BRIEFING NOTES

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, December 4, 2019, 12:00 p.m. Studio Rm. 113, County-City Building, 555 South 10th Street, Lincoln, Nebraska.
MEMBERS IN ATTENDANCE:	Shams Al-Badry, Tom Beckius, Dick Campbell, Tracy Corr, Tracy Edgerton, Deane Finnegan, Dennis Scheer and Cindy Ryman Yost; Cristy Joy absent.
OTHERS IN ATTENDANCE:	David Cary and Steve Henrichsen of the Planning Department; Tim Sieh and Jenifer Holloway; and other interested citizens.
STATED PURPOSE:	Briefing on **"Procedures and other items"**.

Chair Tracy Corr called the meeting to order and acknowledged the posting of the Open Meetings Act in the back of the room.

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Presented by Tim Sieh and Abby Littrell, City Attorney's Office, and Jenifer Holloway, County Attorney's Office.

David stated this should be informative and helpful, and further stated that it was a good time to get into process and guidelines with some updated information.

Tim Sieh, City Attorney's Office, reviewed procedures to help ensure that the City/County is in the best position for when challenges do come forward. Discussions will include the roles of the Planning Commission on whether the items that are before them are quasi-judicial or legislative in nature, findings of fact, and the difference between evidence and people talking. Sieh stated that evidence would tie into the findings of fact and not wild speculations.

Sieh stated, as Planning Commissioners you will at times be in a quasi-judicial body, which is when you are making a determination. He explained with preliminary plats you are asked to consider if the facts shown meet the requirements of the subdivision ordinance. With special permits, you are looking at a specific site, and then asked to consider the facts that go along with that specific site, decide whether to approve the special permit or not. When we discuss advisory versus legislative, this would include change of zones and Comp Plan Amendments, which are areas that a much more general policy would be set. Legislative would be to change the rules for all involved and the conversations would be to change policies.

When in a quasi-judicial role, it is important to make findings of fact. Does the request meet all of the requirements for approval? Other factors to consider for special permits would be the effect of the proposed use on the surrounding neighborhood; the effect of the proposed use on the Comp Plan; and the effect on the community, health, safety and general welfare. With the idea being that the evidence presented meets those factors.

Scheer inquired if it is important for the Commission members to reiterate the findings of fact, if the information is already included in the staff report. Sieh stated that he would love it if Commission members were making specific findings on each item. As an example, he stated if the Commission members would say something like "based on the staff report", and give some of the specifics listed in the staff report that have been met. This would be the best practice way of doing this. The goal is to get closer to the best practices, which will help to get the City/County Attorney's Office set up to go to court if there is a legal challenge and to have the decision upheld.

Finnegan commented on what the Commissioners had done with the first chicken farm and they had outlined why they had approved the permit. Sieh said yes. Finnegan stated the decision was based on the staff report and it still got them in trouble. **Jenifer Holloway, County Attorney's Office,** shared that they need to be doing their best to address every hurdle that they may come across. Everything that is said on the record along with the reasoning for the way members voted one way or another is what is considered as the findings of fact. Finnegan questioned if they should keep the emotion out. Sieh said that he does not have a problem with the members saying that they are sorry, but the important part would be that the decisions being made are on relevant factors and evidence and not speculation and feelings.

Edgerton asked about the findings of fact, when the Commissioners do not vote the same. Sieh explained that the findings of fact would still go with the way the motion was made and with the reasons stated for that motion.

Scheer asked if is important for each Commissioner to state their findings of fact or can they say that they agree or even just let it go. Sieh stated that they could just let it go, and if there is something that was not mentioned the member could state that.

Cary summarizing that the findings of fact best practices would be to state in the motion the most important findings of fact for the basis of the motion, when suggesting approval or denial. Sieh said that was correct.

Scheer asked if the findings of fact should be stated with the motion instead of when the Chair asks for discussion. Sieh suggested that they make the motion to approve or deny and then

wait for the Chair to ask for the member that made the motion to articulate reasoning behind the motion.

Finnegan inquired about setting a precedent for the future. Sieh stated that setting a precedent is not necessarily one of the factors to be considered. Items are to be reviewed on an individual basis. Holloway shared that a good example of that would be with the chicken farms, when based on the findings of fact, one was approved and one was denied.

Corr inquired if she could vote and not give an explanation. Sieh said yes, members could just say yes or no without explaining the vote. Corr asked if it is better not to say anything. Sieh said no, it is not better or worse. If there are reasons to deny an item, you should state that reason. If you have reasons, you can state them as long as it is based on what information is before the Commission.

Sieh stated that evidence is another topic for discussion. During a Planning Commission Meeting, the Commissioners hear a lot of speculation; this is because everyone gets a chance to speak. When speakers come forward, it does not mean it is compelling evidence or even evidence you would consider. Evidence is factual in nature. A speaker that comes in that has expertise can explain the assumptions that they are using and has formed an opinion based on their expertise, so this could be evidence. When a speaker comes forward and just has an opinion, you may decide that it is speculation. Sieh further stated if Commission members have specific questions regarding the requirements, the specialists can be asked those questions.

Beckius inquired if when making finding of fact, if there would be any value if a Commissioner said that they did not find a particular testimony relevant to the decision making process. Sieh stated that it is fine to say. Beckius asked if stating that would be relevant to finding of fact. Holloway stated that she would be careful with that type of statement. She further explained that it may or may not be relevant, but it could also be looked at as the Commission members' opinion on whether it is relevant or not.

Sieh stated that it is helpful to make a motion to close the public hearing. This will protect the Commissioners from having public hearing on items held over to the next meeting date. If you do not close the public hearing portion on that item and it is carried over, the argument is the next time the speakers should get another chance to discuss the item.

Edgerton inquired when the motion to close the public hearing portion should be made, and asked if it would be after motion to approve or deny the item. Sieh stated the motion to close the public hearing portion should be made prior to voting on that item. When all the testimony has finished, a motion to close the public hearing should be made. The Commission should just get into the habit of closing the public hearing after each item and then make the motion to approve or deny.

Sieh stated that when a motion is made, it should be to approve or deny the application, "so moved" does not create a clear record. **Steve Henrichsen, Planning Department,** stated that if the staff report is revised, the Commission member needs to state that fact in their motion. Sieh stated that the Commission member should say subject to the conditions in the (revised) staff report would be important to state. He stated that the Commissioners are the advisory committee to the City Council and County Board.

Abby Littrell, City Attorney's Office, reviewed public records and the Public Records Act. She explained that anything created that has to do with your work as a Commissioner is a public record and the public can ask for those records. This includes emails, text messages, voice messages, Commissioner's notes, Constituent communications, phone calls, and phone records.

Finnegan inquired if phone records include notes that were taken about phone calls or if this means that they would go to the phone company and get the phone records. Littrell stated that it could be up to that level, but usually what they will be asking for is text messages. Conversations with constituents are also subject to public records request. If you were asked by a constituent to keep something private, you would need to tell them that you could not.

Corr stated that she thought that the Commission members were not allowed to talk to one another. Littrell stated that it is good practice not to communicate with each other but, technically, it is not a violation of the Open Meetings Act as long as there is not quorum. Corr inquired how long they would need to keep notes and what if someone were to shred them and throw them away. Littrell explained this would intersect with records retention, because they are Commission members on a board with the Open Meetings Act, they should technically be kept forever. When you are no longer on the Commission, turn in all notes that have been taken. It would be a good idea if at the end of your term or maybe even annually, to turn them into the Planning Department. Anyone could send in a request to the City and ask for those. If you are conducting City business on your personal phones and computers, you will need to make sure that you keep all of that information because it is public records. Things sent to members like articles or magazines would need to be kept for public records.

Holloway stated they have come up with some parameters when visiting an applicant's site. Commission members should continue to drive by the sites but remember this is just to get a general understanding of the site. Sieh stated that he would not want a Commission member to go to the site and state that they had seen something at the site. He further stated that it would be a condition that was seen at a given point in time and it may not have anything to do with the use of the area. Specific observations are not what Commission members are interested in; it should be what are the general characteristics and permanent characteristics of the area.

Holloway indicated that Commissioners should stay in the public right-or-way and refrain from having a conversation with anyone in the area of the site. If someone does talk with you, it will need to be disclosed as ex parte communications.

Ryman Yost inquired if when contacted by someone and the member responded by letting them know the proper way to be contacting members, would this conversation need to disclose. Holloway stated that to be on the safe side, she would count any contact as ex parte and disclose that information. As an example, she shared that the County Board has set up a file that the members put all of their communications in. All of the Commission members stated that they have been getting emails. Sieh stated the real risk behind the ex parte communication is that you would have information that the others are not aware of and that your decision is somehow clouded because you made the decision based on information that was not available for others to see. He stated this is the reason for the disclosure.

Finnegan asked about talking to an applicant about things that had nothing to do with the application. Holloway stated if you are out and about and your discussion has nothing to do with the application then no, you would not need to disclose it. If at a meeting you are talking to the applicant and even if it has nothing to do with the application, you do need to disclose it.

Henrichsen said going back to the emails, if a Commission member receives an email, let the individual know that you do not accept email communications and direct them to send their email to the Planning Commission.

Holloway stated that this is a learning process and the staff needs to be more aware of a site so they can answer anything that has to do with an application.

Corr requested a motion to adjourn the Planning Commission Briefing on December 4, 2019.

Campbell moved to adjourn, seconded by Ryman Yost and carried 8-0: Al-Badry, Campbell, Edgerton, Finnegan, Ryman Yost, Scheer, Beckius and Corr voting ‘yes’; Joy absent.

There being no further business, the meeting was adjourned at 12:55 p.m.

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