

REVISED MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, November 15, 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 Tracy Corr, Tracy Edgerton (arrived at 1:18 p.m.), Deane Finnegan, Maja V. Harris, Cristy Joy, Dennis Scheer, and Sändra Washington; Tom Beckius and Chris Hove absent. David Cary, Steve Henrichsen, Tom Cajka, 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 25, 2017. Motion for approval made by Harris, seconded by Finnegan and carried 6-0: Corr, Finnegan, Harris, Joy, Washington, and Scheer voting 'yes'; Beckius, Edgerton, and Hove absent.

CONSENT AGENDA

**PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:**

November 15, 2017

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

The Consent Agenda consisted of the following item: **STREET AND ALLEY VACATION NO. 17010.**

There were no ex parte communications disclosed.

Corr moved approval of the Consent Agenda, seconded by Finnegan and carried, 6-0: Corr, Finnegan, Harris, Joy, Washington, and Scheer voting 'yes'; Beckius, Edgerton, and Hove absent.

Note: This is a recommendation to the City Council.

Scheer called for Requests for Deferral.

COMPREHENSIVE PLAN AMENDMENT NO. 17007, AMENDING TO DESIGNATE THE NW CORNER OF S. 98TH STREET AND VAN DORN AS (N) NEIGHBORHOOD CENTER ON MAP 5.1: EXISTING AND PROPOSED COMMERCIAL CENTERS, GENERALLY LOCATED AT THE NW CORNER OF S. 98TH AND VAN DORN STREETS.

November 15, 2017

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

Staff recommendation: Approval.

AND

ANNEXATION NO. 17019, TO ANNEXA APPROXIMATELY 73.53 ACRES, MORE OR LESS, ON PROPERTY GENERALLY LOCATED AT 91ST AND VAN DORN STREETS.

November 15, 2017

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

Staff recommendation: Conditional Approval.

AND

CHANGE OF ZONE NO. 17030 FROM AG (AGRICULTURAL DISTRICT) TO R-3 (RESIDENTIAL DISTRICT) PUD, WITH SINGLE-FAMILY, MULTIPLE-FAMILY, AND RESIDENTIAL TRANSITION USES, WITH VARIOUS WAIVERS, ON PROPERTY GENERALLY LOCATED AT 91ST AND VAN DORN STREETS.

November 15, 2017

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

Staff recommendation: Conditional Approval.

Corr moved for a 3-week Deferral to the regular Planning Commission hearing scheduled for December 6, 2017, as requested by the applicant, seconded by Finnegan and carried, 6-0: Corr, Finnegan, Harris, Joy, Washington, and Scheer voting 'yes'; Beckius, Edgerton, and Hove absent.

Chair Scheer called for public testimony on the deferred items. There was no public testimony.

Commissioner Edgerton arrived at 1:18 p.m.

TEXT AMENDMENT NO. 17015 TO AMEND VARIOUS SECTIONS OF THE LMC RELATED TO ACCESSORY DWELLING UNITS AND TO ADD CHAPTER 3.115 TO EXPAND THE AREAS IN LINCOLN WHERE ACCESSORY DWELLING UNITS ARE ALLOWED.

November 15, 2017

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

Staff recommendation: Approval.

There were no ex parte communications disclosed.

Staff Presentation: Andrew Thierolf of the Planning Department stated detailed information on Accessory Dwelling Units was provided to Commissioners at pre-briefings. An accessory dwelling unit (ADU) is a self-contained unit on the same lot as a single-family dwelling. It can be attached or detached and will generally consist of a bedroom, kitchen, bathroom, and small living space, and at most, could house one or two people. There are multiple reasons ADUs have become more popular. The biggest reason is to provide living space for a relative. ADUs can also serve as an extra source of income if rented out. Homeowners can age in place and stay in the familiar neighborhood they love by moving to the smaller unit and renting the main dwelling. ADUs can also serve as guest housing and also offer an affordable housing option. In some cities, there has been a big push for affordable housing.

Today, ADUs are allowed under special circumstances. They can be approved as part of a PUD or CUP. Three current developments, Fallbrook, Village Gardens, and Black Forest Estates allow ADUs today. The units look like single-family homes from the street, but there are attached units with separate entrances at the back. Another option to allow for an ADU is to go through the historical Landmark process. There is a special permit of this type in the Piedmont area where there is a dwelling located above a garage. ADUs were allowed prior to 1953, so if they were built prior to that date, they would be allowed to remain. It is also possible in the R-1 thru R-4 Districts to have an ADU on a larger lot where 2 detached single-family homes would be allowed on one lot, but each structure would need to meet area requirements.

In December 2016, the City Council asked staff to undertake a study on this topic to look at text to expand options for this use. A working group was formed and included some Planning Commissioners, developers, neighborhoods, and other stakeholders. The topic was also discussed at the Mayor's Neighborhood Roundtable. Initially, staff developed a more aggressive proposal to allow ADUs on most lots via the special permit process. Based on feedback, that proposal has been scaled back.

In the Districts where there is enough lot area for a duplex, the detached ADU could be built. The conditions would need to be met, including 800 square foot size or less than 40% area than the main building. The owner must live in one of the units and the ADU must meet the height and setbacks required of the main dwelling. Two parking stalls are required for the main unit and the ADU would require one additional stall. In the R-5 thru R-9 Districts, two detached structures are already allowed on single lots and the lot size needed is less. As far as design

standards, the ADU must be compatible with the main house. One last aspect relates to the "conditioned area". Today, finished floor areas in detached structure are not allowed, so with this proposal, one could have a detached rec room or craft area if it meets the same setbacks.

Harris said she served on the working group and one thing that was not addressed was how the definition of "conditioned area" was developed. Thierolf responded that it is tied to building codes. Harris asked if the definition includes temperature specificity, or what other factors might contribute to the definition. Thierolf said it can include heated and cooled areas, though a garage is different since it has the entire wall that opens to the exterior. It is helpful to think of the conditioned area as useable floor area to the overall house, but without its own bathroom and kitchen.

Harris asked for clarification about where on the Use Tables ADUs are shown as a permitted use in the R-5 thru R-8 Districts. Thierolf said those would be considered a 2nd single-family dwelling so that is why they are not distinguished out.

Corr disclosed that she attended the Mayor's Roundtable meetings and was also part of the working group. She wondered if a garage that was heated and cooled would count as an ADU. Thierolf said it would not, but it would be considered a conditioned area. It is an attached area.

Corr asked Thierolf to give more detail about the parking requirements. Thierolf said in a residential area, tandem parking is allowed. A home with a 2-stall garage would essentially have four parking spots - two inside and two in the driveway. Corr noted she has a double garage but only a single driveway. Thierolf said tandem parking would still be fine.

Opponents:

1. **Vish Reddi, 1944 B Street**, came forward as a representative for the Near South Neighborhood Association. The current zoning already accommodates present and foreseeable needs for accessory dwelling units. The current demand is extremely low and any future demand is speculative. The neighborhood has concerns with how the owner-occupancy requirement would be enforced; neighbors policing neighbors is not effective. Near South has worked hard to downzone as a response to past planning missteps that had a negative impact on the neighborhood by increasing density. The fear is that those efforts could be defeated by making this change. There is no objection to well-planned tiny house neighborhoods, but there is no need to expand requirements to allow for more.

Staff Questions:

Washington asked how the owner-occupancy rule would be enforced. Thierolf said that Building and Safety was consulted, and it would be treated as a zoning violation. On the units treated as duplexes, there could be two renters. Enforcement would happen on a complaint basis. Washington asked if historical district neighborhoods can already have ADUs since they were built prior to 1953. Thierolf clarified that the ADU would have to have been there since before 1953. In effect, the density is not changing where duplexes are already allowed. The change is that there would be a main building and a detached second building.

Corr asked what the consequences are for this type of zoning violation. Thierolf said he believes a fine is accrued for each day in violation, and eventually, court action could be taken. **Tim Sieh, Law Department**, said there would be the violation of code and at some point one could pursue injunctive release. First, here is a per-day fine.

Harris asked if there is any instance where this change would increase neighborhood density. Thierolf said that would be rare since to have the duplex, there must be enough lot area and width. For example, in the R-3 District, there could be a single-family home on a lot with 6,000 square feet and 50 feet of width. For two-family, there must be 10,000 feet of area with 80 feet of lot width. With an ADU, the 10,000 square feet of lot area is still required, but not necessarily the lot width, so there are a few rare circumstances where it could happen.

TEXT AMENDMENT NO. 17015

ACTION BY PLANNING COMMISSION:

November 15, 2017

Harris moved for approval, seconded by Corr.

Harris said this is a great idea that responds to a nationwide trend for housing that we can anticipate will be in demand by seniors, millennials, or even younger people who want an affordable option for living. It can be a source of income and it adds to living options. It also conforms with the Comprehensive Plan. She would have been in favor of an even more permissive proposal, but this is a great start.

Corr agreed that the final result is a good starting point and compromise. She has some concerns about the enforcement of violations when neighborhoods already have problems getting things enforced. She wants to see how this works first.

Finnegan said she will support the motion and echoes the thoughts of Commissioner Harris. This change will not overwhelm the City since changes are being made slowly and it is a good idea to move forward like other communities.

Scheer said this is an innovative idea and is great for existing neighborhoods.

Motion carried, 7-0: Corr, Edgerton, Finnegan, Harris, Joy, Washington, and Scheer voting 'yes'; Beckius and Hove absent.

ANNEXATION NO. 17007, TO ANNEX APPROXIMATELY 70.01 ACRES, MORE OR LESS, ON PROPERTY GENERALLY LOCATED AT O AND NORTH 112TH STREETS.

November 15, 2017

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

Staff recommendation: Conditional Approval.

AND

CHANGE OF ZONE NO. 17015, FROM AG (AGRICULTURAL DISTRICT) TO R-3 (RESIDENTIAL DISTRICT) ON APPROXIMATELY 67.67 ACRES, MORE OR LESS, ON PROPERTY GENERALLY LOCATED AT O AND NORTH 112TH STREETS.

November 15, 2017

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

Staff recommendation: Conditional Approval.

AND

SPECIAL PERMIT NO. 17022, DOMINION AT STEVENS CREEK CUP WITH UP TO 433 RESIDENTIAL UNITS INCLUDING SINGLE-FAMILY UNITS AND TOWNHOMES, WITH WAIVERS, ON APPROXIMATELY 153.97 ACRES, GENERALLY LOCATED AT O AND NORTH 112TH STREETS.

November 15, 2017

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

Staff recommendation: Conditional Approval.

There were no ex parte communications disclosed.

Staff Presentation: George Wesselhoft of the Planning Department to state this area is adjacent to Waterford and Sky Ranch Acres. Around 153 acres of the total area would be within the boundaries of the CUP. The area can be served by sewer from the west and connection to the planned trunk line at Steven's Creek. There is 2.34 acres along O Street that is a State-protected area where the Nebraska Department of Transportation could acquire right-of-way, so the proposed "office" could be impacted by that. Office was proposed in that location due to the pipeline planning area where residential development is not permissible. In terms of conformance with the Comprehensive Plan, the area is Tier I, Priority B, and is all within the full range of City services. The change in zone to R-3 will match the zoning to the west in Waterford. There is a condition to allow the State a 60-day review period.

Phase 1 of the development would commence in the northwest part of the development with 74 single-family units. The subsequent phases would extend to the south and east. There are conditions with the latest proposal to account for a temporary easement to facilitate construction vehicles. Barricades would be placed at the Piper and Beach Craft and would remain in place until occupancy permits are granted for all of the units in Phase 1.

The developer has requested three waivers, similar to what was granted in Waterford. First, it is to have sanitary sewer running opposite the street grade. This is a common request. There are also waivers requested to increase block lengths for Block 15 and Block 25 in the northeast of the area where they will be near detention and green spaces, and to allow side lot lines to deviate from being radial and perpendicular to street right-of-way lines. Lincoln

Fire & Rescue has indicated that the development is not within their desired response time. Station 16 will be located somewhere between Holdrege and O Streets and will better serve the area. The development is not unusual in terms of density. The request is for 433 units and they are allowed up to 1,000, so the developer will use only 40% of the allowed. The intent of phasing the project is to better disperse traffic for residents in the area.

Finnegan asked about the phasing schedule. Wesselhoft said that could be better addressed by the applicant.

Edgerton asked for more information about construction entrances. Wesselhoft said the entrance will be along 112th Street and the developer is currently working with the County Engineer.

Joy asked about the logic of going through existing neighborhoods. Wesselhoft said this proposal is not unprecedented when adding urban density to pre-established rural density. Street connections extended with the intent for future connection.

Washington asked for more information about the waivers for increased block length. Wesselhoft explained that there is green space and some floodplain that consumes much of the northeast portion of the property. That area will be developed in Phase 3. Washington asked if the extra block length was to accommodate those open areas. Wesselhoft said that is correct. Washington said block length is considered to make sure pedestrians don't have to walk extra distances, especially towards school. Wesselhoft said there is potential for an additional school site, but it is to the west in Waterford.

Corr asked about Crescent Drive. Wesselhoft said there will be a connection to Waterford in that northwest area. Corr asked if that was the only ingress and egress for Phase 1 or if there will be access into the other development on Piper. Wesselhoft said that once occupancy permits are issued, then the barricades to the Sky Ranch area will be removed. Corr noted that the original report did not show barricades. Wesselhoft said that is correct; the developer sent a modified request to address concerns over construction traffic.

Washington wondered about the safety of having only a single access point to homes in Phase 1. Wesselhoft said the developer can address that.

Steve Henrichsen of the Planning Department said this is a common occurrence during the initial construction of new developments. It is not possible to go in on day one and build six entrances. Staff works with developers to work out phasing and to find an appropriate number of units while there is only one way in and out. The first phase in this project will include 74 units and, to some extent, this number was to address concerns from Waterford and Sky Ranch residents about people driving past their homes. Public Works looked at the existing roads in the area. Initial construction traffic will go down 104th Street. In the long term, traffic will be distributed differently with potential connections out to O Street, and eventually another 80 acres closer to 112th Street. The phasing addresses how the developer can afford to make the infrastructure improvements. It is not uncommon for there to be a number of units that will temporarily only have one access point.

Proponents:

1. **Mark Hunzeker, 1248 O Street, Suite 600**, came forward on behalf of the developer, Starostka-Lewis. This is a low-density development, with approximately 2.8 units per acre. A neighborhood meeting was held two weeks ago at SCC and there was lots of input from neighbors about access and the ability of roads to withstand heavy construction traffic. In response, Mr. Eckert, the engineer on the project, modified the initial phasing to limit access to Sky Ranch while the first phase is being built. Access was discussed with Waterford residents. Crescent Moon will connect to 104th Street. In addition, barricades will be placed at each access to Sky Ranch. In the meantime, there is a drainage way that runs under 104th Street that will require an amendment to the FEMA Floodplain. An application will be made for a map revision to enable that to be built. This should be done well in time for this to proceed. As an alternative, the option of opening Shore Front Drive has been discussed and that amendment would be requested if FEMA does not act quickly, though that is not our preferred course. In order to limit traffic that travels back to the west, the first phase would be limited to 35 lots so that by the time the second half of Phase 1 is underway, there would be two access points going west. One other request today is to change the language affecting the annexation agreement so that if there is a delay in getting the annexation agreement signed, the public hearing at City Council could be delayed rather than costing the developer even more time, given the holidays. Staff had no objection to that change.

Edgerton asked if splitting the construction of Phase 1 would change the requirements for the barricades into Sky Ranch. Hunzeker said the barricades would still be required to remain until all 74 lots of Phase One have occupancy permits.

Corr asked for more information about the longer blocks.

2. **Mike Eckert, Civil Design Group**, responded that there will be two detention cells to increase functionality. The compromise for the longer block length was that a pedestrian easement be built, so there will be what essentially is a dam between the two cells. That also ties in with water quality requirements in the area. The pedestrian easement goes out into the green space and there is also a future bike trail.

Washington asked if the geometry of Phase I would change if option two were used. Eckert said no, Phase I is seen as a whole, even if constructed in two stages. We are confident that Crescent Moon can be built. The development that has to go through the FEMA process is different, but it should be done by April of next year.

Finnegan asked the density of Waterford and Sky Ranch. Eckert said he did not know, but the proposed lot sizes are similar to Waterford. Sky Ranch Acres has relatively small lots for a rural subdivision. The proposed lots are closer to one acre in size.

Corr asked if there is further development planned on the Waterford side. Eckert said that is correct, there is more planned on 104th Street but none are built. He believes a final plat has been approved. The road is not yet paved.

Scheer asked how long the first phase will take, including permitting. Eckert said from the time the infrastructure is in place, grading is done, it will be mid- to late-summer next year, so it will be into 2019 before the first homes come online.

3. **DaNay Kalkowski, Seacrest & Kalkowski, 1128 Lincoln Mall, Suite 105**, said she represents the adjacent development. Her role today is to let the Commissioners know that discussion regarding access and traffic is ongoing. The final concept for the proposed development keeps changing so the access points need to be worked out, especially because any proposed O Street access location will be important to the other developments. It is their goal to have the access discussion concluded prior to City Council public hearing. Also of note is that the barricades to Sky Ranch essentially force access through Waterford. From our standpoint, we would argue that it is always better to have multiple access points to a development. No one street should have to bear all of the burden of traffic. Waterford's final concern is regarding construction traffic accessing the development through their streets.

Opponents:

1. **Bill Austin, 301 S. 13th Street**, came forward representing Sky Ranch Neighborhood Association. **Matt Sherman, President of Sky Ranch Neighborhood Association**, also came forward. Sky Ranch was platted and developed in the early 1970s with 27 single-family units. Annexation was initiated by the neighborhood and occurred in 2012. The area consists of large lots with private sewer and water. There is concern about the capacity of streets in their area. The development will have immediate and significant impact on the Sky Ranch occupants. To our knowledge, no traffic or road condition study has been conducted. The neighborhood has not been provided with adequate information to do anything other than object. The neighborhood meeting was the first time the proposed development was fully explained. Residents raised numerous concerns. Less than two weeks later, the proposal is at Planning Commission for Final Action. That was simply not enough time to adequately respond. We ask for a delay of at least 30 days to allow time to discuss the sufficiency of the streets to accommodate new development and to sit down with the developer. Allowing the delay would not have an impact since the special permit would have to await the approval of the other applications. His clients are not unmindful of the efforts the applicants have made, but there was simply not enough time to get consensus among Sky Ranch neighbors. Mr. Austin asked all Sky Ranch residents attending the meeting to voice their opposition to stand.

Harris asked if they are asking for a hard 30-day delay. She wondered how the holiday schedule would play into the 30-day delay, or if the holidays would create further delays. Austin said if it took longer that would not concern his clients, but he doubts that is the case for the applicants. They are willing to work with whatever they can get. After discussion with the Clerk, it was concluded the City Council public hearing could occur as late as December 20th.

Joy asked if the neighbors were supportive of the annexation and change of zone, and are only asking for more time on the special permit. Austin said they are neutral on the other applications. It is the impacts to the streets and the connection that cause concern.

2. **Roger Johnson, 1320 Cessna Lane**, said much of his testimony is included in the letter of opposition he submitted. There is a well at the end of Piper Way that was permitted in the 1970s-1980s. The position of the well may interfere with the proposed location of the connection to the new development. He has heard minimal discussion from the City regarding the well when it may have to be moved, at significant cost. He would like to have this issue completely resolved before this moves forward.

3. **Marge Davenport, 302 N. 112th Street**, stated she farms 130 acres on the down side of the proposed buildings. Stevens Creek runs through her property and she said her main concern is the water issue. The creek floods regularly, sometimes completely flooding out her property. More concrete in the area will increase that problem. 112th Street has become impassable two times this year alone. She is also concerned with the safety of the water supply. It has occasionally been so dusty in the area from traffic that headlight must be used during the day to farm. The road is not in good shape and additional traffic will make it dangerous. There is additional concern for safety due to the number of accidents when people turn off O Street onto 112th Street. The project has been very rushed; they only found out about it in early November.

4. **Andrea Howell, 1360 Beechcraft Road**, stated she and her husband, Scott, live on the corner lot and sent a letter of opposition. They have voiced safety concerns and sent numerous emails to urge people to consider that the risks to children and pedestrians are huge. There are almost 20 children under the age of 13. Two cars cannot pass at the same time on the narrow roads and large vehicles can barely make it, if at all. There are no sidewalks or lights for pedestrians and these are not meant to be urban roads. This is a safety risk.

Finnegan asked if they are okay with annexation. Howell said yes, annexation is good for the City and there are many benefits. They are just very nervous about their streets where even garbage and delivery trucks do not fit on the roads. Lives are at stake.

Staff Questions:

Harris was interested in Staff's take on the amendment proposed and on the delay of action. Wesselhoft confirmed that staff supports the change proposed by Hunzeker. Henrichsen said it gets complicated delaying items this time of year. Out of the next seven weeks, there are four weeks without City Council hearings. There are rules to meet regarding introduction, public hearing, and voting, so if this body acts today, the public hearing at City Council will be on December 11th and the vote will be on December 18th. If there were to be some other delay, voting may not occur until next year. An appeal on the Final Action for the special permit would need to be done within 14 days, so potentially, voting could end up occurring in February if that appeal occurs late. In terms of the special permit, it is difficult to come up with the exact dates.

Joy asked if the issues regarding the 112th Street will be addressed. Wesselhoft said he is not aware of any plan at this time.

Corr asked about the Nebraska Department of Transportation easement. She wondered if they could choose to require right-of-way beyond what already exists. Wesselhoft explained that the State easement does not just apply to this property, but to the general area along O Street. They were included in the review process and would also be involved for the final plat.

Corr asked for more information to address concerns about sewer capacity. Wesselhoft said the sewer will connect to Waterford and to the trunk line to the east and will not be made in Sky Ranch.

Corr also asked about the well mentioned in public testimony. Wesselhoft said the City is aware of the well. In a 1990 administrative amendment to a special permit, the well house was shown in a common area and not in the right-of-way. In general, the City and County do not approve wells in right-of-way. If it needed to be moved, those costs would need to be discussed with the developer.

Corr asked about the comments made about flooding in the area. Wesselhoft said the area is within the Lower Platte South Natural Resource District. Public Works and Watershed Management reviewed the proposal. Public Works is satisfied with storm water management and the developer is aware there is a significant flood zone on the property.

Washington asked if moving the well house would be a separate discussion from the well itself. She wondered if people are still able to traverse the road. Wesselhoft said the well house is east of Piper Way.

Washington noted how narrow the roads are. She wondered if they will stay that width once they are eventually connected. She asked what the process would be to widen the roads if is necessary for public safety. **Robert Simmering, Engineering Services Manager, City of Lincoln**, stated the streets were looked at and there was concern that they are rural, probably a 5-inch asphalt over an aggregate base. They are 22-feet wide in several places, which is a typical width for uncurbed streets. There is nothing in the geometry that would limit traffic. The well house is 6 feet off the edge of the street, which is the minimum clearance zone. There is nothing to motivate us to require that be moved. If residents want to widen the street, it would be done through an assessment district. They would only be addressed for the additional width. Staff does agree that construction traffic should be kept off of those streets. Even when the barricades are down, we would probably consider putting weight limits on the streets to keep loaded trucks off.

Washington asked if there is any requirement for them to be widened. Simmering said it is not required and the streets could be left as they are. Washington went on to ask if there is anything about the annexation to cause neighbors to think they would not have future development go through them. Simmering said the streets were stubbed to the end of the lots and for anyone watching the growth of the city, it would be presumptuous to assume they would not be connected.

Edgerton asked if the new streets would be wider to the south, once they are connected. Simmering said they would be 27-foot, curbed streets.

Washington asked for more information about the flooding in the area. Wesselhoft indicated that the comments from the review are available as part of the staff report. Washington explained that she feels for Ms. Davenport, who testified about the flooding on her property, since the addition of impervious surfaces in the area could increase the potential for flooding.

Finnegan asked staff to go over public safety comments from LFR. Wesselhoft said it was noted that the area is not within their 4-minute response time goal. The existing stations are at Cotner and at S. 84th Street. A new station is planned for the near future so once that is there, they will be able to serve the area from that closer station. The area is currently serviced by the Southeast Rural Fire District. Finnegan asked if the streets are adequate for fire trucks in Sky Ranch. Wesselhoft said he does not know. Henrichsen said that when the area was annexed, it was reviewed and no misgivings were expressed.

Washington asked if traffic studies are required for new developments. Wesselhoft said that generally speaking, they are not done for residential developments and are used more for commercial.

Applicant Rebuttal:

Hunzeker said there is no specific description of what the consequences will be to the Sky Ranch area other than the consequences of the connective streets, which were stubbed out for that very purpose. Streets are stubbed to the property line in existing subdivisions and they have no control over this; that is how it is done. Additional traffic was an anticipated consequence of City growth and has been anticipated. It is the job of the City to inform us as to whether or not they are sufficient. The construction traffic will be temporary and efforts will be made to keep it out of Sky Ranch. As for the flooding, a contour map has been provided. All of the runoff from the property moves to the north and to the east to come out in the area where the detention cells are planned. Additionally, it is part of the required design standards that runoff from the development cannot exceed what it is today. That is why the detention cells are planned. Sky Ranch is already within the City and being served by LFR. Our preference is to avoid any delay so that the grading can start on schedule.

Finnegan acknowledged the changes that were made after meeting with neighbors on November 2nd. She asked if there has been any other follow-up with them. Hunzeker said an email was sent to all who signed-in describing what will be done to limit construction traffic through the neighborhood.

Corr asked if the goal is for all of the applications to remain together as they move on to City Council. Hunzeker said that even with the 2-week appeal process, this will put voting well into January. Eckert added that they are more than willing to continue to sit down with neighbors. They are required to follow all the rules in terms of making the connections. The City was willing to put up the barricades. Hunzeker noted that public hearing at City Council will likely not occur until December 18th since details of the annexation agreement need to be worked out.

Edgerton concluded that it seems likely the special permit will be appealed and will move to City Council with the other applications. Hunzeker reiterated that they are willing to meet with neighbors between now and then.

Corr asked if building had to wait for approval from the State due to the protection along O Street. Hunzeker said this protection was designed by the State to provide notice if you want to build, so they are forced to make a decision as to whether or not they will need the land in the future. The state could make an appraisal to acquire the land. It is a matter of giving them the opportunity to buy it in case they need the property and to make sure they know that something is being built.

ANNEXATION NO. 17007

ACTION BY PLANNING COMMISSION:

November 15, 2017

Corr moved for approval, seconded by Joy.

Edgerton commented that the annexation is fine to move forward.

Sheer agreed that the area is ready to be brought into the City.

Motion carried, 7-0: Corr, Edgerton, Finnegan, Harris, Joy, Washington, and Scheer voting 'yes'; Beckius and Hove absent.

CHANGE OF ZONE NO. 17015

ACTION BY PLANNING COMMISSION:

November 15, 2017

Corr moved for approval, seconded by Edgerton.

Corr said this is appropriate zoning for the area given the R-3 District already in the area.

Motion carried, 7-0: Corr, Edgerton, Finnegan, Harris, Joy, Washington, and Scheer voting 'yes'; Beckius and Hove absent.

SPECIAL PERMIT NO. 17022

ACTION BY PLANNING COMMISSION:

November 15, 2017

Scheer noted there are amendments proposed by Staff and the Applicant that will need to be accounted for.

Corr moved for approval, as amended by Staff and the Applicant.

Harris noted one amendment was intended for the annexation. The Law Department clarified that the motion made on that item is acceptable since it relates to the content of the annexation agreement.

Washington seconded the motion.

Joy asked about the appeal process, if it happens. Wesselhoft said the final action taken by Planning Commission can be appealed to the City Council within two weeks of today's date. If that is done early enough, the applications can be synchronized for the sake of City Council. Cary said the items would then move forward to City Council, bundled together. They do not have to be, but the applicant might request they be kept together.

Corr reminded the neighborhood that there is time between today's hearing and City Council public hearing so that will allow for more time to work out issues. She thanked both parties for talking and getting some things worked out already. We are glad that door was opened and hope that discussion continues to get somewhere where the residents can be happy.

Washington said it was good the developers were willing to make changes in response to the neighbors' concerns. She encouraged the neighborhoods to continue discussions and to make a case for their concerns. The project will be better in the end if it is well-vetted. She feels for the neighbors, especially when it comes to safety concerns.

Finnegan echoed the thoughts of Washington. The project is moving fast if the neighborhood meeting occurred only two weeks ago and is before this body for final action today. She hopes everyone involved will keep talking.

Scheer thanked everyone for the context surrounding this proposal. This is what happens when a growing city extends infrastructure. It can be expected and this is a good process. He appreciates neighbors for being at the hearing and hopes discussion continues. It feels like things are moving quickly, but there are some weeks to come, and then a couple of years before the true traffic impacts will be felt.

Motion carried, 7-0: Corr, Edgerton, Finnegan, Harris, Joy, Washington, and Scheer voting 'yes'; Beckius and Hove absent.

[Break: 3:00 p.m.

Meeting resumed: 3:13 p.m.]

ANNEXATION NO. 17020, TO ANNEX APPROXIMATELY 4.4 ACRES, MORE OR LESS, AND ADJACENT STREET RIGHT-OF-WAY, ON PROPERTY GENERALLY LOCATED AT 7721 PORTSCHE LANE.

November 15, 2017

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

Staff recommendation: Conditional Approval.

AND

CHANGE OF ZONE NO. 17031, FROM AG (AGRICULTURAL DISTRICT) TO R-3 (RESIDENTIAL DISTRICT), ON PROPERTY GENERALLY LOCATED AT 7721 PORTSCHE LANE.

November 15, 2017

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

Staff recommendation: Conditional Approval.

AND

SPECIAL PERMIT NO. 17036, FOR A 12-LOT CUP FOR UP TO A MAXIMUM OF 30 DWELLING UNITS, WITH WAVERS, ON PROPERTY GENERALLY LOCATED AT 7721 PORTSCHE LANE.

November 15, 2017

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

Staff recommendation: Conditional Approval.

There were no ex parte communications disclosed.

Staff Presentation: Brian Will of the Planning Department stated the annexation application may turn out to be redundant since this area is included in a City-initiated annexation (AN17018) that is currently before City Council. If that annexation is approved, the annexation application associated with this project will be withdrawn.

Corr asked how much of the area was included in the City-initiated package. Will said the City-initiated annexation also includes much of the surrounding area.

Will went on to say the future land-use map shows the area as urban density. This in an older acreage area, but is in transition, with a few acreage lots in the larger vicinity undergoing changes. The request is for R-3, which is appropriate. The allowable density could go up to 30 dwellings but, given the existing acreages still in the area, the proposal of 12 units is much more appropriate as a transition to the acreages. There is no opportunity for connection to the south, which is already platted and well underway. A waiver is proposed to allow for a hammerhead turnaround instead of a more typical cul-de-sac layout. Staff is supportive of that request since 12 lots will generate only a small amount of traffic and it will allow people to turn around without using driveways. Staff also supports the reduction to the front setbacks provided that the dwellings have side-loading garages.

Washington asked about a letter in opposition that referenced neighborhood covenants. Will said it is not unusual to receive comments about restrictive covenants. Those are simply agreements among private parties and the City is not involved. It is possible for a development to meet City codes and still be contrary to private covenants. Washington wanted to know if the City moving forward creates pressure on the covenants. She wondered if items are ever delayed to resolve conflicts with covenants. Will said no, the City is not involved in matters between private owners and would not ask for a delay.

Corr wondered if the City will be responsible for the curb and gutter down the line, if the area is annexed. Will said there is no imminent requirement that roads are suddenly upgraded after annexation. It could be done via assessment district and Portsche Lane was updated not long ago. Corr wondered about the payment in lieu of updating roads. Will said at the time of the final plat, the developer would be required to improve, but since it doesn't make sense in this case, there has been a tradeoff.

Joy asked if the requirement for the side-garages is a condition. Will said there is a review at the time of acquiring building permits and the building is reviewed as to compliance with the CUP.

Joy asked about access to Portsche and if there would be lots to that lane. Will said it is a local street and would be problematic due to ditches. The intent would be to take access off the streets to be built.

Corr asked Will to address the side setback along the south boundary. Will said the areas to the south in Grand Terrace front onto internal streets. The side yards referred to are to the south, as you look to the rear yards of the lots in Grand Terrace. It is more typical for houses to back to one another. That is not quite the case here. As large as this development is, it is not unreasonable to ask for the 20-foot setback along the south. It is a measure to ensure compatibility with the neighborhood.

Harris asked why the annexation is being requested at this level if it may become void if City Council approves the City-initiated annexation that includes the area. Will said that technically, the area had not been annexed at the time they applied, so this is to make sure this development can move forward in case the other annexation is not approved.

Corr asked about the request for a block-length waiver. Will said that is not an uncommon waiver request as acreage lots develop and is just a function of the larger acreage area. Washington commented that the block does not seem that long. Will said that the buildout of the street network has been slow and there is not much of a network for 3- and 4-acre lots.

Proponents:

1. Rick Onnen, E & A Consulting Group, 7130 South Street, came forward as applicant along with Jayme Shelton, BancWise Realty, 6120 Apple Way. He stated the goal is to fit 12 lots into the area as a transitional use between the urban density area to the south and the acreages to the north. The block-length waiver is to account for the existing block already being that long. We ask for reconsideration of Condition 2.1.3, which is the side yard requirement of 20 feet, and also the requirement for the screening for the end of streets. It is not uncommon to have a side yard abutting a rear yard and their original concept layout showed the drive coming in on the south side. Options include going with the 5-foot setback, consistent with the zoning, approving the original layout with the drives on the side, or to go with the same setbacks suggested for Grand Terrace. There is need for some screening to block headlights, but the standard with the extra height applied here is what is normally required for multi-family units abutting single-family units. The 25-foot requirement is meant to soften the impact of a tall building. A 10-foot height would be more appropriate.

Shelton added that the covenants that existed were between only two parties and they expired as of January, 2017. The area of this development was not part of the covenants.

There was no testimony in opposition.

Staff Questions:

Corr asked how staff feels about the requested amendments. Will said staff agrees with the clarification of what is being required now in Condition 2.1.3. but not with the change to the landscaping requirement. This development is coming into the neighborhood, so providing appropriate screening is necessary. The roadways are being taken to the southern limit. These will be primary entry points so all of the traffic will be coming in and lights will shine to the south.

Edgerton asked about the topography of the area. Will said it is sloping from west to east. There is probably some grade change from north to south, but not enough to block lights.

Applicant Rebuttal:

Onnen said the Design Standards have different criteria based on use and this development is being held to the standards of a multi-family building, which would have to be set back even farther and would require 50% screening to the height of 25 feet. If fencing is used as part of the screen, we believe a height of 10 feet is sufficient. The streets will have a grade sloping to the north so it will go uphill to the south.

Washington wondered how they came up with the amount of screening they propose. Onnen said it includes 6-feet for fence and then 20% of the area of the vertical plan to a height of 10 feet. Corr added that the 6 feet comes from being 60% of the 10 feet.

ANNEXATION NO. 17020

ACTION BY PLANNING COMMISSION:

November 15, 2017

Corr moved for approval, seconded by Joy.

Harris commented that this is a "belt and suspenders" action to make sure the annexation for this proposed development is covered in the case that City Council denies the City-initiated application that applies to the same area.

Motion carried, 7-0: Corr, Edgerton, Finnegan, Harris, Joy, Washington, and Scheer voting 'yes'; Beckius and Hove absent.

CHANGE OF ZONE NO. 17031

ACTION BY PLANNING COMMISSION:

November 15, 2017

Washington moved for approval, seconded by Edgerton.

Corr said this zoning change makes sense with R-3 already in the area.

Motion carried, 7-0: Corr, Edgerton, Finnegan, Harris, Joy, Washington, and Scheer voting 'yes'; Beckius and Hove absent.

SPECIAL PERMIT NO. 17036

ACTION BY PLANNING COMMISSION:

November 15, 2017

Joy moved for approval, as amended by the applicant. Washington offered a friendly amendment to the motion for the inclusion of the clarifying language, as agreed to by staff. Corr seconded the motion with the friendly amendment.

Joy said she thought the first option listed by the applicant provided all they wanted. She said she is looking at a 20-foot separation with reduction to the screening requirement.

Scheer said he would not be in favor to changing the second part for screening.

Corr agreed that protections must be in place for existing neighbors. Otherwise, this is a good transition from north to south so she has no issues with the overall plan.

Washington said she also has no concern with the density, especially since the development is for fewer units that what is allowed in R-3.

Scheer said this is a good step. This area was discussed as part of the City-initiated annexation at the last meeting, so it is clear that this is an area of transition.

Joy thanked her fellow Commissioners for providing clarification.

Motion carried, 7-0: Corr, Edgerton, Finnegan, Harris, Joy, Washington, and Scheer voting 'yes'; Beckius and Hove absent.

SPECIAL PERMIT NO. 10007A, AMENDING THE HAMANN MEADOWS CUP TO ADD 12 DWELLING UNITS, WITH WAIVERS, GENERALLY LOCATED AT 4050 S. 76TH STREET.

November 15, 2017

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

Staff recommendation: Conditional Approval.

There were no ex parte communications disclosed.

Staff Presentation: Brian Will of the Planning Department said this is a major amendment to the existing CUP. There has already been a plan in place for the development since the early 2000s. Later, the owner came and asked for the special permit for the CUP, which only approves two cul-de-sacs. Some lot area and setback adjustments were made. The old plan wasn't quite as dense as the plan shown today. They now propose a cul-de-sac with 11 units

located around it. Almost all of them access onto Silver Circle. There are three that would access S. 76th Street. The waiver to the rear yard setback is a function of the shape of the property. Staff approves that. The other waiver is for lot area. The lots are generally the same size as the other in the CUP, so staff also recommends approval of that waiver.

Harris asked if there is any neighborhood opposition. Will said he had phone calls after the notice was sent out, mainly asking what the development would be like. One neighbor had concerns about the additional properties fronting onto 76th. There are already several lots that do that. It is a local street with other drives on it, which helps to reduce traffic speed, if that was the concern.

Washington asked for clarification about what appears to be a trail on the site plan. Will said that is the drive to the Hamann property which takes access off of 77th Street. There is a trail connector between the two existing cul-de-sacs.

Proponents:

1. **Andrew Willis, Cline Williams, 233 S. 13th Street**, came forward on behalf of the applicant. This proposal is in conformance with the character of the current neighborhood and builds off of what is already there. It also meets the goal of constructing infill housing. The lots are around 5,000 square feet with waivers to make 2 lost just below that amount, but not significantly. The entire plat got denser so this follows suit. The drive to the north will be cut off from the south, but they will have access from 77th Street. There is no plan to develop that property at this time. The other waivers are the same as was done in other cul-de-sac lines. The main goal was to maintain the character of the existing neighborhood while expanding. This new proposal is only five lots over what was originally proposed so the traffic impact will be minimal.

2. **Marcia Kinning, REGA Engineering, 601 Old Cheney Road**, came forward as engineer, on behalf of the applicant. She wanted to note that a letter was sent out to the neighborhood about this project and to let people know of the Planning Commission hearing.

Opponents:

1. **Mark Hunzeker** came forward to state that he is speaking on behalf of Don and Judy Fricke, who live immediately adjacent to the Hamann house. They are not in opposition, but had a few questions and comments. Mr. Fricke sees standing water where this cul-de-sac is proposed and he wonders if there will be a mitigation plan for that. He also wonders if there is any flood plain in the area.

Finnegan asked which house belonged to the Frickes. Hunzeker said the house immediately to the east.

Staff Questions:

Sheer asked if there are any wetlands in the area. Will said he does not know of any. The inventory from the engineer does not show any. Kinning said there are no wetlands or flood plain in the area.

Washington asked if there is any guess as to the reason for the standing water. Kinning said the current grading could have created some indentations where water can sit.

Scheer asked if there are drainage plans for the area. Kinning said there are and they work out fine. The north is higher, so the area drains to the south.

SPECIAL PERMIT NO. 10007A

ACTION BY PLANNING COMMISSION:

November 15, 2017

Corr moved for approval, seconded by Harris.

Corr said this proposal looks fairly straightforward and she intends to support it.

Motion carried, 7-0: Corr, Edgerton, Finnegan, Harris, Joy, Washington, and Scheer voting 'yes'; Beckius and Hove absent.

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:

November 15, 2017

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

Staff recommendation: Denial.

There were no ex parte communications disclosed.

Staff Presentation: David Cary, Director of Planning, stated the perspective of staff is to be consistent with what has already been heard. This item is before this body again today due to the 4-4 vote that occurred at the last hearing. The applicant has changed their proposal and has worked with staff. Staff continues to recommend denial based on a few main points. The current regulation for separation for off-sale should remain as is. Commissioners were directly involved in the process over the summer. Information was provided to Commissioners and the community had the opportunity to talk about issues associated with potential changes. The applicant kindly held off so this could take place, and we thank them. The commentary from the community was to maintain the regulations that are in place. The standard has been in place for 13 years and has served the community well. There are not compelling enough changes at this point to make changes. There is concern with treating groceries differently. It is the opinion of the Planning Department that to do so would open the door for challenges for other types of uses and that really is not the intent of the change. Groceries provide obvious value to neighborhoods. That does not mean there is enough reason to make this city-wide change for this particular vendor. It opens the door for other locations, but it also exposes the City more in the future for other types of retail to request the same exception. A convenience store could argue that every neighborhood needs to get their gas, so they should have a separate classification. The same goes for a neighborhood pharmacy.

The current regulation does not prevent stores from locating in neighborhoods. It identifies location that can and cannot be met in particular districts. There are other locations. For this applicant, we know it is a challenge and they cannot meet the requirements in their current situation. That does not mean others cannot propose grocery locations around the City. There is recourse for the applicant. Planning staff acknowledges that it might be financially burdensome, but there is an option for them under the current rules, at their current location.

Harris thanked the applicant for their willingness to delay. She studied the history of alcohol regulations and read all of the minutes from 2004. The ordinance was changed so the City Council could no longer use the waiver process on a case-by-case basis, the Planning Director could no longer mitigate, and the special permit process was created to have final action at the Planning Commission level. At that time, the change was strongly opposed. Planning Commission recommended denial by a 6-2 vote. They specifically cited concerns about small, independent business. City Council minutes were requested, but the discussion was not outlined. She asked what the arguments were for Planning Commission recommending to deny.

Cary said that his understanding is that there was a strong feeling from City Council and neighborhoods similar to what is felt today. Waivers were becoming burdensome in the sense that they could be very variable. There are points and arguments to be made that the waiver system allows for flexibility in the regulation, but the points made at the time was concern about not being consistent and fair enough on a case-by-case basis. He believes City Council went against Planning Commission because they were feeling the same way in that they did not want to field all of those waivers. He also know anecdotally that neighborhoods also felt the burden of having to make their points with every request.

Harris said there was also talk about planning evaluative methodology to deal with this problem. Brian Will was the planner back then and he agreed there could be other alternatives that could be explored. Will said there are other alternatives and the way we do it is not the only way. This was the standard that was adopted in 1994 and have had since then. From what he has gleaned, he believes it was a confluence of three things. A City Council member was involved with Mothers Against Drunk Driving and it was a strong personal issue for her. Mark Hunzeker was representing the packaged liquor dealer's association, and then there were strong feelings from the neighborhoods. They were all responding to a change in State law where you could buy liquor more places than just the liquor store. Those groups were on common ground and there was enough interest aligned. That resulted in the regulations in place today. Only minor modifications have been made since then, and they have become the community standard that we all live with. This amendment is not saying there is something wrong, or some major malfunction with the current system, or that they underserve some portion of the community.

Cary agreed there are many ways to do zoning. The current setup has been in place for many years and is the standard. There is not an overarching push from the community to make this change. There are particular applicants for whom the current system does not work. That will be the case for most of the codes.

Edgerton asked how long the codes have been in place and when the waiver was done away with. Will said the regulations in their entirety have been in place starting in 1994. In 2004, the waiver system changed. Edgerton wondered about the volume of special permits for alcohol

sales that were being seen at that time. Will said he does not have an exact number, but a good representative guess would be around 100, including on- and off-sale. At one point, the City was sued. The result was that the courts determined that a city can regulate alcohol sales via zoning ordinances.

Cary added that one thing to consider is that the regulations have not changed that much over the years, so there is a strong consistency factor there. It provides the ability to say that we are applying a fair standard for whatever the request may be. That consistency works. The potential for going backward to a system with less consistency could lead to other types of retail proposing the same thing. That is the crux of the recommendation for denial.

Edgerton asked how restaurants were treated prior to being considered an exception. Will said they were treated like all other retail.

Finnegan asked if the neighborhoods were involved in coming up with the compromise that was reached within the current regulations. Will said yes. The neighborhoods were involved and there are some here who took part in the process.

Harris wondered how the restaurant exception came about since, at that time, Planning thought it was appropriate to consider an exception the 100-foot rule specifically for one restaurant. Will responded that staff did not initiate the request; it was the request of a very persistent owner. It became clear in our minds that a restaurant is a different use and warranted the exception. Planning Commission and City Council agreed. Harris noted that there was significant opposition, including from the police and the Building and Safety department, due questions about enforcement, since it is based on a percentage split. Harris asked how that is fundamentally different from what is being proposed by the applicant today. Will agreed that some regulations can be difficult to enforce. In our minds, a restaurant is fairly easily determined, and that was the consensus of the larger group. It is easy to make the distinction between a restaurant and other uses.

Harris asked if any bars meet the same 60/40 rule that restaurants follow. Will said he does not think so. The regulation is clearly generated from food and it is easy to make that distinction. The percentage may help, but the distinction is clear. No enforcement had ever been needed.

Finnegan recalled that part of the conversation was the mitigating factor of alcohol being consumed with food. People go to a restaurant to eat, but not everyone drinks. She also noted the difference between on- and off-sale. Will said that gets to the heart of the issue. There could be multiple retail outlets with off-sale; it is not a nicely niched out area that is easily identifiable.

Harris asked if there is a viable path for a PUD for Open Harvest. Will said if they met the requirements for a PUD, it would be possible. Piedmont was mentioned at some point. In that case, there was an overriding public purpose in that the revitalization of an aging shopping center was the main purpose of establishing a PUD. Alcohol sales were secondary to that goal.

Harris asked how they would go about it. Will said there is a minimum acreage requirement and it would have to include the entire strip mall and some of the adjacent residential.

Harris noted that the language put forth by the applicant is very similar to the restaurant exception. She asked if the language regarding the 100-foot measurement to the door actually provides extra protection asked if the restaurant exception language provides better protection than the restaurant exception because of the required 100-foot distance to the door. Will said he does not know that since it just said "residential district". Staff has reviewed their proposal and even worked with them to help them, but the overall opinion has not changed. It does not provide the same level of public safety for all the other reasons the requirements are in place. Harris asked it provides better protection than the rest because of the 100-foot distance. Will agreed that it does.

Joy wondered if it would be enough to simply amend the 100-feet to the door regulation.

Corr said she does not believe there would be a way to get the language succinct enough. It weakens the code. If the City is taken to court, the regulations have been watered-down. Will agreed that if it becomes okay for a grocery, how is that distinguished from some other retail uses in a meaningful way.

Joy asked if staff has looked at how the State defines grocery stores. Will said staff is not hung-up on whether or not "grocery" can be defined. They are retail and they can't be separated. Cary said staff took the lead from the applicant on the definition. It opens the door for how the regulations could be taken to other retailers.

Edgerton pointed out that it is easy to say that by having the restaurant exception, the door was opened for this conversation today. Cary agreed and said that is his point.

Harris asked if groceries would still need the special permit to sell alcohol. She wondered about mitigating requirements that could be included in a special permit, such as hours or screening. Will said there is a whole variety of ways to mitigate the impact of uses. Cary said the mitigating factor that we want to keep is the 100-foot separation. That is the staff position about the best way to handle this, keeping in mind the consistency factor.

Proponents:

1. Amy Tabor, 855 S. 35th Street, stated that text was submitted that sets a clear definition of grocery based on fresh food sales and a cap on alcohol sales. That sets groceries apart from other types of retail. We took all of the questions and issues to heart. It has been suggested that changing the ordinance would seem to apply to only one, that there is difficulty in using certain terminology, a lack of process for enforcement, and concern for protection of neighborhoods. Based on that, several changes have been made. They met with the Grocers' Association and looked at how the State defines things. The altered definition can be applied to all groceries. The focus is on the primary services of selling food, similar to a restaurant. Availability of food should be at the top of the list when it comes to city planning. The current ordinance makes it unlikely that any grocery would choose to serve and underserved area. In order to protect neighborhoods, the 100-foot rule keeps distance between residents and the public entrance without putting burdensome requirements on stores to remodel to

create a separate entrance. The percentage cap on alcohol sales was deleted to leave focus on food items and to avoid restricting sales at other locations. The threshold of 65% in food sales ensures the primary purpose is to sell food. It is an industry standard. A final revision was to address oversight where the store is to provide Nebraska Department of Agriculture permit that demonstrates 65% food sales. These changes align with the ordinances and with normal permitted processes in place. It has become clear that the ordinance created over 20 years ago is no longer serving the community the way it was initially intended to.

Harris asked why the language regarding farm winery is not included in the new language. Tabor said that was not intentional. Harris said she does not want to unintentionally exclude farm wineries. Will agreed that it was inadvertent.

Harris asked for more information on doing away with the cap on alcohol sales versus having a 15% cap. Tabor said that stemmed from discussion with the grocers' association. There is fluctuation in that market based on location and it seemed unnecessary if the food component is clearly defined. It also simplifies the procedures.

Harris asked if the applicant was open to adding language that says maintains "at all times". Tabor said they would not be opposed to that.

Opponents:

1. **Vish Reddi, 1944 B Street**, came forward as represented for the Near South neighborhood. He stressed that they love Open Harvest as a business and this is by no means opposition to the co-op. They request that Planning Commission maintain the zoning ordinance, keeping the 100-foot separation. Neighborhoods will be negatively impacted by the change. Russ's has cut short their hours of operation due to problems related to alcohol sales. This change could put sales 25 feet from some homes and vulnerable uses like daycares.

2. Marti Lee, Neighbor Works, came forward to say that restaurants are dealing with on-sale. Off-sale leads to littering and later hours. It is entirely different. We are in favor of small business. There is no way that making this change will increase economic development. There are places within the city that would be negatively impacted if the change happens. The ordinance continues to serve the community and to provide protection in neighborhoods.

Applicant Rebuttal:

Brandee Payne, Chari of Open Harvest Board, said she also manages other seasonal community markets and has worked in local food for a long time. Access to food is especially important. This change would not be limited to Open Harvest. Considerable time has been spent addressing concerns. This change does not pave the way for other retailers to sell alcohol. The clear definition of "grocery" prevents that. This will pave the way for grocers to consider core neighborhood locations and it helps to ensure that others can remain competitive by offering one-stop shopping. Hy-Vee stores are adjusting their sales strategies to include smaller, neighborhood stores which shows that even bigger stores want locations with a smaller footprint. 10,000 square foot buildings are not built in new developments. She would find it surprising if any store would locate in an area where alcohol sales were not

permitted. The Comprehensive Plan supports the growth and maintenance of mixed-uses to support a variety of incomes, and walkable neighborhoods. These are important policy ideas and this text amendment supports those values. It is evident even larger corporations see the need to nestle stores into neighborhoods for the benefit of the employees and the city. There has been talk of the known potential impacts, but no talk about the unknowns. What about businesses who have looked at having locations in neighborhoods and decided against it, or have left. We will never know if it has influenced these decision. Losing access to food in the core areas of the city lacks vision.

Finnegan asked for speculation as to why neighborhoods are in opposition to changing the regulations if they will be good for them. Payne said they respect that effort. They are not trying to make the language too concise for grocers. Open Harvest has looked at the PUD option but would have to bring in residential area and the Walgreens to meet the requirements. Our goal is to help grocers. Their concerns do not really address what we are trying to do and we agree that neighborhoods should be protected. Finnegan said Neighbor Works is involved in the core neighborhoods and do not think this change will help development in neighborhoods. Payne said they are not able to go in and show them there would be benefit. It is a chicken-and-egg situation. Older neighborhoods are getting to a point where there is limited food and walkability. We would love to see it happen and to help work on the process. First, we have to break down this barrier to get there.

TEXT AMENDMENT NO. 17001

ACTION BY PLANNING COMMISSION:

November 15, 2017

Corr moved for Denial, seconded by Finnegan.

Corr said this is not a barrier problem or defining grocery succinctly enough, and it is definitely not a problem with Open Harvest, who we love. The problem is the watering down of the zoning codes and being able to defend them. If this gets passed, it will bring a lawsuit on the city. Questions will be raised about how groceries can be treated differently from other retail and problems will arise with consistency. The present applicant is not the only consideration and the long term has to be considered. She believes that what is in place is working and maintaining it is a good compromise for business and neighborhoods.

Harris said she will vote against denial and is ready to move this forward with the proposed amendments. She appreciates the statements made in opposition. The standard is in place, but it ~~may not have been~~ was not reached through consensus. In 2004, Planning Commission voted to deny doing away with the waiver system and was worried about what it would do to grocers and independent businesses. We worry about the unintended consequences of this ordinance change could create, but we cannot fail to address the unintended consequences of ~~what is currently in place~~ our current ordinances. The situation that Open Harvest finds itself in today is an unintended consequence of the 2004 ordinance change. ~~In looking at the restaurant exception, it was reasonable in her mind, and this is a reasonable extension of that.~~ Older neighborhoods do need protections but a "one size fits all" approach is not flexible enough to incentivize the operators we actually desire, especially in core neighborhoods. Instituting the minimum in food sales and the 100-feet to the door provides

added protections. It is universally known that the retail landscape has changed and small businesses need to be able to compete. Enforcement could be a burden on staff, but having the food sales percentage is a tool to enable enforcement. It is difficult to argue that a restaurant has more value than a grocery store, especially knowing that access to fresh food is becoming a problem in some neighborhoods. This is not as simple as making it only about alcohol sales; this is also about the flexibility to encourage accessibility to food and opportunity for small, local providers.

Finnegan said she does not think it is good public policy to change a rule that is working. She has not seen a stampede of other vendors seeking this change. Those who have written letters of support have all been tied to Open Harvest, whereas, the letters in opposition have come from all over the community. The restaurant exception is different because it relates to on-sale only. That is a big distinction. People who work to improve core neighborhoods have come forward in opposition. This would not be good governance if there are not more members of the community coming forward in favor. It is not a good road to go down.

Edgerton said she will vote against the denial. This has been an excellent example of how reasonable conversation can occur, even if there is disagreement. She sees both sides and could probably make an argument for both sides. She is moved by the fact that we can have a legitimate public policy exception for grocers. They can be accurately distinguished from other retail. They are important for poor neighborhoods and the economic viability issue is important. We can control against the perceived slippery slope.

Washington has been paying attention to this issue. She feels strongly that businesses and individuals who move into neighborhoods accept the rules of the neighborhood when they move in. Things have changed and the business model is changing. It is absolutely important to make sure we do not end up with food deserts. She does not like to be on the wrong end of lawsuits where you start to wonder if it is worth it. That said, this is an opportunity to be very clear about what a grocery is and how it is different from retail. She will vote against the denial.

Joy said she will not reiterate what has already been said. She appreciates the efforts made on all sides. She will vote against the denial. Food can be defined.

Scheer said he will vote in favor of the motion. The waiver process seems appealing, but we have heard that it is not. But this is certainly a case where if that were an option, it would be the right thing to do. The ordinance is rigid, but he shares the same fears about changing an ordinance that works.

Motion failed to carry due to a lack of majority vote (3-4): Finnegan, Corr and Scheer voting 'yes' to recommend Denial; Edgerton, Harris, Joy, and Washington voting 'no'; Beckius and Hove absent.

Cary noted the motion for denial failed today. To move forward, it requires five votes one way or the other. Another motion could be made today, but if it is decided to carry this over to the meeting of December 6th, the ideal would be for all nine commissioners to be present so the result is a 5-4 vote. If that does not happen, he would suggest finding a 5th vote one

way or the other in order to allow the applicant to keep this moving forward.

After a short discussion among Commissioners and staff, Washington moved to keep public hearing open, for new information only; seconded by Joy and carried, 7-0: Corr, Edgerton, Finnegan, Harris, Joy, Washington, and Scheer voting 'yes'; Beckius and Hove absent.

There being no further business to come before the Commission, the meeting was adjourned at 5:32 p.m.

Note: These minutes will not be formally approved by the Planning Commission until their next regular meeting on Wednesday, December 6, 2017.

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