

## MEETING RECORD

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Wednesday, October 6, 2010, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10<sup>th</sup> 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, Mike DeKalb, 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 acknowledged the posting of the Open Meetings Act in the back of the room.

Sunderman then requested a motion approving the minutes for the regular meeting held September 22, 2010, as amended by Leirion Gaylor Baird. Motion for approval, as amended, made by Gaylor Baird, seconded by Francis and carried 8-0: Gaylor Baird, Cornelius, Esseks, Francis, Larson, Partington, Sunderman and Taylor voting 'yes'; Lust abstained.

There was no Consent Agenda.

There were no requests for deferral.

**COMPREHENSIVE PLAN CONFORMANCE NO. 10006,**  
**NEBRASKA INNOVATION CAMPUS REDEVELOPMENT PLAN**  
**and**  
**CHANGE OF ZONE NO. 10018,**  
**NEBRASKA INNOVATION CAMPUS**  
**PLANNED UNIT DEVELOPMENT,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT NORTH ANTELOPE VALLEY PARKWAY AND**  
**SALT CREEK ROADWAY.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

October 6, 2010

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

Ex Parte Communications: None.

Staff recommendation: A finding of conformance with the Comprehensive Plan on the Redevelopment Plan, and conditional approval of the Planned Unit Development.

Staff presentation:

**Dallas McGee, Assistant Director of the Urban Development Department,** presented the proposed Nebraska Innovation Campus (NIC) Redevelopment Plan on behalf of David Landis, requesting that the Planning Commission find the proposal to be in conformance with the Comprehensive Plan. Most people are aware that the NIC is located at the site of former State Fair Park, now under ownership of UNL, to create public-private partnerships to develop and maximize economic opportunities and to leverage the research capacity, faculty and student resources of UNL. This will generate economic growth for Nebraska. This redevelopment plan is another step in that process.

The Blight and Substandard Determination Study was previously submitted and the area was found to be blighted and substandard in February of this year. That designation gives legal authority to proceed with the Redevelopment Plan. The Redevelopment Plan is a guide for redevelopment, and includes several guiding principles, including Comprehensive Plan principles as well as the sustainability principles from UNL's Master Plan.

The Comprehensive Plan offers a description of the primary target businesses for marketing and attraction purposes important for Lincoln and Lancaster County including biotechnology, value added agriculture, specialty electronics, entrepreneurship and expansion of UNL research facilities on campus.

The sustainable master plan principles established for NIC to guide the development of the master plan include adopting environmentally sensitive land use practices; a plan for innovative, sustainable buildings and landscapes; a range of transportation options; and a move toward a net zero energy and carbon neutral campus.

McGee explained that upon a finding of conformance with the Comprehensive Plan, the next step will be approval of the redevelopment plan by the City Council. Amendments to the redevelopment plan will come before the Planning Commission as specific projects develop.

Esseks stated that he submitted a question to the Planning staff about how much, if any, of the NIC is in the 100-year floodplain, and it appears to be 75%. Although this is in the older developed part of town and not subject to restrictions on floodplain regulations as in the newer areas, he wanted to know what UNL plans to do to mitigate the possible problems of flooding. McGee indicated that Christine Jackson should be able to address this question on behalf of the University.

**Tom Cajka of Planning staff** presented the proposed NIC Planned Unit Development (PUD). He submitted the comments from Watershed Management regarding the 100-year floodplain and stormwater runoff. Watershed Management states that approximately 75% of the PUD is in the floodplain; however, not all of the PUD will be developed. Only about half of the land in the floodplain within the PUD is proposed for development. There will be a 14% net loss in flood storage and the increase in the floodplain is less than 0.05 feet. To mitigate some of the stormwater runoff, the applicant has proposed Best Management Practices (BMP) such as pervious pavement, utilizing some pervious type of construction on parking lots, and a lot of landscaping with sustainable types of grasses and plants throughout the development.

Cajka further explained that the change of zone is from P Public to O-3 Office Park with a PUD overlay. The PUD is proposed to be a research park, with private/public partnership. It is requested for a total of two million square feet of commercial/office/research type uses. Approximately 1.5 million of that 2 million square feet will be research-related. The PUD also requests up to 250 dwelling units and up to 135 hotel rooms. There would possibly be some minimal amount of retail throughout the PUD.

Some of the research type themes from the Master Plan include agricultural biotechnology, life sciences, food and nutrition, computer sciences, material sciences, water resources, clean energy technology and transportation. The PUD proposes that all of the proposed new streets within the development will be public as well as the utilities.

The PUD covers the former State Fair Park, but does not include the Devaney Sports Center. The site plan proposes some fairly large lots that could be broken down into smaller lots in the future. All of the internal streets will be new, and there will be public utilities, mostly within the right-of-way.

Cajka advised that the applicant has asked for several waivers:

1. To allow parking on one side of 34' wide streets. Staff supports this waiver. The design standards require a 39' wide street, so they are reducing that by 5'. If there is a problem in the future, Public Works has the authority to remove that parking and require "no parking" on the street if it creates a problem.
2. To allow a 24' wide street, Venture Drive, with no access to that street and no parking on the street. Staff is in agreement.
3. Screening and landscaping for buildings. The O-3 zoning district requires that 10,000 sq. ft. or larger buildings have additional landscaping. Since the Master Plan has proposed its own interior landscaping with sustainable type plants and with regulation by the Nebraska Innovation Campus Development Corporation (NICDC), the staff is in agreement. They would still be required

to meet the design standards for screening of parking lots.

4. To waive the stormwater detention requirements. Their Best Management Practices should keep stormwater runoff at a minimum, so staff supports this waiver.

Cajka also pointed out there will be a huge outlot that will remain as open and green space.

Cajka submitted a revised staff report setting forth some minor changes that have been negotiated with the applicant:

Waiver #5, to allow fill within the floodplain for Lot 1, Block 3, prior to compensatory mitigation being completed, has been eliminated. After review by Watershed Management and further discussions, it was determined that this was not actually a waiver and what they are asking for is something that is allowed.

Analysis #6 on page 5 of the revised staff report includes some revised language about a transportation management plan. Planning was requesting that the University submit some type of transportation management plan with the PUD. The revised language suggests that NICDC will develop “strategies to reduce traffic congestion” as opposed to a transportation management plan.

Analysis #8 has been revised such that the relocation of three access points “will be coordinated with” the Nebraska Department of Roads and Federal Highway Administration. It has been determined that the relocation of these access points does not require “approval” by NDOR. Any costs of relocating streets would be the developer’s responsibility.

Esseks inquired whether the “strategies” to reduce traffic congestion will become part of the PUD. Cajka stated that the strategies are required prior to building permits, and will be approved by Public Works and Planning.

### Proponents

**1. Christine Jackson, Vice Chancellor of Business and Finance at UNL,** testified in support of the NIC Redevelopment Plan and PUD. Looking back only a few years, the community forums sponsored by Vision 2015 were the genesis of NIC. The Lincoln community identified the need for a university research development corridor. The community forums identified strong support to locate a research campus at the former State Fair Park. The property was transferred to UNL. UNL’s first step was to create a master plan for the property. A stakeholder committee including community representatives from Lincoln and Omaha and Mayor Beutler verified the plan components. The Board of Regents approved the plans in November 2009 and UNL submitted them to the State Department of Administrative Services and the Clerk of the Legislature in

December, 2009. These plans established the basis for this Redevelopment Plan and PUD. Since then, the University has been working closely with their engineering consultants and city staff.

Nebraska Innovation Campus will be a public/private development that will leverage the research strengths and innovation of University faculty with private industry. It is anticipated that the majority of the buildings will be occupied by private companies. The NIC will not be an extension of the academic campus. Moreover, UNL will not govern the development of the site, rather the University Board of Regents established the Nebraska Innovation Campus Development Corporation as a separate board that includes Nebraska business leaders. The Board of Regents and the NICDC have executed a master lease agreement for the NICDC to oversee the development.

It is anticipated that the first phase will include the research building and green houses for agricultural research service, renovation of the 4-H building, incubator space, area for seminars, research space and several privately developed research-oriented buildings. TIF will be critical for the infrastructure in the first phase.

The NIC is a major initiative for the future of the University, for the city and for the state. **2. Joel Pedersen, General Counsel for the University of Nebraska**, stated that the applicant needs flexibility, and he publicly acknowledged that this is something upon which the staff has been working very hard. Pedersen emphasized that the NICDC fits the public/private nature. The underlying ownership is to be retained by the Board of Regents. They hope to be able to use TIF for the buildings and improvements.

Pedersen then discussed General Note #17, which states:

Other than Block 3, Lot 1, grading work for Phase 1 will be confined to areas outside the floodplain until grading for compensatory mitigation in Phase 1A is completed.

Pedersen stated that this Note #17 is going to be a little problematic and he requested that it be deleted. The University will comply with existing floodplain regulations regardless, and he does not believe this note is necessary. Flexibility is important because we don't know who the potential buildouts will be.

Pedersen also stated that the new streets becoming public is an important part of the flexibility. It provides a good way to productively spend some TIF money, but also a good way to talk about considering new and creative ways to get the infrastructure financed. They will want to continue this conversation as developers identify themselves. Impact fees may be included in discussions about intersections and planned developments.

With regard to the traffic issue, it is anticipated that full buildout will be in 15-20 years. Pedersen submitted that they do want to be cognizant of the traffic congestion, but they are not ready to present a plan today because they do not know how long part of the buildout will take. But the commitment is there and it is real. The NICDC will report to the Board of Regents with copy to the City.

Lust clarified by Pedersen that he is requesting that General Note #17 for the PUD be eliminated because he is not sure if it would be convenient to do the grading work on that first lot before anything else. Pedersen responded that they are complying with the existing floodplain regulations. If the grading is confined to that lot, they have to build some other things to get there and there may be some need to do some other grading.

Larson asked who appoints the members to the NICDC. Pedersen stated that the members are appointed by the University Board of Regents – the NICDC is a subsidiary of the parent corporation, both created by the Board of Regents and appointed by the Board of Regents, who can also remove members, if necessary.

**3. Tonn Ostergard, President and CEO of Crete Carrier Corporation**, who serves on the NICDC, is a member of the 2015 Vision Steering Committee, as well as Chair of the Lincoln Chamber of Commerce, testified in support. It was determined that the highest and best use of what was then State Fair Park was to establish a research campus to leverage the private and public partnerships. This land is also a vital link between East Campus and the City Campus as well as the cornerstone of the Antelope Valley development. He believes this development will be a critical component to the growth and economy of our City, the County and the entire State for generations to come. This will attract research companies from all over the world. The ultimate benefit of a research university is to transfer ideas of innovation through that public/private partnership collaboration and this will provide that opportunity with new jobs and investment in our community. New startup companies will have the opportunity to develop. The buildout will represent a significant investment in new facilities and infrastructure that will significantly enhance our community.

Larson inquired whether the buildings will be owned by the NICDC, or privately owned? Ostergard stated that the intent is that they will be jointly owned, but a significant amount will be privately held. The TIF will be a part of that, but hopefully they will eventually be on the tax rolls.

**4. Tom Henning, President and CEO of Assurity Life insurance Company**, also serving on the NICDC, testified in support. He is excited about the potential for this to positively impact our economy in Lincoln and across the state of Nebraska. He also served on the 2015 Steering Committee. He believes this project has the potential to impact the economy of the whole state by creating new high paying jobs and improving our tax base. It will be key to creating entrepreneurship in our community and out-state. The best jobs created in our community start and come from entrepreneurship. Innovation can help us develop a more entrepreneur climate in Lincoln and the State of Nebraska. It is critical to

get this project off the ground and started quickly. He requested that the Planning Commission not apply unnecessary regulation or restrictions. We are still feeling the effects of the economic downturn and the importance of creating good high paying jobs has never been greater.

**5. Kyle Fischer**, 1135 M Street, testified in support on behalf of the **Lincoln Chamber of Commerce**, agreeing with the two previous speakers, who are leaders of the Chamber and leaders in the business community. On behalf of the 1,425 other Chamber members, Fischer believes that this development is in conformance with the Comprehensive Plan. Our community's overall plan is to grow and to grow jobs. This project helps meet that goal. This project meets the comprehensive goals of the Lincoln Partnership for Economic Development for job growth and job creation. As a Chamber, our mission is to grow our members' businesses. The growth that can be accomplished through the NIC will benefit members of the Chamber as well.

**6. Rick Krueger** testified in support on his own behalf. He stated that he likes the layout, and would be interested to see if they can make use of the sewage plant for some heat and cooling. How will they fund the infrastructure? Is the developer a nonprofit or for profit development entity? Is the land area subject to real estate taxes? How will that work if the University retains ownership? The property is in an impact fee zone, so will these buildings be subject to impact fees? Will sales tax be collected on materials used for construction?

There was no testimony in opposition.

Lust asked staff to address the applicant's request to remove General Note #17 from the PUD. Cajka stated that at this time, the staff does not agree to removing this note. The staff would like to have time to discuss it further with Public Works, and the staff would recommend that Note #17 be retained for now. If it is determined that it can be removed or modified, that change could be made prior to the public hearing before the City Council. Staff understands that the grading work would be confined to areas outside the floodplain, but part of Lot 3, Block 1, is in the floodplain and they could grade there right now until some of the mitigation plans were finalized.

**Devin Biesecker, Watershed Management**, explained that when they do phase one, they have proposed to offset some of their floodplain impacts in what is currently the horse racing area of State Fair Park. Phase one will occur before the horse race area is gone, so Note #17 was put in place to try to limit what they could fill before they could offset their floodplain storage. We don't know what the impacts on the floodplain would be from that phase one area. We still want to tie them down to just how much they can fill before they offset their floodplain fill in the future.

Esseks inquired as to the danger of fill. Biesecker stated that their overall plan with full buildout and the offset of their fill in the floodplain results in very little rise in the floodplain.

We don't know at this time what phase one would do with the floodplain with no offset of fill in the floodplain. We would like to discuss that further before changing the language.

Response by the Applicant

**Joel Pedersen** responded to some of the questions raised. The NICDC is a nonprofit corporation. Proceeds, if any, are returned to UNL. The Board of Regents does not have the internal expertise to oversee the development and could have outsourced or they could have staffed a department or something inside UNL. They chose to create the NICDC in trying to get the best of both worlds. This will be a very impressive board representing the private sector and UNL thinks it's a good fit. The NICDC will keep us focused and responsive on the mission.

With regard to TIF, Pedersen explained that the underlying land ownership will be retained by the Board of Regents. The master lease is through the NICDC. The next step will be the phased development. The NICDC will either own the private improvements or have additional leases or a separate sublease. There was a constitutional amendment in Nebraska whereby UNL reports privately held leases on publicly owned land and those are subject to property tax. The reality is that the major source of property tax will be in the buildout of the improvements.

Lust asked Pedersen how he feels about the Planning Commission approving the PUD with Note #17 remaining in place. Pedersen would agree as long as they can work with staff prior to City Council. They don't have the diagram and layout of what will happen, but he agreed that they would follow up with the city and hopefully can reach agreement before this goes to the City Council.

**COMPREHENSIVE PLAN CONFORMANCE NO. 10006**

**ACTION BY PLANNING COMMISSION:**

October 6, 2010

Larson moved to find the redevelopment plan in conformance with the Comprehensive Plan, seconded by Taylor.

Gaylor Baird noted that there is a fair amount of guidelines in the Comprehensive Plan that addresses this sort of project, such as the economy statement that Lincoln can develop entrepreneur capacity through public and private partnership; emphasizing the creation of office sites for job growth and that more should be done to encourage entrepreneurship and encourage efforts of technology. These ideas and goals are specifically listed in the Comprehensive Plan. The success of UNL research and development is important to the future of the city. This is a great example of the city and private sector working together for UNL to get grants for research and production of work opportunities. It meets many of the central guiding principles of the Comprehensive Plan.

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

**CHANGE OF ZONE NO. 10018,**  
**NEBRASKA INNOVATION CAMPUS PUD**  
**ACTION BY PLANNING COMMISSION:**

October 6, 2010

Esseks moved approval, with conditions as set forth in the revised staff report dated October 6, 2010, seconded by Francis.

Cornelius commented that the main point of contention seemed to be Note #17, with the University and NICDC requesting flexibility. We have heard from staff that there is willingness to have more conversation on that and trying to develop some compromised language, and then this will go to the City Council which will provide further opportunity for whatever compromise is necessary.

Sunderman stated that he is excited to see what this will look like when it's all said and done, but it's going to take 15-20 years and we need to be patient. It will be a huge positive change for the city – job growth, vibrancy.

Motion for conditional approval as set forth in revised report dated October 6, 2010, carried 9-0: Cornelius, Taylor, Esseks, Larson, Partington, Gaylor Baird, Lust, Francis and Sunderman voting 'yes'. This is a recommendation to the City Council.

**CHANGE OF ZONE NO. 10019,**  
**FROM O-3 OFFICE PARK DISTRICT**  
**TO B-2 PLANNED NEIGHBORHOOD BUSINESS DISTRICT,**  
**and**  
**USE PERMIT NO. 15D**  
**TO CHANGE OFFICE USE TO RETAIL USE,**  
**and**  
**STREET & ALLEY VACATION NO. 10015**  
**TO VACATE THE RIGHT-OF-WAY STUB ON**  
**THE NORTH SIDE OF OLD CHENEY ROAD,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT THE NORTHWEST CORNER OF**  
**SOUTH 27<sup>TH</sup> STREET AND OLD CHENEY ROAD.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

October 6, 2010

Members present: Cornelius, Taylor, Esseks, Larson, Partington, Gaylor Baird, Lust, Francis and Sunderman (Commissioner Larson left during this public hearing).

Ex Parte Communications: None.

Staff recommendation: Approval of the change of zone, conditional approval of the amendment to the use permit, and a finding of conformance with the Comprehensive Plan on the street vacation.

Staff presentation: **Christy Eichorn of Planning staff** explained that this proposal includes a change of zone from O-3 Office Park to B-2 Planned Neighborhood Business, an amendment to an existing use permit (the area of the use permit being amended is primarily in the area being rezoned from O-3 to B-2), and street and alley vacation to vacate the street stub that is just east of the B-2 area.

The applicant is essentially asking to move from O-3 to B-2 in order to convert approximately 33,000 square feet of office use to retail use. And within the 33,000 square feet, approximately 13,300 square feet would be used for a pharmacy and approximately 7,480 could potentially be used for restaurant purposes.

The applicant has submitted a revised traffic study. The change in the revised traffic study (increase of 20 PM peak hour trips) does not change any of the comments or conditions listed in the staff report.

Eichorn noted that one specific question regarding traffic was the description of the 10% of the PM peak hour trips that would go out onto Canterbury. The staff report indicates that half of those trips would go north and half would go south. It has also been determined that those trips would be coming from the neighborhood.

Eichorn then discussed the waiver of the front yard setbacks from 20' to 10' on S. 27<sup>th</sup> and on Old Cheney Road. When the application was first submitted, it was showing a 20' setback, but because they are required to put in a right hand turn lane on Old Cheney Road, the staff requested that they move the sidewalk off the curb on 27<sup>th</sup> Street. The applicant has offered to do that and provide a public access easement. The city would prefer that to be dedicated right-of-way, which occurs through a platting process. The City has agreed to reduce the setback from 20' to 10' in order for the City to get dedicated right-of-way for potential future intersection improvements.

If the City is gaining some right-of-way and then there is also a waiver granted, and if the City then decides to expand S. 27<sup>th</sup> Street, Gaylor Baird is concerned about potentially ending up with a situation where the sidewalk is abutting the parking lot without any green space. Eichorn explained that to be why the staff was asking for an additional 10' of right-of-way on 27<sup>th</sup> Street. How much that would get expanded and how much room would be needed would be a question for Public Works staff. The intent was to have an additional 10' of right-of-way on Old Cheney Road as well as on S. 27<sup>th</sup> Street to get the sidewalks off of the curb and to give the City room to do improvements to that intersection, if needed, as well as to move the sidewalk, if needed.

Lust sought confirmation that if the City expands South 27<sup>th</sup> Street, this extra 10' is enough to keep the sidewalk from being right on the street. Eichorn's response was that the Comprehensive Plan suggests that we need to have at least 60' of right-of-way on Old Cheney Road and on South 27<sup>th</sup> Street, and we don't have that today. That's what the 10' gives to us. The direction that we have from Public Works is that they need an additional 10 feet of right-of-way to have enough space for potential improvements to the intersection. Gaylor Baird believes that will eventually squeeze the green space. Eichorn agreed that if they move the sidewalk further west, that would be true.

Proponents

**1. John Badami**, Architect with **DLR Group**, testified on behalf of the applicant. They are proposing this development in three phases. The first phase would be a new CVS Pharmacy building to the south (about 13,225 sq. ft.), and attached to that CVS would be a retail building of about 8,500 sq. ft. The existing office building currently on the site would be demolished. After study through the owner, they have found that that building, once designed for a single use occupant, would be difficult to rent. There are also asbestos issues which would make it very difficult to renovate. After doing the number crunching to rehabilitate that building, they have found it would not be feasible.

Phase two would be a future office and retail building to the west (11,740 sq. ft., two story building). The side of the building facing Old Cheney Road would be the retail side, and then as you go to the back of the building, you would enter on the lower level, which would be commercial side.

Phase three would be another future office building (8,670 sq. ft.), along with the existing office building to the north. The existing Bank of the West and another office building to the north would remain in place.

Badami pointed out that there is a considerable amount of grade change (about 20') from the corner of 27<sup>th</sup> Street and Old Cheney Road down to Canterbury Lane. The retail is at the corner of Old Cheney Road and South 27<sup>th</sup> Street, with the commercial spaces at the lower grades.

Badami then showed 3-D images of the site, indicating that there will be quite a bit of screening and landscaping, which was a concern to the residents of Southwood. Assurity is willing to provide ample screening above and beyond what is required.

Lust inquired about the space in front of the future office/retail. Badami explained that they are required to have some type of retention pond for water runoff so it would be green space.

The applicant has agreed to provide screening all along the new development at the request of the neighbors.

Badami believes there are several positives to this project. The developers are Lincoln residents and have done business in Lincoln for over one hundred years. Assurity has a track record of doing projects in the right way. They do have an interest in working with the neighbors to make this a positive development to the neighborhood and future tenants.

Badami also suggested that this project supports the principles of new urbanism proven to be key in successful developments of neighborhoods, such as College View, Havelock, Fallbrook and Village Gardens. Some of the principles include walkability, providing services and business within 10 minutes of home and work; mixed use and diversity; mixed housing with a range of types, sizes and prices in close proximity; increased density with more buildings, residences and shops close together to make efficient use of services and resources. The benefits to the residents and neighborhood include higher quality of life and better places to live and work; higher and more stable property values; less driving; close proximity to retail services; pedestrian friendly neighborhood; and more efficient use of tax money. The benefits to the City include stable appreciating tax base; less spent per capita on infrastructure and utilities; less traffic congestion due to walkability design; and better overall community image and sense of place.

Badami believes that this development will be beneficial to the neighborhood and the city. Assurity is interested in working with the neighbors to make sure this is a successful development.

Lust noted that two of the concerns that the neighbors have expressed are the increased light and noise pollution from this development. What steps architecturally is the developer taking to mitigate those issues? Badami stated that there are requirements for lighting next to neighborhoods and the developer will comply with all requirements to be sure that light pollution is mitigated as much as possible. As far as noise, the advantage is the topography of the site. The new buildings and the landscaping will help to buffer against sound and traffic along Old Cheney Road and 27<sup>th</sup> Street.

Francis asked Badami to show the traffic access from 27<sup>th</sup> Street and Old Cheney Road into the new development. There has been some concern about access to Canterbury. Badami stated that there are two existing points of access along Canterbury and there is a third access proposed. The access from 27<sup>th</sup> Street will be just north of West Gate Bank along with the other existing access. The Old Cheney Road access is existing today. All of the driveways proposed are already in existence. Although Sunderman pointed out that the access points closest to 27<sup>th</sup> Street and Old Cheney Road will go away.

Esseks confirmed the location of the traffic light for the benefit of those wanting to go north on 27<sup>th</sup> Street.

Gaylor Baird stated that it is not clear to her where it is safe for a pedestrian to walk within this development. Badami acknowledged that this has been discussed. He believes there are ways to integrate good pedestrian traffic through the development and they do need

to have further discussions with the neighborhood on that issue. Gaylor Baird urged that this is really important, especially if it is being argued that it is helping neighbors to the west. It has to be safe, easy, clear and delineated in the site plan.

**2. Mark Hunzeker** appeared on behalf of **Assurity Life Insurance Company and CVS Pharmacy**. This site is at 27<sup>th</sup> & Old Cheney Road, both of which are major arterials. The site is designated commercial in the Comprehensive Plan and it has been that way for over 30 years. The staff report does an excellent job of reviewing the Comprehensive Plan support for this project at this location. This proposal is to revise an existing use permit, which provides for an existing office building and an additional office building, not yet constructed, as well as commensurate parking.

The existing building is about 40 years old and it is not feasible to redevelop or reuse that structure. It was not constructed to be a multi-tenant building and there are multiple issues with respect to asbestos, ADA and other physical obsolescence type problems that make it uneconomical to redevelop.

This is a proposal for 33,000 square feet of retail space on the site in lieu of that amount of office space. The total square footage is nominally reduced under the overall use permit. This is a retail area that would serve the neighborhood. The amount of retail space is somewhere around 50 to 60 percent of the size of Clocktower – we are not talking about a lot of space, but it is very conveniently located and should serve many of the same types of functions. Mixed use and neighborhood oriented convenience type retail is encouraged in the Comprehensive Plan.

Hunzeker also pointed out that the traffic study shows insignificant changes in site trips over the currently approved use permit, and Public Works has found the study to be acceptable.

The developer did send out a notice and had a neighborhood meeting on September 27<sup>th</sup> (later corrected to September 20<sup>th</sup>). Notices were mailed to property owners well beyond the area required to be notified in a change of zone or use permit. At that meeting, the developer offered to meet with and discuss ways to improve the project from the neighbors' perspective, after which they had two contacts. They met with Don Nelson and with the Lambrechts, who own the four-plex immediately abutting the site to the west. They never heard back from Mr. Nelson. The developer has agreed to a list of things which the owners of the four-plex felt were important, and those items have been incorporated into a motion to amend.

Hunzeker then discussed the proposed amendments to the conditions of approval on the use permit:

- 2.10 Revise the drive off of Old Cheney Road to be no more than two lanes and 25' wide, unless it can be shown that additional width is necessary. If the drive remains wider than 25' it shall be striped as a two-lane drive.

Hunzeker believes there is agreement with staff that the additional width for the driveway on Old Cheney Road is necessary so he is suggesting to add that language, and if the drive remains wider than 25', that it would be striped as a two-lane access rather than two lanes outbound and one in.

- 2.11 Remove the southern most one access to Canterbury Lane.

The staff requested that the southernmost access point to Canterbury Lane be removed. The additional access point was proposed because Public Works usually does not want a dead-end parking lot. The developer does not object to the idea of removing an access point to Canterbury Lane, but they we need to agree upon which one.

- 2.13 Add a note that says alcohol sales is permitted in the B-2 zoning district (except in the western 1/3 of the building on Lot 7) as long as all conditions under 27.31.040 are met.

They have agreed to except the western one-third of the building on Lot 7 from alcohol sales. In response to a concern by the neighbor (Lambrecht), the developer has agreed to keep any sort of restaurant or any kind of licensee that would sell alcohol of any kind in the eastern 2/3rds of this building, putting the licensed premise at least 160' away from the property line of that neighbor.

- 2.17 At such time as the building and associated parking on Lot 7 are constructed:
- A. Place a combination of landscaping and fence, to be evenly distributed horizontally; however, it may vary in height so as to screen at least sixty percent (60%) of the surface area of a vertical plane extending along the entire length of the property line and from the ground elevation to a height of ten feet (10') above the adjacent ground elevation.
  - B. Prepare and implement a landscape plan for the area along the west property line on the Assurity side of the fence which exceeds minimum city standards.
  - C. In the area between the SW corner of the Assurity property and the parking lot, plant a grouping of shrubs which will deter pedestrians from traversing the site from south to north between the parking lot and Canterbury (i.e. barberry bushes).

- D. In the area immediately abutting the west side of the parking lot, provide a 100% screen from ground level to 3 feet to prevent car headlights from shining in windows of the fourplex. This could be accomplished by a low fence, or evergreen bushes such as yews, or junipers.
- E. Parking lot lighting to have cutoff fixtures, directed away from the west property line (as required by City Design Standards).
- F. Any licensed alcohol sales in the building on Lot 7 will be located in the east two-thirds of the building.

Hunzeker offered Condition #2.17 as a new condition to reflect the negotiations and agreement the developer has reached with the Lambrechts. This incorporates a standard of landscaping and screening which has been shown on the Canterbury side. That landscaping and screening will be extended along the west property line in order to protect that four-plex. Condition #2.17.F. addresses the alcohol issue.

2.18 No gasoline sales are permitted.

Hunzeker noted that there was a concern raised in one of the e-mails as to the possibility of gasoline sales, and the developer has agreed that there will be no gasoline sales on the site.

2.19 Conditions #2.13, #2.17 and #2.18 were negotiated with the neighbors and shall not be administratively amended but may be amended by Planning Commission.

Condition #2.19 provides that all the conditions of approval negotiated with the neighbors cannot be administratively amended, but only amended by public hearing before Planning Commission.

Hunzeker submitted that the built environment in a city like Lincoln is dynamic. We are undergoing changes constantly. Lifestyles, consumer preferences, and technology all change over time. This site has served its purpose as an insurance company home office and it is time to reuse this site for a purpose more in line with existing conditions. We are only talking about 33,000 square feet of retail and restaurant use. That is a very modest component of a site that encompasses over 100,000 square feet of office space and other kinds of uses. It is actually about half the size of the 1970's vision of a neighborhood shopping center. It is about 10-15% of what we now consider to be a neighborhood scale center. The developer believes that the addition of retail space to this site, with the mixed uses proposed, make sense without imposing unduly upon existing residential areas. If we are serious about the concept of mixed use and pedestrian friendly development patterns, we need to be able to redevelop sites like this in order to utilize that concept. Hunzeker

urged that this project makes a lot of sense and it is not by any means an aggressive use of the site. If you compare the land area to the floor area, you would find that the ratios are pretty low compared to some of the newer sites in this community.

Esseks sought confirmation of where alcoholic beverages may be sold on the site. Hunzeker pointed to the map – it will be in the CVS building and in part of the office building. At its closest point, it will be about 90' from the property line, but they are agreeing that the western 1/3 of the office building cannot be used for that purpose, thus pushing that line to be 160' from the property line.

Lust also expressed concern about pedestrian friendliness, and noticed that Condition #2.15 requires meeting the pedestrian circulation standards. What does this mean? Hunzeker agreed that there is a requirement to meet the city's pedestrian circulation standards. There are a number of ways to make pedestrian connections. For example, if we take the Public Works option and eliminate the one curb cut, the entire area could be green space, enabling people to get to the retail level. There will be a requirement to stripe pedestrian walkways through the parking lot to get to CVS and the retail building. There are fairly specific requirements that have been met by other projects that he is confident can also be met with this site. They have no objection to meeting those standards.

Francis wanted to know whether this prevents the next owner from not putting in a gas station. Hunzeker indicated that to be the purpose of Condition #2.13.F. This amendment would prohibit that. Anybody who wanted to do that would have to come back to the Planning Commission for an amendment. Hunzeker also suggested that the site is too valuable for retail space to do that. Having been through a process to put a gas station on this site was not easy, and once the use permit is developed, it would be even harder to do. Assurity intends to hold this property in their real estate portfolio and they do not intend to sell it. The CVS site is a leased site. Assurity does not want a gas station there and he believes the potential is extremely remote.

### Opposition

**1. Don Nelson**, 2430 S. Canterbury Lane, since August of 1984, testified in opposition. He is either the first closest or second closest single family residence. The first that the neighborhood learned of this project was three weeks ago in the Lincoln Journal Star, and they were shocked because this site was the location of a titanic decades-long struggle over the 80's and 90's gas station project. The controversy was ultimately decided by the Supreme Court and the City of Lincoln taxpayers paid a significant amount which resulted in this small office park. He suggested that the Commission consider that both the city and taxpayers have a vested interest in the current land use.

The neighbors had hoped to be contacted early if redevelopment plans were proposed, and this proved not to be the case. Quite the contrary occurred. Only on September 11<sup>th</sup> were the property owner notifications sent out, and incredibly the Seven Oaks Homeowners

Association, which is not even part of this area, was notified. His neighborhood, the Southwood Homeowners Association, had no such notification. The Association has finally been notified and they have had their first meeting. There were several conditions that he thought would have to take place before he could meet again with Mr. Hunzeker.

The Southwood neighbors feel like they have been kept in the dark and shortened the amount of time to analyze the project and organize their thoughts and put forth a cogent argument for the status quo. Moreover, they sort of feel like the victims of this titanic struggle going on nationwide between Walgreens and CVS. We have seen neighborhood wishes pushed aside elsewhere in Lincoln as well as in Omaha as these two corporations expand and reach into the neighborhoods.

Nelson suggested that the city itself has a vital interest in this property. The Lincoln Fire and Rescue Station is directly across the driveway on South 27<sup>th</sup> Street. The City owns the still vacant northeast corner of 27<sup>th</sup> & Old Cheney Road. The intersection itself was the 19<sup>th</sup> most dangerous in 2008 and he is told that it has advanced considerably up that list since then, although the data has not yet been updated.

Nelson believes that this paperwork raises many questions that point to the need to slow the approval process down so that twelve or so elements and issues can be carefully evaluated.

Nelson pointed out that the lots slope severely from east to west and from north to south. This development will move massive amounts of soil from high to low areas and a deep retention pond is proposed. This needs more consideration.

The lighting of the project will require unique technology as some of the project elevations will be close to the same as the window elevations in many nearby homes. Moreover, the signage needs to look more like Ft. Collins, Colorado, or Scottsdale, Arizona, in order to conform to the characteristics of the adjacent neighborhood. 24-hour signs should be forbidden.

Nelson also believes that there remain many important questions surrounding the ingress and egress. The four or five foot incline up to Old Cheney Road on the north side can prove very problematic during rush hours and inclement weather. Will the existing median cut be closed? His call to the city department remains unanswered. Street parking is problematic. The street is a bus route and has severe sight limitations. Parking is banned on the south and east side of the curb. Snow and ice can make the steep climb nearly impossible from the west and almost impassible.

Another problem is that only approximately one-third of the eventual buildout uses are known.

Nelson urged the Planning Commission to put this application on hold so that the affected

businesses and residents can be part of the process that should have taken place over the past few months. Many of these problems and questions need far more discussion and thoughtful resolution.

Nelson stated that he has not had an opportunity to review Mr. Hunzeker's motion to amend, but it does sound to be toward the direction that he is recommending. However, he reiterated his request that the Planning Commission either slow down the project or postpone a decision until the neighbors have a chance to talk some of these things out.

Taylor asked Nelson when he was contacted. Nelson stated that the first knowledge he had was when the general public read it in the newspaper on a Saturday morning about three weeks ago; and then the first contact he had was when he received Mr. Hunzeker's letter with an invitation to a meeting at the library on South 14<sup>th</sup> Street, which took place on September 27<sup>th</sup> (later corrected to September 20<sup>th</sup>).

Lust wanted to know who was not contacted. Nelson suggested that in a measure of fairness, the developers should have contacted either the neighborhood association or the nearby neighbors two months ago. They should have made contact with the official homeowners association at the time the process was launched. Someone made the decision to contact a homeowners association that is across the street from this project. Lust confirmed with Nelson then that he is not disputing that the neighbors in the area got individual letters inviting them to the information meeting. Nelson agreed, but they didn't have any information ahead of that meeting in order to go to the meeting and react intelligently. The only people that got the letter were 50-60 neighbors or more. When the homeowners association (Southwood) met, not a single member of the association board had gotten a letter or were aware of the project.

**2. Steve Groshans**, 2431 S. Canterbury Lane, right next to the four-plex, since June 1989, testified in opposition to changing the zone. In the 21 years he has lived there, the traffic on S. Canterbury Lane has increased just from the office buildings that are there. He is against any additional entrances or exits on S. Canterbury Lane. It comes down a hill and curves and is difficult in the winter. He requested that the Planning Commission put this proposal on hold. He is sure that the Southwood Homeowners Association can work something out with the people that own this building. They let this building deteriorate to the point that it is too expensive to rehabilitate. They have not even talked about the construction trucks that are going to need to get in and out of the site to tear that building down. They will go out on S. Canterbury Lane. There will be traffic into this site until 2:00 a.m. He is not against them tearing down the building and putting in a new office building, but is opposed to the zoning change. He was not notified. He understands that this project has been in the works for a year.

**3. Pam Manske**, 6435 Lone Tree Drive, about one-half mile further south of the proposed development and a bit west of 27<sup>th</sup> Street, testified. She lives in the townhomes which buffer the east edge of The Ridge. She purchased her home in February. In order to leave her neighborhood, there are only two ways out and she goes right onto 27<sup>th</sup> Street. There are a lot of accidents and traffic at the 27<sup>th</sup> & Old Cheney Road intersection. This feels like spot zoning. She submitted some letters and signatures from neighbors in her area. However, she stated that the Lone Tree neighbors have decided not to oppose the project because they have seen the things that the city has done to allow CVS at 16<sup>th</sup> & South, and in the Dundee neighborhood in Omaha. They are of the opinion that it is going to happen because the Comprehensive Plan calls for commercial zoning here. Since 1977, we have seen this site be an office building and it is hard to believe that we need to have retail zoning at every corner every mile. She believes CVS could go to Bishop Heights, Williamsburg, the B-5 at SouthPointe, or 27<sup>th</sup> & Yankee Hill. There is also zoning to the west where Culvers is located at 14<sup>th</sup> and Old Cheney Road. It seems like the Comprehensive Plan has allowed for a lot of zoning for this type of use, but we have a retailer who wants to locate here, and a Planning Director that will approve it. The Lone Tree neighbors are not opposed but they want assurance that the P zoned lot to the east will not also become retail. "It just feels like strip zoning and we're feeling very boxed in."

**4. Jon Ludwig**, 2402 Jameson South, which is up the hill from Canterbury, testified in opposition to the rezoning of this area. There are eight pharmacies within a one-mile radius of that location. Do we need another? He is not against the retailer – he just does not believe it is needed. We need to watch out for our local businesses, such as Stockwell Pharmacy, as well as the people who live here. There is one way to oppose a project – not doing business there. He would rather see the office buildings rather than retail.

Staff questions

Eichorn explained the issue about the homeowners association not being notified. The Planning Department does notify the property owners within 200' of the property boundaries. The Department also looks at areas surrounding or near the proposed development, and that is how Seven Oaks would have gotten notice. The individual property owners are notified based on the County Assessor's records. We do not notify renters. With regard to homeowners associations, the Department uses a list of homeowners associations that have asked to be notified. The last contact that we had for Southwood was in 2001 and it appears that individual was leaving the neighborhood and asked to be removed, but did not give us an alternative person to contact. When that happens, they fall off the list. The Department is, however, currently looking at ways to be proactive in the future about keeping a more comprehensive list of homeowners associations. The homeowners associations will need to provide us their boundaries and a contact name.

Eichorn indicated that the staff agrees with the amendments to the conditions of approval on the use permit proposed by the applicant. The landscaping requirement under

Condition #2.17.A is the same requirement that the staff had requested along Canterbury Lane to buffer the residences from the retail on the corner. Condition #2.17.E pertaining to the parking lot lighting cutoff fixtures, is already a requirement of the parking lot design standards. We do have design standards for landscaping including parking lot screening, as well as screening between commercial and residential areas. We have lighting design standards to keep light trespass away from residential areas. We have pedestrian design standards as well.

Esseks inquired whether there is anything the Planning Department would like to do if this were delayed two weeks – anything that should be more carefully looked at or new issues examined. Eichorn did not believe there would be any advantage to the Planning Department with a delay. Nothing has changed since the staff report was written, so from the Planning Department's perspective, she does not believe there would be any changes.

Gaylor Baird asked whether the revised traffic study addressed the concern in the staff report about stacking of cars from 27<sup>th</sup> Street blocking access to the proposed site. Eichorn suggested that Public Works would have to address that question.

Sunderman believes that the parking lot and lighting standards have been updated relatively recently. Eichorn stated that the lighting standards were adopted two or three years ago, and the landscape design standards about 4 ½ years ago. The sign ordinance, which is another design guideline, was more recently updated.

If the amendments to the conditions are approved, Sunderman asked what someone would have to do to be allowed a gas station. Eichorn advised that the new Condition #2.19 provides that to change anything listed as a condition negotiated with the neighbors would need to come to the Planning Commission. It could not be revised administratively.

Lust noted that the neighbors have expressed concerns about strobing signs. What would the sign ordinance allow? Eichorn stated that they would be allowed one free standing sign per building and a center sign. The free standing sign can be up to 15' tall and 50 sq. ft. if in the front yard setback, and up to 100 sq. ft. if outside the front yard setback. They would be allowed one center sign oriented toward Old Cheney Road and one toward 27<sup>th</sup> Street, and those could potentially be 150 sq. ft. in area and up to 35' tall. The sign requirements are the same for O-3 and B-2 zoning.

Response by the Applicant

Hunzeker corrected the record – the neighborhood meeting was held September 20<sup>th</sup> (rather than September 27<sup>th</sup>), and they met with Don Nelson on the site on September 24<sup>th</sup>, and did not hear from him further. They met with the Lambrechts on September 29<sup>th</sup>, and in a matter of hours they had reached an agreement. Hunzeker believes the applicant has made an effort here. Unfortunately, these plans don't materialize out of thin area and we did not want to hold the neighborhood meeting without having a plan to show. We did that

as soon as we possibly could. We are on a time line in accordance with our lease which requires us to move as quickly as possible. CVS, which is in process of trying to invest upwards of 30 million dollars in Lincoln, has indicated that they would like to have this store open by the beginning of the 4<sup>th</sup> quarter next year. Whether or not that can happen, there are a lot of variables, but we were trying very hard to meet our obligations under the lease and maintain as good contact as we could with neighbors.

Hunzeker also suggested that the grading on this site, while significant, is not fairly characterized as “massive”. The site grading required to build two-level buildings with walkouts is not massive. They are ready-made walkouts. There will be significant moving of dirt to level those pads, but it is not what he would consider massive.

Hunzeker also pointed out that the median cut on Old Cheney Road has been there and is there and has nothing to do with this site. In the event it became necessary, Public Works has the right to change median openings. They are probably going to change the median on 27<sup>th</sup> Street that is there for the Fire Department. There is a median opening to the north which is available for this site.

Hunzeker disputed the suggestion that we should not do anything here because only about one-third of the users are known. That is always the case. It is very rare when all of the intended users are known at this stage of the game.

Lust inquired as to the occupancy of the current office building. Hunzeker believes it is 35%.

Partington believes that the site plan layout and relative location of the pharmacy and office buildings makes sense. The proposed amendments would address most of the concerns he would have as a resident. But it appears that the people living in the neighborhood don't feel like they have been informed. Would you be concerned about a two-week delay to meet with these people? Hunzeker stated that he would be willing, if he had the flexibility to do that, but they don't. It's a minimum of 2 ½ weeks between now and the time this would come up before the City Council. It's been 2 ½ weeks since they had the first meeting with the neighbors and they have had no response. On September 20<sup>th</sup>, we offered that if they wished to meet to please let us know. Hunzeker pointed out that the developer has made a concerted effort and responded to the concerns of the closest owner of property to this site. They made an effort to go directly to Mr. Nelson as well, but never heard back from him. We are doing what the closest property owner has requested. He does not believe they have been unfair about notification. They used a list supplied by the Planning Department and they specifically asked for a broader list than required so that they would not be accused of trying to keep someone in the dark. They have not tried to avoid interaction with the neighbors.

**CHANGE OF ZONE NO. 10019**

**ACTION BY PLANNING COMMISSION:**

October 6, 2010

Esseks moved approval, seconded by Lust.

Esseks is sympathetic to the positions of the neighbors, but he does not see what would be achieved by further delay. It looks as though there has been a lot of interaction between the applicants and some neighbors, and the applicants have tried to meet with more neighbors. Our community needs a reputation to be able to handle well-developed applications expeditiously. He thinks it is a good site. The Comprehensive Plan provides for commercial use here. We are told that a lot of shopping occurs when people come home from work. Design steps have been taken to buffer the neighbors from light and noise pollution. There are limits on alcohol sales and there is prohibition on gasoline stations. The southwest area of the site is already zoned B-2. It is not the role of the Planning Commission to determine which commercial uses should go into each area, and Esseks does not believe this set of uses looks threatening to the community. The City's sidewalk standards will be applied. It looks as though the signs are not facing the residential area but rather the major arterials.

Gaylor Baird stated that she would rather delay the proposal. This site plan is not sufficiently flushed out. It is a sensitive site that requires more time and attention. The zoning ordinance in which the Commissioners have been tutored talks about B-2 as a zoning district that requires the use permit for the purpose of providing a really delineated site plan that assures integration between residential and commercial areas that are adjacent. The use permit is also supposed to reduce adverse impacts and to allow for a clear picture of what the enhanced designation is in the B-2. We have had people testify that they support changing the use but not necessarily the zone. If we are going to make this big shift from office to business zoning, then we need to give this closer scrutiny. If this is to be a neighborhood center, she does not see the case that it is pedestrian friendly. Proximity is not pedestrian friendliness. Proximity to residents does not equate to being walkable, so she would like to see further details on how this is made pedestrian friendly. She does not think there is great integration between the residential and commercial. It is completely auto-oriented as it is now. It is not designed for walkability. Walkability needs to be clearly delineated on the site plan.

Gaylor Baird believes there are additional ways that this proposal comes into conflict with the Comprehensive Plan with some traffic issues that are still unclear. The stacking on 27<sup>th</sup> Street is a concern which has not been addressed. The compromise that has been achieved with the setbacks creates a situation that if the city exercises its right to expand 27<sup>th</sup> Street, we will have even more limited green space between the parking lot and sidewalk.

There are a number of people who want to delay this. Given the state of the site plan and the neighborhood objections, Gaylor Baird thinks it would be valuable to take two weeks.

This site deserves more scrutiny. When you look at what exists today, you have an office building that was designed by a local architect that is representative of its period. You have to look at what the proposal implies for the character of our community. It now has a lush setting with lots of green space. If demolished, we are looking at a change aesthetically to the landscape of Lincoln. It will be largely pavement that could exist in any city in the country – it is not unique and does not contribute to a sense of place. Because we are looking at such a drastic change on this corner and such a change to the visual landscape, we are losing something. We need to give this more time.

Lust stated that she would respectfully disagree with a delay. While once again, she is very sympathetic with the neighbors, she did not hear anything from the neighbors that has not been addressed by the developer and the staff. Their concerns over noise pollution, light pollution, and traffic issues have already been addressed by the developer. If the homeowners association has issues that they still want to address with the developer, they have two and a half weeks to do that before the City Council hearing. Asking for more details on the site plan and the uses at this point is really not something that this body can demand because that's "putting the cart before the horse." We cannot ask the developer to complete the architectural design of the entire facility before they even have any indication that the city will change the zone. Instead, their use permit requires certain conditions before they can get a building permit. There is going to be more review of this development as it occurs, and the city has been very progressive in their development of pedestrian standards, signage standards, and lighting standards – all of those things have already been considered and are in the ordinance. This is step one. They still have to come back for a building permit that complies with all of the conditions that they have agreed upon and that already incorporate the wonderful things that the city demands. She sees no use in delaying approval of this project. She does not believe that it deserves further scrutiny from the Planning Commission.

Taylor indicated that ideally, he would like to see a delay, and ideally, he would like to see the green space continue. He does not believe this zone change means any of the uses will be open until 2:00 a.m. It is just package liquor purchased on the site and taken home. He thinks a lounge or bar would have to come back before the Commission. At this point, he does not see what benefit a delay will serve. This will be heard by the City Council in the future giving the citizenry more time to organize.

Cornelius observed that the Planning Commission has been informed recently in some of their workshops that one of the purposes of the B-2 is to require a use permit, and a use permit is much more oriented toward being a site plan permit. We were shown a site plan today. He appreciates the lengths to which the applicant has gone to try to meet the neighbors' concerns. However, he is concerned about the integration between the development and the residential area directly to the north and to the west. He agrees with Commissioner Gaylor Baird that "proximity is not walkability." This does not look like a pedestrian friendly development, but rather a lot of parking surrounding some retail and office buildings. Perhaps given two weeks of time, they might be able to work something

out that is more carefully integrated in terms of pedestrian accessibility with the neighboring residential development.

Sunderman stated that he will vote in favor. It's a good plan. They have addressed the issues quite well. It is similar to other developments on corners such as this. As far as walkability, he believes it is at least adequate. It will be better and friendlier, especially with the detention pond. He thinks traffic will work fine. As far as losing the building on the corner, he agrees that it is a nice building, but it is empty, and an empty building doesn't do anybody any good.

Motion for approval carried 6-2: Taylor, Esseks, Partington, Lust, Francis and Sunderman voting 'yes'; Cornelius and Gaylor Baird voting 'no'; Larson absent. This is a recommendation to the City Council.

**USE PERMIT NO. 15D**

**ACTION BY PLANNING COMMISSION:**

October 6, 2010

Lust moved to approve the staff recommendation of conditional approval, with the amendments submitted by the applicant today, further amended to include Condition #2.18 as a reference in Condition #2.19, seconded by Francis.

Cornelius stated that, having registered his objections to the change of zone, and based on those objections and the thought that a deferral would perhaps be valuable, he will vote in favor of the use permit because, in general, he agrees that in many ways this is a decent addition to this area and it meets the standards required.

Gaylor Baird stated that she will vote against it because of the setback issue. It looks bad to have sidewalks pushed up against streets throughout our city.

Motion for conditional approval, with amendments, carried 7-1: Cornelius, Taylor, Esseks, Partington, Lust, Francis and Sunderman voting 'yes'; Gaylor Baird voting 'no'; Larson absent. This is a recommendation to the City Council.

**STREET & ALLEY VACATION NO. 10015**

**ACTION BY PLANNING COMMISSION:**

October 6, 2010

Esseks moved to find the proposed vacation to be in conformance with the Comprehensive Plan, seconded by Francis and carried 7-1: Cornelius, Taylor, Esseks, Partington, Lust, Francis and Sunderman voting 'yes'; Gaylor Baird voting 'no'; Larson absent. This is a recommendation to the City Council.

**STREET & ALLEY VACATION NO. 10014,  
TO VACATE THAT PORTION OF W. WAGGONER DRIVE  
WHICH ABUTS LOTS 1, 2 AND 3, BLOCK 1,  
WAGGONER SUBDIVISION, GENERALLY LOCATED  
1/4 MILE SOUTH OF WEST O STREET,  
ON THE EAST SIDE OF SW 98<sup>TH</sup> STREET.  
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

October 6, 2010

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

Ex Parte Communications: None.

Staff recommendation: Denial.

Staff presentation: **Mike DeKalb of Planning staff** explained that this is a request to vacate a road located in the City's three-mile jurisdiction, thus it requires review and approval by both the City Council and County Board.

The application is to vacate Waggoner Road. The Waggoner Subdivision was approved in 1979, which required the subdivider to build and surface the road and to put up a bond. That was 31 years ago and the road has not been constructed. The road is currently cultivated farmland with a barn partially built onto the County road right-of-way. There is a house on the first lot, but not on the two remaining lots to the back.

The staff recommendation of denial is primarily based on one issue, that being the City's Public Street Design Standards, which provide that the intersections of collector streets with major streets shall be one-half mile apart, and intersections of local streets with major streets shall be one-quarter mile apart. In this situation, the rationale is that this road, whether built or not, needs to provide access at the proper place. Sight distances are safe at this location. If the road is vacated, it will create two lots without frontage and access. However, the property owner has several different options if he replats the property. He could create one lot without the street and have access to the county road; however, that would not resolve the issue of providing long term insurance of having the road there when it was needed for the quarter section.

Francis inquired whether the three lots are in the same ownership. DeKalb explained that the front lot is owned by Mr. Waggoner and the rear two lots are owned by Roger and Patty Vollstedt, who also own the lots to the south and to the east, and the County owns the road.

Esseks wondered about just leaving things the way they are, resulting in no expense to the owner and no expense to the County to maintain the road – just leave things the way they are until the city expands out there. DeKalb agreed that most likely, the circumstances

won't change, but that's up to the County Board whether to enforce the obligations of the subdivider. Long term, this road would be the proper location for the development of the internal platting and uses within that mile section. The only way to guarantee it, is to leave the requirement in place; otherwise it might make it difficult to do something in the future.

Lust inquired as to the owner of the street being vacated. DeKalb explained that the property has historically been farmed and has never changed land use. He has been informed that perhaps the building that straddles the lot may have existed even before the Waggoner Subdivision. The road was deeded to Lancaster County in 1979 with the approval of the subdivision. Lancaster County owns the road. Lust wondered whether the ownership changes if the road is vacated. DeKalb indicated that Lancaster County would retain ownership for the time being. Normally, the County Board would ask the County Engineer to establish a value and then offer for sale to the abutting property owners, or the County Board can direct it be offered for sale to one individual. That is what initiated this request – Mr. Vollstedt wants to purchase the road.

Lust confirmed then that vacation of the road would enable the County to sell the property to the abutting landowners. And if the road is not vacated, everything is going to stay the same and the subdivider is supposed to build a road, but we are not going to make him do it. DeKalb assumes that would be the case. Lust observed that if the road is vacated, the County Board has the opportunity to make money. And DeKalb suspects that the County Board would let it stay if the road is not vacated. There was supposed to be a bond, but he does not believe one was ever posted. If there had been, it would have expired long ago.

Partington understands the long range planning implications, but from a business standpoint, he does not believe he would ever invest in infrastructure before he had an actual use for it. DeKalb explained that the subdivision was being processed between the time the City and County were changing the zoning rules, and he assumes that the developer intended the creation of three lots and a road. Partington suggested that there won't be any need for the road until they develop the lots. DeKalb agreed, but if they sell the lots, then there would be a need for the road. Under today's regulations, this problem is avoided. Today the road is required to be built before the final plat is signed. This subdivision was processed 31 years ago.

Proponents

**1. Roger Vollstedt** appeared on behalf of himself and his wife. They purchased this ground back in 2004, with the intent to eliminate anyone building on these lots. They have been in agriculture ever since and he has farmed the ground for over 30 years. When he purchased the property, there was a building constructed in the northeast corner of Lot 3, well before this subdivision took place. The property was not maintained properly. Two years ago he cleaned up this area and he got his tax assessment from the County and the valuation of Lot 3 went up over \$50,000. He appealed it. They thought he had built a new

building. This building has to be razed in order for this road to be constructed because a cul-de-sac has to be designed. He would be willing to combine the two lots into one. He cannot justify the cost of building the road. The County will not maintain this road anyway because it is a minimum road. He owns the ground on the east side of 92<sup>nd</sup> Street. The east half of the north section was developed with tracts on the east side. They had designed a road with a cul-de-sac and it's just a place for people to come and dump their unwanted items. He polices it all the time. If this road is built, it will be another dumping ground. If it is vacated he could secure it. With the one lot, they could have a private drive and it would eliminate the county road. The north side is all developed and he owns all the ground. He has no intention to develop, and if it were developed, there would be only one lot with a private drive.

Lust asked Vollstedt whether he was aware of the obligation to build the road when he purchased the property in 2004. Vollstedt acknowledged that he did know about the road, but they approved it without the road and now the question is, who is to build the road? Vacating it would eliminate that factor. It's been this way for 31 years. He has no intention of developing or selling it off.

Esseks wondered whether Vollstedt could still demolish the building if things are left the way they are. Vollstedt does not want to demolish the building. He would fix it up; however, he would not want to put any money into it if he had to demolish it in the future to put a road in. The County owns that road now – anyone can enter it at anytime regardless of whether there is a road there or not. He has no way of privatizing those two lots. Vacating the road would eliminate that problem and eliminate the cost factor. If the road is constructed, how are you going to take care of the drainage? There is a draw that runs through Lot 2, and a massive draw just to the east of Lot 3, and there would have to be a big bridge at huge cost to tie into 92<sup>nd</sup> Street. The right-of-way is all tillable and will stay tillable. He wants to purchase the right-of-way.

Francis confirmed with Vollstedt that he has plenty of access to the lots without the road. Vollstedt agreed, but the privacy is an issue. The only road in this whole section is 92<sup>nd</sup> Street. The rest has all been plotted out as acreages.

There was no testimony in opposition.

Partington inquired whether there are any provisions for returning this land to AG zoning. DeKalb advised that it is currently zoned AG. The subdivision was approved right in the window before the County adopted the AG zoning and after the city adopted AG zoning. When it was approved, the properties zoned AA Rural Public Use District with one-acre minimum lot size were grandfathered as existing buildable lots. They would have to replat to make it one parcel.

Lust asked whether the staff recommendation would be different if the applicant subdivided the property. DeKalb explained that subdividing does not solve the first problem of

providing protection for retaining the right-of-way where it is supposed to be for future development. The replatting would not have to be reviewed by the Planning Commission. It could be approved by the Planning Director. Vollstedt would need to file a final plat or work with the County Board to coordinate their participation in the plat and the vacation of the street to go with that.

DeKalb explained that Vollstedt wrote the letter to the County Board. The County Board then initiated the request to study the proposed vacation. The County Board is the applicant.

Taylor wondered about the use of eminent domain by the County in the future if this vacation is approved now. DeKalb believes the City and County could use eminent domain but he does not see any reason that they would. The Planning Commission could recommend approval, subject to a condition that Lots 2 and 3 be replatted in conjunction with the vacation of the road. That would tie it all together.

Cornelius wondered what the situation would be if this subdivision had not occurred in 1979. What would be the position with regard to future expansion and building roads at the quarter section line? Had this subdivision not occurred, would not the city be in the same position were we to vacate this road? DeKalb suggested that if the road were vacated, it would all go away.

Partington suggested that if we can make the lines on Lots 1, 2 and 3 disappear, there is no need for the right-of-way. DeKalb explained that the reason for the road was to provide access for the lots being created, so there would not be that reasoning anymore if it were one lot.

Francis suggested that if the road goes away, with the same owner, perhaps the owner could divert the road to go around the building.

Esseks pointed out that the owner says the road is a nuisance, serves no purpose and adds to the difficulty of ownership. This area is in Tier 3, so he will vote to approve the vacation and let this owner enjoy his property more. Tier 3 means it is unlikely to be developed for 50 years.

**ACTION BY PLANNING COMMISSION:**

October 6, 2010

Taylor moved to approve the vacation, subject to the approval of a final plat removing the two easterly land-locked parcels prior to vacating the road, seconded by Partington.

Taylor thinks this is a good friendly way of securing the rights of our citizens and assisting in keeping our environment clean. He appreciates the owner's desire to keep this area cleaned up and that he will continue to police that area.

Motion carried 8-0: Cornelius, Taylor, Esseks, Partington, Gaylor Baird, Lust, Francis and Sunderman voting 'yes'; Larson absent.

DeKalb approached the Commission and suggested that it would be much clearer if the approval is subject to the approval of the final plat "prior to sale of the right-of-way".

Lust moved to rescind the Planning Commission's previous action and moved to approve the road vacation, subject to the approval of a final plat removing the two easterly land-locked parcels prior to sale of the right-of-way, seconded by Cornelius and carried 8-0: Cornelius, Taylor, Esseks, Partington, Gaylor Baird, Lust, Francis and Sunderman voting 'yes'; Larson absent. This is a recommendation to the City Council and County Board.

There being no further business, the meeting was adjourned at 4:15 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on October 20, 2010.

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