

## **BRIEFING NOTES**

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Wednesday, October 5, 2011, 1:05 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10<sup>th</sup> Street, Lincoln, Nebraska

**MEMBERS IN ATTENDANCE:** Leirion Gaylor Baird, Michael Cornelius, Dick Esseks, Jeanelle Lust, Jim Partington, Lynn Sunderman and Tommy Taylor (Wendy Francis and Roger Larson absent); Marvin Krout, David Cary, Brandon Garrett, Sara Hartzell and Jean Preister of the Planning Department.

**STATED PURPOSE OF MEETING:** Briefing on proposed amendments to the 2040 Comprehensive Plan (LPlan 2040)

This briefing session occurred immediately following the regular meeting of the Planning Commission held on October 5, 2011. Chair Michael Cornelius called the meeting to order and acknowledged the posting of the Open Meetings Act at the back of the hearing room.

Marvin Krout, Director of Planning, updated the Planning Commission on the status of the 2040 Comprehensive Plan (LPlan 2040). This discussion may be premature, but Krout suggested that at some point the Planning Commission may want to express concerns about the issues.

Krout then discussed proposed amendments that may be coming forward at the joint hearing of the City Council and County Board scheduled for October 18<sup>th</sup>. The Planning staff did brief the City Council and County Board at the City-County Common meeting on October 3<sup>rd</sup>, along with Lynn Sunderman and Michael Cornelius. There are some potential amendments that have been identified which are not yet on the table in motion form, due to some possible legal questions, but may be by the October 18<sup>th</sup> joint public hearing or when the individual bodies vote.

There are seven possible amendments that the City Council and/or County Board will be considering. The City Council and County Board plan to vote at their individual meetings after the public hearing.

Proposed Amendments

1. LRTP/Transportation Chapter: Krout recalled that the Planning Commission did have workshop discussions about the Transportation Chapter of the Comprehensive Plan. The Planning Commission did approve the Comprehensive Plan that included the Transportation Chapter, and also separately approved the Long Range Transportation Plan (LRTP), which is the federal document that then goes to the MPO Officials Committee for approval. In the past, the feds were more flexible in their regulations and interpretations so we had a more general transportation plan as part of the Comprehensive Plan. That chapter of the Comprehensive Plan was basically called the LRTP, and that was the plan submitted through the MPO to the federal government. Two years ago, the federal rules changed and we are now required to do much more detail – financial constraints, questions about revenues and costs, issues about priorities and very specific project prioritization year by year in terms of what is being spent and on what project. With that level of detail being required, we decided to take the LRTP document and put it into the Comprehensive Plan as the Transportation Chapter.

This led to a lot of discussion, including with the Mayor, about the level of detail being in the Comprehensive Plan, which requires a super-majority vote of the City Council to amend. The Administration was finding itself negotiating with the Planning Commission on very detailed budgetary matters. In addition, the LRTP will be amended much more often than in the past because of the new level of detail. There are likely to be changes every year or even more often as funding opportunities and cost estimates change. If we want to keep the LRTP and the Transportation Chapter of the Comprehensive Plan the same, we would have to go through an amendment to two different plans in order to amend the Transportation Improvement Program (TIP), and those amendments to the Transportation Chapter of the Comprehensive Plan require a super-majority vote and must go to the City Council and County Board. This has created some administrative difficulties.

Krout stated that the Planning Department is proposing to amend the Transportation Chapter of the Comprehensive Plan to be more general without the level of detail. The Planning Commission will still see that level of detail as part of the TIP review.

The MPO Officials Committee met and the Mayor expressed his concern and requested that the Transportation Chapter be amended now as the Comprehensive Plan goes forward to the City Council and County Board on October 18<sup>th</sup>, and not come back later through a separate process with the

- Planning Commission. This does not take the Planning Commission out of the loop, yet it eliminates the super-majority vote at City Council on Comprehensive Plan amendments.
2. Street trees - City jurisdiction. This is the amendment that was discussed in a Planning Commission workshop held with Lynn Johnson.
  3. Removal of language, "Highly Productive Farmland" - City and County jurisdiction. The County Board has expressed reservations about this language and the Planning Department has agreed to take that language out because it is not something that can be clearly defined .
  4. Acreage/Rural Development - City and County jurisdiction. It was discovered that language was inadvertently placed in the Plan that had not been intended having to do with rural development. There was an initial proposal to review requests for acreage developments once a year as part of the annual review – reviewing all requests at the same time. The County Board did not like the idea and that language was previously removed and was not part of the recommendation approved by the Planning Commission. Somehow that language got re-inserted by mistake and will be removed.
  5. Build-through standards - County jurisdiction. The County Board does not want to consider using build-through standards when approving acreage developments. This would apply to areas outside of the City's 3-mile jurisdiction.
  6. Lot size in the AG district - County jurisdiction. This issue will become some kind of amendment to the County Zoning Resolution and the Planning Commission will be required to review it in terms of a text amendment. In terms of the Comprehensive Plan, the County Board is asking to eliminate a paragraph that provides that once we have established where the acreages are designated (yellow areas), the remainder of the agricultural area should be developed at an average density of no more than 1 lot per 20 acres to allow a generally gravel road system which is less expensive to maintain and help to preserve the agricultural uses in the County. The County Board is asking to remove that language, which will suggest that the next step is to then amend the County Zoning Resolution in some manner. The County Board does not yet have a specific proposal; however, the staff is opposed to removing that paragraph.
  7. Bennet Corner - County jurisdiction. An area has been defined on the north side of Highway 2 from 162<sup>nd</sup> Street (interchange with Hwy 2) one mile east to 148<sup>th</sup> Street, ½ north from Hwy 2, consisting of approximately 300-400 acres. The County Board is suggesting that this area have a land use designation of commercial and/or industrial. Sara Hartzell of the Planning staff attended the

Village of Bennet Planning Commission meeting and she reported to the County Board that the Village of Bennet Planning Commission has asked for the County Board to slow up the process, involve them in the discussion and not proceed with an amendment to the plan without more discussion and input. It appears that the County Board is rejecting that request and the Planning Department has sent notices to property owners of a special hearing of the County Board to discuss this issue on October 11<sup>th</sup>.

Krout indicated that these amendments are tentative and he does not know when or if they will become formal amendments prior to the joint public hearing on October 18<sup>th</sup>.

With regard to the 20-acre rule, Krout pointed out that there is so much in the Comprehensive Plan today about agricultural preservation and low density development – the importance of distinguishing between acreage and agricultural areas. If the County Board were to change the minimum lot size from 20 to 5 acres or 3 acres or whatever, that would be automatic. If the minimum were 10 or more acres, it would not be subject to subdivision regulations. Krout suggested that creating a zone that is almost the same as the AGR zone goes so far from the spirit and intent of the Comprehensive Plan that someone might question whether we are still in compliance with the Comprehensive Plan. The statutes provide that zoning shall be in conformance with a Comprehensive Plan. That's why it is important to make the distinction between acreages and other agricultural areas. The Comprehensive Plan calls for more managed growth in the rural areas. The County Attorney is reviewing this issue and will be rendering a legal opinion.

At the same time, Krout believes there is a legal issue having to do with just how far the City Council or County Board can go in considering amendments that the Planning Commission has not considered. There is some language in the statutes that suggests that if the County Board or City Council are making "suggestions", those suggestions should be considered by the Planning Commission in the public hearing process. There is probably room for interpretation but Krout has requested a legal opinion.

Lust inquired whether the Planning Commission has the authority to pass resolutions. Typically, the Planning Commission only adopts a resolution on something specifically before us, but could we somehow pass a resolution indicating that "you" (County Board) didn't asked us, but we would be in opposition to these changes. Krout stated that he is having discussions with the City Attorney and County Attorney about that very question. It may be that a letter rather than a formal resolution might be appropriate. Any resolution passed by the Planning Commission couldn't happen until the next meeting on October 19<sup>th</sup>, which would be after the joint hearing on the Comprehensive Plan but before the elected bodies take action.

Krout also pointed out that there are not yet any formal amendments in front of the City Council and County Board. It may be that some or all of the amendments may have to come back to the Planning Commission, but as of now, he does not know.

Lust suggested that perhaps the Planning Commissioners could reach out to some other members of the LPAC to come and testify. Krout suggested that it may be a little premature.

If the County Board is contacting property owners in the proposed commercial/industrial area to attend a hearing, Esseks believes the County Board has pre-empted the Planning Commission's function. Krout agreed that it is very unusual to have a special public hearing without review and recommendation from the Planning Commission; however, we cannot prevent the County Board from having a public hearing. They may take some action to prepare an amendment, but they cannot change the plan at that hearing.

Esseks believes that the precedent that they are setting whereby they can completely circumvent the Planning Commission appears to be potentially very dangerous, especially since the Planning Commission is authorized by state statute. There should be some public statement saying that this is against the state statute. Krout reiterated that the City Attorney and County Attorney are being asked the same question about proper procedure. Hopefully, by October 19<sup>th</sup>, the next meeting of the Planning Commission, we should know whether they are proceeding with the proposed amendments or not.

Lust wondered whether the Planning Commission could call a special meeting if the amendments advance further. Krout stated that the idea is to try to follow the statutes. If we had more time, the staff could initiate an amendment to the plan for review and recommendation by the Planning Commission.

Esseks commented that in both the newspaper article and the County Board meeting, the accuracy of the 2003 Fiscal Impact Study was questioned. It was regarded as inaccurate and flawed. Esseks wondered whether it would be appropriate to have someone look at this and decide whether there is a certain flaw. If that Study is going to continue to be part of the discussion and controversy, we need to have an answer to that question. Krout suggested that if the discussion is extended, and we do have some time, perhaps that study could be updated. That is certainly an option. However, Krout was not sure that the Study by itself is all that there is to this issue. It is important and the Planning Department will be preparing two staff reports – one on the Bennet corner and one on the general issue of agricultural zoning. We will refer to that Study and will indicate how some of the finances have changed between the date of that Study and now. Krout pointed out that the County Engineer's budget has increased 75% since 2003, and he believes that the County Board has some responsibility to be

good stewards and good managers of the tax base. Esseks suggested that the overwhelming source for revenues for county functions is the city of Lincoln. Krout indicated that if the discussion lingers on and is not resolved quickly, the idea of having a second opinion on the Study may be good.

Lust stated that she is not sure how much time and energy should be spent on defending or not defending a study. No matter what, someone will find some flaw in the study and then you start fighting about studies instead of fighting about the ultimate important issue. The issue should be: is this good planning, is this good for the environment, not just the tax factor.

However, Esseks pointed out that all jurisdictions are being placed in terrible fiscal limitations and the policy the County Board wants to launch now, after 32 years, has big tax implications for the city of Lincoln. Lust reiterated that defending the study is not going to work.

Partington offered that he owns 160 acres of Lancaster County farm land and there are no economic incentives to divide it into 5-acre plots at all. He is interested in the clarification of the statutes. However, with the tendency for people to want to move into more high density housing, resulting in less population living in rural Lancaster County, Partington believes that acreages will decline. As long as that continues, all the predictions that this is going to happen doesn't matter. He would like to take an intuitive look and is interested in the reason for this shift in the position by the County Board. There has to be some reason why this is taking place. Krout suggested that there has been some anecdotal sort of person-to-person communications about people building on acreages in Saunders County, e.g., because they can't make it happen under the rules in Lancaster County. The claim is that Lancaster County has and is losing population. This issue will be covered in the staff report. The staff has done some initial investigation, finding that actually the rules are no simpler. All of the surrounding counties have basically a 20-acre or higher requirement. Some of the Board members feel that growth is good and adds to the tax base with no need to worry about the cost, and that zoning is a barrier to growth.

Sunderman stated that his concern is the 11<sup>th</sup> hour approach of a potentially major shift in how the County is zoned and developed. He was interested in passing a resolution of some kind. Krout suggested that if the Commission feels strongly enough about it, he will find some way for the Commission to state an opinion as a body.

Sunderman pointed out that this is the last time the Planning Commission will be meeting before the public hearing. Is there anything wrong with stating at this time that we are concerned with a potential major change in the way the County develops?

Motion: Lust made a motion that the Planning Commission resolve that proposed amendments to the Comprehensive Plan without review by the LPlan Advisory Committee and the Planning Commission are inappropriate and ill-advised, seconded by Esseks.

Discussion: Sunderman wants a balanced approach. He does not want to say that their proposal is necessarily bad, but it has not been sent through the process.

Esseks believes that this has been a long process; the Planning Commissioners are volunteers who have an important role in shaping public policy; there was a major change in 1979 to more careful growth in rural areas and that has been upheld for 32 years. This is a huge change in an inappropriate fashion.

Partington wondered whether legal counsel would find this motion/action appropriate. Lust suggested that inappropriate does not mean illegal – it means the things that have been done traditionally and appropriately for the last 30 years.

Gaylor Baird wondered whether the motion might include language that the proposed amendments are also “not in the best interests of the public”.

Partington would like the phraseology to be more diplomatic. We may be setting the course of action that we don’t want to see happen.

Cornelius commented that the Planning Commission has been put in the position of needing to react (if so desired) in a short time frame, and we are limited with regard to what we can do.

Krout suggested that the motion could be stated, “respectfully request that the County Board not proceed with any major amendments to the proposed Comprehensive Plan until such amendments have been reviewed and acted upon by the Planning Commission.”

Partington cautioned about getting into this exchange with the County Board.

Lust then suggested that whether the Planning Commission agrees with what the County Board does or not, it’s occurring after the Planning Commission has reviewed the Plan and passed it. If the County Board wants to propose major changes, we need to express that there is an amendment process. By proposing major amendments after the Planning Commission recommendation, they are not following what we traditionally do with the process just because there are time constraints.

Taylor is interested in pointing out this concern as a body to the County Board.

Esseks agrees with the language suggested by Krout. It focuses on a procedural problem and the Planning Commission needs to defend its role.

Gaylor Baird expressed concern about the distinction between "major" and "minor" amendments.

Esseks suggested that if the Planning Commission agrees that this is a procedural crisis, he would not specify any one of the amendments. Let's just say we want all amendments to come before us. That is our role.

Lust agreed.

Sunderman does not want it to relate to all amendments.

Gaylor Baird was not sure the County Board necessarily cares about the Planning Commission's opinion. What are we left with if we make this statement and it is ignored? Are there other tools for us as a body if we feel the need to act? Krout stated that in the end, the City Council and County Board will do what they want to do, and they will do that with legal advice, but they may not necessarily follow the legal advice. There may be some legal challenges. But that is not the role of the Planning Commission. Krout acknowledged that there are no specific amendments yet on the table, but he believes it is better to send them a message before they make that decision.

Upon further discussion, Lust withdrew the previous motion and moved that, "The Planning Commission respectfully requests that the County Board not proceed with any major amendments to the proposed 2040 Lincoln-Lancaster County Comprehensive Plan until such amendments have been reviewed and acted upon by the Planning Commission." The motion was seconded by Gaylor Baird and carried 6-0: Lust, Gaylor Baird, Sunderman, Esseks, Partington and Cornelius voting 'yes' (Taylor had to leave the meeting prior to the vote; Larson and Francis also absent).

Cornelius clarified that this is not a formal resolution. It will be communicated as a motion to the County Board.

Meeting adjourned at 2:00 p.m.

Respectfully submitted,

Jean Preister, Administrative Officer  
Planning Department