

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, April 27, 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: Tracy Corr (arrived at 1:03 p.m.), Michael Cornelius, Cathy Beecham, Maja V. Harris, Chris Hove, Jeanelle Lust, Dennis Scheer, and Lynn Sunderman; David Cary, Steve Henrichsen, Tom Cajka, Rachel Jones, Andrew Thierolf, Ed Zimmer, Brian Will, and Geri Rorabaugh 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 revised minutes for the regular meeting held April 13, 2016. Motion for approval made by Beecham, seconded by Harris and carried 7-0: Cornelius, Beecham, Harris, Lust, Scheer, Sunderman, and Hove voting 'yes'; Corr and Weber absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

April 27, 2016

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

The Consent Agenda consisted of the following items: **SPECIAL PERMIT NO. 16009, SPECIAL PERMIT NO. 16010, SPECIAL PERMIT NO. 16012, SPECIAL PERMIT NO. 16014, SPECIAL PERMIT NO. 16016, and WAIVER NO. 16002.**

There were no ex parte communications disclosed.

Item 1.1, **Special Permit No. 16009**, Item 1.3, **Special Permit No. 16012**, Item 1.4, **Special Permit No. 16014**, and Item No. 1.5, **Special Permit No. 16016**, were removed from the Consent Agenda and had separate public hearing.

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

Note: This is final action on **Special Permit No. 16010 and Waiver No. 16002**, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days.

Chair Hove asked that any **Requests for Deferral** be called.

Rorabaugh called two requests by the applicants for deferral to the May 11, 2016, meeting.

SPECIAL PERMIT NO. 1906A
ALLOW ANTENNAS ON EXISTING PERSONAL
WIRELESS FACILITY, 2601 NORTH 70TH STREET.
ACTION BY PLANNING COMMISSION:

April 27, 2016

There was no public testimony on this item.

CHANGE OF ZONE NO. 16010
CHANGE FROM R-4 RESIDENTIAL DISTRICT TO
B-3 COMMERCIAL DISTRICT, 2201 SOUTH 17TH STREET.
ACTION BY PLANNING COMMISSION:

April 27, 2016

There was no public testimony on this item.

Lust moved deferral of **SPECIAL PERMIT NO. 1906A** and **CHANGE OF ZONE NO. 16010**, seconded by Beecham and carried 8-0: Cornelius, Corr, Harris, Sunderman, Beecham, Lust, Scheer, and Hove voting 'yes'; Weber absent.

SPECIAL PERMIT NO. 16009
FOR CONSTRUCTION AND OPERATION OF A FIBER OPTIC UTILITY BUILDING,
ON PROPERTY GENERALLY LOCATED AT
1801 KINGS HIGHWAY.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 27, 2016

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

Staff recommendation: Conditional Approval.

There were no ex parte communications disclosed.

Staff presentation: Rachel Jones of the Planning Department came forward to state the applicant is requesting a 4-week deferral to the May 25, 2016, meeting.

There was no public testimony on this item.

Lust moved deferral of **SPECIAL PERMIT NO. 16009**, seconded by Scheer and carried 8-0: Cornelius, Corr, Harris, Sunderman, Beecham, Lust, Scheer, and Hove voting 'yes'; Weber absent.

SPECIAL PERMIT NO. 16012
FOR CONSTRUCTION AND OPERATION OF A FIBER OPTIC UTILITY BUILDING,
ON PROPERTY GENERALLY LOCATED AT
NORTH 70th STREET AND ADAMS STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: **April 27, 2016**

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

Staff recommendation: Conditional Approval.

There were no ex parte communications disclosed.

Staff presentation: **Brian Will of the Planning Department** came forward to present the staff report, explaining that Allo Communications is proposing a fiber optic building on the southwest corner of 70th & Adams Streets. There was former gas station/convenience store at this site which is now vacant. There will be other similar buildings throughout the city, as they build the fiber optic network. The applicant is in agreement with the staff recommendation of conditional approval. This item was removed from the Consent Agenda because a letter of opposition was submitted by Roger Elrod, owner of the adjacent property to the south. Mr. Elrod feels that the city could better utilize this property for a commercial development such a drive-thru restaurant. Will noted that this is not a city development but rather a private communications company. Generally, the market determines the highest and best use of property and, in this case, it for Allo Communications to locate this facility there.

Lust stated that the size of these buildings is similar to a shed so if this building were to go there, she asked if any other development would be allowed. Will stated that the size is similar to a shed. He explained that this is a corner lot and, therefore, more than one building could be located on this property. In terms of where this structure is sited, there is still a fair amount of the property that could be developed for some other commercial purpose.

Commissioner Beecham asked if there are setback requirements for this type of structure in terms of the proximity to adjacent lots. Will stated that the setbacks for the zoning district would apply. In this case, the B-1 zoning district setback requirements apply and they are in compliance and noted on the plan. Beecham asked if any adjustments are being allowed by this special permit. Will stated that there are no waivers of any kind with this special permit.

Beecham stated that since we will be seeing a lot of these facilities, she asked staff to explain what the thought process is when working with the applicant on where these facilities are located. Will explained that in a general sense, these structures are fairly non-obtrusive – they are the size of a typical storage shed that can be located in a backyard, and there is very little nuisance associated with them as they don't generate a lot of noise or dust. He stated that there perhaps there is a higher and better use of this property, but this use at this location, is compatible. There is commercial on the other three corners of this intersection. This is also a compatible use for going into neighborhoods, with some screening and landscaping requirements. Will believes it is appropriate to do these types of facilities by special permit. Most jurisdictions across the country permit utility facilities such as these within certain perimeters. Beecham asked if there is landscaping proposed for this particular site. Will stated that there is landscaping. Staff is recommending that it be a little more strategically placed as part of the recommended conditions.

Corr asked for clarification on the staff recommendation for a turn-a-round apron. Will explained that they will be eliminating some of the driveways in close proximity to this busy intersection. In order for a vehicle to get out onto an arterial street headlights first, they are recommending some additional paving to allow a vehicle to get turned around.

Proponents:

1. Mark Palmer, Olsson Associates, 601 P Street, and Jeff Kuenne, Allo Communications, 610 Broadway Street, Imperial, NE, came forward. Palmer indicated that they agree with the conditions as recommended by staff. In terms of whether there is a higher or better use of this lot, the Access Management Code would not allow the driveways where they are currently located. Two of the three driveways are being removed and they will be utilizing the remaining one. This lot size is about the same size as a corner residential lot and it would be very difficult to put in a commercial use that would require parking and adhere to the front yard setbacks.

Scheer stated that when scaling this area, it appears that there is approximately 5,000 square feet of buildable area on this lot, so it would be really difficult to allow a commercial use with the required parking on this site. Palmer stated that a typical fast food restaurant is generally on a lot that is three-fourths to a full acre in size.

Hove asked if there will be any emitting of noise from inside the structure, light, electricity, etc. Kuenne indicated that this will be “lights out facility”, meaning that it operates pretty much on its own. Techs will visit the structure on rare occasions. There will be four of these facilities located throughout the city – one in each quadrant. These buildings house the fiber optic cables that originate from them and are to be distributed throughout the city through ducts using utility easements. These structures are used as a central point of homing the fiber optic cables.

Beecham stated that since these are unmanned buildings if they get tagged with graffiti, is there a contact person who can be reached so that it can be taken care right away. Kuenne indicated that they have a 24/7 network operation center with a 800 number that is given to law enforcement in every city where they operate so that if they see anything that looks abnormal, they can address it so it does not result in an outage. The structures have environmental sensors on the inside as well as remote photography so that they are alerted to any vandalism.

Beecham stated that she likes that this located a little bit out of the neighborhood and closer to the business district. She asked if Allo has particular qualities that they are looking for in terms of identifying these sites. Kuenne indicated that they are looking at a 50-year life cycle, as there are 3 million feet of utility easements through Lincoln to cover the city limits, so they want something that will last for decades. They try to avoid properties where there might be a restaurant next to them in case of a fire. They want the structures to blend with the area and be non-descript and tucked away in the neighborhoods where they need the fiber to be.

Proponents:

1. **Teri Pope Gonzales, 349 South 1st Street**, came forward in opposition to this application.

Staff Responses and Questions:

Corr asked if the property to the west is a house. Will stated that it is zoned B-1 Commercial but it is a house and is used as a dwelling.

SPECIAL PERMIT NO. 16012

**FOR CONSTRUCTION AND OPERATION OF A FIBER OPTIC UTILITY BUILDING,
ON PROPERTY GENERALLY LOCATED AT
NORTH 70th STREET AND ADAMS STREET.**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 27, 2016

Harris moved approval, seconded by Scheer.

Corr stated that this cleans up a couple of problems by closing up some the entrances onto Adams and 70th Streets, and this is a small lot, which is appropriate for this type of facility. It provides a nice transition between the existing commercial and residential structures.

Beecham indicated that she appreciates that someone will be monitoring all these facilities. She does not want these to become a target for vandalism, etc.

Hove supports this application, as this is a small area and it needs something like this because unless they expanded into the residential area, there is nothing that would likely work.

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

Note: This is final action on **Special Permit No. 16012**, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days.

SPECIAL PERMIT NO. 16014
FOR CONSTRUCTION AND OPERATION OF A FIBER OPTIC UTILITY BUILDING,
ON PROPERTY GENERALLY LOCATED AT
SOUTH 17th AND GARFIELD STREETS.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 27, 2016

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

Staff recommendation: Conditional Approval.

There were no ex parte communications disclosed.

Staff presentation: **Andrew Thierolf of the Planning Department** came forward to present the staff report, indicating that this is also an application of Allo Communications for a fiber optics buildings. Thierolf stated that this site is zoned B-3 commercial and is adjacent to an R-2 residential district. Beecham asked about the zoning of the houses to the north. Thierolf stated that the houses are located in a B-3 commercially-zoned area. There is a slight revision to the site plan, stating that the building is still located in the same building envelope, it is just moved a little bit. Allo would be utilizing a shared access, which is an existing gravel driveway. They are requesting that an easement be obtained and that this area be paved. Because this is a commercial district adjacent to a residential district, there are some enhanced landscaping requirements associated with this, which are being recommended by staff – requiring a 60-percent screen from a plane 0 to 10 feet.

Harris stated that the site plan was revised but not enough to warrant a change to any conditions. Thierolf stated that the notes on the site plan indicate that the building can be located anywhere within the designated building envelope; it moved a little bit to the south and the east.

Beecham clarified that this is like the other buildings and they are not expecting a lot of traffic, headlights or cars coming in with light intruding on the lot next door, or that a lot of noise will be created from the building. Thierolf indicated that this is correct.

Proponents:

1. Mark Palmer, Olsson Associates, 601 P Street, and Jeff Kuenne, Allo Communications, 610 Broadway Street, Imperial, NE, came forward. Palmer indicated that this location is located near Mr. Wamsley's property to the east, and he is here to testify about some concerns. They have been communicating with Mr. Wamsley, which this is one of the reasons the building has been shifted further away from the street and the view corridor of their building. Palmer stated that it is tricky to blend this structure into the neighboring structures because there are different types of buildings all the way around. They are open to suggestions, and they are in agreement to the conditions of approval. It will be a brick building of a color that will blend in with the neighborhood.

Beecham asked for clarification on the landscaping that is being proposed. Palmer stated that there is an existing grouping of trees along the southern area of the lot and they plan to enhance that with additional landscaping up to the north and in the front. There is currently a chain link fence along the property line, which they plan to keep in place at this time. To the north of the site, is a gravel lot which they plan to pave. Since this property is zoned B-2, there are higher landscaping standards, and they plan to meet those requirements.

Beecham asked if the fence is there or if the applicant is putting it in. Palmer stated that it is an existing fence. Beecham asked if there is anything other than a blank wall of the building looking from the street. Palmer stated that the door of the building faces Garfield Street.

2. Robert and Rex Wamsley, 1721 Garfield Street, came forward in support but stated that they have several questions. Their house is an historic house built in 1892. They have spent a lot on renovations to this property and it is located in a neighborhood that they are trying to bring back. The house ties in nicely with the antique malls in the neighborhood. Some of the concerns that they have relate to the parking lot next to them, behind Lincoln Glass. Individuals have used this area as a public restroom, to do drugs, etc. In addition, they come through the property and have broke into their house and garage several times. One of the advantages of having an open parking lot allows these activities to be more visible. If a building is placed on this site, it will serve as a screen and people will go behind the building. If they put an unmanned building here, they think it should be fenced to keep people from wandering behind it. In addition to the landscaping, they would like to have an irrigation system installed for the grass to help improve the looks of the neighborhood and ensure that it is maintained and mowed. If they don't, when it gets hot, the grass will die and the area around the structure will be nothing but weeds. Wamsley indicated that they are not in favor of the trees that they are proposing to put in

because they will block the view of their house looking into the historic district. If there is lighting, they don't want bright lights. They stressed the need to do some things around the building to limit the access to it. They are supportive of how they are shifting the building back. This is a commercial lot but they need to consider the impacts on the residences around it.

Rex Wamsley stated that size-wise, the building is comparable to a 3-car garage, so it is larger than a small garden shed. They hope that the building architecture can be done in a manner that it blends in with the neighborhood, i.e. look like a carriage house. They are not opposed to the building but want to take measures to ensure that it does not negatively impact the neighborhood. Rex Wamsley indicated that the existing chain link fence is not continuous. It may be better to remove the existing trees and replace them with a nicer fence. He noted that the County Board recommended that this house be demolished several years ago but they didn't, and now it is the nicest house in this area. They would like the applicant to be a good neighbor if they come into their neighborhood.

Harris asked the Wamsley's to identify where they would like to see the fence placed around this site. Wamsley stated that for safety reasons, the entire site area would need to be fenced and gated.

Beecham clarified that the Wamsley's would be more comfortable if some of the front trees were taken out and a fence were installed so that individuals could not easily get over it. Wamsley stated that is correct. They want a fence that looks nice as opposed to a high chain link fence.

Beecham asked if a sign on the back of the building indicating that the area is under camera surveillance in addition to a camera would act as a deterrent. Wamsley thinks this may help but then people become aware that it may not be monitored and it could become a dumping ground, as furniture has been dropped off there in the past.

Beecham asked if it is currently used for parking. Wamsley stated yes and for boat storage. This does not add to the neighborhood but at least you can see what is going on.

Harris said if there is a fence put up, it would need to be transparent. Wamsley stated that is correct.

Beecham asked what they would consider the best location for the building on this site. Wamsley stated that if it could be moved back toward the alley more that would be great.

Rex Wamsley indicated that when reviewing the plans, it indicated that the size of the building could change and asked what this means.

Beecham stated that the security view is from 17th Street towards your house and into your backyard. Wamsley stated that this is correct. In addition, Wamsley stated that he understands that there is no noise associated with the building and the lighting will be subtle.

Proponents:

1. **Teri Pope Gonzales, 349 South 1st Street**, came forward in opposition to this application.

Staff Responses and Questions:

Beecham indicated that they were talking about the location of the house and she knows this neighborhood well, as she used to live there. She asked Thierolf to discuss the setbacks and whether or not it would be possible to move the building back further in order to obtain the security that is desired. Andrew stated that this is in the B-3 commercial district and in this district there is no rear yard setback unless it is adjacent to residential. There is a small area of R-2 zoning, so there would be a 30-foot setback for the rear yard setback. Beecham asked if this could be waived with a special permit. Thierolf stated that he didn't believe so, as he had discussed this previously with Steve Henrichsen. Thierolf explained that they could require a larger front yard setback to ensure that the building is not in the front area.

Corr stated that there are screening requirements for projects such as this. If they don't use trees, it will be a fence. She asked if it would be a 6-foot or 10-foot fence. Thierolf indicated that it would need to be a 6-foot fence in order to screen 60 percent, and it could not be a chain link fence but rather an opaque-type fence. Beecham asked if it has to screen the entire lot line. Thierolf explained that it is supposed to be divided evenly across the entire lot line as indicated in the Design Standards.

Scheer stated that the building has been moved back to the rear yard setback and asked if the utility generator and utility transformer have to be placed inside the buildable area. Andrew indicated that on the revised site plan, the transformer is located in the rear yard setback and this is allowed. The building has been pushed back as far as it can be.

Beecham asked if it is possible to request additional signage to help alleviate concerns that may be created as an area where people can commit crime. Thierolf explained that the question is whether or not this building is creating crime for an area. He stated that he is not sure we could force requirements on a facility where they are not actually creating that impact.

Applicant Rebuttal:

Palmer stated that they could reduce the size of the building to measure 11 x 21 feet, thus they would be able to push it back further because it is 9 feet shorter. In terms of the Wamsley's concerns, they are proposing a 6-foot wooden fence that would cordon off the building and related equipment, which would be gated and lock. In addition, they could add a few more motion-activated security cameras. Kuenne stated that they do not want to create an area that would promote crime activity as expressed by the Wamsley's. With regard to the fence, they would be willing to remove the chain link fence and will cooperate with the Wamsley's as to what is visibly appealing. Their goal is to blend in and not stand out and draw attention to this building. The Wamsley's willingness to bring up some of these issues and what they might be up against is much appreciated. Palmer stated that they would also be willing to do a lower level shrubbery rather than placing trees to allow for more visibility to the front of the site. Palmer stated that in terms of providing irrigation, these facilities do not have a water service. Their intent is to contract with a landscape company to seed this site with some kind of a resilient seed mix or use mulch or rock that looks attractive for a residential area.

Corr asked for clarification on the type of lighting that may impact the adjacent neighborhood. Kuenne reported that the current plan does not include exterior lighting; lighting only comes on if they detect an intrusion or if it is manually turned on when a technician is on site. If the Wamsley's feel this is not sufficient, they are willing to work with them.

Harris asked if a motion-sensored light will come on at the rear of the building or is it just at the entrance. Kuenne indicated that it doesn't come on when motion is triggered but only comes on manually. The cameras are set such that they can see in the dark. The reason for this technology is to avoid lights going on and off due to wind, etc.

**SPECIAL PERMIT NO. 16014
FOR CONSTRUCTION AND OPERATION OF A FIBER OPTIC UTILITY BUILDING,
ON PROPERTY GENERALLY LOCATED AT
SOUTH 17TH AND GARFIELD STREETS.
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

April 27, 2016

Lust moved approval, seconded by Cornelius.

Lust stated that it is great when they have applicants that are willing to work with the neighbors. She believes that everyone is interested in having this be a safe and secure building and area. She appreciates their willingness to work this out. It will be an improvement to the neighborhoods with more security. This is a great development.

Hove agreed with Lust. He complimented the applicants and the neighbors for working together on this.

Corr thanked the Wamsley's for investing in the neighborhood. I wish more people like you would invest in up and coming neighborhoods and be willing to do this and live there. She also thanked that applicant for working with the neighbors and being very sensitive to the needs.

Beecham echoed Corr's comments and thanked Allo. You are showing that you are a great partner and sensitive to each location; this means a lot. She also thanked the Wamsley's, as Near South is near and dear to her heart, and for taking the time to come down today. It does mean a lot to hear from the public.

Harris thanked them both for being good neighbors. She believes that the neighborhood is better because of their investment in this historic house. It is appreciated it and hopes that people will follow in their footsteps.

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

Note: This is final action on **Special Permit No. 16014**, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days.

SPECIAL PERMIT NO. 16016

**ALLOW A ROCK/CONCRETE CRUSHER
ON PROPERTY GENERALLY LOCATED AT
431 A STREET**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 27, 2016

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

Staff recommendation: Conditional Approval.

There were no ex parte communications disclosed.

Staff presentation: Andrew Thierolf of the Planning Department and Chris Schroeder of Lincoln-Lancaster County Health Department came forward. Thierolf reviewed some of the highlights of the staff report for this application. This site is located between A Street and South Street along 4th Street. The area is primarily zoned industrial with residential houses along the perimeter. Thierolf identified the location of the park and the concrete pile using the site plan. Adjacent to the park is a firefighter training facility and a large pile of concrete located owned by the city, which is not part of this application. He explained that on the Capital Concrete site, there is a large pile of concrete rubble, and the applicant is proposing a clean-up project which would involve bringing in a mobile crusher to crush the concrete and remove it from the site. This is for a temporary special permit that would only run through August 1, 2016, and the applicant would be limited to 15 days of crushing. Their goal is to have the concrete completely removed from this site by August 1. The

whole area is located in the floodplain as well as the Salt Creek storage area, therefore, it is advantageous to remove the fill from the site.

Lust asked if we are getting rid of the city's concrete pile as well. Theirolf said no.

Corr asked if the city's concrete pile is located in the floodplain. Theirolf indicated that it is. **Steve Henrichsen of the Planning Department** came forward and explained that this concrete pile is part of the Fire Department's training facility that also includes railcars and other items to help simulate different types of accidents such as a building collapse for training purposes. Staff indicated that it is not all Park land between the industrial land located east of the railroad tracks and the park; the Fire Department's training facility is also located there. The area to the north is a parking lot. The entire area identified on the site plan is located in the floodplain.

Beecham asked about the noise, dust and health concerns. Chris Schroeder indicated that the crusher that is being proposed for this site does have a construction permit from the Health Department. As part of this, they are subject to complying with federal and local air pollution regulations, which primarily focus on controlling dust out of the crushing equipment as well as off-site visible dust emissions. In addition, they are subject to complying with the local noise code.

Beecham asked if the code differs when dealing with an area that is adjacent to a residential area versus an agricultural or industrial area. Schroeder indicated that the air codes do not differ but the noise code does. The noise code references receiving land use of the complainant. If the complainant is zoned residential, there are stricter noise standards. If it is commercial, there are higher noise standards, and industrial is higher as well.

Beecham stated that as part of them getting the permit, it has already been reviewed that they would meet the noise requirements. Schroeder indicated that the construction permit only applies to air pollution not noise. The noise program works on a complaint basis. If they receive a complaint, staff will go out and take readings to determine compliance with the noise code.

Harris stated that the reason that the noise requirements as far as the times permitted are different for this than for Allo permits is because of the zoning. Schroeder stated that it is determined by the adjacent zoning.

Lust asked why the concrete has to be crushed to be moved. Theirolf indicated that it doesn't have to be crushed but this would be the simplest way to do it. The applicant can likely better address this.

Corr asked if the 15 days for running the crusher have to be consecutive days. Thierolf indicated that they are bringing in a mobile crusher so he thinks that they will likely try to

get it all done at once. It is anticipated that this will not take more than 5 days to crush the concrete but they are requesting 15 days to allow for contingencies such as break downs, etc.

Beecham asked if this clean-up is voluntary and asked if they are in violation of anything. Thierolf indicated that there is no enforcement action at this time. According to the Building & Safety Department records, there were some floodplain permits but it is not completely clear if all the piles were permitted. The applicant is doing this voluntarily.

Cornelius asked about the distance to the nearest residential property. Thierolf indicated that the nearest house is about 800 feet.

Corr asked if the properties to the west are mainly storage garages. Thierolf stated that the area is industrial and includes some self storage, auto repair shops, etc. He doesn't believe there are any houses there.

Beecham asked Schroeder if the air pollution requirements have any impact based on wind velocity or certain weather conditions, i.e. the impact of smoke due to the burning in Kansas. Schroeder explained that it is a factor in the fugitive dust regulations which includes reasonable dust control measures. If we have a very windy day and the source is not using reasonable measures such as applying water and there is some off-site emissions, they would take the high wind speeds into account and wouldn't necessarily file a violation for that. Beecham clarified that we are not indicating they can't do it because the winds are high. Schroeder stated that is correct.

Lust asked about the shape of the application area, specifically the indentation in the middle. Thierolf explained that the site map outlines the applicant's property boundary and there are some odd right-of-way areas on this site, noting that the two areas are separated by a non-vacated public right-of-way.

Proponents:

1. Ryan Strait of TNT Earth Moving, 7701 Cornhusker Highway, and Nate Peterson with Infinity Excavating, 7701 Cornhusker Highway, came forward. Strait indicated that the noise shouldn't be any higher than the concrete trucks that are in and out of there all the time. They have purchased ceramic low bars which are the mechanics of the machine that break up the concrete and these make it quieter. They also use a wet compression system which helps to control the dust. Dust will only likely be created by the initial drop of the concrete into the hopper, which is comparable to the dust generated by the dump trucks coming and going. They have had their opacity testing performed and they will submit the results to the Health Department and Nebraska Department of Environmental

Quality next week. This concrete is primarily the result of overages coming back from construction sites. If it is not crushed, it would have to be taken to a landfill, which creates a lot of voided space and does not bio-degrade. Crushed concrete is a renewal aggregate that can be used for a city road base or pipe bedding, which is intended to benefit the city.

Scheer asked how many days they anticipate they will be crushing. Straight stated that they are requesting 15 days to allow for unforeseen circumstances but based on the tonnage, they should get it done in 5 days.

Opponents:

1. P.C. Meza, 536 C Street, came forward and stated that has lived in the South Salt Creek neighborhood since 1961. He attended Park School and has seen a lot of changes in the neighborhood, which is close to the floodplain. There is another concrete crushing business located in the neighborhood. At the time that permit was issued, he believes it was also a temporary permit but it is still going on. He is concerned because this is a renewable resource so what is to stop Capital from continuing to bring in concrete into the neighborhood to crush it and sell it for a profit on an ongoing basis. Their neighborhood is the oldest neighborhood in Lincoln and they have been asked to shoulder the burden for these types of activities. TMCO is a great company but it is a big company that has grown and generates a lot of truck and trailer traffic going through the neighborhood, and it is located close to a school. It doesn't belong in their neighborhood. This is a great idea for a renewable resource but it doesn't belong in their neighborhood. The area just north of A Street is all residential. When you were previously discussing the permits, the discussion focused on the quality of life, i.e. public restrooms, graffiti, etc. Why isn't there more concern for their neighborhood and the people who live there and their quality of life. Since the city helped in getting the quiet zone implemented for this area, the neighborhood has improved a lot. The rock crusher will generate more noise for the area. Their neighborhood is being surrounded by the better parts of the community and are being left to deteriorate. He suggested that they truck the concrete to the 77th Street location and crush it there. Meza noted that there is no barrier for noise. They are zoned light industrial next to residential; how are you going to keep the noise down. He is opposed to this special permit. He has nothing against the business but the neighbors in the area do have concerns, which should be considered. He lives a few blocks away from this site and he is sure he will hear it and it will generate dust. There are kids outside playing in this area – think of the kids.

Harris reiterated that the applicant stated that this is a temporary permit. Meza stated that he heard that but there is a history of temporary things sticking around in their neighborhood. Harris asked if they could guarantee that it would be no more than 5 to 15 days, if it would be okay. Meza stated that it needs to be iron clad but there always seem

to be variances because they are located in the floodplain. He stated that no one in their area is allowed to put up a garden shed but they were able to build the arena and the Haymarket development in the floodplain. This is business above residents, which is what he is concerned about. He believes this is a slippery slope.

2. Steve Larrick, 920 South 8th Street, past president of the Salt South Creek Neighborhood Association, came forward and stated that 25 years ago they were told they were getting a temporary batch plant behind Teri Pope Gonzales' property. They were opposed to it but thought that at least it was a temporary plant; however it continued to exist and grow into what it is today. If they are guaranteed that it is 5 to 15 days, they can probably live with it but they don't want to go through this again. Over the years, there have been many people as well as pets in the neighborhood that have died as a result of breathing complications. Trees in the area are also dying. To start a new crushing business in this area is an incompatible use for this land. Capital Concrete has been a good neighbor and he respects them. Their address is 431 A Street and there is housing all along A Street. They don't want to see this happen again like the temporary batch plant. In terms of the floodplain, 3 years ago the city decided to bring in 35-acre feet of fill for the ice rink when the neighborhood had worked with the city for decades to bring in new flood storage. Mayor Wesley agreed to provide a little more flood storage than what was really needed, prior to knowing about all the development in the arena area. Within a year, their neighborhood flooded again for the first time in over 60 years. He hopes that they can be guaranteed that this is a temporary activity and avoid making the same mistakes over again. Larrick stated that new families are moving into the area because they want to be close to the bike trails and people want smaller homes, which they have in this area. They want to keep improving this area.

3. Teri Pope Gonzalez, 349 South 1st Street, came forward in opposition to this special permit stating that this concrete contains poisons such as anti-freeze and diesel. She displayed blisters on her chest caused by the chemicals in the dust. She is not opposed to Capital Concrete but rather the company adjacent to her property. They were told that this company was going to be a temporary batch plant 20 years ago but it is still there. Seven years ago, they were allowed to place a temporary mobile crusher on this property and it is still there. In September 2015, the Planning Commission recommended expansion of this business.

Staff Responses and Questions:

Beecham asked staff to address the process for renewing a temporary permit such as this. Thierolf stated that this permit will expire. It could be amended but it would have to go through the process again.

Beecham asked that if they approve this special permit, are they pre-disposed to approve the next one or can they consider the circumstances. Thierolf indicated that this is not an ideal site for rock crushing because it is located in the floodplain. It would be a different type of review if it were for a permanent rock crushing business in this area.

Harris stated that Ben Higgins is on record stating that he is okay with this as long as it is for a very limited time and asked if this note would likely apply for any new permit application. Thierolf said yes and explained that they tried to make it clear in the staff report that this would only be supporting a temporary use.

Beecham asked if there is anything to prevent a concrete company from re-acquiring more concrete once this initial clean up is completed. Thierolf explained that if they create new piles, they would have to be permitted. He believes that it is the applicant's intent that once this is cleaned up, they will truck the concrete off-site some place for crushing and will not be piling it up on this site. If they wanted to pile more up, a floodplain fill permit would be required.

Beecham asked if this permit is complaint driven. Thierolf stated that is correct.

Corr asked for clarification on the permit process – does it come through Building & Safety or the Planning Department. Thierolf stated that the floodplain permits are issued through Building & Safety.

Scheer stated that a floodplain permit involves a regulatory process. Thierolf agreed.

Sunderman asked if they are only bringing in concrete overages from job sites. Thierolf stated yes. When they measure the concrete for a job, sometimes they have a little bit extra. In the future, this will be going to another site.

Beecham stated that if they wanted to bring concrete back to this site for storing and crushing, it would require a whole new set of permits. Thierolf stated that it would require a permit.

Applicant Rebuttal:

Ryan Strait stated that this is a very temporary permit, and they would not want to have to go through this again. In addition, their schedule with other customers does not permit it. The goal of Capital Concrete is to beautify this area and make it better for the neighborhood. As soon as they get rid of the pile, they will be sodding and landscaping this area. As part of their contract, for the next three years, they are going to bring the concrete to TNT's site for crushing.

Corr asked how difficult it would be to move the concrete and crush it at their plant. Strait indicated that with the amount of tonnage they have, it would be difficult. With the shape

of this property, it is difficult for them to get their equipment in there. It would be much more feasible for them to crush it at this site and haul it out. In order to truck this to another site, it would require a lot more money and would create a lot more truck traffic through the neighborhood and downtown. Their contract proposes to crush what is there. In the future, once they have a dump truck full, they will bring to TNT for crushing. The maximum number of days for this permit is 15 days.

SPECIAL PERMIT NO. 16016

**ALLOW A ROCK/CONCRETE CRUSHER
ON PROPERTY GENERALLY LOCATED AT
431 A STREET**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 27, 2016

Lust moved approval, seconded by Scheer.

Cornelius looked at the site map and it is fairly distant from residential. He couldn't find a residence within 800 feet. The permit issued 20 years ago is somewhat of a distraction from what is before them today. Given that this is a special permit for a very short duration and given the goal of the project, he finds it difficult not to vote in favor of this but noted that it would be difficult to support an extension of this special permit in the future.

Lust stated that this company is trying to be a good neighbor by cleaning up this area and getting the concrete out of there and keeping it out. She is not in favor of penalizing a company by not letting them clean up something that will be an ultimate improvement in the neighborhood. She supports this application.

Beecham indicated that what is occurring here is the result of having residential up against industrial and the challenges that this can pose. She is going to support this for the key reason that they are taking steps to clean this up and to prevent this from being a reoccurrence. The long-term goal is to be an improvement to the area, and they won't be back in a year asking for another temporary permit.

Harris stated that if she lived in the neighborhood, she would also have concerns that it might become a permanent fixture. However, the applicant is on record stating that this a temporary activity and department support indicating that it is okay only if it is a temporary activity, so she intends to support it.

Corr echoed the comments of fellow commissioners. What happened in the past is very unfortunate but none of the current planning commission members were there at that time. She is only in support of this if it is temporary.

Hove echoed the previous comments of the commissioners and encouraged those individuals who testified in opposition to monitor the activity and if it is not completed within 15 days to make a complaint.

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

Note: This is final action on **Special Permit No. 16016**, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days.

There being no further business to come before the Commission, the meeting was adjourned at 2:44 p.m.

Note: These minutes will not be formally approved by the Planning Commission until their next regular meeting on Wednesday, May 11, 2016.