MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, February 24, 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, Jeanelle Lust, Jim Partington, Lynn Sunderman and Tommy Taylor (Roger Larson absent); Steve Henrichsen, Mike DeKalb, Tom Cajka, 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 Lynn Sunderman called the meeting to order and requested a motion approving the minutes for the regular meeting held February 10, 2010. Motion for approval made by Francis, seconded by Cornelius and carried 5-0: Gaylor Baird, Cornelius, Esseks, Francis and Sunderman voting 'yes'; Lust and Partington abstaining; Taylor absent at time of vote; Larson absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: **February 24, 2010**

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

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 09022A and STREET AND ALLEY VACATION NO. 10001.**

Ex Parte Communications: None

Lust moved to approve the Consent Agenda, seconded by Esseks and carried 7-0: Gaylor Baird, Cornelius, Esseks, Francis, Lust, Partington and Sunderman voting 'yes'; Taylor absent at time of vote; Larson absent.

COMPREHENSIVE PLAN AMENDMENT NO. 10001
TO ADOPT AND INCORPORATE THE
2007 LINCOLN WATER SYSTEM FACILITIES MASTER PLAN UPDATE.
PUBLIC HEARING BEFORE PLANNING COMMISSION: February 24, 2010

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

Ex Parte Communications: None.

Staff recommendation: Approval.

Staff presentation: **Brandon Garrett of Planning staff** presented this update to the Water System Facilities Master Plan. It will be incorporated into the 2030 Comprehensive Plan, with amendments to the text in the Comprehensive Plan found on page 3 of the staff report.

Proponents

1. Nick McElvain of City Public Works & Utilities, Lincoln Water System, overviewed the contents of the Master Plan. This Master Plan was engineered by Black & Veatch, Olsson Associates, and City staff. The bond covenants require that an update be done once every five years. The focus of this effort was mostly on the distribution system – once the water gets to Lincoln – rather than the production and supply side because there were already several improvements underway in those efforts.

This Master Plan is a plan for the growth of the community. It also looks for deficiencies in the existing system. The result is a phased improvement plan for the first 25 years of the plan, based on Tier I of the Comprehensive Plan.

The supply of treated water will be focused upon more in the next Master Plan update, budgeted for the fiscal year 2012-13 Capital Improvements Program.

The basis of a master plan consists of a review of the entire water distribution system, comprised of a computer model of almost 10,000 pipe segments. The model is run for the maximum day and maximum hour. They also run average days, but the focus is on maximum demands with fire flows added on top of those demands. The demands are evaluated based upon population over a variety of years, with emergency conditions added on. The results of that modeling provides the pipe sizes and locations for future growth; identifies deficiencies in the existing system (very few were found in this update); and identifies where reservoirs or pump stations are needed for the new or existing pressure districts (there are six different pressure districts – this tells us where we might have to take pumps out and replace them with larger facilities). The final result is that in today's dollars, we need 133 million dollars worth of improvements for Tier I of the Comprehensive Plan.

That is a 25-year plan, equaling 5 million dollars a year. If the area in Tier I is a supply of land for greater than 25 years, maybe 35 years, then it's only 3.5 million dollars a year. It is important to know how big of an area we do plan to serve.

The current water main replacement program was also evaluated in this update as will as the historical water break information. With today's GIS system, they have been tracking the location of water main breaks for 25 years. The general findings are that the city still has over 45 miles of 100-year-old mains. A main was replaced last year on city campus that was built in 1888. There is another 115 miles of pipe between 80-100 years old. 100 years is the general life expectancy. As a result, we are looking at the need to increase the annual funding for the main replacement program. If funded at the level of current depreciation, it will be over 6 million dollars per year.

A recommendation in the plan is to begin using new technology, i.e. a non-destructive testing program for larger diameter pipes. We have been fortunate not to have had a catastrophic failure, but every couple of months you see one of those on the news. Technology has come up with equipment that will go through those pipes without destroying them and use radio waves and listening devices. The city should consider investing some money to determine the condition of some of the older larger pipes. This is recommended in the master plan.

Another observation of the master plan is the number of broken mains of pipe less than 50 years old. There is a need to spend more effort to see what's happening with that newer infrastructure and what we do to maintain those assets. The number of breaks we have had has been on the increasing curve as those pipes get older.

This plan looks out 50 years, but develops a plan for the first 25 years. Another observation is that the average per person use for consumption is down 10-15 % over the last 15-20 years, so it appears that water conserving fixtures in the home, automated water sprinkling systems, etc., are paying off. We see that the peak customer use has shifted from the afternoon to the morning. A reliable sustainable delivery of water depends on climate conditions, condition of infrastructure, capacity, reliability of the system and well-equipped and trained staff.

As one final observation, McElvain suggested that there is a need to further develop information and technology to better manage our infrastructure assets. We need to look at the lowest life cycle cost rather than just the cheapest bid, i.e. what materials can give us the life that we need.

In summary, McElvain stated that the Master Plan is a road map for the future; the information contained therein will be valuable for us as we look at the next update to the Comprehensive Plan because it can show us the cost of growth to the various growth areas of the community. Growing in southwest is very expensive because our source of water is in the northeast. We now have projects and pipe sizes designed for 50 years out. A

stable financial plan and rate structure is needed to sustain the built environment and provide for growth. The first cost is staff and energy costs; then debt service; then rehab and replacement cost; then finally the cost of growth. All of those need to be in our financial plan – a comprehensive asset management plan to provide the least possible life cycle cost.

Francis commented that she appreciates this review, and noted that the Planning Commission did have an extensive briefing two weeks ago. This is a very brief summary of that 204 page document.

Sunderman inquired whether we currently have access or own water rights to provide enough water to support us for the next 50 years. McElvain suggested it would be 35 to 40 years, depending on growth rates, conservation efforts and consumption levels. We may need an additional supply on line in another 35 years.

Sunderman asked how many lines are running from Ashland to Lincoln. McElvain indicated that there are two in service and a third is wrapping up completion.

There was no testimony in opposition.

Sunderman cited the last line of the proposed amendments, "Additional well field property and water rights will need to be acquired in the planning period to meet these demands." What demands are there? Garrett advised that to be the forecasted demands to which McElvain referred. The forecasted demand of the community would require an additional well field, probably aside from the Ashland site. This plan talks about the year 2057 time horizon, forecasting 223.9 million gallons per day. Garrett stated that since they are projecting more need than the projected capacity, they are needing to find more well fields in the future.

ACTION BY PLANNING COMMISSION: February 24, 2010

Esseks moved approval, seconded by Gaylor Baird.

Gaylor Baird stated that she feels very good knowing that staff is working on some really big issues to insure that a very basic human necessity is available for the short and long term in quality form and sufficient capacity. This is a real example of why planning is incredibly important for our community and it is nice to see such thoughtful work on such an important issue.

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

SPECIAL PERMIT NO. 1816B
TO EXTEND THE PERIOD OF TIME
FOR SOIL EXCAVATION ON PROPERTY
GENERALLY LOCATED AT
S.W. 40TH STREET AND WEST VINE STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: February 24, 2010

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

Ex Parte Communications: None.

Staff recommendation: Conditional Approval.

Staff presentation: **Mike DeKalb of Planning staff** advised that this is an application for special permit for mining – extraction of soil - an operation for which the special permit has expired. This is a continuing operation that has been in existence for at least 10 years on NW 40th and West Vine, north of the Interstate. The total parcel size is 61.6 acres, and the proposed area of continuing disturbance would be 33.53 acres. This area is shown in the Comprehensive Plan for future industrial. Until now, the applicant has been turning land back to ag land after completing various phases of excavation.

Esseks inquired as to the provision about mining in 20-acre increments, as it does not appear to be included among the site specific conditions. DeKalb explained that the specific provision is not listed because that provision, among others, are listed in the code. All of the code restrictions are required unless specifically excluded in the conditions.

Esseks also noted that the requirement to prevent ponding and collection of surface waters is also not included. DeKalb reiterated that there are multiple conditions in the code that are not specifically restated in the conditions.

Esseks suggested that if limiting to 20-acre increments, then reclamation will start sooner and erosion problems will be avoided sooner. He wants to make sure the developer is aware. DeKalb pointed out that Condition #2.6 refers back to the code – all provisions of the code would apply unless specifically excluded. The annual recheck and sign-off by Building & Safety for recertification is another check. The history of this particular site is that they have actually had a moving operation from east to west and they are returning the land on the east side back to farm land.

Gaylor Baird noted that the comments by Public Works about the grading plans raise a red flag with regard to future development of this site. DeKalb noted that there is a steep slope coming off the county road against West Vine Street. The issue is complicated, and the question by Public Works is a generic question. Someday in the future when the property is developed, West Vine Street will very likely be rebuilt. The other side of the coin is that

we want to make sure the landowner is cognizant of what is going on today. The thought is that they would provide a plan to show access if the property were to be developed as industrial in the future. Public Works wants to make sure there is acknowledgment now by the landowners that they have thought about this and how they plan to do it. Gaylor Baird inquired whether Planning has a comfort level with the grading. DeKalb believes the condition of approval will cover it.

Francis noted that page 5 of the staff report lists three items which the applicant did not address. Is this common? DeKalb reminded the Commission that this is new language and new code. It has been fairly common for them to miss a couple or two. They will be required to comply.

Proponents

1. Noel Chadd, 3335 N. 13th Street, the applicant, stated that he has been a homebuilder in the city for 50+ years. The dirt supply operation at this location has been in operation for 16 years, starting in 1994. This farm also contains about 90% of the dirt that was removed from the Antelope Creek channel in the last two years. That dirt will be recycled as jobs become available. The amount of dirt received from Antelope Creek was about 50% of the dirt that he is planning to remove – 400,000 cubic yards of dirt. There has always been a long range goal in mind for this land. This land is in the Airport West Subarea Plan and shown as future industrial use. The roadway shown up through the air base and out to Kawasaki is all future roadway. A new roadway from West Vine to West O Street with a bridge over I-80 is also coming in the future. There is now a 12" gas main installed across this farm property to help serve the west side of Lincoln. The city has also installed a new sewer line under the Interstate to the farm adjacent to this property, so now we have sewer and gas, and the water is on 27th Street and 48th Street.

Chadd indicated that he has met three different times with the State of Nebraska Department of Roads about the berms adjacent to his land and he would like to have them removed. They indicate that when the 6-lane interstate is installed, they will probably use those berms plus an additional 300,000 to 400,000 cubic yards of dirt.

Chadd requested that Condition #2.1.3, which requires visual screening to protect the site from the Interstate, be waived. The screening requirement is physically and monetarily impossible. He has a whole half-mile along that particular tract of land. This has not been a problem for 16 years. At present, you can see a large berm of dirt on top. He has removed a good deal during the winter months. Those are berms of frost. As soon as the frost comes out of the ground, he will remove a lot of that dirt and push it back over the hill so that it will not be quite so visible. He acknowledged that there will still be construction equipment on-site during the hauling operations only. The frost problem will take down 50% of the dirt that is already on the top. The visual screening appears to be a new requirement; it also appears that there are some dual standards. For example, Public Works has piled snow along Sun Valley Boulevard and West Charleston as high as his dirt

piles and it is now black, but that doesn't seem to be a problem. How about the City jail, three blocks south – we have the same construction problems going on there with no screening.

In addition, Chadd expressed opposition to the bond amount of $17,588 in Condition #2.1.11 for an operation on about 5-10 acres of land. He only disturbs about 5 to 10 acres at a time. He will go back and make sure all the topsoil is placed on the land where the dirt has been removed, and it will go back into farm production in the spring. He does this every fall and every spring. He does not believe he should be required to bond 33 acres when he is only using 5 to10 acres at a time.

This operation has supplied 90% of all the projects at UNL, including the dirt for the baseball diamond, the football field on two occasions, all of the dirt for the Tom Osborne field house; all soccer fields; all tennis courts; and most of the parking lots. Where do you think most of the dirt will come from for the arena? This is the closest borrow pit for the arena area and he is hopeful to do that project.

After further discussion, Chadd stated that he could live with the bond but he cannot live with the screening requirement. It will put him out of business.

Lust wondered whether there is some existing natural screening. Chadd suggested that it is only the natural lay of the land along the Interstate, but it is visible for a half mile. He believes that the on-ramp may be removed at some point in favor of the bridge on 40th Street.

Sunderman asked staff to clarify the berm issue. DeKalb explained that there is a good sized berm – most on the state highway right-of-way – that screens probably 30% of the subject site. So if he were to screen on the south side we would certainly count that existing state property berm. Chadd does not believe the berm does any good because the land climbs higher and higher from the Interstate. He is leveling the hill to make industrial land in the meantime. The berm serves no purpose and will put him out of business. He is not digging holes. He is leveling the land.

Lust sought further clarification. Are we saying that the berm is sufficient screening, or that he needs additional screening? DeKalb explained that the berm that exists – or the hill that was not removed by the Interstate – should count toward the screening requirement, but additional screening would be required. The area east and west of that hill could still receive some effort toward screening.

Chadd pointed out that in the future, this section of the Interstate is scheduled to be reconstructed – it is in the plan but not budgeted at this time. But, sometime in the future, NW 40th will go over the Interstate where Hwy 77 ties into the Interstate. He believes that berm will be taken out at that time. This special permit will have expired by then and the circumstances will be different.

Sunderman inquired whether the berm that exists now is sufficient for that section, such that we are just talking east and west of that berm for additional screening. Chadd indicated that he would have to take out the detention pond to do that berm.

Esseks inquired whether the percentage and height numbers are required by the ordinance, i.e. 75% and up to 20' in height. DeKalb explained that the ordinance requires visual screening but does not specify density, opaqueness or height. It is suggested that the Commission use this as a starting point. It is a flexible standard that should be applied appropriately to this circumstance to get to the level of appropriate screening.

Lust wanted to know what the bond amount is based upon. DeKalb explained that the bond amount is in the ordinance and it is a set fee per acre. Previously, the bond amount on this special permit was $5,000. The new ordinance requires a fee per acre of the total land area disturbed. The intention is that when the project is done and returned to farm land and proper grades, then the bond is released.

Esseks wondered whether the applicant must pay the entire amount in cash or is it a certain percentage? Chadd stated that in the past, rather than pay a bond company, he has submitted a certificate of deposit to the city. He can live with the bond amount if he has to. The visual screening is the killer. It would put him out of business.

2. Lyle Loth, ESP Engineers, appeared on behalf of the applicant. He does not believe it is necessary to screen a construction site such as a mining permit. At some point in time, he would like to hear the explanation for this necessity. This project has been underway for 16 years. Everyone has a different perception of what they see. He believes it appears to be a pretty well run, controlled and maintained mining operation. Why are we even talking about screening this site? Visually, when you can actually see the mining area, is when you are approaching the Interstate on the ramp, and then you can see a pretty wide version of the site. As you get on the Interstate it is totally blocked. The only thing we are talking about is about a 500 ft. strip. Any screen would have to be back on the property behind the Interstate property, and it would have to be quite tall in order to screen the site. It would still be observed from westbound traffic. It would require putting a fairly sizable berm out in farm ground and taking that land out of production at a rather considerable cost. What is the reasonableness, especially in these economic times when we are all trying to cut costs? Is it that much of an added benefit?

Chadd further explained that the excavation is a small strip that creeps to the west. Both sides of the excavation strip is farmland. There are 33 acres of land that can be removed, but in actuality he is only working 5 to10 acres at a time because the farmland produces income.

Chadd does not believe there is any rationale for this screening requirement. He does not want there to be ponding of water so he keeps it at a nice gentle slope, directing all of the runoff to the sedimentation basins.

Chadd estimated that the berming requirement would cost him $30,000 to $50,000. "You either let me continue and finish the job or put me out of business."

Partington pointed out that this screening requirement is because of the new standards. This is only the fourth permit that has been processed under the new regulations. He also noted that there has been no concern expressed in the past regarding the appearance of this site.

Gaylor Baird explained the rationale for the screening. One of the major reasons is to discourage the choice of new soil mining sites that would be anywhere on a visual corridor that might affect the Capitol and the views people see entering our community, and to try to avoid the situation of having very aesthetically unpleasing sites. We were trying to influence the selection of new sites. There have also been a number of people concerned about health hazards when driving on busy roads and at high speeds, with the dust, mud on roads, etc. Gaylor Baird believes that this body will be flexible – we all want to find a solution that works for the applicant in this situation. We would like to try to find a possible solution that might involve some effort to do something about some of the screening. We are looking for ways to minimize the visual impact of sites like these for aesthetic reasons and to avoid any health hazards.

Chadd suggested that had this been a requirement 16 years ago, he would have gone on the north side and worked a different direction, or he probably wouldn't have gotten involved had this been a requirement 16 years ago.

There was no testimony in opposition.

DeKalb offered that the screening requirement was established by a committee of citizens, the Planning Commission members and staff in response to concerns. As far as the bond is concerned, he believes the Law Department would accept a surety, bond or certificate of deposit. It is an insurance policy held by the city to insure that reclamation occurs. The bond amount is to be $525/acre and is intended to insure compliance with the final reclamation plan.

DeKalb urged the Commission to take the condition for the screening requirement as recommended by staff as a beginning point. The language of code says we "may" require visual screening of the site, so it is certainly not a requirement and there is discretion. There has been a lot of discussion and concern the last several years about soil excavation sites and the appearance, especially along entryways to the city. We realize that we have a 38' rise from the grade elevation of the Interstate to the high point. It would be literally impossible to require 100% screen. We were trying to get to a point of partial screening and perhaps get some landscaping or a buffer to soften the visual impact. You can screen by obstruction or by distraction. The screening has been a big issue in the past. The last two permits have done soil storage up next to the road which establishes a berm as part of the soil operation, i.e. a temporary berm. In this circumstance, putting the topsoil back

on the farm land doesn't really store on-site and creates a unique circumstance. The grade difference is another unique circumstance. The Planning Commission can accept the condition, delete it or attempt to amend it.

Esseks believes that 75% is too much. DeKalb explained that staff had suggested 75% up to 20' in height, so as the terrain roles, he only has a 20' height to try to get that 75%. We are not asking for anything above that.

Lust inquired whether there would be any screening requirements if this were farm land without excavation. DeKalb stated "no". The regulations are specifically relative to special permit for soil mining. We don't screen farm land. And, we do not screen site preparation for a building permit. That only requires a land disturbance permit. Lust commented that we basically look at empty ground three months out of the year when it's farm land. DeKalb explained that the committee's discussion was that there is a substantial difference between exposed subsoil versus topsoil with vegetation.

Cornelius likes the idea of screening by distraction versus screening by obstruction. And DeKalb agreed that Condition #2.1.3 refers to obstruction. You can clearly see the operation. It has been there since 1994. This permit is for three years. Staff believes that some buffer strip with vegetation with some berms would soften the impact. Cornelius is not sure how to translate that into a condition in a special permit. He likes the idea, but it seems that is the kind of thing that needs to be worked out between staff and the applicant before the Planning Commission gets involved. DeKalb suggested the Commission could require visual screening, buffering and landscaping against the Interstate in conjunction with existing natural features, and leave the percentages up to the staff and the applicant. He also suggested that the screening could be reviewed by the Urban Design Committee.

Francis suggested that we're having this discussion because something is not fitting the rules and there are always going to be those exceptions. The guidelines are meant to be a guideline, and not everything can fit into those guidelines. We have to have some common sense at times.

In reading the topography, Partington observes sort of a screening by distraction coming over a ramp with berms that screen it – now you see it and now you don't. So it's not really like looking at an open mining excavation.

In fairness to all of the other soil mining applicants, Gaylor Baird believes it is fair to require the applicant to make an effort to provide some sort of solution that at least addresses the standard. It sounds like there is consensus that we need to find some solution that works for the applicant, and she does not believe the Planning Commission should be making that decision for the applicant. The applicant needs to tell us what can be done to at least try to enhance the screening to some level.

Upon further reading, Esseks decided that maybe the condition is sufficient as written. DeKalb stated that the berm in the state right-of-way will be counted towards that 75%. When we say 75% screen, you can certainly have 75% all the way across; but in almost all cases, unless it's a wall, people will have open spaces and then other areas where they will tighten it up so that it still averages out to 75%.

Since this operation began in 1994, Taylor wondered whether there was some way to grandfather it in to avoid setting a precedent. DeKalb explained that the grandfather situation basically means that if you are legally there and the rules change, you can continue to legally conduct that business. If this special permit had been granted without a time limit, he could continue to operate regardless of the new rules and would be grandfathered. However, in this circumstance, there was an expiration date on the special permit and that special permit for that operation as it exists today has expired, so he starts clean under the new regulations.

Partington thinks the Planning Commission should be able to consider the fact that something has been in existence and then the new set of rules came forward, even though it might not technically be grandfathered. DeKalb suggested that the Commission needs to acknowledge what's there; acknowledge the history of how it got there; and realize that the operator has to apply for a new special permit under the new rules. These regulations have been in place for about a year, so it is not new news, and this applicant is asking for waivers to adjust to his circumstance.

Partington then asked DeKalb whether there is more of an undesirable situation going forward now than in the past as far as visibility and screening. DeKalb stated, "no, it is just as obvious and just as visible and as open as it has been in the past." But, we now have established an ordinance and new set of principles.

Lust wanted to know how we measure screening. DeKalb suggested that we are looking for opacity and visual blockage. That opacity can be accomplished by walls, stockade fences, berms, plant material, both large and small, and even buildings. In this circumstance, we probably will see a berm of hills and some plant material.

Gaylor Baird wanted to know what percentage the existing berm would cover. What is the incremental change? DeKalb did not try to calculate that but would guess it is in the 20% range. That 20% comes right off the top of the 75%.

Cornelius was confused by the words "at least" and "up to". If I wanted to build a glass wall as my screen, that wall would have to be 20' high. The "up to" does not mean anything between zero and 20'. DeKalb clarified that 20' height and 75% needs to be screened. We are only talking about a zone 20' the length of the south property line. That zone screen area should be 75% opaque.

Ten minute break due to a fire alarm

Upon reconvening DeKalb offered a proposed amendment after a brief discussion with the applicant: “Provide screening plan to be reviewed and approved by the Planning Director after review and recommendation by the Urban Design Committee. No percentages, no numbers, but go to the Urban Design Committee to decide the best way to provide the buffer.

Esseks believes the Planning Commission needs expert advice as to what represents adequate screening. He believes it would be much better to get input from Urban Design. Either their vote can come after we pass this on to them, or they could report back to us after a two week delay.

Partington inquired whether there are any different standards within the city limits proper and property outside of the city limits. DeKalb’s answer was “yes and no”. The county has no adopted design standards. Within the city, the screening requirements may vary between types of things that are being screened. This property is outside the city limits but inside the three-mile zoning jurisdiction so city standards apply.

Response by the Applicant

Chadd stated that he would prefer a waiver of the screening and he’ll provide the bond. “You’ve shut me down – I have jobs to do – I’m either in business or out of business.” If he would have had the choice years ago, he would have understood that this is the entrance to and from Lincoln and he could have corrected it. He cannot correct it now.

Chadd also suggested that he believes he has 67% of it screened already, but it costs thousands of dollars to screen another ½ mile length of land. That’s a lot of cubic yards of dirt. He just wishes he could reverse it and start on the other side.

Loth indicated that they did draw some cross-sections and those two berms on either side of the lower area account for approximately 67% of the 1900' of frontage that is a part of this permit.

ACTION BY PLANNING COMMISSION: February 24, 2010

Motion #1: Francis moved to approve the staff recommendation of conditional approval, with amendment to delete Condition #2.1.3 (the screening requirement), seconded by Partington.

Francis believes there is always going to be an exception to every ordinance. Mr. Chadd has been doing this for 16 years at that location. He has a good track record of doing a good job and not being a nuisance or eyesore to the community, and this is a rare exception to a new ordinance that was put in place to take care of soil miners not doing as good of a job.

Esseks is not comfortable about not enforcing the screening regulations because it sets a precedent for other soil mining operations. He would prefer to delay this for two weeks and let the applicant and staff work on a solution to offer. The alternative is to leave it up to the Urban Design Committee, but his preference is a delay for two weeks.

Lust supports waiving the screening requirement in this situation, given that he has been operating for 16 years. Now part of the visibility problem has basically been caused by the city putting more dirt on his land. She is not that concerned about visual screening on this property because you do not stare at it that long. We already have the visual distraction of the berm. She appreciates the fact that this applicant has already protected part of his property with the natural prairie grass. He is doing a lot for the community with this property, providing soil for work around the city. He would have redesigned his work at this property if he had known 16 years later we were going to change the rules. She is not worried about the precedent. This body is to review the exceptions to the “may” provisions in the code. While she supports the screening standards, she does not believe it is fair to apply them in this case.

Gaylor Baird definitely wants to find a solution that will work for the applicant. She believes that this body exists to evaluate on a case-by-case basis, and she does not believe it is unfair to the applicant. No business person operates in a situation where they are guaranteed consistent conditions over a 20-year period. She does not believe the regulations are so unreasonable that they should be waived. She thinks that sets a precedent that these standards don’t have any teeth. She would rather find some common ground from the applicant. If it is only 8% more that needs to be screened, perhaps there is a cost figure that is affordable.

Taylor would be in favor of tabling this for two weeks to see if the applicant and the staff can work together to come up with some reasonable solution.

Partington believes fairness is an issue and he does not believe it is fair to postpone this. More information is not going to provide any more enlightenment on this issue. He does not believe that waiving the requirement for screening changes anything. The applicant started this business endeavor and he continues on and there have been no complaints. He does not see an issue.

Sunderman expressed some discomfort about waiving the screening requirement in its entirety and how it will apply to future applications, but he is cognizant of the fact that this applicant seems to be running a very good operation and has for many years. We have heard that they have already met 67% of that requirement at this point, so Sunderman would be in favor of changing the percentage to 70%. Surely the applicant could find 3% to show some respect for the need for proper screening of these applications. Sunderman does not think this should be delayed. The applicant can appeal the Planning Commission decision to the City Council.

Motion for conditional approval, with amendment deleting Condition #2.1.3, failed 3-5: Lust, Partington and Francis voting 'yes'; Cornelius, Taylor, Gaylor Baird, Esseks and Sunderman voting 'no' (Larson absent).

Motion #2: Lust moved to approve the staff recommendation of conditional approval, with amendment to Condition #2.1.3 to require that the existing berming remain in place and that an additional 3% screening be required, seconded by Taylor.

Lust does not want to find out that the berming that is there was not exactly 67%. She is comfortable requiring an additional 3%.

Upon further discussion, Lust withdrew Motion #2.

Motion #3: Lust moved to approve the staff recommendation of conditional approval, with amendment to Condition #2.1.3 to require 70% screening, seconded by Taylor.

Partington does not believe this leads us to a conclusion. We don't have the information to conclude that 70% is reasonable now without measuring the berms and doing a lot more research.

Sunderman noted that the applicant has said that 67% is there already – that leaves 3% for the applicant to make steps toward doing additional screening.

Esseks suggested a friendly amendment that the screening plan be submitted to the Urban Design Committee before it goes to the City Council. We are making policy choices with little input and he believes the Urban Design Committee could work on this.

It was pointed out that this is final action by the Planning Commission, unless appealed to the City Council. It does not automatically go to the City Council.

Gaylor Baird believes that additional reviews are cumbersome. Perhaps we can get at some sort of policy decision on a situation like this so we don't have to have this kind of discussion over and over again. Perhaps there might be some sort of revision to what we've done thus far to make it more applicant-friendly.

Lust pointed out that this provision already requires approval by the Planning Director. She would think the Planning Director could ask for input from Urban Design if he wanted, and we could suggest that he do so.

Rather than this body make policy about whether it be 70% or 75%, Francis would rather delay until the applicant and staff can make sure it is accurate.

Cornelius suggested removing the numbers altogether from the screening requirement because the conclusion he has come to is that these numbers are not all that meaningful,

particularly in the presence of a landscape that changes elevation, berms along the property lines, and rolling roadways. He fully supports the spirit and objectives of the ordinance calling for the screening. And it sounds like there is some flexibility that needs to be achieved without trying to stick numbers on this application. He would rather see a deferral or a referral to the discretion of the Planning Director.

Motion #3 for conditional approval, with amendment to Condition #2.1.3 to require 70% screening, failed on a tie vote of 4-4: Lust, Partington, Taylor and Sunderman voting 'yes'; Cornelius, Gaylor Baird, Francis and Esseks voting 'no' (Larson absent).

Motion #4: Cornelius moved to approve the staff recommendation of conditional approval, with amendment to Condition #2.1.3 to read: "Provide a screening and grading plan to be reviewed and approved by the Planning Director, based on review and recommendation of the Urban Design Committee", seconded by Francis.

Taylor was still interested in tabling for two weeks to make a decision.

Partington would expect this motion to provide the same answer we have right now.

Lust expressed concern. What if the applicant doesn't like what the staff and Urban Design come up with?

Sunderman believes the applicant deserves an answer. If we throw it into other reviews he could get outside his 14 day appeal period.

Cornelius commented that here we were given a set of numbers which seemed very hard and fast and obvious; and then we were told those numbers don't really mean much if you plant the right things. We have no idea what that means. Even if we find 70%, there is this question of distraction versus obstruction and that sends this whole application into disarray for him. That's what has left him with the idea of throwing the numbers away and letting someone with a background in architecture and urban design make some informed and educated decisions about obstruction and distraction.

Lust suggested that if the Commission votes on something concrete today, like 70% or waiving it altogether, there are appeal rights to the City Council. There is a defined legal procedure and there is some finality. He can go to the City Council. If we just say, "oh well, let's see if someone can come up with something without any time limits," we will run into procedural problems.

Esseks commented that regulations are very hard. We have come across a difficult aspect of a new set of regulations that are a year old or less. It seems that if we want to make constructive decisions we need some more background. If we delay for two weeks, perhaps we could have a special briefing on this issue and come back and learn what perhaps the applicant and Planning Department have proposed as a compromise. We'll

be able to make a decision and fulfill our responsibilities and conclude with a successful experience. He does not believe the Planning Commission is able to make a decision.

Gaylor Baird does not believe this lengthy discussion will go unnoticed. And if, in fact, the Director was going to review this and come up with something workable for the applicant, it probably won't be what we have discussed today. She does not have the same trepidation about letting the Planning Director work with the applicant.

Cornelius stated that he has full faith in the Planning Director, but when we throw in Urban Design into the mix, it adds another level.

DeKalb advised that the City Attorney has recommended that the Planning Commission cannot defer action unless the applicant agrees to a deferral. If this motion passes, the applicant can appeal to the City Council and go to the Urban Design Committee in the meantime. If they can work out a solution, then he can withdraw the appeal. If he is not happy, he can proceed with his appeal at the City Council.

Motion for conditional approval, with amendment to Condition #2.1.3 to read: "Provide a screening and grading plan to be reviewed and approved by the Planning Director, based on review and recommendation of the Urban Design Committee", carried 8-0: Lust, Partington, Cornelius, Taylor, Gaylor Baird, Francis, Esseks and Sunderman voting 'yes' (Larson absent). This is final action unless appealed 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 March 10, 2010.

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