MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, February 10, 2010, 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 and Tommy Taylor (Roger Larson, Jeanelle Lust, Jim Partington and Lynn Sunderman absent); Marvin Krout, Steve Henrichsen, Mike DeKalb, Brian Will, Christy Eichorn, Jean Preister and Teresa McKinstry of the Planning Department; media and other interested citizens.
STATED PURPOSE OF MEETING:	Regular Planning Commission Meeting

Vice-Chair Michael Cornelius called the meeting to order and requested a motion approving the minutes for the regular meeting held January 27, 2010. Motion for approval made by Esseks, seconded by Francis and carried 5-0: Gaylor Baird, Cornelius, Esseks, Francis and Taylor voting 'yes'; Larson, Lust, Partington and Sunderman absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: **February 10, 2010**

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

The Consent Agenda consisted of the following items: **SPECIAL PERMIT NO. 1988B.**

Ex Parte Communications: None

Taylor moved to approve the Consent Agenda, seconded by Esseks and carried 5-0: Gaylor Baird, Cornelius, Esseks, Francis and Taylor voting 'yes'; Larson, Lust, Partington and Sunderman absent.

Note: This is final action on Special Permit No. 1988B, 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.

CHANGE OF ZONE NO. 10002
TEXT AMENDMENT TO TITLE 27
OF THE LINCOLN MUNICIPAL CODE
RELATING TO SPECIAL PERMIT FOR GARDEN CENTERS.
PUBLIC HEARING BEFORE PLANNING COMMISSION: February 10, 2010

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

Ex Parte Communications: None.

Staff recommendation: Approval

Staff presentation: **Brian Will of Planning staff** explained that this text amendment is really a correction with only one substantive change. Back in January, there were two related applications on the Planning Commission agenda for a change of zone and use permit to allow a garden center in The Preserve development. After several meetings and discussions between the applicant and the neighbors, there was consensus that changing the zoning was not the preferred alternative. This text amendment represents another way to get there.

There is a special permit on today's agenda which is dependent upon approval of this text amendment.

This proposed text amendment: 1) modifies the preamble to include the R-2 district, which was intended to be included originally; 2) adds a few commercial districts into the list of allowed districts to which the garden center must be adjacent; and 3) adds the H-1, O-2 and I-3 districts to correctly reflect the way that language exists in the design standards today. These amendments are intended to make the text clearer and easier to understand.

The most significant change is to clarify that the R-2 zoning district is one in which a garden center is allowed by special permit, and to add the B-2, H-1, H-4, I-2 and I-3 zoning districts to the list of commercial districts to which the garden center must be adjacent.

Esseks wondered why this text amendment is a better approach than changing the zoning. Will suggested that this text amendment allows the zoning to remain as residential in The Preserve development with the garden center, if the special permit is approved. The neighbors were more in favor of retaining the R-3 zoning as opposed to B-2. Esseks observed that if the zoning were changed to B-2, then there could be something located there besides a garden center at some future date. Will concurred and clarified that this is an amendment to the zoning ordinance so it is global and affects the entire community, while it does facilitate the special permit later on today's agenda.

Taylor assumes that this text amendment represents a cumulation of changes for various reasons and maybe is something that should have been done some time ago. Will stated that this special permit for a garden center is not used frequently, and while reviewing this application, there appeared to be some omissions and changes that needed to be made to make it work better.

Proponents

1. Mike Eckert of Civil Design Group, the applicant, agreed with the staff testimony and the additional changes to the text recommended by staff. His client seeking the garden center is adjacent to the B-2 district, so the discussion began about including B-2 as a district to which a garden center could be adjacent. As with any law, until its application is thoroughly tested, some of the ramifications are unknown or not realized at the time the law was created. This text amendment allows the garden center to be developed without a change of zone. The neighbors wanted the underlying zoning to remain R-3 as opposed to a change to B-2.

2. Angie Vandersnick, expressed appreciation to the Commission for considering the text amendment. Her family owns and operates Nebraska Nursery and Color Gardens, which began in The Preserve. About three years ago, the property where their business was located developed into the commercial aspect of The Preserve and Nebraska Nursery and Color Gardens moved to the west side of Lincoln. Since then, their business ideas have changed and they wish to relocate back into The Preserve. They have had direct contact with the neighbors and have developed a great relationship with the neighbors. She has a vested interest in The Preserve through the landscaping and retail business. This is an opportunity that will be beneficial to all parties involved.

There was no testimony in opposition.

Staff questions

Gaylor Baird inquired whether there is anything about the additional zoning districts that would have excluded them in the first place. Will stated that staff could not really find any rationale for those that were excluded and is recommending that they now be included.

Taylor inquired about any opportunity for retail sales of small gardening type equipment such as weed eaters, etc. Will explained that the intent is that it be “primarily” a garden center focused on growing and selling plants. Will does not believe the language precludes the accessory sale of such items as long as it is “primarily” a garden center growing and selling plants.

Cornelius suggested that this text amendment could be characterized as something that would be worthy of doing even if we did not have the special permit on today's agenda. Will concurred. Admittedly, it may not have come up in the normal course of discussion, but without the special permit, staff would still be supportive of this amendment.

There was no rebuttal by the applicant.

ACTION BY PLANNING COMMISSION: February 10, 2010

Francis moved approval of the staff recommendation, seconded by Esseks.

Francis believes this corrects some misplaced numbers when it was originally written.

Gaylor Baird believes it meets the original intent and will support it.

Taylor thinks it is a good idea.

Motion for approval carried 5-0: Gaylor Baird, Cornelius, Esseks, Francis and Taylor voting 'yes'; Larson, Lust, Partington and Sunderman absent. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 10001HP,
DESIGNATION OF HISTORIC LANDMARK,
and
SPECIAL PERMIT NO. 10001,
FOR HISTORIC PRESERVATION,
ON PROPERTY LOCATED AT 3008 "O" STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: February 10, 2010

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

Ex Parte Communications: None.

Staff recommendation: Approval of the landmark designation and conditional approval of the special permit.

Staff presentation: **Steve Henrichsen of Planning staff** presented the proposal in the absence of historic planner, Ed Zimmer. The change of zone is for historic designation, with a recommendation of approval from the Historic Preservation Commission. The HPC has reviewed the application and found that it is worthy of designation as a local landmark. The house was built in 1902 and is one of the oldest and largest examples of a home still standing on O Street. The property is already zoned B-1 and is located on the northeast corner of 30th & O Streets. With the B-1 zoning, the applicant would have the ability to tear

down the existing house and put up a business on the property. In this case, we are fortunate that the applicant has decided to preserve the home and take the steps of returning the home to a lot of the grandeur it had before, such as removing asbestos siding and putting some of the porches back in place. All of the work on the exterior comes with review for compliance with the historic preservation guidelines.

The second application for the special permit allows the use of the property under historic preservation. There is a specific site plan with two adjustments that need to be made: 1) to allow the property to have 8 parking stalls rather than the required 11 or 12, and 2) to allow an existing garage to remain on the site, even though it is in the side and rear yards. Otherwise, there are not a lot of things on the site plan that would be different from the use as a typical business. It is important to retain the garage even though it is within the setback – and, it is only in the setback for use as a business. There is no encroachment on the setback as a house.

Esseks wondered how to justify the reduced parking. Henrichsen explained that it is not unusual for a local landmark to come for a reduction in parking because the building takes up a large portion of the property. In this case, with the use being shown, it may not be a business as intensive as some of the other type of retail operations, so the staff felt it would not be a benefit to the historic preservation of the property to tear down the garage to gain the two extra stalls.

Proponents

1. Anita Bartels appeared on behalf of the applicant, Karolyn Howard, to answer any questions. Bartels serves as a manager of a number of Ms. Howard's businesses.

Cornelius inquired as to the intended use of the property. Bartels indicated that it will be used as a small boutique of home decor and gift items for retail sale. It will not be a consignment store.

Other public testimony

1. Rosalind Morris, 3018 O Street, testified stating that she is not really in opposition but wants information. She lives in the court just east of this property at the corner of 30th & O Streets. There is very little space on the back side of her property between the sidewalk and the property line, so she wanted to know the location of the true property line. There is a mulberry hedge that she has taken care of for many years that may be right in the middle of the property line. There is an oak tree which she believes to be on her property which she would not want to see removed, and she has been allowed to use the landscaping and is hopeful that the evergreens can be preserved. There are three large trees between her property and the house and she wondered whether they would be taken

down. She wondered what landscaping would be required. She also understands that there will be a fence between the properties and she is hopeful that it will not be a tall board fence.

There was no testimony in opposition.

Staff questions

Henrichsen showed an aerial photo of the area of application. He could not identify exactly where the property line would be, but it appears the court buildings to the east are very close to the property line. The site plan that will be required to be followed shows the existing house with an addition on the back side; the garage is on the back of the property and will remain in place. That garage is already about 3' off of the property line. The site plan did not show the hedges along the eastern side, but several of the trees on the site are shown, particularly those along the eastern side, and it appears that those trees will remain on the site. The fence that will be added on the front and west sides is listed as a wrought iron fence and would be reviewed by the Historic Preservation Commission. He does not believe the HPC would be interested in a board fence. The site plan does not show a board fence on the property to the east. The hedge may not be shown on the site plan because it is a smaller planting.

Response by the Applicant

Bartels clarified that the fence will be a 3 to 4 ft. wrought iron fence going along O Street on the south and the west side, more for aesthetics than anything else. It is not a privacy fence. It is just ornamental. There is no plan for a fence on the east side of the property. All existing trees will remain in place unless they are a safety hazard. There is no intent to remove any of the trees.

CHANGE OF ZONE NO. 10001 HP
ACTION BY PLANNING COMMISSION: February 10, 2010

Gaylor Baird moved approval, seconded by Taylor.

Gaylor Baird commented that it is nice to see them taking this property and restoring its glory.

Taylor believes it will be a great improvement for the area and it speaks very well of the applicant for going through such terrific effort to restore this property.

Cornelius commented that he has a somewhat personal relationship with this house because he passes it every day. He appreciates it being restored and it will be an asset to the community.

Motion for approval carried 5-0: Gaylor Baird, Cornelius, Esseks, Francis and Taylor voting 'yes'; Larson, Lust, Partington and Sunderman absent. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 10001
ACTION BY PLANNING COMMISSION: February 10, 2010

Motion made by Francis to approve the staff recommendation of conditional approval as set forth in the staff report, seconded by Taylor.

Cornelius observed that it appears that it is not atypical for a local historic landmark to make some adjustments to allow for restoration and to maintain the historic characteristics in light of its alternative use commercially.

Motion for conditional approval carried 5-0: Gaylor Baird, Cornelius, Esseks, Francis and Taylor voting 'yes'; Larson, Lust, Partington and Sunderman absent. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 10002
FOR A GARDEN CENTER
ON PROPERTY GENERALLY LOCATED AT
LUCILE DRIVE AND PRESERVE LANE.
PUBLIC HEARING BEFORE PLANNING COMMISSION: February 10, 2010

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

Ex Parte Communications: None.

Staff recommendation: Conditional Approval.

Staff presentation: **Brian Will of Planning staff** explained that this is the special permit request for the garden center which will be allowed with the approval of the previous text amendment.

The property is located northeast of the intersection of Lucile Drive and Preserve Lane. The lot is the same area and very similar to the application for Use Permit No. 125A which was placed on the Planning Commission pending list last month. The site plan shows a 30' setback for the garden center, which is consistent with the text amendment on today's agenda. Staff is recommending approval, with a few minor conditions and corrections to the site plan.

Proponents

1. Mike Eckert of Civil Design Group, appeared on behalf of the applicant, stating that this project began back in April of last year when the Manzitto family met with staff about the potential for developing a garden center at this location. Staff suggested that they get the neighborhood support. When they reviewed the text at that time, they thought they could do the garden center. The applicant met with the homeowners surrounding this development and portrayed the special permit. Later, with the neighborhood support, they began to look closer at the text and noticed that B-2 was not listed as an adjacent zoning district. Staff then indicated that they would support a change of zone from R-3 to B-2.

The applicant met again with the neighborhood and the townhouse representatives about doing a change of zone and tying the garden center into the use permit for B-2 with restrictions that would only allow townhouses or a garden center. They met with the neighborhood in December and January, and at both meetings it became abundantly clear that the neighbors did not want to do a change of zone on the property. At that point, the applicant came back to staff and drafted this text amendment.

With this special permit, the underlying zoning would remain R-3 and the garden center would abut B-2. There are notes on the site plan about a landscape buffer around the perimeter of the property that will screen 60% of a 10' high area with all-season species coniferous plants. They had talked with the homeowners about the building being 22' high, but it will actually be 24' high, which is still well below the 35' height restriction in R-3. Eckert believes that the neighbors are now in support. Ultimately, the garden center customers will take access through the B-2 area and not the townhouses.

Francis asked Eckert to specify the access points. Eckert showed on the map that one option would be for traffic to come off Pioneers. There is also a drive off of Lucile. There is a dedicated easement. Both of the access points are in place today.

2. Angie Vandersnick, Nebraska Nursery and Color Gardens, who will be the owner and operator of the garden center facility, appeared to answer any questions. They now have support of the homeowners who originated the letter in opposition of the change of zone.

3. Sam Manzitto, the contractor/developer of the property, testified in support. He has also developed the other property that is on Pioneers, and the townhome lots in The Preserve. His company has been in the construction business for 30 years, building hundreds of homes and commercial office buildings. They have been connected to this community and this is a great project for The Preserve. They have had many meetings with the neighbors. He believes that the nursery design is a perfect fit for the area and for these lots, surrounded by commercial on three sides and landscaped on four sides. This plan eliminates four driveways off of Preserve Lane. The nursery will be entered from the existing parking lot from the north.

Esseks understands that the property directly south of the planned garden center is being developed for office, and he wondered whether the developer has had contact with that property owner. Manzitto stated that he owns that property. Esseks inquired whether the original plat provided for an office at that location. Manzitto stated that the original plat in 2001 provided for office. There is one of the two buildings under construction at this time.

There was no testimony in opposition.

Staff questions

Gaylor Baird referred to the 22' height actually being 24' and wondered whether this would require any amendments to the conditions of approval. Will suggested that the applicant will show that on the revised plans that are submitted after the special permit is approved. The 24' is well within the allowed height so there is no question from staff's standpoint.

There was no rebuttal by the applicant.

ACTION BY PLANNING COMMISSION: February 10, 2010

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

Francis stated that she appreciates the developer working with the neighborhood and going back to the table to do what was necessary to correct some of the code and work out the win-win situation for everyone.

Esseks believes this is a reasonable adjustment in the indicators land uses. He agrees that plats have to be open for adjustment now and then. And, what we see here is that to the south of the property we have office being constructed and our plan calls for similar housing types facing each other, so if we insisted on townhouses, they would be facing the office building. He thinks it is reasonable to permit the commercial use here.

Motion for conditional approval carried 5-0: Gaylor Baird, Cornelius, Esseks, Francis and Taylor voting 'yes'; Larson, Lust, Partington and Sunderman absent. This is final action, unless appealed to the City Council.

SPECIAL PERMIT NO. 10004
FOR EXCAVATION OF SOIL,
ON PROPERTY GENERALLY LOCATED
AT N. 56TH STREET/HIGHWAY 77 AND INTERSTATE 80.
PUBLIC HEARING BEFORE PLANNING COMMISSION: February 10, 2010

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

Ex Parte Communications: None.

Staff recommendation: Conditional Approval.

Staff presentation: **Mike DeKalb of Planning staff** presented the proposal for soil mining and excavation on about 209 acres at the corner of Hwy 77 and I-80. The Comprehensive Plan currently shows this area as "red" for commercial and "purple" for industrial land uses around it. There are two phases of cuts taking out two hills. The understanding of staff is that the owner/developers are looking at developing this property as commercial/industrial and worked out an agreement with the city to get water. If graded for commercial, they would have excess soil and realized the timing may not be right for commercial development but an appropriate time to sell that surplus soil and thus this request. The staff recommendation includes a provision for screening. This is one of those areas where you can see the view of the Capitol and this application will also be reviewed by the Nebraska Capitol Environs Commission.

Esseks noted that both the Nebraska Games and Parks Commission and the Lincoln Public Works Department observed that appropriate sediment and erosion control measures should be in place before excavation starts for the purpose of protecting downstream from sedimentation. What conditions of approval cover these issues? DeKalb pointed out that there are wetlands identified and a drainageway between the two hills. Condition #2.1.1 specifically requires a 404 Permit and NPDES permits for wetlands; Condition #2.1.11 requires a certification of operation which means that Building and Safety will ensure that all conditions are put in place; and Condition #2.6 requires compliance with all conditions of Section 27.63.160 of the Lincoln Municipal Code, unless specifically amended. The code provision of 27.63.160 (b) provides that the applicant must comply with all state, federal, and city sediment erosion control regulations.

Esseks referred to Condition #2.3 which requires reclamation within nine months after completion. We have had applicants in the past who have said that they want their permit renewed and then we have not observed any reclamation. It looks as though you've gone a step farther here. How do we deal with the applicant who says that they never started the reclamation because the market for the dirt was low and they are only partially done? DeKalb suggested that there are several layers of conditions in the ordinance for the special permit that overlap. The intent of the nine-month period was that when you cease

excavating, you have a period of time to do the reclamation. We also have the one-year annual review by Building and Safety in place, and there is a bond required to insure reclamation. We have to acknowledge that there are operations that may not finish and ask for a renewal and extension, but it will still be required to be reclaimed in the end.

Esseks further queried – so he starts on the 20 acres, and the market sustains excavating only half of that. Does he wait until the three years have expired before he has to reclaim those 10 acres? DeKalb stated that the area that has been completed must be reclaimed.

Gaylor Baird commented that the Commission has seen a number of these applications in the past few years which were controversial and led to the adoption of some new standards to eliminate some of the problems that have gone on in the past. Based on some of those standards that are now included, we avoid having the work visible in certain sensitive areas like major arterials coming into the city, the Capitol environs corridor and wetlands in this case. This site does not sound ideal for soil mining based on the new standards. Why is the Planning Department recommending approval? Is it because this soil is going to be extracted at some point in the near future anyway? DeKalb concurred. The applicant wants to sell some soil early to generate some cash flow. If they had waited to excavate until a building permit or subdivision permit, they would not need a special permit. You can level land for commercial development without a soil excavation special permit if they are going to use the soil on the site. They could move the dirt for future construction.

Francis confirmed that this is going to be a commercial operation, so they are still obligated to reclaim the soil so that it doesn't blow away when they are done. DeKalb agreed. The resolution talks specifically about air pollution, etc. Francis further confirmed that if they were removing the soil for building, they would not have to have a permit unless they were selling the soil. DeKalb agreed. Francis believes this is an extra and better step for the citizens.

Proponents

1. Mike Eckert of Civil Design Group appeared on behalf the applicant. He believes this is the first soil mining permit to come under the new standards. The requirements provide a lot of protections and his client is more than happy to comply. If they were developing this property now, a lot of the restrictions would not be required. But, there are opportunities to sell some of the dirt, thus the request for this special permit.

Eckert's client controls about 535 acres in this square mile. They are trying to get urban utilities to this property as this area is identified as an employment center.

The mining permit area is in the corner closer to the interstate. The area is actually screened very well already. There is a 20' berm along Interstate 80 that will remain until the very end of the mining permit, as well as a berm along North 56th Street. Eckert showed photographs of the site and surrounding areas depicting the berms that are in place and the views of the Capitol.

Eckert acknowledged that the Nebraska Capitol Environs Commission has veto authority within a full block area north, east, south and west of the Capitol. Other than that, they have recommendation capacity for the Capitol View Corridor. This application will also be considered by the Nebraska Capitol Environs Commission.

The applicant will be required to do a storm water pollution plan and the monitoring of that is very stringently enforced by the City.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION: February 10, 2010

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

Francis appreciates that the client is willing to take the extra effort to keep the soil contained, and the fact that there is no one here in opposition is a good sign.

Taylor expressed appreciation for the photographs.

Esseks also thanked the applicant for the photographs. He also expressed appreciation to the staff for shepherding the revisions to the ordinance. It appears it is working because there is no opposition.

Gaylor Baird believes the applicant has made a persuasive case for what they want to do. She also expressed appreciation to the applicant for taking the time to locate the excavation as such and for showing the photographs.

Motion for conditional approval carried 5-0: Gaylor Baird, Cornelius, Esseks, Francis and Taylor voting 'yes'; Larson, Lust, Partington and Sunderman absent. This is final action, unless appealed to the City Council.

There being no further business, the meeting was adjourned at 2:25 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on February 24, 2010.

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