

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, April 16, 2024.

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, April 24, 2024, 1:00 p.m., Hearing Room 112, on the first floor of the County-City Building, 555 S. 10th Street, Lincoln, Nebraska.

MEMBERS AND OTHERS IN ATTENDANCE: Lorenzo Ball, Dick Campbell, Brett Ebert, Bailey Feit, Cristy Joy, Rich Rodenburg, and Cindy Ryman Yost. Maribel Cruz and Gloria Eddins absent. David Cary, Steve Henrichsen, Shelli Reid, Clara McCully, Andrew Thierolf, Brian Will, Ben Callahan, and Steve Dush of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Hearing

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

Note: This is **Final Action** on the following item: **Special Permit 24010, Preliminary Plat 24002, and Special Permit 24005** unless appealed by filing a Notice of Appeal with the **City Council** or the **County Clerk within 14 days**.

Ryman Yost requested a motion approving the minutes for the regular meeting held April 10, 2024.

Motion for approval of the minutes made by Campbell; seconded Joy. Minutes approved 7-0: Ball, Campbell, Ebert, Feit, Joy, Rodenburg and Ryman Yost voting "yes". Cruz and Eddins absent.

Steve Henrichsen, Planning Department, 555 S. 10th Street, Lincoln NE introduced the new Planner that is now on part of the Planning Department staff. Tom Cajka retired, and George Wesselhoft replaced him as County Planner. Steve Dush is taking an area of the City of Lincoln. Steve has 30 years of experience throughout the country. Steve will be covering the east and central areas of Lincoln.

Steve Dush, Planning Department, 555 S. 10th Street, Lincoln, NE introduced himself. He is a Nebraska alumnus and native, and happy to serve the City of Lincoln.

Ryman Yost asked the Clerk to call for the Consent Agenda Items.

Clerk stated that item 1.2 – Comprehensive Plan Conformance 24008 will be removed from today’s Consent Agenda for a request for a 4-week deferral.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION

BEFORE PLANNING COMMISSION:

April 24, 2024

Members present: Ball, Campbell, Ebert, Feit, Joy, Rodenburg and Ryman Yost. Cruz and Eddins absent.

The Consent Agenda consisted of the following items: Comprehensive Plan Conformance 24007, Text Amendment 24003, Text Amendment 24004, Special Permit 24010, Change of Zone 24009, and Special Permit 24011.

There were no ex-parte communications disclosed.

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

Item 1.3, Text Amendment 24003, was removed from the consent agenda and placed on public hearing.

Campbell made a motion for approval of the remaining Consent Agenda items; seconded by Joy.

Motion carried 7-0: Ball, Campbell, Ebert, Feit, Joy, Rodenburg and Ryman Yost voting “yes”. Cruz and Eddins absent.

Ryman Yost called for **Requests for Deferral.**

Clerk stated that written communication was received from the applicant requesting a 4-week deferral to May 22, 2024, Planning Commission hearing for item 1.2 – Comprehensive Plan Conformance 24008. Clerk stated that written communication from the applicant requesting a 2-week deferral for item 4.3a – Annexation 24003, 4.3b – Change of Zone 24010 and item 4.3c Special Permit 24012, which will delay public hearing and action to the May 8, 2024, Planning Commission hearing. Clerk also stated that written communication from the applicant was received requesting a 4-week deferral for item 5.1a – Change of Zone 24006 and item 5.1b associated Use Permit 15F, which will delay public hearing and action to the May 22, 2024, Planning Commission hearing.

COMPREHENSIVE PLAN CONFORMANCE 24008

TO REVIEW AS TO CONFORMANCE WITH THE 2050 LINCOLN-LANCASTER COUNTY

COMPREHENSIVE PLAN, A REQUEST TO DECLARE CITY PROPERTY AS SURPLUS, ON PROPERTY GENERALLY LOCATED AT S. 9TH STREET AND J STREET OR 555 S. 9TH STREET.

BEFORE PLANNING COMMISSION:

April 24, 2024

Members present: Ball, Campbell, Ebert, Feit, Joy, Rodenburg and Ryman Yost. Cruz and Eddins absent.

Staff Recommendation: Four-week deferral

Campbell moved to approve the request for deferral to the May 22, 2024, Planning Commission Hearing; seconded by Joy

Motion carried 7-0: Ball, Campbell, Ebert, Feit, Joy, Rodenburg and Ryman Yost voting “yes”. Cruz and Eddins absent.

ANNEXATION 24003

TO ANNEX APPROXIMATELY 29 ACRES, MORE OR LESS, ON PROPERTY GENERALLY LOCATED NORTHWEST OF O STREET AND N 112TH STREET

AND

CHANGE OF ZONE 24010,

OF APPROXIMATELY 31 ACRES FROM AG (AGRICULTURAL DISTRICT) AND R-3 (RESIDENTIAL DISTRICT) TO H-4 (HIGHWAY COMMERCIAL DISTRICT) ON ALL OR PORTIONS OF PROPERTY

GENERALLY LOCATED NORTHWEST OF O STREET AND N 112TH STREET

AND

SPECIAL PERMIT 24012

TO ESTABLISH A PLANNED SERVICE COMMERCIAL PERMIT ON APPROXIMATELY 41 ACRES TO

ALLOW UP TO 418,000 SQUARE FEET OF COMMERCIAL USES, ON ALL OR PORTIONS OF

PROPERTY GENERALLY LOCATED NORTHWEST OF O STREET AND N 112TH STREET.

BEFORE PLANNING COMMISSION:

April 24, 2024

Members present: Ball, Campbell, Ebert, Feit, Joy, Rodenburg and Ryman Yost. Cruz and Eddins absent.

Staff Recommendation: Two-week deferral

Campbell moved to approve the request for deferral to the May 8, 2024,. Planning Commission hearing; seconded by Joy.

Motion carried 7-0: Ball, Campbell, Ebert, Feit, Joy, Rodenburg and Ryman Yost voting “yes”. Cruz and Eddins absent.

CHANGE OF ZONE 24006

FROM O-3 (OFFICE DISTRICT) to B-2 (PLANNED NEIGHBORHOOD COMMERCIAL) WITHIN THE EXISTING SOUTHWOOD CENTER USE PERMIT, ON PROPERTY GENERALLY LOCATED AT 5555 S. 27TH STREET.

AND

**USE PERMIT 15F,
TO AMEND THE EXISTING SOUTHWOOD CENTER USE PERMIT BY REVISING THE LAYOUT OF LOT
2 ON PROPERTY GENERALLY LOCATED AT 5555 S. 27TH STREET. This is *FINAL ACTION*
BEFORE PLANNING COMMISSION:** **April 24, 2024**

Members present: Ball, Campbell, Ebert, Feit, Joy, Rodenburg and Ryman Yost. Cruz and Eddins absent.

Staff Recommendation: Four-week deferral

Campbell moved to approve the request for deferral to the May 22, 2024, Planning Commission Hearing; seconded by Joy

Motion carried 7-0: Ball, Campbell, Ebert, Feit, Joy, Rodenburg and Ryman Yost voting “yes”. Cruz and Eddins absent.

**TEXT AMENDMENT 24003, TO AMEND THE LINCOLN MUNICIPAL CODE 27.52.075 AND
27.53.075 REGARDING FLOOD REGULATIONS FOR EXISTING URBAN AREA AND NEW GROWTH
AREAS, TO CLARIFY THE GRANDFATHERING FOR APPLICATIONS PRIOR TO MARCH 2023.
PUBLIC HEARING:** **April 24, 2024**

Members present: Ball, Campbell, Ebert, Feit, Joy, Rodenburg and Ryman Yost. Cruz and Eddins absent.

Steve Henrichsen stated this item is for cleanup to a previous Text Amendment, which was heard at Planning Commission and City Council in early 2023. Discussion focused on Subdivision and Zoning Ordinances, and how to grandfather types of applications. In the Subdivision Ordinances, there is specific language for that grandfathering. The amendment was effective March 1, 2023, and it became clear that similar grandfathering needed to be done in the Zoning Ordinance. The Text Amendment today is for grandfathering that was in the Subdivision Ordinance, is also in the Zoning Ordinance, and in the letter of map revision in zoning which was revised by Building and Safety to use grandfathered information. Henrichsen stated that Jon Carlson, is here today at the Planning Commission, who has been working with the development community to address questions that have come up and which has been documented in the staff report. This is not meant to change the revisions but to address one aspect of it.

Proponents:

No one approached in support.

Neutral:

No one approached in neutral.

Opposition:

Mike Dennis, 1648 South 3rd Street, came forward and stated in 2020 he started a new warehouse and was informed he had to meet all existing regulations and rules. His surveyor has been on this for about 3 years and said he will have to use the new form. The application was never processed, and is sitting on surveyor's desk, waiting for the new form. Mr. Dennis asks for this item to be delayed. Over three years ago he started this attempt to get through the process. It is one building and 200 feet of industrial land and he would like to get out of floodplain insurance. Mr. Dennis stated that he would like to talk to someone from the City about this.

Henrichsen stated any application made before May 1, 2023, would be under the previous rules. If an application was not made before then are not grandfathered. Henrichsen stated that staff can meet with Mr. Dennis regarding specifics, but this wouldn't change their status. Someone who did floodplain work but didn't do anything with property or got a permit may still have to meet the 2-foot standard. This item is a recommendation from Planning Commission to City Council, so there is time to speak with Mr. Dennis. Henrichsen doesn't think that this Text Amendment changes Mr. Dennis' circumstances at all.

Campbell asked if Mr. Dennis built the building and had the building permit in 2021 this would be grandfathered.

Jon Carlson, Mayor's Office, came forward and stated the building would have been reviewed prior to rules being changed.

Rodenberg stated Mr. Dennis is not concerned about the building, as it is already built. He is concerned about flood insurance.

Ryman Yost stated the flood insurance concern is separate from this Text Amendment issue. This is a recommendation to City Council, which allows time for additional conversation.

Ball asked if the Planning Commission recommendation today is immaterial to the process.

Henrichsen stated that is correct. This addresses Planned Unit Developments, Community Unit Plans, large projects for multiple properties, and specifically those that went forward and had grading plans approved prior to March 1, 2023. We wanted to make sure that the status which was clear in the Subdivision Ordinance is also clear in the Zoning Ordinance. Any individual permits outside of a PUD, UP or CUP-- those would not apply to those at all.

Carlson stated it would apply for projects yet to be reviewed.

Rodenburg asked if there would be two dates of grandfathering.

Henrichsen stated it would be the same date for both: March 1, 2023.

Cambell moved to close the public hearing, seconded by Joy.

Motion carried 7-0: Ball, Campbell, Ebert, Feit, Joy, Rodenburg and Ryman Yost voting “yes”. Cruz and Eddins absent.

TEXT AMENDMENT 24003

ACTION BY PLANNING COMMISSION:

April 24, 2024

Campbell stated Mr. Dennis’ concerns will be addressed by planning staff with him. It’s a different question he has from what we have worked diligently through before March 2023.

Ball stated he agrees with Campbell. Ideally those documents were completed, and it was just a matter of procedural hangup for getting that exemption.

Campbell stated in the process of reviewing floodplain requirements, he is not sure if the property would qualify for being raised past the 1-foot limit, but that is up to staff to discuss with Mr. Dennis.

Campbell moved to approve, seconded by Joy.

Motion carried 7-0: Ball, Campbell, Ebert, Feit, Joy, Rodenburg and Ryman Yost voting “yes”. Cruz and Eddins absent.

COMPREHENSIVE PLAN CONFORMANCE 24006

TO REVIEW AS TO CONFORMANCE WITH THE 2050 LINCOLN LANCASTER COUNTY

COMPREHENSIVE PLAN, THE CITY OF LINCOLN’S CAPITAL IMPROVEMENT PROGRAM (CIP) FOR FY 2024/2024 TO FY 2029/2030

PUBLIC HEARING:

April 24, 2024

Members present: Ball, Campbell, Ebert, Feit, Joy, Rodenburg and Ryman Yost. Cruz and Eddins absent.

Staff Recommendation: In Full or General Conformance with the Comprehensive Plan

There were no ex-parte communications disclosed.

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

Staff Presentation:

Andrew Thierolf, Planning Department, 555 S. 10th Street, Lincoln, NE approached and stated this is a 6-year Capital Improvement Plan. The first two years go into budget and years 3 thru 6 are for planning purposes only. The Capital Improvement Advisory Committee and staff reviewed projects before public review, and the plan can be amended at any time with Planning Commission and City Council review.

The CIP is designated in the City Charter. Last fall, departments submitted proposals and we reviewed them earlier this spring, presented for public review, then PC conformance with comprehensive plan. There are four levels of conformance: in conformance with plan, generally conforms with plan, not in the plan, not in conformance with the plan. Factors used include explicit reference, plan intent, location, timing, project definition and description. All projects proposed in CIP have been found in Conformance or General Conformance of the Comprehensive Plan. There were 229 projects submitted. There are both PDF and web-based options for viewing the CIP, and an interactive map.

Proponents:

No one approached in support.

Neutral:

No one approached in neutral.

Opposition:

No one approached in opposition.

Campbell moved to close the public hearing; seconded by Joy.

Motion carried 7-0: Ball, Campbell, Ebert, Feit, Joy, Rodenburg and Ryman Yost voting “yes”. Cruz and Eddins absent.

COMPREHENSIVE PLAN CONFORMANCE 24006

ACTION BY PLANNING COMMISSION:

April 24, 2024

Campbell moved to approve Comprehensive Plan Conformance 24006; seconded by Joy.

Discussion:

Campbell stated they have laid out a good plan. It is very complete, we have gone through the details, and he is comfortable with what staff has put together.

Rodenburg stated he appreciated being able to dig into details. It is well-processed and thought out.

Feit stated she applauds staff for using GIS. It is helpful for the public.

Ryman Yost stated she appreciates the staff here today and the work being done to enhance our community.

Motion carried 7-0: Ball, Campbell, Ebert, Feit, Joy, Rodenburg and Ryman Yost voting “yes”. Cruz and Eddins absent.

ANNEXATION 23008

TO ANNEX APPROXIMATELY 37.75 ACRES, MORE OR LESS, AND THE ADJACENT N. 70TH STREET RIGHT-OF-WAY ON PROPERTY GENERALLY LOCATED AT THE NORTHWEST CORNER OF N. 70TH STREET AND ARBOR ROAD

AND

CHANGE OF ZONE 23057

FROM AG (AGRICULTURAL DISTRICT) TO I-1 (INDUSTRIAL DISTRICT), TOTALING APPROXIMATELY 34.24 ACRES, MORE OR LESS, ON PROPERTY GENERALLY LOCATED AT THE NORTHWEST CORNER OF N. 70TH STREET AND ARBOR ROAD

AND

PRELIMINARY PLAT 24002

TO PLAT 4 INDUSTRIAL LOTS AND 3 OUTLOTS AS PART OF THE ARBOR ROAD NORTH ADDITION, A PROPOSED INDUSTRIAL SUBDIVISION, ON PROPERTY GENERALLY LOCATED AT THE NORTHWEST CORNER OF N. 70TH STREET AND ARBOR ROAD. THIS IS "FINAL ACTION".

AND

SPECIAL PERMIT 24005

TO ALLOW FOR SOIL MINING/EXCAVATION, ON PROPERTY GENERALLY LOCATED AT THE NORTHWEST CORNER OF N. 70TH STREET AND ARBOR ROAD. THIS IS "FINAL ACTION".

PUBLIC HEARING:

April 24, 2024

Members present: Ball, Campbell, Ebert, Feit, Joy, Rodenburg and Ryman Yost. Cruz and Eddins absent.

<u>Staff Recommendation:</u>	Annexation 23008	Conditional Approval
	Change of Zone 23057	Conditional Approval
	Preliminary Plat 24002	Conditional Approval
	Special Permit 24005	Conditional Approval

There were no ex-parte communications disclosed.

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

Staff Presentation:

Ben Callahan, Planning Department, 555 S. 10th Street, Lincoln, NE came forward and stated the applicant is requesting an annexation that abuts city limits on 3 sides. It is roughly 37 acres. The Change of Zone to I-1 would be 34 acres, not including a private residence that is zoned AG today. One reason for including the home in the annexation is Planning felt there would not be confusion with emergency services and city roads maintenance. They also requested a Special Permit for soil mining and excavation which would go up to 3 years when it would time out, then grade into a Preliminary Plat for future development. The Special Permit has conditions: one concern is with soil mining. They may have to submit a hydrology report and look at the surrounding well that could possibly be damaged. There is an unregistered well. The plan is that it would not be damaged, or would have a surety: the developer would pay for a connection to

city water if there were damage. The Preliminary Plat would be zoned and developed for I-1 uses. The entrances would be off of Arbor Road and 70th Street, which are currently minor arterials. The applicant is working with LTU in a traffic study. Staff put in a condition that the two driveways would connect. North 70th would be in right in, right out only. On the south they are working with LTU for full access.

Rodenberg asked of the surety for the residents and the well, is there a sunset on that if well goes dry in 5-10 years is it still covered, or is there a timeline?

Callahan stated there is no timeline. They can keep their well, if it fails due to the excavation or during that time, that would be the point where the surety picks up, during the excavation period.

Campbell asked why Arbor Road is larger than 70th.

Callahan stated it is not a pullout entrance onto the street. It is just how the entrance is lining up with right of way. You wouldn't be able to exit an entrance on that whole part.

Applicant: Rob Otte 129 N 10th Street, Suite 313 came forward and stated he is the General Counsel of US properties owned by Pacific Empires Inc. as part of a 1031 tax exchange we are representing. They are remote from Nebraska, and we are representing them. Otte mentioned that on the east where the home is located and to the west where the floodway is may be a 40 ft drop. The only issue is the bond/surety for the well. We don't think the mining will affect them at all. The mining is in stages, and we would appreciate a motion to take that out. He thinks we can be responsible to work it out. The surety is not much, \$37,000, but not only an expense but problematic to keep up.

Campbell asked if the applicant has talked to the homeowner?

Otte stated the access to roadway on our property and they talked a few times. They are pretty happy. The well is unregistered, serviced 5-8 years ago, old well, didn't know the condition.

Feit asked the location of the well.

Nate Burnett, REGA 601 Old Cheney, Suites A & B: came forward and stated he talked to Chris Schroeder with the Lincoln-Lancaster County Health Department. They are working with Terracon and looked at sources based on conversations with Health, Lower Platte South, UNL, and Natural Resources, and they could not find anything. Terracon and REGA don't feel there is any impact to the well. If there is an impact with the Preliminary Plat, there is potential to connect to water mains. The permit is for 29 acres, and they are only doing 29 acres at a time, it would not even be within 100 feet of property, so there could be a motion for that, if we are not within 150 feet of the property, that agreement is not necessary. There was a previously approved mining permit on this property in 2007. As part of the previous permit there was disturbance on West Side of creek. Regarding the Preliminary Plat, it would be four lots, one large one, adjacent utilities, a 16-inch water main on the north side of Arbor Road, and sanitary access as well.

Feit stated there are 20 acres starting on the west side to mine. Will the applicant need to submit another 3-year Special Permit to continue?

Burnett stated it's possible, 20,000 yards is estimated for what can be mined on this site, so the goal is to use it on their own projects and existing sites on an as-needed basis. We could put a surety up, but we have no idea when their projects are going to go and when the dirt needs to be mined. He assumes they will be back in three years to amend the Special Permit.

Proponents:

No one approached in support.

Neutral:

No one approached in neutral.

Opposition:

No one approached in opposition.

Staff Questions:

Feit asked if the Commission were to waive the surety, can it be added later if they come back with Special Permit or Plat changes?

Callahan stated it could be added later but the planning support for this project included the surety.

Joy asked if the permit for previous mining was for 2004.

Callahan stated the previous permit was for a larger area, this has not been mined.

Chris Schroeder stated he does not feel comfortable removing the surety as a condition of approval. If there is no impact, they won't need to use the surety.

Ryman Yost asked, as long as the well continues to operate they can continue to use it, even though they've been annexed, but they eventually can, but not be required to, connect to the city.

Schroeder confirmed.

Feit asked how it can be proved that mining did or did not affect the well.

Schroeder stated it would be a reduction in well production or quantity. The USGS recommendation is a minimum of 5 gallons a day, but this is a question for a hydrologist or geologist. It could be a shallower well, and they can't say for certain cannot be impacted.

Campbell asked if that likely, being at the top of the hill.

Schroeder stated it's hard to say.

Joy asked if the surety can be removed later throughout the process, such as when producing the PUD?

Schroeder stated he would have to discuss with staff about the timing and to when to be sure there would be no impacts from the mining.

Rodenburg asked if this would also address water quality.

Schroeder confirmed.

Campbell asked which proposal the surety is tied to.

Callahan stated it is the Special Permit for mining.

Ebert stated if this is approved as is, there is still opportunity for the applicant to show that the well will not be compromised.

Applicant Rebuttal

Otte stated it is difficult to talk about an unregistered well that hasn't been investigated. We can be responsible over time. It's a big project, and we are happy to work with the Health Department to establish when and where a water line can be added. This surety can lead to dispute. If there is mining when the well goes dry, how do we know it was due to mining? It is important in terms of the neighbor having a bond on file whether working with the Health Department to put together an agreement to make sure they have water.

Burnett stated they are okay with 1.2 to revise to the satisfaction of the Health Department and work with Health, as opposed to 1.12 where there's a specific dollar amount required.

Henrichsen stated negation on a final action item is not appropriate, applicants are to let staff know 24 hours in advance, otherwise the recommendation is to defer for two weeks. Surety is a normal part of a soil mining permit process.

Otte stated that, given the issue, he would hate to delay it. There is confusion between the two provisions. They don't dovetail cleanly. We suggest that be changed and we would accept it being continued two weeks.

Rodenberg asked which they would prefer.

Burnett stated they request to defer the Special Permit.

Campbell stated it is logical to postpone this item so the applicant can discuss further with the Planning Department.

Ebert stated as drafted, it's clear to prove to the Health Department the effects to the well. She is unsure of what we are gaining with the deferral but will not be against it.

Campbell moved to close the public hearing; seconded by Joy.

Motion carried 7-0: Ball, Campbell, Ebert, Feit, Joy, Rodenburg and Ryman Yost voting "yes". Cruz and Eddins absent.

ANNEXATION 23008

ACTION BY PLANNING COMMISSION:

April 24, 2024

Campbell moved to approve Annexation 23008; seconded by Joy.

Motion carried 7-0: Ball, Campbell, Ebert, Feit, Joy, Rodenburg and Ryman Yost voting "yes". Cruz and Eddins absent.

CHANGE OF ZONE 23057

ACTION BY PLANNING COMMISSION:

April 24, 2024

Campbell moved to approve Change of Zone 23057; seconded by Joy.

Motion carried 7-0: Ball, Campbell, Ebert, Feit, Joy, Rodenburg and Ryman Yost voting "yes". Cruz and Eddins absent.

PRELIMINARY PLAT 24002

ACTION BY PLANNING COMMISSION:

April 24, 2024

Campbell moved to approve Preliminary Plat 24002; seconded by Joy.

Motion carried 7-0: Ball, Campbell, Ebert, Feit, Joy, Rodenburg and Ryman Yost voting "yes". Cruz and Eddins absent.

SPECIAL PERMIT 24005

ACTION BY PLANNING COMMISSION:

April 24, 2024

Campbell moved to defer Special Permit 24005 to the May 8, 2024, Planning Commission Hearing for further discussion with applicant and staff; seconded by Joy.

Motion carried 7-0: Ball, Campbell, Ebert, Feit, Joy, Rodenburg and Ryman Yost voting "yes". Cruz and Eddins absent.

Ryman Yost asked if anyone wishing to speak on an item not on the agenda, may do so.

Campbell moved to adjourn the Planning Commission meeting of April 24, 2024; seconded by Joy.

Motion to adjourn carried 7-0: Ball, Campbell, Ebert, Feit, Joy, Rodenburg and Ryman Yost voting "yes". Cruz and Eddins absent.

There being no further business the meeting was adjourned at 2:14 p.m.