

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, October 1, 2014, 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, Maja V. Harris, Lynn Sunderman, Chris Hove and Jeanelle Lust (Ken Weber, Tracy Corr and Dennis Scheer absent); Marvin Krout, Steve Henrichsen, Paul Barnes, Sara Hartzell, Jean Preister and Amy Huffman 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 September 17, 2014. Cornelius moved approval, seconded by Beecham and carried 5-0: Sunderman, Harris, Beecham, Cornelius and Lust voting 'yes'; Hove abstained (Scheer, Corr and Weber absent).

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

October 1, 2014

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

The Consent Agenda consisted of the following items: **ANNEXATION NO. 14005 and CHANGE OF ZONE NO. 14026.**

There were no ex parte communications disclosed.

Cornelius moved approval of the Consent Agenda, seconded by Hove and carried 6-0: Sunderman, Harris, Beecham, Cornelius, Hove and Lust voting 'yes'; Weber, Scheer and Corr absent.

**COMPREHENSIVE PLAN CONFORMANCE NO. 14019,
AMENDMENT TO THE LINCOLN CENTER REDEVELOPMENT
PLAN, TO ADD THE “A&P II REDEVELOPMENT PROJECT”,
GENERALLY LOCATED AT SOUTH 14TH STREET
AND LINCOLN MALL.**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

October 1, 2014

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

Staff recommendation: A finding of conformance with the 2040 Comprehensive Plan.

There were no ex parte communications disclosed.

Staff presentation: **Ernie Castillo of the Urban Development Department** explained that this is the first step in the redevelopment process. The A & P (Ambassador and President) proposal consists of an extensive renovation to the existing two buildings, currently consisting of 55 efficiency and 29 one-bedroom units. These buildings will be renovated to include 30 efficiency and 41 one-bedroom affordable units. The tax increment financing (TIF) eligible expenses include an energy efficient HVAC system, energy efficient windows (while still preserving the historic elements of the building), and some improvements to the courtyard. The courtyard is in between the two buildings.

Hove inquired why the redevelopment planning goes to the south side of Lincoln Mall. Castillo explained that on Downtown projects, they generally include all of the rights-of-way abutting or adjacent to the project area.

Beecham inquired whether this project will go back to the NCEC (Nebraska Capitol Environs Commission) again. Castillo stated that as far as he knows, it is not currently scheduled to go back to NCEC.

Proponents

1. Andrew Willis, of the Cline Williams Law Firm, 233 South 13th Street, Suite 1900, appeared on behalf of the developer of this project. Essentially, this is a rehabilitation and remodeling of the Ambassador and President buildings. It includes the internal design renovation and remodel of the units to a larger, more updated 71 units, including energy efficient HVAC, the restoration of the historical facades, and the rehabilitation and reconstruction of the courtyard to make it more in line with historical buildings, including some additional updating and suggestions made by the NCEC.

Willis then indicated that the goal is not to change much of the exterior other than damaged areas. The replication of the historical awning and the courtyard changes which include some green space, a fence and gated areas were recommendations from the NCEC and will be implemented.

Lust noted that the Planning Commission decision today is whether this project conforms with the Comprehensive Plan, and she asked the applicant to indicate the items of conformance. Willis suggested that it is going to be a reuse of the area and renovation. It is affordable housing being brought into the Downtown area. It is preserving safe and affordable housing opportunities and historical preservation in the area of the Capitol.

Beecham noted that this project is just a couple of blocks from an elementary school and she wondered why these are going to only be one-bedroom and efficiency units. Willis explained that this project represents a change from very small efficiencies to a more typical one-bedroom unit. He did not know why they did not include any 2-bedroom units.

Hove inquired as to the current clientele in the buildings. Willis stated that it is and will continue to be low income housing. There will be some tenant relocation involved during construction.

Support

1. **Paula Rhian of Excel Development Group**, 8551 Lexington Avenue, the developer of the project, appeared and stated that they have been working with the owner of the buildings. The owner feels very strongly about the clientele that they support, and they are extremely low income. She advised that there is a service coordinator and a food pantry on-site. The owner wishes to continue to serve this very vulnerable population. This owner is interested in being sensitive to the historic nature while insuring that the buildings will be viable for the next 50 years.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION

October 1, 2014

Beecham moved to approve a finding of conformance with the Comprehensive Plan, seconded by Hove.

Beecham thinks this is a good project and she is very happy that the historic integrity will remain.

Motion carried 6-0: Sunderman, Harris, Beecham, Cornelius, Hove and Lust voting 'yes; Weber, Scheer and Corr absent. This is a recommendation to the City Council.

COUNTY TEXT AMENDMENT NO. 14012;
CITY TEXT AMENDMENT NO. 14013;
and
PRE-EXISTING SPECIAL PERMIT NO. 40A,
FOR SOIL EXCAVATION AND STONE MILLING
ON PROPERTY GENERALLY LOCATED
AT SOUTH 54TH STREET AND WITTSTRUCK ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

October 1, 2014

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

Staff recommendation: Approval of the text amendments and conditional approval of the pre-existing special permit, with amendments.

There were no ex parte communications disclosed.

Staff presentation: **Sara Hartzell of Planning staff** first reviewed the proposed text amendments to the County Zoning Resolution and Title 27 of the Lincoln Municipal Code (the Zoning Ordinance).

Prior to the 1979 update, excavation was an allowed use in both the city and the county. No special or conditional use permit was required in the AG district and none of the county districts had excavation uses. You could excavate, process, and store materials or minerals that were mined from any portion within the district. In 1979, mining in the county shows up in the AG district, and in the city jurisdiction it shows up in several other districts under various names and terms, i.e., mining, excavation of soil, rock crusher, stone mills, etc. In 2009, there was a citizens group brought together to review these uses because there had been concern about road projects and soil mines opening up with insufficient controls for closing. The task force came up with language that is very similar in the city and county. The city collapsed some of the various terms into a single special permit, now called "excavation and stone milling."

Hartzell then explained that these two text amendments are basically for clarification purposes. "Stone milling" is not defined in the code and it is not even described in the special permit section. It means cutting, grinding, and processing materials that are mined from the earth in some way. One of the changes in the text amendments is to actually put in a description of stone milling as, "crushing, cutting, grinding or otherwise processing of minerals when associated with an excavation operation".

The issue is that stone milling could mean rock crushing, and if it is allowed as a separate special use, it is possible that we could have a rock crusher on some property with no connection to the use of the property. By clarifying that stone milling is supposed to be

associated with the excavation permit, we have the nexus of uses, and we make sure that it goes through the same evaluation as the excavation permit. These amendments provide that stone milling would be associated with and accessory to the excavation special permit.

Hartzell further explained that a property that was in a particular use prior to the change in the code is granted a “pre-existing” special permit. In this case, the property was being mined prior to a mine needing a special permit. There are now conditions written into the process and code for excavation permits. On a pre-existing special permit, sometimes those conditions do not apply or it may not be necessary to require those conditions. For example, Hartzell referred to the separation requirements for alcohol sales. In this case, the proposed text amendments recommend that a single sentence be added to clarify that the lengthy conditions for mining permits or excavation permits may not always apply to a pre-existing special permit, i.e. “Not all of the conditions will apply to pre-existing, long-term excavation sites.” Hartzell indicated that this is the practice that has been followed for quite some time.

Lust pondered that not all of the conditions referred to in the code will apply to the pre-existing, long-term excavation sites. She wondered whether some of them will apply. Hartzell explained that whatever conditions are reasonable and can be met will be applied to the pre-existing, long-term special permits. For example, the condition that an excavation site be closed within three years would not apply in this case.

Lust wondered who has the discretion on requiring the conditions. Hartzell stated that each application would be evaluated on a case-by-case basis as it comes forward. The staff would make the recommendation and the Planning Commission makes the decision.

Harris inquired whether “pre-existing” means before 2009. Hartzell responded that some conditions did change in 2009, so if it was a legal use in 2009, then yes. In this case, however, this use was pre-existing prior to the requirement for a special permit at all.

Beecham questioned the broadness of the language regarding the conditions not having to be met. Hartzell again explained that this would apply only to pre-existing uses. For example, if a legal use that has been in existence becomes a specially permitted use, then it is a special permit, even though the new conditions were written subsequent to the existence of the pre-existing special permit.

Hove inquired how the conditions that apply and those that do not apply are documented. Hartzell stated that the conditions that do apply would be in the resolution, on the site plan and in the notes on the site plan; however, the conditions which do not apply are not normally listed but may be included in the analysis in the staff report.

Lust still does not understand what this language adds to the situation. She wondered if it is even necessary, i.e. what does this language do that we cannot already do? Hartzell suggested that it is just formalizing that statement, which is not formalized in all the other special permit situations.

Beecham wondered whether the Commission could choose to waive the conditions that do not apply. Hartzell pointed out that the Planning Commission already has the ability to say what conditions are not applicable and may not be able to be met. It would be on a case-by-case basis, but it would not require any waivers.

Cornelius also suggested that if this language does not appear in all special permit situations, maybe the language is not necessary. To clarify, hypothetically, Cornelius observed that there exists a stone milling operation or soil mine or whatever, which existed before any kind of requirement for special permit. Regardless of whether or not it meets the lengthy conditions, once the requirement for special permit is put in place, it is assumed to have a special permit. All we are saying is that that assumption is made regardless of whether or not all of the requirements are met.

Lust then wondered why the language is only being added in this particular situation. Doesn't that imply that those other pre-existing special permits are going to be treated somehow differently? **Marvin Krout, Director of Planning**, approached and suggested that the pre-existing special permit is not the question. The real question is what authority the Planning Commission has when it comes to conditions. There are some, e.g. alcohol sales, where the Planning Commission has no discretion to change the conditions, such as the 100' rule. There are others that specifically state that only the City Council can waive or modify those conditions, such as reducing the front yard setback in a residential district for a parking lot. Then there are others where the ordinance provides that the Planning Commission can waive or modify the conditions. The purpose here is to clarify that this is a special permit where the Planning Commission has authority to waive or modify the conditions. The conditions were drafted to deal with the soil mining issue and contemplated the rock and stone excavation. Here we are saying that the standards that were drafted mainly for soil mining do not all necessarily apply to this other kind of excavation operation. The Planning Commission has the flexibility on a case-by-case basis to make modifications to those conditions.

Lust wondered whether the language only applies to the stone milling permit. Krout advised that it would apply to a pre-existing special permit for soil excavation, including the stone milling.

Beecham stated that she is still uncomfortable not specifically stating that it is at the discretion of the Planning Commission. It just seems very broad. If we are clarifying that the Planning Commission has the ability to waive or modify, perhaps that is the wording that should be used. Krout explained that there are very few pre-existing special permits in the county. We do have other special permit provisions where the Planning Commission

has that kind of flexibility. Krout also pointed out that the Planning Commission approves the special permit subject to appeal to the City Council or County Board.

Lust was still not convinced that the language is necessary because she believes the Planning Commission already has the authority to waive conditions to pre-existing special permits. Krout clarified that the Planning Commission does not always have that authority.

Harris asked staff to explain why stone milling is being made an accessory use. Hartzell explained that the original language talks about the mining and processing of materials. It has always been implied that those pieces go together as a single use, i.e. mining and processing. With this amendment, we are making sure that it is clear that if there is some kind of stone milling operation involved, that it is associated with a mining operation. Harris inquired if there are existing stone milling operations that are not connected to an excavation permit. Hartzell replied that there are a couple of rock crusher permits in the industrial districts, and there are temporary rock crushers associated with demolition projects. In the AG district in the county, there are not any free-standing rock crusher uses. Harris asked if existing rock crushers would be considered pre-existing permits. Hartzell replied that they would be, ~~However,~~ if they had been in operation prior to 1979, they would be pre-existing. (****As amended, at the request of Commissioner Harris****)

Hartzell then addressed Pre-Existing Special Permit No. 40A, which is the Schwarck Quarry facility on S. 54th Street and Wittstruck Road, about 1 ½ mile south of Saltillo Road. This site has been in operation certainly since 1971, and possibly as far back as the 1930's. At one time it was on both sides of 54th Street, the one side now being a residential use. There is a community unit plan nearby with several houses and a few vacant lots. The quarry is broken up into four lots, with a stone cutting business on the north; the quarrying activity is to the south. There is a crushing operation for limestone and a scale house in place.

Hartzell further pointed out that the conditions of approval in the staff report and resolution contain the conditions which the applicant is able to meet. Most of the conditions not being recommending have to do with closure of the mine in a relatively short period of time. The operator believes that this facility could be operating 25-30-35 years before the operation is mined out. The conditions do require some kind of site plan showing that there is some potential in the future to have a residential use on this property. The area of the special permit stops short of the Roca jurisdiction. The mining is going on in the Roca jurisdiction, so this special permit is tied to that area of land. That area will be managed in a way that is complementary and tied to the rest of the special permit.

Hartzell stated that screening is provided by safety fencing; there is some evergreen screening and some natural screening because of topography. They will make sure the visual screening applies.

Hartzell also noted that the County Engineer has requested information on the traffic and how this operation will affect the roads. A paved road runs adjacent to the property.

The conditions do put some limitations on the hours of operation. The rock crusher may only operate Monday through Friday, 8:00 a.m. to 5:00 p.m. The staff is amending Condition #2.4 regarding the hours of operation. The applicant does maintenance on the off hours.

- 2.4 Amend Note 7 to read “Hours of operation for the rock crusher shall be 8 am to 5 pm Monday through Friday. Excavation activities are allowed of soil, limestone and other minerals on-site is limited to during daylight hours Monday through Saturday; however, additional maintenance activities associated with excavation may occur during nighttime hours. The rock crusher operations shall be limited to the area shown on the site plan.”

The staff is also recommending the addition of Condition #2.13 that no explosives will be used in the mining operation. This applicant has no intention of using any explosives, including dynamite.

Beecham inquired about the groundwater report questions. Are there residential wells within the area? Hartzell stated that the Brush Creek Addition immediately to the east was done with rural water. Hartzell did not have a lot of information on the development on the west side in the Roca jurisdiction, but she would assume they also have rural water. There is no particular concern about individual wells. The excavation activity is to the south and drainage is toward the north. There is a pond on the property which has been in place for quite some time, which drains on to the tributary to Salt Creek. It appears that the drainage would most likely increase into this quarry area but it is unlikely that the drainage will increase out to adjacent properties. There are Watershed Management requirements for drainage onto adjacent properties in the conditions. They will also be required to comply with the floodplain development rules.

Beecham wondered about an annual inspection. Hartzell acknowledged that annual inspections could be required, but this is not an operation that is working toward a near future closure, so we are not looking at returning grades for future use. We are looking at more of a long term. This is a different kind of operation than a soil mining operation.

Beecham observed that this operation is changing the topography. What if the runoff accidentally switches direction when we are not doing an annual inspection? How does that change get detected? Hartzell suggested that just like a lot of other special permits, issues with runoff, noise, light, etc., would be handled on a complaint type basis with the Building & Safety Department. The surface water issue would most likely go to Watershed Management to address any problem.

Proponents

1. DaNay Kalkowski of Seacrest and Kalkowski appeared on behalf **Gana Trucking and Excavating, Inc.**, the applicant. Gana is a local excavation company, which was actually started in Lancaster County in 1994 by Craig and Laurie Gana, and has grown to over 160 employees. Gana purchased the Schwarck Quarry part in 2008 and the other part in 2012. Prior to that, they did a lot of business with the Quarry. Gana owns approximately the south 86 acres, and Ring Holding owns the north 28 acres.

Kalkowski pointed out that both of these properties are already covered by a pre-existing special permit since the activities were already occurring on the site before a special permit was required. This application is an amendment to the pre-existing special permit which adds a 5,000 sq. ft. office building for future use as part of the excavation business, leaving opportunities for expansion in the future. Because of this amendment to expand the use, the applicant is also trying to comply with as many of the conditions as possible. This application also further clarifies the existing and the permitted uses and adds restrictions and additional information to the site plan to bring it more into compliance with the current special permit conditions. For example, this application limits the location of stone milling (rock crusher) on the site and limits the hours of operation of the stone crusher and the hours of actual excavation. Screening is being added along South 54th Street and the applicant agrees to stay out of the 100' rear yard setback. This gives the neighbors some additional protections.

Kalkowski also noted that the applicant and Steve Henrichsen of Planning staff met with the neighbors back on August 5th, prior to making this submittal. There were over 11 properties represented at the meeting, including some from the east, south and west. It really was a very positive meeting. The majority felt that Gana had been a good neighbor and had done a lot of cleanup on the site; the neighbors acknowledged that at the time their homes were built, the quarry was already in existence; the largest concern was the hours of operation for the rock crusher, thus there is an agreement to limit those hours of operation.

Kalkowski stated that the applicant also supports the proposed text amendments, which provide better clarification with the definition of stone milling and make the conditions more relevant to dealing with a pre-existing special permit. They need that flexibility to work through those conditions.

Kalkowski stated that the applicant is accepting all staff conditions and the amendments submitted today. This application and the zoning text amendments are the result of a lot of meetings and collaboration with city and county staff. This amendment provides some potential opportunities for growth for a nice local company and puts some protection for the neighbors in place. It is a win-win.

Beecham referred to the condition which limits the operation to daylight hours but allows additional maintenance activities during nighttime hours. She was curious about loud trucks or other things that are noisy. Kalkowski believes that the stone crusher was the main issue. They do truck maintenance on the site now so there is a little bit of noise in the evening. The neighbors do recognize that is part of having a business operation like this. Such a business is not going to do that maintenance during business hours. They will, however, be able to enclose some of it in the maintenance building which may help with some of the noise. The other noise issue was the trucks braking as they are coming down 54th Street. Gana Trucking can control and has controlled its trucks but they cannot control all trucks. The neighbors acknowledge that there is noise from truck usage on the road, which would be during the daylight.

There was no testimony in opposition.

Hartzell reappeared to report a conversation had with the applicant about eventually closing the use, and the applicant has agreed to a condition of approval being added, "to provide a site plan showing a future residential layout after the excavation operation is complete, to the satisfaction of the Planning Director." This will demonstrate that there is a future use for this property.

COUNTY TEXT AMENDMENT NO. 14012

ACTION BY PLANNING COMMISSION:

October 1, 2014

Hove moved approval, seconded by Sunderman.

After today's discussion, Lust now believes the text amendment is appropriate.

Motion for approval carried 6-0: Sunderman, Harris, Beecham, Cornelius, Hove and Lust voting 'yes; Weber, Scheer and Corr absent. This is a recommendation to the Lancaster County Board of Commissioners.

CITY TEXT AMENDMENT NO. 14013

ACTION BY PLANNING COMMISSION:

October 1, 2014

Hove moved approval, seconded by Harris and carried 6-0: Sunderman, Harris, Beecham, Cornelius, Hove and Lust voting 'yes; Weber, Scheer and Corr absent. This is a recommendation to the City Council.

PRE-EXISTING SPECIAL PERMIT NO. 40A

ACTION BY PLANNING COMMISSION:

October 1, 2014

Cornelius moved to approve the staff recommendation of conditional approval, as amended today, seconded by Hove.

Cornelius suggested that this is a balancing act between providing opportunity for local business to grow and protecting the neighbors. The neighbors were not there when the operation began and they are familiar with the operation. It appears that many of the concerns of the neighbors have been addressed by the compromises made by the applicant.

Lust stated that she will support this amendment. It is nice to see the neighbors and applicants working together and, in this case, to move forward with a good business for Lancaster County.

Motion for conditional approval, as amended, carried 6-0: Sunderman, Harris, Beecham, Cornelius, Hove and Lust voting 'yes; Weber, Scheer and Corr absent. This is final action, unless appealed to the City Council within 14 days.

There being no further business, the meeting adjourned at 2:00 p.m.

Note: These minutes will not be formally approved by the Planning Commission until the next regular meeting on Wednesday, October 15, 2014.