

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, March 4, 2015, 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: Jeanelle Lust, Tracy Corr, Michael Cornelius, Cathy Beecham, Lynn Sunderman, Chris Hove, Dennis Scheer (Maja Harris and Ken Weber absent); David Cary, Steve Henrichsen, Paul Barnes, Tom Cajka, Sara Hartzell, Geri Rorabaugh and Amy Huffman 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 at 1:00 p.m. 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 February 18, 2015. Beecham moved approval, seconded by Cornelius and carried 6-0: Lust, Corr, Cornelius, Beecham, Sunderman, and Hove voting 'yes'; Scheer abstained; Weber and Harris absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

March 4, 2015

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

The Consent Agenda consisted of the following items: **ANNEXATION NO. 15002 and CHANGE OF ZONE NO. 05085B; SPECIAL PERMIT NO. 12006A, COUNTY SPECIAL PERMIT NO. 13033A, and COUNTY SPECIAL PERMIT NO. 15006.**

There were no ex parte communications disclosed.

Item 1.4 - County Special Permit No. 15006 - was removed from the Consent Agenda and had separate public hearing due to an email communication received by staff.

Hove moved approval of the remaining Consent Agenda (Item Nos. 1.1 - 1.3), seconded by Scheer and carried 7-0: Lust, Hove, Beecham, Cornelius, Corr, Harris, Sunderman, and Scheer; Weber and Harris absent.

Note: This is final action on Special Permit No. 12006A and County Special Permit No. 13033A, unless appealed to the City Council within 14 days.

**COUNTY SPECIAL PERMIT NO. 15006, TO ALLOW
THE DEVELOPMENT OF THE COYOTE RIDE ADDITION
COMMUNITY UNIT PLAN (CUP), CONSISTING
OF 9 SINGLE-FAMILY ACREAGE LOTS, INCLUDING
ON PROPERTY GENERALLY LOCATED AT N.W. 70TH STREET
AND W. ROCK CREEK ROAD :**

March 4, 2015

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

Staff recommendation: Conditional approval.

There were no ex parte communications disclosed.

This application was removed from the Consent Agenda and had separate public hearing.

Staff presentation: **Sara Hartzell of Planning staff** provided an overview of the special permit application. Hartzell indicated that the application is for an AG Community Unit Plan that would cluster the density from this property onto the north end of the property consisting of nine lots. Referring to the site plan, Hartzell reviewed the location of the proposed development, which is located one-half mile south of Agnew, an incorporated village, and lays next to Hwy 79 which goes into Valparaiso. The road on the south is Rock Creek Road and to the west is NW 70th Street.

Hartzell noted that an email was received from Mr. Robert Schmucker, 7800 West Agnew Road, Raymond, Nebraska, indicating concerns about access and traffic in this area, although he noted his position as neutral regarding the proposed project. Hartzell stated that when looking at the latest traffic reports from 2010, counts show 322 cars/day on Agnew Road, which is approximately 600 feet to NW 70th. As you go to the west to the Wild Wood Lake and a monastery on the north side toward NW 84th and NW 98th Streets, the traffic counts decrease on each of the next mile segments. Hartzell noted that as traffic counts reach 300 cars/day, roadway are considered for

paving and engineering work; however, she noted that the project generally is added to a list of possible projects but this does not guarantee immediate improvements. Hartzell noted that NW. 70th Street along the west edge of the property has 40 car trips per day and Rock Creek Road has 53 trips per day. She noted that there are a couple of small acreage developments and scattered farmsteads in the area. Overall, the traffic in the area is fairly low. Mr. Schmucker indicated that the previous County Engineer agreed to pave the stretch from Hwy 79 to NW 70th Street but it has not been done. Hartzell noted that with a new County Engineer, this matter may need to be revisited. Hartzell indicated that with this development, it is anticipated that the traffic counts would increase by approximately 90 trips per day, which would push the total count up to around 400.

Hartzell noted that there is some concern about the water in this area. She noted that the applicant provided an extensive water report to the Lincoln Lancaster County Health Department (LLCHD) for review regarding the quantity and quality water and wells in the area. The well which was tested pumped at 30 gallons per minute with air, which is well over the minimum requirement of 10 gallons per minute. LLCHD did recommend that before the lots were sold, that a test well or permit well be drilled on each lot. LLCHD recommended moving forward with the proposed development.

Commissioner Hove asked about the revised site plan relative to NW 68th Street. Hartzell indicated that the application includes a waiver to the block length. After working with the applicant, they have agreed to make a connection to the north as well as extending the cul-de-sac to the south to allow access to the east/west road.

Corr questioned the shortfall of the density bonus. Hartzell stated that the size of the outlot will need to be adjusted slightly to get the density bonus for nine units.

Proponents:

1. **Dan Rosenthal, Rega Engineering Group, 601 Old Cheney Road, and Gene Benes, 5580 W Mill Road, applicant,** came forward in support of the project and to address any questions. No questions of the commission were asked. In response to the density bonus, Rosenthal stated that with the size of the lots in this development, they will be easily able to attain the required density for the site.

Staff Questions

None.

Opponents:

1. **Don Olson, 318 County Road 29, Valparaiso**, testified in opposition to the proposed development.

Mr. Olson indicated that he owns land one mile west of this area – Section 15-12-5. He noted that at NW 84^h and Rock Creek Road there is a cluster of houses and the property owners have indicated that there are two wells in that corner, resulting in the need for some of them to pump water from west of the creek due to insufficient water. He has been told they cannot build anymore houses in the area due to insufficient water, and he is concerned about putting in nine additional house based on data from one test well.

2. **Charles Barry, 17800 NW 70th Street**, testified in opposition to the application.

Mr. Barry indicated he is a fifth generation farmer in the area who farms up to Rock Creek Road and 70th Street. He noted he is opposed to this project for various reasons. First, the quarter section is currently divided into three parcels and with this project would increase it to 12 parcels and the infrastructure in the area does not support this. He noted that there is a lack of water in the area. There is good drinking about 100 feet deep but, if drill deeper, you drill into the mud and then into salt water. He is a self-regulated irrigator and has an irrigation well in the area which he hasn't used in years for crops but he has had to use it at times to water his cattle because his domestic well cannot handle it. He doesn't believe it is fair that he not be able to irrigate for someone's financial gain. In addition, he noted concerns about nine additional septic systems in the area in proximity to nine wells, as there have been some wells contaminated to the north of Agnew due to septic systems. He is concerned about the costs for rural water in the future. He noted that the roads in the area are not designed for additional traffic – they are small roads. He noted that NW 70th Street has become an alternate route for people traveling back to Lincoln who have consumed alcohol and there have been accidents, causing damage to his land and fences, with no recourse for recouping the cost for these damages. This development will increase the services required by the local fire department as well as increase the property taxes for those who live in the area. He noted that he is not opposed to development but believes that there are other more suitable locations.

3. **Andy Barry, 2906 Summitt Blvd., Lincoln**, testified in opposition to this development.

Mr. Barry indicated he owns farm land in the area. His parents live approximately one and a half miles from this proposed development. He indicated that there are water issues in the area and encouraged the Planning Commission to consider the affects on the people who are already living in the area.

Hove asked Mr. Barry what water availability experiences he is aware of in the area. Mr. Barry reported that his parents have had to drop their well a number of times by an estimated 50 feet. He noted that there was another well put in in that area that may have impacted the water table and noted that there are others in the neighborhood that are having water issues.

4. Larry Bush, 20655 NW 70th Street, spoke in opposition to the development.

He owns property west of the proposed development. They built their home 7 years ago and their well is at 85 feet. They use their water conservatively. He is concerned that building nine houses to the east of their property will likely impact their livelihood and ability to sustain their daily life.

5. John Osmera, 20401 NW 70th Street, spoke in opposition to the development.

They own 30 acres and have lived in their home for 9 years. The proposed development is 150 yards from the home. They drilled six test wells before finding a hole that produced water and he is concerned about the impact that nine new houses will have on the water table. He noted that he expressed his concerns to the Health Department and was advised to come to the Planning Commission. He indicated that they do not water their lawn and are very cautious about water usage due to the water issues in the area. He believes that they need to consider the information of the water-related issues before approving this development. He also indicated that this an agricultural community where chemicals are used, tractor noise, etc. Potential buyers need to be aware of environment of the area.

6. Lance Rosasa, 8354 W. Rock Creek Road, testified in opposition of the application.

Mr. Rosasa reported that he lives one mile west of the proposed development. He purchased ten acres less than two years ago. They had the well tested at that time and it was marginal so the water concerns are very real. He encouraged more substantive testing of the well and suggested that they consider the size of the residences that would be included in this development and how this will impact the water further. Mr. Rosasa reported that he drives to Lincoln every day to work using Rock Creek Road. He believes that most of these individuals in this development will also work in Lincoln and doesn't feel that this road can handle the increased traffic. In addition, he stated that the railroad crossing is dangerous and suggested that improvements be done to the crossing.

Questions of Staff:

Lust asked staff to explain the requirements for wells and related testing in the area.

Hartzell stated that they look at the general area and obtain information from existing wells in the areas. If the Health department does not have sufficient information, they will ask for more. In this case, the applicant included well information with the application and it was found to be sufficient by the Health Department to make a judgment in terms of the location of the wells and the nine lots being proposed. They consider water pressure, pump rate, chemical analysis, etc.

Beecham asked if the Health Department takes into consideration the impact of adjacent property owners. Hartzell indicated that she is not sure, but noted that there are wide variations on recharge rates and water availability in this part of the county. She indicated that they do consider the cone of influence on the area water table. Sara further stated that with some properties in Agnew there have some situations where owners have had to purchase adjacent property to put their septic system on to separate them from the well.

In response to a question of Hove, Hartzell stated that she is not sure if the Health Department considers the number of homes and occupants in their analysis.

It was noted that no one from the Health Department was present.

Hove asked if the Health Department could require more testing or well drilling? Hartzell indicated that this would likely not occur after the approval of the CUP. In response to a number of questions related to the water analysis, Hartzell indicated that the Health Department makes the determination as to how much testing should be done.

Beecham asked if consideration is given to water usage for sprinklers, watering lawns, etc. Hartzell indicated that they generally consider domestic water use for cooking, drinking, showers, toilets, etc. but don't consider water usage for lawn sprinklers, swimming pools, etc.

Cornelius asked for clarification on the Right-to-Farm Law. Hartzell stated that this is an agricultural area and as such the use of chemicals, farm tractor noise, and ag-related activities are not considered to be a nuisance. In the event that complaints are made, there could be no prosecution of these activities.

Response by the Applicant:

Dan Rosenthal, Rega Engineering Group, 601 Old Cheney Road, and Gene Benes, applicant, came forward to address a number of the concerns brought up by the opponents of the application as well as questions of the commission.

Mr. Rosenthal indicated that their engineering group designs septic systems which typically range between 200 gallons and 1,000 gallons per day depending on bedroom size. He noted that an irrigation well will generally use 750 to 1,000 gallons per minute; therefore, relatively, they will be using a small amount of water. For clarification purposes, Hartzell indicated that the Health Department suggested that it would be good policy to have the wells on the lots before they are sold. In terms of well data, Mr. Rosenthal stated that the State's website provides a lot of well information including gallons per minute, location of screens, water table information, etc. He explained that the test well data was submitted with his application and then forwarded to the Health Department for review and consideration. This data provides a representation of the area and they will need to drill individual wells prior to the lots being purchased.

In terms of the railroad crossing, Mr. Rosenthal indicated that he previously worked for the State Department of Roads and was the engineer in charge for all state railroad crossings. If there were between 0-1,500 vehicles per day, their protocol was to install cross bucks. If there were over 3,000 vehicles per day, then a diagnostic review would be done to determine if gates, lights, etc. were appropriate. He indicated that they would be willing to conduct a diagnostic review of this crossing site to see if trees need to be cut back and/or other improvements are needed.

Mr. Rosenthal explained that as for the impact on the rural fire department, most rural departments like to see new developments and new taxes for the area so they can upgrade their equipment. He noted that there will be minimal impact on the traffic in the area.

In regard to the septic systems, Mr. Rosenthal noted that they meet the minimum requirements for distances for the septic system and the well and noted that these have to be permitted. He further stated that the roads will be built to county standards.

Mr. Benes reported that he also lives in the area. His well is 50 feet deep, and he is not aware of any water issues in the area. He waters his lawn and others in area water their lawns.

Beecham asked about priorities of agricultural and development uses and who gets priority on the water.

Hartzell indicated that she is not familiar with State Water Laws but noted that there are wide variations in water quality and quantity in this part of the county with relatively short distances.

Lust asked if this is final approval. Sara explained that since there is a waiver to the block length, this proposal is not final and would go on to the County Board for consideration.

ACTION BY PLANNING COMMISSION:

March 4, 2015

Cornelius moved that action on this item be deferred for two weeks; seconded by Beecham.

Cornelius explained that he is requesting this deferral to allow a representative of the Health Department be present to address the concerns identified by the neighbors as to the water problems in the area before voting on this application.

Lust indicated that she is not comfortable with voting on the application prior to hearing from the Health department regarding their water analysis.

Motion for a 2-week deferral with continued public hearing carried 7-0; Lust, Hove, Beecham, Cornelius, Corr, Scheer, and Sunderman; Weber and Harris absent.

**COMPREHENSIVE PLAN CONFORMANCE
NO. 15001, AMENDMENT TO THE VAN DORN
REDEVELOPMENT PLAN TO ADD THE “ROBBER’S
CAVE PROJECT” TO INCLUDE A 9,000 S.F. BUILDING
AND RESTORATION AND REOPENING OF ROBBER’S CAVE,
GENERALLY LOCATED AT 3235 SOUTH 10TH STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

March 4, 2015

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

Staff recommendation: Approval.

There were no ex parte communications disclosed.

Staff presentation: **Davis Landis, Urban Development Department Director**, explained that this is a TIF financing project and they need to put this project into the redevelopment plan in order to assist in the proposed development of Blue Blood Brewery to construct a brewery with an adjacent taproom and restroom and reopen the cave, which would be used for beer storage and possibly some special events. A 40-stall parking lot is also included as part of the project. There hasn't been much activity in this area recently. The project area consists of 1.5 acres which houses a lot of vegetation, undeveloped land and the sealed cave which was sealed in 2000 due to vandalism. The infrastructure of the area is not ideal and this project would help to clean up this blighted area. The cave has an historic value and dates back 1860s. During that time, it was used as a brewery storage. The approval of this project would allow for the preservation of an historic landmark. Landis indicated that the city is working with the developer to allow for some limited access to the cave for special event and occasional public tours.

Lust stated that the Urban Design Committee minutes indicate this project is on the fast track and asked why this it is moving so quickly.

Landis explained that most projects today that come forth are on the fast track due to the availability of low interest rates, completion of the projects during the building season, etc.

In terms of access, Landis explained that there are two roadways – one is Robber's Cave Road, which is a public street, and another private drive off of High Street.

Sunderman asked about the 25-year easement on the private access drive and asked if this is part of the amendment.

Landis indicated that the city's involvement relates to the TIF, which is not being used for the private access.

Proponents:

1. **Brian Podwinski, owner and operator of Blue Blood Brewery, 9322 South 28th Street**, testified in support of the project.

Mr. Podwinski stated that this project provides for a unique opportunity. They are lacking storage at their current location and want to expand the business to include a restaurant and taproom onsite using this cave. In response to the private access easement on the north/south road, Mr. Podwinski stated that a developer is working on acquiring a permanent easement on that road which would maintain the north/south access.

Beecham asked Mr. Podwinski if he had pictures. Mr. Podwinski indicated that he has been adding several pictures to their website and he would be willing to share them with the commission.

2. **Dave Johnson, 901 Studio, 800 P Street**, is the architect for the project.

Mr. Johnson provided a brief overview of the site. The site slopes from the east edge to the west edge almost 20 feet. From the front, it will appear to be a 1-story building but the back will be a walk-out area above the cave. The hatched area will consist of the brewhouse and house related equipment. Mr. Johnson referred to a drawing showing the site plan, structure, and access to the cave. The building is not real visible from 9th Street so they will have a high sign for visibility.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

March 4, 2015

Beecham moved finding of conformance; seconded by Cornelius.

Beecham stated that she believes this is a good project.

Corr stated that she supports the use of TIF for this project, as this is a unique piece of property which would be hard to develop.

Motion for finding of conformance carried 7-0; Lust, Hove, Beecham, Cornelius, Corr, Scheer, and Sunderman; Weber and Harris absent.

**COMPREHENSIVE PLAN CONFORMANCE NO. 15002,
TO AMEND THE LINCOLN CENTER REDEVELOPMENT
PLAN TO ADD THE "SOUTH HAYMARKET REDEVELOPMENT
PROJECT" AREA, GENERALLY LOCATED FROM S. 7TH STREET
TO S. 9TH STREET, N STREET TO J STREET, AND APPROXIMATELY
3.5 ACRES LYING SOUTHWEST OF THE INTERSECTION OF S. 7TH
AND N STREET, AND INCLUDING ALL ADJACENT RIGHTS-OF-WAY.**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

March 4, 2015

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

Staff recommendation: Conditional Approval.

There were no ex parte communications disclosed.

Staff presentation: **David Landis, City Urban Development Department Director**, the applicant in this case, provided an overview of the project. Landis indicated that as more development occurs in this area, there will be an increased need for parking and the city needs to prepare for that. Landis reported that a developer plans to build a collegiate housing project at the Baker Hardware site at 8th and N Street. The developer is not asking the city for tax incentives to build the complex but they have agreed to partner with the city to use tax-increment financing (TIF) to pay for on-street parking improvements in this area. This parking could be used by tenants of the project as well as the public. Landis explained that TIF uses the projected increase in property taxes from a development to fund bonds to pay for improvements that will benefit the public. The apartment project is anticipated to generate around \$2.2 million in TIF. Referring to a site map, Landis explained that the city owns a large amount of the property in this area. In B-4 zoned areas, the city does not require the developer to provide its own parking. Landis indicated that the city would like to create more on-street parking by turning the existing parallel parking stalls into angled parking. Phase one includes seeking to get resources from the housing project to make this happen.

Scheer asked about the condition of the existing streets and how that might impact by diagonal parking and whether the public rights-of-way are wide enough to add diagonal parking.

Landis stated that the streets in this area do vary but noted that 8th Street would work for this type of parking.

Beecham asked if this would go to the Urban Design Committee. Landis stated that none of the TIF goes to the building, it goes to the city; therefore, it would not be necessary. In the agreement, there is an exchange for parking rights. He explained that the developer is building according to right on the property that they own.

Staff Questions

Beecham asked Mr. Landis for clarification on Item 8 on Page 70 of the agenda, which states, "The source of funds for public improvements will be Tax Increment Financing generated by the project. If this project receives TIF assistance, the design details of the improvements will be reviewed by the Urban Design Committee. Landis indicated that he believes this in an error. Paul Barnes of the Planning Department explained that if any part of that building project receives TIF assistance or any public improvements receive TIF, it would be reviewed by the Urban Design Committee.

Beecham indicated that she would like to see this project go before the Urban Design Committee for review and noted that when the West Haymarket Project area was being developed, a combined review of the Urban Design Committee and Historic Preservation Committee occurred. She suggested that there might be some value in doing the same for this area. Landis indicated that this matter was raised by Ed Zimmer earlier in the day and it is under consideration.

Proponents:

1. DaNay Kalkowski, attorney representing Trinitas Ventures, a national developer of student housing, came forward and asked if there were any question of the commission. There were no questions asked.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

March 4, 2015

Beecham moved finding of conformance, seconded by Cornelius.

Lust indicated that she believes this is a great project and is glad to see the South Haymarket Project moving forward; she plans to support the application.

Motion for finding of conformance carried 7-0; Lust, Hove, Beecham, Cornelius, Corr, Scheer, and Sunderman; Weber and Harris absent.

There being no further business to come before the Planning Commission, the meeting was adjourned at 2:25 p.m.

Please Note: These minutes will not be formally approved by the Planning Commission until their next regular meeting on Wednesday, March 18, 2015.