City Council Introduction: **Monday**, December 5, 2005
Public Hearing: **Monday**, December 12, 2005, at **1:30** p.m.

Bill No. 05-176
Bill No. 05-178

FACTSHEET

TITLE: **MISCELLANEOUS NO. 05023A,** requested by the Director of Public Works and Utilities, to amend Chapter 26.24 of the Lincoln Municipal Code relating to Flood Regulations for the Existing Urban Area by amending Section 26.24.010 to add a definition for "floodprone area"; by amending Section 26.24.020 to provide platting and subdivision restrictions on land located in the floodway, floodplain or floodprone areas; by amending Section 26.24.030 to require additional information to be shown on the preliminary plat if the subdivision is located in the floodprone area; and **MISCELLANEOUS NO. 05023B,** by amending Chapter 26.25 relating to Flood Regulations for New Growth Areas by amending Section 26.25.020 to provide platting and subdivision restrictions on land located in the floodway, floodplain or floodprone areas.
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SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: Consent Agenda: 09/28/05
Administrative Action: 09/28/05

RECOMMENDATION: Approval (5-4: Taylor, Pearson, Carroll, Esseks and Carlson voting 'yes'; Krieser, Larson, Strand and Sunderman voting 'no').

STAFF RECOMMENDATION: Approval.

ASSOCIATED REQUESTS: Change of Zone No. 05070A and 05070B (05-175 and 05-177).

FINDINGS:

1. These proposed text amendments to the Land Subdivision Ordinance were heard at the same time as similar proposed text amendments to the Zoning Ordinance.

2. These proposed text amendments to the Land Subdivision Ordinance make clarifications and address discrepancies regarding the use of "best available flood information" within the Existing Urban Area and New Growth Areas. These proposed text amendments do not impact measures required for development within the floodplain. These revisions correct an inconsistency inadvertently created by the text changes adopted in 2004.

3. The staff recommendation of approval is based upon the *"Analysis"* as set forth on p.2-3, concluding that these revisions will provide a mechanism to consistently apply the best technical flood hazard information available throughout the City's jurisdiction, and thus to better protect homes and businesses in the future from flood hazards.

4. The staff presentation and testimony in support is found on p.4, and the record consists of one e-mail in support (p.9).

5. Testimony in opposition is found on p.4-5, claiming that the City's information may not be reliable.

6. On September 28, 2005, the majority of the Planning Commission agreed with the staff recommendation and voted 5-4 to recommend approval.

FACTSHEET PREPARED BY: Jean L. Walker **DATE**: November 28, 2005

REVIEWED BY:_____ **DATE**: November 28, 2005

REFERENCE NUMBER: FS\CC\2005\MISC.05023A&B

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for September 28, 2005 PLANNING COMMISSION MEETING

This is a combined staff report for related items. This report contains a single background and analysis section for all items.

PROJECT #: Change of Zone #05070
Miscellaneous #05023

PROPOSAL: This is a text change to the zoning and subdivision ordinances to make clarifications and address discrepancies regarding the use of best available flood information within the Existing Urban Area and New Growth Areas.

CONCLUSION: These revisions will provide a mechanism to consistently apply the best technical flood hazard information available throughout the City's jurisdiction, and thus to better protect homes and businesses in the future from flood hazards.

RECOMMENDATION:	Approval

GENERAL INFORMATION:

LEGAL DESCRIPTION: Revisions to 26.24, "Flood Regulations for Existing Urban Area," 26.25, "Flood Regulations for New Growth Areas," 27.52, "Flood Regulations for Existing Urban Area," and 27.53, "Flood Regulations for New Growth Areas."

HISTORY:

May 2004. Text changes to the zoning and subdivision ordinances were adopted to distinguish between the Existing Urban Area and New Growth Areas for the purposes of flood standards, to adopt stricter standards for New Growth Areas, and to achieve consistency regarding information submitted for permits to develop within the floodplain and floodprone areas.

COMPREHENSIVE PLAN SPECIFICATIONS:

Page F80 - Improve the accuracy of floodplain mapping and make it a priority to which specific resources are dedicated. Continue to develop a comprehensive, watershed approach to floodplain mapping.

Page F80 - Reinforce accountability and disclosure laws regarding real estate transactions, enhance education efforts to notify prospective buyers, and improve methods for assessing and taxing floodplain properties, especially land held in conservation easements.

ANALYSIS:

1. These are proposed text revisions for the Zoning and Subdivision Ordinances to make clarifications and address discrepancies regarding the use of best available flood information within the Existing Urban Area and New Growth Areas.

2. These text revisions do not impact measures required for development within the floodplain. The revisions correct an inconsistency inadvertently created by the text changes adopted in 2004 which recognized updated floodplain information in new growth areas, but not within the existing urban area.

3. While a great deal of the City's floodplain map updates are associated with master plans for new growth areas, the City has also updated or is in the process of updating floodplain mapping for the existing urban area.

4. The revisions also make it clear that in all areas revised floodway boundaries may be part of the updated flood information.

5. These revisions will provide a mechanism to consistently apply the best technical flood hazard information available throughout the City's jurisdiction, and thus to better protect homes and businesses in the future from flood hazards.

Prepared by:

Ray Hill
Development Review Manager
September 14, 2005

APPLICANT: Karl Fredrickson, Director
Public Works & Utilities Dept.
555 South 10th Street
Lincoln, NE 68508

CONTACT: Nicole Fleck-Tooze
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Lincoln, NE 68508
(402) 441-6173
ntooze@lincoln.ne.gov

CHANGE OF ZONE NO. 05070
and
MISCELLANEOUS NO. 05023

PUBLIC HEARING BEFORE PLANNING COMMISSION: September 28, 2005

Members present: Krieser, Taylor, Pearson, Larson, Strand, Carroll, Esseks, Sunderman and Carlson.

Staff recommendation: Approval.

Ex Parte Communications: None.

Additional information submitted for the record: Ray Hill of the Planning staff submitted an e-mail from Foster Collins in support.

Proponents

1. Nicole Fleck-Tooze of Public Works & Utilities, presented the applications. This is a text revision to make clarifications and address discrepancies regarding the use of "best available flood information" within the existing urban and new growth areas, for both the zoning and subdivision regulations. The intent is to correct an inconsistency when the City Council adopted changes in 2004 which recognized updated floodplain information in the new growth areas. Revised floodway boundaries may be part of that updated floodplain information. There are mapping efforts underway for stream reaches that are within the existing urban area. It is important for Building & Safety to be able to apply this information. These text changes were routed to the development community and presented to the Mayor's Neighborhood Roundtable on September 8, 2005. These amendments provide a mechanism to consistently apply the "best available information" throughout the city's jurisdiction.

2. Marilyn McNabb, who was a member of the Floodplain Task Force, testified he support. The task force always assumed that we would use the best available information, where possible. It was the least controversial thing discussed by the task force. We need to use our best information to protect ourselves.

3. Russell Miller, 341 S. 52nd, testified in support and showed an example of what happens if you don't use the best information available, i.e. 3500 Baldwin Avenue in Dead Man's Run.

Opposition

1. Peter Katt, a member of the development community, testified in opposition, focusing on the imposition of these regulations in the existing urban area. This is much more than a technical amendment. That is a mischaracterization. It extends the city's upgraded floodplain management policies into the urban area by creating a term called a "floodprone area", thus creating the city's regulatory authority in an area that currently does not exist. He was here when the "best available information" was adopted in the reaches that it affected Prairie Village on 84th and Adams. There were numerous errors in the information that was put together. These studies done by the City do not

guarantee or assure accuracy. "Best available" is just that. The purpose of having the federal flood legislation is that when you update the FEMA study maps and create that information, there is a very extensive public process involved before you change the maps. There is scientific review and opportunities for public input. It is bad policy to have two different competing standards. The difference between new growth areas and existing urban growth areas is dramatic in that there is already a lot of development that has other impacts as a result of changing this floodprone area. Another key difference is that we have adopted a different regulatory standard in the new growth areas – no net rise or rise of .05. So in order to implement that new regulatory standard in the new growth areas, you do need to create floodprone areas. In the existing city we are not proposing to change that standard, so the increment of regulatory power the city gains is small. Katt contends that there is plenty of regulatory control in the existing urban area. We don't need to add more. Let the update of the FEMA maps happen. The information is available and it is impacted in projects that are in process. He does not believe there is any real need to impose another regulatory system within the existing urban area.

Katt proposed an amendment in the new growth area regulations, i.e. move the decimal point from .05 to .5 in the new growth areas.

Taylor asked Katt to address the comments made by Mr. Miller. Katt suggested that it was an example of a bad business decision. It was not because the city had or had no regulations in place. It was because he chose to use the information that was readily available. This is not a case where the information is not available. It is the issue of do you want to give regulatory authority to the city with regard to this information? "Best available" implies some stamp of approval that he does not believe is justified.

Taylor wondered whether the example given would have been different had these regulations been in place. Katt's response was that if the information had been in place, the individual would have had to bring in six feet of fill to do the project. The project would not have been stopped but he would have had to either fill it or flood proof it.

Pearson posed the question to Katt: Are you really saying that people who live inside the city should not be protected with the best available information on flooding? Katt responded, "no, I'm saying the city should not adopt a regulatory standard with information that is not reliable." There has been no independent analysis. The impacts in new growth areas do not have the same level of investment. There is a ripple effect. It is not as simple as saying we are going to protect people by having best available information. It is much more complicated. Changing floodplain lines on a map has dramatic consequences in the marketplace. It should not be done where people have made tremendous investments without making sure the information has gone through the FEMA process.

<u>Staff questions</u>

Esseks inquired as to how often FEMA updates the floodplain maps. Fleck-Tooze indicated that Public Works is currently in the process of an update as a cooperating technical partner with FEMA for five different stream reaches. Stevens Creek has been adopted and there are four others that are in various stages of completion. We are in a period of time where we are seeing more updates than we have in the past because of that partnership and because there is an overall nationwide effort to do updating. All floodplain mapping is being conducted by qualified professional engineers who work in this area, and all in accordance with FEMA's floodplain standards for mapping with

very specific guidelines. They are using the very best technology; the most recent topography; and the most up-to-date model efforts, so they are significantly more accurate than previous floodplain mapping efforts.

Esseks inquired as to the time lapse between when the updates would be available and when FEMA would approve it. Fleck-Tooze advised that she expects to see formal update approval in the spring of 2007. There may be some floodprone areas designated about a year and a half before the time adopted by FEMA.

Esseks inquired as to a property owner's recourse if they feel the information gathered by the city is inaccurate. Fleck-Tooze advised that the property owner would have ability to submit technical information that shows there is something different than what has been demonstrated in the modeling effort. All of the models that we have thus far have been provided to the engineering community.

Response by the Applicant

Fleck-Tooze pointed out that the maps are not before the Commission for adoption. What is before the Commission today is a text change that says as the City Council adopts updated floodplain information, it should be consistently used and applied whether in the new growth area or existing urban area. The maps are adopted by the City Council This is not a change to measures that are required for development in the floodplain. It is simply a change to recognize "best available information", and we do follow FEMA guidelines for floodplain efforts. It is important to have the updated information. Fleck-Tooze would advocate that it is good policy. It is not in the public interest to make a conscious decision not to utilize the information that is there.

With regard to Mr. Katt's proposed amendment to the new growth areas, Fleck-Tooze observed that the "no net rise" or .05 was a major policy decision previously adopted. What Mr. Katt is proposing (.5) is a very significant change that has not been any part of a public process.

CHANGE OF ZONE NO. 05070
ACTION BY PLANNING COMMISSION: September 28, 2005

Taylor moved approval, seconded by Pearson.

Taylor commented that if this had been in place then there would have been guidelines available that would have forced the developer (in the example given by Russell Miller) to make an adjustment prior to completing the development.

Pearson also believes it is important that we protect the people inside the city as well as those in the new growth areas with the best available information. We have seen cases recently where they have not protected people inside the city and we don't want to be there.

Esseks noted that the federal bureaucracy is overwhelmed at this point and funding may not be generous in the future so this is a good incentive for local governments to hire the skilled personnel to do what the feds cannot do expeditiously.

Strand feels the definition for "floodprone area" goes too far so she will vote in opposition.

Motion for approval carried 5-4: Taylor, Pearson, Carroll, Esseks and Carlson voting 'yes'; Krieser, Larson, Strand and Sunderman voting 'no'. This is a recommendation to the City Council.

MISCELLANEOUS NO. 05023
ACTION BY PLANNING COMMISSION: September 28, 2005

Carroll moved approval, seconded by Pearson and carried 5-4: Taylor, Pearson, Carroll, Esseks and Carlson voting 'yes'; Krieser, Larson, Strand and Sunderman voting 'no'. This is a recommendation to the City Council.

CITY OF LINCOLN
NEBRASKA

MAYOR COLEEN J. SENG
lincoln.ne.gov

Public Works and Utilities Department
Karl Fredrickson, Director
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Suite 203
Lincoln, Nebraska 68508
402-441-7548
fax: 402-441-8609

September 1, 2005

Marvin Krout, Director
Lincoln-Lancaster Co. Planning Dept.
555 South 10th Street
Lincoln, NE 68508

Dear Marvin:

RE: Text Revisions for Use of Best Available Flood Information

Attached please find proposed text revisions for the Zoning and Subdivision Ordinances to make clarifications and address discrepancies regarding the use of best available flood information within the Existing Urban Area and New Growth Areas. Parallel text changes are proposed to 26.24, "Flood Regulations for Existing Urban Area," 26.25, "Flood Regulations for New Growth Areas," 27.52, "Flood Regulations for Existing Urban Area," and 27.53, "Flood Regulations for New Growth Areas."

This text change does not impact measures required for development within the floodplain. It simply corrects an inconsistency inadvertently created by the text changes adopted in 2004 which recognized updated floodplain information in new growth areas, but not within the existing urban area. While a great deal of the City's floodplain map updates are associated with master plans for new growth areas, we have also updated or are in the process of updating floodplain mapping for the existing urban area. The revisions also clarify that revised floodway boundaries may be part of the updated flood information.

These revisions will provide a mechanism to consistently apply the best technical flood hazard information available throughout the City's jurisdiction, and thus to better protect homes and businesses in the future from flood hazards.

Should you have any questions, please contact Nicole Fleck-Tooze at 441-6173 or ntooze@lincoln.ne.gov.

Sincerely,

Karl Fredrickson
Director of Public Works & Utilities

cc: Nicole Fleck-Tooze, Ben Higgins, John Callen - PW/U
Lana Tolbert - B&S Dept.
Brian Dunnigan - NDNR
Glenn Johnson - LPSNRD

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LINCOLN
The Community of Opportunity

SUPPORT

ITEM NO. 3.2a&b: CHANGE OF ZONE NO. 05070
MISC. NO. 05023
(p.101 - Public Hearing - 9/28/05)

Foster E Collins Jr
<fcollins@unlnotes.unl.edu>
09/28/2005 11:48 AM

To jwalker@lincoln.ne.gov
cc ntooze@ci.lincoln.ne.us
bcc
Subject for planning commissioners for 9/28 mtg

Planning Commissioners:
As a member of the Mayor's Floodplain Task Force I have been waiting for about two years for our recommendations regarding regulation of development in the floodplain within the developed areas of Lincoln to come forward. The regulations for the "New Growth Areas" have been in place for some time now, but it seems that there has been some reluctance to extend that regulation into the city limits. I understand some of this reluctance, but I strongly feel that we need to address this sometime, and the sooner the better.
One of the prime recommendations of the Floodplain Task Force was to advocate the use of the best information available, and to seek to keep the floodplain maps as up to date as possible. What you have before you today will not limit the rights or abilities of landowners or developers to build in the floodplain. It merely makes identification of these at risk areas easier to obtain. You would never say " don't use the new accurate information to make decisions; use this old outdated information." This measure will help to begin to protect the people who might actually live or work in these areas. It will help protect the investments of people who might want to build in these areas.
Thank you for your attention to these matters. We do appreciate the service you perform for our county and city.

Foster Collins
2100 Calvert St.
Lincoln, NE 68502
420-2101