City Council Introduction: **Monday**, January 9, 2012
Public Hearing: **Monday**, January 23, 2012, at **3:00** p.m. Bill No. 12R-10

FACTSHEET

TITLE: **COMPREHENSIVE PLAN AMENDMENT NO. 11006,** requested by the Director of Planning, to amend the 2040 Lincoln-Lancaster County Comprehensive Plan to add introductory language clarifying the Plan's purpose as a policy guide, not a legally binding document.

STAFF RECOMMENDATION: Approval

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 12/14/11
Administrative Action: 12/14/11

RECOMMENDATION: Approval, as amended (6-3: Francis, Lust, Weber, Hove, Sunderman and Esseks voting 'yes'; Butcher, Gaylor Baird and Cornelius voting 'no').

FINDINGS OF FACT:

1. This request to add introductory language to the Comprehensive Plan was originally initiated by City Council member, Jon Camp, during the public hearing on the 2040 Comprehensive Plan.

2. The staff recommendation of approval is based upon the "Analysis" as set forth on p.4, concluding that this proposed amendment provides a helpful description of the purpose of LPlan 2040 and comprehensive plans in general. It also clearly states that the Plan is a guide for decision-making, representing a community consensus at a point in time, not a legally binding document. This is an appropriate amendment that clarifies the Plan's purpose and will provide a useful introductory framework for the public. The staff presentation is found on p.6-7.

3. Prior to the public hearing, alternate language was proposed by Commissioner Lust, to which the staff had no objection (See p.14).

4. There was no testimony in opposition.

5. On December 14, 2011, the Planning Commission agreed with the alternate language proposed by Commissioner Lust and voted 6-3 to recommend approval, as amended (Butcher, Gaylor Baird and Cornelius dissenting, finding that such introductory language is not necessary). See Minutes, p.7-9).

6. This proposed amendment is also tentatively scheduled for public hearing and action by the Lancaster County Board of Commissioners on January 24, 2012, at 9:30 a.m.

FACTSHEET PREPARED BY: Jean L. Preister **DATE**: December 28, 2011

REVIEWED BY:_____ **DATE**: December 28, 2011

REFERENCE NUMBER: FS\CC\2012\CPA11006

LINCOLN /LANCASTER COUNTY PLANNING STAFF REPORT
for December 14, 2011 Planning Commission Meeting

****AS AMENDED AND RECOMMENDED FOR APPROVAL BY PLANNING COMMISSION: December 14, 2011****

PROJECT #: Comprehensive Plan Amendment #11006

PROPOSAL: Amend the 2040 Lincoln-Lancaster County Comprehensive Plan to add introductory language clarifying the Plan's purpose as a policy guide, not a legally binding document**.**

CONCLUSION: The proposed amendment provides a helpful description of the purpose of LPlan 2040 and comprehensive plans in general. It also clearly states that the Plan is a guide for decision-making, representing a community consensus at a point in time, not a legally binding document This is an appropriate amendment that clarifies the Plan's purpose and will provide a useful introductory framework for the public.

RECOMMENDATION:	Approval of the proposed amendment

HISTORY:
In October 2011, the City Council and Lancaster County Commissioners adopted LPlan 2040, the 2040 Lincoln-Lancaster County Comprehensive Plan. Adoption of the updated Plan followed a year-and-a-half long public process that included a tremendous amount of public input, and the guidance of a 20-person citizen committee called the LPlan Advisory Committee.

During the approval process of the City Council and County Board, there was discussion about the purpose of the Comprehensive Plan. Individual members expressed the need for language to clarify the purpose of the plan and to state that it is not a legally binding document. Councilman Camp proposed some specific language to both elected bodies via email on October 21 (see "Prefatory language for LP 2040," attached). Both the Planning Director and City Attorney expressed concerns about the specific language offered, and the City Attorney confirmed in an email dated October 28 (also attached) that any new language would need to first be reviewed by the Planning Commission. As a result of the discussion, the Planning Director agreed to draft new language to address these concerns and to forward a proposed amendment to the Planning Commission for review.

STATE STATUTES:
Section 15-1102 of the Nebraska Revised Statutes describes what is to be included in a Comprehensive Plan for cities of the primary class, and similar language appears in other sections that describes comprehensive plans for counties:

15-1102. Comprehensive plan; requirements; contents.

The general plan for the improvement and development of the city of the primary class shall be known as the comprehensive plan. This plan for governmental policies and action shall include the pattern and intensity of land use, the provision of public facilities including transportation and other governmental services, the effective development and utilization of human and natural resources, the identification and evaluation of area needs including housing, employment, education, and health and the formulation of programs to meet such needs, surveys of structures and sites determined to be of historic, cultural, archaeological, or architectural significance or value, long-range physical and fiscal plans for governmental policies and action, and coordination of all related plans and activities of the state and local governments and agencies concerned. The comprehensive plan, with the accompanying maps, plats, charts and descriptive and explanatory materials, shall show the recommendations concerning the physical development pattern of such city and of any land outside its boundaries related thereto, taking into account the availability of and need for conserving land and other irreplaceable natural resources, the preservation of sites of historic, cultural, archaeological, and architectural significance or value, the projected changes in size, movement, and composition of population, the necessity for expanding housing and employment opportunities, and the need for methods of achieving modernization, simplification, and improvements in governmental structures, systems, and procedures related to growth objectives. The comprehensive plan shall, among other things, show:

(1) The general location, character, and extent of existing and proposed streets and highways and railroad, air, and other transportation routes and terminals;

(2) Existing and proposed public ways, parks, grounds, and open spaces;

(3) The general location, character, and extent of schools, school grounds, and other educational facilities and properties;

(4) The general location and extent of existing and proposed public utility installations;

(5) The general location and extent of community development and housing activities;

(6) The general location of existing and proposed public buildings, structures, and facilities; and

(7) When a new comprehensive plan or a full update to an existing comprehensive plan is developed on or after July 15, 2010, but not later than January 1, 2015, an energy element which: Assesses energy infrastructure and energy use by sector, including residential, commercial, and industrial sectors; evaluates utilization of renewable energy sources; and promotes energy conservation measures that benefit the community.

The comprehensive plan shall include a land-use plan showing the proposed general distribution and general location of business and industry, residential areas, utilities, and recreational, educational, and other categories of public and private land uses. The land-use plan shall also show the recommended standards of population density based upon population estimates and providing for activities for which space should be supplied within the area covered by the plan. The comprehensive plan shall include and show proposals for acquisition, extension, widening, narrowing, removal, vacation, abandonment, sale, and other actions affecting public improvements.

Other sections of the Nebraska Revised Statues describe the responsibilities of the Planning Director and Planning Commission for preparing a comprehensive plan, require that zoning regulations be designed to be in accordance with a comprehensive plan, and that public improvements and land acquisition and sale be reviewed for conformity with the plan.

ANALYSIS:

1. During the adoption of LPlan 2040, the update to the Lincoln-Lancaster County Comprehensive Plan out to the year 2040, concern was expressed about the need to clarify the purpose of the plan and to emphasize that it is not a regulatory document.

2. On October 21, Councilman Camp proposed some specific language to the Planning Director, City Council, and County Board via email (see "Prefatory language for LP 2040," attached). The Planning Director expressed concern that the language introduced terms that could raise more questions for the public than provide clarification, and that it could be viewed as diminishing the extensive public input and participation that developed the plan as a vision for the community.

3. On October 28, the City Attorney provided a response to Councilman Camp's email. In the response, the City Attorney indicated that any statement the Council makes concerning the effect of the plan has no legal weight or authority. He also expressed a concern about the proposed use of the term "black letter law," and indicated that the legal effect of the Comprehensive Plan is not entirely clear. He stated that although the statutes clearly impose duties upon the Planning Director, Commission and the Council with regard to complying with the plan, Supreme Court decisions have not made it very clear what the effect of <u>not</u> complying with the comprehensive plan might be. His conclusion regarding the legal effect of the plan was: "While the plan sets forth general guidelines and policies for improvement and development of the City, failure to adhere to the plan is permissible in specific instances in which circumstances justify deviating from its terms and provisions."

4. The proposed amendment prepared by the Planning Director is intended to meet the need for clarifying the purpose of the plan and for confirming that it is not a legal document without the use of legal terminology. It comprises three new introductory paragraphs at the beginning of the plan to help inform the public about what a comprehensive plan is and to provide a framework for the chapters that follow. The amendment indicates that the Comprehensive Plan is intended as a guide in making decisions on public and private investment for land development, and to provide a vision for the pattern and character of the community as it grows. It also describes the requirements of state statutes, and the purpose and benefits of a comprehensive plan in general. In addition, the language specifically notes that while the Comprehensive Plan sets forth general guidelines for decision-making, **it is not legally binding on the planning commission or elected officials.** Finally, the amendment acknowledges the importance of regular updates to the plan so it can remain relevant over time.

PROPOSED AMENDMENT:
Amend the 2040 Lincoln/Lancaster County Comprehensive Plan as follows:

1. Add language to the beginning of the Introduction section, starting on page 1.1 of the Vision and Plan chapter as follows:

   LPlan 2040 is the latest edition of the Lincoln-Lancaster County Comprehensive Plan. The Comprehensive Plan is intended as a guide to local government officials, institutions, businesses, landowners, and the general public in making decisions on public and private investment for land development. The plan provides a vision, based upon demographic and economic projections and ~~developed with~~ broad public input, for the pattern and character of the community as it grows. Comprehensive plans deal with the arrangement of different land uses, the standards for development, and the provision of transportation facilities, utilities, and other community facilities and services – ~~all~~ with ~~due~~ regard for expanding housing and employment opportunities, ~~recognizing~~ the community's financial limitations and economic realities, and ~~conserving~~ its natural and cultural resources. State statutes require that comprehensive plans be developed by planning commissions and adopted by cities and counties, as a basis for establishing zoning regulations and to consider before the~~y~~ city or county buys or sells land, constructs or improves public facilities, ~~and~~ or takes other actions affecting public improvements.

   While the Comprehensive Plan sets forth general guidelines for decision-making, ~~but is not legally binding on the planning commission or elected officials. There may be occasions where a decision that deviates from some provision in the plan is justified, and that is legally permissible~~ failure to adhere to the plan is permissible in specific instances in which circumstances justify deviating from its terms and provisions. ~~But the plan is an important expression of community consensus on charting our future at this point in time. If generally followed,~~ However, the plan ~~can~~ is designed to provide a ~~more~~ predictable environment for public and private investment decisions~~, and with more coordinated decisions, we should see greater overall economic growth, lower taxes, and a higher quality of life~~.

   LPlan 2040 looks out nearly 30 years in the future because the decisions ~~we make~~ made today about land use and public facilities ~~today~~ will affect the community for generations. However, ~~we recognize that~~ economic, social and environmental factors change over time, as do preferences and priorities of local citizens. Therefore, the Plan ~~should be reviewed annually and~~ is updated as needed~~, with more significant updates every 5 to 10 years, so it can~~ to remain relevant over time.

   (As amended by Planning Commission and agreed upon by staff: 12/14/11)****

Prepared by:

Nicole Fleck-Tooze, AICP
Long Range Planning Manager
402-441-6363 or nftooze@lincoln.ne.gov

COMPREHENSIVE PLAN AMENDMENT NO. 11006

PUBLIC HEARING BEFORE PLANNING COMMISSION: December 14, 2011

Members present: Francis, Lust, Butcher, Gaylor Baird, Weber, Hove, Sunderman, Esseks and Cornelius.

There were no ex parte communications disclosed.

Staff recommendation: Approval.

Staff presentation: **Nicole Fleck-Tooze of Planning staff** explained that this is language proposed by the Planning Director as introductory language. During the approval process, the City Council and County Board discussed the purpose of the plan and there was interest expressed by individual members about clarifying the purpose and clarifying that the plan is not a regulatory document. The result was that the Planning Director agreed to examine and propose some language.

Fleck-Tooze acknowledged that during the workshop prior to this meeting, the Commission discussed revisions to the language proposed by Commissioner Lust, which include some relatively minor edits to the language in the staff report and includes language suggested by the City Attorney's office, as follows:

> LPlan 2040 is the latest edition of the Lincoln-Lancaster County Comprehensive Plan. The Comprehensive Plan is intended as a guide to local government officials, institutions, businesses, landowners, and the general public in making decisions on public and private investment for land development. The plan provides a vision, based upon demographic and economic projections and ~~developed with~~ broad public input, for the pattern and character of the community as it grows. Comprehensive plans deal with the arrangement of different land uses, the standards for development, and the provision of transportation facilities, utilities, and other community facilities and services – ~~all~~ with ~~due~~ regard for expanding housing and employment opportunities, ~~recognizing~~ the community's financial limitations and economic realities, and ~~conserving~~ its natural and cultural resources. State statutes require that comprehensive plans be developed by planning commissions and adopted by cities and counties, as a basis for establishing zoning regulations and to consider before the~~y~~ city or county buys or sells land, constructs or improves public facilities, ~~and~~ or takes other actions affecting public improvements.
>
> While the Comprehensive Plan sets forth general guidelines for decision-making, ~~but is not legally binding on the planning commission or elected officials. There may be occasions where a decision that deviates from some provision in the plan is justified, and that is legally permissible~~ failure to adhere to the plan is permissible in specific instances in which circumstances justify deviating from its terms and provisions. ~~But the plan is an important expression of community consensus on charting our future at this point in time. If generally followed,~~ However, the plan ~~can~~ is designed to provide a ~~more~~ predictable environment for public and private investment decisions~~, and with more coordinated decisions, we should see greater overall economic growth, lower taxes, and a higher quality of life~~.

LPlan 2040 looks out nearly 30 years in the future because the decisions ~~we make~~ made today about land use and public facilities ~~today~~ will affect the community for generations. However, ~~we recognize that~~ economic, social and environmental factors change over time, as do preferences and priorities of local citizens. Therefore, the Plan ~~should be reviewed annually and~~ is updated as needed~~, with more significant updates every 5 to 10 years, so it can~~ to remain relevant over time.

Fleck-Tooze stated that the Planning staff does not have any concerns about the proposed revisions.

Lust inquired whether there has ever been introductory language in any of the Comprehensive Plans in the past. To the best of her knowledge, Fleck-Tooze does not believe there has ever been any specific introductory language, at least there was not any in the 2030 Plan.

Lust then inquired whether other cities and counties use introductory language. Fleck-Tooze suggested that they do. The staff did review some language in other plans and it seemed to make some sense.

There was no testimony in support or opposition.

ACTION BY PLANNING COMMISSION: December 14, 2011

Lust moved to approve the amendment to add introductory language, as revised by her own proposal, seconded by Francis.

Lust stated that she even hesitates to vote for her own language. She is not sure that the Comprehensive Plan needs introductory language. She is mostly concerned about people relying on the introductory language. She believes that there are situations where we do have to follow the Comprehensive Plan, although it is meant to be a guideline. However, she hesitates to attempt to summarize complicated legal issues in three paragraphs. That said, she does think that a little guidance and introduction to a very lengthy document that explains the purpose and overview is probably a good thing, in general. She is comfortable with the revised language that has been proposed. In general, she will support the amendment but she does have some hesitancy about the need for it.

As stated in the workshop, Francis reiterated that she does not think the language is necessary, but she will support this amendment because Lust did a good job of narrowing it down. The Comprehensive Plan is and always has been a guide. She is disappointed that other bodies think it is necessary to include three paragraphs to say it is a guideline.

Gaylor Baird agreed with Lust and Francis. The language is good and perfectly reasonable and especially clarifies things for a new reader of the Comprehensive Plan. However, what is problematic about this whole exercise, and what she wants to say on the record is that it is coming from a place that appears to be quite critical of the process that we all undertook and the professionalism of the people sitting at this table, at least those who were here throughout the LPlan process. The LPAC was asked to come up with this plan, and that was a citizen/commissioner body of people appointed who represented all sectors of our community. There was a farmer, design professionals, architects, business men and women, academics,

community volunteers, representatives of rural areas and people who lived in the city. It was our charge to come up with a plan, defined as a plan and a guideline, for the future of our community and what we think it needs to be mindful of as we progress. To have preferatory language requested that talks about paying more attention to reality, current conditions, respect for individual rights and the fiscal ability of the government units and the private sector says to her that this particular council person was not paying attention to what we were saying and what we did during those meetings in a close and thoughtful way.

We had an incredible team of experts over the series of a year come and speak to us. We had economists, we had census demographers, we had experts in sustainability, we had representatives of different communities come and talk about the issues that they faced, all of which were ways to try to gather data to inform our plan and our decision making. We talked often and with great purpose about the economic constraints that we faced going forward. We spent a lot of time, especially in the area of transportation, talking about how do we cut valuable projects down into the timeline that we have – how do we cut them down for the budget that we have but still try to get them done in a meaningful and efficient and effective way – how can we serve the needs of the community given the constraints we face. We had a budget called the fiscally constrained plan.

Gaylor Baird then pointed out that anyone who pays attention to these meetings, or watches Channel 5, will recall that at almost every other meeting, someone in this body states for the record that the plan is a guide – that it is not something that binds our hands but something that is meant to provide a vision and a source of reference. It is meant to provide predictability for our community and set expectations so that we aren't making decisions in a vacuum. It helps us avoid conflicts that we might otherwise face. The fact that we update the plan is another acknowledgment that it is a plan and a guideline and that it isn't just something that is "black letter law" as is stated in the Council member's document.

On top of that, Gaylor Baird pointed out that about 90 plus percent of what comes through this body does get approved and gets fair and thoughtful consideration. It is rare that the Planning Department presents anything that then isn't given a real fair shake and a real professional assist.

What is disheartening about this whole exercise – aside from the insult to which others referred in our briefing – is that the language is not only perhaps unnecessary but perhaps somewhat insulting – it is a waste of taxpayer dollars. The amount of time that the Planning Department has spent working on this particular language and the amount of consultation with attorneys has been not only a waste of taxpayer dollars but it has also taken their time away from other more pressing matters.

Gaylor Baird stated that she wanted to get this all on the record because she thinks it's the elephant in the room and she thinks it needs to be said out of respect for the dozens of people who worked on this, for the public input that we received and took into careful consideration, for the data, for the awareness of our fiscal constraints. While setting a hopeful vision for the future, this plan is very much grounded in reality and she is very proud of the plan and the Planning staff and the public who came forward to help shape it.

Esseks added that in some parts of this country, there are written Comprehensive Plans which are put on shelves and no one looks at the plan once it is on the shelf. Here, in his 6.5 years on the Planning Commission, the plan has been used as a real guide. At the beginning of each staff report, there is a statement about conformity with the Comprehensive Plan. We have a state statute

that says zoning should be in conformance with the Comprehensive Plan. We have a Supreme Court ruling that says the proposed land use should take into account the Comprehensive Plan, and that the proposed land use will be judged in its relationship to what is approved. It is useful for us to be united. All this effort has a statutory and practical basis. We really do use the plan as an important document and guide.

Butcher expressed his concern that the introductory language really doesn't change anything on the back end in interpretation of the plan. This may muddle it more for some lay people as they get into the process and look at it, and it may enlighten someone who did not understand the plan, but on the back end under the law, this language has no determination. He thinks its inclusion can be for the benefit of some and also to the detriment of others.

Cornelius agreed with Butcher. It might be helpful to some and it may not be very helpful or perhaps hurtful to some. He is not sure this language has a whole lot of benefit overall. The purpose and scope of the plan are self-evident. There is language throughout the plan describing itself as a guideline and an aide to decision making by policy makers, and the legal standing of the plan is a matter of law. Further, the plan obviously is a living document; it receives annual review – we look at it and revise it; and every five years we make a major revision like the one we just undertook, and for those reasons he will vote no on including this language.

Motion to approve the comprehensive plan amendment, with amended language as proposed by Commissioner Lust, carried 6-3: Francis, Lust, Weber, Hove, Sunderman and Esseks voting 'yes'; Butcher, Gaylor Baird and Cornelius voting 'no'. <u>This is a recommendation to the City Council and the Lancaster County Board of Commissioners.</u>

Nicole Fleck-Tooze

From: Rodney M. Confer
Sent: Friday, October 28, 2011 9:40 AM
To: Marvin S. Krout; 'Jon Camp'
Cc: Eugene W. Carroll; 'Adam Hornung'; 'jcookcc@aol.com' (jcookcc@aol.com); Doug Emery (Dougemerypm@aol.com) (Dougemerypm@aol.com); Carl B. Eskridge; DiAnna R. Schimek; Mary M. Meyer; Mayor; Commish; Rick R. Peo; Kerry P. Eagan; Brittany L. Behrens; Rick D. Hoppe; Nicole Fleck-Tooze
Subject: RE: Prefatory Language for LPlan 2040--NOW ATTACHED!!!

Dear Council Members, et al.:
This is in response to Jon Camp's suggestion that prefatory language be included in the Comprehensive Plan. Rick Peo and I have spent some time reviewing this matter and have the following recommendations.

1. As a preliminary matter, Council should realize that any statement it makes concerning the effect of the plan has no legal weight or authority. In other words, the effect that the plan will have is a question of law that depends on the applicable statutes and court decisions that interpret those statutes. A court would not be influenced by any prefatory statement the Council might make or not make concerning the plan's effect.

2. If this sort of new language is to be included in the plan, the County Attorney has taken the position it will need to first be reviewed by the Planning Commission. That has also been the opinion of the City Attorney's office in the past, and we would agree with the County Attorney in this instance that if there is going to be new language modifying the plan, the Planning Commission should consider that language before it is voted on by the Council under Neb. Rev. Stat. 15-1103 ("The Commission shall review such plans and modifications, <u>and those which the city council may suggest</u> . . . .") If, after the Commission reviewed any prefatory language, it would not endorse the prefatory language, five votes of the Council would be required to adopt that language contrary to the Commission recommendation.

3. Since the suggested prefatory language doesn't address the substance of the plan, but describes its effect, an alternative to making it part of the plan would be to make this type of provision part of the adopting resolution. That would make it unnecessary to send the Plan back to the Planning Commission because the language wouldn't be part of the plan.

4. As far as the language itself, I am concerned that the reference to "black letter law" would be confusing. That term is probably not in general use by non-lawyers, and in fact may not have consistent usage in the legal profession. My own understanding of the term is that it refers to legal precedent that is so well-established it is not open to question. I don't believe that was what Mr. Camp intended by the term, although I could be wrong. I think it would be preferable to describe the effect of the plan in other terms instead of saying it is not "black letter law."

5. Unfortunately, the legal effect of the comprehensive plan is not entirely clear. Neb. Rev. Stat. 15-902 (1) says that zoning regulations "shall be made . . . with a view to conserving property values and encouraging the most appropriate use of land throughout the area zoned, <u>in accordance with a comprehensive plan</u>." Sections 15-1102 describes the content of the plan and 15-1103 describes how it will be adopted. Section 15-1103 requires the Planning Commission to review any zoning action and determine whether it is in accordance with the Comprehensive Plan, and to report to Council the degree of conformity or non-conformity.

Although these statutes clearly impose duties upon the Planning Director, Commission and the Council with regard to complying with the plan, the Supreme Court decisions have not made it very clear what the effect of <u>not</u> complying with the comprehensive plan might be. A number of cases have held that Lincoln's and other cities' comprehensive plans are mere guidelines, which do not control over zoning ordinances in determining the rights of property owners. In <u>Holmgren v. City of Lincoln</u>, however, the Court expanded on this language by finding that, although the zoning action in question did not comply exactly with the comprehensive plan, it did comply in a general way, so the ordinance was

upheld. From this, as well as the statutes, it appears that while the Council is not required to adhere slavishly to the plan, it is not free to entirely ignore it either. If Council were to take action that was directly contrary to the plan in some major way, it may be that the action would be overturned as being arbitrary and capricious.

Based on these factors, I would recommend that if there is going to be an attempt to describe the legal effect of the plan, the Council should simply indicate that: "While the plan sets forth general guidelines and policies for improvement and development of the City, failure to adhere to the plan is permissible in specific instances in which circumstances justify deviating from its terms and provisions."

Rodney M. Confer
City Attorney

From: Marvin S. Krout
Sent: Monday, October 24, 2011 9:51 AM
To: 'Jon Camp'
Cc: Eugene W. Carroll; 'Adam Hornung'; 'jcookcc@aol.com' (jcookcc@aol.com); Doug Emery (Dougemerypm@aol.com) (Dougemerypm@aol.com); Carl B. Eskridge; DiAnna R. Schimek; Mary M. Meyer; Mayor; Commish; Rodney M. Confer; Rick R. Peo; Kerry P. Eagan; Brittany L. Behrens; Rick D. Hoppe; Nicole Fleck-Tooze
Subject: RE: Prefatory Language for LPlan 2040--NOW ATTACHED!!!

Councilmember Camp, thanks for your suggestion on introductory language.

As I indicated at the public hearing, the proposed plan does have language sprinkled throughout that refers to its being a "guide" to decision-making. Reviewing that language again, I believe it is adequate and an introductory statement is unnecessary. I am concerned that this language introduces terms that raise more questions for the public rather than clarifies the purpose of the plan. I also am concerned that it will be viewed as condescending and downgrading the value of the hundreds of people who participated in developing this vision for the community, e.g. suggesting that the plan should be weighed against "reality."

I would suggest that Councilmembers or Commissioners who are interested in some introductory language should ask your attorneys for their opinions about this proposal, both in terms of the language and in terms of process. I think the attorneys may have concern with this "suggestion" not having been reviewed first by the Planning Commission.

Should the boards decide that you would like this or some other language appended to the 2040 Plan, we could bring that proposed language to the Planning Commission for their review, hearing, and recommendation. As you all know, we are planning to bring three plan amendments being proposed by the County Board to the Planning Commission for their review in December, and we could potentially add this to the package.

Marvin S. Krout, Director
Lincoln-Lancaster County Planning Department
555 South 10th Street, Suite 213
Lincoln, Nebraska 68508
402-441-6366

From: Jon Camp
Sent: Friday, October 21, 2011 2:59 PM
To: Marvin S. Krout (mkrout@lincoln.ne.gov)
Cc: ecarroll@lincoln.ne.gov; 'Adam Hornung'; 'jcookcc@aol.com' (jcookcc@aol.com); Doug Emery (Dougemerypm@aol.com) (Dougemerypm@aol.com); ceskridge@lincoln.ne.gov; 'dschimek@lincoln.ne.gov'; Jon Camp; 'Mary M. Meyer'; mayor@lincoln.ne.gov; Commish
Subject: Prefatory Language for LPlan 2040
Importance: High

011

Director Krout, Members of the Lincoln City Council and Commissioners of the Lancaster County Board:

Please see the attachment for introductory language I would like to have amended into and appended to the LPlan 2040.

My purpose is to reinforce the intent of the Comprehensive Plan, namely that as was confirmed at our public hearing earlier this week, the Comp Plan is a set of suggestions, recommendations and ideas to assist in guiding future development of Lincoln, but not "black letter law".

Thank you for reviewing these few sentences and concurring in your agreement to add this language.

Jon

JON A. CAMP

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012

Prefatory language for LP 2040:

The following document, "LPlan 2040: Lincoln-Lancaster County L2040 Comprehensive Plan and Long Range Transportation Plan,", should be read in the context that it is a compilation of ideas for the City of Lincoln and County of Lancaster to consider as it progresses through the future.

The contents should not be interpreted as "black letter law".

The individuals who participated in the evolution of this document are to be commended for their efforts and ideas. However, future actions should couple the particular ideas discussed in LPlan 2040 with (1) reality, (2) current conditions, (3) respect for individual rights and (4) the fiscal abilities of the governmental units and the private sector.

LPlan 2040 is the latest edition of the Lincoln-Lancaster County Comprehensive Plan. The Comprehensive Plan is intended as a guide to local government officials, institutions, businesses, landowners, and the general public in making decisions on public and private investment for land development. The plan provides a vision, based upon demographic and economic projections and ~~developed with~~ broad public input, for the pattern and character of the community as it grows. Comprehensive plans deal with the arrangement of different land uses, the standards for development, and the provision of transportation facilities, utilities, and other community facilities and services – ~~all~~ with ~~due~~ regard for expanding housing and employment opportunities, ~~recognizing~~ the community's financial limitations and economic realities, and ~~conserving~~ its natural and cultural resources. State statutes require that comprehensive plans be developed by planning commissions and adopted by cities and counties, as a basis for establishing zoning regulations and to consider before the city or county ~~y~~ buys or sells land, constructs or improves public facilities, or~~and~~ takes other actions affecting public improvements.

While ~~T~~the Comprehensive Plan sets forth general guidelines for decision-making, ~~but is not legally binding on the planning commission or elected officials. There may be occasions where a decision that deviates from some provision in the plan is justified, and that is legally permissible.~~ failure to adhere to the plan is permissible in specific instances in which circumstances justify deviating from its terms and provisions. ~~But the plan is an important expression of community consensus on charting our future at this point in time. If generally followed~~, However, the plan is designed to~~can~~ provide a ~~more~~ predictable environment for public and private investment decisions.~~, and with more coordinated decisions, we should see greater overall economic growth, lower taxes, and a higher quality of life.~~

LPlan 2040 looks out nearly 30 years in the future~~,~~ because the decisions made today~~we make~~ about land use and public facilities ~~today~~ will affect the community for generations. However, ~~we recognize that~~ economic, social and environmental factors change over time, as do preferences and priorities of local citizens. Therefore, the Plan ~~should be reviewed annually and~~is updated as needed.~~, with more significant updates every 5 to 10 years, so it can~~ to remain relevant over time.