

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, December 12, 2018, 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, Dick Campbell, Tracy Corr, Tracy Edgerton, Deane Finnegan, Maja Harris, Dennis Scheer and Sandra Washington; Christy Joy absent. David Cary, Steve Henrichsen, Tom Cajka, Collin Christopher, Stacey Groshong-Hageman, Rachel Jones, Geri Rorabaugh and Amy Huffman of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Hearing

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 Planning Commission hearing held November 28, 2018. Motion for approval with revisions made by Harris, seconded by Beckius and carried 8-0: Beckius, Campbell, Corr, Edgerton, Finnegan, Harris, Washington and Scheer voting 'yes'; Joy absent.

Requests for Deferral:

SPECIAL PERMIT 18045, TO ALLOW A COUNTY AG CUP CONSISTING OF 148.49 ACRES WITH 9 SINGLE FAMILY ACREATE LOTS, GENERALLY LOCATED AT NORTH 14TH STREET AND ROCK CREEK ROAD;

PUBLIC HEARING:

December 12, 2018

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

There is no Staff Recommendation at this time.

There were no ex parte communications disclosed on this item.

SPECIAL PERMIT 18045

ACTION BY PLANNING COMMISSION:

December 12, 2018

Campbell moved to place Special Permit 18045 on the Pending List, as requested by the

applicant; seconded by Beckius and carried, 8-0: Beckius, Campbell, Corr, Edgerton, Finnegan, Harris, Washington and Scheer voting 'yes'; Joy absent.

Opponents:

Dan Montag, 1680 Rock Creek Road, Ceresco, stated there are significant water problems in this area with some wells pumping 20 gallons/minute down to 2 gallons/minute. If adequate water is not found, these proposed lots will fail. He wants to know that there is adequate water for functioning wells, not just for the area, but for each one of the lots. The rules regarding for showing water quality and quantity before approval have been recently changed. That will open up problems for developers and residents. He would like to know why the change was made. The notice for this proposed development and this hearing were not adequate.

Leaford Burnett, 19595 N. 14th Street, Ceresco, said that they are directly west of this project and their well pumps only 2 gallons/minute. They have made several attempts to get access to better water. The signatures mentioned by Mr. Montag include people from 1 mile north, 1 mile south, 3 miles east, and 1 mile west of this proposed project. These people experience the same types of water problems. He is totally against this project. He submitted over 70 signature of individuals in the area who are opposed to this proposal. (Exhibit 1).

Corr asked what kinds of attempts were made to find better water. Burnett said they have tried numerous attempts at other wells. The original well is restricted because you pump more water than can be recovered within a certain amount of time. A neighbor to the south has tremendous trouble watering their livestock. A neighbor to the west does not do their laundry at home anymore because they only have enough water to bathe and cook.

Lynn DeShon, 19595 N. 14th Street, Ceresco, said that she has visited with experts on East Campus and it has been shown that there is not much water in their area, particularly when there are droughts; they have pumped silt at times. The farmers to the south only keep their cattle on the property in the winter when less water is needed.

Campbell asked how deep the wells are. Burnett said his is 180 feet. Campbell asked if there was rural water service in the area. Burnett said no.

Mark Hughes, 26077 N. 14th Street, Ceresco, came forward to state that when he bought his house just a third of a mile north two years ago, he drilled 5 holes to find a well that would provide enough water for his house. One pumped 2 gallons/minute and was 700 feet from the house, the other pumps 8 gallons/minute and is 93 feet deep.

Cindy Arias, 4333 Agnew Road, Ceresco, said they purchased 80 acres in 2001 and plotted off 20-acre lots. They found a well that pumped 8 gallons/minute. They moved out in 2006 and in that time, that well had dried up. They had to move the site and made two more attempts at wells. One pumps 12 gallons/minute with a pressure tank, but they live with the concern that someday it could dry up again. In a nearby area, one well pulled up salt water. Water in the area is spotty and if you find it, you never know if it will dry up.

Lonnie Rech, 3200 Rock Creek Road, Davey, said he is against a zoning change for the area. He is not anti-growth, but wants to see smart planning. Notification time about this proposed project and hearing was inadequate and it appeared the developer was not going to disclose their plans to neighbors. The land is intended to be preserved for agricultural use in the county; the City of Lincoln only covers a small percentage of the county. The CUP tool can be used inappropriately, as in this case, where “leap-frog” development is proposed. There have been very few residential changes in the area. There is insufficient infrastructure for this scope of growth. Increased traffic will make roads more dangerous; they are narrow with no turn lanes and some intersections have needed flashing lights. This will also place additional strain on County road maintenance budgets. The number of lots proposed is troubling. The water quality could reach unsafe levels with nine separate septic systems.

James Lamken, 20805 N. 27th Street, Ceresco, said he has lived near the proposed development area since 1987 and also had two wells; one ran dry and sucked sand. The second well is 180 feet deep. During droughts, their water has a sulfur smell. They are very concerned about pumping additional water.

Steve O’Hare, 19401 N. 1st Street, Raymond, said they have the same water problems and the water table fluctuates a lot. He purchased his property in 1969. Since that time, there have been many changes in requirements regarding buildable lot sizes; he sued the County over this and won.

Chair Scheer thanked everyone for their testimony. The item has been placed on the Pending List, but if it comes up again for Public Hearing, anyone is allowed to attend and provide testimony and additional information at that time.

SPECIAL PERMIT 16004A, FOR THE RENEWAL OF A SPECIAL PERMIT FOR A SOIL MINING OPERATION, GENERALLY LOCATED AT SOUTH 68TH STREET AND SALTILLO ROAD;

PUBLIC HEARING:

December 12, 2018

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

Staff Recommendation: Conditional Approval.

There were no ex parte communications disclosed on this item.

Staff Presentation: Tom Cajka, Planning Department, stated this application is for the renewal of a mining permit originally approved in May, 2016. This is one of the few special permits that expires; mining permits have a 3-year time limit. The only difference between this application and the previously approved one is that the extraction area will move to the north part of the site. It is estimated the new area will have 550,000 cubic yards excavated. The County Engineer requested a road maintenance agreement and that has been worked out with the owner.

Harris noted that when this was on the agenda in 2016 it was on the Consent Agenda. She asked why this time it is a Public Hearing item. Cajka said the applicant asked for the deferral to work out the road maintenance agreement and that automatically bumped the item off of the Consent Agenda.

Washington asked if there is any concern about moving the excavation to the north, in terms of dust or other pollution, particularly with the site's proximity to Saltillo Road. Cajka said the access for the site will remain at the south end and no access will be taken from Saltillo. Washington clarified that she is concerned about the dust. Cajka said dust control is a requirement of the permit.

Campbell asked how deep removal of that amount of soil will be. Cajka said he will let the engineer answer.

Proponents:

Mike Eckert, Civil Design Group, 8535 Executive Woods Drive, came forward as applicant on behalf of Gana Trucking, to state that this item was deferred in order to work out the road agreement with the County Engineer. To address questions, all wind and water erosion must be controlled or the permit can be revoked. The depth of excavation varies. It was between 10-15 feet deep on the south side, but it depends on where the loess soils are located. To the north, it is expected to be in the 3-6 foot range. The applicant wants to renew and expand now because it is close to the South Beltway and they will be in a position to provide dirt. This mine also continues to serve south Lincoln, rather than hauling from the north side of town. We are in agreement with everything laid out by Staff and the County Engineer.

There was no additional public testimony on this item.

SPECIAL PERMIT 16004A

ACTION BY PLANNING COMMISSION:

December 12, 2018

Beckius moved approval; seconded by Campbell.

Scheer said this is straightforward and was only removed from the Consent Agenda for clarification.

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

TEXT AMENDMENT NO. 18014, AMENDING VARIOUS SECTIONS OF THE LINCOLN MUNICIPAL CODE RELATED TO PARKING AND LANDSCAPE SCREENING;
PUBLIC HEARING:

December 12, 2018

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

Staff Recommendation: Approval.

Finnegan disclosed that she had lunch with Mark Hunzeker, a friend. No Planning Commission topics were discussed.

Harris disclosed that she forwarded an email that was received after the vote was taken, but she is disclosing the information now, for transparency.

Staff Presentation: Collin Christopher, Planning Department, stated that since the November 14th Planning Commission hearing, staff reached out to the development community and met with several individuals and groups in an effort to find common ground and achievable compromises. There are nine revisions, overall.

It was decided that the window of time between project completion and landscape installation be eight months to account for changes in season, and to include an extra cushion during the busy seasons for landscape installers. The new revisions clarify language about the 3-foot strip used for low walls as a screening. The requirement for internal island breaks was eliminated for single parking rows and now requires the islands only with 40 stalls in double rows, and along the edges with single rows. The hope is to preserve necessary parking stalls in smaller lots. Also to avoid negative impact to smaller lots, the percentage requirement related to landscaped internal islands will apply only if there are more than 200 stalls. There is also increased flexibility for where shade trees can be located since there was concern expressed

about placing shade trees in the islands due to visibility or preference. There is a desire to use parking islands for required storm water solutions, so there is additional flexibility in certain circumstances to move the shade trees to the perimeter without penalty. It is also possible for there to be conflicts on the parking islands with structures such as required lighting, so again, adjustment were made to avoid that conflict. The final change relates to the determination made by the Parks & Recreation Department for whether street trees are possible in built environments. If they determine there is not enough room, that requirement can be waived as part of the permit review process without additional waivers.

Washington asked if Parks & Rec. can exempt street trees, but not any other tree requirements. Christopher said any other exemption would have to go through the standard waiver process, but staff wanted to acknowledge that there are certain districts where allowing the exemption makes sense.

Campbell noted that there are trees that would be appropriate in storm water basin, though he does not see a problem with the revision.

Finnegan asked if, after meeting with developers, there was agreement on both sides. Christopher said staff built upon the meetings one-by-one, so the final culmination was not seen until the memo went out detailing the changes. Some changes were direct results from the conversations. From a staff perspective, this was a careful and concerted effort.

Harris asked if any other communities have the 50% trigger for street trees related to renovations. She wondered if it is working elsewhere and if that number was pulled from best practices. **Stacey Hageman, Planning Department**, said she does not know the origin of the policy, but it comes from the Downtown standards as a mechanism to determine whether a remodel is a major or a minor. If major, then the developer is asked to meet as many standards as is feasible. The downtown application of this was also revised to only apply to exterior remodels.

There was no testimony in support.

Opponents:

Mark Hunzeker, Baylor Evnen Law Firm, 1248 O Street, came forward representing B & J Partnership, LTD. and stated they appreciated the changes offered by staff, but still have some improvements to suggest. The revisions made are not sufficient to address problems inflicted upon older parts of the city. There are some older corridors along South Street and O Street that are not models of urban development, and they should be encouraged to redevelop; it is important to the health of surrounding neighborhoods. Their client has a lot of experience redeveloping properties. Modern

commercial sites require more space, better access and more parking than before. Many lots in older areas have lost depth due to street widenings. Redevelopment often requires assembling several adjacent parcels to be economically viable. Buildings often outlast tenants so it is important to ensure there is enough space for potential future users. If the City is serious about encouraging redevelopment in older corridors, then a working group should be established to plan for the redevelopment rather than just regulating it more.

Finnegan asked for examples of where redevelopment in older areas has been hindered by regulation. Hunzeker said one example is the corner at 17th and South Streets. Walgreen's is much smaller than standard stores but cannot expand because there is not enough land to support that. They have land that runs over to Bryan but the parking lot just east is not zoned commercial and alternate suggestions have been rebuffed. These corridors exist on many of the older arterial streets and you see that they need more space to be viable and vibrant.

Campbell asked what is wrong with the waiver process provided by the revisions. Hunzeker said there is nothing wrong with waivers but it creates a situation where developers plan around existing rules. When it comes time to make a serious investment, the cumbersome waivers become a detriment. There are projects that don't see the light of day due to over-regulation. The flexibility allowed for today via waivers may not always be available with future staff or commissioner changes.

Beckius asked if the Walgreen's at 17th and South has a drive-through. Hunzeker said it does not. Beckius noted that the result is that it makes it a nearly obsolete business model. He wonders, generally, if a body such as Planning Commission would grant a waiver for that type of situation. Corr commented that this particular text amendment is not meant to address issues such as that.

Washington said this process appears to have created the opportunity to consider more careful planning in older corridors along arterials; sub-planning areas could be a viable solution. Corr said that she thought that could be hindered by budgetary issues. Hunzeker said he is not offering his changes as a solution to those problems, but is trying to prevent negative impact on older and smaller sites.

Ann Post, Baylor Evnen Law Firm, 1248 O Street, said their opposition is based on the potential result of delaying redevelopment on the types of sites mentioned. Their amendments include retaining the exception for screening of lots less than 15 feet depth. The idea of screening one lot from another also creates inflexibility, so it makes sense to maintain that exception. It also makes sense to exempt lots less than 6,000 square feet from shade and interior tree requirements. The trees required at the ends of rows takes up valuable parking space. Finally, we propose to eliminate the 50% standard for remodels.

Harris asked if these proposed changes are in writing. Post said she can provide them via email.

Washington asked if the elimination of the 50% threshold is partially due to the added cost. Post said that on small lots, this could discourage exterior remodels. If they had to go through the entire planning process, this would add time and expense to their project.

Campbell asked if the exemption from screening adjacent lots would apply to lots without interior connection. Post said yes, where they do not share drive aisles. Again, it causes a loss in available square footage.

Beckius asked how many tenants come into a building and require a different setup or look. Post said that can be specific to each tenant; some have very specific requirements for the look of their business. Beckius asked if these requirements could prevent a tenant from choosing a particular location. Post said if they can't achieve the look they want, they could choose not to go in at a location.

Campbell commented that he has difficulty imaging situations where an external remodel would amount to more than 50% of the valuation. Post said she agrees, in general, but it could negatively impact redevelopment knowing that threshold could be reached. Harris asked for clarification about where the language says "exterior" remodels. Post said that would be better answered by staff.

Campbell commented that in most built areas, the street trees are already established so he is not as concerned about requiring them.

Dustin Antonello, Lincoln Independent Business Association, 620 n. 48th Street, said they appreciate the willingness of staff to listen to concerns and adjust the amendment. Despite this, they remain in opposition to the street tree requirement and request the exemption remain for lots with less than 150 feet of depth. The 50% remodel threshold is also difficult for smaller lots and could limit redevelopment of locations such as the Shopko at Bishop Heights, Leon's Market, 33rd and A Streets, and 17th and Van Dorn Streets, to name a few. The amendment has improved, but it could be better and they request this be considered prior to City Council. (Exhibit 2)

Staff Questions:

Harris asked for more information about the 50% exterior remodel threshold. Christopher said there is a sentence at the end of a revision made prior to November 14th where it specifically states that if the remodel is to the interior, the street tree requirement does not kick in.

Beckius asked how the valuation is determined. Christopher said that at the time of applying for a building permit, a developer is required to provide a total construction valuation. Beckius asked if the permit differentiates between interior and exterior. Christopher said there are classifications of permit types. The applicant selects the type of construction being done, whether it is new construction, interior, etc. If they say it is strictly an interior remodel, then no calculation is necessary. The total construction valuation is divided by the assessed value at the time the permit is requested. If that amount is greater than 50%, the requirement would kick in.

Beckius asked if staff feels that a waiver would be justified if it is done in order to facilitate a particular business model, such as the pharmacy drive-through mentioned earlier. Christopher said it would depend on the site and the circumstances. The issue at the Walgreen's that was mentioned is not a landscape screening issue. They have a narrow fence they use to screen from residential and that would never be waived. That particular site also has parking islands but they are concrete. In general, under the right circumstances, staff would consider waivers case-by-case.

Beckius went through the four changes proposed by Post and asked if staff had any change of mind related to them. Christopher said 'no' to all. Beckius asked if staff met with other developers. Christopher said yes. Mr. Hunzeker and his client were the most adamant about retaining certain exemptions.

Corr asked for a review as to why screening is being asked for between adjacent lots. Christopher acknowledged that it can be difficult to explain why screening is necessary between one lot and another. One considerable intention of landscaping and screening requirements is to improve aesthetics, while not impairing visibility. It is true that in older neighborhoods, there are many irregularities to account for and it is a challenge to fit in all of the required parking. On the other hand, there are areas where lots function separately and the chosen screening is unattractive, especially along highly visible major corridors like O Street. An example is the separation between the car wash and the Jiffy Lube at 33rd and O Streets which just uses unattractive concrete posts. If landscaped correctly, it would lead to a better development and a major aesthetic improvement.

It is also important to consider the entire corridor broadly. Between 24th and 44th along O Street, it is easy to see the implications of an area with 25 properties that have done zero screening, even when they all have room for it. What has been allowed to occur over the years is the application of the "worst case scenario" being applied across the board and dictating the entire design standard. That should be solved. As the staff person who sees all landscape plans, he categorizes developers into three groups: a top 15% or so that goes above and beyond what is asked; the majority who do exactly what is asked, no more and no less; and the final group that doesn't want to give anything.

The important group is that middle majority. If the design standards are subpar, that is what is applied. There is room to balance needs; landscaping is not the number one concern, but we want to apply it where we can. Corr commented that if it is the national developers who go above and beyond, that could indicate that standards are more demanding elsewhere. **Steve Henrichsen, Planning Department**, said he does not agree with that. There are local developers who go above and beyond what is asked and it is important to not to distinguish who belongs to one group or another. There are many local developers who are willing to compromise.

Harris thanked staff for pointing out where to find the revised language regarding the 50% exterior remodel threshold. She wondered if one were doing an interior remodel, but then changed the windows, if that would then push the project into the category of an exterior remodel. Christopher said he would need to dig in deeper to answer that in detail, but his opinion is that if the windows are part of the interior renovation, then that would not trigger the requirement for street trees. **David Cary, Director of Planning**, stated that staff is confident that there is enough flexibility to identify and apply what is needed for sites to succeed. There is a reason for requiring the street tree when it is truly an exterior remodel; we want to shy away from the “missing tooth” look. Campbell suggested the consideration of using the renovated valuation for the calculation. Christopher said that cannot be calculated at the point of issuing the building permit. In most cases, application of this would mean the inclusion of just one tree, which is not a significant burden compared to the overall cost of these projects.

TEXT AMENDMENT 18014**ACTION BY PLANNING COMMISSION:****December 12, 2018**

Corr moved Approval, as amended by Staff; seconded by Campbell.

Washington said she is happy with the process that allowed staff to work with developers after the first public hearing. She is confident the work was done sincerely. She also stressed that having subarea development planning could address many of the issues. She recognizes the challenge, in terms of budgeting, but believes it is a good idea.

Commissioner Harris made a motion to strike the language relating to the 50% threshold as a trigger for the street trees; seconded by Beckius.

Harris said the lengthy discussion on that point shows the amount of confusion related to that particular provision and seems like a recipe for conflict between the City and developers. She understands the reasoning behind it and is not opposed to beautification, but does not feel comfortable with how it is being executed. Even if it is not a huge cost, the aggregate does matter to profit margins when thinking of the compounded cost of the whole package. She worries it could discourage some projects.

Beckius agreed with Harris that the methodology is not perfect. The language should be clear to understand. If he were renovating interior and exterior, he would say it was only an interior project to avoid triggering the requirement.

Scheer said he is also concerned by the lack of clarity in the language.

Campbell agreed. The cost of a tree would be minimal compared to the overall costs, but the language lacks clarity.

Washington said the number of questions and the discussion is an indicator of that lack of clarity. She hesitates to pass something along to the next body, knowing there is an issue such as this; conversely, simply striking the entire concept does not feel like a positive resolution. But the language does need clarification.

Corr said she understands the confusion, but suggests that if this body were to choose to delay again, public hearing should be closed because the testimony would likely be largely the same.

Motion on the amendment carried, 5-3: Beckius, Campbell, Finnegan, Harris and Scheer voting 'yes'; Corr, Edgerton and Washington voting 'no'; Joy absent.

Beckius thanked staff for their willingness to meet with developers. There are still things that trouble him that were not mentioned today including the reduction in minimum parking in B-2 and B-5, creating lots that are not pedestrian friendly, the added costs of interior islands which also includes curbing and maintenance, the open space requirements, and the fact that some parking lots, such as those found near manufacturing, do not necessarily need beautification but need to function only in a utilitarian way. He does not think the proposed changes offered by Hunzeker and Post are out of line. He would rather see encouragement of development than deal with the heartburn of the installation of a street tree, and would rather be talking about pedestrian walkways in lots, or public safety. He will vote against the entire package.

Scheer said he will support the changes. Though he understands where Beckius is coming from; he deals regularly with design standards at his job, and this package has a good overall effect on the city. He thanked staff and developers for the time invested. He is also comfortable with the waiver process and the ability of staff to be fair about the odd things that happen on sites. His concern is that parking lots are asked to do more and more by local, State and Federal regulations, including storage of cars, lighting, landscaping, and storm water mitigation, which will become a larger and larger issue. That said, this is a good amendment with a positive impact on the community, as a whole, and he will support it.

Finnegan appreciates the comments offered by everyone. She will vote yes because she believes staff took the lead and engaged with developers for a better amendment. Nothing is perfect and it is possible that any flaws can be considered again in the future.

Harris said she also plans to support the amendment. Her main concern was the 50% trigger. She might have also supported the amendments put forth by representatives of the developer and also agrees that a working group could look at revitalizing and incentivizing redevelopment in older districts. More care should have been given to the B-1 and B-3 districts before these added costs came into play. She hopes elected officials will think about it and balance these needs and encourages the development community to continue participation since this could get even better with more reaching across the aisle.

Corr clarified that she had disclosed at a past meeting that this amendment was presented at two Mayor's Roundtable meetings, but that was incorrect. It was on the agenda at one meeting, but was not presented due to time constraints. The waiver process does not have to be as difficult as it has been made out to seem; it can be done administratively. She is glad staff took the time to speak more with developers. The City has compromised by requiring less parking, so it was already a compromise to begin with. She does not want Lincoln to fall behind, in terms of standards, and reiterated that if any national developers go beyond what is required, that could indicate that is the case. She believes the screening between parking lots is appropriate since the users could change, and the screening concept is good for that. Separating lots and providing islands does improve pedestrian safety and she would much rather see a fence or tree than an unsightly concrete post. Landscaping beautifies and increases the tax base. She would still have liked this package even with the 50% threshold. Maybe staff will come up with better language or City Council could ask for improvements.

Main motion carried, 7-1: Campbell, Corr, Edgerton, Finnegan, Harris, Washington and Scheer voting 'yes'; Beckius voting 'no'; Joy absent.

There being no further business to come before the Commission, the meeting was adjourned at 3:13 p.m.

Note: These minutes will not be formally approved by the Planning Commission until their next regular meeting on Wednesday, January 9, 2019.