MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, October 25, 2017, 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	Tom Beckius, Tracy Corr, Tracy Edgerton, Deane Finnegan, Maja V. Harris, Chris Hove, Christy Joy, and Dennis Scheer; Sändra Washington absent. David Cary, Steve Henrichsen, Paul Barnes, Rachel Jones, Andrew Thierolf, George Wesselhoft, Brian Will, Geri Rorabaugh and Amy Huffman of the Planning Department; media and other interested citizens.
STATED PURPOSE OF MEETING:	Regular Planning Commission meeting

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

Scheer requested a motion approving the minutes for the regular meeting held October 11, 2017. Motion for approval made by Edgerton, seconded by Beckius and carried 8-0: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Joy, and Scheer voting 'yes'; Washington absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: **October 25, 2017**

Members present: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Joy, Scheer and Washington.

The Consent Agenda consisted of the following items: **COMPREHENSIVE PLAN CONFORMANCE NO. 17017, CHANGE OF ZONE NO. 17029, USE PERMIT NO. 17007** and **STREET AND ALLEY VACATION NO. 17009.**

Scheer declared a Conflict of Interest on Comprehensive Plan Conformance No. 17017 and exited the chambers.

There were no ex parte communications disclosed.

Vice-Chair Corr called for a motion on the Consent Agenda.

Joy moved approval of the Consent Agenda, seconded by Harris and carried, 7-0: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, and Joy, voting 'yes'; Scheer and Washington absent.

Note: This is a recommendation to the City Council on all items.

Commissioner Scheer returned to the chambers at 1:07 P.M.

TEXT AMENDMENT NO. 17001, AMENDING CHAPTER 27.63.685 OF THE LINCOLN MUNICIPAL CODE RELATED TO DELETE THE ACCESS DOOR LOCATION REQUIREMENT, AND TO ADD EXTERIOR DOOR OPENING REQUIREMENTS FOR A SPECIAL PERMIT FOR OFF-SALE ALCOHOL SALES: **October 25, 2017**

Members present: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Joy, and Scheer; Washington absent.

Staff recommendation: Denial.

Harris disclosed that she had a conversation with Shawn Ryba regarding a letter he previously submitted and whether he still held the same position. He responded that he did.
[After the public hearing on this item occurred, Corr disclosed that she attended a Mayor's Roundtable meeting where an overview of this topic was given].

Staff Presentation: **Brian Will of the Planning Department** stated this application was originally submitted on March 1st. This was on the heels of another zoning action request related to off-sale alcohol for the Walgreens at 48th and O Streets. After working through that process, the City asked to take time to revisit this issue in more depth and to bring Planning Commissioners up to date. The applicant graciously agreed. In the interim, Planning Commission was designated to be the body to have the public process. Three meetings were held to talk about the background of these regulations, to give the public ample opportunity to comment, and to summarize and answer questions from Commissioners. At the end of that process, the applicant asked that the application move forward. It is unchanged from when it was first submitted.

This request attempts to modify the regulations in two ways. First, it seeks to define "grocery store" as a specific and distinct use. Then, it seeks to modify the required separations. "Grocery is not currently defined and is considered a retail use. From the perspective of Staff, there are several issues with creating a definition which is vague and open to questioning. As proposed, it is really not separated out from other like uses such as convenience stores, dollar stores, or pharmacies, among others. Even if a distinction could be made, this action opens the door for someone to come in and lessen the distinction, eventually eroding the protections intended by the separation requirements.

The thought process behind separating out a distinct use and treating it differently is not new. It can be seen today in the regulations relating to restaurants, which have unique operating characteristics with distinct traffic and parking needs. Alcohol sales are considered secondary to the primary function of serving food.

One tenant in the same building as Open Harvest is Brewsky's. They are allowed to sell on-sale because their establishment predates these regulations. Say the entire building was covered by the special permit to sell alcohol, the separation is measured from the premises to the residential zoning district. This building clearly would not meet the 100-foot separation to the

nearest wall. This proposal would change that separation to 25 feet. As a point of clarification, Will noted that on a map exhibit, the zoning boundary is shown in the center of the right-of-way, but it actually is at the north side of the right-of way. The request to reduce the separation comes from current regulations for the B-2 and B-5 Districts where the distance is measured to the door instead of the entire premises. In this case, measuring from the entrance of Open Harvest and around the building would meet the requirement.

The request to reduce the requirement from 100 feet down to 25 is significant. B-2 and B-5 areas are large, suburban shopping centers. They differ significantly from B-1 and B-3 located in older areas in their characteristics and the way they are designed. Staff views these distinctions between the zoning areas as important. While staff recognizes that the applicant is seeking to get alcohol at their location, this affects the entire city. All commercial centers such as those in University Place, College View, and Havelock would be impacted.

Corr asked how much the fee is for the applicant to apply for this change. Will said he believes it is $330.

Beckius asked how the proposed gross sales of alcohol not exceeding 10% of total sales would be enforced. Will said it is hard enough to enforce what is there, let alone things that require the applicant to submit documentation to the city, so staff does not tend to suggest provisions such as the 10% limit proposed by the applicant. Beckius said he did not see any feedback from staff regarding this point. Will said if someone is renovating and they come in for the appropriate permits, it will be clear based on the facilities, furniture, and the building codes that apply what type of establishment they are. Beckius asked what the follow-up the City does to ensure that businesses do not exceed that amount. Will replied that there is no active surveying of businesses. As with many other things, it would likely be complaint initiated.

Finnegan asked how many places might be impacted if this text were to pass. Will said that a geographical analysis of the city was done with the 48th and O Street application and in excess of 600 properties would be impacted. He is comfortable saying it could be in the hundreds.

Harris requested more information regarding a question asked by Beckius about the history of Open Harvest attempting to meet the requirements for selling off-sale. Beckius noted that 1 person mentioned it had been ongoing for 10 years. Will confirmed it has been going on for at least the past several years. The question from the beginning was how to get to that goal if they do not meet the requirements. Staff saw four viable options, including a PUD over the larger area would be an option, but it has a minimum acreage requirement so neighboring businesses and even some of the residential area would have to be included. With a PUD, any of the zoning requirements can be modified. The reason this option did not go far is because there has to be some reason and rationale for a PUD; it should not be used just to get around regulations. Piedmont is an example where an entire redevelopment project was proposed. That is not to say that Staff wouldn't consider supporting this option, it just did not go anywhere.

Another option was rezoning to B-2 which would allow for the conditional use where the separation can be measured to the door. Staff does not think that rezoning older districts is the solution. Areas are identified as B-1 and B-3 Districts for good reasons. Again, this would be a case of attempting an action to get around regulations. Often in these older strip centers, there are multiple tenants. Each could be considered as a separate licensed premises under certain conditions. These must have a separate entrance and point of sale. That can be done on a much smaller scale. Staff suggested that a small part of their business could meet the requirements since only that area would have to be 100 feet away. That option was not viable for the applicant. The text amendment is what is before this body today.

Harris asked if a request for a change of zone to B-2 would have been achievable. Will replied that when staff meets with the public, all options are presented whether we like the options or not. If people ask for advice as to how successful an application might be, we are able to say certain ones would most likely be supported. The B-2 option was discussed early on with this applicant and it was expressed that it would most likely not meet internal criteria.

Hove asked whether reducing the separation to 25 feet effectively reduces it to zero since there is almost always enough distance to meet that. Will said it depends. It would be hard to say for sure, but that is probably correct.

Beckius wondered if, in theory, the landlord could choose to tear down the current building and relocated closer to South Street and if that would then meet the requirement. Will said yes. The property is large enough that located closer to the street would create enough distance to meet the requirements. Beckius asked if there are examples of businesses choosing to relocate their buildings in order to meet code. Will said yes.

Beckius asked if there is potential to rezone the residential properties across Rosalyn Terrace, as CVS did, so that would create distance from residential zoning. Will said that the strategy of CVS was to rezone residential properties to O-2. There is language that talks about 1st floor residential use, so if the zoning were made correct, the dwelling would also need to go away. The language basically prevents that sort of strategy from being used again.

Beckius noted that the Comprehensive Plan does not really address accessibility of food with the exception of mentioning the importance of growing food locally. Will said staff does think that is important. Whether that aspect is specifically stated or not, the Comprehensive Plan does state that having a range of goods and services in or nearby is an integral part of a thriving neighborhood. Everyone agrees that is a good thing. Open Harvest has an extremely supportive customer base who agree that having that fresh food available is a good thing. Alcohol is treated differently. Grocery is considered retail and can go in commercial zoning.

Beckius asked what is being done to encourage the maintenance of retail in core neighborhoods. Will said Urban Development is the better department to address that question. David Cary, Director of Planning, came forward to acknowledge that there is a bigger picture issue at play relating to core neighborhoods and services. The Comprehensive Plan certainly includes tenets as far as bringing services to the neighborhood level. The City is in the beginning stages, with Urban Development taking the lead, of discussions on how the

City can partner with entities within neighborhoods to identify critical steps to strengthen them. We know what having access to healthy food can do for the health of a local population and there are opportunities to look at some of these issues.

Hove asked how many places within the general area are allowed to sell alcohol now. Will said the convenience store on the corner, Brewsky's, and the CVS. The Walgreens across the street cannot. They have tried but they are in the same circumstance. Corr asked if Brewsky's in on-sale only. Will said yes.

Proponents:

1. Amy Tabor, 855 S. 35th Street, came forward as General Manager of Open Harvest. The store has been around over 40 years and has been in the current location since 1992. Over 30% of their revenue comes from sale of goods from local farms and businesses within a 200-mile distance of the store. Business is conducted with over 40 local businesses and $3.1 million is moved within the local economy. Since opening, sales have dropped by 16% and every year, new competitors enter the natural foods market. In 2015, retail grocers outsold natural grocers by a 2% margin, which indicates that not only do they compete against other natural grocers, they also have to worry about major chain stores who have increased their natural food sales. There has been a 150% increase in Nebraska brewers and the craft industry is very different today than what it was when the store opened. This mission is not just about sales, it is about providing a complete shopping experience to customers. Small sales mean a lot to local producers. A person might come in and see an interesting local wine and decide to pick up a local cheese and other products with it. Having those choices available elsewhere has eroded the customer count one-by-one. Having a liquor license is not a "silver bullet" that will fix everything, but we work tirelessly to improve customer services, ads, and education. The current ordinance is prohibiting them from being able to compete; they are at a huge disadvantage. Moving to another location or building a store within the store are not good options. Rezoning the houses is not an option. We do not have the money to build. The text as presented provides a clear definition by including fresh food that others lack. This change is no different from those rules that allow on-sale in the exact same neighborhoods.

Harris asked why some of the other options were not attractive. Tabor said having a separate POS is not viable. According to staff, we were short on acreage for the PUD and, additionally, Open Harvest does not own the building so it would be up to the landlord. Harris asked if there is a way to sway the critical mass to pursue that option. Tabor said not that she is aware of.

Beckius asked why the proposal includes the 10% cap. Tabor said that was to demonstrate that alcohol sales are not the primary source of revenue. Open Harvest is a small store and there would not be an entire aisle of alcohol, but only a small display. The limit also helps to further separate out pharmacies or convenience stores. Beckius wondered if the store would be willing to supply sales receipts to show compliance, should that 10% cap pass. Tabor said they are willing to do it on an annual basis and already have 3rd party verification of types of sales in their store. Beckius asked if they would seek to change their hours of operation. Tabor said they would not. Extending hours of operation during the summer has been

discussed, but is separate from the request for alcohol sales. Beckius asked if there would be any change to lighting, signage, or noise levels. Tabor said no to all.

Beckius went on to ask why Open Harvest wishes to remain in their current location. Tabor said they have been in that location since 1990 and they are an important part of the neighborhood, especially since Ideal and Sun-Mart are no longer in the area. People in the neighborhood stop in for lunch and to hang out. Open Harvest seeks to be there for their community and owners.

Beckius asked why alcohol sales are important to grocery stores and what other groceries in Lincoln were not allowed to sell alcohol because of the current regulations. Tabor said there are two others stores that she is aware of. Today, people want to get things done all in one place; pharmacies, banks and groceries are often all in the same location for convenience. In terms of the industry, in 1994, there was only one local beer or wine that would have been sold, so at that time, no license was necessary. Open Harvest only seeks to sell a small, curated set of local products.

Harris noted that in the definition for "grocery", other items, such as cleaning products, pet supplies, and health and beauty supplies, were included, beyond the abundance of fresh food. She wondered the reason for this and whether it actually dilutes the definition. Tabor replied that the definition was intended to be very specific about the product mix that a grocery might have. Having the 65% of non-taxable food items is something that other types of retailers do not have.

Edgerton asked what research was done in coming up with the definition. Tabor said this version was written years ago after brainstorming and investigating how other cities defined groceries. Open Harvest is part of a larger network of co-ops so the breakdown of all sales was accessed to find a consistent number.

Beckius wondered if calling the amendment a "grocery store exemption" was important to the text change; the City has said they do not find a distinctive difference between groceries and other retail uses. He wondered if it would be better to drop that exemption and instead say that any retail that could cap its alcohol sales at 10% would qualify. Tabor said the intention was to address neighborhood concerns. Smaller grocers could benefit from this, but not all of the other businesses. They are not tied to the term "grocery".

Corr asked what year Open Harvest expanded. Tabor said it was in 2009.

2. Mark Hunzeker, 1248 O Street, Suite 600, stated that today, he is not coming forward on behalf of any client. In his 40 years of experience, he regrets inventing this horrible idea over the strong objections of Planning and Law. The staff report offers only a vague justification for its recommendation of denial. The other options described are not meaningful from what is in front of this body. To create a PUD or to build a separate area for alcohol sales are ridiculous suggestions. Calling a business a "restaurant" or creating any sort of exception is only a way of using different words to justify treating a group of businesses differently. The restaurant exemption is absurd. Brewsky's probably meets that exemption. There is no way that allowing a business like Open Harvest to sell alcohol would have a worse impact that

Brewsky's. There are three ways this problem could be solved. The perfect way would be to repeal the entire set of regulations that require the special permit for alcohol sales. Another good option would be to reinstate the waiver provision to allow this body to do their job and to make determinations on whether or not alcohol sales are appropriate. The adequate action would be to approve these text changes to allow businesses to do what they can to compete in this competitive environment and to serve their customers.

3. Kathy Siefken, Executive Director at Nebraska Grocery Industry Association, 5935 S. 56th Street, stated there are a few worrisome things about this proposed amendment. Alcohol sales at groceries in Lincoln tend to range from 8%-15% depending on the size of the store, so the 10% may impact some other stores. This ordinance will really only allow three additional stores in Lincoln to sell. Those are Save Best, Open Harvest, and A Street Market, all of whom do not have a license due to zoning. We are losing grocery stores within neighborhoods because their profits are not what they used to be. When the City does not allow a grocery to sell alcohol to consumers who are asking for it, people move down the street where they can by the product. Alcohol is an important revenue stream for groceries. Other stores are grandfathered in, but there are reasonable questions as to whether they continue to be allowed to sell if they had to rebuild for any reason. If those grocers are lost, those neighborhoods will not have easy access to fresh food, particularly people without transportation. Maybe this is not the perfect change, but it is a beginning and making sure neighborhood grocers can remain vital is so important.

Beckius asked whether grocers are willing to locate or relocate in areas where they are not allowed to sell alcohol. Siefken said they tend not to even consider locating since it puts them at such a disadvantage. To her knowledge, there is not a store that has opened in the last five years without a license to sell alcohol. This means they do not open in densely populated areas. Losing up to 15% in sales is a make or break deal.

Corr asked the location of Save Best. Siefken said it is at 1101 N. 27th Street.

Harris noted that Siefken seems generally in support of making a change, but not 100% the specific proposed language. She asked if whether amendments could be proposed or if it seems too early in the process. Siefken said the 10% cap will become a problem because, for example, microbreweries have taken off and groceries sell those products. She also sees problems with government regulation of the types of products retailers can sell. It is confining at the State level.

Harris asked if the inclusion of the 65% sale of non-taxable food items in the definition would adequately cover retailers where it is clear fresh foods are the main source of revenue. Siefken said that again could cause trouble down the road. She would change it to "food" because there is an established definition in State statute for "food". Food items are non-taxable, but if the legislature changes that, everyone would be out of compliance. The existing definition is also derived from a national definition so it would be easy to add it to the ordinance.

4. Charley Friedman, 1901 S. 25th Street, said that he stopped at CVS Pharmacy and picked up a bag of Cheetos, M&Ms, and a bottle of vodka. He then went to Open Harvest, located 100 feet away, and picked up milk, fresh radishes and four apples. Open Harvest is his neighborhood grocery, is a part of the community, and even a family-gathering place where people can learn what is happening in the community. They offer nutritious products, are locally owned, and go out of their way to support local products. While other stores may brand themselves this way, Open Harvest is really doing it. Under the "Trojan Horse" of protecting neighborhoods, this community-based store is unable to compete in Lincoln's marketplace because of the 100-foot rule. Many other locations are grandfathered in or have the means to wriggle around the rules. This puts smaller retailers at a disadvantage and threatens their livelihood. Small retailers being allowed to sell beer would not undermine the safety of children or the community. These locally owned operations are invested in the fiber of Lincoln and will not be able to compete with large stores who are only concerned with profit.

Beckius noted much of the discussion has been specifically about Open Harvest. He assumes that testimony is intended to support any retailer under the same circumstances. Friedman said that is correct. He is just a consumer, but he knows that alcohol is a revenue stream that helps to maintain the sale of other quality food. Some existing stores allowed to sell alcohol were grandfathered in and are even closer to residential neighborhoods. The idea that they are any different and should be grandfathered in is rubbish. Lincoln needs places that sell fresh, wholesome foods. People in those neighborhoods, in his neighborhood, need places like Open Harvest. The Near South neighborhood is 70% under poverty level. The community needs stores to be able to make enough money to provide fresh food.

5. Senator Anna Wishart, District #27, 911 E Street, said that many of her constituents frequent Open Harvest. As a senator, she prioritizes making sure state regulations are as contemporary as possible. She is a community member living in the Everett neighborhood, which is currently undergoing a revitalization. She is also a member of Open Harvest and grew up there, so this is important on a personal level. She appreciates the testimony and hopes this body will support making this change.

Edgerton asked whether, as a State senator, she sees this as a broader issue relating to what this means for our community as a whole and how she weighs potentially conflicting issues. Wishart responded that the benefit of keeping fresh food in neighborhoods outweighs the small increase in alcohol sales.

Harris asked if Wishart, as an experienced Senator, has any recommendations related to the language as it is proposed. Wishart said that some concerns were raised today and she would hope those would be looked in to. If the language is too restrictive, it will end up with some stores being out of compliance.

Joy asked if there has been anything at the State level that looks at these kinds of issues, specifically adding a definition of "grocery". Wishart said no.

Beckius noted that District #27 runs the gamut in terms of access to services and food. He asked how important access to food is in that area. Wishart said it is critical. It is also important to consider that independent groceries are owned by people who live close by, in the community, so there is interaction with them.

Opponents:

1. Pat Anderson Sifuentes, NeighborWorks Lincoln, has worked with neighborhoods across the city. The Neighborhood Plan of Action was endorsed by 27 neighborhoods and we support the 100-foot rule, especially in poorer neighborhoods. Older neighborhoods did not benefit from planning when they were established and do not have covenants to offer protection. She is a member of Open Harvest, and this requested change is not just about them. She remembers the waiver system for approving alcohol sales and advised that it would be unwise to go back to that system. That system was also difficult for citizens who got burned out from the number of waivers requested. Open Harvest could fundraise to be able to move the store on their large lot. Grocers do not consider whether they can sell alcohol, they look at local incomes. That is why in areas where poverty is high, grocery stores leave. There are a number of ethnic stores in her own neighborhood. She wondered if they would be allowed to sell and whether that would become a problem.

Corr asked for clarification about the four specialty groceries. Sifuentes said they are around 11th and B Streets, 14th and D Street, and 11th and G Street.

Beckius asked for thoughts about having groceries within neighborhoods. Sifuentes said it is very important, especially in low-income neighborhoods. Grocers play a big role in creating walkable areas; it is akin to having a neighborhood school. Beckius said he struggles with the possibility of grocers leaving neighborhoods to relocate. Sifuentes said the area around 60th and O Streets has many groceries, but west of 11th Street is a food desert.

Beckius asked if there is concern about the 100-foot rules being a detriment to local groceries. Sifuentes responded that 100 feet is a very reasonable distance and there are communities with even stricter rules. There is a reason CenterPointe is located in the area where it is. Alcohol sales may not be the root of substance abuse issues, but they do not help. There is no lack of alcohol sales in the area. She wants stores to be competitive, but there may be a better alternative than changing the 100-foot rule.

Harris asked what type of alternative would be better. Sifuentes suggested the closing in of a separate area to sell alcohol.

2. Marti Lee, NeighborWorks, stated that it is possible to bring in new stores that meet the current requirements. Stores do not leave areas because they are not allowed to sell liquor. It will be difficult regulating a percentage of alcohol sales. Changing the description of "food" will not be helpful. With a waiver system, the lines become blurred. Grocers locate based on the income of the area and that is why we see them go to where the dollars are.

3. Jim Friedman, 1505 A Street, said that as President of the Near South neighborhood association, this is the 3rd time this issue has been addressed. Open Harvest is a fantastic

resource to their neighborhood, but opening up alcohol sales opens that window for the entire community. We have voted several times in opposition to changing the 100-foot rule.

Harris noted the existence of establishments that have been grandfathered in and suggested there is an argument that the problem is already in place. So then it is important to ask whether reducing the restriction compounds the problem. Friedman said alcohol sales are a problem in older neighborhoods where planning did not occur. Residents in these neighborhoods have to fight undesirable changes. Alcohol sales generally do create issues with lighting and increased noise.

Harris asked if the benefit of having fresh food outweighs the risk of additional alcohol sales. Friedman replied that it does not. We support the mission of Open Harvest but feel there could be more problems.

Beckius said that the fact that residents in older neighborhoods have to constantly fight against changes like this struck a chord with him. He wondered if there are circumstances where the two could coexist. Friedman said he was also on his neighborhood board when CVS did the rezoning to allow for alcohol sales. They can coexist if circumstances are right, but there are enough who do not want to see sales near their homes. He has not seen enough evidence to support a reduction to the 100-foot rule.

Hove asked if it is thought that a reduction in the requirement would increase the number of locations where alcohol could be sold, and that, in and of itself, is something they are opposed to. Friedman said that is correct. There are enough places where alcohol is sold.

Staff Questions:

Corr asked whether a store that was grandfathered in would be able to sell if they needed to rebuild. Will said that the way the current ordinance is written, it has to do with the timing of the establishment of the business. If it predates 1979, it is grandfathered. Anything between 1979 and 1994 becomes a non-conforming use and might be allowed to sell with a special permit. It is not generally true that if a place burned down, it would never be able to sell.

Harris asked the Law Department if there were any suggested changes heard today that would make for a better ordinance. **Abby Litrell, Law Department**, said that it is not the role of the Law Department to take a policy position. She would echo the comments that some of the suggested percentage caps and sales amounts could be difficult to interpret and enforce. There are practical problems with the enforcement.

Edgerton asked if the 65% of gross income from food items provides enough clarity. Litrell said that practically, they could show that. There was testimony today that suggested that alcohol sales could exceed the 10%, so that could alter some percentage of food sales.

Beckius asked if there would be a way to apply a fee paid by the applicant for the review of sales so there is no additional cost to the City. Litrell said the City regulates a number of

things. There is no process in place for this particular issue so it would be best to consult with the affected departments.

Hove asked how other cities deal with this issue. Will said that it truly runs the gamut with regulations more and less restrictive than those in Lincoln. Our ordinance was carefully crafted and has been in place for 23 years; it has become a community standard. That does not mean it is perfect. As it stands, there are some properties that meet the requirements and some that do not; that is the long and short of it.

Harris asked why "grocery" is not defined. Will said it is considered a retail use like any other. There has been no compelling reason to define them differently up until now.

Joy asked if restaurant use is the only other use with a special definition. Will said that it is, within the rules for the special permit for alcohol sales. It has been separated out and is treated differently.

Beckius asked if someone were to come along and rent only the front 30 feet of space, if they would be allowed to open a liquor store. Will said yes. That is a circumstance that exists around the city where portions of properties meet the setbacks. It is possible to meet the distance requirement on one end of a building, but not the other.

Beckius asked if there has been an assessment done as to how many businesses might actually change. Will said that there has not. It is possible someone could come in and redo a building on the site to move it closer to the street to have it meet requirements. The number that was suggested in the staff report was only to get a sense of the City-wide impact and was not intended to be an exact number.

Applicant Rebuttal:

Megan Jackson, 1540 Garfield Street, said that it has not been mentioned how clearly this amendment distinguishes "grocery. It is 65% non-taxable food items. When we get to that part of the definition, many of the other issues become obsolete. You will be hard pressed to find other retail uses that can meet that definition. It is important to make that distinction moving forward into the future. Creating food deserts is the result of not placing enough value on groceries. If stores cannot be competitive, they will not nestle into established neighborhoods. Open Harvest does not have multi-millions of dollars and cannot just pick up and move. We have our community. If we had to move, it would be unlikely to be within the core if we were restricted from selling alcohol; that is just not reasonable. It is also not reasonable to deny the amendment just because other options exist. Those other options are not viable solutions for Open Harvest. To build a separate entrance would cost valuable space for fresh foods, the community board. Separating out alcohol sales actually draws more attention and diminishes the emphasis on fresh foods. This solution is not a "silver bullet" for Open Harvest; it is just giving us equal advantage in order to be competitive. She is disappointed that staff could not find a single goal in the Comprehensive Plan to support this when it clearly speaks to providing opportunities for local food production and points of sale, maintaining quality of life, and supporting older districts.

Finnegan asked if Open Harvest sells paper products, health and beauty items, and meat. Jackson said yes.

Corr asked if they had help from an attorney in crafting the proposed definition. She also wondered why there was no push for this change at the time of their remodel. Jackson said they did not have an attorney. They prioritized making more space for fresh food. Creating a separate area with its own point of sale would have cut significantly into labor and space, so it was not considered at the time of the remodel.

Corr asked if there would be any opposition if this item were delayed so language issues could be worked out. Jackson said no. For their situation, and for those in a similar situation, we would be willing to delay if the intent was to come up with language that produced the desired result.

TEXT AMENDMENT NO. 17001
ACTION BY PLANNING COMMISSION: **October 25, 2017**

Corr moved for Denial, seconded by Finnegan.

Finnegan said she is having a hard time with this application. She lives in the neighborhood within a walkable distance from Open Harvest and it does add to the neighborhood flavor. She is not opposed to alcohol sales and does not think this addition would harm the neighborhood. Her main concern is that this change impacts the entire City. There were many letters received in support, but they were all in connection specifically to Open Harvest. The letters of opposition were from all over the city. There is no way to know the final impact across the city. It is important to be cautious in changing laws. She also has concerns about the wording and the fact that there is no process in place to actually enforce the proposed regulations being added. She will vote for the denial with a heavy heart.

Hove said he is also torn. It does not make sense that a community store cannot sell alcohol, while the CVS can. At the same time, there could be unintended consequences because these changes would be city-wide. He will support the denial.

Beckius said he will vote against the denial. His overall sentiment is one of disappointment. Grocers are vital in neighborhoods, particularly in low-income areas. Groceries may be difficult to define given the overlap in services and goods they provide, but he is impressed with the general framework of the changes, even if they are not perfect. The percentage of fresh food sales should ensure that neighborhoods can be served by those looking to supply food. The State has defined "food" but the City has not. That may not even matter if the amount of total alcohol sales does not exceed a certain percentage for any type of retailer. This application has had ample time for discussion, thanks to the applicant's patience. He is not hearing much willingness on the part of the neighborhood to work through the problem; he is concerned to hear comments about any unwillingness to sit down and talk about the issues or about being tired of addressing this. The business model for grocery stores clearly includes alcohol sales so he wonders if zoning is keeping up with those standards. Grocers are economic drivers and are instrumental to the vitality of neighborhoods. He is voting against the denial, not because this is a perfect solution, but because he would like this discussion to

continue and a good solution should be found. This solution is not out of line and it does not buck the community standard.

Harris thanked Open Harvest for their willingness to place their application on hold while we explored the issue. She agrees with Beckius in that if she votes for denial now, it will be a missed opportunity. She is not prepared to send this particular language forward, but does not want to stop the engagements or the progress made on this application. As a small business, Open Harvest cannot be expected to provide a large amount of data or to hire an attorney up front. She hears the perspective of both the small business owners, and of the concerned neighborhood associations. She hopes that by voting against denial, the input received will be considered, and there will be more opportunity to discuss this issue.

Beckius said he would be open to a delay.

Joy said she concurs with Harris and Beckius. This is a City-wide issue, but the position of the small business grocers should be addressed.

Harris recalled past applications for event centers in the County where there was lots of opposition and discussion and specific circumstances to be evaluated. When given more time, she felt she learned a lot and made a better decision. Even though there has been a lot of work on this application already, she is asking for more.

Edgerton said she is also not comfortable voting for denial and is more comfortable delaying, or if necessary, voting against denial.

Corr said she agrees with Finnegan in that this will affect the entire city and that causes concern. This is not just about Open Harvest. She will vote for denial because of that. The rule in place now is a very good one and it has been working for quite some time. Prior to that, neighborhoods had to come forward to maintain the rules. Maintaining the status quo can be tiring, as she knows from her own personal experience serving on two neighborhood boards. In one neighborhood, A Street Market is not allowed to sell even though Moran's liquor store is right across the parking lot. It makes her wonder how successful the grocery would even be because of this location. In the other neighborhood, the grocery store was lost to fire and a store like Open Harvest would be welcomed. She recognizes that it might be impractical to move, but maybe a second location could be considered. Corr also noted for the record that she has helped set up farmer's markets where the grocery store was lost and she knows how difficult it is to get local farmers in, but it is very important for the economy and to combat food deserts. With all of that said, she just cannot support a blanket measure for one business, but she is willing to continue to work with the applicant. There are questions as to why a remodel would not work and she would like to find out more.

Scheer said he will support the motion to deny. As a Commissioner, he believes he needs to vote within the framework of the Comprehensive Plan. There could be unintended consequences with moving this amendment forward. The vote will be tied today, so there will be another opportunity for this body to look at this again. He would like to see the discussion revolve around planning issues, distance, and the zoning ordinances more than about the benefits to a single grocer.

Motion failed to carry due to a lack of majority vote: Finnegan, Hove, Corr and Scheer voting 'yes' to recommend Denial; Beckius, Edgerton, Harris and Joy voting 'no'; Washington absent.

ANNEXATION NO. 17017, FOR A CITY-INITIATED ANNEXATION OF APPROXIMATELY 156 ACRES, MORE OR LESS, ON PROPERTY GENERALLY LOCATED BETWEEN 84th and 105th STREETS, ADJACENT TO O STREET: **October 25, 2017**

Members present: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Joy, and Scheer; Washington absent.

Staff recommendation: Approval.

There were no ex communications disclosed on this item.

Staff Presentation: **Paul Barnes of the Planning Department** stated that in the mid-1990s, City Council asked the Planning Department to put together a process for conducting annexation studies. The community has been growing at a consistent rate of around 1.2%-1.3% annually. Today, that amounts to between 3,000 and 4,000 people each year. In order to accommodate that growth, annexation is required. Since the annexation study process was developed in the 1990s, several annexation packages have come forward, the last one in 2008.

The annexation policy is rooted in State Statute 15-104, which grants local governing bodies annexation rights based on class of city. Lincoln is considered a "primary" class city and, as such, the City Council may annex contiguous lands at any time, in any direction, in ways that are deemed proper.

At the local level, most annexations are requested by developers. There are several factors that make consideration of City-initiated annexations appropriate. First is to provide equity for all tax payers. Some of the edge developments that are adjacent or contiguous to City limits benefit from City services, such as use of streets, trails, and parks, among other things, without paying the same taxes. Another important reason is to provide clarity of services such as street maintenance, and especially emergency services. A final reason is to allow for the orderly and efficient growth of the community to get the best use out of the investment made in streets, utilities, and all City services.

The Annexation Policy Text came directly from the 2040 Comprehensive Plan. The guideline states that the "City should annex land in Priority B that is contiguous to the City and generally urban in character, as well as land that is engulfed by the City. Land that is remote or otherwise removed from the limits of the City of Lincoln will not be annexed."

Relevant to the proposed annexations before this body today is text regarding annexation of acreage developments. There are some costs associated with annexation, so it is important not to discredit that. Staff also acknowledges the importance of the character and way of life in acreage developments and even with annexation, those qualities should remain unchanged. Zoning will stay the same unless requested by a property owner.

Part of the annexation process that is especially important includes having open conversation in public meetings and in written materials to help to explain some of these changes. With acreage areas, additional steps should be taken to have this open process. The Draft Annexation Study was published online on July 19, 2017. Notifications were sent out, and there were four public meetings held in late August. A presentation and written materials have been available on a website created specifically for the annexation study and package.

The methodology and criteria for City-initiated annexation, devised by putting together elements of State Statute, the Comprehensive Plan, and the annexation policy, are very clear. Areas that are in Tier I, Priorities A and B; land that is engulfed by city limits, land that is contiguous to city limits and in urban zoning; or land that is contiguous to city limits, in agricultural zoning, where basic infrastructure is in place or planned and urban in character, are all appropriate areas for consideration. After going through this process and analyzing land surrounding the city limits, there were thousands of areas that met at least one of the criteria. Eight subareas were identified that meet more than one of the criteria.

Several comments have been received throughout this process. One has to do with timing and that these annexations seem to be happening on too quick a timeline. To address this, one can look back at the process undertaken by Staff with the study published in July and meetings in August. We are currently at the Planning Commission level and action will also be taken by City Council sometime in December. Although payment of the City levee would kick in in 2018, payment would not be due until 2019. There were other broad comments regarding traffic, drainage, safety, and security. Given the future growth areas of Lincoln, these are some good topics for discussion, but not necessarily directly related to annexation.

Andrew Thierolf of the Planning Department said this annexation is for an area east of 84th Street, mostly south of O Street. It includes 156 acres, with 56 dwelling units and an LES substation. LPS fields are to the west. The annexation will bring in portions of O Street where it switches from City to County, back to City jurisdiction. Waterford Estates is to the northeast. The area is in the Waverly School District and will switch to the LPS district upon annexation. It is currently within the jurisdiction of the SE Rural Fire district.

A primary question that arises with proposed annexations is from citizens who want to know what benefits they are getting by being annexed. The answer is that they are already experiencing many benefits. Residents already use City streets to leave the area and staff believes it is fair to say that they use other City streets and other services at exactly the same rate as other residents located within city limits. It is important to note that there is no scenario where the City installs water, sewer, or fire hydrants before annexing. If a developer were selling lots prior to building, the costs of connecting to City services would be included in the sale price of the lots. For existing areas, those services would be paid for by property owners via the assessment district process.

Another concerns raised is that City staff will be stretched too thin by this annexation package. With all of the areas, around 300 residents are being annexed. The city grows by around 3,500 individuals per year, so the addition from annexation is not significant. As the City grows, more staff will be needed, but these annexations will not create any sort of big shock to the system. A final issue for the Hillcrest Subdivision is the current Health Department policy requiring three

acres for private well and septic systems. These properties would be grandfathered in, but it could lead to potential problems down the road. If this development were new, Health would not allow it.

Pat Borer, Assistant Fire Chief, Lincoln Fire & Rescue, stated lots of information was presented at the last regular Planning Commission hearing about the differences between two good fire departments – Lincoln Fire and Rescue and the SE Rural Fire Department. It is not as simple as just comparing "a" and "b". When considering the data, he starts with people. Even if a person lives next door to a rural station, if no one is there, the response time is affected. Even in cases where someone is at the station, there is something called "effective response force" which refers to having the right number of people to do the job effectively. On a cardiac arrest case, one person doing CPR may not save a life. LFR has done an analysis of all emergency tasks. It takes six people to create an effective response force for cardiac arrest. For a structure fire, it takes 16-19 people to put out the fire, vent the structure, and conduct search and rescue simultaneously. The effective response force is a critical consideration; station location is not good response time measurement criteria unless you have the effective number of people on hand to respond. He is unaware of how many volunteers are available at any given time. LFR also has an ISO rating of Class 2 and is doing things today that will bring the department up to Class 1, the top rating given by the independent third party. The SE rural department is a Class 4 department. Additionally, LFR rated top in the entire nation for cardiac arrest save rates. That data is also tracked by a third party made up of physicians. Lincoln continues to grow and LFR is aware of the need for staff. City elected officials have produced results and more fire fighters and police are set to be added. It is important to consider each of the departments based on factual evidence. Both are good departments; LFR has the data to back this up.

Hove asked if it would be necessary to daisy chain to reach any of the properties proposed for annexation in this subarea. Borer said tapping into a hydrant supplies a virtually limitless water supply. The key to effectiveness is the availability of people and response time. If the daisy chain is necessary, it does take time, but again, that is only one part of the equation. Hove asked how soon this area might have hydrants. Thierolf said that depends on the timetable of the homeowners. They could request a water assessment district upon annexation.

Beckius asked for clarification of tax revenue listed in the Staff Analysis of the Staff Report. Thierolf said it only includes the City levee.

Harris noted that a letter submitted by a member of the public stated that the City officials told residents they would not be annexed. Thierolf said that was a question addressed in a letter from Olsson Associates regarding a specific development project in the area.

Corr asked for information about the eight properties that would be required to hookup to the City sewer within six months of annexation. Scheer asked the location of the sewer main. Thierolf replied that the sewer main goes through the north side of the Hillcrest development, under the road, and a certain portion of residents are within 300 feet.

Corr wondered about changes to the speed limit in the area and the traffic thresholds that would create those changes. **Robert Simmering, Public Works Department**, said the he does not know how much traffic it takes to change the speed limit; there is an entire study that

takes place and it is a complicated process. There is currently a request to do a study on this part of O Street all the way to 112th Street. In his opinion, the study could take place within a year.

Opponents:

1. Ryan Sullivan, 609 Anthony Lane, came forward both for himself, and as Vice President of the Hillcrest Neighborhood Association. The neighborhood is not opposed to annexation and understands the reasons for it; rather, they are opposed to the timing of it. The push has been extremely sudden and it was unexpected. As a result, neighbors are not ready for it. Over the years, neighbors have been given assurances there were no immediate plans for annexation and they made important decisions based on that, such as costly upgrades to their septic systems and wells, and enrolling their children in the Waverly school system. No money was set aside to pay for new expenses. Many are on fixed incomes and this will create a hardship. Much opposition could be avoided by simply waiting a few years. Then neighbors could work in partnership with the City. Some of the infrastructure planning should be in place first. There does not appear to have been consideration of maintenance of asphalt roads, sewer and water, and storm drainage.

Beckius asked if they, as an association, have talked about the possibility of connecting to City services. Sullivan replied that the association was disbanded for several years and has now scrambled to have meetings to discuss these types of options. Only two in attendance were in favor. Many assumed the City would bring in water and sewer as part of the process. One thing missing from the equation is that residents have already expended money for their own septic and well systems, so in a way, they are paying twice. The same goes for the County roads. The fair thing to do is to give us time to budget for changes.

Beckius noted the concern about emergency response time. He commented that concern about the decrease in response time and effectiveness appears to be a perception rather than based on factual data. He wondered if there has been any factual data that would confirm a decrease in service. Sullivan said that was their number one concern. Based on data he has seen, he believes there will be a sharp drop in service, especially for those in the southernmost part of the neighborhood.

2. Leo Kreifels, 641 Anthony Lane, came forward to speak for himself, and as a member of his neighborhood association. He agrees annexation is inevitable, but it should not occur until the proper planning has occurred and sufficient notification is given. Main concerns include traffic, drainage, safety, and security. He does not believe the City is prepared for these annexations and thinks that services will become diluted. According to Borer's testimony, it is around two minutes per mile in travel time so that would be around 10 minutes. There are no hydrants within the neighborhood and no answer can be given as to how long it takes to string together hoses. The SE Rural Chief said they cover around 23 square miles of area. They are all volunteers and their station is at 84th and Holdrege. One volunteer lives across the street. It would be best to slow this process down and wait for the City fire stations to be built.

Beckius asked what items the neighbors would like to see addressed by more thoughtful planning. Kreifels said one problem is that LFR cannot provide their goal response time, even now. Beckius asked if the information from the rural fire district is available anywhere. Kreifels said it is word-of-mouth. He was told the rural station could provide 7,200 gallons of water in around 6 minutes.

3. Rodney Schwartz, 1010 Anthony Lane, stated that annexation for reasons of equity, clarity, and orderly growth seem valid at first, but not if you dig deeper. County citizens already pay a significant amount to the City through their businesses and rental properties. Many work in Lincoln, or come to Lincoln and spend money, paying sales tax. As County residents, they are commuters, like any other. City services will not be provided at the same level for several years, until residents are willing and ready to pay for them. As for clarity of services, only a small portion of the area touches City limits and most of the area is farmland. Instead of clarity, the annexation causes confusion as to who will provide services, kids having to switch school districts, or having to arrange different transportation to school. Annexation should not be to encourage growth in a particular area, but should be to absorb areas when everyone is prepared. LFR confirmed it would take around 10 minutes to reach their subdivision and they would work with SE fire to use their trucks to pump water. The City department is not equipped to handle rural fires. A letter to the Lincoln Journal Star addresses this issue as it occurred in Sky Ranch Acres, where one house was a total loss, even with the combined efforts of LFR and the rural fire service. Snow removal service will decrease when it becomes the responsibility of the City. The City should consider the impacts to people's lives and creating adverse effects with annexation. If they were aware of this annexation proposal as early as January of 2017, they did not communicate that with the neighborhood.

4. Terry Neddenriep, 550 Anthony Lane, said that timing is a key part of the fairness issue. Although the neighborhood abuts the City, but it is farmland and the golf course contributes to the rural feel. The neighborhood was caught off guard. As far as we know, the Waverly School District was unaware of any of this. A school representative attended one of their neighborhood meetings to find out what was going on. It would be better to plan first, then announce the plan. Then the City and the neighborhood can be partners in growth.

5. Fred Myers, 6801 O Street, stated he is the lot at the eastern edge in the annexation subarea. One parcel got skipped over for some reason and they should be a part of this annexation since they are a part of the area.

Beckius asked if it is the Country Club access point on O Street. Myers said the access is just west of his house. He operates a small business from his home. It is not fair that the other property is not included.

6. Stanley Jensen, 930 Anthony Lane, said that due to the slope and drainage in the area, he is concerned about annexation until sewer and water is installed to the west. As soon as the area is developed, there will be a lot of pressure to have a through-street to A Street. The streets in the area were not developed with the intention of being City streets and they are not meant to withstand heavy traffic.

Staff Rebuttal and Questions:

Cary stated the process for presenting this annexation package was done very deliberately and following the policies and procedures for annexation of this sort. An involuntary annexation is never anyone's favorite topic, but it is necessary at certain junctures. He does not discount the importance of issues raised with these annexations, but the policy, planning, and facts related to these areas address these issues. He can say with confidence that emergency response time and service will be extremely improved, especially for medical services. LFR is a very highly rated fire department. Cary concluded by noting that direct contact was made with the Waverly School District, including phone calls with the superintendent.

Barnes stated that the annexation policy follows State Statue which grants the authority to annex area that are contiguous. No part of this area is remote or separated and that is something that would be challenged. The subarea meets more than one criteria of the annexation policy since it is in Tier I, Priority B, is contiguous, and has the appropriate infrastructure. There is no need to pull lines from the west; the lines are already there. This has been an open process. If the idea of annexation was thrown out earlier, no decisions were made at that time. There were thousands of acres reviewed and background and analysis work was done prior to the study being published in July. The number of dwellings being annexed is a small percentage compared to what is being built in the city overall. To say that adding 56 units will dilute services seems to be a perception. This particular subarea was not considered a reach into a rural area. Not only has Hillcrest been platted into residential lots, Gable Pines is being built and Shadow Creek and Whitehorse are nearby. Though there are agricultural fields there now, the area is not rural, it is transforming and the utilities are in place. The small parcel left out of this subarea does not have access to the same utilities and so was intentionally left out of this subarea.

Thierolf reiterated that Waverly has been contacted via phone and email on multiple occasions and they are fully aware of the proposed annexation areas. Staff has been told that students going to Waverly schools could remain if they have been in the school system for a certain amount of time. There will most likely not be a bus stop at Hillcrest, so they may need to drive to other stops. It does not make sense for Staff to conduct a detailed engineering analysis before a request is made because a neighborhood could choose not to file a petition for assessment for years, by which time, the analysis would be useless. There is no question about this area being sewerable.

Borer said the letter to the Journal Star mentioned in Mr. Schwartz's testimony was a letter to the editor and not written by staff. Due to a mutual agreement between fire departments, the responding station called the rural department as they left the station, so both departments worked together from the very beginning. Even so, the house was a loss. There is an upcoming meeting with the chief of the SE Rural Fire department to discuss expanding upon the mutual agreement in order to take advantage of each other's resources.

Beckius asked for confirmation that this entire area can be served by LFR. Borer said yes. LFR carries 500 gallons, though he acknowledges that amount will not go far in a house fire. But all engines carry 750 feet of 5-inch hose and 1,000 feet of 2-inch hose. This subdivision is not

that different from Firethorn. With that subdivision, LFR added extra equipment to reach the entire area. Beckius asked Borer to comment of LFR response times. Borer said the average travel time is 2 minutes per mile and that average is based on times calculated during traffic, day or night, in all weather. Engines can travel faster, but there are times when they are just slowed down. Turnout time is the time when the call is heard to when the wheels on the engine are moving. Our goal is 60 seconds. That time could vary significantly for a volunteer force, who may not be at home when a call comes in. Other factors include the amount of time from when a person experiences an emergency and then makes the call, and the amount of time it takes for work to begin once arriving at the scene.

Beckius asked if the golf clubhouse will be eligible for annexation when the Whitehorse subdivision is infrastructured out. Thierolf said that in addition to water and sewer, annexation of the clubhouse would also bring in 98th Street. The County currently has an agreement with the neighboring property owner, and annexation would create complications. 98th Street is currently just right-of-way.

Beckius asked about the past letter sent by Olsson Associates as referenced in the public testimony. Mr. Schwartz provided copies of the Olsson letter (see Exhibit A) and the City notification letter dated August 1, 2017 (see Exhibit B) to the Commission. Thierolf responded that the letter had to do with information Olsson was seeking for Waterford. **Steve Henrichsen of the Planning Department** added that the specific question of annexation was addressed when talking about the Whitehorse development. The question was posed at that time about whether Hillcrest would be annexed as part of that process and the answer at that time was 'no'. The same goes for Shadow Creek and the assisted living facility. In 2016, Shadow Creek was approved and Olsson was hired to host a meeting. Olsson knew this question of annexation would come up and they addressed it. No government assurances were given that this particular subdivision would not be annexed. Scheer asked if that meeting was in 2016. Henrichsen said yes, it was last year and was dealing with the sewer line paid for by the developer. The rest of that line would have to be assessed.

Edgerton asked about the issue of road maintenance. Thierolf said that many areas have been annexed and Public Works is capable of maintaining the roads.

Corr asked if 98th street will connect through to A Street. Barnes said that it ultimately will, once it becomes a funded project.

Hove asked about the timing of the taxation if annexation is approved. Thierolf said taxation will occur on the 2018 tax year, to be paid in 2019.

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Corr moved for Approval, seconded by Beckius.

Beckius said annexation is never easy. He is not concerned about the dilution of City services and believes there is equity for tax payers. His biggest concern would be if there were a decline in public safety. He is not saying that one department is better than another, but if nothing can

be demonstrated beyond anecdotal evidence, he has a hard time believing that the quality of service will decline.

Hove said he appreciates all of the comment made throughout this process. It is a timing issue and he wishes there were a better way to prepare resident for the changes, but it is a 'chicken and egg' situation. Residents could be told annexation is possible and then choose not to improve their private water systems, and then have the annexation not go through. Unfortunately, this is the way it is.

Scheer said the comments heard throughout this process have revolved around the issues of timing and justification. Timing is always a problem and he agrees with Hove that it is a 'chicken and egg' situation. To get things moving and to have the detailed engineering and planning, annexation must happen first.

Motion carried, 8-0; Washington absent.

ANNEXATION NO. 17018, FOR A CITY-INITIATED ANNEXATION OF APPROXIMATELY 68 ACRES, MORE OR LESS, ON PROPERTY GENERALLY LOCATED BETWEEN 75th and 84th STREETS, ADJACENT TO PORTSCHE LANE, DUNROVIN ROAD, OR ALIMARK LANE: **October 25, 2017**

Members present: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Joy, and Scheer; Washington absent.

Staff recommendation: Approval.

There were no ex communications disclosed on this item.

Staff Presentation: **Paul Barnes of the Planning Department** said this subarea includes two areas packaged together. The same thorough methodology and criteria for determining appropriate annexation areas was applied to this subarea. Both areas are within Tier I, Priority B. Both are contiguous, have infrastructure in place and are urban in character. Again, the areas are acreage residential in use, but it is everything else defines its urban character. The comments received from the public included concerns over utilities, the requirements to connect to services, and emergency services.

Thierolf said these areas make up 68 acres with 18 dwelling units. The area is already in the Lincoln Public Schools District and is served by the SE Rural Fire department. It should be noted that there is current development interest in this area with approved plans for subdivision of one of the lots. There is also a project that will be on the next Planning Commission agenda that includes a change of zone. That developer has also requested annexation as part of their redevelopment.

Thierolf went on to say that the obvious hole in this annexation area can be attributed to the incremental approach taken by Staff. That area is currently under study by Public Works to determine exactly where pipe will go. That study will be done later this year, so we did not

want to look at annexation for that area until those results are in. The annexation areas have obvious water and sewer access with hydrants at the edges of nearby streets.

Edgerton asked the location of the nearest Lincoln fire station. Borer said a new station is underway at 66th and Pine Lake Road. Existing stations are at 84th and South or 48th and Highway 2.

Finnegan commented that one letter mentioned there are four adjacent properties that are not included in this annexation group. She wondered if there was a reason they were excluded. Thierolf said they are in the area being studied by Public Works to determine where pipe will go. Sewer and water goes through the included area.

Edgerton mentioned a comment regarding the need for tree burning to clear diseased trees in a shelter belt. Thierolf said burning is not allowed within City limits. Edgerton asked if it would be allowed now. Borer said that outside of city limits, people can go to their fire district and ask for a burning permit. City Health Codes prohibit burning because of adverse health effects and we do not do burn permits in the city to burn brush or grass.

Opponents:

1. Laura Thelan, 7900 Portsche Lane, stated she disagrees with the idea that they will have to drive past properties not included in the annexation to get to theirs. She works in healthcare and is aware of what staffing entails. She feels the City is already stretched, so adding all of the annexation residents will spread resources thin. They lack hydrants and even though engines can bring water or tap into other hydrants, they still feel the rural district will be able to serve the area better. There are fences in the area, so to have to connect to hydrants on the other side would be difficult. The County currently does snow removal. Residents have paid for the road and the County plows are very quick and reliable. Her home is at the top of a large hill that dips down and creates large snow drifts. If that were to occur, it further increases the amount of time it would take for emergency responders to get to their property. It makes more sense to wait until more crews are hired. She wonders who will have to pay for hydrants in the area. They have hundreds of trees as well as orchards and chickens and the area is not urban in character. Edgerton asked if the lane ends at their property. Thelan said yes. There is only one way in and out, which is another cause for concern.

2. Arzoo Hadi, 7900 Portsche Lane, stated she also disagrees that the houses to the west are not included in the annexation. The rural fire station is very close. Even when the new City station is built, the response time will be 6 minutes. If residents want fire hydrants, then they would have to agree to connect to City water. She does not want to go with City water. She paid $30,000 for a septic tank that works perfectly. She paid $15,000 for a well that reaches clean water. Her home has significant square footage of living area and she wonders how many tanks it would take to put out a fire of that size. The current location of the hydrants makes access to her house challenging. She is willing to pay a wheel tax for use of City streets. The residents built the roads in their neighborhood. The area will eventually be taken over by the City as nearby properties continue to subdivide. At this time, her household is not ready for the annexation and do not have room for the extra costs.

Harris asked about the properties that were not being annexed. Hadi responded that she does not want to be the victim of other people's decision to subdivide. The annexation does not make sense without the inclusion of the properties to the west.

3. Zach Hadi, 7900 Portsche Lane, stated that it makes no sense to him that a few houses were "cherry picked" for annexation when everyone travels on the County roads paid for by the residents. He was told by LFR that they do not have tankers to carry a water supply with them.

Staff Rebuttal and Questions:

Barnes said the idea of an area being urban in character has been challenged in the Nebraska Supreme Court. This concept is not based on land use but comes down to basic infrastructure in an area. This was the determining factor for all eight subareas.

Thierolf said that the City can utilize County roads for snow removal. The County Engineer and Public Works work together on snow removal. Hydrants are paid for as part of an assessment district requested by the property owners. The estimate for adding a hydrant is between $5- and $8,000.

Corr asked if residents could request only the hydrant or if they have to request water to their house. Thierolf said the mechanism for hydrants is the water assessment district. The waterline is already there so they would not have to retroactively pay. Hove added that the amount is paid over time. Thierolf said it is paid over the period of 20 years. The rough estimate for cost is around $40 per frontage foot.

Borer said the person living at the end of the lane is correct; dead end roads are always a challenge for any emergency service. Since fire trucks are long, it creates additional distance if they have to line up end-to-end. A fully involved fire in a 9,000 square foot home would require 3,000 gallons of water. There is a 5,000 gallon tanker.

Cary said that the question about the exclusion of the adjacent four properties is based on the need for further review and the ongoing study of how sewer will work for that area, and areas even farther over. The area included in annexation is the most logical area that can be served. The rest of the areas will be considered during a future annexation package.

Scheer asked for more information regarding the upcoming proposal in the area. Thierolf said they are requesting annexation along with a change of zone and a CUP special permit area. If this annexation goes through, they would withdraw the annexation aspect of their applications, but for the time being, it is included.

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ACTION BY PLANNING COMMISSION: **October 25, 2017**

Beckius moved for Approval, seconded by Corr.

Harris said she will refer back to her comment at previous hearings regarding annexations. This

area generally checks all of the boxes. She wanted to be sure that it is understood that the reason fewer questions are being asked is not because of a long hearing, but because this body has already had a lot of philosophical discussion on the annexation topic, and it has largely been the same. We have signed-on to the fact that there is an ongoing initiative for City-initiated annexation and that it should happen in areas that where City services can be logically extended. At some point, after this body has determined that these actions are acceptable, and for the sake of fairness, it becomes more difficult to oppose certain areas. She hopes the questions of the benefits of annexation and of helping residents adjust will continue to be asked at the City Council level. There is no illusion that there are no serious challenges and costs to residents. This is an opportunity to call upon ourselves to review how this process worked internally, and at the Planning level, and to grade ourselves on how we have done. She will support the motion for approval.

Beckius said he has maintained a consistent viewpoint. For him, the subareas have met the qualifications of annexation. If there were any question of safety, that would have been problematic for him. Again, there has been no factual evidence to suggest that emergency services will be worse.

Scheer said that without the knowledge that an annexation request is coming forward at the next hearing, he would most likely vote against adding the Portsche Lane portion of this annexation subarea because of the disruption it causes to connectivity. It is possible that this is an issue of timing and that it could have waited for the larger piece to be annexed, but with the upcoming application, it makes sense to approve it.

Motion carried, 8-0; Washington absent.

There being no further business to come before the Commission, the meeting was adjourned at 5:59 p.m.

Note: These minutes will not be formally approved by the Planning Commission until their next regular meeting on Wednesday, November 15, 2017.

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