

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, June 15, 2011, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Leirion Gaylor Baird, Michael Cornelius, Dick Esseks, Wendy Francis, Roger Larson, Jeanelle Lust, Jim Partington, Lynn Sunderman and Tommy Taylor; Marvin Krout, Steve Henrichsen, Mike DeKalb, Brian Will, Christy Eichorn, Jean Preister and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

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

Sunderman then requested a motion approving the minutes for the special public hearing on the FY 2011/12 - 2016/17 Capital Improvements Program and the FY 2012-15 Transportation Improvement Program held May 25, 2011, as amended. Motion for approval, as amended, made by Francis, seconded by Gaylor Baird and carried 9-0: Gaylor Baird, Cornelius, Esseks, Francis, Larson, Lust, Partington, Sunderman and Taylor voting 'yes'.

Sunderman then requested a motion approving the minutes for the regular meeting held June 1, 2011, as amended. Motion for approval, as amended, with additional amendment requested by Gaylor Baird, made by Francis, seconded by Esseks and carried 9-0: Gaylor Baird, Cornelius, Esseks, Francis, Larson, Lust, Partington, Sunderman and Taylor voting 'yes'.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

June 15, 2011

Members present: Gaylor Baird, Cornelius, Esseks, Francis, Larson, Lust, Partington, Sunderman and Taylor.

The Consent Agenda consisted of the following items: **SPECIAL PERMIT NO. 1507B, SPECIAL PERMIT NO. 11011 and SPECIAL PERMIT NO. 11012.**

Ex Parte Communications: None

Larson moved approval of the Consent Agenda, seconded by Francis and carried 9-0: Gaylor Baird, Cornelius, Esseks, Francis, Larson, Lust, Partington, Sunderman and Taylor voting 'yes'.

Note: This is final action on Special Permit No. 1507B, Special Permit No. 11011 and Special Permit No. 11012, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

CHANGE OF ZONE NO. 11009,
TEXT AMENDMENT TO TITLE 27 OF THE
LINCOLN MUNICIPAL CODE RELATING TO
SPECIAL PERMITS FOR SCRAP PROCESSING OPERATIONS, ETC.,
and
SPECIAL PERMIT NO. 11006
FOR A SCRAP PROCESSING OPERATION
ON PROPERTY GENERALLY LOCATED
AT 545 WEST O STREET.
REQUEST FOR DEFERRAL:

June 15, 2011

Members present: Larson, Francis, Cornelius, Gaylor Baird, Taylor, Partington, Esseks and Sunderman (Lust declared a conflict of interest).

The Clerk announced that the applicant for Special Permit No. 11006 has submitted a written request to place both of these applications on the Planning Commission "pending" list, no date certain, with the understanding that these applications will be re-advertised and notices will be sent to property owners and interested parties when these applications are placed back on the agenda for public hearing.

Francis moved to place on pending, no date certain, seconded by Cornelius and carried 8-0: Larson, Francis, Cornelius, Gaylor Baird, Taylor, Partington, Esseks and Sunderman voting 'yes'; Lust declaring a conflict of interest.

There was no public testimony.

**CHANGE OF ZONE NO. 11020,
TEXT AMENDMENT TO TITLE 27
OF THE LINCOLN MUNICIPAL CODE
RELATING TO PERMITTED CONDITIONAL USE
REQUIREMENTS FOR THE SALE OF ALCOHOLIC
BEVERAGES FOR CONSUMPTION ON THE
PREMISES IN THE B-2 PLANNED NEIGHBORHOOD
BUSINESS DISTRICT.
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

June 15, 2011

Members present: Larson, Lust, Francis, Cornelius, Gaylor Baird, Taylor, Partington, Esseks and Sunderman.

Ex Parte Communications: None.

Staff recommendation: Approval.

Staff presentation: **Brian Will of Planning staff** submitted a letter in opposition which he believes is in response to comments he made at the Mayor's Neighborhood Roundtable describing this proposed text amendment. Will believes his comments may have been misunderstood.

This change of zone amends that language of the zoning ordinance specifically relating to alcohol as a conditional use in the B-2 district. In 1994, the zoning ordinance was amended to then include the new special permits for on- and off-sale alcohol in the commercial zoning districts. There were minor changes made over the years, the most significant being in 2004, when those special permits were then made final action by the Planning Commission, with a set of revised conditions required to be met. In that legislation, the B-2 and B-5 districts were separated out and instead of requiring a special permit, the alcohol sales became a conditional use. In other words, if the conditions set forth in the ordinance are met, the applicant can conduct on- and off-sale alcohol by right.

Will then explained that today's proposal is to modify two of those conditions in just the B-2 district. Currently, the zoning ordinance eliminates any building from consideration for on- and off-sale alcohol in the B-2 district if there are any adjacent parking stalls within a required side or rear yard, regardless of the distance from the actual licensed premises. This amendment would require that the door opening to the licensed premises be more than 100 feet away from any parking spaces located in a side or rear yard. This is consistent with the required 100 ft. separation from an entrance door of a licensed premises to a residential zoning district, which is also a condition for the sale of alcohol for consumption on or off the premises in the B-2 district.

Will used Clocktower at 70th & A Streets for purposes of illustration only. The owners of Clocktower are the applicants for this text amendment; however, this is an amendment to

the zoning ordinance affecting all B-2 districts throughout the city. As the language exists today, with Clocktower being adjacent to homes in the R-1 and R-4 districts, two of the buildings would be eliminated from alcohol sales. With the proposed amendment, the 100' distance would be measured from the doorway (public entrance) to the parking spaces, making portions of the building available for either on- or off-sale alcohol.

The staff is supportive because as we looked through our special permits for on- and off-sale in the other zoning districts, and including the conditions in the B-2, the 100' separation is consistent. This does not necessarily weaken the regulations. The original intent was not to eliminate the entire building but to maintain the consistency of the 100' separation.

Will then submitted a map illustrating the location of the B-2 zoning districts throughout the city. The B-2 district was created in 1979 and is considered to be the suburban neighborhood commercial zoning district. It is predominantly found around the edge of the city.

From a public welfare point of view, Esseks inquired as to the purpose of the setbacks from a business that sells alcoholic beverages. Will suggested that there is an understanding that there is potentially some impact with those uses. The 100' separation provides a minimum separation from the commotion and activity associated with that use. We have required setbacks and separation with other permits as well, so it is not just unique to the special permit for alcohol but where there is activity associated which needs some type of buffer situation.

Esseks confirmed that the 100' would be measured from the main door used by customers. Will concurred. The zoning ordinance is explicit about defining an entrance. It does not include a service door. It has to be a door that is open to the public for access.

Esseks wondered about the situation where there is an outside place to drink and talk. Will stated that such a situation would also have to meet the separation requirement.

Will clarified that if the alcohol use were in a separate building without adjacent parking in the side yard, it would be allowed. But in the Clocktower situation, it is a large building with multiple tenants.

Proponents

1. Jeff and Susan Coffey, the owners of Clocktower Shopping Center and the applicants, stated that they have been redeveloping Clocktower for the last few years. They have been very particular about the tenants so that they complement the neighborhood and the other tenants.

The purpose of this request is that they do have parties interested in putting in a lounge, but they will be very particular about the type of lounge. They do not want a bar, but a place for people to come together and converse. It will be a very nice lounge. There is also a party interested in an event center/reception hall in the building. The building is 460' long. The closest entrance now would be 170' from the residential area.

Mr. Coffey believes that the changes proposed still keep the integrity of the ordinance intact by allowing a business while keeping the distance to protect the residents.

Mrs. Coffey pointed out that the back of the building abuts another parking lot. She has spoken to all of the property owners and did not get any opposition. She referred to the building in which the Library Lounge was previously located and believes that there should be no alcohol in that building due to the proximity to residences. She acknowledged that they have a responsibility as property owners to make sure they are putting the potential tenant in the proper location within Clocktower, and it would be in the other building, which she believes meets all of the 100' requirements.

Cornelius asked whether the entrances in Building B are 100' from the residential zone to the west. Mr. Coffey responded that there is a doorway on the south end of Building B, but he does not believe that is beyond 100' of the actual residence. In looking at the drawing, Sunderman believes the proposed reception hall would be 170' from the residential area.

There was no testimony in opposition.

Will then submitted the following proposed amendment for clarification: Add the following text at the end of Sections 27.31.040 (f)(1) and (g)(1):

"...provided that, if there is an intervening exterior wall of the building containing the licensed premises between the exterior door opening and such residential district, then the 100 feet shall be measured from the exterior door opening, along the exterior base of the building wall(s) to the point where there is no intervening exterior building wall, and from that point the shortest, most direct distance to the residential district.

Sunderman clarified that if the front door is 100' away, alcohol could be located in either one of the buildings. Will explained that the ordinance talks about 100' from a residential zoning district. If there is a door on the south portion of the building and if it is already 100' from a residential district, it would be allowed. The language we have now would increase that distance, requiring that the door be 100' away from the parking spaces. We believe that this maintains consistency with the 100' separation, and in some cases it will be more than the 100' distance.

Cornelius confirmed that the 100' is not from a residential district but from the parking. Will concurred.

Esseks wondered why the parking is considered to be affected. Will explained that we talk about activity associated with a particular use – it is an attempt to maintain that separation associated with that use – people walking to their cars.

Sunderman clarified that the building may not meet the existing separation requirements today, but with this new language, the interior rental spaces as you move on north may now be able to be used for alcohol sales. Will stated that the intent is to maintain consistency with what we have generally come to acknowledge as the minimum separation of these uses from a residential district, a residence, church, etc.

Partington confirmed that the exterior door is the public access door and not delivery doors or emergency exits. Will concurred. It only applies to the doors where the public can come and go.

Then logistically, Cornelius suggested that the way this is intended to work, is that by insisting that the entrance is at least 100' from the attending parking, it will remove the nuisance traffic away from the side yard. Will agreed that to be the logic to this amendment.

Response by the Applicant

Susan Coffey submitted photographs showing the traffic patterns. Building A is entirely leased, and there is no alcohol in any of that building and the parking lot is full during the day. So for a good tenant mix, she believes it makes common sense to have some evening traffic flow. To get the best mix for the community as a whole, she decided that they needed evening traffic. So when she had an opportunity to put in an event center, they began to work on this. They are also working toward a neighborhood lounge, which also makes sense to bring a little bit of night life back to 70th & A. It is a good mix for Clocktower and the community as a whole.

ACTION BY PLANNING COMMISSION:

June 15, 2011

Partington moved to approve the staff recommendation of approval, as amended today, seconded by Larson.

Larson stated that he is very familiar with Clocktower and it suffered sort of a depression for many years. These people, whom he has no affiliation with, have done a wonderful job of upgrading Clocktower and he appreciates their desire to have the proper mix of tenants. This will be a great asset to the center and to the community. The Planning Commission just came from a meeting where they talked about removing barriers, and this is a good example of removing a barrier to development.

Francis agreed with Larson's comments. She commended the applicants for revitalizing this shopping center. It is good mix and it has been nice to see it come back to life.

Partington stated that he offices right across the street, and the applicants have done an excellent job in the last couple of years. The former Library Lounge served alcohol much closer to a residential area, so this is a much better plan.

Cornelius agreed with all of the comments but pointed out that this is not a simple application for a special permit. This is a change to the text of the zoning ordinance and affects more than just this property. While it may at first glance appear to be a loosening of the standards, he believes it is actually a tightening of the standards because it applies only in cases where there is parking in the rear or side yard, and in that case requires a greater degree of separation. The intent is to move the parking for the use actually further away than in the case where there might not be parking in the side yard.

Sunderman stated that he will vote in support because it makes sense.

Motion for approval, as amended, carried 9-0: Larson, Lust, Francis, Cornelius, Gaylor Baird, Taylor, Partington, Esseks and Sunderman voting 'yes'. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 2029A,
AN AMENDMENT TO THE
S.W. 1ST STREET APARTMENTS COMMUNITY UNIT PLAN,
ON PROPERTY GENERALLY LOCATED
AT S.W. 1ST STREET AND WEST A STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 15, 2011

Members present: Larson, Lust, Francis, Cornelius, Gaylor Baird, Taylor, Partington, Esseks and Sunderman.

Ex Parte Communications: None.

Staff recommendation: Conditional approval.

Staff presentation: **Christy Eichorn of Planning staff** explained that this is an application to amend an existing community unit plan (CUP). The original CUP was approved in 2001, but was never actually constructed. The property has since changed ownership and the current owner wants to do something different than what was originally approved. The original approved CUP showed two 15-unit apartment buildings located at S.W. 1st Street and West A Street, and the part where they will locate the dwelling units is in the southeast corner of the property. As part of the CUP, there is a conservation easement over the northern portion of the site where there is a tree mass. Most of the site is in the floodplain, except for an area which has been raised out of the floodplain. There is industrial zoning

to the south with railroad tracks to the north and west. The Health Department originally had concerns and still has some concerns, but this CUP and the 30 units has already been approved.

What is before the Commission today is an amendment to show 19 individual or attached units instead of two apartment buildings. The approved CUP showed two apartment buildings. The current property owner would like to create single-family dwelling units, with one individual single-family dwelling unit to the east. There is a recreational area associated with the CUP which is located in the floodplain. Additional off-street parking will be provided for visitors and there will be a one-stall garage and two parking spaces behind each unit.

Gaylor Baird inquired whether measures are being taken to let potential property owners or buyers or lessees know about the Health Department concerns. Eichorn stated that there is nothing in writing, but potential buyers are required to be notified of the floodplain and they can see the railroad tracks. The industrial zoning to the south is on the zoning map and they could be told about that. There is not just one document listing all of these concerns. There is a subdivision agreement with a final plat which has language that says the developer will notify any future property owners that the property is located in the floodplain.

Esseks inquired whether the Planning Commission is now approving the additional units. Eichorn stated that 30 units are approved today. This applicant is utilizing 19 of those units. In order to use any of the additional units beyond the 19, the developer would be required to request an administrative amendment. He is not asking for an increase in the units already approved. He is requesting the same number of units, but only wants to build 19 at this time. The applicant knows that it will be extremely difficult to develop the remainder of the units because of the amount of fill that would be required to bring in. It would be a difficult challenge.

Esseks wondered whether this implies that the Corps of Engineers has some standards here, i.e., the Corps does not want to keep filling the floodplain because of the possible damage downstream. Eichorn did not know how much more fill could be brought into the site. She knows they did get a permit for the fill that they had, which was before our current floodplain standards for this area. She does not know how those changes would affect this site; however, Watershed Management did express that it would be difficult to find more area on this site to fill. Esseks sought assurance that the Planning Department would be entitled to say "no", and Eichorn agreed.

Esseks inquired whether the multiple waivers are standard for a CUP like this. Or are they asking for extraordinary waivers? Eichorn explained that the waivers being requested are what we often see with use permits in commercial areas. This is unique in that it is a residential development instead of commercial. The reason we do CUP's is to have the flexibility to create something different which often means a waiver to setbacks. It is unique

in that we don't have too many residential developments like this, but it is not at all uncommon for these waivers to be requested in other developments because they are mostly townhouses and the one single-family lot. A lot of that has to do with maximizing the space in the area that is out of the floodplain with the smaller sized lots and a common area.

Proponents

1. Rod Hornby, 10720 Yankee Hill Road, the applicant and owner, testified that when he purchased this property the plans were all done for two 15-plexes. Maybe 15 months ago that would have been okay, but amending the CUP provides an opportunity for people to own something that is more affordable. He will turn the two 15-plexes into 19 townhouses. The waivers are necessary to do that. He is downzoning the site to create a spot where people can live or play. He does not know the distance to the railroad, but there is a bike path for biking downtown and south. The important thing is that by doing this, people can actually own their own units. There will be a garage and extra parking within each unit and a spot for extra parking and extra garages. There will also be a basketball court and lots of open area. He is even proposing a common area garage to help some of the lower income people make their lives better.

Hornby went on to state that this site was all filled prior to the new regulations. There are probably three to four feet around the perimeter that might need a little bit of fill. There is not enough fill to require any special permitting.

There was no testimony in opposition.

Eichorn clarified that any future fill permit that might have to occur on this site would not go through the Corps because there are not any wetlands. It would go through the Building & Safety Department.

Eichorn also observed that good examples of similar residential setups are found in The Ridge and Firethorn, with their own building envelope with a common outlot surrounding it.

Response by the Applicant

Hornby agreed that this is a tough site because of the industrial to one side and the older housing to the east. As the future moves forward, we need to try to provide affordable housing units for people actually living in some of the old houses. It is dense but it provides an opportunity for a lot of people.

ACTION BY PLANNING COMMISSION:

June 15, 2011

Francis moved to approve the staff recommendation of conditional approval, seconded by Esseks.

Francis stated that she is excited to think that there is going to be some affordable housing built, and this is a good location for it. The applicant's comments about giving somebody an opportunity to own are appropriate.

Motion for conditional approval carried 9-0: Larson, Lust, Francis, Cornelius, Gaylor Baird, Taylor, Partington, Esseks and Sunderman voting 'yes'. This is final action unless appealed to the City Council within 14 days of the action by the Planning Commission.

**SPECIAL PERMIT NO. 11013
FOR SOIL EXCAVATION ON PROPERTY
GENERALLY LOCATED AT
N.W. 56TH STREET AND WEST O STREET.**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 15, 2011

Members present: Larson, Lust, Francis, Cornelius, Gaylor Baird, Taylor, Partington, Esseks and Sunderman.

Ex Parte Communications: None.

Staff recommendation: Conditional approval.

Staff presentation: **Mike DeKalb of Planning staff** explained that this is essentially the renewal or extension of an existing special permit for soil mining which expires this year. The applicant is requesting an additional three years. This application was given a separate special permit number because the existing special permit operates under the old soil mining standards. This application meets the new soil mining standards.

Larson stated that he does not understand the elevation map. Will this create sort of a pit? DeKalb explained that this will actually be a grade/hill cutting back up the site. They will bring it to O Street level and cut it all the way back as a grade. There is a standing water/pond right next to O Street that is intended for capturing sediment and runoff.

Proponents

1. Roger Schwisow, 1354 Pelican Bay Place, the owner and applicant, stated that at the present time, he is in the process of hauling the fill in to the Arena project and that permit runs out this year.

Schwisow explained that once Hwy 34 gets rebuilt, there will be a 4' drop, so even after they have taken the dirt down, once that new road gets graded it will be higher than the new road. The elevation from O Street will come up for a ways and then will fall back to the back of the property at a ½ percent grade. There should be no standing water at any time. He assured that this permit will comply with the existing standards.

They are building a 3:1 slope on the east edge. There is an electric transmission line that goes through the property on about 6 acres. The long range plan is to acquire that property or buy the dirt off that property. Then that grade will blend out with the power transmission lines. The dirt has been left along O Street strictly to screen the equipment.

Schwisow explained that his application requested to be allowed to work some night hours, only if necessary. They were supposed to start on the Arena project on May 23rd, but the city did not have the property acquired. Thus they did not get started until June 1st. In addition, there are 70,000 yards on the railroad property to the west of the Arena to which the applicant was supposed to have had access; however, because the city did not get the railroad crossing put in, the railroad won't let them cross their tracks, so they will end up hauling more dirt in than originally planned. They are currently running 12-hour days, but may need nighttime hours because of their deadline on the Arena project. Schwisow is requesting nighttime hours but understands that only the City Council can approve that. It will take another 60 days to get Council approval. They may need nighttime hours, but hope not to have to use them.

Larson understands that the applicant will be removing the topsoil and then replacing it. What will you do with the finished land? Schwisow indicated that it will be farmed again. The back part is farmed now. It will be planted.

Larson inquired whether Schwisow has had other mining permits and whether there have been any problems or complaints. Schwisow stated that there may have been some complaints but he believes theirs would be very minimal. What happens is sometimes you have a lot of trucks out there, you get caught in a rainstorm, and you have to get out on the road to get them out of there. We bought an extra water truck for dust control. We do try to clean up, where possible.

Lust asked staff to explain Condition No. 2.1.4:

Operating hours shall be limited to daylight hours Monday through Saturday. Revise the note to exclude the night operations for government contracts.

DeKalb explained that the notes on the drawings submitted by the applicant had called for the nighttime hours and Condition #2.1.4 requires that note to be deleted. Our expectation is that if you are asking for a waiver and extension or some adjustment, you should explain why, which they did not do with the application. There was no justification for the need for nighttime hours. The current special permit had been very contentious and was appealed

to the City Council over the issue of the groundwater and operating hours. Under the provisions of the existing special permit, the clock did not start ticking until the operations were started by opening up the site. We are thinking that instead of three months from the date the permit was approved, he has a window of several months where he can continue with the current special permit which allows the nighttime hours.

DeKalb further stated that the ordinance on time of operation is very specific, limited to daylight hours Monday through Saturday. That is the ordinance. There is no provision in the ordinance for the Planning Commission to grant nighttime hours. It must be modified by the City Council. The applicant can appeal this condition to the City Council.

Further, DeKalb indicated that we do not know when the existing special permit actually expires because it would be based on when he actually started operation. Therefore, we anticipate that he probably has the summer until maybe even October to operate under the existing special permit with the nighttime hours.

Francis pointed out that at this time of the year, daylight hours is about 6:30 a.m. until 8:30 or 9:00 p.m., and that should be ample time.

Gaylor Baird inquired whether the staff is confident that this is not going to be visible as an entryway corridor. DeKalb does not believe it is an issue with the proper screening and buffering required by the conditions of approval.

Rick Peo, City Law Department, suggested that the conditions be amended such that this special permit would not commence until expiration of the existing special permit to avoid conflicting regulations.

Public Comment

1. Eunice Cernohlavek, 6205 West O, right across the street from the excavation, stated that Mr. Schwisow has been very good about doing things properly and he had assured her that he will take care of the dust and other problems she may incur living there. She raises llamas and she is concerned about their health and welfare, but the applicant has assured her that he will take care of everything. She will hold him at his word and keep working with him. She knows she cannot stop the Arena, so she will endorse this special permit with the hope that it gets done as fast as possible.

Response by the Applicant

Schwisow explained that under the DOT regulations, they can only run a truck 12 hours, so even though there are more daylight hours, they can't have two shifts of drivers working the daylight hours. He does not believe they will have to use the nighttime hours, but he is up against a \$10,000 a day penalty on this job so he may need some flexibility in case the weather goes bad.

ACTION BY PLANNING COMMISSION:

June 15, 2011

Esseks moved to approve the staff recommendation of conditional approval, including the amendment suggested by Rick Peo, seconded by Taylor.

Esseks thinks this is an excellent example of how we can have a very good application with a relatively rapid but also informed discussion because of all the efforts that Mike DeKalb has put into the new regulations to deal with all the issues that were raised in the past. There was so much controversy which has been set aside because of the new ordinance.

Motion for conditional approval, with amendment, carried 9-0: Larson, Lust, Francis, Cornelius, Gaylor Baird, Taylor, Partington, Esseks and Sunderman voting 'yes'. This is final action unless appealed to the City Council within 14 days of the action by the Planning Commission.

There being no further business, the meeting was adjourned at 2:10 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on June 29, 2011.