

## MEETING RECORD

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Wednesday, March 14, 2018, 1:00 p.m., Hearing Room 112 on the first floor of the County-City Building, 555 S. 10<sup>th</sup> Street, Lincoln, Nebraska

**MEMBERS IN ATTENDANCE** Tom Beckius, Tracy Corr, Tracy Edgerton, Deane Finnegan, Chris Hove, Cristy Joy, Dennis Scheer and Sandra Washington; Maja V. Harris, absent. David Cary, Steve Henrichsen, Tom Cajka, Dessie Redmond, 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 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 February 28, 2018. Motion for approval made by Finnegan, seconded by Beckius and carried, 7-0: Beckius, Edgerton, Finnegan, Harris, Hove, Joy, and Scheer voting 'yes'; Washington abstaining; Harris absent.

### **CONSENT AGENDA**

#### **PUBLIC HEARING & ADMINISTRATIVE ACTION BEFORE PLANNING COMMISSION:**

**March 14, 2018**

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

The Consent Agenda consisted of the following items: **COMPREHENSIVE PLAN CONFORMANCE NO. 18006, CHANGE OF ZONE NO. 18004, PRE-EXISTING SPECIAL PERMIT NO. 33B, and SPECIAL PERMIT NO. 18005.**

There were no ex parte communications disclosed.

Hove moved approval of the Consent Agenda, seconded by Edgerton, and carried, 8-0: Beckius, Corr, Edgerton, Finnegan, Hove, Joy, Washington, and Scheer voting 'yes'; Harris absent.

Note: This is a recommendation to City Council on **COMPREHENSIVE PLAN CONFORMANCE NO. 18006** and **CHANGE OF ZONE NO. 18004**. This is FINAL ACTION on **PRE-EXISTING SPECIAL PERMIT NO. 33B** and **SPECIAL PERMIT NO. 18005** unless appealed to the Office of the City Clerk within 14 days.

Prior to Public Hearing, **Tom Cajka of the Planning Department**, came forward to state that the applicant has requested a 2-week deferral of Preliminary Plat No. 18001.

**PRELIMINARY PLAT NO. 18001, TO ADD TWO COMMERCIAL LOTS, ON PROPERTY  
GENERALLY LOCATED AT 10200 SOUTH 158<sup>TH</sup> STREET:**

**March 14, 2018**

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

**Staff recommendation:** Conditional Approval.

There were no ex parte communications disclosed on this item.

**PRELIMINARY PLAT NO. 18001  
ACTION BY PLANNING COMMISSION:**

**March 14, 2018**

Hove moved for a 2-week deferral to have Public Hearing and Action at the regular Planning Commission meeting of March 28, 2018, seconded by Beckius and carried, 8-0: Beckius, Corr, Edgerton, Finnegan, Hove, Joy, Washington, and Scheer voting 'yes'; Harris absent.

Rorabaugh invited members of the public wishing to testify on this application at this hearing to come forward. There was no public testimony on this item.

**CHANGE OF ZONE NO. 18003, FROM R-2 (RESIDENTIAL DISTRICT) TO H-3 (HIGHWAY  
COMMERCIAL DISTRICT), ON PROPERTY GENERALLY LOCATED AT 340 WEST CORNHUSKER  
HIGHWAY:**

**March 14, 2018**

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

**Staff recommendation:** Conditional Approval.

**AND**

**SPECIAL PERMIT NO. 18007, TO ALLOW FOR THE SALE OF ALCOHOL FOR CONSUMPTION ON  
THE PREMISIS, ON PROPERTY GENERALLY LOCATED AT 340 WEST CORNHUSKER  
HIGHWAY:**

**March 14, 2018**

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

**Staff recommendation:** Conditional Approval.

There were no ex parte communications disclosed.

**Staff Presentation:** Brian Will of the Planning Department stated these are two related applications. The north half of the property is occupied entirely by a parking lot. The special permit for on-sale is necessary to resume operation. Several people have asked why this is the case since the Royal Grove had operated in that location for so many years. The business ceased operation four years ago. Up to that point, it was considered a non-conforming use. As such, it

had two years from the point of closing to reopen and take advantage of that status. The big issue now that the special permit is being sought is the 100-foot separation from residential areas. There is a line running through the center of the property where the south half is zoned H-3 and the north is zoned R-2. The proposed rezoning of the lot would allow the licensed premises to meet the separation requirement, with the exception of the small outdoor area along the west which will not be included in the licensed area.

Corr asked how this lot ended up having split zoning. Will said this is not a single lot but is part of an old residential plat. This sort of split zoning along Cornhusker Highway and other arterials is not uncommon.

Edgerton asked if a condition of approval was that an agreement require that this will stay at its current use. Will said yes. The change of zone is subject to the condition that the owner enter into a zoning agreement with the City so the property is limited to a singular use. Any change would require coming back with a change of zone to modify the zoning agreement.

Washington asked if a future change of zone could be requested by a new owner. Will said the zoning and the agreement run with the land, not the owners. Washington asked how long the agreement will remain in place. Will responded that City Council is the body that is authorized to modify the terms of that agreement.

Beckius asked why the parking lot has never been rezoned. Will said that the former owners of the Royal Grove had what they needed to operate and never requested that change.

Scheer asked if the action today would have any unforeseen consequence for others on Cornhusker or related to the Entryway Corridor landscape. Will said he is not aware of anything. By approving these applications, Planning Commission is allowing the former use to continue without any substantial change. There is no requirement in a special permit for any significant upgrades to the property.

Edgerton asked if there is some suggested landscaping along the parking areas. Will said there is a note stating that the significant existing landscaping along the north of the lot remain. The typical required screening has also been put in place along the west since that is what would be required with a standard special permit request.

Corr asked about a gate and fence along the north. Will said the gate is along Saunders. There is no driveway.

Washington asked if there were any letters or calls in support or opposition of these applications. Will said he had two phone calls from neighbors who were just curious about the applications that were coming forward and one could be characterized as a complaint regarding noise on weekends.

Finnegan noted the liquor license could have been kept even if the business turned over. It is the amount of time that has passed that is creating the problem. Will agreed. It is by virtue of the fact that a premises only gets two years to start back up.

**Proponents:**

**1. Bill Austin, 301 S. 13<sup>th</sup> Street**, came forward as legal representative for Hunky Dory, dba Royal Grove. This location has been a tavern and nightclub since the 1960s. The applicant said they needed to apply for the special permit and change of zone in order to comply with LMC 27.63.680. They are agreeable to all conditions of the special permit and are in the process of negotiating the conditional zoning agreement. The owners also reached out to neighbors and left flyers indicating that there is no change in the essential use, though this will be a different operation from what was previously experienced there.

**2. Eli Mardock, 1521 Sunset Road**, stated that he is a professional musician and venue operator and he hopes to bring a new image to the Royal Grove. As a nightclub, the venue had a positive reputation as one of the best live-music venues. Unfortunately, there was also a period of time where the Grove had a roadhouse reputation. The plan is to bring high-quality, national acts to Lincoln.

Corr asked for more information about the outdoor area. Mardock said it was used as a beer garden in the past, but it was decided that it would be best to eliminate that since it is within the 100-foot separation from residential neighbors. It will be used for smoking.

Beckius asked when they became aware of limitations. Mardock said they applied for their liquor license in December 2017 and found out fairly early on from the police investigator that there might be an issue. The zoning issues were confirmed in mid-January. Beckius asked when their lease began. Mardock said he believed it started January 3, 2018.

**Opponents:**

**1. Paul E. Virus, 225 W. Saunders**, stated that his testimony is not in opposition to the use, but he wanted to make his concerns known. His home is directly adjacent to the east and, prior to owning that home, he lived across the street for ten years. He has no issue with the liquor license and does not know the new operators of the venue. He has concerns about potential future commercial uses and how any changes will affect the valuation of his property. He added that there is no longer a gate at the north end of the property.

Corr asked for confirmation that he lived in the neighborhood while the Royal Grove was operating under the previous owner. Virus said yes, both as the Royal Grove and as Uncle Ron's. He has had no issues since the business has been open again. There is some noise, but that is to be expected, considering the location. Corr asked if there is another parking lot to the east at the end of an alley. Virus said that is correct. There has only been one occasion where there has been a long line of traffic. There are also signs along Saunders to prohibit street parking from 8:00 p.m. to 6:00 a.m. Corr said she was more concerned about noise from people walking from one lot to the other. Virus said he has not experienced that. Most noise comes from loud vehicles at closing time. His main worry is that if the business changed ownership, he would be concerned if something less desirable moved in, such as a 24-hour operation, or anything that might cause loitering.

Beckius asked Virus if he experienced any problems when he lived across the street. He said not really.

**Staff Questions:**

Hove asked for more information about the potential of this property changing to another commercial use. Will said that anything else would have to come through Planning Commission and City Council. The zoning agreement also cannot be changed without City Council approval.

Edgerton wondered if approval would really just be a return to the same conditions in place five years ago. Will said yes, that was the strategy. This is a return to the historic use of this property. Edgerton asked if another use could come in. Will said yes, but the north part of the lot would still have to serve as parking. This proposed use is one of the more intensive, so any change would likely be less intrusive.

Beckius asked if the recommendation of staff would be the same if there was a different applicant. Will responded that there is a history of this use going back to the 1960s to this proposal is no surprise. Beckius said he asked the question because there was an operator in the past who had the reputation of not being a good neighbor. Will said that the department response is that it does not matter who the applicant is. Planning looks at land use and appropriateness to the surrounding area.

**Applicant Rebuttal:**

Austin addressed the neighbor who provided testimony. That home is outside of the change of zone, so any change to valuation would only be speculative.

Corr asked about the use of the parking lot to the east. Mardock said their goal is to avoid using that lot whenever possible. They would accept any guidance on that matter. Joy asked if that area was included in their lease. Mardock said yes.

**CHANGE OF ZONE NO. 18003**

**ACTION BY PLANNING COMMISSION:**

**March 14, 2018**

Finnegan moved for Approval, seconded by Corr.

Washington said this proposal makes sense. She noted that in the Staff Report, it notes that the future land use of this area is listed at Residential. Since that is not the case, to be properly in conformance with the Comprehensive Plan, that designation should be changed.

Corr said she has no problem with the zoning change since this is a similar situation as many other parts of Lincoln, such as College View, where the fronts of the blocks are zoned commercial, with residential at the back. Generally, she does not like spot-zoning, but in this case, the use has been in place more than 50 years. She likes the agreement in place to protect the parking lot.

Beckius said his only hesitation is that this action creeps closer to H-3 zoning on the lot, even with restrictions in place. It may not be a huge jump for a new applicant to ask for H-3 zoning on the entire lot. He wishes there was more flexibility in terms of having R-2 zoning without having to change the zone to accommodate alcohol sales.

Scheer said this is a good use. He never likes to see dark buildings around town, so this alleviates that.

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

**SPECIAL PERMIT 18007**

**ACTION BY PLANNING COMMISSION:**

**March 14, 2018**

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

**SPECIAL PERMIT NO. 18002, FOR THE DEVELOPMENT OF 22 DWELLING UNITS, INCLUDING WAIVERS, GENERALLY LOCATED AT 1125 W. A STREET:**

**March 14, 2018**

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

**Staff recommendation:** Conditional Approval.

There were no ex parte communications disclosed.

**Staff Presentation:** Dessie Redmond of the Planning Development stated this application is for a CUP at the southwest corner of the intersection of West A Street and Highway 77. The properties would be accessed from West Washington Street. The proposal includes 22 units and 3 outlots; two for drainage and one for Phase II of the project. There are similar residential developments just to the west and on the other side of Highway 77. The Comprehensive Plan identifies the area as future urban residential density so the use is in compliance. Staff is agreeable to the requested waivers due to the constraints of the property. It is a small site and has limited potential for lot layout.

Corr asked if the similar development to the west had the same setbacks and waivers. Redmond said no, they are just straight zoning so there is no CUP in place and generally speaking, they meet the setback requirements of the zone.

Hove asked if access off West A is limited. Redmond said there is a lot on the site plan that accesses off of West A, which will be relinquished so the only access would then be W. Washington.

Washington asked if the church will keep their access. Redmond said yes, until Phase II is implemented.

Edgerton asked about the unassigned dwelling units and if they are related to the church on the site. Redmond said that is correct. There is the possibility for attached or detached units.

Corr said the problems with detention caught her eye. She wondered if those issues have been resolved. Redmond said they have been resolved. After meeting with Watershed Management, the outlots for drainage were required in Phase I. There is also a condition of approval that Watershed has to approve one last time.

**Proponents:**

**1. Marcia Kinning, REGA Engineering, 601 Old Cheney Road,** on behalf of developer, Scott Anderson, stated the waiver to the depth is requested because this is a small site and in order to meet the drainage requirements, the normal required depth cannot be met. Planning staff determined there was no need for a pedestrian way with the highway and the development to the west. There is also nowhere to add another sidewalk. The various waivers to setbacks are again due to the lot dimensions and needing to fit a certain size of structure on those lots.

Edgerton asked the timing of the extensions of roadways. Kinning said W. Washington and SW 11<sup>th</sup> will be constructed to create the lots. For Phase II, that area will still be owned by the church which will still be in operation, so that area will not be served at this time. Edgerton asked if the connection to the west will happen eventually. Kinning said that is just conceptual. That developer has no say over that, but it does show that a connection would work.

Corr asked if there will be sidewalks up and down 11<sup>th</sup> Street in front of the houses. Kinning said yes, that will be a standard public street.

Washington wondered how many lots will be sold when Phase II is developed. Kinning said the church will probably be removed. The unassigned units are shown so that whoever purchases that second phase can divide up the lots as they choose. Washington asked for confirmation that all issues were worked out with Public Works, especially relating to water. Kinning said yes. The lots to the east were 95 feet deep and are now 90 feet to accommodate the outlot. Washington asked if the grade is the same on both sides. Kinning said the grade looks steep, but it is a nice 4:1 slope.

There was no testimony in opposition.

**Staff Questions:**

Corr asked about the location of a shed violating the front yard setback. Redmond said the shed is at the northwest corner of the intersection.

**Applicant Rebuttal:**

Kinning came forward to clarify that since the street needs to be constructed, that shed will need to be removed. The church is aware of that.

**SPECIAL PERMIT NO. 18002**

**ACTION BY PLANNING COMMISSION:**

**March 14, 2018**

Hove moved for Approval, as amended per the staff memorandum dated March 13, 2018, seconded by Washington.

Corr said she normally does not like to see waivers, but with this site, they are appropriate because it is limited by so many things on both sides. With the waivers along Highway 77, they will still have green space.

Hove said this is a good use of the land in this tight area and it fits with the Comprehensive Plan.

Scheer said this is a tight site, so this is a good project for what we are trying to accomplish for this area.

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

There being no further business to come before the Commission, the meeting was adjourned at 2:02 p.m.

Note: These minutes will not be formally approved by the Planning Commission until their next regular meeting on Wednesday, March 28, 2018.