

BRIEFING NOTES

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, May 30, 2012, 11:30 a.m., Room 113, County-City Building, 555 S. 10 th Street, Lincoln, Nebraska
MEMBERS IN ATTENDANCE:	Greg Butcher, Michael Cornelius, Dick Esseks, Wendy Francis, Leirion Gaylor Baird, Chris Hove, Jeanelle Lust, Jim Partington and Lynn Sunderman. Ken Weber absent.
OTHERS IN ATTENDANCE:	Frank Daley of the Nebraska Accountability and Disclosure Commission; Ed Kouma, Ben Higgins of Watershed Management; Karen Amen of LPSNRD Board and Advisory Committee; John Trombino, EA Consulting; Terry Genrich of Parks & Recreation; Marvin Krout, Nicole Fleck-Tooze, Sara Hartzell and Michele Abendroth of the Planning Department;
STATED PURPOSE OF MEETING:	Watershed Management on the Antelope Creek Watershed Basin Management Plan; Conflicts of Interest

The meeting was called to order at 11:35 a.m. The Nebraska Open Meetings Act was acknowledged.

Ed Kouma stated that he managed the City portion of the Antelope Creek Watershed Basin Management Plan process. The Plan is different from previous Master Plans. They were concerned with a portion of the basin downstream from Holmes Lakes. The emphasis of the Plan was on water quality. The public was involved throughout the process with two open houses, four newsletters, a website, and stakeholder meetings. The regulatory background for the study involved the total maximum daily load (TMDL) and the achievement of recreational standards. The goals of the Plan are to determine the source of pollutants in Antelope Creek, specifically E. coli, ammonia, conductivity, selenium and chloride; provide alternatives to reduce the pollutants and determine a systematic approach; increase the awareness and educate the public about water quality; and apply lessons learned to other basins. The elements of the Plan are a basin inventory, TMDL assessment, water quality monitoring, water quality modeling, best management practice recommendations and implementation strategy.

Kouma reported on the summary of findings. Antelope Creek does not attain the TMDL standards for E. coli bacteria. There are other pollutants in Antelope Creek including ammonia, selenium, conductivity, chloride, total suspended solids, sediments, phosphorus, and nitrogen. Achieving the TMDL standard for E. coli will be difficult, costly, and require a long term systematic approach. The City needs to be proactive to implement measures to reduce E. coli levels. For the Antelope Creek Basin, the most effective pollution control strategies for diffuse

sources of E. coli are source controls, storm water surface runoff volume reduction and infiltration BMPs. He noted that the levels of pollutants found in an Antelope Creek are typical of other urban streams. Implementation of all Phases could total \$57 million over 40 years. The long term goal is to remove Antelope Creek from the impaired waters list. We need to achieve a 93% reduction in E. coli levels to meet the current standard.

Strategies to reduce pollution include non-structural source controls such as pet waste removal and wildlife management strategies; and structural BMPs. The Basin Plan includes a strategy which describes practices to be implemented over the entire watershed for the 40 year period. Phase 1 includes implementing recommended non-structural control strategies across the entire watershed; and implementing recommended structural BMPs within the Antelope Creek Basin. The projected total cost for Phase 1 is \$1.1 million for the structural strategies over the 5 year period. The non-structural costs are \$550,000.

Esseks stated that it might be useful to report to the public the negative consequences of this high level of pollution. Kouma stated that out of 1,000 people playing in the stream, 8 of those people could get sick with E. coli, and the EPA has determined this is an acceptable level. We need to show that we are making an effort to improve the water quality. Trombino stated that the pollutant levels across the Antelope Park area are consistent. It is important to keep in mind that some of the pollutants are not visible to the naked eye. Gaylor Baird asked if there is some education that needs to be done where it is likely for people to access the stream. Kouma stated that there has not been a public education effort on that, but that is a good point.

Kouma stated that this Plan was presented and approved by the NRD Board in May and will be on the Planning Commission agenda in June.

Next, Cornelius stated that there will be a briefing on Conflicts of Interest. Preister introduced Frank Daley of the Nebraska Accountability and Disclosure Commission. Daley stated that it is important to be aware of the Conflict of Interest so that you know you are functioning in accordance with the law and that adds to the confidence of citizens. You need to be accurate and complete when completing the Statement of Financial Interest. The term business association includes both for profit entities and non-profit entities. The Statement must include a description of any gift with a value of more than \$100 received by the Commission member other than from a relative.

Daley explained that a Planning Commission member has a Conflict of Interest if he or she is faced with taking an official action or making an official decision which could result in a financial benefit or detriment to the Commission member, a member of his or her immediate family or a business with which he or she is associated. The financial benefit or detriment must be

distinguishable from that experienced by the general public or a broad segment of it. If the Planning Commission member has a potential conflict of interest, he or she is required to prepare a written statement describing the matter requiring action or decision and the nature of the potential interest; deliver a copy to the NADC and to the person who normally keeps records for the Planning Commission; and take such action as the NADC shall prescribe to remove himself or herself from influence over the matter. If the NADC determines that there is a conflict of interest, it will typically require the member to abstain from participating or voting on the matter.

Daley then provided definitions for some of the terms. 'Business' has a very broad definition and does not distinguish between for profit and non-profit entities as either can be a business. A 'Business Association' is a business in which the individual is a partner, limited liability company member, director, or officer; or a business in which the individual or immediate family member of the individual is a stockholder. "Immediate Family Member" is a very narrow definition and is defined as a child residing in an individual's household, a spouse of an individual, or an individual claimed by that individual or that individual's spouse as a dependent for federal income tax purposes.

Esseks stated if a business is next door, he would probably recuse himself, but if a business is several blocks away, he asked how you determine if there is a conflict of interest. Daley stated that land use questions are the most difficult to deal with. The law is not based on infinity, it is based on financial benefit or detriment.

Lust asked if she would need to recuse herself from a vote on a Wal-Mart application if she owns \$10,000 worth of stock in Wal-Mart. Daley stated that although that is small amount of stock, it meets the definition of a business association, and you would need to recuse yourself.

Daley provided an example of a friend coming before the Commission with an application. Even though a friend does not meet the definition of a family member, it would probably be a good idea to recuse yourself.

Gaylor Baird asked if there is a way to expedite the process of declaring a conflict of interest as they have a fairly short timeline. Daley stated that they could email the form to them and they can review it that way.

Hove asked if he would have to recuse himself if the Planning Commission is looking at an approval of a project and the applicant is a lending customer. Daley stated that the red flags should arise. The mere fact that it is a customer is not enough to have to recuse yourself. But if there could be a financial gain to the bank, then you would need to recuse yourself.

Daley continued by explaining the use of government resources for non-government purposes. A public official or public employee shall not use or authorize the use of personnel, property, resources or funds under his or her official care and control for the purpose of obtaining personal financial gain for himself or herself, a member of his or her immediate family, or a business with which he or she is associated. For example, if there is a copy machine that is not monitored, and you need one copy of a document for personal business, that would be an incidental use and would not be prohibited.

Daley noted that violations of the provisions can result in civil penalties being assessed by the NADC or in criminal penalties upon conviction by a court of competent jurisdiction.

Lust asked what would happen if she voted on an application and then later finds out that there is a conflict of interest. Daley stated that you should still disclose it once you discover the conflict of interest. It does not affect the vote, and the NADC would not take action.

Preister asked if a member should excuse themselves from the public hearing if they have declared a conflict of interest. Daley stated that there is no requirement stating they must remove themselves from the public hearing, but it is a good idea to do so.

There being no further questions, the meeting was adjourned at 12:50 p.m.