are being made to the plat today, the easements will remain. Staff agreed.

There was no testimony in opposition.

CHANGE OF ZONE NO. 17020 **ACTION BY PLANNING COMMISSION:**

August 30, 2017

Beckius moved for Approval, seconded by Finnegan.

Beckius said he finds this to be an appropriate use, considering the surrounding residential neighborhoods. The special permit makes it possible for the building to remain as an office use, as it has been for the last 45 years. Providing this flexibility is a productive solution.

Corr said this is a smart, proactive move on the part of the County.

Harris said that, with regard to the easements, this body cannot make a call right now, since new uses are conceptual. Hopefully, there will be other opportunities to express concerns when it is clearer what will become of the property.

Washington said she echoes the thoughts of her fellow Commissioners and intends to support this.

Scheer said this is a good approach to keep this important building sustainable.

Motion carried, 7-0: Beckius, Corr, Edgerton, Finnegan, Harris, Washington, and Scheer voting 'yes'; Hove absent.

Note: This is a recommendation to the City Clerk.

SPECIAL PERMIT NO. 17030

ACTION BY PLANNING COMMISSION:

August 30, 2017

Washington moved for Conditional Approval, seconded by Beckius and carried, 7-0: Beckius, Corr, Edgerton, Finnegan, Harris, Washington, and Scheer voting 'yes'; Hove absent.

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

COUNTY SPECIAL PERMIT NO. 16021A, FOR AN AMENDMENT OF SITE SPECIFIC CONDITION NO. 5 REGARDING LANDSCAPE SCREENING REQUIREMENTS FOR AN EVENT CENTER, GENERALLY LOCATED AT 12400 WEST DENTON ROAD:

August 30, 2017

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

Staff recommendation: Conditional Approval.

Washington disclosed that she spoke with Planning Staff because she had a few questions.

Staff Presentation: Tom Cajka of the Planning Department stated that the special permit to allow the event center as an expanded home occupation on this property was approved just over a year ago. It comes before Planning Commission now to address one very specific aspect of the original conditions related to landscape screening. A 60% screen up to 10 feet was required to screen the outdoor ceremony area and a parking area. A question arose about whether the landscape screening needed to be at the 10-foot height from day one. That was not the intent; the screening calculations are based on height at maturity. The landscape plan

submitted by the applicant clearly met the qualifications; however, the County Attorney's Office determined that the language was not specific enough to exclude the possible interpretation that a 10-foot screen is required from day one. It should also have been clearly noted that, because the County does not have its own set of design standards, the standards were modeled after City design standards for areas where commercial abuts residential, and were not arbitrary. A final point of clarification relates to the definition of what qualifies as a screen; a 6-foot fence would meet the requirement because it provides a 100% screen.

Harris asked if the reason for the clarification is that it was not implied that City standards were used on this site located outside of City limits. Cajka said that is correct. Harris asked for more detail about the language. Cajka said that Staff looked at the design standards and anything that would be questionable in an attempt to cover every possible variable. It did not make sense to make a general statement that the plan must be in conformance with City landscaping, so relevant sections were added.

Harris asked how the conditions are enforced. Cajka said conditions are enforced on a complaint basis. If a tree was planted, but does not survive, the property owner is required to replace it to fulfill the screening requirements.

Washington said she was not on the Commission when the original special permit was approved. She does not question the landscape plan because it is prudent to require the screening between commercial and residential areas. Her consideration is for the application of rules more broadly. She questioned when and why it was appropriate to apply City standards to the County since they are not the same kind of environment and residents are used to different things. She would encourage any effort made to consider landscape plants and materials more specifically appropriate to the County. Cajka noted that the suggested plant materials and the screening requirements borrowed from the City standards are used only as a reference point. Each special permit is viewed on a case-to-case basis to see if a location needs to be screened. Plant types are not locked in; the conditions specifically state that other plants not listed could be approved by the Director of Planning.

Proponents:

1. Mark Hunzeker, Baylor Evnen Law Firm, 1248 O Street, Suite 600, came forward representing the applicant. He stated he did not agree with the interpretation of the condition because, when it comes to landscape screening, the same rules have been in place for a long time and people do not expect a standard that would require materials to be planted at full height. A significant number of trees on the property were moved to screen the parking area, and the landscape plan was approved, requiring the outdoor area to be screened. That screening was fulfilled, but the hedge chosen did not do well this year due to grasshoppers. In order to make sure they were in compliance, the applicants took the initiative and effort of installing a fence along the diagonal property line to screen the outdoor area. The original approved plan also included an extension of that screening along the north/south property line, but because screening in that area would not serve to screen anything, it was indicated by Staff that the original plan would likely have been approved without showing that additional landscaping in that area. The applicant intends to submit a revised plan eliminated that one area of the screen.

Scheer asked if the fence is intended to be permanent or if it is just to accommodate the screening until the landscaping fills in. Hunzeker said it is permanent.

Opponents:

1. Ashley Anderson, 12600 W. Denton Road, owns the property directly to the west of the event center. If people are allowed to come in and change agricultural uses to commercial uses, these types of issues will come up again and again. She is concerned that the landscaping might never reach the full height to meet the screening requirements. People regularly miss the event center location and turn around in her driveway since it is the next property over. There is concern from many neighbors about the loud music and the fact that the site may never be properly screened.

Washington asked if there is opposition to any change proposed to the screening, or if they would be more comfortable if it had to be at 60% before events could be held. Anderson said she worries it will never reach the full height required, and if it does, it will take years.

Finnegan asked the exact location of her property. Anderson said they are adjacent to the west. They keep livestock in their front pastures, right where people turn around, and animals have been spooked by the activity; even her dogs bark. Finnegan asked for clarification that the property is across S. 126th. Anderson said yes.

2. Chet Bennetts, 12121 W. Bennet Road, stated his property is southeast of the event center. He acknowledged that the subject today is narrow, focusing on the landscape requirements, but he does not agree with the entire use. Neighbors do not agree that an event center was the original intent of an expanded home occupation use. At the meeting last year, Cajka mentioned that the screen should be a requirement in order to act as a noise and light buffer. We stood by and watched this use get approved, but were hopeful that the required limitations would mitigate some of the negative effects. It seems like the business itself was an exception, and now they want to change the rules again, possibly because of the expense. The question of screening was specifically asked and it was explained that there must be 60% protection where a person cannot see through. He agreed this has been a bad year to grow and plant trees but does not believe the small trees that were planted will ever get up to 10 feet. The trees that were transplanted are not doing well. Many people moved out to this area to avoid lights and noise and to live in a quiet place. It is difficult to hold the owners accountable since enforcement is complaint based. It seems like a case of making rules to fit one owner even though many in the surrounding area do not support the use.

Staff Questions:

Harris asked if the original intent of Planning when this condition came forward was to comply with City standards, in that the planted screening does not need to be mature. Cajka said that is correct. Harris asked if that rule is stated in the Codes or if it is just a common practice. Cajka replied that planting size is addressed under the Plant Materials List. There is a planting size shown. The majority of the transplanted trees on the applicant's property

meet that 4- to 5-foot rule.

Corr asked where those trees are located. Cajka said they are located along Denton Road on each side of the driveway. There are a few that are not in good shape.

Cajka went on to say that no landscape plan was submitted as part of the original special permit; that condition was added later. His review was based on mature height and spread of the plantings. The applicants showed more than would have been required. He made it clear that the screening itself is not being changed or waived. The fence installed meets the condition. The only reason for this request is to clarify that the trees along Denton do not have to be 10-feet at the time of planting.

Scheer asked if it is Cajka's opinion, having seen the site, that what has been planted meets the intent being described. Cajka said that if the amendment today is approved, what they have done meets the condition.

Corr asked if the trees that are now estimated to be 4 or 5 feet tall only need to grow to be 6 feet. Cajka said they would need to be 10 feet.

Washington commented that she is familiar with that type of cedar planted and it will take more than a couple of years to reach that height. Cajka agreed, and added that even though this is outside of City limits, it is an accepted practice to consider the mature height for the calculations.

Scheer noted that a complaint could be made in a case where a tree dies and no replacement is made, but if the screening is not yet at maturity, but healthy and growing, then the complaint would not be valid. Cajka agreed.

Beckius asked how this request for a language clarification came about. He wondered if the neighbors questioned the screening. Cajka said if this issue had never been raised, he would have said the landscape plan meets the conditions. The question was whether the plantings need to provide the full screening from day one. Beckius asked who prompted this action. Cajka said a neighbor complained that the screen was not 10 feet. The County Attorney found that the way the condition was written leaves room for people to get the wrong idea. After many discussions, it was determined that the intent was never meant to be 10-feet screening from day one, so the best way to make the change was through this body. It is a strange situation because it looks more like a change rather than a clarification.

David Cary, Director of Planning, came forward to state that it is a good point to discuss how this special permit application came forward. After discussion, Staff concluded that the intent was there, but was not spelled out clearly; it was a very strict interpretation of language. After further discussion about the true intent of this condition and investigating the history of this type of situation, it was determined that it has been the practice to follow the City standard of 60% at 10 feet in this type of situation. Once that was cleared up from a Staff perspective, it was decided that the best course moving forward was to amend the condition to ensure there are no questions.

Washington asked for examples in the County where design standards have been lifted from the City. Cajka said there was another expanded home occupation for outdoor storage where the City standard for screening was applied. Screening in the County does not come up all that often since it is not as common to deal with commercial uses.

Applicant Rebuttal:

Hunzeker stated that those who have been working in this field understand that this is the way the standards have always been applied. Speaking as the attorney for the applicant, if there was any impression that mature plants were required from day one, he would have immediately objected. The condition was never written to say, "shall meet the standards at the time of planting." The Cedar trees planted 100 feet on either side of the driveway were planted in 2016 and most are doing well. Additional trees have been planted along the parking lot, so there are actually two rows of trees. The screening required along the south and east property lines will be of no benefit to the neighbors who spoke in opposition today; there is simply an objection to the use. He believes they may meet the 60% screening requirement now. There is a condition that requires care for struggling trees and replacement of those that do not survive.

Scheer asked if the trees along the road were around 4 to 5 feet in height. Hunzeker said he believes they are closer to 6 feet in height. The trees planted there were not even required, but the applicant has been proactive about meeting requirements.

SPECIAL PERMIT NO. 16021A**ACTION BY PLANNING COMMISSION:****August 30, 2017**

Corr moved for Conditional Approval, seconded by Finnegan.

Corr noted that she was on the Commission when the original application came through and as the attorney stated, those that have been around consider the condition normal. For her, there is no conflict about whether the trees need to be at full height when planted. She is sympathetic to the neighbors, but this is standard procedure and more of a point of clarification.

Harris agreed. Nothing is going to fix the fact that neighbors were opposed to the use in the first place. She is not surprised that some points got lost in the lengthy and intense discussion that occurred the first time this application came through. For those familiar with the language, it is "cut and paste," though in this case, it was not clarified. The important thing is the intent. It is also important that this flexibility to make changes or correct errors is built into the process. She would rather this could be solved in a way that made everyone feel that it was a fair outcome, but it is what it is, and the applicant should not be punished after the special permit was approved.

Scheer said he also remembers the original application and feels that this oversight should have been caught. If it had been noticed at that time, he is confident that the condition would have landed where it is today. He will support the motion. This is a sensible way to go about this correction. He understands the issues with the neighbors, but they are deeper than

just the screening and are directed at the use.

Motion carried, 7-0: Beckius, Corr, Edgerton, Finnegan, Harris, Washington, and Scheer voting 'yes'; Hove absent.

Note: This is a recommendation to the County Board.

Rorabaugh announced that this application will have Public Hearing before the County Board on September 5, 2017, at 9:00 a.m.

There being no further business to come before the Commission, the meeting was adjourned at 2:34 p.m.

Note: These minutes will not be formally approved by the Planning Commission until their next regular meeting on Wednesday, September 13, 2017.

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