

REVISED MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, January 20, 2016, 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, Maja V. Harris, Chris Hove, Jeanelle Lust, Dennis Scheer and Lynn Sunderman. (Ken Weber absent); David Cary, Steve Henrichsen, Rachel Jones, Andrew Thierolf, Brian Will, Geri Rorabaugh and Amy Huffman of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission meeting

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

Hove requested a motion approving the minutes for the regular meeting held January 6, 2016. Motion for approval made by Harris, seconded by Lust and carried 7-0: Cornelius, Corr, Harris, Lust, Scheer, Sunderman, and Hove voting 'yes'; Beecham abstaining, Weber absent.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION BEFORE PLANNING COMMISSION:

January 20, 2016

There were no items on the Consent Agenda for January 20, 2016.

USE PERMIT NO. 64B

TO ALLOW A NON-RESIDENTIAL HEALTHCARE FACILITY ON PROPERTY GENERALLY LOCATED AT SOUTH 16TH STREET AND OLD CHENEY ROAD.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

January 20, 2016

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

Staff recommendation: Conditional Approval.

There were no ex parte communications disclosed.

Staff Presentation: Rachel Jones of the Planning Department stated this application is for a non-residential healthcare facility located at approximately 14th Street and Old Cheney Road and bounded on the east by S. 16th Street. It will be classified as a transitional care facility primarily used for rehabilitation, with an average patient stay of 25 days. There will be 47 patient rooms.

In 2006, the Joint Committee on Health and Land Use published a final report that talked about a 300-foot separation being a typical standard distance between industrial and residential uses. That separation is to protect populations against hazardous chemical spills or other similar threats. There is also language in the Comprehensive Plan addressing the compatibility of adjacent land uses. Inherent in the Special Permit approval process is review of the location and suitability of special permitted use on the proposed site.

The 300-foot buffer policy is extended to other vulnerable populations like day cares, schools and housing. Because patients at this facility stay overnight, it is considered a residential use, so the buffer applies. There is I-2 zoning on the other side of S. 16th Street and 17 patient rooms are located only 195 feet away. The Health Department is recommending Conditional Approval based on the relocations of the 17 patient rooms to outside of the buffer zone. Planning, in this case, is recommending Conditional Approval based on implementation of certain emergency planning and facility procedures, rather than the relocation of the patient rooms. Those procedures are the same as would be recommended for churches located within an Industrial zone.

Planning's recommendation is based on several circumstances at this site. First, there will be staff working overnight who would be awake and alert to assist in evacuation in case of an emergency. Next, though it is within the 300-foot buffer zone, it is still a good distance at nearly 200 feet; it is not immediately obvious what would be gained, in terms of safety, from the additional 100 feet. Finally, this facility is not surrounded by Industrial, only adjacent to it, so that lowers the risk somewhat.

In order to relocate the 17 patient rooms, the facility would need to be shifted to the west. The applicant does not wish to take that course of action due to traffic noise along 14th Street, the desire to take access off of 16th Street, and because this facility has no real need for visibility from 14th Street. The applicant feels the site to the west would be better utilized by a commercial tenant who would benefit from the visibility.

There was a motion to amend requested by the applicant to increase the square footage of the building by approximately 1,800 square feet.

Lust asked what currently occupies the building to the east that is within 195 feet of the proposed facility. Jones said it is currently occupied by Time Warner Cable. Lust asked if there was any type of industrial manufacturing going on there. Jones said not today.

Hove asked if this new facility would limit the option of a heavier use in the future. Jones said this would not limit any future use. Due to the I-2 zoning district, a more intensive use could come in. Hove asked for an example of what that could be. Jones said things like refineries or distilleries are examples. There are a number of industrial uses permitted and some could potentially store or transport hazardous materials.

Lust asked if the Health Department monitors when and where hazardous materials are stored. Jones said Health Department staff are on hand to answer questions of that nature.

Cornelius asked why a 300-foot instead of a 200-foot distance is even specified if staff does not see the value of a third again as much buffer. Jones said she was unsure of the history of how that distance was chosen. The Joint Committee was made up of Health and Planning Staff.

Chris Schroeder of the Health Department came forward. The 300-foot recommendation was based on looking at the United States Department of Transportation's Emergency Response Guidebook. There is a list of chemicals and they provide "isolation" or "protective action" distances in the case of large spills. Most chemicals land within the 300-foot recommended area. There are more toxic chemicals such as anhydrous ammonia and chlorine, which have greater recommended isolation distances of 500 and 1,500 feet, respectively. The Joint Committee took middle ground and landed on the 300-foot recommendation.

Beecham asked what the Health Department thinks of the Planning Department recommendation. Health Department does not support the current site plan depicting the 17 rooms within the 300-buffer area, as submitted by the applicant.

Schroeder went on to address Lust's question about monitoring stored chemicals. There is no internal monitoring system, but Health does what is called "Tier 2 Data". Data is submitted to the State of Nebraska regarding storage and quantities of chemicals. There is a lag time of about a year before Health receives that information, but that is one mechanism used to track storage of chemicals in the community.

Jones added that one of the conditions of approval is that the facility would notify the Health Department if they became aware of any chemical storage in the area.

Harris wondered, given that this applicant is required to notify the Health Department if they become aware of hazardous materials, if it would be possible and reasonable to impose similar requirements for a new applicant that might come in to the industrial zoning. She asked if they could be required to notify their neighbors or the Health Department.

Schroeder said he does not believe there is authority to ask for that within the permit before Commissioners today. Harris clarified that she meant she wondered if it would be possible to add that condition for any new application that came to the area. Schroeder said that might be a question for Law Department. It might require an ordinance. Looking at ways to reduce risk and notification of neighbors has been discussed before.

Steve Henrichsen of the Planning Department approached to say that bulk storage of hazardous chemicals and other more intensive uses in the I-2 District still require a Special Permit, so there would be an opportunity to examine the appropriateness of the use at the time of application. Mr. Schroeder is correct in that we do not have any right to impose conditions on other properties through this application.

Lust asked if the 195-foot buffer distance to the east was to the lot line or to the actual building. Jones said it is from the edge of the proposed building to the setback of the building in the I-2 zone. Lust asked for clarification about the setback. Jones said the setback of the I-2 district is the edge of where a building could be built, though the current building is not built all the way out to that distance. Lust asked the setback in I-2. Jones said she believes it is 20 feet. Lust said that means that the distance from the current building to the proposed one could be 215 feet. Jones said that is possible but she does not know the exact distance of the Time Warner occupied building from the setback.

Sunderman noted that a new building could be built all the way up to the setback, so it is possible for the two buildings to be 195 feet apart, even if they are not now. Jones agreed.

Harris wondered, since the conditions proposed by Planning are similar to what is required of churches in I-2, if there has ever been a real-life evacuation situation. She wondered how well the plans work in a crisis. Jones said that the emergency response and evacuation plans would have to be approved to the satisfaction of the Health Department. Schroeder said there have not been any concrete examples of a similar evacuation plan being put into effect. Harris said that the effectiveness of the plans have not been evaluated in a real-life scenario.

Lust wondered if the applicant has explained the "X" configuration of the building. It appears that only the northeast corner would be out of compliance, so she wondered why the building could not be reconfigured. Jones said the applicant evaluated other layouts and concluded the plan submitted used the space most efficiently.

Proponents:

1. Erin Bright of Olsson Associates came forward on behalf of **Kensington Corporation**. He stated he has been working on Kensington Office Park for the past eight years and has a lot of history with this project. The developer is very excited about this user, Promontory Healthcare. A nice medical healthcare facility with good architecture will create a great cornerstone building for the area. Knowing that the adjacent users to the

north and east were Time Warner Cable and Farm Bureau, it came as a surprise to us that it was I-2 zoning. We learned about the 300-foot separation and started looking at plans that would work. The buffer area is to deal with hypothetical situations. Promontory Healthcare has a facility in Omaha that has a robust evacuation plan in place already. It covers roles and responsibilities of staff and what to do for any disaster. The user is also more than willing to update the plan to satisfy the Health Department's concerns regarding hazardous materials. One other condition of approval for the facility itself is to be able to shut down the HVAC system so that in the event of a toxic plume, contaminated air would be kept out. That will be part of the building design itself.

Corr asked if anyone from Kensington is present at today's meeting. Bright said Kensington had a conflict today, but Sam Manzitto is on hand to answer questions. Corr asked how many vans will be on site. Bright said the applicant has already confirmed that at least one van will be on site at all times. Corr asked if each room is one bed. Bright said each room has a single bed. Corr commented that one van will not be enough to get 17 people evacuated. Bright said in the event of a toxic plume, people would need to remain inside the building. A larger event such as a refinery fire seems like such an impossibility given what is currently surrounding the site. It should be noted that there are residential neighborhoods within 200 feet to the east of the I-2 zoning. Bright said they appreciate the Planning staff's willingness to give consideration of these unique situations.

Hove said that it seems reasonable that patients could be moved out of their rooms to another part of the facility where they would be located outside of the 300-foot buffer.

Scheer asked if there is a possibility within the building where patients can be moved so that they are outside of the 300-foot zone. Bright said the north and the west wings mirror the northeast wing. It is a double-wide hallway; those 17 people can certainly fit in to the hallway and get beyond the 300 feet.

Lust asked what attempts have been made to design th building out of the 300-foot area. Bright said this is their standard template.

2. Sam Manzitto, Manzitto Construction and Real Estate, said the Omaha office has two nurses stations within the cross which is the best configuration for best serving their patients. Corr asked if there was any way to swing the building around. Manzitto said that option has been considered but the arms of the cross are too close together.

Harris said the quality of the architecture was mentioned. She asked for a description of the materials. Manzitto said it will be a higher quality office structure with rustic contemporary styling. It will be a wood structure and will have a residential feel to it, even though it is in an office park, along the lines of what can be seen in Williamsburg. Harris said the rest of the area has done a good job of keeping the look nice. It will be important to maintain that quality in the area. Manzitto agreed.

Opponents:

There was no opposition to this item.

Staff Questions:

Beecham asked Henrichsen to address the types of uses that could request a special permit in this area. She wondered if there are any uses that might store chemicals that would not have to go through the Special Permit process. Henrichsen explained that he made an error in his earlier explanation. In the I-1 zoning district, there are many Special Permitted uses. That zone is found throughout the city, often right up against residential zoning. The I-2 zoning district is much newer and has larger setbacks. Many uses do not require the special permit process. Most of the uses in the I-2 around this project would not require a special permit. Beecham noted that means that Planning Commission does not have the option of requiring notification as part of the Special Permit process. Henrichsen said correct. He said the 300-foot buffer is a policy that provides for an opportunity for review on a case-by-case basis. The character of this particular I-2 area includes close proximity to Old Cheney and 14th Street where most uses have been retail/office oriented due to the visibility. The southern end has more office and contractor services. Time Warner might move and that building could have another use, but currently, it is set up for office/contractor use rather than for manufacturing. The particulars of this circumstance led Planning staff to say the conditions for a church would be appropriate, particularly since there is no I-2 to the west and north, and currently office uses, most of which are outside of the 300-foot buffer area.

Beecham asked if there are procedures in place when industrial uses abut residential. She wondered what the process would be in case of a spill. Henrichsen said there are not notification requirements in the zoning ordinance. Schroeder said that the regulations do not protect people from accidents. There are environmental and air quality regulations that talk about safe use, storage and emission levels. In the case of a hazardous materials emergency, it would be the Health Department and Lincoln Fire Department responding. Beecham asked how they would find out about that situation. Schroeder said from emergency dispatch.

Corr asked for clarification about the extent of the surrounding I-2 zone in relation to the proposed project. Henrichsen said to the west is residential zoning. There is a bike trail between the residential and I-2 zoning on the south. To the east there is Southwood Neighborhood adjacent to the I-2. To the north, the area is bounded by Highway 2. To the northwest is the State Penitentiary, Nebraska Department of Roads and mostly commercial and government uses to the west. Corr said she asked because if Time Warner's current location were zoned office or business, this would not be an issue. She wondered if it would be appropriate to ask that property owner to rezone to something that would match better with the area. Henrichsen said that could be something the applicant could look at, but it is doubtful that a property owner would elect to rezone to a more restrictive district. The

building would have more flexibility for future tenants left as-is. In addition to that, the goal of the industrial area is to allow the businesses within that zone to go about doing business without residential areas impinging on their right to do so.

Harris asked if the close proximity of a fire station mitigates the risks in any way. She wondered how important fire rescue is? Schroeder said it is really important, but it is hard to guess how emergency response would mitigate unexpected accidents. ~~Harris said that it doesn't take away risk. Schroeder said it~~ It does not change our recommendation.

Corr asked if each fire station has their own hazmat team or if that is centrally located. Schroeder said he knows Station 14 in the Highlands is the main hazmat station and he is unsure of others.

Beecham asked what the policy is regarding spacing requirements for residential and industrial. Schroeder said it is the same. She wondered how the Southwood neighborhood avoided the issue of the 300-foot buffer. Henrichsen said the Joint Committee made their recommendation in 2006. Most of this area developed far in advance of that recommendation.

USE PERMIT NO. 64B

ACTION BY PLANNING COMMISSION:

January 20, 2016

Cornelius moved Conditional Approval as recommended by the Health Department, seconded by Sunderman.

Cornelius stated that his reasoning is that having sat on this body for a long time, one lesson he has come away with is that things change. Geography changes and it surprises people. We are talking about business cycles and consistent uses within a single zoning district, not even a change of zone. We cannot count on an I-2 zone continuing to be office indefinitely. This proposed site plan shows a fair amount of flexibility that would allow for the shifting of the building. He understand that there are considerations that we must think of, such as noise and visibility, but we must also think of the potential risk of locating residential within this area that is established for I-2.

Lust asked for clarification that Cornelius is only recommending approval if the development is outside of the 300-foot buffer. Cornelius said yes, only if the residential occupied rooms are outside that buffer zone, as recommended by Health. Henrichsen offered further clarification that the motion would be to add a new condition 1.10 to relocate the building on Lot 6 so that all bedrooms are more than 300 feet from the I-2 zoning. Cornelius agreed that was his motion. Henrichsen added that he verified with Schroeder that the recommendation is accurate.

Lust said she struggles with approving any development that is against the recommendation of the Health Department. In the past, this body has been very deferential to the Health Department, even when something is not part of the ordinance. She is thinking of the pipeline protection area, for example. They had a lot of sway with wind energy as well. The fact that they are still recommending that it be outside the 300-foot barrier, makes her question why Commissioners would ignore that in this situation, when they have chosen to heed their recommendation in the past, even when it was a barrier to development in some cases. Therefore, she will support the motion.

Harris said she would support the recommendation made by the Planning Department. There is a real trend in this development that is moving towards lighter uses such as office and commercial. The order of things will impact potential special permits in the industrial zoning.

Hove said that he will not support the motion. The 300-foot distance is an average of a couple of different recommendations. In this case, it is 200 feet. He believes that they could move patients outside of 300 feet easily.

Scheer said he agrees with Hove. He supports the conditions of the Planning Department. The addition of the 1.10 sways him to vote against the motion, as made.

Sunderman stated he also does not agree with the addition of Condition 1.10. He thinks the uses across the street are pretty static at this point in time. If they were to change to uses involving hazardous chemicals, it would be fairly obvious with the construction that something has changed. Moving people outside the 300-foot buffer and that can easily be done within the building.

Corr said she will support the motion as made. It is important to honor that 300-foot buffer, especially when there are options for developing this land a little bit differently where that condition could easily be met. She would whole heartedly support it if the property was not I-2. As it is, there is no guarantee that it will remain an office. It could change and we might not know about it. That causes concern.

Beecham said this one is tricky. She will support the motion because she is concerned about impacting the site down the road where if someone comes in and wants to put a use on there that is within the zoning that has been on the property, we will want to restrict their right to do what they should be allowed to do in the industrial zone because we are making an exception to the policy today. She agrees with Harris that soon this may change to a different zone, but right now she must base her decision on what is there and she is uncomfortable going against a policy that was reviewed by a committee.

Motion failed due to a lack of majority vote, 4-4: Beecham, Cornelius, Corr, Lust voting 'yes'; Harris, Scheer, Sunderman, and Hove voting 'no'; Weber absent.

Sunderman asked if it was necessary to vote for deferral, or if this item will automatically be carried over to the next meeting.

Lust stated she believes it is necessary to also take a vote on the Planning Staff recommendation and the vote needs to come out the same.

Cornelius stated any motion can be made for deferral or to vote on the Planning Staff recommendation.

Lust suggested waiting until the Weber is present.

Sunderman moved Conditional Approval as recommended by the Planning Department, without 1.10; seconded by Scheer. Motion failed due to a lack of majority vote, 4-4: Harris, Scheer, Sunderman, and Hove voting 'yes'; Beecham, Cornelius, Corr, and Lust voting 'no'; Weber absent.

Beecham moved for a 2-week deferral; seconded by Corr.

Corr stated that she would encourage the applicant to contact the Time Warner property owner to see if they would be open to a Change of Zone.

Lust added that a Change of Zone, even to I-1 where a Special Permit process would be required, would make her a lot more comfortable.

Motion carried, 8-0: Beecham, Cornelius, Corr, Harris, Lust, Scheer, Sunderman and Hove voting 'yes'; Weber absent.

SPECIAL PERMIT NO. 04016A
TO BUILD INDOOR SELF-STORAGE AND INCREASE SQUARE FOOTAGE
ON PROPERTY GENERALLY LOCATED AT
NORTHWOODS DRIVE AND COLBY STREET.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

January 20, 2016

Staff recommendation: Conditional Approval.

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

There were no ex parte communications disclosed.

Staff Presentation: Andrew Thierolf of the Planning Department stated that a full staff presentation was given at the December 2, 2015, meeting. The applicant would like to construct an indoor, self-storage facility on Lots 6 and 10. With their original application, they requested two modifications to the Special Permit. The first was to increase the total

allowed square feet to 140,000 of mini-warehouse. Right now it is approved for 19,000 square feet of retail/commercial. The other modification was to waive the height limit east of Northwoods Drive. Right now there is a note that appears to set a limit of 35 feet. The H-4 district has a limitation of 55 feet.

There was some question at the December meeting as to why the Special Permit specified the 35-foot height limit. In March 2004, the height limit in H-4 was 35 feet. In 2005, that increased to 45 feet, and in 2007 to 55 feet. Staff believes the note was not intended to be regulatory or to put a restriction on the area; it was simply saying that the Special Permit should have the same height as the H-4 district. Because it causes confusion, in the future, we would support an amendment to cross out the note for clarification. If that were to occur, the height in this entire Special Permit area would become 55 feet. The applicant is going to come forward to amend the conditions of approval. They propose to clearly state that the height remain 35 feet for this area, with the exception Lots 6 and 10, which will be increased to only 45 feet. The applicant has made significant changes since in response to comments at neighborhood meetings and at the last Planning Commission meeting. Planning Staff supports those changes.

Corr asked for clarification that if the note was interpreted to mean that the height should be consistent with the height allowed by H-4 zoning, it would mean the entire Special Permit area could be 55 feet. Thierolf said yes.

Beecham asked if there are minutes from the City Council meeting. Thierolf said old staff reports were reviewed. Based on that information, the height was not the main point of discussion. The main discussions were about waiving setbacks.

Lust said so the main issue before this body is no longer height, but setbacks. Thierolf said the main issue now is the increase in square footage.

Corr asked for a reminder of what was located behind the dentist office. Thierolf said there is the T. O. Haas, a strip mall and restaurants.

Hove reminded the public that Public Hearing on this item was previously held on December 2, 2015. Testimony today will be limited to new information only.

Proponents:

1. DaNay Kalkowski, 1010 Lincoln Mall, came forward on behalf of the applicant. There were significant questions at the December 2nd meeting regarding the height, scope and size of this building. The applicant asked for additional time in order to meet with neighbors. The first meeting was held December 9th and 61 letters were sent out to neighbors around the site. Thirteen attended that meeting where we heard three main concerns. First, the height and scope of the building. Next was the distance of the setback from 84th Street. There is a 50-foot setback there, but neighbors were concerned about the large building

blocking visibility to other businesses. The final concern was the appearance of the building, especially given its size. As a result of this meeting, significant revisions were made to the plan. Then the applicant met with neighbor Randy Haas of T.O. Haas and John Rallis, who was working with the dentist to the south. There was also a second neighborhood meeting with sixteen in attendance. In the new plan, there is a significant reduction in the size of the building from 140,000 square feet to approximately 101,000 square feet. That is the minimum needed to make this business model work. This reduces the footprint of the building, which allowed for it to be pulled back farther from 84th street, so in addition to the 50-foot setback, it is now an additional 69 feet back. This creates better visibility to those businesses to the south. The building has also been reduced to three stories. The approximate 40-foot height is to accommodate a parapet and a small sloped roof.

The building incorporates a lot of glass for light. Around the bottom is a split face block with brick banding to create a differential of color. Brick is the center component. There will be metal wall panels at the top. The building has a clean, sharp look that is more like an office than a storage facility. The building also incorporates eaves, the parapet, and other architectural features to create nice relief so it does not look like a straight, flat building. The eave is right at 33 feet in height. The slope of the roof takes it up to 36 feet, and the parapet up to 39 feet. Again, these features all provide relief.

No loading will be done from the back or the sides, so every side of the building will look nice. Lots of work has been done to make this building look attractive and to fit in with the surroundings.

The motion to amend includes the proposed revisions already discussed. It should be noted that the applicant is not requesting that the note about the 35-foot height be removed. They are only requesting the exception to go up to 40 feet for their site. That would allow the note to remain so the rest of the area would stay at 35 feet, unless otherwise requested. But as was mentioned, this proposed use is well under the allowed 55 foot limit that is usual for this district. This project will be in substantial conformance with the site plans as shown. The distance to the townhomes is over 200 feet from lot to lot, and there could eventually be other uses between the storage facility and those homes. The area was zoned H-4 well before any of the residential units were there. H-4 allows for some high intensity uses, so this use is actually quite low in intensity. Considering proximity to the major arterial street and the mix of surrounding uses and adequate separation, this is an appropriate use.

Lust asked if Mr. Haas was in support of this revised plan. Kalkowski said that Mr. Rallis was supportive since one of their main concerns was to pull the building back, but she cannot speak for those not present to represent themselves.

2. Dave Paladino, 127 N. 39th Street, Omaha, stated that only commercial use that is lower in intensity than indoor storage is a cemetery. For every 10,000 square feet of storage, you can expect to see one person per hour, so with this facility, around seven per hour could be expected, and probably not all at one time.

Hove asked for clarification about the 197,000 foot number. Kalkowski said that is the entire Special Permit area. This building is only 101,000 square feet.

Beecham asked if the site drops in elevation. Paladino said it is a 30-foot drop from the finished floor of the proposed building to the front porches of the townhouses.

Beecham wondered about the size of vehicles that would need access to the site. Paladino said the facility is designed to handle a 26-foot moving truck, but larger trucks will rarely be seen. Most people use family cars. Seventeen percent of users are small businesses and people who work from home who need additional storage. Otherwise, it is mostly household goods that are stored. A semi truck would not be able to get into the site.

Hove asked how visible the building will be with the 30-foot drop. Kalkowski said depending on where buildings are set in the area between the townhomes and this site, much of it could be blocked. There is no way to speculate how they will look. They can currently be built up to 35 feet.

Lust wondered if the townhomes were notified since they are 200 feet away. She said she knows they were notified so she appreciates that. Kalkowski said she counted the extra 18 feet of private roadway on our lot, so they may be just under the 200 feet. Corr added that the entire Special Permit boundary is included, so they are within that legal notification area.

Corr asked how tall the strip mall is. She wondered how this new building will compare with what is already there. Kalkowski said that T.O. Haas is shorter. Paladino said he thought they were 22 feet tall. Kalkowski went on to say the other buildings may be a little shorter but have the higher pitched roof. If you surround this site with uses, it doesn't look like such a large building because the view is blocked.

Harris noted that the setback between the strip mall and the homes to the west is not a very great distance. She wondered if a new development would be that close to the homes. Kalkowski said that could be the case. Harris said she was trying to get an idea of the visual impact those neighbors would have once something goes in to that space. Kalkowski said there is a 50-foot setback between the townhomes and the strip in the back because there was commercial adjacent to residential. That is consistent all the way along there. Harris said the edge of that strip mall is representative of what could be built. Kalkowski agreed. Harris added that it could go up to the 35 or 45. Kalkowski said that 55 is what is allowed in H-4 now. Harris said that there is a potential future where buildings closer to the

townhomes could be taller than the applicant's building. Kalkowski agreed that it could be the case. The way we are leaving the note, it would stay at 35 feet so someone would have to come in and ask for the additional height. Harris said they would have the opportunity to ask for that.

Beecham said that there was a reference to covenants. She wanted to know if there are any on the commercial areas. Kalkowski said there are multiple covenants. There is a set for the entire commercial center and everything under the Special Permit area largely dealing with the appearance of the buildings and maintenance of the common areas since these are private roadways. There is also a use restriction covenant from Walgreen's so certain things are not allowed. Beecham said she was wondering if there were any specifically dealing with height. Kalkowski said she would have to look, but it would be atypical to place a restriction on height through a covenant.

Opponents:

1. Derek Zimmerman, 1248 O Street, came forward on behalf of T.O. Haas Tire, the property directly to the south. Though we appreciate the developers efforts to reduce the size of the building, it still does not fit within this commercial center which is composed of modest, single-story offices that are compatible with neighbors. The size requested is more than five times the currently permitted size. With regard to the height restriction, we do not know exactly why that note was made. All of the other buildings were able to meet that restriction. The drop-off in elevation is also not a given. The staff report focuses on the limited traffic. Looking only at this factor is misguided. A building's footprint matters. Traffic numbers are based on square footage which is more than just traffic and again, the other buildings have complied with this. This facility would set a precedent that a building of this size is allowed within a commercial district with distinctly different character. Additionally, lower traffic is not necessarily a good thing for retail within a commercial center since they rely on the overall activity and vibrancy within an area. Certainly, there are limitations to that, but that is why there are square footage and parking limitations in place. T.O. Haas will be directly and negatively impacted. They will be faced with a 100k building with no windows on the first floor which will impede their visibility to those driving along 84th Street. If this application is approved, T.O. Haas will be forced to apply for a sign waiver for a sign that goes above the height of this facility. This is not something they want to do. One exception in a commercial center will lead to others. We ask you to oppose this application. He stated that he does not directly represent other neighbors in attendance at today's meeting, but out of respect for the time of Commissioners, he was asked to allow them to stand to show their presence in opposition to this application.

Beecham asked the square footage of T.O. Haas. Zimmerman said he doesn't know the exact size, but the existing range of buildings in the center are around 15,000 to 20,000 square feet.

Lust asked if they had direct access off of 84th Street. Zimmerman said they do not.

Lust noted that if other buildings were constructed closer to 84th Street, this same issue of visibility would occur. Zimmerman agreed there could be partial blockage, but there are no other buildings of this size. This proposed construction would stretch from north to south. It is unlikely another building with this amount of square footage would be proposed within the currently allowed square footage. Lust proposed, for the sake of discussion, that another building could be proposed at the 55-foot height. She suggested the situation could become worse than what is proposed today. Zimmerman said from a height perspective it would be. But from a north-to-south perspective, not necessarily, because this building has such a large footprint. Looking at what is there today, the scope of the proposed building is out of place.

Harris asked if there would be any iteration of the storage facility that his client would support. Zimmerman said the focus of the opposition is not on the use. It is on the size and scope. He understands Mr. Paladino's concern that the building must be of a certain size to support the business, but his client also has economic concerns.

Staff Questions:

Beecham asked for a reminder of the square footage allowed in the area now. She also asked for confirmation that the use is permitted in H-4 and this would not be an issue if not for the increase in size. Thierolf stated the use is permitted. The total square footage permitted is 158,000 square feet. For these two lots, it is 19,000 square feet.

Corr asked if it would be accurate to say that the increase in square footage is mainly due to the addition of levels. Thierolf said he believes the footprint of each level is around 30,000 square feet. Corr said that 60,000 square feet of this is on the upper levels.

Harris asked for a reminder about the sign options, especially the center sign. Thierolf said he mentioned a center sign that included the names of all of the businesses in the center would be an option. That could be placed in an area of high visibility. Harris asked if that included the 84th Street side. Thierolf said yes.

Applicant Rebuttal:

Kalkowski stated she appreciates the concerns about this building not fitting in because it is a larger building, however, there are factors that illustrate its appropriateness for the site. One factor is that this area has sat vacant for a long time. When this Special Permit was originally approved, this type of project was not even contemplated as a potential use. The Special Permit was left as flexible as possible and created with typical uses in mind. For most uses, a building of this size would not work due to the amount of accompanying parking that would be necessary, but in this instance, that parking is not needed. The footprint of the building is around 33,000 square feet, which is not out of character, with what is already approved just to the north, where a 33,000 recreational facility with an additional 1,000 square foot of office. So there could be another building that is roughly the

same size as this one. This building does go up, but that is allowed in this zoning district. She went on to say that she appreciates the sensitivity of T. O. Haas to their visibility on 84th Street, however, they did not purchase a lot on 84th Street. Their lot is already behind two on 84th. We have attempted to minimize the impact by pulling the setback as far back as we can go. There is no way to guarantee that street visibility unless you buy a lot on the street.

Lust asked if there is currently any signage for anyone along 84th Street. Kalkowski said the only one allowed signage are the lots on 84th. Walgreen's has a sign on the corner.

Corr asked if the property owner would be open to placing a center sign on their property along 84th street where T.O. Haas would have the option to advertise. Kalkowski said there is ample setback, so if that was something the entire center was interested in contributing in, it would probably not be problematic.

Beecham asked for clarification about the boundaries of the entire special permit area and whether the area discussed today is only Lots 6 and 10. Kalkowski said the applicant is only asking to amend the Special Permit for Lots 6 and 10 and everything else stays in place.

SPECIAL PERMIT NO. 04016A

ACTION BY PLANNING COMMISSION:

January 20, 2016

Lust moved Approval as amended by the applicant, seconded by Corr.

Lust stated that she knows that Dino's has not satisfied all of the concerns of the neighbors, but she appreciates their willingness to work with them and to make this as neighborhood friendly as possible. The plans presented today show a significant change from what was seen in December. She plans to support this application.

Scheer expressed appreciation for the changes made to the building and for the efforts to make the storage facility look more like an office building. He said he is not opposed to the use, but he is opposed to the size. A 30,000 square foot footprint, multiplied by three stories is a dramatic change in character from the existing and surrounding area. It is too much. He will not support this application.

Beecham agreed that the work by the applicant is to be commended, but the proposal is not in keeping with the character of the development as a whole. It is not the right scope. She also has no opposition to the use, only the size.

Corr stated this case has been a tough one and there has been a lot of opposition. The main complaints are about the size, height, setback and aesthetics. This is a really nice looking building, they have moved the location back as far as possible. Unfortunately, T.O. Haas will still have visibility issues. That is a business risk they took when they chose an

inner lot. The new proposal is only 5 feet over the 35 feet allowed. The applicant has gone above and beyond in their efforts to address concerns and to make it fit. The mass of the building comes from the fact that it is being built up. Even though she dislikes supporting a development where so many concerns were expressed by neighbors, she will support this project. The huge buffer surrounding the building will make a big difference.

Cornelius stated that he is sensitive to all of the concerns expressed by neighbors. He would like to discuss the note regarding the 35-foot height limit that was on the original Special Permit. It shows the importance and careful consideration of the wording that goes into these Special Permits because it is just as easy to argue that the limitation was put there to protect adjacent neighbors to changes made to H-4 zoning regulations. So in the future, it would be best to specify a height or a district, and not both. For the reasons already stated, he will support the motion.

Harris stated she is also in support. The applicant has gone above and beyond. She is sympathetic to the concerns of neighbors, but a considerable amount of time has passed where a more modest development could have gone in, and it has not happened. For the economic viability of the entire development, you must look at compromises. The wording of the permit is important, as are the minutes. Hopefully in the future, we will not see these kinds of confusing issues.

Hove said he is sensitive to the needs of the neighbors and he appreciates their involvement throughout the process. He will support the motion. Because of height levels of the road and down to the townhomes, and with the future development of the strip of land between this storage facility and those townhomes, the visual impact of this project will not be so significant.

Motion carried 6-2: Cornelius, Corr, Harris, Lust, Sunderman, and Hove voting 'yes'; Beecham and Scheer voting 'no'; Weber absent.

SPECIAL PERMIT NO. 1762E
VINTAGE HEIGHTS CUP TO INCREASE DWELLING UNITS TO 990
TO ALLOW 84 UNITS TO BE SERVED BY SANITARY SEWER
ON PROPERTY GENERALLY LOCATED AT
SOUTH 98TH STREET AND OLD CHENEY ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

January 20, 2016

Staff recommendation: Conditional Approval.

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

Hove disclosed Brad Korrell is on the Board of Directors at the bank for which he works, and had stated this item was coming through.

Staff Presentation: Brian Will of the Planning Department came forward to state that Vintage Heights is a large development bounded by 84th on the west, Old Cheney on the north, Pine Lake Road on south, and 98th Street on the east. The application today is to amend the overall Special Permit to delete Note 24 regarding the requirement for availability of gravity fed sanitary sewer and to modify the lot layout of the northeast two-thirds of the CUP.

There is a line just west of the area in question, beyond which everything is developed and flows west. The area under discussion today cannot be served by typical gravity fed sanitary sewer because of the grade which causes everything to flow east. This request is to allow that area to be served by a pump station and force main. It would be located midway within the area.

Vintage Heights has been around for a long time with many incremental changes. It started out a much smaller development along Old Cheney Road in 1997. A year later that was expanded to the south. The area to the east was identified at that time as an area that could not be served by the gravity fed system, so it was not included at that time, and the necessity for today's request is no surprise. In 1999, additional area was approved farther east. It showed in concept large acreage lots and a church lot. The thinking was there could still be some development there, potentially locating homes on the western edge, or as acreages with septic systems. That plan was not developed. In 2004, a more substantial modification was made to the plan to leave out the acreage and church lots and to create an urban density residential lot layout. The Planning Department is recommending approval. This was originally on the November 18, 2015, Planning Commission agenda. It was delayed primarily to create the agreement between the developer and the City regarding the cost for construction and maintenance of the lift station and associated facilities. That agreement has been completed, with the exception of a few details that will be resolved before this application appears before City Council.

The rationale for allowing a lift station now, even though it is not consistent with City policy, is that this area is already annexed and rezoned into the City, which is a unique situation. We are not concerned about setting a precedent because the facts of this case are so unique. Other conditions of approval relate to revisions to site plan. We have not met with the developer regarding those changes, but in our view, they are not that significant.

Lust asked whether the distinguishing factor for this application is that the area in question has already been annexed and rezoned. Will said that is the primary distinguishing factor. Lust went on to say we would not have recommended annexation and rezoning for other property in a similar situation. Will suggested that today, we would not do that. Lust said, so aren't we really just compounding the error of allowing the annexation and rezoning of an area that could not be served by gravitation sewer? Will said the Planning Director would like to address that larger issue.

David Cary, Director of Planning, came forward to explain that this is a very good question. The uniqueness of this proposal is the annexation and rezoning and that is in the future service area of the City within the Long Range Plan. The lesson learned is about how we make decisions about whether or not we do or do not annex certain properties. For our purposes, we are very aware now that moving forward, we would avoid this situation to the best of our ability. That does create a unique feature of this situation. Another factor here is that this property has sat vacant for years, while the rest of it has been built out. The streets have been improved, which is a contributing factor. Additionally, we made sure as part of the agreement that the developer is paying for the improvement and maintenance of the pump station over many years into the future. We looked at the whole situation to come to a conclusion.

Lust said but even though it was annexed and rezoned, it is not a surprise to the owner and developer that typically development would not have been allowed because of the City's policy. They have known about that. Cary said that is correct. Lust wondered if then, this creates an expectation within the neighborhood that this particular lot would not be developed because of existing policy. Cary said the expectation of it remaining undeveloped should not be there. From the very beginning, there were discussions about it being developed in some manner and not to be open space. If gravity-flow sewer, and it will eventually reach this spot, so that gets into the part of the agreement where the pump sewer would be decommissioned, but when it gets to this area coming around from the north, this will develop the way it is being proposed now. One way or another, this area will be developed.

Lust asked how this area got into Tier I area. It is her understanding that there was nothing included in Tier I that could not be served by gravity sewer. Cary said that is correct. Planning Department is responsible for not being clear on that in the past when the annexation was taking place. Granted, many of the same staff were not here, but that is another valuable lesson to be aware of the future service limit in relation to what we annex when those proposals come forward.

Harris asked whether Cary knew whether Planning recommended approval of the lift stations in previous cases when they were denied by the City Council. Cary asked if she meant in other locations. Harris said no, in say 1999 the request for a station was denied and in 2004. Do you know the recommendation by planning for those? Cary said he is sure that the ~~recommendation at that time was that would not have been that we shouldn't be approving-we should not be approving~~ those lift stations. Harris said, so in your opinion, enough has changed. Cary said the rest of the development has built out and this area has been vacant. Another factor is the roads that have been approved. That is an urban service that is often lacking in an area like this, but that is not the case here.

Corr said she knows the developer is paying for the stations. She asked if that is being guaranteed with a bond. Cary said the applicant and Public Works staff are both here to speak to that, but it has been worked out.

Proponents:

1. Mark Hunzeker, 1248 O Street, came forward representing the applicant. The original plan was approved in 1997 and much has happened since then. The entire area is developed, the arterial streets are built, and there is a school site that virtually abuts this location. Water lines are in and available. This would represent a very efficient use of infrastructure that was paid for by taxpayers and this developer. The area has been designated as a Tier I development area in the Comprehensive Plan. It is annexed and zoned R-3. We are not aware of any other property area that meets such criteria.

In addition to these unique factors, an agreement has been reached with the City that the developer will pay for construction, installation, maintenance and replacement costs for the pump station for the next thirty years. This is an opportunity to bring in approximately \$25 million in property valuation at virtually no cost. There will also be no cost to the surrounding property owners. The area will be made part of the Vintage Heights Homeowner's Association with substantially similar neighborhood covenants. Another benefit is the access that will be created out to 98th Street. If you look at the street network as it exists today, this will provide for better circulation.

When this was approved, there was no lift station policy, except to say that the City has a preference to use the gravity system. The fact is, the City now has 13 lift stations and they are used and operated every day. This is not an unprecedented use of equipment or an engineering feat that has not been accomplished. It is an exception to a policy, or more accurately, a general preference for the gravity sewers. Lincoln was built in a bowl so it has had the luxury to use the gravity-flow system. Everything has developed uphill, and now we are at the top of the hill and are looking at some long and expensive trunk lines to bring in additional land. This is one area where there are some additional lots, and it is an easy exception, given the circumstances.

Beecham asked if the cost of decommissioning is included in the agreement. Hunzeker said yes, along with construction, maintenance and hookup.

2. Richard Rice, Crosby Guenzel Law Firm, came forward representing the Vintage Heights Homeowner's Association who are not necessarily here in favor or opposition to this application. He acknowledged the presence of several members of the HOA, including the President, Dan Wheeler. We will not oppose this and will support it if the things stated by Mr. Hunzeker are true and that there is no cost that will fall upon the existing Vintage Heights residents in connection with this project. There has been reference to an agreement but we have yet to see that. It is also understood that this will be single-family housing and the lot density and design standards will be consistent with the existing area. We also now understand that the new residents would become members of the current HOA. As long as those issues are resolved as we have been told here today, there is no opposition, but we reserve official judgement until the agreement is finalized.

Opponents:

There was no testimony in opposition.

Staff Questions:

Harris asked if all of the financial terms that were stated in today's meeting will be fleshed out and ready before City Council so that the homeowners will have a chance to review the agreement and to appear during the Public Hearing. Will said that is correct. It will be done and available prior to City Council and will part of the public record.

Beecham wanted to make sure there was no liability that would be placed on the homeowners. Will said the agreement is between the developer and the City and is an up front, lump some payment to cover the costs. There would be no involvement on the part of the existing association.

Beecham asked if all of the lots are single family. Will said that is what the revised site plan shows.

Corr asked if there is just one additional access point to 98th Street. Will said that is correct and that according to the Access Management Policy, it would be limited to every quarter mile. Corr asked for details on where the access will be located. Will said he is unsure, but it is approximately halfway between Old Cheney and Napa Ridge Drive, around a quarter mile.

Corr stated she has questions about the agreement. **Donna Garden of the Public Works and Utilities Department** came forward. Corr wondered what would happen if the developer went bankrupt. Garden said the agreement asks for all of the funds up front, prior to anything else going in, so the money will be in the bank to cover the costs of construction and maintenance well into the future. Corr wondered if there is any way to know how long the station will be there. Garden said at least 30 years or longer. Corr asked whose responsibility it would become if it is needed for 50y years. Garden said that beyond the projected amount of time and funding, it would become the responsibility of the City.

Applicant Rebuttal:

Hunzeker came forward to reiterate that there will be no responsibility placed on the current homeowners. All of the money will be provided up front. He addressed the location of the access point which will be built at the half section line and that connection will be at Forest Glen Drive. It will provide easy access in and out, particularly around the school site. The agreement will likely be finished by the end of the week and is a requirement of the conditions of approval today. It must be entered prior to scheduling on a City Council agenda, so it will be delivered, signed and available prior to that.

Hove asked if that information will be shared. Hunzeker said that it will be part of the public record and will be available right away. Hove asked for confirmation that the units will be single family, as shown, and that they will become due-paying members of the same HOA. Hunzeker confirmed all of that is true. This developer did the original covenants and provided the right to add additional property to it in the future, so it makes good sense.

SPECIAL PERMIT NO. 1762E

ACTION BY PLANNING COMMISSION:

January 6, 2016

Beecham moved approval, seconded by Harris.

Lust said she has never felt more reluctant to support an application due to the City's long standing policy on gravity sewers that has driven the Comprehensive Plan and what areas development are classified as Tier I. If there had been any neighborhood opposition at all, she would vote against this, but as is, she feels compelled to not be the only one opposed. She only supports this because it is already annexed and zoned and this will likely be the only time this will come up.

Scheer said he agrees with Lust's comments.

Beecham said she will support this even though it feels strange to recommend it without seeing the agreement. Considering this is going out so far, 30 years, it seems like we are doing a lot of estimation in terms of cost, but she will trust that City staff has done their due diligence.

Corr said a key for her is that the Staff Report clearly states that approval of this will not set a precedent for other developers. She will support it for that reason.

Hove said he will also support this and appreciates the neighborhood's involvement.

Motion carried 8-0: Beecham, Cornelius, Corr, Harris, Lust, Scheer, Sunderman, and Hove voting 'yes'; Weber absent.

There being no further business to come before the Commission, the meeting was adjourned at 3:20 p.m.

Note: These minutes will not be formally approved by the Planning Commission until their next regular meeting on Wednesday, February 3, 2016.