MEETING NOTES

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, April 11, 2007, 11:45 a.m., Rm. 113, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska
MEMBERS IN ATTENDANCE:	Lynn Sunderman, Mary Strand, Eugene Carroll, Gerry Krieser, Dick Esseks and Michael Cornelius (Jon Carlson, Roger Larson and Tommy Taylor absent).
OTHERS IN ATTENDANCE:	Various staff from the Planning Department, Public Works & Utilities Department, Building & Safety Department and Lower Platte South NRD; interested citizens.
STATED PURPOSE OF MEETING:	**Briefing on proposed amendments to the Zoning Ordinance, Subdivision Ordinance and City of Lincoln Design Standards (Drainage Criteria Manual) related to Stormwater Quality and Erosion and Sediment Control.**

The meeting was called to order at 11:47 a.m. by Vice-Chair Eugene Carroll.

The presentation was made by JB Dixon of Lower Platte South NRD and Rock Krzycki of Public Works & Utilities, Watershed Management Division. The handouts are attached hereto as Exhibit "A" (***Summary: Erosion and Sediment Control (E&SC) Standards*)** and Exhibit "B" (***Summary of Revised Chapter 9, "Erosion and Sediment Control" City of Lincoln Drainage Criteria Manual, Adopted by Reference in the Design Standards***), and incorporated herein by this reference.

It was announced that the public hearing on these proposed amendments will be held before the Planning Commission on Wednesday, April 25, 2007, at 1:00 p.m.

Acronyms: NPDES = National Pollutant Discharge Elimination System
SWPPP = Stormwater Pollution Prevention Plan
BMP = Best Management Practices
NDEQ = Nebraska Department of Environmental Quality
EPA = Environmental Protection Agency

The proposal stems from the EPA, the purpose being that these updates are required for the City to comply with the federal Clean Water Act through the regulations of the NPDES. One of the main sources of pollution the City of Lincoln is dealing with is sediment.

Dixon gave a history of the proposal. The 1972 Clean Water Act established environmental programs including the NPDES stormwater program. One of the six pieces of the NPDES program is the issue of construction stormwater. NPDES issues stormwater permits to cities to control discharge pollutants. The authority is passed from federal level to state level, which goes to NDEQ, which administers the program for the State of Nebraska.

Phase I was issued in 1990, which required the initial permit and regulations for Lincoln. Phase II was issued in 2003, and included the additional requirement to regulate individual building sites that are less than one acre, but are "part of a larger common plan of development or sale".

The City of Lincoln received its stormwater permit from the state in 2002, which required regulation of construction site runoff. The City and NRD entered into an interlocal agreement in 1996 to aid program administration. The enforcement mechanism is through the City of Lincoln.

In 2003, Lincoln had to drop their "per acre" threshold that required a permit for construction site discharges. Beginning in 2003, Lincoln must regulate construction sites greater than 1 acre, and Lincoln must regulate sites less than 1 acre which are "part of a larger common plan of development".

The purpose of this legislation is to come into compliance both with the state and with the federal EPA.

Dixon explained that one of the most common examples of sites less than one acre are the single family residential lots or small commercial lots. The sedimentation and the pollution aspect is one thing. Another thing we get a lot of and need to keep in mind is the safety aspects, i.e. sediment in the right-of-way. Another component of the permit is solid waste pollutant sources. Another pollutant source could be hazardous material and chemical storage.

Mr. Krzycki then discussed the process in bringing these amendments forward. A consultant was brought in to examine the City's program. It was a lengthy process and this brings it to the home stretch. The consultant found that the City of Lincoln is out of compliance on the less than one acre requirement. Current ordinances do not mimic federal and state NPDES requirements, and the Drainage Criteria Manual needs to comply with state and federal guidelines.

Individual construction sites could be less than one acre, and they need to be included on a stormwater pollution prevention plan and need to have structural and non-structural BMP controls.

Is there a problem with the small sites? Yes, EPA believes that the small sites combined are a larger contributor to the stormwater discharges than the larger sites on a per acre basis.

The review process included looking at the federal and state minimum requirements and research of ordinances from other phase I communities.

The City of Lincoln is out of compliance. In 2006, NDEQ clarified that lots that are part of the larger common plan need to be addressed. The current construction site runoff program does not have adequate provisions for inspecting and enforcing or for permitting. NDEQ notified the City that by not addressing these issues, the City is out of compliance with its permit.

With regard to public participation in this process, stakeholder meetings were held in December 2005, including the Home Builders of Lincoln, developers, environmental groups, homeowners associations, neighborhood groups, City departments and NDEQ. The information gathered from the stakeholders was brought back to the committee. Four working group meetings were held in 2006 with the Home Builders, developers, general contractors, and DEQ, and corresponded with EPA. Local groups had an integral part in reshaping the existing E&SC program. At the stakeholder meetings the committee heard: "keep compliance costs low; developers perform inspections on individual sites; make enforcement fair for everyone; provide education to reduce non-compliance; and make compliance straight forward". A new chapter for the LMC has been drafted to address these issues. Two drafts were crafted and reviewed by the working group. There was an extensive effort to address the concerns before getting to where we are today.

The proposal includes creation of a new Chapter 28.01, Regulations for Construction Site Discharges, and updated design standards and drainage criteria manual.

What's new in these regulations? Sites under one acre that are part of the larger common plan must be accounted for in a SWPPP, and have structural and non-structural BMP's, where needed, and updated BMP's in the Drainage Criteria Manual.

Dixon reiterated that compliance is always a moving target. Every construction site is a little bit different with their own unique challenges. Through the education process as we more forward, we want to have as many opportunities to put the right tools in people's hands to achieve compliance.

BMP's could include silt fence on the downstream side of things as a sediment control device; erosion control blanket; coconut fiber log; containment system for solid waste (roll-off); street sweeping/cleaning; straw mulch for erosion control; mulch berm for

sediment control for curb inlet protection; porta potty is a pollutant source and the standards include proper placement, etc.

This has been a lengthy and tedious process but it has been a positive working experience with the stakeholders trying to meet our objectives of achieving compliance.

The specific code amendments are located on the internet at ***lincoln.ne.gov (keyword: E&SC).***

Question and Answer:

Esseks inquired as to the consequences if the City is out of compliance with the EPA or NDEQ regulations. Dixon advised that Lincoln is in Region 7 of the EPA. EPA has made this compliance a nationwide priority. Right now we have been told that the EPA would like to conduct program audits in Region 7, which includes Lincoln and Omaha. They have said that this year could be the year they start doing that. This update gets us into compliance. The consequences of noncompliance could be a consent decree with a myriad of options, including monetary fines. We want to make sure we are meeting the minimum to avoid any consequences.

Krout inquired about the adoption of the Drainage Criteria Manual. Nicole Fleck-Tooze of Public Works & Utilities advised that it is adopted by the City Council by reference in the Design Standards.

Strand expressed concern about the day-to-day tasks of building a home in inclement weather, such as a concrete truck backing up to pour a foundation or the drywall being delivered or more wood being delivered. With these great big trucks backing up on wet soil, they are going to pull off and carry chunks of mud down the street. Who is responsible for that sediment in the street? Dixon believes that it would start with the builder and developer agreements, and then work down to the subcontractor level (the builder/subcontractor agreement). At all levels for people doing work on that permitted site, it is stated very clearly in the federal regulations that they must abide by the terms of the permit, which can only go so far as those agreements go. If the agreements are not in place with the subcontractors, it can only go back so far as the builder. In the education process we will be stressing to have those agreements in place and make sure they are written well and make the obligations very, very clear. We need to educate that subcontractor base and we are eager to do that.

Fleck-Tooze clarified that it was the consensus of the working group that the developer should maintain the responsibility for the site. In general, for enforcement, the city will go back to the developer and it will be up to the developer to enforce the agreement on the individual lots. If there is a specific tracking problem, there is an ordinance in place

that prohibits tracking mud into the street and right-of-way. Therefore, we do have the ability to go back to the responsible party.

Esseks commented that he likes the idea of enforcement with the developer taking the initiative and communicating between the NRD, etc. But, he thinks some groups within our community may be skeptical about that. He is afraid we will get this challenge. Is there any evidence that this type of enforcement works? Dixon stated that they did pose some options at the stakeholder meetings. It was suggested that there be one point of contact to go back to for the permitted site, and that would be our point person for getting compliance on that site. The working group had a comfort level with that because it put the onus on the development community and did not require that each and every individual site had to have their own separate permit. The consensus was that the development community would be the point people on getting compliance at these construction sites. We do have provisions in place if a developer can show that they have done everything they can to work with the builder or subcontractor to get into compliance. If they can show us that paper trail, we can go after the perpetrator and hold them responsible.

Krzycki added that there are checks and balances in that inspections are required every seven calendar days and after every half-inch rain. If those inspection records are not available, it is considered a violation. There are also checks and balances in the developers doing their own inspections.

Esseks suggested that the paperwork could look good but it could be invalid. Krzycki explained that the City has building inspectors that will be checking the sites and there may be inspections made on a complaint basis.

Carroll inquired whether there is a fee for the form the builders are required to complete. Krzycki indicated that there is not a fee – it will become a part of the checklist for the building permit.

Carroll expressed concern about delaying the building inspections if there is a problem with the construction site runoff. Dixon explained that the inspections would be a part of the weekly inspection, which is a requirement of the overall permit for that site. We would not expect an individual construction site lot-by-lot inspection. The weekly inspection form would take problem sites into consideration.

Carroll reiterated, if the builder fills the form out, will it delay the construction of the building? Dixon believes that it potentially could, depending on the severity of the problem. Carroll believes that should go back to the developer and not the builder.

Krzycki suggested that the frame inspector will do his inspection and there would be a certain number of days to correct the situation and, if not corrected, inspections of the building could be withheld.

Carroll does not want to punish the builder for something the developer should be doing. If you are going to delay inspections for the builder because the developer is not doing their job, aren't you punishing the wrong person? Krzycki suggested that there will be an opportunity for the developer and builder to get things worked out. We don't want to hold up anyone's construction but we do need compliance. We will not automatically stop things. There will be correspondence, there will be warnings, there will be conversations.

Strand went back to the tracking issue. In the winters in Nebraska, we get snow that thaws and freezes over and over. There is going to be tracking. Are you expecting every single truck to clean up after themselves, or that once a day a street cleaner come down the street? What are you assuming is the responsibility? Krzycki stated that it will depend on the situation. If their plan says they are going to clean up the street, then that is the agreement they made. We are not going to dictate how it can be done, but whatever they agree to do, we are going to hold them to that. They do have to have a plan that is going to work. There are certain requirements for winter that are different than summer. It also depends on what agreements have been worked out in advance between the builder and developer and subcontractors, etc. It also will depend on the severity of the track-out issues.

Cornelius inquired whether there is going to be some kind of objective standard for the track-out issue. And is it going to be reasonable? Are these developer/subcontractor agreements intended to realign the enforcement mechanism for the City? Does the City then just go after the contractor? Or are these agreements more contractual obligations where if a contractor doesn't hold up their end of the agreement and the builder is on the business end of a city enforcement action, it gives the builder a legal lever of litigation against the contractor? Are we talking about realigning the enforcement mechanisms or giving the person subject to the enforcement a lever against the person responsible? Dixon believes that it could be a little bit of both. The agreements are always good to have so that everyone is starting on the same page. We would like to handle it at one source if at all possible. Those agreements would be a mechanism to gain compliance.

Fleck-Tooze commented that in general, the intent is that the ordinances will place the burden of responsibility on the developer and it is up to the developer to have those agreements in place for their own protection. The tracking issue has already been addressed by the ordinance and it is really not changing by this proposal.

Carroll requested that the text amendments be sent to the Planning Commission members immediately.

Esseks suggested that there be a follow-up audit to see if this process actually works. Dixon agreed that to be integral to meeting the objectives for the permit for the state and EPA. The goal of the Clean Water Act is fishable, swimmable, drinkable water in the United States. We want to have a program in place with good tracking and a good inspection program. We want to see measurable progress. If we run into dead-ends and loopholes, then we will have to reassess.

Esseks wondered whether there might be an evaluation package available that has been "tried and true". Dixon responded that the consultant looked at some other Midwest phase I municipalities' programs. Given the feedback from the stakeholder groups, we tried to roll that all together to make something that could work for Lincoln.

Fleck-Tooze advised that the EPA does have a set of audit guidelines. That would be another tool we could use to measure progress.

Meetings adjourned at 12:50 p.m.

Respectfully submitted,

Jean Walker
Administrative Officer
Planning Department

q:\pc\minutes\2007\pcbrief0411.07