

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, September 4, 2013, 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: Cathy Beecham, Michael Cornelius, Tracy Corr, Chris Hove, Jeanelle Lust, Dennis Scheer, Lynn Sunderman and Ken Weber; Marvin Krout, Steve Henrichsen, David Cary, Brian Will, Tom Cajka, Christy Eichorn, Jean Preister and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

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

Lust requested a motion approving the minutes for the regular meeting held August 21, 2013. Hove moved approval, seconded by Weber and carried 7-0: Beecham, Cornelius, Corr, Hove, Lust, Scheer and Weber voting 'yes'; Sunderman abstained.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION

BEFORE PLANNING COMMISSION:

September 4, 2013

Members present: Beecham, Cornelius, Corr, Hove, Lust, Scheer, Sunderman and Weber.

The Consent Agenda consisted of the following items: **ANNEXATION NO. 13003, CHANGE OF ZONE NO. 13016, SPECIAL PERMIT NO. 04013A, SPECIAL PERMIT NO. 13042 and WAIVER NO. 13008.**

There were no ex parte communications disclosed.

Item No. 1.2, Special Permit No. 04013A, and Item No. 1.4, Waiver No. 13008, were removed from the Consent Agenda and scheduled for separate public hearing.

Beecham moved approval of the remaining Consent Agenda, seconded by Hove and carried 8-0: Beecham, Cornelius, Corr, Hove, Lust, Scheer, Sunderman and Weber voting 'yes'.

Note: This is final action on Special Permit No. 13042, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days.

**SPECIAL PERMIT NO. 04013A,
TO EXPAND THE EXISTING
RESIDENTIAL HEALTH CARE FACILITY,
ON PROPERTY GENERALLY LOCATED AT
SOUTH 33RD STREET AND YANKEE HILL ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

September 4, 2013

Members present: Corr, Beecham, Weber, Scheer, Hove, Sunderman, Cornelius and Lust.

There were no ex parte communications disclosed.

Staff recommendation: Conditional approval.

This application was removed from the Consent Agenda at the request of Commissioner Beecham.

Staff presentation: **Christy Eichorn of Planning staff** advised that the existing facility already has a special permit for a residential health care facility. The proposed change is for an addition on the westernmost side of the facility. The existing site plan that was approved with the Clark Jeary facility had a building envelope inside of the setbacks. When researched, the staff could find no justification for both a building envelope and setbacks. In analyzing this application, there was a 30' rear yard setback, which is normally required in the R-3 District, and some existing landscaping along the western side. The expansion for a 13,000 sq. ft. addition to allow more residents within the facility seemed to fit in with the neighborhood. It is residential in character and does not encroach into setbacks.

Beecham stated that when she drove by the site, she was struck by the topographical landscape. It looks like the back yards of the little condo's that line Tularosa Lane are very tiny and steep, and then the health care facility is on the higher level. Did we look at the runoff impact by building close to that steep elevation? And if they are already at the roof line of the condo's, is building higher than that going to impact them negatively in terms of light in the back yard, etc.? Eichorn responded that staff and the applicant did talk about whether the grading plan needed to be revised and the applicant was asked whether there is a retaining wall required. It was determined that a retaining wall would not be required. To mitigate the impact of building closer, the removal of the landscaping was discussed. At the time of building permit, the staff will review to make sure they meet the same screening requirement that they have there today. In this case, there is not a height requirement for the screening. Beecham wants to avoid the potential for the steep back yard and just a little slice of sky. Eichorn stated that the staff and applicant did talk about mitigating the impacts by adding more or taller trees.

Proponents

1. **Brad Marshall of Olsson Associates** appeared on behalf of **Clark Jeary** as the applicant. He advised that the addition will have approximately 14 single units and two to four double units – a little less than 20 additional units and about 13,000 sq. ft. With respect to the drainage question, Marshall pointed out that the property to the south mostly drains around to the west and to the north. There are several inlets and pipes carrying all of this drainage. During the design phase, the applicant will pay close attention to make sure everything is captured on the site and not taken down the slope. There are slopes and berms that protect that drainage now. They have not gotten into the details for the expansion because this is the first step. They have looked at the slopes and anticipate that the building will be closer to the edge, but not right at the edge of the berm. It probably will be visible for those residents but the landscaping requirements will be met. He believes the applicant would consider some more mature trees to help block the new addition.

Beecham inquired whether there will be glass on that side of the building or just a brick wall. Marshall did not have current elevations of the proposed expansion but he believes it will be much like the existing building and they anticipate some glass. The west facing exterior will be the additional units and livable spaces so there will be the typical window dressing on the west for each unit.

There was no testimony in opposition.

Staff questions

Beecham inquired whether the residents that live along there were contacted. Eichorn stated that the Planning Department notifies property owners within 200', and since the condo's are adjacent, she believes they would all have been notified. Also, a zoning action sign was placed on the corner on top of the berm. The Planning Department has not received any comments or phone calls.

Beecham encouraged that consideration be given to the screening and to soften it as much as possible with the landscaping.

ACTION BY PLANNING COMMISSION:

September 4, 2013

Beecham moved to approve the staff recommendation of conditional approval, seconded by Hove.

Lust believes this appears to be a good expansion for residential care services that are needed in various neighborhoods.

Motion for conditional approval carried 8-0: Corr, Beecham, Weber, Scheer, Hove, Sunderman, Cornelius and Lust voting 'yes'. This is final action, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days.

WAIVER NO. 13008,
TO WAIVE THE REQUIREMENT FOR A
PEDESTRIAN EASEMENT
FROM N.W. 8TH STREET TO HOMELAND PLACE.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

September 4, 2013

Members present: Corr, Beecham, Weber, Scheer, Hove, Sunderman, Cornelius and Lust.

There were no ex parte communications disclosed.

Staff recommendation: Approval.

This application was removed from the Consent Agenda at the request of Commissioner Corr.

Staff presentation: **Tom Cajka of Planning staff** explained this is a request to waive a pedestrian easement located at Homeland Place and N.W. 8th Street. The sidewalk is in place. The homeowners association and other property owners have requested this waiver due to concerns about the pedestrian easement and activities that may go on in this area. One of the main reasons is the easement is not a straight shot and you cannot see from one end to the other. The residents are concerned about illegal activity going on and a lot of the people in the neighborhood stated that they do not like to use this sidewalk because of the sight difficulties. Staff typically supports pedestrian easements for connections and shorter routes when there are block lengths in excess of 1,000 ft. This easement does provide a shorter route over to a large open area, but in this case, with the concerns from the residents and the possibility of illegal activity on the sidewalk, if true (the Police indicated that they have had no calls within the last year), the staff supports this waiver. If the residents perceive it as a problem and unsafe path, then it is not going to be used.

Corr believes the neighborhood did a good job of soliciting a lot of signatures, but her concern is that the owner of 2861 Homeland Place, which is adjacent to the sidewalk, is not on the signature pages at all. She also noticed that the signature for 2750 N.W. 8th is not the property owner. Do those neighbors know that this is happening? It appears that the original letter might have been from the owners of 2861 Homeland Place, but there is no signature. Cajka believes it is the owner of 2861 Homeland Place that wrote the letter, so he believes that owner requested the waiver, along with the homeowners association. Staff did not match the names on the petition to the addresses. The petition is a little over a year old. It was confirmed that the Planning Department sent notice to all property owners within 200' as well as all of the individuals who signed the petition. Cajka clarified that the letters are mailed to the property owners, not tenants.

Beecham asked how the sidewalk would be closed. Cajka indicated that it would be up to the property owners. They could fence off the rest of the area adjacent to their property.

Corr wondered what happens if one side does something and the other side doesn't. Cajka observed that the sidewalk is on private property and there would be no easement to the city. Corr thinks that would cause more of a safety concern. Cajka pointed out that the two houses with the sidewalk on their property do not want the sidewalk. He would think they would put a fence across there, or they could even tear out the sidewalk. The property owners on the south own the land upon which the sidewalk is constructed.

Lust suggested that perhaps the distinguishing factor is the angle of the sidewalk because, generally, the staff and the Commission are is not supportive of these waivers. Cajka concurred. It is unusual when it does not go straight through. Lust wondered whether that is due to poor design of the easement or just the way it got built. Cajka believes it is due to the lot layout. The easements are usually along the side lot line. When you look at the lot configuration it is not a straight shot in this case. The elementary school is some distance to the south. This easement does not provide a shortcut to the school.

Proponents

1. Val Nickell, 2861 Homeland Place, testified in support. She wrote the original letter requesting this waiver. Her name is not on the petition because she signed the letter attached to the petition. The reason the property owner of 2750 N.W. 8th is not on the petition is because the owner is a non-English speaking person so the English speaking person who lives there signed the petition. There are three generations that live in that house.

Nickell stated that it is her intention to close off the sidewalk at the building end so that no one could go down there. She did not know whether they would tear down their portion of the fence from the point of closure to the center. Nickell is not planning to remove the sidewalk, and she does not need the land. They just do not want the danger that is going on in there. The kids sometimes use it as a cut-through, but if they went to Glacier Trail and then over, it is about the same distance. She is planning to extend her 6' privacy fence across the sidewalk. There would not be any short fence anywhere that could be scaled. There have been problems with snow removal and risk of someone falling on the ice when it melts. There has also been some graffiti issues. Maintenance is a problem with the trash, broken glass, weeds and snow and ice removal.

As far as the Police not having a record of any calls, Nickell stated that her daughter's car got broken into less than a year ago and the Police did come out. She believes the Police have been there a couple of times. In fact, they were called out just last week to check on a suspicious person on the sidewalk. Nickell suggested that the sidewalk provides such a convenient escape route for anyone wanting to break into cars or garages. Even if the cop shines his light down the sidewalk, he can't see around the curve.

There was no testimony in opposition.

Staff questions

Cornelius wondered whether the staff has gained some knowledge from this situation. Is this something we will look out for in the future? Cajka agreed that the staff will need to keep this in mind in the future when looking at pedestrian easements. There is nothing that says the easement has to be right along the property line.

ACTION BY PLANNING COMMISSION:

September 4, 2013

Hove moved to approve the staff recommendation of conditional approval, seconded by Beecham.

Corr appreciates the applicant being available and appreciates them being good stewards of a public easement. She wanted to make sure that all property owners are aware of the situation and that we didn't create a dead-end. She will support the application.

Cornelius appreciates the problems that the neighbors were talking about. But he also saw the conditions that were created unintentionally by the plat and subsequent occupation of the area. We have a very narrow sidewalk, and then we build 6' privacy fences on either side making a corridor that is only 5' wide. We need to think about this as we move forward with final plats and pedestrian easements so that we don't end up with problems like this.

Lust commented that she is normally a big advocate for pedestrian easements and there would be no way she would support removal or closing off pedestrian access in a neighborhood; however, in this case, with the blind spot we have vandalism and various unacceptable things so she will support the application.

Motion for approval carried 8-0: Corr, Beecham, Weber, Scheer, Hove, Sunderman, Cornelius and Lust voting 'yes'. This is final action, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days.

SPECIAL PERMIT NO. 13041

FOR SOIL EXCAVATION

ON PROPERTY GENERALLY LOCATED

SOUTH OF VINE STREET, 1/2 MILE WEST OF N.W. 27TH STREET.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

September 4, 2013

Members present: Corr, Beecham, Weber, Scheer, Hove, Sunderman, Cornelius and Lust.

There were no ex parte communications disclosed.

Staff recommendation: Conditional Approval.

Staff presentation: **Tom Cajka of Planning staff** pointed out that there was a condition of approval added to the resolution that was not in the staff report. It was in the analysis and on the County Engineer's memo. A condition has been added which states:

Access and use of this excavation permit is only via West Vine Street to N.W. 27th Street to West O Street. Use of N.W. 40th Street and West Holdrege Street is not permitted for this permit.

Cajka then explained that this is an application for a soil excavation permit on West Vine Street between N.W. 27th Street and N.W. 40th Street – on the south side of Vine a little south of the airport. Interstate 80 is on the south edge. This permit would be for three years for soil excavation. The applicant will be required to enter into a road maintenance agreement with Lancaster County for West Vine Street and N.W. 27th Street. The applicant would be required to have dust control on the streets. N.W. 27th and West Vine are both gravel streets. The applicant is also required to maintain proper erosion control and drainage; post a warning sign on West Vine of trucks entering; and to limit the operation to daylight hours, Monday through Saturday. The Health Department did not oppose this application but noted that the applicant would be required to keep the dust controlled. Screening can be required for soil mining permits, but in this case, it is not being required due to the berms along Interstate 80. There was another soil mining permit approved near this area previously and the screening was waived.

Lust requested examples of dust control measures. Cajka suggested that they use water trucks to water down the roads to keep the dust down.

Proponents

1. Nate Burnett, REGA Engineering, appeared on behalf of the applicant, **Gana Trucking**. This is for soil excavation of over 200,000 cubic yards of desired soil that is to be mined. The reason for this excavation site is because of the type of soil which is highly desired for building fill. All state and federal as well as city requirements will be followed. In particular, the dust will be controlled with it being so close to the airport and Interstate 80. The applicant trucking company has extensive experience with these types of projects and has communicated that they are aware of the requirements and will meet the requirements, whether it is water or some calcium chloride to control the dust. The drainage has been studied as well and they will take the necessary steps to mitigate excessive runoff onto neighboring property owners. They did talk with the property owner to the east. Berms have been created as well as a double-silt fence line to mitigate any runoff to the east or west. Temporary seeding will be placed at the end of the grading operations so that there is vegetation and not excess of sediment runoff. There is a berm on the south neighboring I-80 and a three to four foot berm on the north. The topsoil will be stripped. The applicant had another project similar to this by Lancaster Event Center

where there were concerns about trucking and the potential hazard to traffic. To Burnett's knowledge, there have been no reports that the excavation has caused a problem. He sees the similar situation here by using N.W. 27th onto West Vine Street. The applicant agrees with the conditions of approval, including the additional condition included in the resolution today.

Opposition

1. Noel Chadd, 3335 North 13th Street, home builder and contractor for over 50 years, testified in opposition. He received an excavation special permit in March 2013, an extension of a continuous mining permit which has been in operation next to this property for 20 years. He has all of the Antelope Creek dirt – about 300,000 cubic yards – that still has to be removed. His objection is the fact that to give another permit next to him will only kill the operation that has been there for 20 years. He was hoping to wind his permit down. Gana Trucking is also his contractor. He does not see how they will haul off his property and then off of the applicant's property to accomplish the same thing. The owner of the subject property previously objected to removing this dirt and now he wishes to remove it to collect the money.

Chadd requested that this permit be denied until the end of his existing permit, which is also a three-year permit starting in March, 2013. At the end of that, he does not care. He does not believe this permit should be approved because it will kill his project. He was required to berm across the visual sight of the Interstate. He just spent \$4500 to rock the road on West Vine Street to control the dust. Unless we need a dirt pit on every corner, then he is objecting. There is no need until they extinguish the dirt on his site.

Cornelius inquired whether the problem is that the supply of fill dirt is enough. Chadd believes there is more than enough supply now. Land Construction was one of his haulers, which opened up another large pit at the Plamor Ballroom on West O with 500,000 yards.

Hove wondered why Chadd has not discussed this with Gana Trucking. Chadd stated that he assumes Gana will still haul from him, although he does not have a contract, only verbal agreements. Gana will shop wherever he can shop. Gana did not buy the land – they will just contract to haul the dirt. Chadd excavates, backfills, and puts black dirt back into farm ground. Chadd does not care if Gana does the dirt, but Chadd wants his permit to expire before another one is issued.

Staff questions

If this permit is granted, Cornelius inquired whether all of the usual requirements and regulations would apply. In other words, there are no special waivers being requested. Cajka agreed. This permit will have the same regulations as the Chadd permit. Chadd received approval for an extension in March of this year.

Weber inquired whether the proximity of pits is a consideration of staff when determining approval. Cajka stated that the staff considers the application from a land use standpoint – not a free market competition kind of thing. Is this area suitable for soil excavation and what is the impact on the surrounding area? Staff is taking the position that this application area, with the airport and agricultural, industrial and highway commercial zoning close by, is an appropriate location for this land use.

Beecham wondered whether staff considers the impact of or on the nearby mining permit. Cajka stated, “no”. For example, if a day care wanted to open next door to another day care, it would be supported if it met all the zoning requirements.

Cornelius confirmed that the question before the Commission is not the competitive impact but rather the land use impact. Is the land use impact magnified by having two soil mining operations in a close environment? Cajka does not believe so. They all have to meet the requirements. They have to post a bond that guarantees reclamation of the land at the end of the permit. They must either request an extension or put the land back, reseed it and make sure it is back to its previous condition.

Beecham asked staff to address Vine Street being regraveled. Is that part of putting things back where they were? Cajka did not know for sure, but assumes it has something to do with the road maintenance agreement with the County. Chadd had the same condition on his permit.

Sunderman confirmed that there is a requirement for seeding during the permit if they are not mining. Cajka concurred. They also have to start their excavation within a certain period of time. Sunderman also sought confirmation that it is not the case where this applicant will have this entire lot torn up at the same time. It is a process where they work through it, reseeding as they go on. Cajka agreed, but the permit does cover the whole 22 acres.

Response by the Applicant

Burnett confirmed that there are both temporary seeding specifications as well as permanent seeding specifications listed on the plan. Once mining activities are finished for the year, they would seed for the winter so that there is no sediment that is exposed for the winter. Once part of the land is finished, then they would maintain the erosion and seed it. In speaking with Gana Trucking, it is his understanding that they are not going to pursue further excavation from the land owned by Mr. Chadd. The clay that they desire and need has been mined on the Chadd property, thus they would like to use the proposed excavation site for the clay that has been desired for the projects around Lincoln for which they will have use.

Burnett also clarified that the applicant for this special permit is Gana Trucking. C&R Operations owns the property and they have given Gana Trucking permission to pursue

this. They cannot submit an application without the owner's signature. Whatever the past, the owner is now in favor of this application to let Gana excavate their land. Gana would have a per cubic foot agreement with the property owner.

Hove confirmed that Gana does not intend to take any more dirt from the Chadd property. That is Burnett's understanding. The applicant intends to cease operations on Chadd's property. It is not any more expensive. It is his understanding that the clay that is desired has been excavated on the Chadd site, so they are moving to another site for the clay that is desired.

Scheer suggested that Burnett is implying that the property of the soil on the Chadd property is different than the clay on this application property. Burnett agreed. He believes that Gana has excavated all of that type of soil available on the Chadd property.

ACTION BY PLANNING COMMISSION:

September 4, 2013

Cornelius moved to approve the staff recommendation of conditional approval, including the new condition added by staff today, seconded by Sunderman.

Cornelius reiterated that the Planning Commission is asked to review this from the perspective of land use and we heard and have seen in the staff report that this area is appropriate for this particular use. The standard regulations are in place; screening is provided by existing berms; and there are requirements for replacing the topsoil and reseeded according to a schedule. We are not asked to get involved on the level of business and competition. For example, if a home builder wanted to build houses and someone said there are plenty of houses in Lincoln, we would not use that as a consideration. Another example would be CVS and Walgreens across from each other. In reviewing the staff report, Cornelius believes the land is suitable for this use.

Sunderman commented that the Planning Commission is not responsible for marketability of the product or the land – we are dealing with the land use. By everything we have seen, this land is appropriate for a borrow pit. Several years ago, this whole process was standardized, and one of the reasons was to add the requirement for a performance bond to put the money up-front to put the land back to the way it was in case there is not a market there. Sunderman believes is an appropriate land use.

Lust stated that she will support the motion. The Planning Commission does not get into market forces and how that is controlled. We are here to decide land use issues and in this case, she believes the land use is appropriate.

Motion for conditional approval, as amended, carried 8-0: Corr, Beecham, Weber, Scheer, Hove, Sunderman, Cornelius and Lust voting 'yes'. This is final action, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days..

There being no further business, the meeting was adjourned at 2:05 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on September 18, 2013.

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