MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, September 23, 2009, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska
MEMBERS IN ATTENDANCE:	Leirion Gaylor Baird, Michael Cornelius, Dick Esseks, Wendy Francis, Roger Larson, Jeanelle Lust, Jim Partington, Lynn Sunderman and Tommy Taylor; Marvin Krout, Steve Henrichsen, Brian Will, Tom Cajka, 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 Lynn Sunderman called the meeting to order and requested a motion approving the minutes for the regular meeting held September 9, 2009. Motion for approval made by Cornelius, seconded by Francis and carried 6-0: Gaylor Baird, Cornelius, Esseks, Francis, Sunderman and Taylor voting 'yes'; Larson, Lust and Partington abstained.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: **September 23, 2009**

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

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 2463D, an amendment to the Highpointe PUD, and STREET AND ALLEY VACATION NO. 09006.**

Ex Parte Communications: None

Item No. 1.1, Change of Zone No. 2463D, was removed from the Consent Agenda and scheduled for separate public hearing at the request of Commissioner Gaylor Baird.

Lust moved to approve the remaining Consent Agenda, seconded by Francis and carried 9-0: Gaylor Baird, Cornelius, Esseks, Francis, Larson, Lust, Partington, Sunderman and Taylor voting 'yes'.

CHANGE OF ZONE NO. 2463D,
AN AMENDMENT TO THE
HIGHPOINTE PLANNED UNIT DEVELOPMENT,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 48TH STREET AND OLD CHENEY ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: September 23, 2009

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

Ex Parte Communications: None.

Staff recommendation: Conditional approval.

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

Staff presentation: **Brian Will of Planning staff** explained the proposal for the commercial area southwest of the intersection of S. 48th Street and Old Cheney Road, being part of the larger Highpointe PUD. There is a tennis court and clubhouse just to the west of the commercial component. This request would allow a sign that is already allowed to contain electronic changeable copy. Given the location of this development and the surrounding land use pattern, the staff is recommending approval.

One of the conditions of approval requires that whatever landscaping is removed must be relocated somewhere else on the site. Currently, there is a significant amount of landscaping and screening along Old Cheney Road and it appears that some of that may have to be disrupted for the sign. The condition is that whatever landscaping has to be moved or relocated be put back on the site.

Gaylor Baird asked Will to address the comment in the staff report that there are some other sign changes that were recently amended. Will stated that he was referring back to the text amendment in 2006 when the sign regulations were amended to define changeable copy – where it is allowed and under what circumstances. That is not to be confused with the most recent sign amendment which basically clarified and reorganized the existing regulations.

Esseks believes that the loss of landscaping could conceivably be loss to the community because landscaping tends to enhance the experience of driving by or shopping or living there. How do we provide for maximizing the value of that landscaping that has to be moved? Will explained that to be the intent of the condition – to result in no net loss. He does not know that anything is going to have to be moved, but in the event that it does, we want it placed back in the open space between the parking lot and Old Cheney Road.

Proponents

1. Jerry Nelson, appeared on behalf of the applicant. The applicant did not ask for a larger sign. They have a multi-tenant building and the tenants believe they need more signage than their wall signage because they are set back so far. The changeable copy allows a more legible size. Four to five signs on one monument sign becomes so small that it is to no one's benefit because it cannot be read.

As far as the landscaping, Nelson stated that they put in much more landscaping than what was required and they have no intention of going backwards on that. They definitely want to keep the landscaping there as much as possible.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION: September 23, 2009

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

Gaylor Baird stated that she pulled this application off the Consent Agenda – not because of anything to do with the applicant, but because she generally has concerns about electronic changeable copy signs and their safety. There is mixed data about how safe these signs are. She finds them to be one step above a text message. It is distracting. There are other jurisdictions throughout the country looking at this as an issue. The City Council in North Little Rock, Arkansas, recently put a moratorium on these kinds of signs, their reasons having to do with safety and proliferation, resulting in visual blight. They also talk about being concerned when they are near residential areas, which is not the case here. New Hampshire has actually banned these altogether, and that went all the way to the Supreme Court. This is an interesting issue, one that bears further consideration in general. Gaylor Baird stated that she realizes that this applicant has justifiable reasons for wanting this sign in this place and the arguments made by staff are rational and cogent, but until we have more conclusive information about the safety of these signs, she will err on the side of caution and vote against this proposal.

Taylor believes this change provides more information and the messages will be a lot quicker than in the past. He believes it will be set up in a very tasteful manner. We have some in the downtown area that are very informative, e.g. Journal Star. Taylor indicated that he would need to hear something that tells him that there are reports that say that it becomes a hazard for traffic, or increases accidents or even delay of traffic – something that confirms that it is going to be a problem.

Cornelius sympathized with Gaylor Baird's concerns, but he intends to vote in favor, largely because the ordinance changes that were passed in 2006 restrict the changeability of copy – they are not supposed to be animated and bounce around – they are text and up for a

period of time (seconds), and then they change all at once to something else. In the absence of more conclusive data it is hard, given our record, to vote against this.

Esseks is concerned about the possible public safety issues and he is not sure whether to vote against it or simply make comments, but he stated that he will vote against it to make his concern more real.

Francis would rather see an electronic sign in one location in this sort of setup as opposed to four, five or six individual little signs promoting each business. Those are far more distracting than a sign that repeats itself in several seconds.

Motion for conditional approval carried 7-2: Francis, Taylor, Larson, Cornelius, Lust, Partington and Sunderman voting 'yes'; Gaylor Baird and Esseks voting 'no'. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 2022C,
TO REVISE THE PLANNED SERVICE
COMMERCIAL SPECIAL PERMIT TO
PERMIT A BUILDING WITH BANK DRIVE-THRU AND
TO REMOVE EXISTING SIGN PACKAGE AND
BUILDING AND SIGN ELEVATIONS,
ON PROPERTY GENERALLY LOCATED AT
SOUTH 27TH STREET AND GRAINGER PARKWAY.
PUBLIC HEARING BEFORE PLANNING COMMISSION: September 23, 2009

Members present: Francis, Gaylor Baird, Taylor, Larson, Cornelius, Lust, Partington and Esseks; Sunderman declared a conflict of interest.

Ex Parte Communications: None.

Staff recommendation: Conditional approval.

Staff presentation: **Christy Eichorn of Planning staff** explained the proposal as an amendment to the existing special permit for planned service commercial at the corner of S. 27th Street and Grainger Parkway. There used to be a strip of O-3 zoning that ran along Grainger Parkway and then everything south is zoned H-4 for planned service commercial. In 2007, the O-3 zoning was removed to allow for retail uses along Grainger Parkway and a drive-thru bank at the corner of 27th and Grainger Parkway was eliminated. The applicant today is proposing to include the drive-thru bank at 27th & Grainger Parkway. The applicant has submitted traffic counts that show that this amendment with a drive-thru bank would not have any significant impact over what was approved in 2007.

Eichorn also explained that the proposed amendment keeps all of the use permit restrictions on Lots 1, 2, 3 and 4, which had previously been negotiated with the

neighborhood association to the north. There is a long list of uses that are prohibited. The only thing that changes is that now they can have a drive-thru bank.

In addition, Eichorn pointed out that the previous special permit had a specific sign plan because there were signs proposed for which we did not have a definition at that time. We now have a new ordinance to define those signs. Since that developer no longer has an interest, those signs would need to be changed. That sign package goes away and the new developers of the area would have to conform with the existing sign ordinance.

There is one additional restriction requested by the neighborhood association – that there be no lighted signs along Grainger Parkway. And the applicant has agreed to this condition.

Eichorn also noted that besides the lighting of the signs, the neighborhood expressed concern about the right-in/right-out at this location, which has been shown throughout the three site plans for this site. The neighbors have noticed that with the median in Grainger Parkway, some traffic is coming through and making a u-turn around the median. They expressed concern that the customers leaving the drive-thru would do u-turns. The revised site plan shows a “pork chop” in this location, i.e. a piece of cement that goes in the middle of the access. Public Works said that the pork chop can stay but they do not believe it is going to be effective in deterring u-turns at that location. The city could install a “no u-turn” sign at this location. Staff supports the right-in/right-out with or without the pork chop, and the city can try to install a “no u-turn” sign at that location.

Lust noted that the staff report indicates that the only way to prevent the u-turn would be to require a right-in only. Eichorn explained that there would be no lane to allow traffic to come out on this access. They would have to exit at another access point. Eichorn has discussed the “no u-turn” sign with Public Works and they would agree to install one at that location.

Esseks inquired whether there was another undertaking either by the developer and/or by the Planning Department that there will be a no u-turn sign or right-in sign. Eichorn reiterated that the plans for this site have always shown the right-in/right-out. It has been the observation of the neighbors that there have been people making u-turns. The staff does not know how many are making u-turns or whether it is causing any problems. The “no u-turn” sign would be our best effort to try to keep people from making u-turns.

Lust asked for clarification of the concern about the u-turns. Eichorn stated that some of the neighbors believe that there is not enough room in the street for an effective u-turn without hitting the curb and tearing up the grass, etc. The other side of the street where they are hitting the curb, etc., consists of grass, landscaping, fence and a single-family house.

Rick Peo of City Law Department made it clear that whether or not a “no u-turn” sign is posted is not within the jurisdiction of the Planning Commission. That is part of Public Works’ authority.

Dennis Bartels of Public Works explained that typically the City does not like “no u-turn” signs on a local street like this. The pavement back to back between the curb on the median is only 25'. There are a lot of vehicles that could not make the u-turn in a traditional way. Signs on medians like this are going to have to be replaced periodically. Bartels suggested that the developer pay for the first sign.

Eichorn also explained that there is an outlot owned by the neighborhood association before you get into the private owner’s property, so if the traffic did run over the curb, etc., any repairs would be at the neighborhood association’s cost, and that is part of the concern of the neighbors.

Bartels stated that if the traffic is intent on making that u-turn, they are probably going to do it anyway, but if it helps until the traffic pattern gets better established, Public Works is willing to put up the sign. The only 100% effective way to prevent u-turns would be not to allow an exit at that driveway. This design will most likely encourage the u-turns.

Bartels also observed that when this area is fully developed, that intersection will have a significant amount of traffic and may very well need a signal at some point in time. If they are going to have the driveway where they are showing it, they want the median in front of it. The median was a safety aspect in the original design of Grainger Parkway. It would not be a good idea to have a full access at that point because of the traffic that has been projected.

Esseks inquired whether there is a design standard or provision for drive-thru facilities. Bartels stated that there is a design standard for drive-thru windows. He believes the standard for teller-operated windows is one car at the window and room for four stacking, then we look to make sure those stacked cars don’t block the through access needed for the parking lot. They will sign it as right-turn only when you leave that facility. So the driver has direction, whether he follows it or not. The only positive way to prevent it is to design a right-in only driveway, but that doesn’t always work because we have medians across roadways where people drive their four-wheel drives right over the median.

Lust reviewed the traffic pattern and inquired how someone gets southbound on 27th leaving the bank building. Bartels explained that the traffic will have to hit the accesses through the shopping center and get to Yankee Hill Road. There is a shopping center south of Jamie Lane and there are cross access easements, so one could go through that shopping center to get to an access point that would go south on S. 27th Street. There is full access at Grainger Parkway on 27th Street.

Lust is concerned that even a “no u-turn” sign is not going to solve the problem. Bartels suggested that a u-turn at this location would be violating the traffic rules, but there will be a certain number that will do it way. Bartels also pointed out that there is nothing to prohibit the developer from building the full access point on the undeveloped portion today.

If necessary, Partington doesn’t believe that circling around the whole area would be too much of an inconvenience. Bartels believes there is more than adequate access for full directional movement. That’s why Public Works was not recommending that they eliminate this driveway. He does not believe the u-turn will be a long term problem once the full access is built in the remainder of the development.

Taylor suggested that the developer could change the design so that the u-turn would be safe. Bartels agreed that if this type of situation were going to happen regularly or was needed, it could be designed differently.

Eichorn pointed out that when there is further development, there will be an exit allowing traffic to go north or south on Grainger Parkway.

After more discussion about the traffic patterns on the site, Bartels suggested that the u-turn problem is probably short tem until the rest of the development occurs. He again stated that the developer is authorized to build that full access onto Grainger Parkway today.

Proponents

1. Danay Kalkowski appeared on behalf of **First State Bank,** the applicant. This amendment will impact the 6.2 acres. The bank has an agreement to purchase the west half of the property and it plans to construct about a 14,000 sq. ft. building on the corner that would house its company offices as well as a drive-thru bank.

Originally, the commercial zoning approved a strip of O-3 along Grainger Parkway and the remaining of the site was H-4. At that time, the corner was shown for a bank use, which was a permitted use in the O-3 zone. Back in 2007, the developer worked with the neighbors and the city to change the zone to H-3, and the primary reason the neighbors were supportive was because of use restrictions limiting the more intense type retail uses. At that time, the use that was planned on this corner was a day spa so there was no concern about the drive-thru. The amendment today is to change that use restriction to allow the bank back on the corner. Even though they are putting the bank back in, the amount of traffic generated by this site is still within what was originally approved.

Today’s proposed amendment still includes the use restriction for signage – the wall signage on the north side of the buildings would have no illumination.

Kalkowski discussed the meeting with the directors of the homeowners association, and stated that they subsequently mailed out 400 letters to the whole neighborhood and 11 people attended the meeting. The developer has tried to address the main issues of the neighbors. The developer has also visited with the rest of the neighbors to the south.

Kalkowski submitted a motion to amend to delete Condition #1.5, which requires all of the existing landscaping along the south side of Grainger Parkway to remain. The existing landscaping is primarily pine trees. The core problem is that the developer believes the requirement that those specific trees be kept is above and beyond what the developer had agreed upon with the neighbors back in 2007 and today. Even though the zone was changed along Grainger Parkway, the developer is continuing to show the O-3 setback and is committed to install the minimum landscaping requirements along Grainger Parkway. Back in 2007 and again today, the bank has committed to provide funding to the neighborhood association that would allow the association to install landscaping of their own on the outlot that they own all the way along Grainger Parkway. There was no tie to the specific existing trees in that agreement. Those trees were not part of a formal landscaping plan at the time. The developer worked hard with the neighborhood to come up with an agreement and that agreement gave the developer the flexibility that, depending where buildings might be located, they would have ability to remove a tree or two if they needed additional exposure to the roadway.

With respect to the access point, Kalkowski stated that Grainger Parkway is a local street – it is not an arterial street – so the amount of traffic is not the same that you have coming off of an arterial. It is not four-lane traffic going both ways when someone is trying to make a u-turn. The site plan has always shown this access point. The restaurant owner would tell you that he built the site with the understanding that he would be able to turn in and turn right back out in this location. We are not adding more traffic than already approved. We are not doing anything to change what has been in place. The bank feels that the turn in and out is important at this location. The appropriate way to deal with it is to put up the sign prohibiting u-turns.

This bank will be a great project for this neighborhood. They are ready to see something happen here to provide additional services for their neighborhood.

Esseks wondered whether the developer has considered lining up the access road with South 28th Street because then there could be a straight turn. The problem with access is the median. Kalkowski agreed that to be a great concept and one of the first questions they discussed with staff, but there are sight distance issues because it is right on the curve. **Mark Palmer of Olsson Associates** explained that there is not enough sight distance to make a full median and create a left turn bay.

Kalkowski confirmed that the site plan shows a 30' setback from the edge of the right-of-way to what would be buildable area. The trees are not entirely within that setback. That is some of the problem. There are no specific users for those lots yet. They plan to begin construction of the bank in the spring. There are no specific users for the rest of the site at this time.

Lust presumed that in essence, the vast majority of those trees would remain if Condition #1.5 is eliminated. Kalkowski agreed that it is not the anticipation that someone would wipe out the mature trees. But some of the building tenants may not want the trees to impede upon visual view. These trees have never been any part of a formal landscape plan, and we have agreement to provide funding to the neighborhood association. Gaylor Baird observed, however, that mature trees would provide more barrier for residents across the street. Kalkowski's response was that this is a neighborhood organization that the developer has worked with for multiple years. If the neighborhood felt those specific trees were that important to them, they would have incorporated them into the agreement with the developer.

Esseks inquired whether the idea of moving some of these trees was discussed with the leadership of the neighborhood association. Kalkowski stated that they have always said that the developer would provide at least the minimum landscaping required by the city. There has been no commitment that those trees will stay or go. The neighborhood representatives have never gone away with the understanding that the existing trees would be kept.

There was no testimony in opposition.

Staff questions

Taylor asked for staff response to the request to delete Condition #1.5. Eichorn explained the rationale for including it as a condition of approval -- for a long time the staff attempted to maintain the O-3 zoning along Grainger Parkway as a buffer between higher intensity uses and a residential area. When the staff report was written, the staff had not had any discussions with the neighborhood association on this amendment; however, Eichorn did confirm the agreement between the neighbors and the developer with the neighborhood representative this morning, i.e. that the neighbors do not have any expectation that those trees are going to remain, and that they do have an agreement that the neighborhood association to be compensated in some way for some additional landscaping on the north side of Grainger Parkway. Staff's original purpose for this condition was to provide that screening between the neighborhood to the north and the development to the south, but if the neighborhood does not have that expectation and has worked out a private agreement with the developer, the city does not object to allow those trees to go away. The screening required in H-4 is parking lot screening.

Esseks inquired whether there is an agreement between the current developer and the residents north of Grainger Parkway that the trees, or something as good as the trees, along the south side of Grainger Parkway would stay. Eichorn's responded "no", there is an agreement that the developer would install the required landscaping by code, which is strictly that for parking lot landscaping. When Condition #1.5 was written, Planning staff had the assumption that those trees were going to stay unless there was some sort of private agreement between the neighborhood association and the developer. Staff was not aware that the developer had reached any such agreement. Condition #1.5 was included as standard language that would be used for any area rezoned from lower to higher intensity use to buffer the neighborhood to the south. Since the neighborhood association has confirmed their agreement with the developer, staff will not object to removing Condition #1.5.

Response by the Applicant

Kalkowski confirmed that the developer does have the agreement with the neighbors.

ACTION BY PLANNING COMMISSION: September 23, 2009

Taylor moved to approve the staff recommendation of conditional approval, with amendment deleting Condition #1.5 as requested by the applicant, seconded by Esseks.

Taylor appreciates the work that the applicant has gone through to make sure that the neighbors have been informed. He is concerned about the traffic flow in that area. He is pro-energy efficiency and he would love to see a better way of making certain that they are not going to make it more u-turn friendly.

Larson commented that he has no objection to the project except for the traffic. He thinks the traffic situation is so complicated that he is going to vote against it.

Cornelius believes that it looks like we have the beginning of a development here and he would like to see it move forward. There is a wrinkle with the right-in/right-out issue – it's not a real safety issue but a complaint or slight problem for the neighborhood across the street because some traffic makes a u-turn today at this location and sometimes goes up on the outlot. As the development progresses (and we hope quickly), the traffic situation will improve. There is an agreement about the landscaping. He will vote yes.

Motion for conditional approval, with amendment deleting Condition #1.5, carried 7 -1: Francis, Gaylor Baird, Taylor, Cornelius, Lust, Partington and Esseks voting 'yes'; Larson voting 'no'; Sunderman declaring a conflict of interest. This is final action, unless appealed to the City Council.

** break **

CHANGE OF ZONE NO. 09021,
TEXT AMENDMENT TO TITLE 27
RELATING TO PROCEDURE FOR
APPEALS OF ADMINISTRATIVE APPROVALS.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: September 23, 2009

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

Ex Parte Communications: None.

Staff recommendation: Approval.

Staff presentation: **Christy Eichorn of Planning staff** explained that this proposal is another attempt to streamline the process because as the Planning Director makes administrative decisions we want a clean clear-cut way for appealing that decision, such as approvals of administrative amendments to special permits or use permits or if the Planning Director makes an administrative decision to allow someone to move a billboard and someone wants to appeal that decision. Today, if you wanted to appeal an administrative decision, you would have to go to the Board of Zoning Appeals showing you were an aggrieved person and that the Planning Director action was somehow in error – and it is not entirely clear what "error" means.

In order to clarify that question and to make the process of appeal easy to understand and to streamline, the proposed text amendment provides that instead of going to the Board of Zoning Appeals with an alleged error, the applicant would appeal an administrative decision to Planning Commission to be taken up at a public hearing. Planning Commission is the appropriate body because the Planning Commission deals most often with use permits and special permits and might be familiar with the original permit as it went through the process.

Lust asked for a definition of "aggrieved person" and whether it is defined in the ordinance. Eichorn does not believe it is specifically defined in the ordinance. The Planning Commission would have to decide whether the appellant is an aggrieved person. **Rick Peo of City Law Department,** indicated that it will be a case law determination as to whether a person qualifies as aggrieved – whether it be a property owner or City Council members, etc., but beyond that you have to look to case law to determine what is an aggrieved person. Our guidelines talk about sending notice to people within 200' and perhaps they would be worthy of being an aggrieved party. It is not always going to be black and white.

Assuming the appellant is an aggrieved party, Lust inquired as to the procedure the Planning Commission would follow. Peo advised that it would be scheduled for public

hearing before the Planning Commission with an independent review and decision.

There was no testimony in support or opposition.

ACTION BY PLANNING COMMISSION: September 23, 2009

Larson moved approval, seconded by Francis.

Sunderman believes this is somewhat of a clarification of what we already do and he agrees with bringing the appeals back in front of Planning Commission because that is where the decision is usually made in the first place.

Motion for approval carried 9-0: Francis, Gaylor Baird, Taylor, Larson, Cornelius, Lust, Partington, Esseks and Sunderman voting 'yes'. This is a recommendation to the City Council.

There being no further business, the meeting was adjourned at 2:35 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on October 7, 2009.

F:\FILES\PLANNING\PC\MINUTES\2009\pcm092309.wpd