

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, March 6, 2019, 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, Dick Campbell, Tracy Corr, Tracy Edgerton, Maja Harris, Christy Joy, Dennis Scheer and Sändra Washington; Deane Finnegan absent. David Cary, Steve Henrichsen, Tom Cajka, Andrew Thierolf, Brian Will, Geri Rorabaugh and Amy Huffman of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Hearing

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 Planning Commission hearing held February 20, 2019.

Harris requested a revision to the minutes to include the following language:

Harris agreed with her fellow commissioners, noting the unmet need for updated affordable housing in Lincoln in general and in this area in particular. This seems like a good opportunity to ensure that code is enforced and that Lincoln has quality affordable housing that is a great way to make sure there is new, quality housing.

Motion for approval of the minutes, as revised, made by Campbell, seconded by Corr and carried 8-0: Beckius, Campbell, Corr, Edgerton, Harris, Joy, Washington and Scheer voting 'yes'; Finnegan absent.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION

BEFORE PLANNING COMMISSION:

March 6, 2019

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

The Consent Agenda consisted of the following item: **COMPREHENSIVE PLAN CONFORMANCE, SPECIAL PERMIT 15019A and SPECIAL PERMIT 19010.**

There were ex parte communications disclosed.

Tim O'Neill came forward to state that he is present to answer questions about **Special Permit 19010**. Washington stated she has questions about that application and requested it be pulled from the Consent Agenda to have separate public hearing.

Campbell moved approval of the remainder of the Consent Agenda; seconded by Harris and carried, 8-0: Beckius, Campbell, Corr, Edgerton, Harris, Joy, Washington and Scheer voting 'yes'; Finnegan absent.

Note: This is **FINAL ACTION** on **SPECIAL PERMIT 15019A** unless appealed by filing a Letter of Appeal with the Office of the City Clerk within 14 days. This is a recommendation to the City Council all other items.

SPECIAL PERMIT 19010, TO ALLOW THE SALE OF ALCOHOLIC BEVERAGES FOR CONSUMPTION OFF THE PREMISIS, GENERALLY LOCATED AT 301 OAK CREEK DRIVE;
PUBLIC HEARING: **March 6, 2019**

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

Staff Recommendation: Conditional Approval.

There were no ex parte communications disclosed.

Staff Presentation: **Brian Will of the Planning Department** stated this site is west of downtown off of Sun Valley Boulevard in a large commercial/industrial park zoned I-1. The applicant is required to have a special permit for the sale of alcohol in this district, which is, in turn, required for the State liquor license. The site meets all requirements for the use; therefore, Staff recommends Conditional Approval.

Washington asked if there are other locations in Lincoln with a similar need to sell alcohol, but not directly from the site. She wondered if this is new to Lincoln. Will said it is new and he believes this is the first location to offer the service. There are districts where off-sale can be sold, but this is the first one he can recall going through the special permit process. Washington commented that she is curious about how it will work to deliver alcohol with groceries.

Proponents:

1. **Tim O'Neill, 121 S. 13th Street**, came forward as legal representative of the applicant to say this is unique for Lincoln right now, but it is a growing trend; he has heard interest from others. GoPuff is an on-demand delivery service offering over 2,000 items, like a convenience store that delivers. They intend to follow all State statutes. Delivery drivers will be over the age of 21 years and will scan the i.d. of everyone they deliver to. Since 2015, they have never had a single violation. They also check to make sure the identification matches the credit card on the order. Drivers go through the training that is required for servers and will know to avoid sales to anyone who is visibly intoxicated and will have limited hours of operation for alcohol deliveries. They are happy to comply with all conditions. Their good reputation speaks for itself.

Beckius asked the hours of deliver. O'Neill said noon to 4:30 a.m., with liquor for sale during legal off-sale hours. Beckius asked what the limitations will be for where the business is allowed to deliver; he wondered if it would include homes, businesses, and even parking lots. O'Neill said that legally, a seller can deliver anywhere. GoPuff carefully considers the safety of its drivers, so they would not deliver to a parking lot. It will not be surprising if soon, restaurants will offer delivery of a bottle of wine with dinner.

There was no public testimony.

Staff Questions:

Beckius asked if there were any concerns from the City about alcohol delivery to residential neighborhoods. Will said that is a separate issue; only the permit for off-sale is being considered by Commissioners today, and that is strictly a land use issue. The liquor license obtained from the State addresses the types of activities allowed in association with that license. City Council will make the recommendation to the State board as to whether a license is appropriate for the community. A special permit for alcohol sales is not allowed in residential zoning districts. Beckius noted that this special permit will allow delivery to residential neighborhoods. Will responded that he will not argue with that point and it is valid; however, this is a permit for off-sale at this location, which is allowed.

Washington noted the assertion that other locations will start offering this delivery service soon. She asked Will if he could envision another situation where a store would need to come forward at Planning Commission to obtain a special permit for this use. Will said the business would have to be in a location that does not currently sell alcohol. If off-sale alcohol sales are established already by the zoning or a special permit, it is possible a business could start offering delivery without coming before this body. That type of service may require the State to modify an existing State liquor license. That type of issue would come before City Council.

Joy asked who would supervise delivery. Will said that is not part of the consideration for the special permit. If anything, it might be a function of the license, but he is unsure.

Applicant Rebuttal:

O'Neill said the Liquor Control Commission will be involved when it comes to the service of alcohol and they have regulations for how this will be done, and the age of the driver. There are procedures in place to handle any problems if there are any.

Corr asked if they have applied for a liquor license yet. O'Neill said they will apply later this week.

Corr noted that the delivery boundaries proposed by the applicant do not cover the entire city and wondered why. O'Neill said that as a new business, they want response times to meet the expectations of customers. That way they can see how receptive the community is to the company, and hopefully expand. Corr asked if the boundaries were based on drive time. O'Neill said yes.

SPECIAL PERMIT 19010

ACTION BY PLANNING COMMISSION:

March 6, 2019

Harris moved Conditional Approval, seconded by Campbell.

Harris said she travels often and has seen this service in many states. It was originally on the Consent Agenda today because it meets all necessary requirements.

Washington said this is a new proposal for Lincoln and she wanted to know more about it, so she appreciates the time spent discussing this item.

Corr said that she understands there is a difference between land use and the regulation of liquor sales. The delivery of alcohol makes her pause, especially because this is a college town.

Beckius agreed that the land use is appropriate. There could be impacts from this business in residential areas, particularly the time of delivery. It is a worthy discussion to have in terms of the potential impacts delivery of alcohol could have in residential neighborhoods.

Motion for Conditional Approval carried, 8-0: Beckius, Campbell, Corr, Edgerton, Harris, Joy, Washington, and Scheer voting 'yes'; Finnegan absent.

Note: This is FINAL ACTION on SPECIAL PERMIT 19010 unless appealed by filing a Letter of Appeal with the Office of the County Clerk within 14 days.

COUNTY SPECIAL PERMIT 14044A, FOR EXPANSION OF EXISTING COMMERCIAL FEEDLOT BY ADDING 86,000 BROILER CHICKENS IN FOUR BARNs, GENERALLY LOCATED AT 7850 NORTH 148TH STEET;

PUBLIC HEARING:

March 6, 2019

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

Staff Recommendation: Conditional Approval.

There were no ex parte communications disclosed.

Staff Presentation: Tom Cajka of the Planning Department stated this special permit is to allow the expansion of an existing poultry feedlot. There was confusion because the application stated a different number of animals; Staff will use the number used in the NDEQ report, which is 82,000 additional chickens. The site is located on N. 148th Street. Just to the north is the Waverly zoning district, though this expansion occurs entirely within the Lancaster County jurisdiction. The expansion will allow for up to a total of 220,000 chickens. The existing 6 barns hold 138,000 chickens. There are also turkey barns, but the owner plans to discontinue raising turkeys at this location. Waverly was notified and expressed no concerns. There are no houses within a quarter mile, and six houses within a half mile. NDEQ has inspected the site and found it to be in compliance with Title 130; therefore, a construction and operating permit is not necessary. That permit is what triggers the nutrient management plan. The applicant has completed that plan, but has not yet submitted it to NDEQ. That is a condition of this application, and is there to be consistent with what has been approved in the past. 148th Street is a paved road and litter is expected to be transported off of the site twice a year.

Proponents:

1. Mike Eckert, Civil Design Group, Inc., 8535 Executive Woods Drive, came forward on behalf of the applicant. This area has had an existing operation since 1963. Mr. Bevens, the applicant, still lives onsite and has had enough success to request an expansion. He has been diligent about providing information to NDEQ regarding the nutrient management plan, and this operation has been a good fit for this location, with a paved road and only a few neighbors. Contrary to other similar applications that have come in, this operation has been so well run that there have been no concerns about the expansion and there is even a letter of support stating this has been a good, clean operation.

Corr asked where the litter is stockpiled.

2. Bill Bevans, 7900 N. 148th Street, came forward as applicant. The manure is sited in the northeast portion of the property which is a high point, located far from water drainage. There are filter strips and berms required. The area is accessed through a secondary road on the back of the property. All of the litter currently goes out to a young couple who are converting to an organic operation. They haul the litter as their crop schedule allows. His goal is to get to the point where the litter is hauled directly after it is gathered from the barns.

Corr asked how often the barns are cleaned. Bevans said they are set up in groups of two and each group is cleaned out twice per year, rotating through all of the barns. Corr wondered how long the litter would sit out in a worst case scenario. Bevans said five months. Corr requested more information about proximity to wells. Bevans said he does not have an accurate number for the distance from the wells, but he knows it is more than the required 100-foot minimum distance. Eckert confirmed that the area has been surveyed.

Corr asked about the turkey operation. Bevans said turkeys were located in the two barns that straddle the driveway. There were small turkeys in the barns up to December, but they have not been repopulated because they are exiting that part of the business. Corr asked about a location to the south where there appeared to be more barns. Bevans said that is his brother's operation. The northeast turkey plant shut down, so those barns have also been emptied.

Washington said she assumed that the litter storage in the northeast corner is within setbacks, but she wanted to make sure it was not too close to a neighbor's well. Bevans said that area of his neighbor's property is crop ground, and he is not sure that they even irrigate.

Edgerton acknowledged that the nutrient management plan is not required by NDEQ, but she wondered if it will be submitted, since it is a requirement of the Health Department. Bevans said the plan has been developed by nutrient advisors and will be submitted.

Campbell noted that manure needs to be aged adequately to make sure it can be properly applied without burning. He wondered about the aging process for that. Bevans said that happens mostly in the pile while it is on his property. It is not turned on a consistent basis, but is stirred when manure is brought out.

There was no testimony in opposition.

Staff Questions:

Harris was curious if there has been any progress on the public input process regarding feedlots since the last poultry operation application. Cajka said the working group is now established, including 10 people from varying backgrounds, and the first meeting will be held next week.

Washington asked for more information about what needs to be submitted to NDEQ. Cajka said Condition 2.2.1 says the construction and operation permit must be in place so that the nutrient management plan will be triggered. That is required before beginning operation.

Applicant Rebuttal:

SPECIAL PERMIT 14044A

ACTION BY PLANNING COMMISSION:

March 6, 2019

Campbell moved Conditional Approval, seconded by Beckius.

Beckius said this operator has demonstrated the ability to run a good operation and to be a good neighbor. He will support the expansion.

Campbell agreed.

Corr noted that the lack of opposition speaks highly of the operator's reputation.

Motion for Conditional Approval carried, 8-0: Beckius, Campbell, Corr, Edgerton, Harris, Joy, Washington, and Scheer voting 'yes'; Finnegan absent.

Note: This is FINAL ACTION on SPECIAL PERMIT 14044A unless appealed by filing a Letter of Appeal with the Office of the County Clerk within 14 days.

There being no further business to come before the Commission, the meeting was adjourned at 1:45 p.m.

Note: These minutes will not be formally approved by the Planning Commission until their next regular meeting on Wednesday, March 20, 2019.