MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, April 9, 2008, 1:30 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska
MEMBERS IN ATTENDANCE:	Leirion Gaylor Baird, Gene Carroll, Michael Cornelius, Dick Esseks, Wendy Francis, Roger Larson, Lynn Sunderman and Tommy Taylor. Marvin Krout, Ray Hill, Mike DeKalb, Ed Zimmer, Brian Will, Tom Cajka, Sara Hartzell, Christy Eichorn, Jean Preister and Teresa McKinstry of the Planning Department; media and other interested citizens.
STATED PURPOSE OF MEETING:	Regular Planning Commission Meeting

Chair Gene Carroll called the meeting to order and requested a motion approving the minutes for the regular meeting held March 26, 2008. Motion for approval made by Sunderman, seconded by Francis and carried 6-0: Carroll, Esseks, Francis, Larson, Sunderman and Taylor voting 'yes'; Gaylor Baird and Cornelius abstaining.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: April 9, 2008

Members present: Gaylor Baird, Carroll, Cornelius, Esseks, Francis, Larson, Sunderman and Taylor.

The Consent Agenda consisted of the following items: **COMPREHENSIVE PLAN CONFORMANCE NO. 08003, COMPREHENSIVE PLAN CONFORMANCE NO. 08004, CHANGE OF ZONE NO. 2751B and CHANGE OF ZONE NO. 08011.**

Ex Parte Communications: None

Item No. 1.2, Comprehensive Plan Conformance No. 08004, was removed from the Consent Agenda and scheduled for separate public hearing.

Taylor moved to approve the remaining Consent Agenda, seconded by Larson and carried 8-0: Gaylor Baird, Carroll, Cornelius, Esseks, Francis, Larson, Sunderman and Taylor voting 'yes'.

COMPREHENSIVE PLAN CONFORMANCE NO. 08004
PROPOSED AMENDMENT TO THE
2007-08 - 2012-13 CAPITAL IMPROVEMENTS PROGRAM
INVOLVING THE RECONSTRUCTION OF THE
BOOSALIS TRAIL BETWEEN 17TH AND BURNHAM STREETS
AND 27TH STREET AND HIGHWAY 2.
PUBLIC HEARING BEFORE PLANNING COMMISSION: April 9, 2008

Members present: Larson, Taylor, Sunderman, Esseks, Gaylor Baird, Cornelius, Francis and Carroll.

Ex Parte Communications: None.

This application was removed from the Consent Agenda at the request of Commissioner Baylor Baird.

Staff presentation: **Sara Hartzell of Planning staff** explained the Capital Improvements Program process, which is done on an annual basis covering a 6-year span of capital improvements in the city including real estate, buildings, reconstruction of building, reconstruction of a road, etc. According to the City Charter, the City Council cannot enter into any agreements on these capital improvements until the Planning Commission has determined conformance with the Comprehensive Plan.

In between times, if we have a project that comes forward that is not in the current CIP and needs to be begun before the next CIP begins, we bring it forward as a special application. In this situation, grant funding was obtained after the last CIP was found to be in conformance and the Parks Department needs to begin this project before the next CIP would be approved due to the grant funding.

Proponents

1. Terry Genrich of Parks & Recreation appeared to answer questions.

Gaylor Baird requested clarification of the duration and total project cost. Genrich explained that it is a two-phase project with maximum grant of $150,000. Therefore, it is being split into two phases because the total project is a little over $300,000. Parks is also providing some in-kind match.

Gaylor Baird wondered what would be accomplished in year one if they do not get the granting funding for the second year. Genrich stated that the funding is actually to complete that phase of the project, i.e. 17th and Burnham to 27th and Hwy 2. They will not go forward with phase two until they have the funding to complete phase two.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION: April 9, 2008

Larson moved a finding of conformance, seconded by Gaylor Baird and carried 8-0: Larson, Taylor, Sunderman, Esseks, Gaylor Baird, Cornelius, Francis and Carroll voting 'yes'.

CHANGE OF ZONE NO. 08012 HP,
TO DESIGNATE THE LEWIS SYFORD HOUSE
LOCATED AT 700 N. 16TH STREET
AS A HISTORIC LANDMARK
and
CHANGE OF ZONE NO. 08013 HP
TO DESIGNATE THE SIGMA CHI FRATERNITY HOUSE
LOCATED AT 1510 VINE STREET
AS A HISTORIC LANDMARK
and
CHANGE OF ZONE NO. 08014 HP
TO DESIGNATE THE PHI KAPPA PSI FRATERNITY HOUSE
LOCATED AT 1548 S STREET
AS A HISTORIC LANDMARK.
PUBLIC HEARING BEFORE PLANNING COMMISSION: April 9, 2008

Members present: Larson, Taylor, Sunderman, Esseks, Gaylor Baird, Cornelius, Francis and Carroll.

Ex Parte Communications: None.

Staff presentation: **Ed Zimmer of the Planning Department** gave the presentation on these three different applications and three different properties, all applying for landmark designation under Chapter 27.57 of the zoning code. Each of these properties are seeking designation for the purpose of fund-raising and tax deductibility.

Change of Zone No. 08012 HP, involves the Lewis Syford house located at 700 N. 16th Street, owned by Nebraska State Historical Society Foundation, which intends to convey this property to others. The landmark designation will add protection for the property in the future. There are two outbuildings in the rear of the property. This property is important and unique and is on the National Register of Historic Places.

Change of Zone No. 08013 HP, involves the Sigma Chi Fraternity House located at 1510 Vine Street, and is typical of what we have seen in the Greek Row area of fraternity and sorority houses. This whole area on R Street was designated in the National Register of Historic Places in 1977, giving it recognition and a certain measure of protection, but it does not give additional city protection without the landmark designation. The Sigma Chi house was built in 1931, with additions in 1946 and l965.

Change of Zone No. 08014 HP, involves the Phi Kappa Psi Fraternity House located at 1548 S Street. It was built in 1917, the earliest by several years of any of the Greek houses built for Greek Chapter houses in the proximity of the University. It was listed in the National Register of Historic Places in 1977. It is a red brick house which has been painted white. It has had some additions, but the 1917 property is still visible and in place with mantel pieces and the main staircase on the interior.

All of these landmarks are being recommended by the Historic Preservation Commission.

Esseks asked Zimmer to summarize the advantage to the public and community at large that is achieved by landmark designations. Zimmer suggested that it recognizes and celebrates a unique element of Lincoln's heritage, and by cooperating with these houses and their fund-raising efforts, the landmark designation gives these properties a level of supervision.

There was no testimony in opposition.

CHANGE OF ZONE NO. 08012 HP
ACTION BY PLANNING COMMISSION: April 9, 2008

Larson moved approval, seconded by Francis.

Carroll believes the landmark designation is important from a planning standpoint and preserving the city's landmarks gives good status to the historic part of the city. He appreciates that the city is helping the foundations to do this.

Motion for approval carried 8-0: Larson, Taylor, Sunderman, Esseks, Gaylor Baird, Cornelius, Francis and Carroll voting 'yes'. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 08013 HP
ACTION BY PLANNING COMMISSION: April 9, 2008

Larson moved approval, seconded by Francis.

Carroll believes the landmark designation is important from a planning standpoint and preserving the city's landmarks gives good status to the historic part of the city. He appreciates that the city is helping the foundations to do this.

Motion for approval carried 8-0: Larson, Taylor, Sunderman, Esseks, Gaylor Baird, Cornelius, Francis and Carroll voting 'yes'. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 08014 HP
ACTION BY PLANNING COMMISSION: April 9, 2008

Larson moved approval, seconded by Francis.

Carroll believes the landmark designation is important from a planning standpoint and preserving the city's landmarks gives good status to the historic part of the city. He appreciates that the city is helping the foundations to do this.

Motion for approval carried 8-0: Larson, Taylor, Sunderman, Esseks, Gaylor Baird, Cornelius, Francis and Carroll voting 'yes'. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 08010,
HUB HALL COMMERCIAL CENTER
PLANNED UNIT DEVELOPMENT
ON PROPERTY GENERALLY LOCATED AT
N.W. 48TH STREET AND W. HOLDREGE STREET.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: April 9, 2008

Members present: Larson, Taylor, Sunderman, Esseks, Gaylor Baird, Cornelius, Francis and Carroll.

Ex Parte Communications: Esseks reported that he drove to the property on April 8, 2008; he viewed the Ashley Heights commercial area and a set of stores further north on the west side of N.W. 48th Street. Sunderman disclosed that he had a short conversation with Mark Hunzeker before this meeting.

Staff presentation: **Tom Cajka of Planning staff** stated that the staff went back and did some more research on the types of uses being allowed on the west side of the street north of Holdrege and the trip counts that the developer had provided. The staff would agree to amend Condition #1 on this proposal to change the trip count from maximum of 1,965 to 2,800. The staff did continue discussions with the applicant about a R-T PUD with additional uses being allowed, as opposed to the proposed B-2 PUD. The additional uses considered if this were a R-T PUD are drive-thru bank and sit-down restaurants, and townhomes or multi-family residential.

Esseks noted that the staff report delineates a number of reasons for recommending denial. Esseks pointed out that the Comprehensive Plan calls for locating commercial areas between intersections, not at intersections. This proposal appears to be right at the intersection with Holdrege Street. The Plan also calls for no direct access onto the major roads within a certain distance from an intersection. Cajka advised that Holdrege at that

location is a collector street–not considered a major road. Holdrege is only considered a major street between N.W. 48th and N.W. 56th. The staff remains opposed to access onto N.W. 48th. In this case, Holdrege is not considered a major street at this location. The staff is agreeable to some limited commercial in this area. With R-T, the impacts would be minimal.

Carroll confirmed that the staff remains opposed to the B-2, but if the proposal is changed to R-T PUD with increase in the daily trips to 2,800 and 60,000 square feet, the staff would recommend approval. Cajka agreed, except that the trip cap would go away with R-T.

Esseks inquired about the location of the closest sewer line. Cajka indicated that the sewer line is located in the residential area to the north. There would be no problem with sizing of the sewer for this development.

Proponents

1. Hub Hall, the applicant, reiterated the request for change of zone from R-3 to B-2. He believes that this is an ideal location for a shopping center and he has had some interest from some people about having a business there, but it has only been conversation at this point in time.

2. Mark Hunzeker appeared on behalf of Hub Hall, the applicant. He sought to clarify what he believes to have been some confusion at the last meeting about what was approved on the west side versus what is recommended for approval by the staff on this site. He clarified that there is no trip cap on the west side. He also submitted that the uses that are presumably allowable on the west side will generate traffic which exceeds the number of trips that the staff had originally recommended on this site. That is why the staff is raising the trip cap on this site to 2,800.

Hunzeker believes that this site is a better site for the kinds of neighborhood shopping center uses than any other site available out there simply because it is on the east side of the street–the going home side for most people. It is directly accessible to the residential area to the north by foot – we talk a lot about pedestrian access – this area is directly accessible by sidewalk and bike path. It is at the very edge of what will be the residential development in that area. We have spent the last 30 years attempting to encourage development in this area. In the late 1970's and early 1980's, the city spent several million dollars extending a sewer underneath the airport to serve this area. It took until Ashley Heights was developed for anyone to tap into that sewer. Some other areas are using that sewer. This site is at the far south end of the watershed that can use that sewer. All the property on the west side of N.W. 48th Street that is being discussed as being the “R-T PUD across the street” and everything south of it has to be served with sewer from I-80.

That area has to sewer all the way down to a trunk line that is south of West O Street. He believes that the area to the west will develop from south to north, starting at the interchange and moving north, and the commercial uses will be oriented primarily toward the interstate–not to the neighborhood.

Hunzeker also pointed out that there is very little R-T zoning "out there" – and it doesn't really apply to neighborhood shopping center type uses – that is why there are exceptions that have to be made for uses like a Walgreens. The buildings that are permissible in the R-T district are too small for that type of use.

Hunzeker also observed that virtually every new development incorporates B-2 zoning – e.g. North 40 at Adams and 84th Street, where there will be approximately 53 residential lots along the interface between neighborhood commercial, and the single family residential has a 40' setback. The 50' setback being proposed in this PUD is "standard" in those kinds of situations where we interface residential and commercial. There is nothing unusual about it.

Hunzeker agreed that the applicant has talked compromise with staff and has offered to go from 81,000 sq. ft. down to 70,000 sq. ft. The applicant will also accept a trip cap (even though the other side doesn't have one) at 4,400 cars per day. In addition, the applicant would agree to a restriction on the use of the buildings in the area to the north of the proposed roadway to be no more than 12,000 sq. ft. and that they be restricted to office and retail uses. Hunzeker submitted proposed amendments as follows:

1. Amend Condition No. 1 by deleting "60,000" and insert "70,000" in lieu thereof, and delete "1,965" and insert "4,400" in lieu thereof.

2. In the next to last paragraph of Condition No. 3 on page 9 of the Staff Report, delete the words "to Northwest 48th Street and" and at the end of that paragraph, add the following language: "<u>and construct the access to Northwest 48th Street with a 'pork chop' island to assure right-in, right-out access only</u>".

3. Delete paragraph 4.1.10, and insert the following in lieu thereof: <u>Uses of buildings in the area north of the east/west private roadway shall be restricted to office/retail uses.</u>

The amendment to Condition #2 allows the right-in, right-out at N.W. 48th Street.

The amendment to Condition #3 deletes the requirement that they not have access to N.W. 48th and allows for the uses of buildings in the area to the north be restricted to office and retail as opposed to restaurant and the variety of other uses available under the B-2 district. The more intense traffic uses would be further away from the residential. Hunzeker also agreed that the Planning Commission could restrict the size of these buildings to 12,000 sq. ft.

Hunzeker urged that this is a project that should be approved. The neighborhood in Airpark is in favor with no opposition other than staff.

It was confirmed that the access on N.W. 48th is a little over 600 feet north of Holdrege, about 1/8th mile. For example, Hunzeker pointed out that the access to the Walgreens just west of 27th & Pine Lake Road is about 330 feet west of 27th Street; the right-in, right-out for famous Dave's is 550 feet east of the intersection; the access for Red Robin is 300 feet east of 27th Street. Hunzeker also pointed out that the applicant on the west side did not propose an access to N.W. 48th. There was never an argument or decision about that access on the PUD proposal for the west side. Therefore, Hunzeker disagrees that it is inconsistent to allow this access.

Esseks inquired how the right-in, right-out is enforced. Hunzeker advised that it is enforced by the way it is constructed with a pork chop median, which would be part of the access built by the developer.

Carroll inquired about the type of uses that would require 4,400 trips. Hunzeker suggested that the staff's estimate of number of trips overall is probably a little light. For example, if you were fortunate enough to attract a drive-thru bank, that use would generate somewhere near 1,300 to 1,400 trips per day. If you are even more fortunate and able to attract a drug store with a drive-thru, that will generate 1,500 to 1,600 cars per day. With those two uses, taking up maybe 20,000 sq. ft. total, you have gone beyond the number proposed by staff. A fast food restaurant adds another 1,000. If you have the rest of the office, dry-cleaner, small retailer, hardware store, etc., you will be at that 4,400 per day, which isn't very much. Hunzeker submitted that 70,000 square feet on 13 acres is a very low intensity use. It will interface very well with residential, as has been approved all over town with more square footage and equal or smaller setbacks from single family residential.

Carroll inquired whether the 12,000 sq. ft. buildings would be two-story with retail underneath. Hunzeker stated that these buildings are not yet designed but the potential height maximum in B-2 is 45', which they would never do for a 12,000 sq. ft. building. They would likely be two-story buildings.

Gaylor Baird inquired what kind of process the applicant went through to get public input. Hunzeker advised that the developer had a meeting with the Board of the Arnold Heights Neighborhood Association. They mailed invitations to all of the owners within Hub Hall

Heights and those within the first tier of the Ashley Heights development. There were probably 12 people who attended the meeting. There was one owner who expressed some reservations about this project – he wanted to be sure that the bike path would be at least 50 feet away from his back yard (which they agreed), and that there would do some berming and extra landscaping and/or a fence (if he desires a fence). The developer assured the property owner that the applicant would work out a specific landscape plan with him before this goes to the City Council. This owner then retracted his objection. Hunzeker also acknowledged opposition from one of the owners of the commercial development in Ashley Heights.

In terms of connectivity, Esseks inquired whether there is an easement going north so that people can walk from the residential area to this commercial area. Hunzeker showed on the plan a street stub that is preliminarily platted. The proposal is not to dedicate that as a street but as a public access easement for a sidewalk/bike path to connect to the bike path running through the northern setback to the property.

Esseks noted that the Ashley Heights commercial area has some good buffers and he believes that this development will need to have some really good screening. However, with adequate screening and berms, it appears reasonable. Otherwise it is not. Hunzeker agreed. That is partly why the B-2 district has a required standard for landscaping and screening between those incompatible land uses. He believes that standard is a screen that has 60% opacity from the ground level to a height of 10 feet. He believes this provides a good, green look for those back yards of the homeowners as well as a nice pleasant side yard where the bike trail is located headed to the shopping center.

3. Mike Hoelscher, 1730 N.W. 46th in Hub Hall Heights, testified in support. He disagrees that the Ashley Heights commercial area is adequate for this neighborhood. Airpark has been perceived as slow growth outside of Lincoln and there is a perception of not being a part of Lincoln. Even the additional commercial coming to the Ashley Heights center is still not enough commercial. Just last night, he left the area to use a bank. More people are leaving the area and not using the commercial area in Ashley Heights because there is not an adequate amount. It is going to take a long time for the area on the west side of N.W. 48th to develop. He believes it would help the Ashley Heights Commercial Center if there were more neighborhood services provided in the area.

There was no testimony in opposition.

Staff response: Cajka advised that the staff does not agree with the applicant's proposed amendments. The limitation on the size of the buildings does not include the area to the south. The uses allowed would be any use in the B-2 district, generating more traffic. The proposed trip cap of 4,400 is still higher than what staff is calculating on the west side. It is a lot more intensive commercial use that will generate more traffic.

Esseks thinks a Walgreens makes a lot of sense. Where can he put the Walgreens? Cajka suggested that a Walgreens could be located in the R-T zoning as long as it does not have a drive-thru.

Response by the Applicant:

Hunzeker asked the Commission to think about the last time they saw a Walgreens built without a drive-thru.

ACTION BY PLANNING COMMISSION: April 9, 2008

Larson moved approval, with conditions as amended by applicant, seconded by Francis.

Esseks requested the maker accept a friendly amendment to limit the buildings adjacent to the residential area to 12,000 sq. ft. The maker of the motion and the second agreed.

Esseks commented that the applicant has gone to great lengths to make this more suitable for the area with the downsizing, and it looks as though the stickler between the applicant and the staff is the possibility of a Walgreens-type. He believes the drive-thru's are very valuable, and that it would be useful in this development. Esseks will vote in favor of this compromise.

Carroll moved to amend to not allow the right-in, right-out access on N.W. 48th Street, seconded by Cornelius.

Carroll believes that initially, the applicant for the PUD on the west side wanted the same type of access, so he wants to be consistent to say it should not be allowed on either side. Public Works does not want that access there because of traffic and other conditions.

Esseks does not understand how they would then get access to this property for the retail and office uses. Carroll suggested that it would have to come on Holdrege Street and work through the housing development. Esseks noted that Holdrege is now a gravel road. He does not want to encourage a lot of retail traffic going through a residential area. Carroll reiterated that the development on the west side was restricted and must use Holdrege Street to go into their development. However, Esseks observed that the development on the east side would be B-2 zoning.

Marvin Krout, Director of Planning, approached the Commission at this time. He clarified that the Planning staff has discussed a configuration for commercial that was of lesser size and had right turn in and out only onto N.W. 48th, and Public Works is opposed to having that access. We talked about reconfiguring that parcel of land so that it would be somewhat larger and it would have full access at the standard 1/4 mile spacing for full access to N.W. 48th Street. There would be full movements at that location and no other turn lane from that 1/4 mile point down to Holdrege. Therefore, there is access to N.W. 48th

but it is full access in conformance with the city's design standards. Because it was a larger parcel, we came up with a less intense amount of square footage of commercial, hoping to encourage mixed use with residential uses on the remainder of that tract.

Esseks noted that the applicant has cited relatively recent examples along Pine Lake Road where it looks as though the 1/4 mile standard has not been used. Krout's response was that since he has been the Director, Public Works has maintained the 1/4 mile standard, but he agreed that there have been exceptions to that standard.

Krout further clarified that Public Works' recommendation is to have no access onto N.W. 48th Street – to take all the access off of Holdrege, which is a full movement collector street. He acknowledged that this limits the number of access points and it might encourage some people to take some route through the neighborhood, although he thinks it would be very few.

Esseks noted a precedent of the Walgreens off of 84th north of Holdrege. You really have to circulate through to get there. So maybe the Chair's amendment is workable.

Motion to amend to delete the right-in, right-out access to N.W. 48th carried 5-3: Larson, Esseks, Gaylor Baird, Cornelius, and Carroll voting 'yes'; Taylor, Sunderman and Francis voting 'no'.

As far as consistency, Carroll pointed out that we do not know what the property owners on the west side were initially thinking, but they came in with a request for R-T PUD and he thinks this site should be the same in terms of consistency.

Main motion for approval, with conditions, as amended, carried 5-3: Larson, Taylor, Esseks, Cornelius and Francis voting 'yes'; Sunderman, Gaylor Baird and Carroll voting 'no'. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 08017
FOR EXTRACTION OF SOIL
ON PROPERTY GENERALLY LOCATED
AT N. 56TH STREET AND BLUFF ROAD.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: April 9, 2008

Members present: Larson, Taylor, Sunderman, Esseks, Gaylor Baird, Cornelius, Francis and Carroll.

Ex Parte Communications: None.

Staff presentation: **Mike DeKalb of Planning staff** had no new information.

Esseks attended the City-County Common meeting on April 8, 2008, where they discussed the problem of a big hole being created through excavation causing potential reduction in the water table used by surrounding properties, and the possibility of pollution of this hole such as if a septic field is above it. Some of us thought it would be a good idea to have a certified hydrologist examine the site. Esseks asked DeKalb to indicate his opinion of that approach in an attempt to protect the public welfare. DeKalb suggested that we always need to find a balance of protecting the public welfare versus the level of cost and impact on the applicant and owner of the property. The two cases cited are quite different in character. This one is at the top of a hill and not anywhere close to groundwater. As far as requiring a hydrology study as a standard requirement, he suggests that the Planning Commission may want to discuss that further, but taking off the top of the hill will not be an issue. It will only be an issue in the case of wetlands or bottom areas. This particular site is at the top of a hill so DeKalb does not believe there will be an issue in this situation.

Gaylor Baird wondered about the issue of whether this will hold water as a pond. DeKalb pointed out that the application submitted shows a water feature but no indication of the depth, amount of water and how it is going to be filled so he could not answer the question. The applicant might need an irrigation well and there will be permits and inspections required.

Larson believes that this area is noted for lack of groundwater anyway. DeKalb was not aware of the issues here being as bad as further to the north and to the west. He would suspect one domestic well on this parcel would be a non-issue. They do have a house across the street and two houses to the south, so there are wells.

The applicant was not present.

Opposition

1. Marlene Tracy, 17500 N. 84th Street, testified in opposition. The people in the neighborhood are concerned about safety for the public. They are also looking for consistency in the regulations. She asked the Commission to please consider the community impact of the soil mining in general. She submitted a map pointing out all of the current and proposed soil mining activities along Hwy 77, going from the Sanford property, to the Muhlbach property, to the Giebenrath property to the Peterson property. We are piling a potential amount of dump trucks onto that highway, in addition to the garbage trucks pulling out from the landfill and the new I-80 ready-mix plant on the other side of the street. How many more soil mining sites do we have to add on this corridor? Is there really that much need for the dirt? She questions the intent to build a home site.

Tracy also expressed concern about the hours of operation. In the interest of all of the travelers on that road and potential bus traffic with school children, the neighbors feel very strongly about only daytime hours and only during the week.

2. Tom Keep testified in opposition. His main concern is the adequacy of the reclamation plan and the excavation plan. He does not believe that the excavation plan will end up with a site that is anything but a blight. We already have many sites in this area that have ended up being claimed as blighted. He would appreciate it if the applicant would come in with another plan that would be more reasonable.

Another concern is traffic control. The residents constantly hear, "it is a state highway – we can't do anything about traffic control." The trucks out of this site will have to make a left hand turn across Hwy 77. He would like to see some type of traffic control, signage, to warn people. This is going to become a very highly truck congested area.

Esseks asked Mr. Keep to identify the defects he sees regarding the post-excavation grading plan. Keep sees a dry hole in the ground that is going to be a 25' deep pit. It is not going to end up as a home building site. It will end up being a site that is very difficult to do anything with in the future – certainly not farm it and certainly not make a reasonable home site.

Staff questions

Taylor asked staff to respond to the traffic control issue. DeKalb indicated that the responsibility and authority lies with the Department of Roads. That is one of the dilemmas. Because it is a state highway, they have full authority. The applicant has nothing to do with it. We can suggest that the applicant post signs, if permitted by the Department of Roads, but we don't have the authority to require it.

Gaylor Baird inquired as to DeKalb's best estimate of what it is going to look like when it is done. DeKalb understands that the applicant's intent is to build a house and outbuildings at the north end, and to the back of the lot, which is currently rolling, would be the depression with some level of water and some water feature.

Esseks suggested that because the Planning Department cannot require flashing lights or anything on that highway, the Planning Commission could limit excavation to daylight hours for traffic safety reasons. DeKalb advised that to be the condition recommended in the staff report – daylight hours. The applicant has requested the same condition as the Sanford permit.

ACTION BY PLANNING COMMISSION: April 9, 2008

Taylor moved to approve the staff recommendation of conditional approval, seconded by Francis.

Esseks noted that the conditions in the staff report require that operating hours shall be limited to daylight hours Monday through Friday only. He wondered about an annual administrative review like has been required on another recent permit. The real issue for

further consideration is what we are creating here. He would like to say no because he does not like the thought of a 25' hole. Esseks stated that he will vote in favor, but he shares Mr. Keep's concern about the landscape and how it looks in its future use.

Carroll pointed out that this permit is limited to one year, so it will not be necessary to have an administrative annual review.

Taylor will support the motion with it being limited to daylight hours. We are doing a lot of work on the highways and the dirt is very much needed. He thinks the conditions are restrictive enough. The economics and the time factor for completion needs to be considered and he believes it is restricted quite well. He is definitely concerned about the neighbors but it is not enough for him to vote against it.

Motion for conditional approval carried 7-1: Taylor, Sunderman, Esseks, Gaylor Baird, Cornelius, Francis and Carroll voting 'yes'; Larson voting 'no'. This is final action unless appealed to the City Council within 14 days.

WAIVER NO. 08001
TO WAIVE THE PEDESTRIAN EASEMENT
ON PROPERTY GENERALLY LOCATED
AT N.W. 56TH STREET AND WEST ADAMS STREET.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: April 9, 2008

Members present: Larson, Taylor, Sunderman, Esseks, Gaylor Baird, Cornelius, Francis and Carroll.

Ex Parte Communications: Carroll disclosed that he visited with Lyle Loth about the profile of the sidewalk and it has been submitted.

Staff presentation: Staff had no further comment or new information.

Proponents

1. Lyle Loth of ESP appeared on behalf of the applicant. He apologized for not attending the last meeting because he had assumed the issue had been resolved. He acknowledged that he did submit the profile that was obtained by field survey and it pretty much substantiated the profile taken from the city's contour information.

Staff questions

Esseks wondered whether there is some precedent where, in the interest of pedestrian connectivity, there are either steps or ramps for access. Tom Cajka of Planning staff was not aware of any pedestrian easement that has steps. Dennis Bartels of Public Works could not give an example either. It gets questionable with ADA standards. There are

street intersections south and west where there would be an accessible route for handicapped. Public Works would prefer not to put steps in the public sidewalk system.

Esseks pointed out two concerns: the possibility of people falling and the alternative reality of a subdivision with no close egress. What do you think our ultimate solution should be? Bartels is of the opinion that the sidewalk should not be built because of the problems with the grade, even though it creates 3,000 feet more or less between the two intersections where there are sidewalk connections. Esseks pointed out that if we had put the connection to the north, this would not be a problem now. Bartels indicated that there was still some grade problem. If it had been constructed where anticipated, there would not be as much of a grade problem.

Carroll pointed out that the application is to waive the pedestrian easement. What if we would waive the sidewalk requirement and allow the easement to be retained for the neighborhood? Rick Peo of the City Law Department agreed that to be an option. If the Planning Commission releases the obligation to construct the sidewalk, the easement can remain in place. It is a public access easement – not a private easement. Carroll suggested that the neighborhood could pay for a sidewalk in the future if an easement is in place.

Gaylor Baird indicated that she also has had trouble with this issue, and inquired whether the regulations have changed since this requirement was put in place on this particular plat. Peo stated that the change in the ordinance occurred prior to this development. At that time, the ordinance was changed to require that the pedestrian easements/sidewalks be constructed at the same time as the construction of the street before any houses are built. He believes that there may be a lack of staffing and time to verify that the sidewalks are constructed when the streets are put in. There are bonding ordinances but there is not a good process of check-offs. There are a lot of failures on timing and it is usually discovered on a complaint basis. Maybe we should not release the street bond until there is verification that the connection is in place; however, that would require some changes to the code. We have been trying to tie sidewalks to building permits. The timing is difficult. It is probably an internal city policy issue.

Esseks suggested that those properties with easements could be tagged. He believes they are very vulnerable because a lot of people do not want an easement on their property. Peo observed that at the time of building permit, the developer is required to set the building back from the easement line, so Building & Safety is aware of the easement. It is possibly a communication issue.

Response by the Applicant

Loth acknowledged that there was a condition of approval on the preliminary plat which said that the pedestrian easement should be constructed at the same time as the street. He believes that Duane Hartman provided the Planning Commission with a timeline of

efforts he had made to resolve this issue. It was at that time that he realized that this wasn't a very good place for a sidewalk and that it was erroneously placed in this location on the plat. He made contact with Public Works and the sidewalk inspector to get the issue resolved and it never happened. That is what has gotten us to this point. Loth does not have the impression that the applicant simply refused to construct the sidewalk. He believes he truly wanted to get it resolved. Loth agrees that there needs to be a way to require the sidewalk along with the paving district executive order, for example.

ACTION BY PLANNING COMMISSION: April 9, 2008

Taylor moved approval, seconded by Gaylor Baird.

Cornelius stated that the last time he was here he wasn't happy about this. He is still a little concerned and not very happy about it. There was a breakdown somewhere and he is concerned about voting to approve this because it seems to waive the responsibility that someone had to insure that this process was followed from A to Z. He will, however, vote yes because of the practicalities involved, but he would like to see some kind of solution to this problem.

Esseks likes the Chair's idea to retain the easement but not require installation of the sidewalk.

Esseks moved to amend to approve the waiver of the requirement to construct the sidewalk but to keep the pedestrian easement in place, seconded by Cornelius.

Francis wondered whether this puts the burden on the neighborhood association to finish the sidewalk. Carroll concurred that to be the case.

Cornelius believes the amendment does a nice job of splitting public concern and managing responsibility.

Motion to amend carried 7-1: Larson, Taylor, Sunderman, Esseks, Gaylor Baird, Cornelius and Carroll voting 'yes'; Francis voting 'no'.

Larson does remember that Duane Hartman submitted a timetable of his attempts to get this resolved. He thinks it is appropriate to let him off the hook, so to speak.

Main motion, as amended, waiving the requirement to construct the sidewalk, but retaining the pedestrian easement, carried 8-0: Larson, Taylor, Sunderman, Esseks, Gaylor Baird, Cornelius, Francis and Carroll voting 'yes'. This is final action unless appealed to the City Council within 14 days.

There being no further business, the meeting was adjourned at 3:25 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on April 23, 2008.

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