

MEETING RECORD

Advanced public notice of the Planning Commission meeting was posted on the County-City bulletin board and the Planning Department's website. In addition, a public notice was emailed to the Lincoln Journal Star for publication on Tuesday, August 10, 2021.

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, August 18, 2021, 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: Lorenzo Ball, Dick Campbell, Tracy Corr, Tracy Edgerton, Cristy Joy, Dennis Scheer and Cindy Ryman Yost; 8th and 9th Seats Vacant; Steve Henrichsen, Tom Cajka, George Wesselhoft, Geri Rorabaugh and Rhonda Haas of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Hearing

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

Edgerton requested a motion approving the minutes for the regular meeting held August 4, 2021. Motion for approval made by Campbell, seconded by Joy and carried 7-0: Ball, Campbell, Corr, Joy, Scheer, Ryman Yost and Edgerton voting 'yes'.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION

BEFORE PLANNING COMMISSION:

AUGUST 18, 2021

Members present: Ball, Campbell, Corr, Edgerton, Joy, Ryman Yost and Scheer.

The Consent Agenda consisted of the following items: Change of Zone 21029, Special Permit 21031 and Special Permit 17043A.

Item 1.2 – Special Permit 17043A, was removed from the Consent Agenda for a separate hearing and action.

There were no ex-parte communications disclosed.

There were no ex-parte communications disclosed relating to site visits.

Campbell moved approval of the remaining Consent Agenda items, seconded by Scheer and carried 7-0: Ball, Campbell, Corr, Joy, Scheer, Ryman Yost and Edgerton voting 'yes'.

Note: This is **FINAL ACTION** on **Special Permit 21031** unless appealed by filing a letter in the Office of the **City Clerk within 14 days.**

CHANGE OF ZONE 21024
FROM B-1 (LOCAL BUSINESS DISTRICT) TO H-2 (HIGHWAY BUSINESS DISTRICT) ON PROPERTY
GENERALLY LOCATED AT 4615 VINE STREET
BEFORE PLANNING COMMISSION: **AUGUST 18, 2021**

Members present: Ball, Campbell, Corr, Edgerton, Joy, Ryman Yost and Scheer.

Staff Recommendation: Applicant has requested this application be placed on pending until further notice.

The Clerk noted that the applicant has requested to place this application, Item 5.1 – Change of Zone 21024, on pending until further notice; and, therefore, the application was removed from the Agenda and placed on pending.

Campbell moved to place this item on pending until further notice, seconded by Corr and carried 7-0: Ball, Campbell, Corr, Joy, Scheer, Ryman Yost and Edgerton voting 'yes'.

SPECIAL PERMIT 17043A
TO ALLOW SOIL MINING AND EXCAVATION, ON PROPERTY GENERALLY LOCATED AT SW
112TH STREET AND WEST VAN DORN STREET
PUBLIC HEARING: **AUGUST 18, 2021**

Members present: Ball, Campbell, Corr, Edgerton, Joy, Ryman Yost and Scheer.

Staff Recommendation: Approval

There were no ex-parte communications disclosed.

There were no ex-parte communications disclosed relating to site visits.

Staff Presentation: **George Wesselhoft, Planning Department, 555 South 10th Street, Lincoln NE,** came forward and stated that the area of proposed excavation is 7.47 acres. A special permit was approved on January 9, 2018 for soil excavation for the same area. There is a maximum time limit of three years for such permits and the prior permit has expired. The applicant is requesting the same amount of cubic yards and same excavation area as the original special permit. The County Engineer has requested some enhancements to the existing road maintenance agreement which pertains to the notice requirement, maintenance patrols and mitigation measures. Wesselhoft share that a representative from the County Engineer's Office is in attendance to answer questions.

Campbell asked the location of the residence that had expressed concerns. Wesselhoft shared that one of the houses was located on SW 112th Street just to the north of the intersection and there was another house located to the south. Campbell stated that they are not located next to the site. Wesselhoft said correct.

Edgerton stated that the enhanced conditions are not standard but are above and beyond what has been in place for other excavation permit and asked if that was correct. **Pam Dingman, Lancaster County Engineer, 444 Cherrycreek Road, Bld. C**, came forward and stated that what is being added to this maintenance agreement will be added to all future maintenance agreements and will add more definition on what needs to be done to maintain the roads. Edgerton asked if enforcement by default falls to their area. Dingman shared that sadly it does, but they do not have any authority to do anything. When complaints come in, the only action that can be taken is for it to go back before the County Board and, if there is an issue, the permit can be revoked. When complaints do come in, they contact the contractor to make the necessary modifications associated with their agreement. Dingman shared that at times with special permits there is the assumption, if anything happens to the road, it is the special permit holder's responsibility, which we all know that is not reasonable. Edgerton inquired if there had been any complaints with this specific property. Dingman explained that initially when this property opened there were several complaints, but they have been worked out. Edgerton asked what the term "Maintenance Motor Patrol" involves. Dingman stated that it is a motor grader with a blade in the middle and it is used to maintain gravel roads. Edgerton reiterated that the additional conditions were not a result of any issues for this particular property but will be standard conditions moving forward and asked if that was correct. Dingman said yes that they are trying to have a greater level of understanding and definition of when additional maintenance is needed.

Applicant:

Nate Burnett, REGA Engineering Group, 601 Old Cheney Road, Suite A, came forward on behalf of High Plains Enterprises. The first permit was approved and approximately 25,000 cubic yards has been excavated leaving 85,260 cubic yards remaining. Burnett stated that this pit runs on an as-needed bases so, if there is something in the area, the pit would be mined, but there are also times that nothing is going on. Typically, with this type of special permit, the concerns are the dust and traffic. The applicant cannot control every aspect of dust in the county, but they do have a water truck onsite. The applicant is agreeable to the conditions that have been added that will become standard for all permits moving forward. There were issues with this site at the beginning, but those issues have been worked out and he is confident that they will be successful.

Scheer inquired when the initial complaints were made and resolved how much longer did the pit continue to excavate. **Mark Smith, High Plains Enterprises, 18570 SW 29th Street, Martell**, came forward and stated that the initial complaints were with the frequency of watering the roads. They did increase the frequency of when the roadway was getting watered. He shared that some of the calls from the county asking why they were not watering the road was

because they were not working in the pit that day. Smith explained they water the road in the morning for the traffic rush, around lunchtime and then again before the end of the day, which does keep the dust to a minimum. Smith stated that at the beginning there was other construction in the area and other trucks would drive by the pit to get to their sites, which would kick up dust when they sped by. Smith shared that they did follow their trucks to ensure that they were not speeding through the area, but they cannot control trucks from other construction sites. Smith stated that most of the excavating was done during the first year of operation. Scheer stated that his point was that after initially starting of the operation when the complaints came in, those complaints were resolved, and the pit continued to run with no complaints. Smith said yes.

Proponents:

No one came forward in support.

Opponents:

1. **Andrew Willis, Cline Williams, 233 S. 13th Street**, came forward on behalf of John and Kim Benes who live close to this site. He stated that this is a health and safety issue with the dust and the traffic. They are concerned that there is no real enforcement of these issues when there are complaints. Willis stated that it is great that they are adding additional conditions, but there is still no way for the area residents to get resolution. Willis stated that more conditions need to be added, which may slow the approval process, but they need to make sure that they are maintaining the health and safety of the neighbors in the area because this will continue to be a problem until it is addressed.

Campbell stated that the applicant did increase the watering of the roadway and the fact that it is other company's trucks that seem to be causing most of the complaints, and he asked how they would propose to control that. Willis stated that he does not know the answer to that question. Campbell stated that it is a public roadway which makes it hard to control. Willis said that it is but, if you watch, you can see where the traffic is coming from.

2. **Debora Van Lent, 10705 W. Van Dorn Street**, came forward in opposition and shared that in January 2018, she sent in two emails in opposition to this permit and they did not seem to matter. Last evening, while driving home, the blind spot detection on her car was disabled because of the dust when following a pick-up. This is a safety concern for current and new residents in the area. She stated that they were not watering the road, and the trucks should be rerouted to 112th Street where there is less traffic.
3. **Craig Johnson, 10365 W. Van Dorn Street, Denton**, came forward and stated that he approved of the first application, but now he is in opposition. He stated that he has a CDL license and knows what it is to drive a truck. Johnson stated that he had requested additional conditions be added to the first permit, which were ignored. Johnson asked if four loads meant four loaded trips and four empty return trips or two loaded trips with

two empty return trips, because it is not specified in the conditions. Johnson asked if the Health Department did an onsite inspection to look at the dust problems. The neighbors in the area will end up being the ones to police this site. Johnson stated that he has pictures of the pit being worked just last week without their special permit being approved. Johnson asked that they lower the speed limit on that road and post speed limit signs and no engine braking signs for all drivers to follow.

4. **Margaret Bond, 11000 W. Van Dorn Street**, came forward in opposition and stated she is home all day and there are water trucks on the site, but they do not water the road to keep the dust down. She stated that the trucks go too fast on the road, which makes the windows rattle and creates a lot of dust. With all the dust on the road, she is surprised that there are not a lot of accidents.
5. **Kim Benes, 10301 W. Van Dorn Street**, came forward in opposition and stated that she lives on the south side of the site. Last year, it was not a problem, but the two years prior to that it was bad. Benes stated that they had called to complain because the trucks were constant and the dust was so bad that they could not go into their yard for baseball. Benes stated that after they had complained, trucks started honking their horns and engine braking by their house, which is very disrespectful. She stated that she is in opposition and hopes that this gets worked out. She worries about her daughter driving with the constant dust on the road.

Staff Questions:

Campbell stated that the things that have come forward are not necessarily being created by the pit and asked if there was anything that the county could do to address some of these issues. Dingman stated that over the past few years they have asked for more funding and this year will be the same. She stated that in the previous budget year they had zero dollars allocated for paving and that Lancaster County is a very populated and continues to grow. Dingman stated that currently there is 28 miles of road that need to be paved and sadly all her department can do is continue to maintain the roads. A gravel road is very hard to maintain after it has 300 cars in a day traveling on it and that is when the motor grader is used once and sometimes twice a week. Dingman stated that they will continue to do whatever needs to be done to stabilize this corridor, but the only thing that will work in stabilizing this corridor is more funding. Campbell inquired if they were familiar with other treatments as previously mentioned that could be used. Dingman stated that she is familiar with other methods and that her office has been studying different treatments to stabilize them and minimize the dust, but they are very expensive and only control 60 to 70 percent of the dust and makes the road hard and difficult to maintain. Dingman stated that they are looking at a pilot program and will be using one mile of gravel road section for a test project. Dingman stated that in the budget hearing they did request additional funding for a dust control program, which is needed especially if the roads are going to continue to be unpaved.

Corr inquired how the County Engineer's Office defines a trip. Dingman stated that one loaded truck out of the site would be considered a trip. Corr stated that the original permit this site had

was for three years and would have expired in January 2021 and asked if that was correct. Wesselhoft said that was correct. Corr stated that if they were operating now, it would be outside of that permit. Wesselhoft said correct. Corr inquired if any violations cause this site to be shut down at any point. Wesselhoft said that he was not aware of any. Corr inquired who would have the authority to shut down a site. Dingman stated that it would be the County Board. Corr stated that engine braking signs could be put up but the enforcement would fall outside of the County Engineer's purview and asked if that was correct. Dingman stated that they do not post no engine braking signs in the county because the sheriff has no way to monitor it and "sadly" when an engine braking sign goes up, the neighbors ask for its removal because on occasion the behavior gets worse

Joy asked if a performance bond was part of the solution for enforcement and asked who would enforce it. Wesselhoft stated that the bond referenced is for the restoration of the site after the project has been completed.

Edgerton stated that it is specified in the added conditions that the county needed to be notified if there would be more than four trips made in any one day and further stated that there is no method of enforcement other than the neighbors and asked if that was correct. Dingman explained that there is a process for a special permit, which is more of a legal question, and further stated that her staff does check on complaints but has no authority to enforce.

Applicant Rebuttal:

Burnett explained that this is for a special permit specific to this proposed project and is not about what had happened previously with the W. Van Dorn Street or Conestoga Lake construction. What High Plains can control is what has been done. The Health Department has given their approval. There have been discussions with the County Engineer to resolve issues. Burnett noted that there are some outstanding issues with this stretch of roadway and they will do what they can to keep the dust to a minimum.

Smith stated that most of the complaints they have heard are about dust. On average, they run 4 trucks a day, which would be about 32 trips per 8 hours. There could be days that there are less trips and days that there are more. The agreement with the county is that anytime the pit is operational and they will be doing more than 4 trips that day, they are to notify them, which they do. He stated that there would be no way that they could have their water trucks on the road putting water down all day and the county would not want that either. Smith explained that the more water that is put on the road the more damage it does. In the past, they did a good job controlling the dust when they determined the rate that it needed to be done.

Smith stated that they were on the site last week as stated earlier, but it was to maintain the site as required by the county, and no dirt was removed. Smith stated that their goal is not to make all the residents angry, but to have a strategically-placed borrow pit for the city and county when projects come up. Smith explained if they can divert their trucks to go north or south on 112th Street to hit pavement and where there is less traffic, they do.

Scheer stated that there was a comment about other haulers taking dirt from this site and he asked if that was correct. Smith stated that it is only their trucks or trucks that they hire, and no other excavation contractor would come into the pit. Scheer stated that when you say you will control what you can control, that means you will control the other trucks that you hire. Smith said yes.

Ryman Yost asked about the delay in renewing this special permit if it expired in January. Burnett stated that nothing has been hauled in the last 18 to 24 months and that is the reason for this delay.

Campbell moved to close the public hearing, seconded by Scheer and carried 7-0: Ball, Campbell, Corr, Joy, Scheer, Ryman Yost and Edgerton voting 'yes'.

SPECIAL PERMIT 17043A

ACTION BY PLANNING COMMISSION:

AUGUST 18, 2021

Campbell moved approval, seconded by Scheer.

Campbell stated that he understands and empathizes with the homeowners and the dust situation, but basically this is a county problem and not the company's problem. According to what has been said the hauler is being very conscious on how they are handling some of the issues that have been complained about and he sees no reason not to renew this special permit.

Scheer stated that from a land use and comp plan perspective, there is no reason to vote against this permit. Scheer stated that there are some health, welfare and safety issues here, but he is having a hard time thinking that they are the applicant's issues, and further stated that these issues do exist but they are not landowner or applicant issues. Scheer stated that he is in support of this motion with the recognition that there are some issues that need to be addresses somehow but are not on the applicant.

Corr stated that she agrees with Commissioner Scheer and she cannot say definitively that this is the applicant's problem, and they should not have the burden of fixing it when it is a public road.

Edgerton stated that she agrees with her fellow commissioners, and it seems like this is a bigger problem and not just from this permit. Edgerton stated that she does not know that this board would ever be in the position to know what conditions would provide mitigation to resolve the issues. This special permit makes since to move forward.

Motion carried 7-0: Ball, Campbell, Corr, Joy, Scheer, Ryman Yost and Edgerton voting 'yes'.

Note: This is **FINAL ACTION** on **Special Permit 17043A** unless appealed by filing a letter in the Office of the County Clerk within 14 days.

Scheer exited the chambers.

PRELIMINARY PLAT 21002

FOR SEVEN COMMERCIAL LOTS, ON PROPERTY GENERALLY LOCATED AT 4731 WEST O STREET
PUBLIC HEARING: **AUGUST 18, 2021**

Members present: Ball, Campbell, Corr, Edgerton, Joy and Ryman Yost; Scheer declaring a conflict of interest.

Staff Recommendation: Conditional Approval

Scheer declared a conflict of interest on Preliminary Plat 21002.

There were no ex-parte communications disclosed.

There were no ex-parte communications disclosed relating to site visits.

Staff Presentation: **Tom Cajka, Planning Department, 555 South 10th Street, Lincoln NE**, came forward and stated that this preliminary plat is for 7 lots on 21.7 acres. This property was rezoned from AG to H-4. There will be two new public streets, which will facilitate future development. He stated that the city did agree that Sylvan Avenue would not need to be built to the boundary due to some topographical restraints but, with the first final plat, the developer would pay the city the equivalent of the gap. In the future, the city would then be responsible for building that gap. The private driveway access to O Street would be closed, and the developer is required to install a right-turn lane in SW 48th Street. The following revisions were agreed to: Revise condition 1.16 to clarify how and when Sylvan Avenue will be built; and revise Condition 1.1.10 to clarify the use of Outlot F and C.

Edgerton asked if all LTU concerns have been addressed. Cajka said yes. Edgerton stated that there has been an agreement reached with regards to West M Street that satisfies both the applicant and the city. Cajka said yes.

Campbell asked who would be responsible for putting West M Street in. Cajka said that eventually the developer would be responsible for the paving of West M Street, but it may be many years into the future. Campbell asked if there was a developer on the south side, would they be responsible for half of the pavement. Cajka stated that typically it is whoever gets to that point first is who would be responsible to pay for it.

Applicant:

Tim Gergen, Clark & Enersen, 1010 Lincoln Mall, Suite 200, came forward stated that they did defer this item for two weeks to work out some items. The drainage analysis that was worked out with LTU was complicated, and financially the project did not make sense, but then they

were able to make a compromise on the drainage and West M Street to help make this project financially feasible. Gergen shared that this land has been vacant for some time now and it is for these reasons. Gergen explained to Commissioner Campbell that when West M Street is ready to be developed the developer would most likely ask for a paving district to offset the costs.

No one came forward in support or opposition.

Campbell moved to close the public hearing, seconded by Joy and carried 6-0: Ball, Campbell, Corr, Joy, Ryman Yost and Edgerton voting 'yes'; Scheer declaring a conflict of interest.

PRELIMINARY PLAT 21002

ACTION BY PLANNING COMMISSION:

AUGUST 18, 2021

Campbell moved approval, seconded by Ball and carried 6-0: Ball, Campbell, Corr, Joy, Ryman Yost and Edgerton voting 'yes'; Scheer declaring a conflict of interest.

Note: This is FINAL ACTION on Preliminary Plat 21002 unless appealed by filing a letter in the Office of the City Clerk within 14 days.

Chair Edgerton stated that anyone wishing to speak on an item not on the agenda may come forward and do so; no one came forward.

Joy moved to adjourn the Planning Commission Meeting of August 18, 2021, seconded by Campbell and carried 6-0: Ball, Campbell, Corr, Joy, Ryman Yost and Edgerton voting 'yes'; Scheer absent.

The meeting was adjourned at 2:10 p.m.

Note: The Planning Commission will not formally approve these minutes until their next regular meeting on Wednesday, September 1, 2021.