

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, April 16, 2014, 1:00 p.m., Hearing Room 112 on the first floor of the County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Cathy Beecham, Michael Cornelius, Tracy Corr, Maja V. Harris, Chris Hove, Jeanelle Lust, Dennis Scheer, Lynn Sunderman and Ken Weber; Marvin Krout, Steve Henrichsen, Brian Will, Tom Cajka, Christy Eichorn, Paul Barnes, Jean Preister and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

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

Lust requested a motion approving the minutes for the regular meeting held April 2, 2014. Hove moved approval, seconded by Scheer and carried 7-0: Cornelius, Corr, Harris, Hove, Lust, Scheer and Sunderman voting 'yes'; Beecham and Weber abstaining.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

April 16, 2014

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

The Consent Agenda consisted of the following items: **COMPREHENSIVE PLAN CONFORMANCE NO. 14007, ANNEXATION NO. 14001 and CHANGE OF ZONE NO. 14005.**

There were no ex parte communications disclosed.

Cornelius moved approval of the Consent Agenda, seconded by Beecham and carried 9-0: Beecham, Cornelius, Corr, Harris, Hove, Lust, Scheer, Sunderman and Weber voting 'yes'.

Note: This is final action on Comprehensive Plan Conformance No. 14007.

**COMPREHENSIVE PLAN AMENDMENT NO. 14001,
CHANGE OF ZONE NO. 14004, FROM AGR TO H-4
and
SPECIAL PERMIT NO. 14003 FOR PLANNED SERVICE COMMERCIAL
TO ALLOW MINI-WAREHOUSING AND OFFICE,
ON PROPERTY GENERALLY LOCATED
AT THE NORTHWEST CORNER OF
SOUTH 70TH STREET AND PINE LAKE ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

April 16, 2014

Members present: Beecham, Cornelius, Corr, Harris, Hove, Lust, Sunderman and Weber; Scheer declared a conflict of interest.

Staff recommendation: Approval of the comprehensive plan amendment and change of zone requests, and conditional approval of the special permit.

There were no ex parte communications disclosed.

Staff presentation: **Brian Will of Planning staff** explained that this is an application on two lots northwest of the intersection of South 70th Street and Pine Lake Road, currently zoned AGR. The proposed comprehensive plan amendment amends the future land use map to change the land use designation from “urban residential” to “commercial”. The Comprehensive Plan is to be amended when the proposed change covers over five acres of land.

The change of zone request is from AGR to H-4. Will suggested that under the current residential urban land use designation, it would be nice to be more integrated and more connected to the Country Meadows residential development to the northwest, but, unfortunately, these two lots have been left off by themselves and have not been incorporated with any adjacent development over the years. There is a church to the west and a church to the north. Thus, the future development is uncertain so staff does not believe that only residential land use is appropriate and not justified on this property.

Will advised that the applicant came forward with a proposal for mini-storage and mini-warehousing, which requires the change from AGR to some district that would allow it. The H-2 through I-3 zoning districts allow this use. Given the location and surrounding land uses, the fairly intensive commercial zoning districts do not appear appropriate at first blush; however, the request is for change of zone from AGR to H-4, the primary reason being that H-4 is unique with the special permit for Planned Service Commercial. Using that overlay, the applicant can voluntarily limit those uses allowed and add mitigation in the way of landscaping, separation, etc., to make that development more appropriate for the location.

Will pointed out that there is lack of connectivity with the adjacent residential to the northwest and also no direct connectivity with the adjacent church uses. The Access Management Policy tells us that access points should be at the quarter mile. There is one access at the major entrance into the shopping center. A major intersection any closer to Pine Lake Road and S. 70th is not feasible. Therefore, this development already has access limitations, including onto Pine Lake Road. There is drainage along the north side, and given the lack of depth and width, there is not going to be access onto 70th Street. Given the access constraints, some development which does not require a lot of traffic generation and is a low intensity development appears to be appropriate, such as the proposed H-4 and the associated special permit for mini-storage and two office buildings.

Will also pointed out that there is a third use that is allowed as a permitted use, i.e. motorized, non-motorized vehicle rental such as U-Haul trailers and trucks. The staff wants to make sure that that component is somehow limited and managed so that the equipment would be adequately screened for aesthetic purposes.

Will believes that the proposal is a low intensity land use with fairly low traffic generators. The applicants have met with the neighbors and the churches and have letters of support. The staff is recommending approval.

Beecham inquired about access to the churches. Will stated that the staff report contains a condition of approval to make those connections to the churches. There is a detention facility on the south edge of the property. Currently, a future driveway connection is shown to the adjacent church property. Beecham clarified that on the north, the access would be coming off of South 70th Street, which is currently a driveway. Will agreed, and the other connection would not occur unless the church chooses to develop sometime in the future.

Beecham acknowledged the applicant's efforts to reach out to the neighbors, but she noted that the Jehovah's Witnesses gave a letter of "acknowledgment" and not necessarily a letter of support. Will confirmed that to be all that has been received.

Proponents

1. Tom Huston, 233 S. 13th Street, Suite 1900, appeared on behalf of the applicants, Mike and Carol Wachal. Relating to the comprehensive plan, Huston showed an aerial photo of the site. The reason this site was selected is because it does have challenges for access for urban residential. The applicant has attempted to identify uses that are more appropriate for the site with high visibility to arterial streets.

With regard to the activities in working with the adjacent neighborhoods, Huston explained that in dealing with a proposed use contrary to the Comprehensive Plan, they had four meetings with the general membership of Country Meadows Neighborhood Association; a special meeting with the individuals whose yards back up to the area; and individual meetings with the Jehovah's Witnesses and Christlife Church to the north. It was

emphasized to the neighbors that this is an attempt to concentrate all of the activity on the interior of the development and adequately screen the exterior that fronts the neighborhood. Huston suggested that the letter from the Jehovah's Witnesses was a "welcome to the neighborhood" effort. Huston stated that he was encouraged by the reaction of the neighbors in support.

Relating to the special permit, Huston also acknowledged that the Planned Service Commercial special permit is a unique designation giving an opportunity to specifically identify a site with challenges and react to those challenges to make sure the development is compatible with the neighborhood. This application focuses on mini-warehousing plus approximately 20,000 square feet of office use. It is a highly visible corner, but with restrictive access. It will be a destination use, restricted to right-in right-out access. Mini-warehousing is a complementary use with low traffic generation.

Huston submitted a motion to amend Condition #1.1.1 and #1.1.6 of the special permit. Condition #1.1.1 addresses the connectivity issue with the church to the north and to the west, and to provide more flexibility in how to locate that access drive to the west if the Jehovah's Witnesses ever develops as some commercial development.

Condition #1.1.6 deals with the screening issue and how to address the city's concern about the mini-warehouse use and addresses the separation requirement. From a site planning perspective, the applicant was focusing on use of the office buildings with enhanced landscaping and buffering.

Huston believes that the staff supports the proposed motion to amend.

There was no testimony in opposition.

Staff questions:

Will confirmed that the staff is in agreement with the applicant's motion to amend. The biggest concern relative to the screening was if the office building went away and was replaced by mini-storage, what would happen? Would there be adequate screening? The language proposed by the motion to amend would require an administrative amendment in that case and the staff would revisit the screening issue at that point in time.

Corr asked whether the staff attended the neighborhood meetings. Will attended the one held at Trinity Church with the Country Meadows neighborhood.

Corr noted that the H-4 zoning is restricting those uses to the office and storage and the U-Haul rentals. If this property changes hands in the future, will the restrictions change? Will explained that the special permit runs with the land and any changes would have to come back to the Planning Commission.

COMPREHENSIVE PLAN AMENDMENT NO. 14001

ACTION BY PLANNING COMMISSION:

April 16, 2014

Beecham moved approval, seconded by Hove.

Cornelius noted that the Commission does not see a whole lot of comprehensive plan amendments of this sort of scale. But he thinks the applicant made a compelling case regarding the limitation of access such that the land use currently specified might not be the best and most functional for the area. This is a procedural item with the comprehensive plan amendment and he will support it.

Beecham expressed her appreciation for the efforts made in reaching out to the neighborhood.

Corr also commended the applicant for going above and beyond the normal notification procedures since this is a change in the Comprehensive Plan.

Motion for approval carried 8-0: Beecham, Cornelius, Corr, Harris, Hove, Lust, Sunderman and Weber voting 'yes'; Scheer declared a conflict of interest. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 14004

ACTION BY PLANNING COMMISSION:

April 16, 2014

Hove moved approval, seconded by Weber.

Lust agreed with the previous comments. This looks like a good change of zone for this property.

Motion for approval carried 8-0: Beecham, Cornelius, Corr, Harris, Hove, Lust, Sunderman and Weber voting 'yes'; Scheer declared a conflict of interest. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 14003

ACTION BY PLANNING COMMISSION:

April 16, 2014

Hove moved to approve the staff recommendation of conditional approval, with the amendments requested by the applicant's motion to amend, seconded by Cornelius and carried 8-0: Beecham, Cornelius, Corr, Harris, Hove, Lust, Sunderman and Weber voting 'yes'; Scheer declared a conflict of interest. This is final action, unless appealed to the City Council within 14 days.

MISCELLANEOUS NO. 14001,
VAN DORN REDEVELOPMENT AREA #2
BLIGHT AND SUBSTANDARD DETERMINATION
PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 16, 2014

Members present: Beecham, Cornelius, Corr, Harris, Hove, Lust, Sunderman and Weber; Scheer declared a conflict of interest.

Staff recommendation: A finding that there is a reasonable presence of substandard and blighted conditions.

There were no ex parte communications disclosed.

Staff presentation: **Christy Eichorn of Planning staff** appeared and corrected a mistake in the staff report on the first page which referred to the "Piedmont" area rather than "West Van Dorn Redevelopment Area #2".

Proponents:

1. David Landis, Director of the Urban Development Department, showed the area that is being considered as substandard and blighted. It is located in an industrial area with no parking and no entry at certain points – a rather good portion is open area. It is ideally suited for the purpose for which Urban Development brings this study and its subsequent action. There is a developer interested in the property which has formed a team with local soccer operatives who want to have 10 fields, including a championship field, and some other uses and parking. Urban Development is preparing to bring a redevelopment plan to the Planning Commission in two weeks. Urban Development is currently negotiating a redevelopment agreement with the developer.

Landis noted that Hanna Keelan found four of the blighted conditions present and ten of the twelve substandard conditions, including deterioration in some of the structures; 78% of the structures that are housing are almost 80 years old; commercial buildings are about 30 years old; the infrastructure is substandard – streets are without sidewalks, asphalt is in pieces, and the water mains are made of obsolete materials too small for the area and are 45 years old; there are commercial buildings that are not storing everything inside; there are some commercial structures and residential properties which are not in good shape and 30% are dilapidated. It is an area that does not have a great deal of traffic today, but imagine 10 soccer fields filled with soccer players and family members. The developer is prepared to improve the infrastructure. There are substandard and blighted conditions and there are places where TIF (tax increment financing) can be used.

The report done by Hanna Keelan justifies a finding of blight and substandard. This is part of a longer process that specifically implicates this land and its designation for redevelopment if given permission to proceed.

Lust noted that the proposed development area is in a grassy area that was once a sod farm, but the findings of the blight study are the result of the buildings in a wider area. Landis suggested that this is not a cornfield outside of town. It is ripe for redevelopment and it has not occurred because the roads are not good and the connectivity is not good.

Lust expressed her concern that the so-called “blighted” properties do not necessarily benefit from the development. How is the development going to assist blighted properties in the area? Landis acknowledged that the blight designation will not improve a house that is in this area with all of their grandfathered property rights, even those dilapidated. The blight study is a tool, but someone has to say they want to redevelop. It is not a city-initiated project. The private developer is here and the City would like to be ready because there are blight and substandard conditions. This tool is available in this location. The existence of the tool might encourage that which is not happening now. If we wanted to, we could have asked that the boundaries merely include that area but because of the age of the infrastructure, additional areas were included which Urban Development believes are in need of redevelopment. The area is also drawn as it is because if there is a rising tide of resources, those resources can be spent in that area. Once the developer’s TIF is used and grows on in time, the valuation grows and we have TIF resources in this area not necessarily assigned to the developer, the TIF funds could be used for the three parks that are not in particularly strong condition. This could be a rising tide for some of our own resources.

Lust inquired whether there will be any infrastructure improvements in the development. Landis suggested that there will be connectivity of Van Dorn Street into a sports park; this will allow the streets to happen which might not happen without this tool; we will get linkages to bike trails linking to the soccer fields, which is a public benefit; and we will have some new structures that will serve private and public needs. The reason we are here today is because we have a development that we want to have and it will be back before the Planning Commission.

Lust inquired whether there will be any improvement in the parking. Landis acknowledged that there will be a significant parking area designated. The parking will not push into the neighborhood or industrial areas.

Hove confirmed that the developer owns just the piece to the south of Hwy 2, and most of the property is in the floodplain. **Darl Naumann, Ayars & Ayars**, project manager for the redevelopment, approached, stating that Speedway Motors owns the area just north of Highway 2 as well as the development to the south. Hove then suggested that everything beyond up to the north is either city-owned or parks. Naumann further responded that the

developer is looking at constructing an indoor soccer complex, volleyball complex, and basketball complex, plus 10 outdoor soccer fields, one being an all-weather turf field. There will be parking in the center of the development.

Landis stated that this development will not be at the cost of our Parks and Recreation budget. There are some un-owned sections of our parks because we don't have the budget.

Beecham wondered whether the sidewalk connectivity will extend to the ball fields that are there now or just the new area. Naumann stated that the sidewalks will go around the parking lot connecting the fields all the way throughout the project. Landis pointed out that the project area is the development area. We are not going to get sidewalks for the parks property. We are not asking them to build sidewalk on city property.

Lust then inquired whether the property would still be considered blighted if the city-owned property were not included. Landis responded, "yes". Ultimately, there may be resources that may be used for a civic purpose.

Naumann confirmed that all of the property is in the floodplain, and that 500' is being protected by the levee on Salt Creek. There is almost a "no build zone" for 500'. That is where the soccer fields will be developed. The developer is being very careful to work with the floodplain and NRD to make sure they are in compliance. Landis believes those discussions are occurring simultaneously, including Watershed Management, and to the best of his knowledge, he believes the proposed development meets the city standards with respect to construction in the floodplain. The City adopts a higher standard when there is a TIF project rather than a private development.

Beecham noted that a majority of the houses are 85 years or older, but the age does not concern her. She wanted to know a little more about the condition of the houses and what the ramifications are for those homeowners being in a blighted area. Landis assured that the blight designation does not affect property values. He understands that people do not like the name, but if the houses are 70 years old, they are probably built with substandard insulation and infrastructure and if you were to treat it with a bright future, you would do all of the things you do to preserve that and then keep its historical integrity. A property that is 50-60 years old will not meet current building (plumbing and electrical) standards; those houses exist appropriately with grandfathering clauses on all of these issues. In general, the present conditions -- not every structure -- invite redevelopment.

Beecham asked whether the owners of these homes have been notified. Landis stated, "no". He does not know that any particular unique notice other than public notice of the

process has been issued. Naumann offered that the developer is going to have a neighborhood meeting on April 23rd. All of the neighbors in the surrounding area have been invited to attend.

Lust pointed out the three tiny fingers of one property that goes into residential that is marked on page 20 of the blight study. Landis explained that on occasion the boundaries run out onto the public right-of-way where, if we had resources, there might be improvements that we could make in public rights-of-way, e.g., in Downtown and Block 68, the redevelopment area includes the public rights-of-way in connecting streets. And we do that for the purpose that says ultimately we may want to be able to use resources created by this development in the city right-of-way.

Beecham asked whether the owners of the other buildings and businesses have been invited to the neighborhood meeting or notified in any way. Landis suggested that the neighborhood meeting will be their first opportunity to speak to this.

Wynn Hjermstad of Urban Development showed the location of the houses within the blighted area. Hjermstad also advised that the pictures shown were not taken during Midget football. The first picture of the road was from one of the parks – the parks are tired. As far as historic, Urban Development did consult with Ed Zimmer to review the whole area and there were no historic housing or structures found. There is some history with the parks, which will be discussed in the redevelopment plan. In terms of contacting residents, Urban Development does not generally notify the property owners during the blight study because it is more of an administrative function. Once we get to the planning stage and a project, that is when the neighbors are brought into the discussion. The statutes are pretty objective and it's either blight or substandard or not. It is not really something upon which the public can provide input.

Beecham stated that she is struggling with that because she worries that we are going to send out an announcement to these businesses and residences saying they are declared blighted. Hjermstad advised that they will not get that announcement. The only time they will know is if there is a redevelopment plan and a project, and then a TIF district is established. They will see a line item on their property tax statement referring to the TIF district showing what portion of their taxes go into the TIF funding. That is really the only notification of the blight that they get. It does not change their taxes.

Hove inquired whether it is typical to have this much public zoned area in a blight study. Landis stated that it is not unusual to have public land. This is probably more than common, but we do reach out to make sure there are public spaces as well because there may be resources generated by the project that could be used for public purposes. We have been careful to draw some of our recent redevelopment plans to include right-of-way because we think there is a relationship between the project, which often draws more traffic, and we want the landscaping to harmonize. Do we make it a habit of reaching out for any close-by public land? No, not necessarily. And he does not believe it is unusual

in this case. Landis does not believe that the City has been shy about putting ancillary lands in beyond where we think a development is coming. We would like to be ready to help in other ways in that area.

Lust inquired whether there is substandard infrastructure outside of the parks property. Hjermstad stated that there is. A lot of the roads are not in very good shape. In the area of the project, there are no roads so there is definitely infrastructure lacking there, and sewer and water will be extended into those areas.

Support

1. Derek Zimmerman, Baylor Evnen, 1248 O Street, #600, appeared on behalf of the developer. He suggested that there is a mis-perception that blight equals slum, and that is not accurate. We have a strict statutory standard for what is declared blighted. Conditions of structures is one factor, but there are several other factors that have been identified as well, including irregularity of lot sizes and infrastructure that is either deteriorating or non-existent.

Zimmerman shared some photographs of a general site plan coming off of West Van Dorn. The road shown does not now exist and it will be constructed to current standards. There is an LES easement and substation with right-of-way issues that will be cleaned up. This is to accommodate what we anticipate to be a fully developed project. Parking has been discussed with Planning and Urban Development staff and they are comfortable that more than enough parking is being provided to accommodate the needs.

Zimmerman offered that this project will turn a blighted area from what is essentially nothing with no infrastructure or other factors that are identified in the blight study. The neighborhood meeting on April 23rd is the opportunity to discuss the project – not the blight study itself. The blight determination is for a number of factors beyond just the residential structures. The report identified 10 blight factors – you only need one and there are ten.

2. Andrew Ferguson, Sporting Lincoln Soccer Club, testified in support. He has been doing business in this area for the last four years. They have outgrown their current building; they already have traffic issues; the club needs to be able to grow with the indoor and outdoor facilities side by side. They want to stay in this area. He has discussed this project with Speedway Properties. Building a complex like this is extremely unique and he definitely needs the assistance because of the roadway and infrastructure needed. Their current membership is over 700. The complex will be entertainment – providing things for kids to do on Friday and Saturday night.

There was no testimony in opposition.

Staff questions

With regard to “an area is blighted or it is not”, Harris wondered how straight forward that is from a legal standpoint once you have fulfilled the criteria. Zimmerman responded that as he reads the state statute, if there is a finding of those conditions, then a blight designation is justified and warranted. You are dealing with things like infrastructure and lot layout, and those factors are present in this case. Landis further suggested that the statute allows city councils to designate the blight standard. Lincoln is remarkable in that it asks for a blight study to be done. Many jurisdictions do not. They would be subject to a challenge by a taxpayer and it would be a factual question. The factual question would be whether or not a sufficient number of these conditions listed in the study were present in the location so marked by the city council. There are very few court cases about TIF in this state. He does not know of a case where they have been overruled. It is clear that not every structure has to meet the conditions. It is whether or not the conditions are present – not uniformly. In the end, Lincoln has been confident that if a planner takes 200 pictures – walks the streets; identifies places that are in disrepair; asks about the age of the infrastructure; locates when and where it was built; and identifies the mapping of the legal ownership showing irregular lot sizes, our confidence of meeting the legal test is very high. Since 1979, to his knowledge, the City has not been challenged on a blight study. The City Council acts in good faith.

Lust inquired whether Hanna Keelan has ever been hired and not found the area blighted. Landis responded, “yes”.

Beecham indicated that she is struggling about the difference between an old industrial area and a blighted area. Landis explained that the difference is that it is substandard under today’s standards – not the standards used 40 years ago when it was built. It is not difficult to find substandard conditions when we raise our standards over time. The infrastructure at that time may not be what we need now. We don’t have the money to dig up that pipe. The building may not look ugly but it could be supported by substandard infrastructure. We are going to rip up some obsolete building materials and obsolete pipes, and part of the infrastructure replaced will bring it up to today’s code. It will be very common that age will affect substandard and the reason is that the standards were considerably lower than they are today. There is a relationship between age and substandard.

Lust stated that overall, she supports the project. Her question is, how do we answer the people that say that the city has let its own property in this area become substandard and blighted and included as part of a redevelopment area in this blight study in order to benefit a private developer? Landis suggested that if and when that questions comes, the individual should be shown the area, ask them to drive through it, and tell you if this is an area where the city would like to invite redevelopment – because Landis believes it will meet a common sense “drive the neighborhood” standard. The proposed use will be an improvement of what’s there and it will be a good thing. We would want to do it here rather

than where it will naturally occur otherwise. Drive this area and you will see that the market needs help to build this area. It's about redirecting the force of the private sector to where it is not as easy because of the additional cost but good for the city to have it be done in those areas.

ACTION BY PLANNING COMMISSION:

April 16, 2014

Hove moved to approve a finding that there is a reasonable presence of substandard and blighted conditions, seconded by Sunderman.

Cornelius suggested that the city has not had the resources to bring the city-owned property up to the level that we would like and that it why it is in the condition that it is in. This is giving us an opportunity to direct some of the funds that would come from TIF to these areas.

Beecham commented that she recognizes that not having had the public meeting yet does not preclude the Commission from making a decision, but she has known plenty of neighbors who have gotten really upset when they found that their property has been blighted. She would rather the neighbors knew about this before the blight study.

Lust stated that she will support the motion. It does, however, concern her somewhat when we have these blight studies where the overall area is blighted. She is hopeful that people that live in that area are the ultimate beneficiaries of the project. Overall, she believes it is a good project for the area and she will agree that the area does meet the blight and substandard determination.

Motion carried 8-0: Beecham, Cornelius, Corr, Harris, Hove, Lust, Sunderman and Weber voting 'yes'; Scheer declared a conflict of interest. This is a recommendation to the City Council.

There being no further business, the meeting was adjourned at 2:20 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on April 30, 2014.