

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, March 20, 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, Deane Finnegan, Maja Harris, Dennis Scheer and Sändra Washington; Christy Joy absent. David Cary, Steve Henrichsen, Rachel Jones, Dessie Redmond, 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 March 6, 2019, as revised to correct typographical errors.

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

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION

BEFORE PLANNING COMMISSION:

March 20, 2019

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

The Consent Agenda consisted of the following item: **COMPREHENSIVE PLAN CONFORMANCE 19003, COMPREHENSIVE PLAN CONFORMANCE 19004, MISCELLANEOUS 19001 and STREET AND ALLEY VACATION 19002.**

There were no ex parte communications disclosed.

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

Note: This is **FINAL ACTION on COMPREHENSIVE PLAN CONFORMANCE 19004 and MISCELLANEOUS 19001** 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.

Beckius and Scheer declared a Conflict of Interest and exited the chambers.

CHANGE OF ZONE 19006, FROM O-3 (OFFIC PARK) TO B-2 (PLANNED NEIGHBORHOOD BUSINESS DISTRICT), GENERALLY LOCATED AT HIGHWAY 2 AND PINE LAKE ROAD;

PUBLIC HEARING:

March 20, 2019

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

Staff Recommendation: Approval.

AND

USE PERMIT 132C, TO ADD SIX COMMERCIAL LOTS FOR AN INCREASE OF APPROXIMATELY 47,200 SQUARE FEET OF COMEMRCIAL FLOOR AREA, GENERALLY LOCATED AT HIGHWAY 2 AND PINE LAKE ROAD;

PUBLIC HEARING:

March 20, 2019

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

Staff Recommendation: Conditional Approval.

Commissioner Washington disclosed that she was asked about the process for providing public testimony during Public Hearing, but there was no discussion related directly to specific items on the agenda.

Staff Presentation: **Brian Will of the Planning Department** stated these applications are both related to the Willowbrook shopping area located just south of Highway 2 and east of S. 70th Street. The original zoning and use permit go back to the year 2000. The parcel in question today was included in the original boundary, but remains O-3 while the rest of the area is B-2. Staff is supportive of changing the zoning to match the surrounding zoning, given the future land use, the surrounding commercial development, and the history of this site. There has been concerns

about infrastructure and increased traffic in the past, but that was prior to improvements to S. 70th Street and Pine Lake Road. Additionally, the South Beltway timeline has moved up. The property has been part of the Use Permit but was blank and didn't show anything at that time, and now the plan shows typical B-2 commercial development. The issue with these applications relates to improvements in Pine Lake Road. There are two access points shown in Pine Lake Road at the eighth and quarter mile. Eventually, there will be a traffic signal since the traffic study indicates intensification as a result of development.

Washington asked how the zone change from O-3 to B-2 impacts the intensity of use. Will said more uses are allowed in B-2, such as gas stations, convenience stores, and dry cleaners. These are neighborhood uses that generate more traffic and are open longer hours, which changes traffic generation.

Campbell asked if the timing of the lane changes has been coordinated with efforts by Lincoln Transportation and Utilities Department. Will said yes, they have been involved in discussion and the improvements will be coordinated.

Corr asked for clarification about what is eligible for impact fees. Will said the eighth-mile access is not. At the quarter-mile access, there are two separate improvements; the turn lane and the signal. The turn lanes will be eligible, but the traffic signal will not.

Edgerton asked if there is any idea of when the traffic signal will be needed. Will said there are only educated predictions at this point.

Proponents:

1. Mark Hunzeker, 1248 O Street, #600, came forward representing the applicant. The access closest to Highway 2 will be right-in and out only. That is at the expense of the applicant. The right and left turn lanes at the other location are impact fee eligible. It was once under consideration to be a roundabout, but it is getting too late for that, so turn lanes are being designed, to be built with Pine Lake.

Two amendments are proposed today to address a couple of concerns (Exhibit "1"). Condition 2.1.9 says the applicant is required to construct a road from its internal roadway over to the abutting property to the west. At this time, it is not known what kind of access will be needed and, furthermore, the residents of the house may not want another access at this time. We are willing to provide easement, but actual construction is a problem, exacerbated by the grading of the site. If a road is built over the property line, it will dump water onto the residential lot. Transportation and Utilities has indicated they are fine with showing the easement, to take effect once that residential property develops. At that point, it would be their cost. They will become a member of our association at that time and be assessed along with everyone else for

maintenance.

The second proposed condition is 3.2, which states escrow must be provided for the traffic signal. We would like to use a different type of security to guarantee half the cost of the signal at such time as the signal becomes necessary. It will likely only become necessary when the property to the south develops and, at that point, it makes sense for them to pay for half. That said, this applicant is not trying to get out of paying and is willing to pay the entire cost if the signal is needed before the adjacent property develops.

Harris asked if there are issues with requiring the residential owner to become a member of an organization in order to honor this agreement. There are other ways to make sure there is proper maintenance. Hunzeker said that most of the property maintenance is done by the applicant, except for the last 25 feet. We are saying that if it is used as a commercial access point, they should contribute to that maintenance. There was a similar situation on Pine Lake with Franklin Dry Wall and Campus Life to the west. We think it is fair to help maintain that short stretch and contribute a small share to the eventual signal, if it is required. Harris asked for clarification about the second amendment. Hunzeker said the language is intended to refer only to the traffic signal. We will provide the security as a condition of getting building permits. Harris suggested the wording could be clarified.

Hunzeker responded that two improvements must happen--the signal and the outbound turn lane from the north side of the intersection. There will be a dedicated right turn lane with a through left-turn lane. Both are being secured by escrow or other security until the signal is warranted. Washington asked if he is suggesting that the outbound right turn lane will be in place until the signal is installed. Hunzeker said that is correct. It will be a right-turn only and left-turn only, with no through movement. Later, the right-turn lane will become a through-lane and a designated right-turn lane will be built.

Corr asked if they have received the deviation request. Hunzeker said not yet, but the traffic study is done and we are confident that we will get approval.

Opponents:

1. Sharon Kresse, 8000 Dougan Circle, came forward to state that she is president of the Pine Lake Homeowner's Association. They do not oppose growth and development, but this proposal erodes the beauty of this attractive entryway corridor, creates spot zoning, and is not an attractive transition from commercial to residential areas. Historically, change in this area has suffered from incrementalism, where, piece by piece, the corridor and residential feel have been eroded. The subarea plan for this area has also been disregarded. There are topographical concerns to consider, as this area drains to Beal Slough. The apartment complex added more density when the goal should have been to retain the low density residential character. It is

concerning to neighbors that there are fewer limitations to uses allowed in B-2 zoning.

Harris asked if Kresse represented the neighborhood. Kresse said yes, they voted at their meeting that this testimony would be made.

Campbell asked if their neighborhood is located around Pine Lake. Kresse said yes, the neighborhood has been there since the 1960s.

Edgerton asked where most of the homes are in relation to this development. Kresse said across Highway 2.

Staff Questions:

Campbell asked if Staff has reviewed the two proposed amendments. Will said briefly; they were received late this morning. There may be room for common ground but there was not enough time to do a more thorough review to make a recommendation. Therefore; Staff is not in support of the amendment due to lack of time to review. Campbell asked if these items were delayed to the next meeting if that would be enough time. Will said the applicant has indicated they do not want to delay. This body could take action to recommend approval, as is, and the final action item could be delayed. Campbell said some of the changes suggested by the applicant make sense, even if improvements to the language are needed. Will said there are points that have merit, but again, Staff cannot support them, as-is.

Harris asked for more information regarding requiring membership in an association. Will said that is one item in question and we are not sure how that would work. We would like time for our Law Department to review and comment to see if the proposal is viable. It does sound reasonable that if the owner is using an improvement, there should be some sharing, but where does that responsibility end? There could be middle ground on when and where to add the drive. In general, it is a matter of equity. We ask developers to build to the edge of their own property so it does not become the responsibility of someone else in the future.

Harris wondered the difference in timeline between Staff's and the Applicant's suggested Condition 3.2 for the requirement of escrow. Will said the timeline is the same, the difference is that we are saying this applicant will be responsible for the entire cost of the traffic signal, whereas they ask to guarantee only half.

Washington expressed concerns since the amendment language is so new. She wondered if the current adjacent residential owner has been part of these conversations. It seems important since there is question about the drive on his property. Will said that Staff wants to make sure that when the property does develop, the drive onto Pine Lake Road will go away. Washington said she understands that aspect of the condition.

Washington and Corr asked for confirmation that only the turn lanes at the quarter mile are eligible for impact fees; not the signal or the other eighth-mile turn lanes. Will said that is correct. Edgerton asked if the City and the Applicant are in agreement on that. Will said yes.

Washington asked for more information about the subarea plan. Will said this development has a long history. The subarea plan is not in effect and was superseded by Comprehensive Plan updates, which incorporated relevant components of the subarea plan. The Future Land Use map clearly designates this area as commercial. Staff does not consider this spot zoning since the larger area is already commercial zoned. It is true that Highway 2 is an important entryway corridor, but there are protections in place, such as the 400-foot wide greenway, which is maintained in the commercial development.

Washington asked if there are design standards for this area. Will said not for the piece of land under consideration. There were some limitations on the original B-2 portion relative to uses and a few design elements incorporated for consistency. Those have not been carried through here in this recommendation.

Edgerton asked when Home Depot was built. Will said around 2000.

Campbell asked what the zoning is to the west of 70th Street, just north of Pine Lake. Will said it is H-4 and there is a special permit over the area for mini-storage and office. Corr asked if that is recent. Will said yes, it was approved in the last few years.

Finnegan asked the location of the HOA. Will said it is across Highway 2 to the east. Washington asked if they are topographically higher than Highway 2. Will said yes, the drainage does come through the site along Pine Lake and flows into Beal Slough.

Corr asked for clarification about the crossed out wording on the site plans. Will said that is a reflection of the amendment to the use permit. Those notes were stricken in a prior iteration. They could have been deleted entirely, but this shows they were there at one time, though they no longer apply. The plan has been amended a few times since the original version.

Harris asked for legal advice about options for approval. She wondered if it is possible to approve the proposed amendments with the caveat that they take effect only if City Law also approves. **Tim Sieh, Law Department**, said that is a difficult question and he cannot advise any action that could ultimately be contrary to law. These applications could be approved as recommended by Staff, and then appealed by the applicant if they would like to try to incorporate their amendments, and that would avoid a 2-week delay. Law has not had time to review the proposed amendments.

Washington asked if it is acceptable for the applicant to ask to submit a different form of security. Sieh said that is a typical request and there is no problem with that aspect of the proposed amendments.

Sieh went on to say that he can see the reasoning behind asking for the neighbor to pay for the temporary drive though he is not familiar with that process and would want to look at it closely. He assumes the applicant has not requested anything that is not legal, so it is also an option to approve the amendments. Approving the changes as presented by Staff would allow issues to be worked out prior to City Council which seems to achieve everyone's goals.

David Cary, Planning Director, stated that he agrees with what Mr. Sieh has said. From a planning perspective, the fact that there are so many unanswered questions is indicative of the fact that more time is needed for review of the matter before a final decision is made on the amendments. The appeal process can happen without causing a delay.

Washington reiterated her concern that the neighbor be brought into the conversation since they are so impacted by this action and she has heard nothing from their perspective. Will said he is sympathetic to that; however, staff does not reach out to neighbors to get their concurrence. They are part of the public notice process and have the opportunity to choose to participate in that way.

Corr said that for the time being, nothing would change for the applicant. The problem now is if a drive is required, we do not want to increase water flow onto their property.

Applicant Rebuttal:

Hunzeker said this part of town has a long history of acrimonious decision making, all of which the Pine Lake neighborhood has opposed. The subarea plan was done in the 1990s and the important pieces of that plan have been carried forward. This area is designated to be commercial. This area has been developing for a long time. In addition to Home Depot and the apartments, there are large commercial centers on both sides of Highway 2. There is also plenty of buffer and design and landscape standards that will be upheld. An alternative to asking the applicant to appeal the final action on the use permit, this body could approve the amendments and the Planning Department could appeal the decision. That would be a way to voice your ideas about our concept we have provided in terms of access, security for the traffic signal and paying for the lane. There have been conversations with the adjacent homeowner and it is entirely possible that they do not know where they would want a drive because they have not talked about development and want to continue to live there. If they choose to develop in the future, that is the time for an engineer to come in and make the best decisions for the site, as a whole.

Tim Gergen, Clark Enersen Partners, 1010 Lincoln Mall, said that he personally knows the adjacent homeowners and they are not interested in developing at this time. They have a lot of investment in their home and want to live out their years there. We do not know at this time what the site layout will be on that property when it does develop; things could be very different if they wait 20 years. An attempt was made to give them the most flexible point for access. At the same time, he does not want to put in any drive that could potentially cause damage to their property. We want to have this approved to show that they will be given access, but will not be tied to it at this time.

Hunzeker said building the stub streets is a matter of equity in most cases; however, in most cases, there are also buildable lots on either side of the stub for that potential future development. In this case, this is essentially just a 25-foot piece of concrete, not a longer stub with utilities for future buildout. It would be wasteful to bring in an access point now that may not even be useful in the future.

Campbell asked if they are willing to escrow money for the stub. Hunzeker said they would if that is what is asked, but that is not their first choice.

Harris asked whether they would want a delay to further explore their amendments. Hunzeker said they do not want the delay. If Planning is not satisfied, they can appeal and the discussion can continue.

CHANGE OF ZONE 19006

ACTION BY PLANNING COMMISSION:

March 20, 2019

Campbell moved Approval, seconded by Harris.

Campbell said that overall, this is a good plan for developing this area. It is up to the applicant to work with Planning, rather than the Planning working with the applicant. He does agree that the stub should not be built at this time because it poses more problems than benefits. He would also prefer to see the escrow for the stub when the use permit is voted upon.

Harris said she does not agree that this is spot zoning. She understands why it was split zoning at the time to be conservative, but times have caught up with the area and it is more urbanized, supported by the Future Land Use map and the Comprehensive Plan, and makes sense in this area. She also does not understand the incrementalism argument when most growth happens incrementally to avoid large decisions that are sudden, dramatic changes. It allows us to grow cautiously and is a good thing for city planning.

Corr said she supports the change of zone though she understands the growing pains expressed by the nearby neighborhood and this will likely generate more traffic and change the road at that

spot. When it comes to the use permit, in general, she prefers approving development as recommended by Staff. The Planning Department is known for working with applicants and has shown a willingness to make reasonable changes. She does not appreciate 11th hour amendments on this application and is frustrated to see it repeatedly from certain applicants. She will not support an amendment that alters the Staff Report.

Motion for Approval carried, 6-0: Campbell, Corr, Edgerton, Finnegan, Harris, and Washington voting 'yes'; Beckius and Scheer abstained; Joy absent.

USE PERMIT 132C

ACTION BY PLANNING COMMISSION:

March 20, 2019

Campbell moved Conditional Approval, seconded by Harris.

Campbell moved to amend the Staff Report, Item 2.19, to add that the owner of this project escrow money for the stub; seconded by Finnegan.

Harris said that with regard to the amendments proposed by the applicant, she has no problem with them except for the fact that she does not know if they are feasible. She would have been happy to delay action to incorporate them, but since the applicant states it is not their desire to delay, she will support the amended Staff Report, as it stands.

Campbell said that his thought are that the applicant should take the responsibility. He would like to keep the process moving.

Washington said that she is not comfortable moving items ahead when Staff has not had time to respond to the proposed amendments. She would be more comfortable with a delay than with the idea that it is passed on and then has to be appealed.

Corr agrees with Campbell that the applicant should be responsible for payment of the stub. She also agrees that delaying the items would remove the quandary of making last minute decisions, but since the applicant does not want to delay, she will support the recommendation of Staff.

Motion for amendment carried, 6-0: Campbell, Corr, Edgerton, Finnegan, Harris, and Washington voting 'yes'; Beckius and Scheer abstained; Joy absent.

Motion for Conditional Approval, as amended, carried, 6-0: Campbell, Corr, Edgerton, Finnegan, Harris, and Washington voting 'yes'; Beckius and Scheer abstained; Joy absent.

Note: This is FINAL ACTION on USE PERMIT 132C unless appealed by filing a Letter of Appeal with the Office of the County Clerk within 14 days.

SPECIAL PERMIT 07005A, TO EXPAND THE YANKEE HILL TOWNHOME CUP TO ALLOW 11 DWELLING UNITS, GENERALLY LOCATED AT 8140 SOUTH 84TH STREET;

PUBLIC HEARING:

March 20, 2019

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

Staff Recommendation: Conditional Approval.

There were no ex parte communications disclosed.

Staff Presentation: Brian Will of the Planning Department stated this request is to expand the CUP slightly by about 5 acres. The lot is already zoned R-3, as is the remainder of the CUP and everything else is in place to bring it into the CUP. The application will subdivide the southeastern corner of the residential lot to finish six townhouse lots, which requires a final plat. The idea is reasonable and the only issue is the drive to the existing dwelling from 84th Street. The Access Management Policy requires that at the time of final plat, the drive needs to go away. Without a deviation from Lincoln Transportation and Utilities, it would need to be moved, but that has been approved with a caveat that the single-family dwelling can continue to use the drive until the remainder is further subdivided again.

Campbell asked if the townhomes have been built. Will said the eastern ones have not yet been built, but closer to 84th Street, they have been built. Campbell asked for more information about the letter that expressed concerns about street maintenance. Will said they are private roadways maintained by the property owners and not the City. The letter commented that the HOA failed to maintain street lighting and other issues on some of the roads.

Edgerton asked about the four extra lots. Will said those are shown at the request of Staff. We ask for a potential layout should the remainder of the lot be sold. It is not binding, but it at least shows how the street could be extended. Edgerton asked if the home is still occupied. Will said he does not know but believes it is for sale.

Beckius asked if there will be another review of the access layout if the owner divides the single-family dwelling lot. Will said yes, when the final plat is brought into the plan, or an amendment is made to the CUP, then that drive goes away. Beckius asked if the deviation is temporary. Will said that is correct.

Campbell asked if a wetland is shown on the plan. Will said there is drainage throughout and it is a sensitive area. Watershed Management wanted it delineated since it does need to be protected. Campbell asked if they would need a permit to put the stub street into that area. Will

said that could be. We do not know the extent of the requirements at this time. Washington suggested the area be named so it is better defined.

Corr noted that the escrow for the stub has not been received and wondered how that affects the approval of this application. Will said it is a requirement. The final plat is under review and one comment is to guarantee that improvement, so it is covered. They will not be able to build until it is provided. Construction of private roadways is certified by an engineer who must provide verification that everything is consistent with the final plat. Campbell asked if Dunrow is also not yet paved. Will said it is, but in the report is an older aerial view. The only one not paved is the stub.

Proponents:

1. Mike Eckert, Civil Design Group, Inc., 8535 Executive Woods Drive, came forward on behalf of the applicant. This development has a long history. If the developer can acquire the triangle portion of the residential lot, he could bring in six new lots on a built street that is already paid for. The house was restored along with several outbuildings that are in good shape so he figured he could sell the single-family residence to a buyer seeking an in-town acreage; he has a buyer now. We appreciate Transportation and Utilities working with us to grant the deviation request for this purpose. The mapped floodplain starts just on the other side of the shaded area on the plan. That has now been mapped to the limits of a 100-year storm event. When it comes to the crossing to the north, modeling in that culvert will need to adhere to Watershed Management standards. Since it is not a floodway, this should not be a problem. We agree with all of Staff's recommendations. There are intentionally two separate HOAs for this area so some of the issues raised in the letter will be addressed by one or the other. Privately-maintained streets have benefits and drawbacks. As a developing area, there has also been the usual amount of traffic associated with construction.

Edgerton asked if all the roads are private. Eckert said yes. It is less the norm these days, and Planning would generally encourage public roads. These private streets are built to the same standards, it is just a matter of ownership and maintenance.

There was no testimony in opposition.

There were no questions for staff.

SPECIAL PERMIT 07005A

ACTION BY PLANNING COMMISSION:

March 20, 2019

Corr moved Conditional Approval, seconded by Edgerton.

Beckius said this looks like a nice way to incorporate a few more lots into the existing CUP while maintaining the single-family structure.

Edgerton said this is a good project and great compromises have been made.

Scheer said this is a good fit.

Campbell agreed.

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 07005A** unless appealed by filing a Letter of Appeal with the Office of the City Clerk within 14 days.

There being no further business to come before the Commission, the meeting was adjourned at 3:00 p.m.

Note: These minutes will not be formally approved by the Planning Commission until their next regular meeting on Wednesday, April 3, 2019.

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MOTION TO AMEND CONDITIONS OF APPROVAL

USE PERMIT #132C

I HEREBY MOVE TO AMEND THE CONDITIONS OF APPROVAL FOR USE PERMIT #132C AS FOLLOWS:

1. Delete existing condition 2.1.9 and substitute the following language:

Provide a public access easement to Lot 92 adjacent to the west property line of sufficient width to construct a private driveway for access to Lot 92. Such easement shall become effective at such time as the use of Lot 92 changes to commercial, and the owner of Lot 92 constructs a driveway from Lot 92 to the internal private roadway of this use permit, and agrees to become a member of the commercial lot owners association to be created for the maintenance of the roadways within Use Permit #132C which provide access for Lot 92 to and from Pine Lake Road, and reserves for future intersection/signal improvements at Pine Lake Road.

2. Amend Condition 3.2 as follows:

Provide an escrow agreement or other security acceptable to the law department to guarantee one half the cost of the installation of a traffic signal and all the cost of construction of an outbound right turn lane at the median opening when a traffic signal is warranted. If a signal is warranted prior to the land south of Pine Lake Road being developed, the developer/owner(s) of the land within Use Permit #132C shall be responsible for the entire cost of the signal.