

REVISED MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, June 26, 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, Tracy Corr, Cristy Joy, Maja V. Harris, Dennis Scheer and Deanne Finnegan. Steve Henrichsen, Brian Will, Geri Rorabaugh and Rhonda Haas 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 meeting held June 12, 2019.

Motion for approval made by Corr, seconded by Finnegan and carried, 6-0: Beckius, Harris, Joy, Corr, Scheer and Finnegan voting 'yes'; Campbell, Edgerton absent.

Rorabaugh read a Resolution of Appreciation into the record for Maja V. Harris. Harris has volunteered over 5 years of service to the community as a member of the Lincoln Lancaster Planning Commission, reviewing over 1,088 development applications and other projects and studies of major importance.

Joy moved approval of the Resolution of Appreciation, seconded by Finnegan and carried, 5-0: Beckius, Corr, Finnegan, Joy and Scheer voting 'yes'; Campbell, Egerton absent.

Beckius thanked Harris for her years of service, stating that she has been a joy to work with.

Finnegan stated she has learned a lot from Harris by watching her perform her duties, and it has been a joy to work with her.

Joy thanked Harris saying she has learned a lot from her and her leadership has been excellent on the board.

Scheer stated he has learned a lot from her and appreciates her perspective, as she is incredibly professional and broad, especially on the really hard decisions that were made.

Henrichsen presented Harris with a plaque and thanked her for her years of service. Henrichsen shared that for six years she has asked staff well, thought-out questions keeping them on their toes and have

appreciated that Harris has always tried to keep the big picture in mind. We honor Harris for all that she has done, and wish her the best on her new adventure.

Harris expressed her thanks to everyone, stating she has enjoyed working with current, as well as former colleagues, who are now contributing in other ways and on other boards. She feels fortunate to have been able to learn from two fabulous Planning Directors, Marvin Krout and David Cary. Harris shared it has been fun to see all of the young people coming into the Planning Department and being impressed by their professionalism and ideas and has learned from some of them. She would miss everyone.

Next, Rorabaugh read a Resolution of Appreciation into the record for Sändra Washington. Washington was appointed to the Lincoln Lancaster County Planning Commission on November 10, 2016 to fill an unexpired term. Washington has resigned to fill a vacant at-large City Council seat previously held by Mayor Gaylor Baird. Washington has contributed over 2½ years volunteering her service to the community as a member of the Lincoln Lancaster Planning Commission, reviewing over 500 development applications and other projects and studies of major importance.

Motion for approval made by Joy, seconded by Finnegan and carried, 6-0: Beckius, Harris, Joy, Corr, Finnegan and Scheer voting 'yes'; Campbell, Egerton absent.

Beckius thanked Washington for her dedication and years of service and for continuing to serve our City on the City Council.

Harris thanked Washington saying it was clear that her background really qualified her for this position on the Planning Commission. She has contributed an amazing amount during this time and it has really showed; stating she can't wait to see what Washington does on the City Council.

Finnegan stated she has enjoyed working with Washington and is looking forward to seeing her perform greatly for the City Council and representing Lincoln.

Joy thanked Washington saying her leadership has been fun to sit beside and it is going to be fun to see how it goes as she moves forward. We are really excited.

Scheer shared that he is glad that Washington is staying close while moving on to the City Council. There is a relationship between Planning Commission and City Council and he is thrilled that Washington is on City Council and doing the work of that great group.

Henrichsen presented Washington with a plaque and thanked her for the dedication and years of service. Henrichsen shared that Washington couldn't pass up this opportunity to serve our community on the City Council, stating that Washington will continue to ask the tough questions while on City Council as she had done with the Planning Department. Henrichsen expressed appreciation that Washington was always open to listen to all sides.

Washington shared that she had thought her time with the Lincoln Planning Commission would be much longer and stated she had hoped to hear at the end of her service that she had worked on 5000 development proposals. She is really thankful that she has had the opportunity to serve the Planning Commission and to learn so much about Lancaster County and the City of Lincoln. She thanked everyone

for listening when she had questions and for being really good leaders who have helped her through the process. She is looking forward to working with everyone while on City Council.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION

BEFORE PLANNING COMMISSION:

June 26, 2019

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

The Consent Agenda consisted of the following items: **Text Amendment 19003 and Change of Zone 19017.**

Joy declared a Conflict of Interest on Text Amendment 19003 and exited the chambers for the duration of the hearing on the Consent Agenda.

There were no ex parte communications disclosed.

Corr moved approval of the Consent Agenda, seconded by Beckius and carried 5-0: Beckius, Harris, Scheer, Finnegan and Corr voting 'yes'; Joy declared a conflict of interest on Text Amendment 19003 and, therefore, recused herself from voting on the Consent Agenda; Campbell and Edgerton absent.

Chair Sheer called for Requests for Deferral.

PRELIMINARY PLAT 18002

TO ADD 430 RESIDENTIAL LOTS ON APPROXIMATELY 152.1 ACRES, MORE OR LESS, ON PROPERTY GENERALLY LOCATED AT THE SW CORNER OF WEST OLD CHENEY ROAD AND SOUTH FOLSOM STREET:

June 26, 2019

Joy returned to the chambers.

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

Staff recommendation: Applicant has requested this application be placed on hold.

The Clerk noted that the applicant has requested to place this application on hold until further notice.

Beckius moved to place on hold until further notice seconded by Corr and carried 6-0: Beckius, Harris, Joy, Finnegan, Corr and Scheer 'yes'; Campbell and Edgerton absent.

SPECIAL PERMIT 19025, FOR A CUP (COMMUNITY UNIT PLAN) FOR ONE RESIDENTIAL LOT, WITH WAIVERS TO DRAINAGE STUDY, GRADING PLAN, SIDEWALKS, AND POST-CONSTRUCTION STORM WATER MANAGEMENT PLAN, ON PROPERTY GENERALLY LOCATED AT 66TH STREET AND PINE LAKE ROAD:

PUBLIC HEARING:

ACTION BY PLANNING COMMISSION:**June 26, 2019**

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

The Clerk noted there was an appeal by the applicant of the denial of request for deviation provided, as well as a motion to amend.

There were ex parte communications disclosed on this item.

Finnegan disclosed that Ann Post had called her and they had a conversation on the motion to amend. Scheer disclosed that the applicant's attorney called him to ask several questions.

Staff recommendation: Denial

Staff Presentation: Brian Will, Planning Department stated this property is located at South 66th Street and Pine Lake Road and clarified that this discussion relates to the 1.5 acres on the ~~western~~ **eastern** portion of Lot 1, and the special permit is only over this portion. The goal today is to gain access onto Pine Lake Road by a private roadway. The only way to do this is with a zoning overlay and, in this case, it would be the use of a Residential Community Unit Plan (CUP). The CUP includes only one lot with a private driveway for only one dwelling. This question has come up before and there is a history to this property dating back to 1982, which is when this property and the property across the street relinquished access to Pine Lake Road. In October 2002, an Administrative Final Plat was submitted to the Planning Department, which created this lot. It was noted during that review that City Council had approved the Preliminary Plat and that condition would need to be modified by the City Council, stating that the applicant needed to work with the City when Pine Lake Road was improved. This condition was modified by the City to require that this owner would take shared access with the property to the east, which is a Church. The request for the special permit for the CUP creates the one lot, but it does need access Pine Lake Road. They are also required to have a deviation request that they have submitted. With the history of this property and the City stating that another driveway not be allowed on Pine Lake Road, this is why staff is recommending denial. The Access Management Policy at the time of development requires driveways be eliminated if possible. If the Planning Commission does decide to approve this, conditions have been added to set it up for being approved as part of the CUP. It has been argued that this entire circumstance of today is entirely of the owner's making. The circumstances at this location have not changes at all since 2003.

Finnegan asked how they currently access the property. Will stated that there is a driveway off the northern edge of 66th Street.

Beckius stated that currently the condominium regime has no direct access to the public right of way. Will said that is correct.

Finnegan inquired if it was an active church. Will said yes, it is an active church and they have been involved in some discussions.

Harris asked if this was to go before City Council and they were to accept the request, how would this all tie together. If we were to grant the request, would it just go to City Council and be followed by the appeal. Will explained that they would go together and they might add a condition to CUP, something about having an approved deviation.

Corr stated that this is final action, and asked if it would even go before City Council. Will stated that it could be appealed.

Harris stated that the denial of the deviation request would still go to City Council. Will said yes, if this were approved; although the applicant has a motion to amend. Then with the deviation, as soon as it was appealed, it would go to City Council to be acted upon. If denied, the assumption is that the applicant would appeal this decision to City Council with the intent of having both items before Council at the same time.

Finnegan stated that this has been going on for a long time and inquired if there was anything that could be done to help resolve this. Will stated that other than the two most likely options, there really isn't any other options. The redevelopment needs to happen in a way that is consistent with the policy and standards without including waivers and exceptions.

Scheer asked how the Access Management Policy has been resolved on this stretch of Pine Lake where there has been some development on other properties to the east and to the south. Will stated that the church already had an access point and the development was required to pay for the connection to the church. On the south, a PUD was approved for this area and as this is being developed and when they request changes, they will relinquish their driveway and share access where possible.

Finnegan asked if the church has said that they didn't want to share their access. Will stated that is what the applicant has said. Finnegan inquired if the owner of the property were to get the church to agree to share a new access, could you then close the church access. Will said yes, if they willingly agreed to something like that, it would be entirely different. The location of the church driveway is closer to the ideal location for a 1/8 mile access point. The further that you move to the west the less likely that becomes.

Joy questioned if in 2001, 2002 and 2003 the discussion was to have the access as one single road, was there nothing tied to those CUP's to have had access then. Will said no. Neither one is under any type of zoning overlay at this point. The plat was approved subdividing the lot into two lots with the condition that it gets cooperation with the church and share the access point. Joy asked if the church was built at that time. Will said yes. Joy asked as a city how do we deal with something like this. What has been done in the past in this type of situation when you have someone that isn't affected and doesn't want to

make a change? Will explained you wait; you don't know what the future holds. Joy asked if there is room on the city right of way to put in a road for them. Will shared that the church has not done anything with their property, so there is really nothing new.

Finnegan asked where the location of the road would be if put in. Will stated if the church redevelops, then they could go to the eastern property line.

Beckius asked with this being an arterial road, would we want the access at a quarter mile rather than an eighth. Will stated that this does allow under certain circumstances for an eighth mile access point. Beckius asked Bob Simmering to discuss the process that Lincoln Transportation & Utilities (LTU) has on the arterial improvement on Pine Lake Road and discussions that LTU has had with neighbors in terms of access points. **Bob Simmering, Lincoln Transportation & Utilities** stated that the goal is to limit to the quarter mile and eighth mile in this case. In this case, on Pine Lake Road, when the negotiations went on all of the access points were considered as to if they could be eliminated or even combined. Access to this property was relinquished prior to any improvements on Pine Lake Road. Beckius stated that with the Pine Lake improvements, the city will be providing a new stub to the church for a connection to Pine Lake. Was there discussion by the City of Lincoln to change the location of the stub provided to the church. Simmering stated that there is not a stub of right of way in there, just the maintenance of their driveway. Beckius stated that the improvement of Pine Lake Road would damage a portion of the churches driveway, and asked if the city is going to be paying for the installation of a portion of driveway for the property owner. Simmering said certainly, the city would.

Joy asked if the property owners relinquished access to their property thinking that they would be getting access. Simmering explained prior to development they most likely had access to Pine Lake Road by right. When it was separated into subdivisions, the city required that it be designed so that all of the lots could take their access off of streets within the subdivision to protect the arterial road from a number of access points.

Beckius stated that a traffic study is not being required because the volume of traffic is so low, is that correct? Simmering stated that is correct. Beckius asked about the process that LTU/Planning Department went through with the property owners to work with them and to talk about how the process goes and how the consolidation of driveways would need to occur and if there was any conversation with this property owner of this parcel relating to access. Simmering explained that the goal on arterials is to limit the access at the quarter- and eighth-mile with the latter being limited to right in, right out with a median. In this case, all of the access points were looked at in terms of elimination or combining the access points. In looking at this particular parcel, there was a question as to whether or not the city was required to provide access; the Law Dept. indicated that the city was not required to provide access because the conditions were in place prior to any improvements being made to Pine Lake Road – access was relinquished and conditioned on combining access with the church. They cannot force the church to provide shared access. Beckius indicated that the city will be paying for the installation of a new connection to the church with the improvements to Pine Lake Road due to

damage of the existing driveway. Was there a discussion at this point in time about the relocation. Simmering was not sure if there was any such discussion. Joy questioned the process for relinquishing access; does it cause something else to happen. Simmering stated that prior to the development they likely had access to Pine Lake Road. When the property was subdivided, the city did not want them to take access from Pine Lake Road, and they were required to design so that all the lots would take access off of streets within the subdivision; all costs would be the obligation of the developer. These are the conditions that they asked to be waived.

In response to a question of Beckius relating to exceptions or requirements that would be considered for obtaining a connection to Pine Lake Road, Simmering explained the condition would require that it be built to typical street standards with a right-hand turn lane.

In terms of the annexation on the south side of Pine Lake Road and the construction of the Fire Station, Simmering explained that with right-of-way acquisitions and the design, the city's goal focuses on compliance with the Access Management Policy standards. Will stated that Planning staff met with the property owners to discuss access to the arterial street and how it will change if they go through the process of having a PUD approved – the access will go away and they will need to share a driveway.

Corr asked when doing a widening project on Pine Lake Road, at what point would the property owner be contacted. Simmering stated it would be well in advance of a year prior to the project, as well as neighborhood meetings on the projects. Steve Henrichsen, Planning Department stated that there were discussions with the property owner's attorney, who asked for access. They had an old resolution that stated they could subdivide the property if they could get access through the church lot and asked for assistance from the city to do that. Steve clarified that there is no lot; it is a condominium unit off the back lot. Therefore, there was no obligation of LTU to provide the condominium unit access. The owners have said they have had conversations with the church and they are not willing to work with them. The applicant, years ago, owned this entire lot and they had the opportunity to create a panhandle lot to 66th Street, which would have been a shared driveway and they would have had access. They gave up their chance to have access off 66th Street and are now asking to be granted access from Pine Lake Road even though it is contrary to the city's policies. There are other properties in similar circumstances. This is in part why staff is recommending denial.

APPLICANT: Ann Post, Baylor Evnen, came forward on behalf of Vic and Kathleen Hannan with the ultimate goal of gaining access to Pine Lake Road. The Hannan's have owned this property for over 16 years, and they are wanting to build their retirement home here in Lincoln on this property. When this was brought before City Council, the Hannan's were asked to work with the church. At that point, they had some understanding that this would be addressed when Pine Lake was widened. Every effort has been made with the church to gain access. An offer of \$10,000 has been made to the church in an effort to gain access and offered any guarantees that they needed. Whenever there was a chance to talk with someone at the church, we were told that all the decisions were made in the New York office and that all communications had to be sent to that office. The applicants are proposing that they will build the private roadway and will give the church to the east access to their property. The applicant is also asking

that there be two access points now and when the church decides to redevelop they would be required to go with the Hannan's access, which would take it back to one access. There has been an offer of a motion to amend with a change on item one, under Site Specific Conditions to provide 3 copies of the final plot plan. This is a condominium unit and is not a legal lot, but under state zoning and land use regulations, restrictions can't be imposed on a condominium unit that are greater than you would require on a legal lot. If approved, there would be a requirement to subdivide the lot to make two lots. In response to the subdivision, this would add nothing to the substance of what we are trying to do. The CUP application is to dedicate the private roadway, which can be done without a subdivision and only complicates things. We are asking that the conditions of the subdivision be removed. The request for deviation will give them the right to have the private roadway connect to Pine Lake. This is why we are bringing them to you together and we are asking for your approval.

Harris asked if they have shared their specific plans with the church. Post stated that she spoke with someone at the church on Monday, letting them know what they were planning and that there would be meeting with the Planning Commission on this. We have not heard anything back from the church.

Corr asked if they have contacted the New York office. Post stated that they could not find any contact information for the New York office.

Harris stated the Planning Department is making the argument that because this situation is of the applicant's own making, exceptions shouldn't apply. Post shared that this type of infill development is consistent with the Comprehensive Plan to address the housing needs in Lincoln. In terms of establishing a precedent, this is a process that she would not advise her clients to follow, as it is expensive. This is not a preferred option. There would be several options she would recommend before choosing this option.

Corr asked how the applicant accesses this property now to maintain the property. Post stated that she is unsure how they access this property. Corr inquired if the applicant have talked with the property owner to the north to gain access through Anns Court. Post stated they have and that the issue was that any access would go right past their kitchen window and would have a negative impact to their property.

Beckius asked why the applicant would create this condominium regime without any form of access, knowing the entire time they had relinquished access to Pine Lake Road. Post stated the property was under contract to sell at the time that the process was going forward and they needed to close on the contract and this was a way to close on the contract to sell that property. They had difficulty trying to sell the larger lot so they sold the smaller portion with the idea of subdividing it.

Support:

1. Vic Hannan, 14202 59th Avenue, Haviland, Kansas, came forward to say how important this is to them. When they first purchased this land it was 3 1/2 acres, which a lot to mow. They decided to sell a portion of the land and keeping some of the land to build a retirement home to be close to the rest of the family. In 2003, the Planning Commission minutes refer to a common access easement with the church at the time of the widening of Pine Lake Road, indicating that the City should be flexible working with the new property owners in every way possible. At that time, they thought that the widening of Pine Lake Road would be in two to four years. This has been a long and expensive process to gain access

to their property. For 16 years, they believed that at the time of the widening of Pine Lake Road, they would be allowed access to their property. This has been very frustrating for him and his wife and would ask you to move in favor of this.

There was no testimony in opposition.

Staff Questions:

Joy referred to the information on the city's website defining the improvements along Pine Lake Road, and asked if the road to the church that is being developed now with the right in and right out, if the property owner agrees to pay for it on their property and, in the future, the church could add on to that, could that be negotiated. Will stated that street design is already done and it is built. **Tim Sieh, City Attorney's Office**, came forward and asked Commissioner Joy to clarify what exhibit she is referencing. Joy stated that it is the definition of improvements as defined in 2017 and 2018, and updated in April 2019 on this section of Pine Lake Road. This definition is listed on the city's website under LTU's list of projects, under project highlights, and includes several pdf documents which illustrate the standards that the city should be following.

Harris asked why this is so difficult to reach an agreement with the neighbor; does staff see this a lot. Will said yes, this occurs routinely. Will stated that the amendment by City Council states that "the owner provide the necessary easement and consolidate the access to Lot 2, Hannan Addition with the existing access to Lot 1, Country Place 22nd (church lot) to the east of Lot 2, Hannan Addition, and agree that the access provided to Lot 2, Hannan Addition, be restricted to an access for one single-family dwelling". It does not mention anything about the timing of Pine Lake Road improvements.

Will indicated that in terms of the motion to amend, they are not major changes, but staff wrote the conditions of approval setting it up for a CUP with a final plat to follow. Building and Safety will not issue a building permit on this portion of the lot without a final plat. Scheer asked if it was even possible to have an address assigned for this lot. Will said no, that addresses are assigned at the time of the final plat.

Will stated that staff does not support the motion to amend. The staff report is set up so that if the staff recommendation is overturned, the proposed conditions would apply and follow through with a final plat that works. Beckius asked how the owner legally gets access to his property from a public street. Will indicated that he is unsure. Will clarified that the City Council did not approve the condominium regime. This is an action of the property owner which provides for the subdivision of the property privately. Tim Sieh indicated that there is not a good answer in terms of accessing this property. The access to this lot was from 66th Street via the final plat that no longer exists. The action by the City Council included an amendment that was approved to release the relinquishment of access, which was necessary in order for the administrative final plat to be approved at that time.

Finnegan asked what would need to occur to get access restored back to 66th Street. Will explained that there would need to be an agreement between the two parties.

Applicant Rebuttal:

Post stated the private roadway can be done by other methods and that is what we are proposing. She also asked that even if the Planning Commission decides to approve with conditions that require a subdivision, that they also approve with the condition for the approval of the request for deviation. Post stated they have tried to have discussions with everyone involved to find a solution, and they are asking for the approval of the CUP.

Corr asked why the applicant was advised to pursue a condominium regime in this situation. Post indicated that it is her understanding that it was the best option at the time.

Corr moved denial, seconded by Beckius and carried, 6-0: Beckius, Harris, Joy, Finnegan, Corr and Scheer 'yes'; Campbell and Edgerton absent.

Corr stated that she does not feel that the right communication has happened. The applicant needs to speak with the owner of the church property in New York, and she is not comfortable that that has been done.

Finnegan said that the church is the key and that more effort needs to be made.

Beckius stated he feels the applicant was fully aware of this the entire time. The church is not under any obligation to be a nice neighbor.

Harris supporting the denial, stated there is a general best practice policy when it comes to planning and to make exceptions you need to demonstrate a real hardship. When the hardship is of your own creation, it doesn't hold as much weight.

Joy stated she will vote for denial for the same reasons as her colleagues.

Scheer is also supporting denial. Nothing has changed and it is the same as it was 15 years ago. There needs to be communication with the church to find a resolution to this.

Note: This is FINAL ACTION on Special Permit 19025 unless appealed by filing a Letter of Appeal with the Office of the City Clerk within 14 days.

Joy made an announcement about the CAFO meeting tomorrow if anyone would like to attend. Henrichsen stated it will be held at Scott Middle School located at 2200 Pine Lake Road. This meeting is from 5:30 p.m. to 7:00 p.m. and will involve a public comment meeting format.

There being no further business to come before the Commission, the meeting was adjourned at 2:51 p.m.

Note: These minutes will not be formally approved by the Planning Commission until their next regular meeting on Wednesday, July 24, 2019.

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