

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, July 16, 2008, 1:00 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, Wendy Francis, Roger Larson, Jim Partington, Lynn Sunderman and Tommy Taylor (Dick Esseks absent); Marvin Krout, Ray Hill, Steve Henrichsen, Mike DeKalb, Ed Zimmer, Brian Will, Tom Cajka, Sara Hartzell, Brandon Garrett, 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 July 2, 2008. Motion for approval made by Sunderman, seconded by Francis and carried 7-0: Carroll, Cornelius, Francis, Larson, Partington, Sunderman and Taylor voting 'yes'; Gaylor Baird abstained; Esseks absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

July 16, 2008

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

The Consent Agenda consisted of the following items: **COMPREHENSIVE PLAN CONFORMANCE NO. 08013, COMPREHENSIVE PLAN CONFORMANCE NO. 08014, CHANGE OF ZONE NO. 08036, SPECIAL PERMIT NO. 08029, COUNTY SPECIAL PERMIT NO. 08030, SPECIAL PERMIT NO. 08031, and STREET AND ALLEY VACATION NO. 08003.**

Ex Parte Communications: None

Item No. 1.3, Change of Zone No. 08036; Item No. 1.5, County Special Permit No. 08030; Item No. 1.6, Special Permit No. 08031; and Item No. 1.7, Street and Alley Vacation No. 08003, were removed from the Consent Agenda and scheduled for separate public hearing.

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

Note: This is final action on Comprehensive Plan Conformance No. 08014 and Special Permit No. 08029, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

COUNTY SPECIAL PERMIT NO. 08030,
SAGEBROOK ESTATES COMMUNITY UNIT PLAN,
ON PROPERTY GENERALLY LOCATED
AT N. 176TH STREET AND HOLDREGE STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 16, 2008

Members present: Cornelius, Partington, Taylor, Sunderman, Larson, Gaylor Baird, Francis and Carroll voting 'yes'; Esseks absent.

Ex Parte Communications: None.

Staff recommendation: Conditional approval.

This application was removed from the Consent Agenda and called under Requests for Deferral, due to a written request from the applicant for a four-week deferral.

Cornelius moved to defer for four weeks, with continued public hearing scheduled for Wednesday, August 13, 2008, seconded by Gaylor Baird and carried 8-0: Cornelius, Partington, Taylor, Sunderman, Larson, Gaylor Baird, Francis and Carroll voting 'yes'; Esseks absent.

The applicant was not present.

Opposition:

1. **Tricia Kehn**, 18150 Holdrege Street, indicated that the property owners on Holdrege Street have not been personally contacted by the applicant so they are unaware of his request for this development. The neighbors have concerns with traffic issues. 176th & Holdrege is a dangerous intersection. They would like to see what kind of action the developer is taking on this issue. The neighbors wants to know what this will do to their property taxes; what kind of houses will be built; and where the access to this development will be located. Ms. Kehn is opposed to the development. The aesthetics of the land will be compromised by this development. The housing market is failing right now and she does not want to see a development without the houses being able to be sold.

Francis encouraged the neighbors to make contact with the applicant.

This application will appear on the Planning Commission agenda on August 13, 2008, for continued public hearing and action.

**CHANGE OF ZONE NO. 08036,
FROM R-2 RESIDENTIAL DISTRICT
TO R-5 RESIDENTIAL DISTRICT,
ON PROPERTY GENERALLY LOCATED
AT N. 14TH STREET AND SUPERIOR STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

July 16, 2008

Members present: Cornelius, Partington, Taylor, Sunderman, Larson, Gaylor Baird, Francis and Carroll voting 'yes'; Esseks absent.

Ex Parte Communications: None.

Staff recommendation: Approval, subject to conditional zoning and development agreement.

This application was removed from the Consent Agenda due to a letter received in opposition.

Additional information for the record: Tom Cajka of Planning staff submitted a letter in opposition from Ted Triplett, President of the Belmont Neighborhood Association, with concerns about the change of zone to R-5, including traffic and safety, quality of the buildings being built, additional noise, type of housing, potential impact on property values of the surrounding neighborhood, and how it would impact the look and feel of the current neighborhood.

Staff presentation: Tom Cajka of Planning staff explained that this is an application for change of zone from R-2 to R-5 for a future development for multi-family. The applicant in his letter states that he is only planning to build six units. The R-5 zoning, however, would allow a maximum of 19 units based on the size of the lot being 22,000 sq. ft. Multi-family in R-5 zoning is based on 1500 sq. ft. of lot area per unit, with parking of 1.75 parking stalls per unit.

Cajka stated that the staff is recommending approval based on the Comprehensive Plan, which encourages different types of housing in neighborhoods and affordable housing, proximity to the school and shopping.

Proponents

1. **Jerry Boyce, Boyce Construction**, 4631 S. 67th Street, presented the application as the applicant. In support of the proposal, he referred to the commercial developments on the northeast corner of 14th & Superior, the vacant ground on the southwest corner with the

water department building that may some day be abandoned, with a possibility of commercial development someday in the future. He showed photographs of the existing development and residences in the area. The subject property is the only older age property in the neighborhood. It is in poor and deteriorated condition. He believes it might even be red-tagged if inspected. It is overgrown with vegetation. The two neighbors to the south are newer age, ranch homes. There is a vacated street on the south border and a heavy tree screen on the south neighboring property. The school is behind the property with a public easement sidewalk on the south edge of the property. He proposes to rebuild the public access sidewalk on the south edge of the property. There is one single family home to the north of this property. LPS owns a small 7' strip between the subject property and the north neighboring property. Boyce proposes to keep as much of the screening on the street side as possible. Public Works is requiring that the access drive be moved so that it lines up with the access to the shopping center across the street. Public Works is also requiring access to the north neighboring property so that if and when it is ever developed, it will limit additional access to 14th Street if widened in the future.

Boyce also indicated that the total square footage of this rather large parcel is a little over 29,000 sq. ft., and it would support 19 units if the parking could be accommodated. Boyce clarified, however, that he has no intention of developing more than six units. The two duplex structures facing the street would have to meet the neighborhood design standards. He could not face the garages toward the street. There will be front door and windows on the street side, looking like single family homes from the street. The second unit entry will be on the back side of the property. The third duplex is tucked in behind the street-side duplex. These will be condominium units, individually sold, and he believes they would blend in very nicely with the neighborhood. He has support of the adjoining property owners.

The development will be heavily screened with the existing trees along the west boundary to screen the property from the Goodrich Middle School. He will keep as much of the screening on the street side as possible.

Cornelius inquired whether there will be some sort of covenant to maintain these units as owner-occupied. Boyce indicated that the condominium regime which will come later will dictate association-controlled maintenance and common utilities. That dictates better control over the grounds and maintenance. He would intend to contract lawn service, snow removal, etc.

Opposition

1. Verna Pate-Lewis, 4421 N. 14th Street, testified in opposition. She has been in contact with Mr. Boyce and has been talking to the neighbors. The neighborhood is very well-established – sort of like the gateway coming into Lincoln from the north – large lots, a lot of green space, landscaped yards. The neighborhood does not want apartments on 14th Street. There are none from Superior Street to the University. She has talked to all the

neighbors and unfortunately Mr. Boyce does not have current information. All the neighbors are opposed to the zoning change, except Scott and Tracy Cobb whom she was unable to reach. She submitted a petition stating that the neighbors do not want this development. The neighborhood is ranch houses, single family, set back from the street. The three proposed units will have a lot of parking. Once we open the door to R-5, the neighbors are fearful the plan could change and become more dense. The neighbors are also very concerned about the access being across from the shopping center. 14th Street will not be widened for another 10 years. There are plenty of apartments in this neighborhood, to the east, north of Walgreens, further north on 14th, etc.

Pate-Lewis acknowledged that the neighbor to the north initially was not opposed, but he has reconsidered and signed the petition in opposition. The neighbor to the south was neutral because he wants the owner to have the opportunity to sell the property. She agreed that the house is deteriorated and overgrown.

Pate-Lewis has not met with the applicant face-to-face, but they have e-mailed several times back and forth. This is just not the right neighborhood. The neighborhood has not had time to organize anything official as a neighborhood association.

Cornelius inquired whether a delay for further discussions with the applicant would make a difference in the neighborhood's position. Pate-Lewis did not believe it would make any difference. The neighborhood does not want apartments. They are fearful that they may become rental units.

Staff questions

Carroll inquired about R-4 versus R-5 zoning. Cajka indicated that R-4 was discussed at first, but it only allows single family or duplex. To get six units, they looked at different ways to subdivide the land but ran into problems with subdivision because it would not meet some of the subdivision requirements. It was also the thought that increased density was acceptable because of the proximity for walking to shopping centers and the main arterials in the area.

Carroll inquired whether the zoning agreement being recommended by staff requires the applicant to only have six units. Cajka indicated that not to be a recommendation of the staff, although the applicant has indicated he would agree to a limit of six units. The only terms of the development agreement recommended by staff is that the driveway to 14th be in line with the commercial driveway at the request of Public Works as a safety issue. The other item is access to the property to the north in the case of future development so that there would not be any additional access to 14th Street.

Cornelius inquired whether the pedestrian walkway is a public right-of-way. Cajka believes it is a public access easement and it is used by the students getting to the middle school.

Response by the Applicant

Boyce responded to the opposition, stating that change is always new and different and hard to accept. He appreciates people in the neighborhood caring about their neighborhood and that's what makes it as nice as it is. This property is the only eyesore in the neighborhood. The development will not be apartments, per se, but two-unit townhomes under condominium regime allowing for individual ownership of all six units. If he had a vehicle to satisfy all the subdivision requirements, two duplexes could be built now under the R-2 zoning, with ground left over. This proposal is actually only one additional building than would be allowed under the current R-2 zoning.

Further, Boyce submitted that this proposal does comply with the Comprehensive Plan with mixed use in the neighborhood. If the southwest corner of 14th & Superior Street is ever developed as commercial, R-5 is typically the buffer zoning between commercial and the lower density residential. He suggested that approval of this change of zone may perhaps be saving the neighborhood from additional higher number of units and higher density on this property sometime in the future.

Taylor inquired whether the housing will be harmonious with the neighborhood. Boyce indicated that he has taken this into consideration. Most of the homes in the neighborhood are newer ranch style homes. The footprint is tight to get the square footage necessary and he may have to do some basement finish if ranch style as opposed to going upward. He is cognizant of the neighborhood concerns. The property will be very heavily screened from the street as well as from the school and to the north.

Gaylor Baird clarified that the applicant is open to the idea of remaining R-2. Boyce reiterated that there were going to be too many problems with anything less than R-5 in terms of subdividing. Public Works only wants one access on 14th Street, so if you were to subdivide into three separate lots, there would be a problem with three driveways, etc. R-5 does not require subdivision and gives him the units he needs to make it economically feasible.

Carroll inquired whether the applicant would agree to a condition limiting the development to maximum of six units. Boyce agreed. He has no intention to build more than six units. Cajka also clarified that such a limitation would run with the land if it were sold in the future. It was also clarified, however, that a request for change or variance of that limitation could also come forward in the future.

ACTION BY PLANNING COMMISSION:

July 16, 2008

Taylor moved approval, subject to the zoning agreement with amendment limiting the development to six units, seconded by Sunderman.

Cornelius expressed that he is sympathetic to the neighbors' concerns. The developer seems, however, to also be sympathetic to their concerns, and he is persuaded by the owner-occupied units along with the design standards imposed by the ordinance.

Sunderman added that this provides a nice transition from the businesses at the corner.

Francis indicated that she has mixed feelings. She knows that there has been some good downzoning in older neighborhoods previously; she knows that Mr. Boyce builds a good product; and she likes that they will be one-story to blend in with the neighborhood.

Cornelius pointed out that this does not require the Planning Commission to approve every change of zone from R-2 to R-5, but this sounds like a good proposal.

Gaylor Baird commented that she lives in a neighborhood with lots of downzoning and apartments really do change the feel of the street and the block, even if they are well done. She is torn. She would like to see some of the neighbors purchase the property.

Motion for approval, subject to conditional zoning and development agreement as set forth in the staff report, with amendment limiting the development to six (6) units, carried 7-1: Cornelius, Partington, Taylor, Sunderman, Larson, Francis and Carroll voting 'yes'; Gaylor Baird voting 'no'; Esseks absent. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 08031
FOR OFF-SALE ALCOHOL
ON PROPERTY GENERALLY LOCATED
AT S. 21ST STREET AND K STREET.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 16, 2008

Members present: Cornelius, Partington, Taylor, Sunderman, Larson, Gaylor Baird, Francis and Carroll voting 'yes'; Esseks absent.

Ex Parte Communications: None.

Staff recommendation: Conditional approval.

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

Staff presentation: **Brian Will of Planning staff** presented this request for special permit for sale of alcohol for consumption off the premises. The subject property is bounded by Capitol Parkway, S. 21st Street and K Street. As a special permit, the ordinance requires that several criteria be met, and this application does comply with all of those requirements. Therefore, staff is recommending conditional approval.

Gaylor Baird commented that with off-premise sales, the alcohol is chilled and in larger quantities than in a restaurant and typically ready for immediate consumption on a street corner or a nearby park or vehicle. She suggested that this is more likely to result in excessive drinking, auto accidents and potentially physical violence. She inquired whether there is any data that suggests placing such a premise near to a school is a bad idea.

Will referred to the subject property on the map and pointed to Lincoln High School to the south. The separation between the licensed premise and the high school is approximately 650 feet. There are two other similar circumstances: 1) N. 33rd near North Star High School – there is a convenience store on Folkways Boulevard that is 1,000 feet from the high school; and 2) Pine Lake Road and S. 14th near Southwest High School – there is a shopping center in B-2, with alcohol sales as a conditional use, and a convenience store with off-sale, which is approximately 750 feet from the school.

Will also pointed out that the various departments were asked to review and comment on this request. The comments from the Police Department note that they did not have any concerns provided that the premises is at least 200 feet away from the school. More specifically, the Planning Director posed the question as to whether convenience stores in general with higher traffic result in more police related calls. It was determined that the sale of alcohol probably does not lessen that and could increase it; however, when comparing any convenience store to one in proximity to a high school, there has not been a difference in police related calls. We can't state whether it is any worse or any better. In general, Will stated there may be more incidents in calls to those facilities, but the proximity to a school does not appear to make the difference. Gaylor Baird also believes this to be in a higher crime area.

Taylor inquired whether this would be the only convenience store near the school. Will stated that there is a convenience store three blocks south of this site on the west side of Lincoln High but he does not believe they sell alcohol, and probably would not meet the criteria and requirements to sell alcohol.

Proponents

1. Mark Hunzeker appeared on behalf of **Whitehead Oil Company**. The site plan presented with the application does meet all of the requirements and criteria of the ordinance and the issue is a land use question. The ordinance itself does not even list schools as being one of those things from which these facilities must be separated, although the state statute does have the separation requirement and this application meets that requirement.

Hunzeker also stated that all of the special permit criteria were specifically considered while discussing the site plan with the staff. Planning, Public Works, Health and Police have all reviewed this application and have voiced no objection. Hunzeker suggested that because this application meets all of the specific criteria of the special permit ordinance, this

applicant is entitled to this special permit. In every instance where there has been a special permit which meets all the criteria, the permit has been issued. He does not believe there is any basis for denial of this special permit.

Public testimony

1. **Deanna Elikor**, 6033 Hartley, stated that she is not opposed but wanted clarification on land use, specifically whether the distance requirement is from the property line or the building itself. Carroll explained that the proposed building would be 650 feet from the school. Elikor suggested that it should be taken into consideration that schools generally grow and their building footprint may change in the future.

Staff questions

Taylor wondered why the other convenience store in the area does not sell alcohol. Will did not know for sure, but to his knowledge they have not requested a special permit and they may not meet the requirements because they may be in too close proximity to a residential zoning district.

Regarding the separation distance, Will clarified that the separation distance is physically from the license premises (the building) to the closest point of the physical building of Lincoln High School.

Response by the Applicant

Hunzeker's only response to the testimony is that this application meets the criteria set forth in the ordinance.

ACTION BY PLANNING COMMISSION:

July 16, 2008

Larson moved approval of the staff recommendation of conditional approval, seconded by Francis.

Larson pointed out that the applicant has met all of the requirements. Whitehead Oil has a long history with the city; it is locally owned; and all of their other operations have been very well run.

Gaylor Baird stated that she will reluctantly vote in favor in the absence of data that suggests it is a bad idea to put off-premise alcohol sales near schools and in the absence of opposition.

Motion for conditional approval carried 8-0: Cornelius, Partington, Taylor, Sunderman, Larson, Gaylor Baird, Francis and Carroll voting 'yes'; Esseks absent. This is final action, unless appealed to the City Council within 14 days.

STREET & ALLEY VACATION NO. 08003
TO VACATE THE NORTH/SOUTH ALLEY BETWEEN
N. 60TH AND N. 61ST STREET, NORTH OF SEWARD AVENUE.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 16, 2008

Members present: Cornelius, Partington, Taylor, Sunderman, Larson, Gaylor Baird, Francis and Carroll voting 'yes'; Esseks absent.

Ex Parte Communications: None.

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

This application was removed from the Consent Agenda at the request of the petitioner. Staff presentation: **Brandon Garrett of Planning staff** explained that this is a proposal to vacate the north/south alley. There is currently an east/west alley that will remain in place. The current situation is that the alley proposed to be vacated is not surfaced with gravel or anything. There is a curb return for the alley but the paving ends at the sidewalk. One of the conditions of approval is to remove that return and that the curb and gutter be replaced for Seward Avenue. Another typical condition of approval is the retention of a utility easement. There is a sanitary sewer through that alley and a manhole in that alley that will need to be accessed by Public Works occasionally for maintenance.

Proponents

1. **Deanna Elikor**, 6033 Hartley, testified on behalf of her mother, who is one of the petitioners for this alley vacation. She is opposed to the conditions because she does not understand why they are required to remove the return if the city will continue to utilize the alley. Elikor wants to retain access to the alley for storage of a boat trailer. It is a green space and there is a large tree that prevents any through access to the alley. It is bordered by a fence on the east side. The special assessment for the road was paid by the abutting owners. If the alley is closed and they cannot access the garage, they would have to pay for a curb cut. The petitioners are opposed to the curb cut being closed. Elikor explained that the petitioners are asking the city to vacate the alley so that the city does not use it. The petitioners want to close the alley and purchase the alley for their own use as green space and boat storage.

Elikor further explained that this lot was a three-lot configuration when her mother purchased it. They recycled a home that was going to be torn down and resubdivided the property. They may want to resubdivide again sometime in the future for another single-family home. They have maintained the alley. They want control of the alley. There is no opposition from the neighbors.

There was no testimony in opposition.

Staff questions

Carroll asked staff to speak to the access to the manhole. **Chad Blahak of Public Works** assumed that the request to maintain the easement runs the full length of the alley. The city would have the right to use the alley for that maintenance, regardless of whether it is vacated. As far as removal of the return, if the alley is vacated and purchased, that would become a private driveway. If the owner on either side of the alley purchases the entire alley, then that driveway would violate the “no overhang” for the returns on the driveway. The applicant is probably correct that it might be more handy for maintenance to use the return for their access for the time being. Removing it would require reapplying for a curb cut. They would need to get permission from the other property owner to allow that overhang.

Francis inquired whether the abutting property owners have the opportunity to purchase the alley once it is vacated and whether it gets split in half. Garrett agreed that to typically be the case. The abutting property owners must sign the petition and they each have the opportunity to buy half. However, in this particular case, it is just the west property owner that intends to purchase the entire alley. The east property owner does not want any part of it.

Carroll wondered whether the purchase of the vacated alley could require a new application for a curb cut further to the west so that it is away from the east property owner. Blahak indicated that they would be required to apply for a curb cut regardless.

Cornelius noted that the applicant brought up a seeming contradiction between the requirement for a utility easement and the return being removed. Is it possible to accommodate them in the short term by not requiring the return to be removed as part of the vacation, but to defer that until they purchase the alley and reapply for the curb cut? Blahak stated that if they don't purchase the vacated right-of-way, it is still owned by the city. Blahak envisions some sort of agreement. It would probably be best served if they were willing to purchase it and go through the exercise of applying for the curb cut so that the return is not just sitting out here.

Rick Peo, City Law Department, suggested that if the alley is vacated, that street return is part of the existing alley and it is conveyed to the private property owner. The way it exists today, it would then encroach on the abutting property owner without their permission. That could probably be refined to shorten it up to maintain it on the new purchaser's side of the boundary line, but not knowing the legal description he is not sure that is the issue. Public Works is suggesting the application for curb cut would define what they could have. If the alley is vacated, the utility easement must be retained by the city. That cannot be given up.

Carroll suggested that the alley could be vacated and during the sale process, the city can negotiate the return. Peo thinks they can work out details as to how much actually has to

be removed.

Response by the applicant

Eliker pointed out that the alley is a T-alley. Therefore, at the north end of the alley there is an 8 x 16 return. The neighbor has fenced across that area. She believes they can negotiate some sort of agreement that the return in the front on the south side versus the return on the north side may be accomplished. There is a large 3' hackberry or green ash tree located in the middle of the alley. There is no way for the city to back their truck up from the north end of the alley to the manhole. That access is much more convenient from the south side.

Francis inquired whether Eliker has talked with her neighbor about possible encroachment. Eliker stated that the abutting neighbor has no problem. He would also agree to move the fence.

Carter Bull, 3911 N. 61st Street, the other petitioner and abutting property owner, appeared and stated that he gave up the right to purchase the right-of-way because that was a provision in his purchase agreement when they bought the property. His only concern is that the area remain green space and not be used for storage. He does not object to storing the boat, but the actual vacation of the alley was in his purchase agreement with the church in 1988, and he agreed that the alley would be used as green space only.

ACTION BY PLANNING COMMISSION:

July 16, 2008

Sunderman moved a finding of conformance with the Comprehensive Plan, with conditions as set forth in the staff report, seconded by Taylor.

Sunderman believes the vacation is in conformance with the Comprehensive Plan because it is not used as an alley. The return will come into play when they are negotiating the final price. As far as vacating an alley, it is appropriate.

Motion for a finding of conformance with the Comprehensive Plan carried 8-0: Cornelius, Partington, Taylor, Sunderman, Larson, Gaylor Baird, Francis and Carroll voting 'yes'; Esseks absent. This is a recommendation to the City Council.

COMPREHENSIVE PLAN CONFORMANCE NO. 08016
AMENDMENT TO THE ANTELOPE VALLEY REDEVELOPMENT PLAN
TO ADD THE “AV PARKWAY PLAZA TRIANGLE REDEVELOPMENT PROJECT”
ON PROPERTY GENERALLY BOUNDED BY “S” STREET
ON THE NORTH, “Q” STREET ON THE SOUTH,
THE FUTURE ANTELOPE CREEK CHANNEL (N. 21ST STREET) ON THE EAST,
AND THE FUTURE ANTELOPE VALLEY N/S ROADWAY (N. 19TH STREET)
ON THE WEST.
PUBLIC HEARING BEFORE PLANNING COMMISSION: July 16, 2008

Members present: Cornelius, Partington, Taylor, Sunderman, Larson, Gaylor Baird, Francis and Carroll voting ‘yes’; Esseks absent.

Ex Parte Communications: None.

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

Staff presentation: **Sara Hartzell of Planning staff** presented the proposal to add a redevelopment project to the Antelope Valley Redevelopment Plan, north of Q Street up to just north of S Street and between the future Antelope Valley Parkway and the future Union Plaza Park.

She submitted a revised map showing a slightly different shape of the area than what is in the staff report. This is phase one of the project, located between R and Q Street and includes the Antelope Valley Parkway. Phase two would be at a later date. Phase one is office, phase two is commercial mixed use. The transportation facilities will be very good; there will be bicycle access and a very good bus route available for a major employer at this site.

Proponents

1. Dallas McGee of Urban Development explained that this action will create a project area – an amendment to the Antelope Valley Redevelopment Plan – that project area will allow the collection of TIF (Tax Increment Financing) funds generated from the project. He estimated that the project would be about 60 million dollars investment in phase one – public investment would be approximately 6 million from TIF generated from the project itself. There have been preliminary discussions and they will be looking at using the TIF for site preparation, utility reconstruction and relocation and possibly parking construction. Once the City Council adopts this proposed amendment to the redevelopment plan, the next step is to negotiate a redevelopment agreement with Assurity Life Insurance Company for the redevelopment of this area, identifying in detail the size, scope, location and design of the buildings and kinds of improvements and amount of improvements that the city will be providing through TIF.

McGee further advised that the emphasis on phase one will be office uses. There could be some retail on the first floor. It is likely that the second phase would be office as well, but that has not yet been defined so they used the broader term of commercial.

Hartzell also pointed out that during the design process, the vacation of 21st Street will be considered, which Parks is interested in using for access to a future playground; and there are several large storm drains in that area and drainage issues are being addressed.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

July 16, 2008

Larson moved a finding of conformance with the Comprehensive Plan, seconded by Francis.

Carroll believes this to be a very good first step for redevelopment of the Antelope Valley area. There is potential for having a very good business moving to this area. It is exciting for the city and the first step of many steps toward redevelopment of the area.

Motion for a finding of conformance with the Comprehensive Plan carried 8-0: Cornelius, Partington, Taylor, Sunderman, Larson, Gaylor Baird, Francis and Carroll voting 'yes'; Esseks absent. This is a recommendation to the City Council.

**CHANGE OF ZONE NO. 08027,
TEXT AMENDMENTS TO TITLE 27;
MISCELLANEOUS NO. 08007,
LINCOLN DOWNTOWN DESIGN STANDARDS;
and
CHANGE OF ZONE NO. 08026
FROM P PUBLIC USE, I-1 INDUSTRIAL, B-3 COMMERCIAL
AND R-6, R-7 AND R-8 RESIDENTIAL
TO B-4 LINCOLN CENTER BUSINESS DISTRICT,
AND FROM I-1 INDUSTRIAL AND R-6 RESIDENTIAL
TO P PUBLIC USE DISTRICT,
ON PROPERTY GENERALLY LOCATED IN THE
ANTELOPE VALLEY AREA, GENERALLY FROM
K STREET TO FINE STREET, FROM 17TH STREET TO 23RD STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

July 16, 2008

Members present: Cornelius, Partington, Taylor, Sunderman, Larson, Gaylor Baird, Francis and Carroll voting 'yes'; Esseks absent.

Ex Parte Communications: None.

Staff recommendation: Approval of Change of Zone No. 08026 and Change of Zone No. 08027, and approval of Miscellaneous No. 08007, as revised by staff on July 16, 2008.

Staff presentation: **Steve Henrichsen of Planning staff** advised that the City is the application on these proposals.

This has been a very long process. The first public meeting was held in February and the last public meeting occurred at the end of June. Staff has also spent time with the Chamber of Commerce, Downtown Lincoln Association (DLA), UNL and NRD in bringing this forward. Over the many months, there were a lot of different viewpoints and good comments. This proposal is an attempt to find a balance between a lot of different views. Staff heard from a lot of investors that said they were interested in the area but wanted some certainty to have some protections to their investment like we see in a newer area. Staff also heard from DLA that there was some interest in having some design standards to protect the investment in the Downtown as a whole. There is a desire not to have a lot of extra process and extra time and complicating standards.

Henrichsen then submitted proposed amendments to the Downtown Design Standards (Miscellaneous No. 08007) which have been worked out with the City Attorney since the Planning Commission packet went out. These amendments are mainly wording and renumbering changes. There is one amendment having to do with the appeal process providing an appeal to the Urban Design Committee, and then to the City Council. Or as an alternative, one may appeal straight to the City Council with the Urban Design Committee making comments.

Francis requested an overview of the parking requirements for this area and why it is what it is. Henrichsen advised that today, there is a dividing line between Downtown and Antelope Valley, which is basically 17th & L Street. West of 17th, there is no parking requirement so the Downtown portion does not require any parking on the site. There is a parking requirement for the area east of 17th Street except between N and P Street, leaving that as it is today. Today, the parking requirement for the rest of Antelope Valley north of P Street and south of N Street, is generally about 1 per 600 on-site. This proposal would allow that parking to be located within 300' on private property and the requirement of 1 per 300 for restaurants has been stricken.

Francis commented that part of the parking requirements is that Antelope Valley is supposed to be pedestrian friendly and let people walk past shops instead of driving and parking. Henrichsen agreed. The access would be from the alley as much as possible. There should be some amount of parking on-site or within 300' with the burden on the property owner to provide the parking.

Support

1. David Landis, Director of Urban Development, supports the proposal. The proposed Design Standards for this community in this area reflect a trend that has existed elsewhere. Design Standards are imposed to protect investment and to encourage private sector investment. The neighborhood design standards have been in existence, although very controversial when they began, but they have improved the neighborhoods. The Historic Haymarket has design standards, and the private sector's value to their land in the Haymarket has gone up in part because of this sense of place, identity and shared historic design. The most common and strongest analogy are the dozens and dozens of design standards that exist that are operated by the private sector – shopping malls, commercial centers, subdivisions. They provide compatibility. Many of them are in places where developers have chosen to use this technique to support, defend and to maximize private sector return. The city wants to take that idea and apply it to the area of highest public investment that we have. There is \$238 million of public funds in the Antelope Valley. The way to maximize on that investment is to fill that with high density, high-end development, producing high tax valuations.

2. Kyle Fisher, appeared on behalf of the **Lincoln Chamber of Commerce**. The Board of Directors did meet in May and passed a unanimous resolution of support for this proposal. They did consider a few broad guidelines that the City should explore – establish limited uses and building standards without adding an additional approval process, while continuing to work on streamlining the entire permitting process; find the required funding for the street standards without sacrificing projects in other areas of the community; and continue to support efforts to market Lincoln to national and international investors. The taxpayers have already made an investment in this area. The Chamber believes that this quality public investment should and will attract similar high quality, private investments. Without minimum standards and building materials, the return might not be realized. Raising the bar in this area because of its proximity to the Downtown and UNL will generate more interest and more opportunity to the landowners in that area.

3. Ed Swotek, 5340 W. McKelvie Road, appeared on behalf of the **Downtown Lincoln Association (DLA)** as Chairman Elect in support. These proposed design standards are the culmination of several meetings over the last six months. DLA does support the concept of the design standards, being consistent with the Downtown Master Plan. This has not been an easy process and there is not uniform consensus, yet DLA believes they are an important tool in shaping the future of Downtown. Through this review process, however, DLA has some areas of concern.

The proposed design standards in B-4 call for no parking requirements in Antelope Valley. The DLA Board has voted to officially oppose this recommendation because it is inconsistent with the approved Downtown Master Plan. A no parking requirement could open the possibility of diluting parking funds raised by and allocated to the central business district (CBD) of Downtown Lincoln; and no parking requirement in the Antelope Valley area

implies a promise that the City would provide additional parking resources in the Antelope Valley area sometime in the future.

DLA is also concerned about material selection for buildings and limitation related to drive-thru functions. These design standards should allow for flexibility of materials to accommodate architectural creativity of future building designs. It is hoped that these same standards would not restrict the marketability of property in this area for drive-thru related business. DLA is finalizing its position on these issues. DLA will provide an official statement to the Mayor and City Council as this proposal moves forward.

DLA does support the concept of implementing Downtown Design Standards that are consistent with the Downtown Master Plan. The DLA would respectfully request that reasonable parking requirements be implemented throughout the entire Antelope Valley area and to maintain no parking in the existing CBD of Downtown Lincoln.

Larson confirmed that the no parking requirement is just an extension of the no parking requirement in what is now the CBD. When that happens, doesn't the city assume the parking requirement as they have with the parking garages? Swotek agreed, and that is part of the concern. Right now, you want to maintain the density of buildings and properties in your proper CBD district, from 17th to the railroad tracks. The concern is, if that no parking is carried out beyond that existing footprint, that in turn might draw some parking resources away from our CBD into an area in Antelope Valley, which then shifts a lot of the demand for parking which is in the CBD.

Larson assumed that the Antelope Valley project is intended to extend the CBD down to about 21st Street. Swotek did not know – he sees the Antelope Valley project as a transitional zone building up to the CBD. He suggested that it may be a transition zone as opposed to an extension.

Larson confirmed that DLA already has in their future planning the next city parking garage on the eastern side of the CBD. Swotek agreed.

4. Brendan Evans, 1209 Peach Street, testified in support. He recently moved back to Lincoln from Portland, Oregon, with offices located at 22nd & Y. He advocates and supports the design standards. He is hopeful that in the near future the design standards can be extended to the area north of Whittier, which will build a transitional zone between the innovation park and some of the investment in Antelope Valley. There should be a centralized focus/vision for Downtown and how it transitions into some of the new investment. Historically, some of the considerations made by business and community leaders are what has built a sense of place in Downtown, such as Miller & Paine, Hovland Swanson, etc. These proposed design standards formalize a process and build a strong foundation. Personally, living in Portland, he has seen neighborhoods go from low value,

boarded up structures to wine bistros, specialty shops, high-end restaurants and office space in 5-10 years. There is a strong value to these types of design standards in conjunction with other community development.

5. Matt Wegener, 1974 Ryons Street, testified in support. He purchased and started a business at 22nd and Y Streets about a year ago and is hopeful that the design standards will apply to the 22nd & Y area in the future as well. He is somewhat concerned and wants to make sure that opportunity is given to people that own the existing structures to renovate and provide a unique atmosphere of old and new. That is difficult when you have to provide parking. He looks forward to the consistency being applied to the neighborhood.

6. Peter Hind, 5140 Valley Road, architect, Assistant Professor of the College of Architecture and President of the Lincoln Haymarket Development Corporation, testified in support of the proposed design standards. He does, however, have some concerns with discussions that are focused on sameness, and words such as “traditional”. He also gave examples and suggested that the specifics and limitation on building features are somewhat problematic, e.g. not allowing the use of wood. While the guidelines are here to stop what we might call poor design or bad design, he also believes that they have the potential to burden projects with a multi-step process adding significant costs to projects for developers. Hind urged that some of the specifics of the language should be balanced against the cost and time per project.

7. Mark Hoistad, 2648 Everett Street, Associate Dean of the College of Architecture, stated that he is neither for nor against the proposed design standards; however, he suggested that the standards should be more performance based rather than prescriptive. His concern is that prescriptive standards tend to set limits that do not foster innovation. He suggested that it is much more progressive to think of a performance standard as opposed to a prescriptive standard. He believes that the prescriptive standards are uneven and almost arbitrary, and do not present the kind of comprehensive notion about how we can develop a healthy, innovative redevelopment of an area. There are aspects in the proposed standards that are really important, but there are also aspects that would prevent the goals of this overall notion, which is a healthy, vibrant community that only comes about by allowing designs to be innovative and more performance based.

Hoistad also expressed disappointment and concern that there is nothing about sustainability or green design in the proposed design standards. “If we really want to be progressive, those are the kinds of things that need to be folded into this kind of process.”

Partington asked whether Hoistad is suggesting that enforcing the design standards rather rigidly can be counter-productive. How do you balance this? What provisions can you have to evaluate proposals for changes that are easy and flexible? Hoistad understands the dilemma. How do you create it? Planning in the public sector is a messy business. It is never a simple yes, no, on, off. But, the difficulty when it is so prescriptive is that as a design professional, were you to propose something progressive means time, and time

means money. So in the context, these standards really discourage anyone from doing anything other than the known straight-forward solution, which he believes is anti-innovation. Yes, the performance standard is messy but it will allow pursuing the best that it could be or the most interesting opportunity. The prescriptive standards make assumptions about a number of things, almost arbitrarily, that do not encourage innovative design. Prescriptive design standards set the bar as opposed to raising the bar, so it puts a ceiling on the prospects of what could be.

Partington inquired whether the College of Architecture was involved in this process. Hoistad stated, “only what we might do as a private citizen”, and he participated as much as his schedule would allow. He respects the amount of energy that has gone into this, but we need to think progressively as we move forward.

Gaylor Baird inquired whether Hoistad had any changes to propose to address his issue. Hoistad stated that he is most concerned with the materials portion, all of which make a value judgment that certain materials or designs are necessarily bad.

Larson noted that there is a waiver procedure in the proposal that perhaps will provide opportunities for departure from the design standards. Hoistad agreed, but each one of those ways to get a “yes” requires time. If you want to do something out of what is prescribed, you are taking on the risk of getting a “no” and the time it would take to go through the process. Larson stated that he has enough faith in our future authorities that if a desirable project comes along that is not in conformance with the design standards, there will be an effort to expedite. Hoistad did not disagree, but he is advocating something more performance based as opposed to prescriptive. He values the people that the city would entrust with making that judgment; however, in a prescriptive based system, “you start out with no until you convince me yes”.

Cornelius commented that this has been presented to the Commission as an attempt to “split the baby” – one of the requirements of the development community seemed to be a very clear standard without a lot of ambiguity. He has heard Dr. Zimmer talk about the neighborhood design standards as setting a low bar that you have to get above to achieve approval. He does have concern with the latitude of the appeals process. The appeal process almost seems easier than achieving approval through the design standards themselves. Hoistad suggested that that assumes the client is willing to take that risk. Generally speaking, because time and money are involved, it would take a very progressive client to be willing to do that.

Hoistad further stated that green design has been around for a long time. It raises the bar. Performance based does not ever set a limit on what it can be. It allows something more progressive.

Cornelius believes there would have been a lot of opposition to the performance based approach. Hoistad agreed but he wanted this conversation to be had. He also acknowledged that performance based standards are a minority to be sure.

Response by staff

Henrichsen advised that a lot of this same discussion has occurred over the last six months.

In terms of the materials, the approach that is being attempted is to list out some objective things that even a non-architect can read and understand. A developer wants to be able to read our standards and understand them. We are attempting to meet a variety of interests that are going to be investing in this area. We also need standards that can be implemented by staff. There is also an attempt in these standards to respect the buildings that exist. There are several opportunities to make an appeal. Not every building will be designed by an architect.

With regard to parking, this proposal is really leaving it status quo. It is hoped that by adding flexibility to allow parking to be up to 300' away, it will encourage parking lots in the transition area, and hopefully over time get some parking garages.

The compromise on drive-thru's is that you can have drive-thru's but not between the building and the sidewalk.

Cornelius asked Henrichsen to revisit the question of the degree to which users of older buildings are imposed upon by these design standards. Henrichsen explained that the design standards would not be applied to a minor interior remodeling project. There is an attempt to be sensitive to the existing buildings, e.g. you do not have to meet the minimum height.

Gaylor Baird inquired where this package talks about ways for people to try to be more innovative, using different materials, etc. Could we potentially add something that addresses a good faith attempt to promote innovative design and performance standards? Henrichsen suggested that this would change the overall attempt. The staff has tried to be objective. It does provide that other high quality durable materials can be proposed and reviewed. We heard in the public meetings that a subjective process where there would be a lot more performance or opinions involved was not desired.

Henrichsen submitted a proposed amendment to Section 2.5 on the waiver process.

Landis suggested that there are a whole lot of brilliant and innovative designs that fall well within these design standards. It will be almost like getting a building permit. If there is a checkmark that says "no", the first level is to go to the Director of Planning, whom he believes has the ability to recognize an innovative building and he has the right to say "yes".

If not the Director of Planning, there is a second place – the Urban Design Committee. The difficulty is writing the standard that says we will say “yes” to innovative buildings and “no” to building that are not innovative. The private sector does not want to go down that path – they want predictability. These proposed standards are in response to the developers who are going to put up the money. They want this to be predictable.

CHANGE OF ZONE NO. 08027

ACTION BY PLANNING COMMISSION:

July 16, 2008

Cornelius moved approval, seconded by Francis.

Cornelius observed that this is the culmination of a very long period of public process involving input from many, many people with compromise on all sides, and he thinks it is a result that is pretty good. He shares the concern about green design and he would like to see something like that inserted into what we know to be a draft, if someone can figure out how to do it.

Motion to approve carried 8-0: Cornelius, Partington, Taylor, Sunderman, Larson, Gaylor Baird, Francis and Carroll voting ‘yes’; Esseks absent. This is a recommendation to the City Council.

MISCELLANEOUS NO. 08007

ACTION BY PLANNING COMMISSION:

July 16, 2008

Larson moved approval, as amended by staff today, seconded by Sunderman.

Larson commented that Antelope Valley has probably been the biggest project the city has ever had and has had years of preparation, public input and public discussion. He believes it has the potential to make tremendous improvements in our city and the downtown area. It is terribly important that we do it right. This process has been done extremely well. He believes the mechanism for innovation is built into this proposal.

Partington suggested that the design standards will provide uniformity but not a gothic cathedral. In general, the private sector probably likes the uniformity and they will be able to anticipate and get the buildings up. But he does believe these standards fly in the face of common sense and there should be some easy way to resolve innovative designs.

Carroll believes that Mr. Landis elegantly discussed the reasons to approve. It is a first step for security for the businesses that want to develop in this area. It has to start somewhere.

Motion for approval, as amended, carried 8-0: Cornelius, Partington, Taylor, Sunderman, Larson, Gaylor Baird, Francis and Carroll voting ‘yes’; Esseks absent. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 08026

ACTION BY PLANNING COMMISSION:

July 16, 2008

Sunderman moved approval, seconded by Francis and carried 8-0: Cornelius, Partington, Taylor, Sunderman, Larson, Gaylor Baird, Francis and Carroll voting 'yes'; Esseks absent. This is a recommendation to the City Council.

There being no further business, the meeting was adjourned at 3:30 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on July 30, 2008.

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