MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, November 30, 2011, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska
MEMBERS IN ATTENDANCE:	Leirion Gaylor Baird, Greg Butcher, Michael Cornelius, Dick Esseks, Wendy Francis, Chris Hove, Jeanelle Lust, Lynn Sunderman and Ken Weber; Marvin Krout, Steve Henrichsen, Nicole Fleck-Tooze, Brian Will, Tom Cajka, Christy Eichorn, 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 Michael Cornelius called the meeting to order and acknowledged the posting of the Open Meetings Act in the back of the room.

Cornelius introduced and welcomed the new members, Greg Butcher, Chris Hove and Ken Weber.

Cornelius then requested a motion approving the minutes for the regular meeting held November 16, 2011. Motion for approval made by Francis, seconded by Lust and carried 6-0: Gaylor Baird, Cornelius, Esseks, Francis, Lust and Sunderman voting 'yes'; Butcher, Hove and Weber abstained.

CHANGE OF ZONE NO. 11028,
AMENDING SECTION 27.35.025 OF
THE LINCOLN MUNICIPAL CODE
TO ALLOW THE SALE OF ALCOHOLIC BEVERAGES
FOR CONSUMPTION ON THE PREMISES
IN THE B-4 LINCOLN CENTER BUSINESS DISTRICT
AS A PERMITTED CONDITIONAL USE.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: November 30, 2011

Members present: Gaylor Baird, Butcher, Cornelius, Esseks, Francis, Hove, Lust, Sunderman and Weber.

The Clerk announced that the applicant has submitted a written request for an additional 90-day deferral.

Lust moved to defer 90 days with continued public hearing and action scheduled for February 22, 2012, seconded by Esseks and carried 9-0: Gaylor Baird, Butcher, Cornelius, Esseks, Francis, Hove, Lust, Sunderman and Weber voting 'yes'.

COMPREHENSIVE PLAN AMENDMENT NO. 11007,
ANNEXATION NO. 11003,
CHANGE OF ZONE NO. 05085A,
AMENDMENT TO FALLBROOK PLANNED UNIT DEVELOPMENT,
and
STREET & ALLEY VACATION NO. 11030
ON PROPERTY GENERALLY LOCATED
AT FALLBROOK BLVD. AND HIGHWAY 34.
PUBLIC HEARING BEFORE PLANNING COMMISSION*:* November 30, 2011

Members present: Esseks, Sunderman, Lust, Gaylor Baird, Butcher, Francis, Weber, Hove and Cornelius.

There were no ex parte communications disclosed.

Staff recommendation: Approval of the comprehensive plan amendment and annexation; conditional approval of the amendment to the PUD, and a finding of conformance with the Comprehensive Plan on the street and alley vacation.

Staff presentation: **Brandon Garrett of the Planning staff** addressed the Comprehensive Plan Amendment which deals with the urban land use designation on the Future Land Use map in the 2040 Comprehensive Plan. The proposal is a change from urban density residential to commercial at the northwest corner of Fallbrook Blvd. and Hwy 34/Purple Heart Highway. The associated applications for the expansion of the PUD will cover the site plan and zoning issues.

As for the land use designation change, Garrett explained that the area of Fallbrook generally, and these northern neighborhoods are generally under-served in terms of commercial opportunities more related to one's daily needs, such as groceries. This center is designated as a mixed use office center which provides largely for an office environment but also accommodates some retail. This series of proposals would increase the square footage to about 900,000 square feet of commercial/retail. This proposal brings the percentage of retail to about 26%, which is roughly what is recommended for mixed use office centers.

Garrett also pointed out that the nearest community sized center is at 84th & Adams Streets, which is in development at this time. Beyond that, the nearest two larger types of shopping centers would be the two regional centers, i.e. Downtown and the 27th & Superior area (WalMart, HyVee, Sam's, etc.). In order to serve this entire northern neighborhood

area better, additional retail in this mixed use type of center would be appropriate given the nature of the neighborhood centers that are established there. There is a neighborhood center somewhat nearby in the Highlands but it is small and does not include a grocery store.

The staff is supportive of this amendment because by having more daily needs met, there would be fewer and shorter vehicular trips and an increased likelihood for pedestrian and bicycle trips within that general area. In the future, there are plans for an extension of N.W. 12th Street across Purple Heart Highway that would create an even better connection between the Highlands neighborhood to the south and to Fallbrook. The staff is recommending approval of the comprehensive plan amendment.

Garrett further explained that community centers are larger than neighborhood centers. There should be more community centers spread throughout the community. In this northern area of the city there seems to be a shortage of that type of opportunity.

Gaylor Baird commented that the Commission has spent the past year working diligently on a community wide process for updating the Comprehensive Plan for the year 2040. A lot of emphasis was placed on pedestrian orientation and reviewing what part of the city should be commercial versus residential, and we looked at mixed use. Gaylor Baird asked the Planning Director to talk about this proposal in terms of its conflicts with the newly adopted Comprehensive Plan.

Marvin Krout, Director of Planning, acknowledged that this comprehensive plan amendment was discussed in a workshop preceding this hearing. He repeated for the record that overall, this is a very exemplary project that meets many of the principles and policies in the new Comprehensive Plan, including the new emphasis on mobility and mixed use development. If you look at the commercial development to the east, it is very much "new urbanism" type of design with very walkable streets. The whole development is laid out in a way that makes bicycle and walking attractive, desirable and convenient. However, the original commercial development in this PUD was laid out without a lot of regard to large commercial uses (big boxes). So when the opportunity came to consider the possibility of expansion for that area, including a new grocery store, the developers looked to the west. These discussions began over two years ago, well before we launched the process on the new Comprehensive Plan and before we began to talk about these new principles and more priority on the design of buildings, etc. We did not know what the outcome of those discussions was going to be when we began discussions on this proposal.

Krout further advised that the staff was supportive of this project to encourage a grocery store for this area as an anchor and neighborhood service for the community. There is a mix of uses that is insured by the PUD so there will be that kind of potential for reduction of traffic and walkability. But, because the development plans were underway well before

the LPlan 2040 discussions, and because of the nature of the site, the size of the buildings, and the grading in this area (which is somewhat difficult), the staff took the position that the most important thing was to encourage the grocery store to happen. It would be a very complementary use. We have to find a way to integrate large commercial uses – just like cars are going to be part of our future, larger uses are going to be a part as well and we have to find a way to integrate them as much as possible. Krout acknowledged that part of our charge is the design standards – we know the arrangement of parking to buildings and buildings to other buildings is important. But this project was just too far along in the process. We basically considered it a grandfathered use. If we were starting from scratch, we might have planned it somewhat differently.

Gaylor Baird confirmed that if this project were starting today, maybe some of these same concessions would not be up for consideration. Krout agreed.

Tom Cajka of Planning staff then addressed the annexation, PUD amendment and street vacation. This application is to amend an existing PUD by adding approximately 38.6 acres and 220,000 square feet of commercial floor area. The area of expansion is west of Fallbrook Boulevard coming in the entrance off Hwy 34. Lot 1 is for the proposed 60,000 sq. ft. grocery store. A condition of approval is that 100,000 sq. ft. of the 220,000 sq. ft. of additional commercial floor area must be set aside for office use, so the maximum retail would be 120,000 square feet. The developer's long range plan is to have the office space in Lot 4, with some smaller retail and office in the other areas.

Cajka pointed out that there will be a bike trail on the north side of Aster Road that will connect up with the existing trails found throughout the development. Nothing else in the existing Fallbrook area changes.

Cajka advised that one area of discussion at length with Public Works involved turn lanes on Fallbrook Boulevard because the turn lanes shown are not as long as what is recommended by the traffic study and by Public Works. At this point, the turn lanes cannot be any longer because of the location of the highway. Planning, Public Works and the developer reached a compromise to add general note #10:

> The left-in turn in Fallbrook Boulevard, leading into Lots 1 & 2, Block 34 may be removed by the City if:
>
> a. Southbound vehicle stacking onto Highway 34 is routinely observed to be blocking the left-in turn to the driveway for Lots 1 & 2, Block 34 or;
>
> b. Northbound vehicle stacking for a left turn to Waterleaf Drive or to the left-in turn for Lots 1 & 2, Block 34 is observed routinely stacking into a through lane in Fallbrook Boulevard; or
>
> c. If traffic warrants or vehicle crashes caused by the left-in turn deem the left-in turn movement removal is advisable.
>
> The lot owner of Lot 2, Block 34 will be responsible for posting a $20,600 bond equal to the cost of removing the left-in turn lane at time of final platting.

Cajka then explained that the area of annexation is 10 acres north of the City Limits which includes Aster Road to N.W. 12th Street.

Cajka pointed out that the changes to the General Notes are bold and underlined in the staff report. The developer has requested several waivers, mostly having to do with the signage. The other waiver requests dealing with setbacks and parking are the same waivers that were granted in the previous approval of this PUD.

Gaylor Baird expressed concern about the number of modifications to the signage since the Commission has recently done a lot of work on the sign ordinance. Is all that work for naught in this situation? Is there some reason why the standards are not working? Or is this an incredibly unique situation? If we are granting this many waivers, are we setting some sort of precedent? Cajka explained that a lot of the modifications to the sign ordinance are carried over from the previously approved PUD. The biggest sign is on the corner of 1st & Hwy 34 – it is their major subdivision sign – 350 sq. ft., 16 feet tall, which was previously allowed to be 700 sq. ft. (The sign area is calculated differently under the new sign ordinance). This sign is next to the highway with a lot of fast-moving traffic. Planning staff takes the position that this sign was no larger than what had been previously approved. Gaylor Baird confirmed that the staff considers the waiver to be acceptable because the sign is no larger than previously approved and is next to a highway so visibility is especially important. Cajka agreed.

Cajka went on to point out that the signs located on the major entrances are 150 sq. ft. Most of the signs in the area set aside for offices meet the existing sign ordinance. There are center signs a little larger than what is allowed by the sign ordinance along Hwy 34 at three locations. Gaylor Baird confirmed that the waivers are acceptable because these signs are on the highway. Cajka concurred, along with visibility being an issue.

With regard to the street vacation request, Cajka explained that Fallbrook Boulevard is being redesigned. Right now it has a wide median in the middle and they are going to take some of that median out because they do not need the right-of-way to be out that far. They are requesting that a strip of land on the west side be vacated to be used as part of their future lots. They have to reduce the medians in order to construct the left turn lanes.

Esseks was interested in the requirement to set aside 100,000 square feet for office. Is this a guestimate? Cajka indicated that it is based on what was shown in the developer's traffic study. Cajka believes that the only committed tenant at this time is the grocery store. But, based on the traffic study submitted, the developer has agreed to add the stipulation for the 100,000 sq. ft. of office. Esseks wondered about the impact should anything change in the future and the market does not support the office use. Cajka indicated that the developer could always come back and request an amendment.

Lust inquired how the traffic study determines what is going into the development? Cajka explained that the traffic study has to do with the impact on the existing road network with different uses having different traffic generators. The developer submits the traffic study based on their projected uses, which, in this case, included the office, retail, grocery, bank, and restaurant, etc. **Dennis Bartels of Public Works** also explained that the initial Fallbrook development had a traffic study so the improvements were built on 1st Street. When they added this new development with more square footage on the west side of Fallbrook, it changed the numbers from what was in the original traffic study. His assumption was that the developer did not want to pay for additional improvements or start redoing existing improvements for what was already built with the initial approval.

Gaylor Baird returned to the signage issue. She does not believe the staff report sufficiently explains which signs are subject to waivers and how they vary from the sign ordinance. She cannot clearly distinguish what is being waived and whether or not there is something being changed by category. After further discussion, Cajka stated that basically, the center signs and the PUD complex subdivision signs are those that deviate from the sign ordinance and involve waivers. The new signs include three subdivision signs (pointed out on the map) which are the 150 sq. ft. and 16 ft. high signs. That is a new waiver from 32 sq. ft. and 6 ft. tall. Cajka also displayed a rendering of the proposed signage for the MarketPlace.

Lust clarified that the signs involved in the waiver requests are at the corner of 1st & Alvo, N.W. 12th & Alvo, and N.W. 12th & Aster Road. Referring to the sign map, Lust suggested that the Commission is voting on a request for one 1.A.1 sign (already approved). The new signs are the three 1.A.1 signs and two 1.B signs as shown on page 57 of the agenda. Cajka confirmed that there are six new signs included in the waiver requests. Gaylor Baird confirmed that the justification for the waiver is greater visibility at the entrance points. Cajka agreed.

Krout offered that this is a huge scale project – this is a mile of frontage on Hwy 34. For example, picture South Point which has ½ mile of frontage with more signs than what is being shown here. This is a much reduced number of signs from the potential there could be with a different type of development stripping down the highway with potential for free-standing signs and center signs. These signs are all going to be architecturally controlled by the covenants. It ties back to the overall design and architecture of this development, which to date has been very exemplary. Krout believes there are issues of scale and design that mitigate any increases in area of the signs.

Gaylor Baird explained that she just wanted to understand what the increases in area were and what is being waived.

Proponents

1. Tim Gergen, Olsson Associates, appeared on behalf of Nebco, the developer of Fallbrook. This is a planned neighborhood subdivision which they began working on in 1999, and has slowly matured into a beautiful residential neighborhood in need of amenities. They now have a town center more geared toward a small footprint of boutique shopping, but this part of the community is greatly in need of large scale services of daily needs, such as grocery store and medical services.

Gergen further explained that this phase of Fallbrook is called the MarketPlace, where it gets into more of a large scale footprint shopping where there are pad sites to be sold to landowners for retail, shopping and office use. The office is a conceptual idea for the traffic study, but as they developed the traffic study they realized that northwest Lincoln is in dire need of medical office as well.

With regard to signage, Gergen explained when they first developed Fallbrook, they were cognizant of the desire to retain the natural part of the development. A lot of the buildings were pushed back from the highway, and a lot of those retailers really depend on signage on their buildings to get the users into the development. With setbacks so far from the highway and with 60 mph speed limit on the highway, there is the need to have something to catch the eye of the travelers to bring them into this new shopping center. That is the purpose of the larger signs. This is a planned residential subdivision where we want to dictate the location and users on the signs and not have more signs on the highway. The developer has worked diligently with the city staff for two years on this project and they have come to general consensus on the conditions of approval.

There was no testimony in opposition.

COMPREHENSIVE PLAN AMENDMENT NO. 11007
ACTION BY PLANNING COMMISSION: November 30, 2011

Lust moved approval, seconded by Francis.

Francis believes this is an excellent location for an office and retail site as opposed to residential.

Cornelius stated that he is sympathetic to the concerns about the new Comprehensive Plan. This is not something that we might expect to come up under the precepts of the new Plan; however, the Plan is very new and we just discussed before this meeting revisions to the plan that we have yet to make that are simply not new information but refinements of the Plan as it stands. Our community is a big ship and it turns slowly, and we don't have all the design standards in place yet to apply to an application like this.

Further, this project was underway as we were discussing the new Plan and proposing design standards in the future. For that reason, he will vote in support of this amendment.

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

ANNEXATION NO. 11003
ACTION BY PLANNING COMMISSION: November 30, 2011

Lust moved approval, seconded by Francis and carried 9-0: Esseks, Sunderman, Lust, Gaylor Baird, Butcher, Francis, Weber, Hove and Cornelius voting 'yes'. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 05085A,
AMENDMENT TO THE FALLBROOK P.U.D.
ACTION BY PLANNING COMMISSION: November 30, 2011

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

Sunderman complimented Fallbrook for the first large scale development which applies the standards of "new urbanism". It is a fabulous concept.

Gaylor Baird commented that with the care taken in the planning with the fewer number of signs, some size accommodation and the architectural nature of the signs, she accepts that these kinds of waivers make sense.

Cornelius agreed, suggesting that the signage was discussed a lot because in the recent past, the Commission has had a lot of discussion about signs and extensive changes to the sign ordinance. It raises a flag for us whenever we see variances from that ordinance because so much work went into it. But, it is clear here that the reasoning for their differentiation from the ordinance is sound – they are attractive additions to the community and they fit in with the overall design of the community – and for that reason he will support it.

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

STREET & ALLEY VACATION NO. 11011
ACTION BY PLANNING COMMISSION: November 30, 2011

Lust moved a finding of conformance with the Comprehensive Plan, seconded by Francis and carried 9-0: Esseks, Sunderman, Lust, Gaylor Baird, Butcher, Francis, Weber, Hove and Cornelius voting 'yes'. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 11030
FOR AN EARLY CHILDHOOD CARE FACILITY
ON PROPERTY GENERALLY LOCATED
AT S.W. 27TH STREET AND WEST A STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: November 30, 2011

Members present: Esseks, Sunderman, Lust, Gaylor Baird, Butcher, Francis, Weber, Hove and Cornelius.

There were no ex parte communications disclosed.

Staff recommendation: Conditional Approval

Staff presentation: **Christy Eichorn of Planning staff** discussed the zoning in the area and the history of the development of this area. The proposed day care facility for 150 children and 21 staff is located on West A Street and S.W. 27th Street, in an area that is currently part of a community unit plan (CUP) special permit. Today, there are vacant lots platted along W. Timber Lake Drive – the day care facility will be located on 10 of those lots. There are existing lots to the east, there is H-4 zoning to the west and R-3 to the north. All of the area to the north is included in the existing CUP. There is more residential zoning to the south.

Eichorn pointed out that the closest commercial area with services is located about ½ mile to the east. Everything else around the area is mostly residential in nature. Just north of the area of the proposed day care facility is a significant amount of floodplain that separates this area from the area north of "O" Street.

Eichorn stated that, in general, the CUP that was approved in 2008 had several waivers to the R-3 zoning district to allow smaller lots, higher density, and specifically row houses, which is about 9 single-family houses attached to each other.

Eichorn also pointed out that this is a relatively high density area where we expect to have a lot of single family attached residential units. There is H-4 zoning across the street, which is a highway commercial district where we expect to see all kinds of retail, office and commercial uses sometime in the future.

Esseks referred to the existing townhouses to the east and inquired whether those landowners have been informed about this proposed development. Eichorn indicated that she did attend a meeting where the owner of the property and proposed day care provider met with the neighborhood.

Esseks then referred to the H-4 property to the northwest and inquired whether there is any type of potential hazards for the children in the day care facility. Eichorn stated that the H-4 is not an industrial zoning district. And, if the day care comes first, then any future uses would be subject to the day care's existence. You might see heavier commercial services in the H-4, but not anything that would be hazardous.

Proponents

1. JD Burt, appeared on behalf of the applicant, **Cheryl Dubas,** who is the contract purchaser of the proposed day care. The current owner of the property is City Bank. Burt explained that, In general, this is an application that is the result of many months of research for a day care project in the southwest portion of Lincoln, and this property is the most desirable. The applicant currently operates a day care center at 24th & Superior – Little Munchkinland – and has had numerous requests from people living in other portions of the community to provide services. The applicant has contacted other properties that would be suitable, but unfortunately, they were not for sale.

Burt believes that the applicant has attempted to be sympathetic to the neighbors with the design. The two problems with a day care facility include traffic and intrusion into the neighborhood. In the proposed design, the parking was purposely located on the west, adjacent to S.W. 27th Street in order to minimize the travel into the neighborhood. There will be a 6' privacy fence along the perimeter of the playground located on the east side.

Burt acknowledged that the applicant did meet with the neighbors and did make some changes to the plan, including separating the site another 5' to the west. They started with a 5' setback as required by the zoning ordinance, and increased that by another 5' which helped the current owner with a problem as far as providing mitigation to the existing residences. They ended up with an outlot that the bank will retain, which provides an increase in the separation.

The building will have a 4:12 pitch, which is fairly flat. The designer of the building is noted for his designs in Fallbrook. Some of the aesthetic amenities found in the Fallbrook facility are being included in this proposed facility. Burt assured that this will be a very attractive building that will provide the neighborhood with a residential type building that could easily be converted into 10 multi-family dwelling units should the need arise in the future.

Opposition

1. Shawn Schulzkump, homeowner at 2533 West Timber Lake Drive, testified in opposition, pointing out that the day care facility will abut his back fence. He purchased his home with the understanding that this site would be townhomes and because he was going to start a family. He did not expect to have 150 kids right next door with a playground. He agrees there is a need for a day care facility in the area, but he does not believe this large size is needed.

Schulzkump acknowledged that he did meet with the developer. At that time, it was his understanding that they would be asking for 130 children and the time was from 6:00 a.m. to 6:00 p.m. Now, it appears to be 150 kids from 6:30 a.m. to 11:00 p.m., which he did not know. He knows that his quality of life will change just by having these kids next door. 150 kids make a lot of noise. An extra 5' does not provide much noise barrier.

Schulzkump is also very concerned about the value of his home. The applicant has suggested that his property values would not be decreased by the location of this day care center, but Schulzkump is not comfortable. Schulzkump stated that he would have never purchased a house next to a day care that large. He would request that someone that is not associated with City Bank assess the value of his property and determine whether his land value will decrease due to this facility. He will sell his home in the future and he is fearful that it will be more difficult to sell with the day care next door.
Schulzkump suggested that the day care facility locate on the H-4 zoning.

Schulzkump is also concerned about traffic on Timber Lake Drive. The plan shows an outlet to get into the parking lot on Timber Lake Drive which he believes will bring more people to Timber Lake Drive.

Schulzkump acknowledged that the applicant and City Bank suggested some things at the neighborhood meeting, but there are not a lot of people in the neighborhood enthusiastic about this. We all bought our townhomes to live in a quiet neighborhood with no traffic and not a lot of commercial. The day care had suggested that they would leave an open lot between his home and the day care. That would be helpful but he is not sure it would make a difference. Traffic, noise and property value are issues.

Butcher inquired as to how many of the townhomes are occupied. Schulzkump stated that they are all occupied at the present time.

2. Jolene Wagner, 2514 West Timber Lake, agreed with Schulzkump's testimony in opposition. She saw the maps that indicated the rest of the development would be townhomes and that was one of the considerations when she bought her townhome. She has concerns about the ability to sell her home in the future. When purchasing this townhome, one of the other locations she considered had a day care in the back yard and

she opted not to purchase that property specifically because of that. She believes this will affect her ability to sell her home in the future. She is also concerned about the traffic. When she leaves now it is difficult to turn left on West A Street. With another 60-75 cars, it is going to be difficult to get out of her subdivision in the mornings. She uses the only exit out of the subdivision by going to A Street. There is very little development or activity to the west on West A Street so everyone from this subdivision is turning left onto West A Street. There is not a back way out of the neighborhood.

Butcher wondered whether some of that traffic might be coming from the neighborhood to the south as well.

Francis asked staff to address the question about the H-4 zoning. Eichorn stated that the H-4 zoning is there but the infrastructure is not there. That's one of the reasons the applicant chose not to go with the H-4 property. They did communicate with that property owner and were not able to work out an agreement to purchase and get the infrastructure they need.

Hove inquired as to what other types of businesses could go into this location. Eichorn advised that the R-3 zoning has permitted, conditional and special permitted uses. By right, under the approved CUP, if the day care was approved and not built, they could build 10 single-family townhouses on the lots that are there. Another option is conditional uses, such as group homes. A special permitted use such as day care and domiciliary care would have to come to the Planning Commission. All early childhood care facilities over a certain size in residential districts are required to submit a conversion plan. This facility is showing that one option for converting back to residential use would be to convert the building into a 10-unit multi-family building.

Eichorn also pointed out that one of the reasons this location was chosen is that the Comprehensive Plan specifically mentions multi-family units and day care facilities as good transitional uses between commercial and residential zoning districts. With highway commercial across the street, the day care seemed appropriate for that transition.

Eichorn also pointed out that the applicant has requested no waivers to the design standards, so they would have to meet all parking lot screening and screening for day care facility requirements, as well as show elevations with the conversion plan and how it will fit in with the neighborhood.

Eichorn further advised that higher density is expected in this area. There is already a special permit approved for 200+ units all together. The day care will just be the beginning of the increase in traffic that is going to come out on S.W. 25th Street and S.W. 27th Street in the future.

In addition, Eichorn pointed out that the day care will not be open on weekends. It does have an outdoor component, but usually not all kids are outside at one time. The staff considers parks and schools and day care centers as areas where you do not have a lot of people at night. This is an area where there would not be a lot of people generating noise on the weekends.

Lust inquired about the type of commercial uses allowed in the H-4. Eichorn suggested that it could be "big boxes" or offices. A lot of the existing H-4 in the community is under the Planned Service Commercial special permit, such as the Trade Center. There is also a lot of H-4 on S. 27th Street.

Lust confirmed that we are anticipating lots of increase in traffic in this area anyway, even if this day care is not developed. Eichorn agreed.

Cornelius commented that in terms of potential uses for this site, R-3 is generally considered a residential use by right. Eichorn stated that there are also conditional uses allowed such as a group home, domiciliary care, etc. The day care would only be allowed as a conditional use in a residential district if the operator lives in the home and has less that 15 children.

Cornelius observed that the special permitted uses in R-3 include community unit plans, private schools, health care facilities, mobile home courts, recreational facilities, broadcast towers, etc.

Response by the Applicant

Burt did not recall any conversation for a number of children less than 150. The applicant did not agree to anything with the neighborhood, but he believes the applicant would be willing to change the hours of operation to be 6:00 a.m. to 9:00 p.m. She does not want this facility to be open on weekends. Burt suggested that the day care eliminates the potential of having rental units and the traffic that goes along with the kinds of activities that happen with rental units.

As far as noise, Burt observed that perhaps this property is already in a landing zone noise corridor that would supersede the noise of a day care.

With regard to the traffic concerns, Burt believes that S.W. 27th Street and West A Street is a potential location for a traffic signal. There is 33' of right-of-way on the day care's side of the street and this owner is required to negotiate with the H-4 property owners to either acquire or have them dedicate the other half of the right-of-way to 66'.

Burt also advised that during the conversation with the neighbors, the applicant did talk about additional separation between the day care playground and the Schulzkump

property. The applicant made varying offers and the objection to the project did not go away, which means whether it is 5' further away or 20' further away, it is not going to make any difference.

In addition, Burt believes that this particular project will the require the construction of S.W. 27th from West A down to Timber Lake, which will give the existing neighborhood and the day care users an additional access to West A Street. When you relocate the turns from S.W. 25th down to S.W. 27th, the potential exists to consolidate all those trips at one intersection, which will function better.

Gaylor Baird asked Burt to speak to the noise issue with regard to the schedule when the children might be outdoors. Burt stated that it is anticipated that the maximum number of children on the playground at any one time will be 25-30. **Cheryl Dubas,** the applicant, came forward, indicating that at her current facility at 24th & Superior, the children generally do not go outside until 9:00 a.m., and in the afternoon they would not be outside until 3:00-5:00 p.m. At 24th and Superior Street, she only has 15-20 children in the evenings and they leave by 8:30 p.m., and they would not be outside in the evening.

Esseks wondered how many might be outside from 3:00 to 5:00 p.m. Dubas believes there should be no more than 20-25 children outside at one time.

Esseks wondered whether there is really a need to stay open until 11:00 p.m. Dubas stated that she would be willing to close at 9:00 p.m. However, there are 3:00 to 11:00 p.m. shifts in certain employments and there are people in need of this shift. The 24th and Superior facility is only open until 8:30 p.m., but she is licensed until 11:00 in case the children are picked up late. She currently has 110 children in the 24th and Superior facility.

Butcher inquired as to what percentage of the children are not the traditional 8:00 a.m. to 5:00 p.m. Dubas stated that most of the children at the current facility arrive from 6:00 a.m. to 8:00 a.m. (peak time); some trickle in from 8:00 a.m. to 10:00 a.m.; most leave anywhere from 3:00 to 5:00 p.m.; and not very many leave after 5:00 p.m. The current facility has maybe 10-20 children that leave after 5:00 p.m.

With regard to the traffic flow in the parking lot, Butcher imagines that they will come in off West A and enter off S.W. 27th. Is it expected that they would exit off onto West Timber Lake? How are children dropped off? Dubas stated that generally, they pull up in the front and are walked in by the parents. The parents typically stay 5-10 minutes.

Butcher then wondered whether it is the expectation that traffic will go out on West Timber Lake to avoid the traffic coming in, which might put more stress on the residential area there. Burt explained that to avoid emphasizing the driveway on West Timber Lake, they created the 90 degree parking stalls allowing enter and exit on the same driveway on S.W. 27th Street. If you take the driveway off West Timber Lake and create a dead-end road,

there will be more problems and the people will park on the street. We can maximize the parking with the 90 degree angle, giving people the option to enter and exist on S.W. 27th Street and have an alternate location if we have congestion issues. Burt suggested that the owner can deal with the parents regarding the traffic flow.

Butcher inquired about the age range of the children. Dubas stated that she is licensed for 6 weeks to 12 years of age. The school age children will be transported by a van.

Weber asked whether the children would be outdoors after 6:00 p.m. Dubas stated that they would not.

Francis asked the applicant whether there is any modification that could be made to provide more separation between the playground and the Schulzkump home. Burt stated that they have considered reducing the area of the playground but the applicant is not real comfortable consolidating the children any tighter. They have already moved it from 5' to 10'. Perhaps they could add some height to the fence, if that would be helpful. Francis does not believe the visibility is the issue. It's the noise.

Dubas suggested that the Commissioners visit some of these day care sites. The 6' privacy fence provides a good noise barrier such that the noise is not any different than hearing kids walking and playing outdoors on a day-to-day basis on the sidewalk or in their back yard.

Francis disagrees that the fence buffers the noise level.

Gaylor Baird suggested additional landscaping to help abate some of the noise. Burt agreed that they could add some trees in the 5' setback. They will comply with landscape standards and could add some more trees in that area.

Dubas stated that she understands the concerns of the neighbors and she asked them what they would like to see. She and Mr. Burt took it upon themselves to come up with some compromises because the neighbors did not.

Brian Kamler, appeared on behalf of **City Bank & Trust.** He is the senior lending officer and addressed the appraisal issue. The Bank has a vested interest because they own lots on the other side of the day care and all the land to the north. The Bank is not going to do anything that will jeopardize the value of the remaining lots. He contacted the Bank's appraiser and asked if there was any devaluation because of the location of the day care center next to a residence. His experience has been that it actually enhances the neighborhood and attracts people to buy or build homes there. He also pointed out that in a lot of developments around Lincoln where banks have taken over the projects or where the developers have been able to survive, many of the projects are turning into rental neighborhoods. This neighborhood is 33% rental occupied now. Before things improve,

it will go higher than that. The neighbor's house next to the day care center may have some issues, but he does not believe it will devalue the property.

Esseks wondered why this development has not been built out with townhomes. What is the outlook? Kamler was not at the bank when this loan was made, but he believes it was prematurely taken off the planning docket and put into action. It is on the outskirts of civilization. The bank owns a couple of other subdivisions more interior and those lots are selling fast right now. The bank owns another subdivision east of town that is starting to sell now, too. Unfortunately, it will be a long time before this one is sold. The price of the lots is around $10,000, but they are not selling.

ACTION BY PLANNING COMMISSION: November 30, 2011

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

Esseks asked the maker of the motion whether she would accept a friendly amendment to reduce the hours of operation from 6:00 a.m. to 9:00 p.m., rather than 11:00 p.m. Lust believes it would be nice to be licensed until 11:00 p.m. just in case they have a situation where a parent is picking up late. She is not sure it is a necessary amendment.

Gaylor Baird stated that she was hoping to amend in a way in which the Planning Director works with the applicant to come up with additional screening along the eastern fence line such that there is additional noise protection for the neighbor.

Eichorn suggested that the Commission put some language into the conditions of approval. The landscaping along the eastern edge is not required, only the fence is required. If additional landscaping is desired, perhaps three or four trees should be added to the conditions of approval at this time.

Gaylor Baird made a motion to amend to provide that four coniferous trees be added such that there is adequate screening between the day care center and the residential property to the east, seconded by Lust.

Discussion on motion to amend. Gaylor Baird believes this will help with the noise issue by creating an additional barrier. The fence is a good one for visual but not necessarily for noise.

Francis suggested it will take time for those trees to grow, but perhaps the resident that lives there will be selling his property at the time the trees are big enough to provide a positive effect. Gaylor Baird suggested that perhaps the trees will help with the selling price.

Sunderman stated that he will not support the motion to amend. It seems like "shooting from the hip" as far as the type and how many trees to require. He would prefer to trust the applicant to put in something that is appropriate.

Esseks thinks it is a good idea. These conflicting land uses are going to be with us and we have to come up with ways to make people on both sides of the fences get along and to strengthen whatever buffer there is. He believes that the trees along with the fence makes a lot of sense.

Gaylor Baird suggested that by choosing trees that don't lose their leaves, there is the noise protection year around.

Cornelius indicated that he is on the fence with regard to this amendment. He appreciates the intent of the amendment. It is concise. It is discreet. The reason that he is on the fence is because, in general, he finds it problematic to try and pilot conditions into special permit applications on the fly. It feels like "shooting from the hip". On the other hand, because of the nature of this amendment – small, self-contained and buy-in from the applicant – he is inclined to support it.

Motion to amend carried 8-1: Esseks, Lust, Gaylor Baird, Butcher, Francis, Weber, Hove and Cornelius voting 'yes'; Sunderman voting 'no'.

Discussion on main motion, as amended. Esseks suggested that we must realize the importance of day care centers. Yes, perhaps they are not the best neighbors to townhouses, but it could be worse. You could have private schools, recreational facilities, domestic shelters, group homes, etc. We have had problems like this before. There are people who do not like day care centers in their immediate neighborhood, but it could be worse because it does not appear that the land in question is going to develop as townhouses. He doesn't think we can say, "we'll wait for the townhouses." We have to be concerned about our city's economy and meeting real needs. He believes there is a real need for day care facilities. We live in a society with a lot of single parent households and we don't have that many households where one parent can afford to stay home. Hence, the really great importance of day care facilities, particularly one open from 6:00 a.m. to 11:00 p.m.

Francis stated that she is very sympathetic to the owners that live there. Unfortunately, after this development was approved, the economy took a huge dive. She is also sympathetic to the landowner charged to do something with this property and to make it work. She has four children living next door to her and it is an issue. She is sympathetic to the homeowners but this is good use of this land and she encouraged the owners of the day care to do everything they can to minimize the noise for the resident that abuts this property.

Lust stated that she is also sympathetic to the homeowners, but in the grand scheme of things, having a day care in a residential area can only enhance the value of the neighborhood. As a working parent herself, day care is something we all struggle with and to have one that is located in close proximity to a growing neighborhood is actually good for the community and in the long run will enhance all of the property values out there because more families will want to move into the area because of the proximity of the day care. She appreciates the day care being open extended hours.

Weber agreed with Francis. Hopefully the operators will keep the kids inside after 6:00 p.m. With the fence and the trees and no children, it's just a fence and trees.

Butcher expressed appreciation to the applicant for all the work they did by meeting with the residents. A bigger concern than the special permit in the R-3 is all the possibilities that will come with the H-4 which is directly across the street. A big box will have a far more larger impact on the neighborhood than this special permit. He thinks this is a good use.

Cornelius agreed with everything that has been said. There are a limited number of hours that the children will be outdoors. We have put measures in place to try to help mitigate the impact of the children outdoors. The facility is closed on the weekend. This area is subject to much greater development than what we now see. The traffic is likely to increase as it builds out to the north and as the H-4 develops to the west.

Motion for conditional approval, as amended, carried 9-0: Esseks, Sunderman, Lust, Gaylor Baird, Butcher, Francis, Weber, Hove and Cornelius voting 'yes'. This is a final action, unless appealed to the City Council within 14 days.
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There being no further business, the meeting was adjourned at 3:00 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on December 14, 2011.

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