

## MEETING RECORD

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Wednesday, January 8, 2014, 1:00 p.m., Hearing Room 112 on the first floor of the County-City Building, 555 S. 10<sup>th</sup> Street, Lincoln, Nebraska

**MEMBERS IN ATTENDANCE:** Cathy Beecham, Michael Cornelius, Tracy Corr, Maja V. Harris, Chris Hove, Jeanelle Lust, Dennis Scheer, Lynn Sunderman and Ken Weber; Marvin Krout, Steve Henrichsen, Brian Will, Tom Cajka, Brandon Garrett, Sara Hartzell, Paul Barnes, Jean Preister and Teresa McKinstry of the Planning Department; media and other interested citizens.

**STATED PURPOSE OF MEETING:** Regular Planning Commission Meeting

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

Lust requested a motion approving the minutes for the regular meeting held December 11, 2013. Cornelius moved approval, seconded by Scheer and carried 9-0: Beecham, Cornelius, Corr, Harris, Hove, Lust, Scheer, Sunderman and Weber voting 'yes'.

Steve Henrichsen of the Planning Department introduced Bob Simmering, the new Engineering Services Manager with Public Works and Utilities, who will be attending the Planning Commission hearings and responding to staff questions pertaining to Public Works & Utilities issues.

**CONSENT AGENDA**  
**PUBLIC HEARING & ADMINISTRATIVE ACTION**  
**BEFORE PLANNING COMMISSION:**

**January 8, 2014**

Members present: Beecham, Cornelius, Corr, Harris, Hove, Lust, Scheer, Sunderman and Weber.

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 13028, SPECIAL PERMIT NO. 13058, PRE-EXISTING SPECIAL PERMIT NO. 5C, SPECIAL PERMIT/USE PERMIT NO. 8C, USE PERMIT NO. 149A, SPECIAL PERMIT NO. 1405A, SPECIAL PERMIT NO. 13055, STREET AND ALLEY VACATION NO. 13004 and STREET AND ALLEY VACATION NO. 13005.**

There were no ex parte communications disclosed.

**Item No. 1.3, Special Permit / Use Permit No. 8C, and Item No. 1.4, Use Permit No. 149A,** were removed from the Consent Agenda and called under Requests for Deferral. Hove moved approval of the remaining Consent Agenda, seconded by Weber and carried 9-0: Beecham, Cornelius, Corr, Harris, Hove, Lust, Scheer, Sunderman and Weber voting 'yes'.

Note: This is final action on Special Permit No. 13058, Pre-Existing Special Permit No. 5C, Special Permit No. 1405A and Special Permit No. 13055, unless appealed to the City Council within 14 days.

**SPECIAL PERMIT/USE PERMIT NO. 8C,  
TO ALLOW AN ADDITION TO AN EXISTING  
BUILDING AND REDUCTION OF PARKING REQUIREMENT  
ON PROPERTY GENERALLY LOCATED AT  
SOUTH 70<sup>TH</sup> STREET AND A STREET.  
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

January 8, 2014

Members present: Cornelius, Sunderman, Weber, Hove, Beecham, Harris, Scheer, Corr and Lust.

Staff recommendation: Conditional approval.

The Clerk announced that the applicant has requested a two-week deferral of the public hearing.

Cornelius moved to defer, with continued public hearing and action scheduled for Wednesday, January 22, 2014, seconded by Scheer and carried 9-0: Cornelius, Sunderman, Weber, Hove, Beecham, Harris, Scheer, Corr and Lust voting 'yes'.

There was no other public testimony.

**USE PERMIT NO. 149A  
TO RECONFIGURE THE BUILDING  
AND PARKING LAYOUT ON PROPERTY  
GENERALLY LOCATED AT  
SOUTH 27<sup>TH</sup> STREET AND JAMIE LANE.  
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

January 8, 2014

Members present: Cornelius, Sunderman, Weber, Hove, Beecham, Harris, Scheer, Corr and Lust.

Staff recommendation: Conditional approval.

The Clerk announced that the applicant has requested a two-week deferral of the public hearing.

Hove moved to defer, with continued public hearing and action scheduled for Wednesday, January 22, 2013, seconded by Weber and carried 9-0: Cornelius, Sunderman, Weber, Hove, Beecham, Harris, Scheer, Corr and Lust voting 'yes'.

There was no other public testimony.

**COMPREHENSIVE PLAN CONFORMANCE NO. 13016,  
TO REVIEW A PROPOSED AMENDMENT TO THE  
LINCOLN CENTER REDEVELOPMENT PLAN AT  
1421 P STREET.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

January 8, 2014

Members present: Cornelius, Sunderman, Weber, Hove, Beecham, Harris, Scheer, Corr and Lust.

Staff recommendation: A finding of conformance with the Comprehensive Plan.

There were no ex parte communications disclosed.

Staff presentation: **Brandon Garrett of Planning staff** explained that this is an amendment to add a redevelopment project to the existing Lincoln Center Redevelopment Plan. The site is known as the "Case, Case and Case Building" located directly across the street to the south of the Lincoln Children's Museum. The proposal would rehab the existing building. There are currently 30 units in the building containing single room occupancy with shared restroom facilities. The proposal would reduce the number of dwelling units from 30 to 29 units, and include improvements that would include full bathroom facilities for each unit. In addition, there may be some site improvements and facade improvements, including the surrounding portions of alleys.

Garret further explained that TIF (Tax Increment Financing) would be a part of this project and used for energy enhancements, facade improvements, streetscape improvements, etc. Urban Development is the applicant.

Proponents

**1. David Landis of the Urban Development Department** testified as the applicant and showed photographs of the interior of the building depicting a restroom shared by 6 units and the single rooms. Landis explained that this building has not been redeveloped because in the past, the seller has charged a high price. The proposed redevelopment will occur for two reasons: 1) the existence of TIF, and 2) the buyer is TruBuilt Construction Company, a family-owned company. If you paid someone else to do this work, it would

be untenable and not economically sensible. Here, we have a young developer, Bo Jones, who purchased the property and will do the construction himself, with the potential to be profitable. Urban Development is delighted to assist in the success of this project.

**2. Tom Huston** appeared on behalf of **TB Rentals**, an affiliate of **TruBuilt Construction**, stating that this is a textbook example of why we have a community development law. In addition to physical improvements within the interior, there are a lot of improvements that need to occur in and round the area, including some alleyways that present some security issues and site issues. This amendment to the redevelopment plan is step one. His client looks forward to developing this site and it will be a great addition to the neighborhood along P Street.

Beecham stated that she is delighted that this building is being saved. She inquired about the plans for the alley, i.e. parking, courtyard. Huston stated that it will be a secured area. They are currently in the very early stages of discussion with the adjoining property owners. He does not believe it will be parking, but rather some type of courtyard area.

There was no testimony in opposition.

**ACTION BY PLANNING COMMISSION:**

January 8, 2014

Hove moved to approve a finding of conformance with the Comprehensive Plan, seconded by Corr.

Lust agreed that this is a great project for downtown.

Motion carried 9-0: Cornelius, Sunderman, Weber, Hove, Beecham, Harris, Scheer, Corr and Lust voting 'yes'. This is a recommendation to the City Council.

**COMPREHENSIVE PLAN CONFORMANCE NO. 13017,  
TO REVIEW A PROPOSED AMENDMENT TO THE  
NORTH 27<sup>TH</sup> STREET CORRIDOR AND ENVIRONS  
REDEVELOPMENT PLAN, ON PROPERTY GENERALLY  
LOCATED AT 444, 436 AND 422 NORTH 27<sup>TH</sup> STREET.  
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

January 8, 2014

Members present: Cornelius, Sunderman, Weber, Hove, Beecham, Harris, Scheer, Corr and Lust.

Staff recommendation: A finding of conformance with the Comprehensive Plan.

There were no ex parte communications disclosed.

Staff presentation: **Brandon Garrett of Planning staff** explained that this is an application from the Urban Development Department for an existing site, zoned R-6, with no plans for future rezoning. By being zoned R-6, the redevelopment will not be required to come forward as a community unit plan. This application is to review the proposed redevelopment project as to Comprehensive Plan conformance.

The proposal is to develop this vacant lot to add 13 dwelling units. This project would be using TIF for property acquisition, facade enhancements, alley paving, curb cut and a fence for the east property line. There are some single-family and duplex units to the east of the alley zoned R-4. This project will improve the alley and add a fence.

Proponents

**1. David Landis of Urban Development** stated that Urban Development likes this project because it is on city-owned land that is vacant. The City wants to sell this land on the North 27<sup>th</sup> Street Corridor and have it developed. This amendment is well-supported by the Comprehensive Plan and is subject to the Neighborhood Design Standards. It will be done with a great deal of interaction with the neighborhood and the business district that surrounds it.

Support

**1. Curt Donaldson**, 2860 R Street, testified on behalf of the **Hartley Neighborhood Association** and the **North 27<sup>th</sup> Street Business & Civic Organization**, in support. It is little known, but outside of the Downtown redevelopment area, North 27<sup>th</sup> has spent more TIF than any other area in Lincoln. The North 27<sup>th</sup> Street Business & Civic Organization has been advisory to the Urban Development Department over the last 15 years. It is a challenge to redevelop in this area. He is delighted with this project for residential use.

There was no testimony in opposition.

**ACTION BY PLANNING COMMISSION:**

January 8, 2014

Cornelius moved to approve a finding of conformance with the Comprehensive Plan, seconded by Scheer.

Cornelius stated that he is happy whenever good development is going into N. 27<sup>th</sup> Street. He lives in the Hartley neighborhood and he is overjoyed with this redevelopment proposal.

Corr expressed appreciation to the neighborhood for coming forward and letting the Commission know that they are working with the developers.

Lust believes it is a good project and she is happy to support it.

Motion carried 9-0: Cornelius, Sunderman, Weber, Hove, Beecham, Harris, Scheer, Corr and Lust voting 'yes'. This is a recommendation to the City Council.

**COMPREHENSIVE PLAN CONFORMANCE NO. 13018**  
**TO REVIEW THE PROPOSED PIEDMONT SHOPPING CENTER**  
**REDEVELOPMENT PLAN ON PROPERTY GENERALLY**  
**LOCATED AT SOUTH COTNER BOULEVARD AND A STREETS.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

January 8, 2014

Members present: Cornelius, Sunderman, Weber, Hove, Beecham, Harris, Scheer, Corr and Lust.

Staff recommendation: A finding of conformance with the Comprehensive Plan.

There were no ex parte communications disclosed.

Staff presentation: **Brandon Garrett of Planning staff** presented the new redevelopment plan for the Piedmont Shopping Center area. The Planning Commission recently approved a blight study dealing with this area and a planned unit development (PUD). Having reviewed the Redevelopment Plan, Garrett indicated that staff finds the proposed Redevelopment Plan to be completely consistent with what has already been approved with the PUD.

Beecham inquired whether this plan addresses the connectivity of the sidewalk and crosswalks getting to this block. Is there anything that will make this more pedestrian-friendly in getting to the shops on foot? Garrett explained that the PUD dealt with this kind of issue. Along South Cotner Boulevard, they are planning to move the small sidewalk from the curb and create some separation with a full sidewalk along South Cotner Boulevard. During the PUD process, there was also discussion about creating a better sidewalk link along Aldrich on the east side of the site. There are existing site constraints that make it difficult, cost inefficient or impossible to create a sidewalk on the 50<sup>th</sup> Street side. Garrett believes there may already be a sidewalk on the north side of C Street along the park. There are some existing situations behind the building on the north side of the shopping center where there are docks and drives. There are improvements to the sidewalk conditions included in the PUD which will be of benefit to the neighborhood and the shopping center.

Hove asked whether the service station is part of this Redevelopment Plan. Garrett stated that it is part of the Redevelopment Plan, but the Redevelopment Plan does not hold them to anything – they can continue on with their existing situation. However, that service station is not part of the approved PUD.

Harris inquired whether there is anything involved in the Redevelopment Plan that would result in relocating families. Garrett clarified that the Redevelopment Plan boundary only

includes commercial. There are no dwelling units within the Redevelopment Plan boundary. If there were to be any relocation, it would only involve commercial uses, and he is not aware of any relocation activities being planned.

Corr referred to page 17 of the Redevelopment Plan, suggesting that it looks like some medians and landscaping are being added to the parking lot to help direct the traffic and create a better walkway for pedestrians. Garrett agreed that the plan does illustrate the sidewalk separation along South Cotner Boulevard and the sidewalk along Aldrich. They are also proposing to change the landscaping and parking lot layout and showing a striped or marked pedestrian crossing throughout to help raise awareness for the automobile traffic. There are also some designated pedestrian crossings internal to the site.

Beecham inquired whether the sidewalk would change at the service station location. Garrett did not believe so and he does not know if that site would be able to facilitate a different sidewalk situation. That service station is not part of the PUD so it does not have an approved planned future at this point.

### Proponents

**1. David Landis of Urban Development** testified as the applicant. The developer has been in contact with the gas station but they do not have an agreement. If they could, the developer would like to, but as yet it has not consummated. The discussions continue. If they did, it would be a social benefit because that gas station is at a very odd five-sided intersection which is not particularly safe. The neighborhood does not want to close that street. Even though it might be a great Public Works benefit, it would be at a cost to the neighborhood that does not want that to happen. There will be buffering that does not now exist at the dock end of the old buildings. Landis reiterated that the existing sidewalk is at the lip of the curb. This development will move the sidewalk back and initiate green space. This Redevelopment Plan is consistent with the Comprehensive Plan and it will be an improvement for an area that deserves it.

### Support

**1. Mark Hunzeker** appeared on behalf of **Piedmont Shopping Center, LLC**, stating that the developer is looking forward to getting this project underway. He believes everyone will be very pleased with the outcome of this rehabilitation of a very important older center. It is a challenging and difficult site.

There was no testimony in opposition.

Beecham inquired about the electronic signage – where will those signs be allowed and will they blink and have message changes? Garrett suggested that the electronic signage could include any electronic messaging. Beecham is concerned about the intersection because it is a dangerous intersection for pedestrians and vehicles. **Marvin Krout, Director of Planning**, approached and explained that the signage was addressed in the PUD. Normally, in this type of district, you would be allowed multiple signs – freestanding along the street as well as wall signs. The PUD restricted this development to two signs – one to the north end and one to the south, limited in size with a small electronic message board. According to the sign code, they cannot have full video – a business sign can have a message that holds for a three seconds and one second for transition with animation, etc. Beecham wanted to know if there are restrictions as to how close to the intersection the sign can be located. Krout stated that there is a sight distance requirement. However, for both of these signs, they are not going to be close enough to those sight distance triangles that they will have to raise the sign up. They will both be monument signs.

**ACTION BY PLANNING COMMISSION:**

January 8, 2014

Hove moved approval of a finding of conformance with the Comprehensive Plan, seconded by Scheer.

Lust stated that she is happy to see this project going forward.

Motion carried 9-0: Cornelius, Sunderman, Weber, Hove, Beecham, Harris, Scheer, Corr and Lust voting 'yes'. This is a recommendation to the City Council.

**CHANGE OF ZONE NO. 13029**  
**FROM AGR AGRICULTURAL RESIDENTIAL DISTRICT**  
**TO H-3 HIGHWAY COMMERCIAL DISTRICT**  
**and**  
**SPECIAL PERMIT NO. 13060**  
**FOR A 13-STALL CAMPGROUND**  
**ON PROPERTY GENERALLY LOCATED AT**  
**HIGHWAY 2 AND PINE LAKE ROAD.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

January 8, 2014

Members present: Cornelius, Sunderman, Weber, Hove, Beecham, Harris, Scheer, Corr and Lust.

Staff recommendation: Denial.

There were no ex parte communications disclosed.

Staff presentation: **Brian Will of Planning staff** explained that these are not associated applications but they are different requests on the same piece of property so most of the findings in the staff reports relate to both applications.

The property is approximately a 3-acre triangular tract. Where Pine Lake Road used to extend, it is now terminated at Eiger Drive. This property is right across Highway 2 from where Eiger Drive now intersects with Highway 2. The surrounding land use is AGR zoning with the exception of O-3 to the northeast (Pine Lake Plaza office park). Otherwise, the surrounding uses include the Southeast Rural Fire Station, the horse stable for Pine Lake, and 3-acre single-family residential acreage lots.

Will submitted the comments received from the reviewing agencies which were not included in the staff report.

Will explained that there are two related issues on both applications – access and land use. Unusually, this tract has a guaranteed access to Highway 2 from the State of Nebraska. Given the existing zoning pattern of AGR, only one dwelling unit would be allowed on this property. If the zoning were to change, Will believes the State of Nebraska Department of Roads (NDOR) would view that negatively. The change of zone would mean increased traffic onto Highway 2. It is rare to find a driveway off of a single property like this along Highway 2. It is a goal to eliminate driveway access onto Highway 2. As is, one single family dwelling would have right to get access on Highway 2; otherwise, the access will be restricted.

With regard to the issue of land use, Will pointed out that H-3 Highway Commercial zoning allows a range of uses, as compared to the surrounding residential zoning, that would be described as fairly intense, including garden center, motel, gas station, auto repair, retail sales, restaurant, contractor services, etc. NDOR noted that any change of zoning on the property of more intense land use could result in a traffic study being requested by NDOR, and we would assume that there would be some recommendation in that traffic study including requirements for improvements to Highway 2.

Will further pointed out that Public Works is not supportive of the change of zone given the access onto Highway 2. Any increase in traffic makes a driveway on Highway 2 not acceptable. The Health Department noted the potential for nuisances, off-site impacts, etc., and they are not supportive.

Will clarified that the special permit request for the campground does not require a change of zone. It would be allowed by special permit in the AGR zoning district. The facts of both cases are similar but we need to distinguish that the AGR zoning as it exists would allow this special permit. The same issues come to bear with the campground, i.e. Public Works is suggesting that a campground use would require

likely improvements in Highway 2 with turn lanes into the property for slower moving vehicles exiting the property as well as perhaps a left turn lane for westbound traffic to get into the property off Highway 2.

With regard to land use, Will suggested that a campground is not necessarily a high intensity or obnoxious land use, but it is in close proximity to residences and the staff is recommending denial. Typically, there are no limited hours of operation allowing people to be out recreating into late hours of the evening perhaps. Health Department also expressed concern that campfires would present a nuisance to surrounding properties. Therefore, staff does not find the campground proposal to be an appropriate land use at this location.

Will acknowledged that staff is not in the position of recommending denial very often. Staff did attempt to come up with alternatives. One suggestion included in the staff report was perhaps a change of zone to R-1 for three residential lots. Maybe that would be more suitable in the market.

Will concluded that staff is recommending denial of both applications.

Hove inquired about the elevation of the property and whether it is higher than Highway 2. Will believes that it is rising to the south, not significantly but a little higher than Highway 2. Hove then asked if it would be “up the hill” to get there with the one access from Highway 2. Will suggested that as you move across the site, it goes uphill. The driveway access point is not specifically set in place at this time. That is indeterminate at this point. LES commented that there are power lines and facilities in the right-of-way which need to be considered in any grading of the site. There is no access to any other public street or private roadway. Staff has offered to cooperate in this effort for perhaps either some sort of an access easement in Highway 2 back to the Pine Lake Road right-of-way, or even perhaps across the adjacent residential lot to the west, somehow coming back to Pine Lake Road, for something other than a commercial use.

Hove confirmed that Pine Lake Road does not connect to Highway 2. Will concurred.

Proponents

**1. Peter Katt** appeared on behalf of the applicant, **US Property Management**. Katt suggested that this is a blighted property. The owners of US Property Management are Monte and Lisa Froelich who have worked in the Downtown Lincoln area, i.e. Grand Manse improvements; recently completed rehab of the old Spaghetti Works into some student housing units; they have acquired and had a little setback on the Christian Book Store on O Street, but they are committed to doing that kind of work and making communities better. One of their mission statements includes a goal to fix broken,

vacant property business and bring it new life, i.e. “blight busters.” They are committed to making Lincoln and other communities better. Mr. Froelich has experience not only in Lincoln but also in national projects.

Katt suggested that the subject property is probably best considered the blighted Bermuda Triangle. He referred to the history in the staff report and showed the 1965 plat of the property. Had that happened, Katt agreed that it might have been realistic to have acreage houses develop without access to the highway. However, in 1989, the city approved an administrative final plat creating the “Bermuda Triangle” and for the past 24 years it has been blighted – nothing has happened – it remains the same. It is unique. As noted by staff, as part of the approval of that plat, the NDOR gave them unrestricted right of access as part of a condemnation proceeding and it is located opposite Eiger Drive. Katt submitted that the owners have a clear legal right to develop the property with access to Highway 2.

The staff notes that the tract has no access to an internal residential street network. Because of the existing land use with AGR zoning, Katt agrees that the number of lawful uses is quite limited. And for 24 years, no one has been willing to invest or develop anything on this property. What do you do? Staff suggests we triple the problem by taking it from one home to three homes. That hasn’t happened for 24 years. His client believes that the staff solution simply compounds the problem. So, if that is not the solution, what is? The answer should be based on what is needed in our community in this location, and what are the impacts of that use. And, if creating negative impacts, can they be mitigated?

Katt then stated that the applicant’s proposal is for a mini-warehouse which requires the H-3 zoning, generating approximately 100 trips a day. The community needs mini-warehouse space. There are apartments going up at 84<sup>th</sup> and Highway 2; also north of the shopping center at 84<sup>th</sup> Street; and there is a new project just west of 70<sup>th</sup> and Highway 2. There is a demand for mini-warehouse storage space and there are no available sites in southeast Lincoln to meet that market demand.

Katt then pointed out that to the extent there are any issues, NDOR has standards for safe access. Katt also suggested that entryway corridor aesthetics is a relative question. Does it mean you cannot build along the corridor? No, but the neighbors do not want it to look like Cornhusker Highway and his client agrees. The applicant is willing to sit down with the neighbors and talk about the design of the mini-warehouse and will do it at a high level, making it attractive and appropriately landscaped.

In addition to the staff issues, Katt advised that one of the neighbors to the east raised the issues in terms of protecting their view to the east, hours of operation and lighting. Katt submitted that all of those can be managed through a sensitive site plan, and his client is willing to meet those concerns.

Katt then observed that the staff report noted that there was a change of zone done for mini-warehouses at Old Cheney Road and Highway 2 which had a conditional zoning and

development agreement. Katt had anticipated that this applicant might have that opportunity but staff chose not to provide any conditions of approval in the event the Planning Commission chose to recommend approval. If the Planning Commission wants standards, Katt suggested that the Planning Commission put these applications on pending and send the change of zone back and come forward with some specific requirements to address the legitimate concerns about using this property for a mini-warehouse. This would be his request. This is kind of an either/or situation, but Katt believes the mini-warehouse is the best use.

With regard to the special permit for the campground, Katt referred to the questions: what does the community need and what are the impacts? There are no private campgrounds in the City, and there is limited or no locations at which they can be developed. This campground would meet all of the special permit requirements for a campground to operate at this location. No change of zone is needed.

Katt acknowledged that the proximity to residential dwellings is a staff concern. The special permit requires a 50' separation, which Katt believes the site buffers. The special permit provisions indicate that campgrounds be located near a highway, and this application meets that requirement.

Katt believes the reality is that none of the suggested staff uses for a single-family dwelling are going to work on this site. The owner has some right for an economically viable use of the property, and under the Whitehead Oil Nebraska Supreme Court case, there is a requirement that says through all of the city's restrictions, the city cannot arbitrarily and unreasonably say that you get no use of your property. Therefore, at a minimum, the special permit for the campground should be approved as the only viable economic use of the property that is consistent with the city zoning requirements.

Katt does not believe the Planning Commission can negotiate the conditions that would make a mini-warehouse appropriate. Katt agreed that a blanket change of zone to H-3 is inappropriate. He suggested that if a mini-warehouse is determined to be a reasonable land use, and if the protections of adverse issues can be mitigated, the best course of action today would be to place the change of zone on pending with directions to the applicant and staff to bring forward a conditional zoning agreement to narrow the number of issues that need to be weighed in.

With regard to the campground, Katt believes that could be placed on pending as well because his client would prefer the mini-warehouse as the best solution. Until the discretionary application of the mini-warehouse is done, we do not need to get to the campground.

Beecham asked the applicant to address the traffic issue, particularly if it were a campground with slow moving campers merging onto Highway 2, etc. Katt agreed that to be a challenge at this site, but there is a legal right to access the highway. He does not

know what the conditions would be at this point. However, those decisions will be made by NDOR in consultation with Public Works. In any event, this applicant has a legal right for access. However, Katt does not know what the reasonable conditions might be for this access.

Katt then advised that when he met with staff three months ago, they discussed the possibility of some type of extension of Pine Lake Road into this site, thus eliminating the Highway 2 access. Given the number and nature of the mini-warehouse trips, that would be doable; however, his client lacks the legal ability to make that happen and asked the city to help. Katt would expect that they would try to go to that solution, but he cannot do this in a vacuum. He needs to have someone help with the conditions to make that happen.

Weber asked whether the unrestricted access goes with the change of zone. Katt's response was "absolutely". In the condemnation proceeding, there was an unrestricted right of access at a designated location and a specified width. He believes that unrestricted access means "unrestricted access not tied to a particular land use."

Cornelius inquired whether the applicant has heard anything from the residential neighbors about either of these proposals. Katt informed the Commission that he sent letters to all of the adjoining property owners inviting them to contact him if they had any concerns about the mini-warehouse or the campground. He heard from one neighbor, Ron and Kathy Hill, and he met with them yesterday. Katt believes there are ways to work with them to mitigate the things they are fearful of.

Cornelius wondered how long of a deferral the applicant is suggesting. Katt suggested that this is a significant enough change that a four-week delay would be appropriate to work through the issues.

Hove asked how long Froelich has owned the property. Katt stated that Froelich has had the property under contract for about nine months. He has tried to sell it as residential lots. This property was held for a long time by Stan and Grace Portsche, who tried to sell it for a long time for office use and eventually sold it to Kent Thompson two or three years ago, who is the current owner.

Lust asked if Froelich's ownership is conditioned on getting the change of zone. Katt stated that his client is not obligated to purchase, but at a minimum, if the mini-warehouse does not go forward, he will pursue the campground as an interim land use. Katt also suggested that if the campground is denied by the policy makers, they run a legal risk. That would be an interim use until there is a long term permanent solution.

### Opposition

**1. Ron Hill**, who owns the property just to the east, expressed his concerns of increased traffic and noise, regardless of the use. It will be more than what we are used to.

Secondly, their security and privacy might be compromised by children wandering from the campground to other people wandering around unless appropriate walls are erected to help protect his property. He also has concerns about increased lighting. He moved to the dark because he has difficulty sleeping. Decreasing the value of his home is another concern because the view would be changed.

Hill stated that he does respect Mr. Katt and his kindness in visiting with he and his wife, and they will consider any compromises that need to be made for the advancement of the city in this area.

**2. Steve Nickel**, 7941 Portsche Lane, about 300 feet southwest of the west corner of the subject property, testified in opposition as the president of the **Family Acres Association**. The Association is concerned about the land use. Campers will be on their way to find open space. This is an undesirable mix, often referred to as friction. There does not seem to be much of a buffer between what would be transient individuals and back yards.

In the area of land use, one of the goals of this Commission is to make higher density happen in AGR areas as the city limits approach. In this case, this won't happen if it is a campground or even a storage facility. Nobody would buy a lot backing up to a campground. The use of this property should be compatible with being in someone's back yard. There is a possibility of rowdiness and just general lack of curfew on any night. There is possibility of increased crime. Traffic should be a major consideration. Nickel stated that he talked with a representative of the First District Highway Department and it was their opinion that right-in right-out is going to be the only thing that will happen. The campground would mean vehicles, self-contained campers up to the size of busses, and pickup trailers and fifth wheel trailers up to the size of semi's. Unless there were a break in the median straight across from the entrance, these things would have to make u-turns at Pine Lake Road west over 84<sup>th</sup> Street in the middle of a 55 mph 4-lane highway with heavy truck traffic. And the heaviest turning traffic will be during rush hours if it is a campground. At this point, Nickel pointed out that Pine Lake Road west of the intersection will remain uncontrolled and that would be where there would be a lot of u-turn activity. If it is a storage area, the same problem exists.

As far as the sale of the property over the years, Nickel suggested that there has been very little attempt made to sell the property as residential. It was on the market for \$400,000 and no one is going to pay that for a house, and because of the access it has not sold. There is a way to develop the property as residential land with cooperation of

some of the neighbors. As build-through happens, people will be subdividing their acreages and a potential subdivision of the acreages could access a road at the south side of that property.

Staff questions

Lust inquired about the Whitehead Oil case and what it entailed. Peo explained that it was a use permit application in a different situation and he does not believe it is applicable in this case. There are three types of uses allowed on a property, i.e. permitted, conditional permitted and special permitted uses. A permitted use is a list of by-right uses with standard conditions; a conditional permitted use requires additional criteria and conditions; a special permit is a discretionary function. Just because there are conditions with a special permit does not mean that it becomes a conditional use. It still has criteria to be met as to whether it fits in with abutting properties, and the City Council has additional authority to impose additional conditions to alleviate adverse conditions.

Peo believes there is an additional factor on this property – this land was created and platted as AGR by the Portsche's. They created the lot in question, so if there were any difficulties in marketing the property, that was their own. They were holding it for O-3, which was a speculative land venture with no expectation it would be granted. It was sold to another property owner, probably for speculation. US Properties is trying to mandate a use to put themselves in a better position. The original landowner created the problem and purchasers knew what it was. The Planning Commission does have the authority to deny the change of zone request.

Lust confirmed that US Properties does not own the land, and Peo agreed.

Cornelius asked Peo's opinion about the guaranteed access on Highway 2. Peo stated that he is not familiar with the provision that was granted. That is a NDOR decision. He does not know what unrestricted means. It is vague.

Beecham wondered about the particular size for the access. Peo stated that he has not seen the document. It was stated that it was a certain width so that it would not be so narrow that it is not functional. NDOR negotiated right-of-way acquisition to Highway 2 and there were probably some guarantees back.

Beecham referred to the aerial photo and what looks to be a residence on a triangular lot on the lower right. Will did not know when the house was built. It does have access on Portsche Lane. It would not be historic.

Harris noted that the comments from LES talk about grade elevation conflict with the driveway. Would that put any constraints on the proposed alternative use? Will believes that LES is attempting to put everyone on notice that there are facilities in the right-of-way and that any work done needs to take that into consideration. If doing any grading or

cutting, there are standards which require an amount of separation between the grading and the facility. The developer needs to work with LES. Any utility relocation that would be required would be upon the applicant. It is not a prohibitive statement but more of an advisory statement.

Lust posed the question to staff about deferral. Is there any possibility of coming up with conditions that would satisfy staff for a mini-warehouse facility? Or would we be deferring to accomplish nothing? **Marvin Krout, Director of Planning**, stated that it is complicated. We do not know the expectation of the Planning Commission or the neighbors. There is a 50' setback required in the AGR area. It would be very difficult to maintain that kind of setback on an irregular site. If sent back, staff would do their best to come back with a proposal that comes closest to meeting some financial return on this property that makes it a feasible use and deals with neighbors' concerns. But it is a very difficult proposition.

Lust then asked whether staff believes they have exhausted their resources on this particular application. Krout responded that this is a situation where you have acreage residential uses with the potential for more residential. Staff believes there is an obligation to try to protect the ability of this lot and other lots in that area to further subdivide into an urban neighborhood. If you take this step, it will be difficult for the other abutting lots in this area to be attractive enough to warrant that kind of subdivision. He does not foresee that this tract is large enough to create large enough buffers that the Comprehensive Plan calls for. It is going to be very difficult on a small irregular tract to do that as well as any kind of use that is going to generate four or five times more traffic than three residential lots and 10 times more traffic than one residential lot. Mini-warehouse will have semi's that are coming and going, too. He foresees lots of problems. That is why the staff did not foresee an answer that would satisfy the abutting property owners and the developer's needs on this site.

Response by the Applicant

Katt believes it is worthwhile to take the change of zone back to develop a conditional zoning agreement. He agreed that it may be difficult; however, he does not view the concerns of the neighbors that the Commission has heard to be insurmountable. If you think one of the biggest challenges to intensifying residential use is protection against the noise from Highway 2, Katt submitted that a mini-warehouse facility lining Highway 2 would do wonders to minimize the noise intrusion to the residential homes. It's not simply the use, it's the buildings, the structure, the sight sensitivity and the long term impacts. He thinks it is worth the effort to give it a try. It is a pretty important decision. The history of the dynamics of this site, irrespective of how it got to where it is today, is that we have a 3-acre undeveloped parcel on Highway 2 that should be more than it is.

What should it be? No one has said they want to live on a one-acre lot on Highway 2. It is not a realistic land use for that lot. It never was and never will be with Highway 2 being the only public access.

Katt stated that he generally agrees with Rick Peo about the campground. There are levels of discretion, but not the same level of discretion as with the rezoning to H-3. There are certain uses created in the ordinance that are compatible. In the Whitehead case, the inclusion of a use in the ordinance is a per se finding that it is in harmony with the neighborhood. When you create a zoning ordinance with all of these wide varieties or requirements and conditions, the very nature of a multi-layer system of regulations increases the risk of arbitrary and unreasonable and capricious action resulting in an unreasonable requirement. Boiled down, Katt reiterated that an owner of land has the right to expect that no matter what the restrictions, there is a reasonable economic value that he can expect to put to the land. Without a change of zone or special permit, the only permitted use at this point is one house, but that does not appear to be reasonable in the marketplace. Leaving that as the only land use for the owner is unreasonable and arbitrary.

Katt reiterated his request that the Planning Commission defer for four weeks, giving the applicant and the staff a chance to come to some kind of arrangement for the mini-warehouse use.

**CHANGE OF ZONE NO. 13029**

**ACTION BY PLANNING COMMISSION:**

January 8, 2014

Lust moved to deny, seconded by Corr.

Cornelius stated that he was somewhat interested in moving to defer because the arguments that are being made about the existing residential properties are going to apply to this property. The Planning Commission has seen this property a couple of times, and we know it is problematic because of access and because of the shape and because of the marketplace. He is somewhat compelled by the argument that a thoughtful commercial development like multi-storage/mini-warehouse might provide a buffer to the noise from the highway and increase the likelihood of constructive development for this area. He is inclined to want to send this back for more consideration.

Lust stated that she will not recommend deferral because she does not think there is any possibility to reach agreement for mini-warehouse on this site. The current applicant is not even the owner of the property. They purchased knowing it has been difficult to develop. The original owners held it for a use that was contrary to the zoning. The second owner did the same thing. She believes this is zoned AGR because it is

the appropriate zoning for this property, and there really has not been a concerted effort to develop it as residential property. Lust does not think deferring it will accomplish anything. She does not see the mini-warehouses working out.

Corr stated that she will support the denial. She cannot support going to H-3. She could possibly support R-1, as suggested by staff, or O-3 because it is already across Highway 2. But, she cannot support H-3 because we do not like spot zoning. Another hesitation for Corr is the incompatibility with the Comprehensive Plan – knowing it is a guide and perhaps the access issues could be worked out – but she does not believe H-3 is appropriate.

Sunderman agreed with Cornelius. This site has sat there for a long time. He is trying to decide what he wants to see there, but nothing seems to fit. He believes that the mini-warehouses as a buffer for the acreages will work. Access on Highway 2 is a concern. He is not thrilled about H-3. He would also have further questions about conditional zoning on H-3. This is a problematic site, but it deserves someone willing to do something with it. He believes a four-week deferral would be reasonable.

Beecham acknowledged that the Froelich's have done a lot of good for the City. The heartburn for her is the H-3. She does not think deferral will bring anything in H-3 that she thinks is appropriate. She would be open to seeing other approaches to this site.

Motion to deny carried 5-4: Weber, Beecham, Scheer, Corr and Lust voting 'yes'; Cornelius, Sunderman, Hove and Harris voting 'no'. This is a recommendation to the City Council.

**SPECIAL PERMIT NO. 13060**

**ACTION BY PLANNING COMMISSION:**

January 8, 2014

Lust moved to deny, seconded by Scheer.

Corr stated that if the applicant was interested in doing an office building which would provide the buffer to the residential, she might be able to support it. She does not know what else would fit in O-3 if the applicant were interested in pursuing that. Lust suggested that the applicant can file a new application if that is something in which they are interested.

Lust does not think a campground is appropriate for this location. It is the applicant's fallback but it is not appropriate.

Motion to deny carried 7-2: Cornelius, Weber, Beecham, Harris, Scheer, Corr and Lust voting 'yes'; Sunderman and Hove voting 'no'. This is final action, unless appealed to the City Council within 14 days.

**SPECIAL PERMIT NO. 1960A,**  
**AN AMENDMENT TO THE GRANDVIEW HEIGHTS**  
**COMMUNITY UNIT PLAN, ON PROPERTY**  
**GENERALLY LOCATED AT**  
**NORTH 7<sup>TH</sup> STREET, OGDEN/SUPERIOR STREET**  
**AND PINE TREE LANE/HILLTOP ROAD.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

January 8, 2014

Members present: Cornelius, Sunderman, Weber, Hove, Beecham, Harris, Scheer, Corr and Lust.

Staff recommendation: Conditional approval.

There were no ex parte communications disclosed.

Staff presentation: **Tom Cajka of Planning staff** explained that this is an application to amend an existing community unit plan (CUP) by adding two dwelling units, for total of 55 dwelling units, and to change Pine Tree Lane from a public street to a private street. The associated Street & Alley Vacation No. 13004 was approved on the Consent Agenda today.

The property is bounded by Superior Street, 14<sup>th</sup> Street, 7<sup>th</sup> Street and Interstate 80. Pine Tree Lane is a cul-de-sac and currently a gravel street but it is a city street in the city limits. Planning and Public Works both have no issues to change it to a private street. The applicant is also requesting a waiver to not meet city design standards for a private street, but rather a rural cross-section road with no curb and gutter, asphalt paved with sidewalk on one side of the street. Planning and Public Works are also agreeable to this waiver.

The applicant has requested a waiver on the timing of improving 7<sup>th</sup> Street and Ogden Road. The subdivision ordinance requires that whenever you come in with a final plat, you are required to bring streets to city standards within your development, and any streets that abut your development. For example, when Lot 14 would come in to subdivide and wants to develop a couple of lots, they would be required to pave that section of 7<sup>th</sup> Street abutting their property. The applicant is asking that the timing be different – not tied to a final plat, but that there would be a paving district and the property owners would sign an agreement to not protest a district. At the time when the city would want the paving to happen, it would go forward through a district. Staff is agreeable to that waiver for 7<sup>th</sup> Street because the area of 7<sup>th</sup> Street from Ogden Road is about 2,000 feet. The cost would be spread out amongst seven lots – four existing and the new plat for three lots. Planning and Public Works believe the paving district is a more equitable distribution of the cost for paving 7<sup>th</sup> Street.

Cajka went on to explain that the applicant is also asking for the same paving waiver on Ogden Road. Planning and Public Works do not agree to the waiver on Ogden Road because the distance is much shorter, approximately 400 feet. The costs of paving Ogden Road could be spread out amongst all nine lots for the 400 feet, which would not be an undue burden on those lots.

In summary, Cajka advised that the staff agrees with everything being requested, except the waiver of paving on Ogden Road.

Corr inquired whether Pine Tree Lane as a private roadway will be built so that at some point in the future the curbs and gutters could go in, or is that just negated? Cajka stated that it is private and the applicant wants it to remain with no curb and gutter. **Steve Henrichsen of Planning staff** approached and offered that Pine Tree Lane is a local street. The term RUTS refers to arterial streets. As a local street, the developer could build to this standard and it could stay that way perpetually. As a private roadway, they could add curbs and gutters later at their cost. This area consists of a lot of large lots and trees and the developer desires that it remain more rural in character, even though within the city limits with urban zoning.

Sunderman sought clarification on the North 7<sup>th</sup> Street paving district and the requirement that more than 50% of the property owners must sign the petition. Cajka agreed that that could be a problem in the future. The city is in favor of the paving district. The property owner to the west is not part of the CUP so they could object to the paving district.

Proponents

**1. Kent Seacrest** appeared on behalf of the **Grandview Heights neighborhood** of 16 dwellings. It started out in the county as an acreage and is now annexed and one of the most unique and quality areas. One of the unique attributes of this area is the massive number of trees—one of the most dense in Lincoln. The city annexed this area ten years ago, but he has been working with this neighborhood for 20 years. They knew the day of annexation was coming and that there would be change. This neighborhood has master planned and worked together on covenants and lot sizes that will be smaller than current sizes. The trick has been how to master plan to preserve the trees, and with 16 different owners, how to allow development to occur on one 5-acre site and not be at the traditional urban standard of having 15 homes on 5 acres, while the rest were living their quality of life on 5-acre tracts. This density pattern was approved in 2003.

Seacrest also pointed out that the 2040 Comprehensive Plan talks about infill and quality, but yet do it in a way to preserve, enhance and protect the existing homes. This is an application to add two lots to the CUP and turn Pine Tree Lane into a private roadway so the city does not have to maintain a gravel street. This allows a rural asphalt topping but keeps the rural ditches so that they do not have to remove trees. They do not want to pave on a piecemeal basis such as at the time of final plat.

In that regard, Seacrest advised that the developer and the neighborhood felt that 7<sup>th</sup> Street and Ogden Road were the same. This only abuts half the site. If we are required to pave it all in sections, we're giving the person on the other side a free ride. The applicant and the neighborhood agree that everyone should have to contribute. Seacrest then submitted a proposed motion to amend/compromise to build a portion of Ogden Road to urban standards as soon as six of the nine lots get built. Then it would connect to Superior Street. He is requesting that the final three lots be treated like the 7<sup>th</sup> Street lots and be able to pave on an assessment basis so they are not forced to pave and bear the whole cost of that section. The motion to amend would allow the neighborhood to work together to continue to master plan.

Lust clarified that the applicant was requesting the paving district for the entire length of Ogden Road, but the motion to amend suggests that just the little piece in the southwest corner have a paving district, allowing the three lots to be treated like the rest of 7<sup>th</sup> Street. Seacrest agreed, stating that the six lots on the cul-de-sac would have urban streets out to the Superior Street right-of-way.

Beecham wondered what happens if the person across the street does not agree to the assessment district. Seacrest suggested that the district does not happen the first time the lots get split. This neighborhood has survived a long time with gravel roads and that's part of its character. 7<sup>th</sup> Street used to be an arterial street going over I-80. The bridge was taken out and now 7<sup>th</sup> Street is one of the quietest little streets. For awhile you will see the neighborhood be very content living on gravel because that is part of the characteristic of the acreage approach. If someone comes in to final plat, that owner would have to get the petition signed. He does not believe the city is asking for it to be paved today, but we want to be smart and think ahead. Whoever final plats signs the petition and it prevents them from protesting.

Corr asked whether the applicant has had any discussion with the owners concerning the paving district. Seacrest stated that the neighbors will want to defer as long as possible because the cost of urban streets will make the lots hard to develop. Right now, the neighbors will not be dying to pave that street. They are willing and understand when they create additional lots they have to agree to not protest the creation of the district.

Corr wondered more about the neighbors across the street and the paving district. Seacrest stated that he did talk to them. That owner does not want to see it paved today. His first choice would be to ask the city to do a rural section private roadway on North 7<sup>th</sup> Street and let it be asphalt. There is not a lot of traffic up here. He is also

willing to pay his fair share. At this stage, we just want to get Pine Tree Lane because that will be the first subdivision. If the city creates the special assessment district, they would have to agree to not protest because it does take 51% to create the district.

Support

**1. Walter Meintka**, 921 Pine Tree Lane, testified in support on behalf of his wife and his family. The area is so unique. This morning, 23 turkeys came to eat the seeds that the birds dropped. You know the history. You know about the military academy. This is the legacy of his family. There is no way in the world we would ever pave Ogden Road. He wants to keep the composition of this area. He has lived there for over 60 years and he appreciates the environment. It is so close to Lincoln but yet hopefully it will still be kept in its current environment. There are beautiful sculptures in the area. He appealed to the Commission to support this amendment.

There was no testimony in opposition.

Staff questions

Cornelius asked for the staff's position on the motion to amend. Cajka stated that the staff position remains the same. The staff does not agree to the motion to amend. The current outlot is more of an urban flavor than the rest – more lots in a smaller area – and when anything is platted, the whole outlot has to come in with the final plat. The subdivision ordinance would then trigger the paving requirement. It is a different situation than 7<sup>th</sup> Street. The cost would be less and we have a little more traffic on that area so the urban standard is more desirable. There is a property owner on the south that would get the paving free, but we have that situation all around Lincoln. The first developer is required to build the street, so this would not be an unusual situation.

Lust confirmed that according to the staff recommendation, if one lot is sold, then Ogden Road has to be paved. Cajka explained that right now, it is an outlot consisting of open space. They would come back in with a new final plat that would create one or more lots. With that final plat, the ordinance requires that the street be brought up to urban standards.

Hove asked if that applies to all of Ogden Road. Cajka stated that it applies to all of Ogden Road up to 7<sup>th</sup> Street. With 7<sup>th</sup> Street, we are giving them a little bit of a break because the subdivision ordinance would also require paving a portion of 7<sup>th</sup> Street with a final plat.

Weber inquired whether the two lots at the corner exit onto Ogden Road. Cajka pointed out that the lots shown on the map do not exist today. When the corner lot is developed, they could have access either onto 7<sup>th</sup> Street or Ogden Road.

Lust noted that Ogden Road is not a through street to Superior Street, but it runs into 7<sup>th</sup> Street, not crossing Superior Street. Cajka advised that Ogden Road T's into Superior, thus from 7<sup>th</sup> Street to Superior Street is the sole length of Ogden Road. Most of Ogden Road is gravel now, except for a short segment coming off of Superior Street that is already concrete. The developer would be required to build the rest from the cul-de-sac back to 7<sup>th</sup> Street.

Scheer then clarified the proposed amendment. When that outlot would be replatted, and the cul-de-sac would be built to urban standards, they would pave from the south edge of the cul-de-sac on Ogden Road back to Superior Street. From Superior Street to the end of the cul-de-sac would all be paved, but not Ogden Road from where the cul-de-sac penetrates into the lots to 7<sup>th</sup> Street. If the westernmost lot can have access to 7<sup>th</sup> Street and if Lot 25 could have access to the cul-de-sac, we have one lot for which we're paving that stretch of Ogden Road. The cul-de-sac from the north edge all the way down to Superior Street would be a continuous paved route.

Sunderman observed that we're talking about gravel on N. 7<sup>th</sup> Street because the area around it is rural in character. Sunderman agrees with staff because it is consistent with what we do in other parts of the city. The lots abutting the area in question are urban in nature and it is urban in nature to the south. He supports the staff's position on Ogden Road.

Response by the Applicant

Seacrest suggested that the lots being created on Ogden Road are not being created more urban in nature. This property is doing some clustering in order to preserve trees that run up the major drainage way. In order to preserve the tree mass running through the property, they are allowing density to go into part of the property. It is rural acreage density – it is not an urban flavor. The whole cul-de-sac would be curb and gutter. Anytime any one of the 9 lots is created, it triggers the whole pavement. Those on urban streets should continue to be on urban streets, but the other three lots will be on a lower density type situation and they should not require immediate curb and gutter.

Corr inquired as to the average lot size in the development. Seacrest stated that it exceeds .9 acre. **Mark Palmer of Olsson Associates** clarified that the lots in question are 120' wide by 200' deep, twice the size of a standard residential lot.

Hove confirmed that the access on Lots 23 and 24 would be Ogden Road. Seacrest agreed. Right now, Lot 23 could go out on either street, Ogden or the cul-de-sac. If any one of the six lots on the cul-de-sac get final platted, it triggers the pavement of the yellow area shown on the map to urban standards.

Cornelius asked if the cul-de-sac is included in the urban standard paving. Seacrest responded, yes. We are just trying to get our fair share so that everyone pays their fair share of the street and not stick it all to one property owner.

**Rick Peo of City Law Department** approached and suggested that there needs to be an amendment to the conditions of approval pertaining to an agreement at the time of final plat that the lot owners would not protest creation of a paving district. That is not currently in the conditions of approval and needs to be added. He would draft the condition prior to City Council (*Editorial note: It was later determined that the Planning Commission action is final action, unless appealed to the City Council*).

Peo further explained that if the waiver of paving for North 7<sup>th</sup> Street is approved, it is actually a deferral until such time as there are proper petitions to pave the road. That would be the intent. The staff report indicates that we are allowing it to be paved at the time of paving district as opposed to time of final plat, and the criteria is that the property owners will either agree to sign the petition or agree not to protest.

**ACTION BY PLANNING COMMISSION:**

January 8, 2014

Cornelius moved approval, with conditions, subject to language approved by City Law Department regarding the issue of the paving district, along with the proposed amendments by the applicant, seconded by Sunderman.

Cornelius understands that there is a bright line around the outlot; however, more holistically, the boundary between urban density and rural density seems somewhat fuzzy and there is continuity between 7<sup>th</sup> Street and Ogden Road. He believes we can safely include that in the paving district requirements to get what the city needs.

Sunderman commented that the size of the lots does make a difference to him.

Lust stated that she will support the motion, as amended by the applicant. It makes sense to include these three lots in a paving district just because of the unique nature of the general neighborhood we are dealing with.

Motion for conditional approval, with amendments, carried 9-0: Cornelius, Sunderman, Weber, Hove, Beecham, Harris, Scheer, Corr and Lust voting 'yes'. (*Editorial note: This application was called as a recommendation to the City Council; however, after the meeting, it was determined by staff and the City Law Department that this is final action by the Planning Commission, unless appealed to the City Council within 14 days. The legal ad and the notification letters correctly stated this to be final action by the Planning Commission.*)

**APPEAL OF THE DENIAL OF ADMINISTRATIVE AMENDMENT NO. 13075,  
TO SPECIAL PERMIT NO. 07041,  
FOX TRAIL ESTATES COMMUNITY UNIT PLAN,  
ON PROPERTY GENERALLY LOCATED  
AT S.W. 56<sup>TH</sup> STREET AND W. OLD CHENEY ROAD.  
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:**

January 8, 2014

Members present: Cornelius, Sunderman, Weber, Hove, Beecham, Harris, Scheer, Corr and Lust.

Staff recommendation: Approval.

There were no ex parte communications disclosed.

Staff presentation: **Sara Hartzell of Planning staff** explained that this is a very unique application because the Planning Commission has not yet seen an appeal to an administrative amendment. The administrative amendment is either approved or denied by the Planning Director, with appeal to the Planning Commission.

The question then becomes, how can the staff recommend approval of a denied administrative amendment? Hartzell explained that the CUP area was originally approved in 2007, and covers the general area of 5 lots that were created as an AG CUP, with four of them along the roadway and there is an additional lot to the north. The rest of the land is broken up into outlots, including the streets. When the plan was originally approved, there were setback reductions to the residential lots. The outlots, however, did not have setbacks defined because at the time they were not labeled for buildings.

The owner of Outlot C submitted an administrative amendment to add language that would allow buildings and did build according to the AG setbacks.

The owner of Outlot D then applied for a building permit to also erect an accessory building on the outlot. During the inspection, it was noted that the building encroached into the 60' side yard setback. The applicant/owner submitted an administrative amendment on all outlots in the CUP to reduce the side yard setback to 10', 25' on the front and 30' on the back. That application was reviewed and initially there were no real concerns; however, the Planning Department informed all of the owners in the CUP and there was some concern expressed by other property owners indicating that there was a covenant requiring a 25' setback from the side yard lot lines. That administrative amendment was denied based on those factors.

The owner of Outlot D then appealed the denial and amended the request so that it would only reduce the setback that they needed, which was the north side yard setback where their building was being built. All other lots were removed from the request. After this was done, they had a lot of conversations with surrounding landowners to talk about what would

be acceptable and four of the original five landowners ended up signing a letter of support. After further conversation, the owner of Outlot C also agreed to go along if he could also have the reduction to his side yard setbacks as well.

Thus the Planning Department recommends approval of the reduction of the setback on the north and south side yards of Outlot C and the north side yard of Outlot D, Fox Trail Estates CUP, from 60' to 10'.

Proponents

1. **Nataliya Chorna**, 6509 S. 31<sup>st</sup> Street, the applicant and owner of Outlot D, testified that everything has happened only because there was a mistake made by the Building & Safety Department when they issued her a building permit. That is why we are here. She has spoken with other neighbors and they are in support.

Support

1. **Dana Wolf**, 6255 SW 58<sup>th</sup> Street, which is the far northwest lot, testified in support. His property is directly across the street from Outlot C, the individual most affected. Initially, the neighbors in the area were not real happy with what happened because the barn went up fairly quickly and it became obvious that it was well within the setback limits and in violation. He believes there were some mis-communications. A number of the property owners signed a letter in opposition to the amendment because it changed everyone's setbacks. If there is not an amendment to change the setback on Outlot D, then they've got a large barn that will have to be taken down and moved 50 feet. After speaking with the owners of Outlot D, and speaking with the other neighbors, they are all in agreement to support this application for Outlots C and D, with the exception of the owner of Outlot C. The barn remains in violation of the covenants but most of the neighbors didn't think it worthwhile to make them move the entire barn, so the neighbors agreed to sign the letter in support.

Opposition

1. **Todd Magnuson**, 6180 S.W. 58<sup>th</sup> Street, the owner of Outlot C and President of the Homeowners Association, stated that he is testifying "somewhat" in opposition. He believes there has been some misunderstanding on his position. This does clearly violate the covenants for the 25' setback for the residences. Violating the covenants of the 25' setback is the issue. The setback on Outlots C and D is 60', not 25'. That is pursuant to County regulations and not the covenants. His biggest concern about the barn is the effect on the value of his residential property. The barn almost makes it look like a commercial area. He has a tree line 25' from the property line which is shaded 6 hours a day and he does not believe it will grow being so close to the barn. Magnuson has always opposed

this amendment but he was told that the Planning Department would most likely recommend approval, so he decided to get the setbacks reduced on his property as well in case it does pass. That is the only reason he has agreed to be a part of this application.

Staff questions

Lust pointed out that nothing the Commission does today enforces the covenants. Hartzell agreed because the covenants are private.

Response by the Applicant

Chorna does not believe this violates anything. All covenants relate to the 3-acre "lots". The covenants do not say anything specific about the "outlots". Building & Safety told her that the covenants do not involve their outlot and different rules would apply. Chorna apologized to neighbors for what has happened. The mistake was identified and she spoke with Building & Safety immediately. This was the first experience she has had with land development.

**ACTION BY PLANNING COMMISSION:**

January 8, 2014

Cornelius moved approval, seconded by Hove.

Cornelius pointed out that the covenants are not a matter for this body to consider. We have a recommendation from staff which seems reasonable. What we are doing does not impinge upon the rights of the homeowners association to enforce those covenants and it does not relieve any of the neighbors from abiding by them.

Lust stated that she will support the application. She is impressed by the hard work that goes into this type of process with staff and other agencies.

Motion for approval carried 9-0: Cornelius, Sunderman, Weber, Hove, Beecham, Harris, Scheer, Corr and Lust voting 'yes'. This is final action unless appealed to the City Council within 14 days.

It was announced that the workshop on "reFORM" scheduled to occur immediately upon adjournment of this meeting is postponed until January 22, 2014.

There being no further business, the meeting was adjourned at 4:00 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on January 22, 2014.