MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, January 11, 2012, 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, Chris Hove, Jeanelle Lust, Lynn Sunderman and Ken Weber (Wendy Francis absent); Marvin Krout, Steve Henrichsen, Nicole Fleck-Tooze, Brian Will, Christy Eichorn, David Cary, Brandon Garrett, Rashi Jain, Sara Hartzell, 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 then requested a motion approving the minutes, as amended, for the regular meeting held December 14, 2011. Motion for approval made by Gaylor Baird, seconded by Lust and carried 8-0: Gaylor Baird, Butcher, Cornelius, Esseks, Hove, Lust, Sunderman and Weber voting 'yes'; Francis absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: **January 11, 2012**

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

The Consent Agenda consisted of the following items: **ANNEXATION NO. 11004, CHANGE OF ZONE NO. 11041, STREET AND ALLEY VACATION NO. 11012, CHANGE OF ZONE NO. 11043, SPECIAL PERMIT NO. 11032 and WAIVER NO. 11026.**

Ex Parte Communications: None

Item No. 1.2, Change of Zone No. 11043, was removed from the Consent Agenda and scheduled for separate public hearing.

Lust moved approval of the remaining Consent Agenda, seconded by Esseks and carried 8-0: Gaylor Baird, Butcher, Cornelius, Esseks, Hove, Lust, Sunderman and Weber voting 'yes'; Francis absent.

Note: This is final action on Special Permit No. 11032 and Waiver No. 11026, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

CHANGE OF ZONE NO. 11043
FROM R-3 RESIDENTIAL DISTRICT
TO O-2 SUBURBAN OFFICE DISTRICT
ON PROPERTY GENERALLY LOCATED
AT SOUTH 80TH STREET AND PIONEERS BOULEVARD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: January 11, 2012

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

There were no ex parte communications disclosed.

Staff recommendation: Approval, subject to a Conditional Zoning Agreement.

This application was removed from the Consent Agenda and had separate public hearing.

Staff presentation: **Brian Will of Planning staff** explained that this is a change of zone from R-3 to O-2 on property located southwest of the intersection of S. 80th Street and Pioneers Boulevard. The Planning staff is recommending approval, conditioned upon a zoning agreement relating to the issue of access to the property. The property is located on Pioneers Boulevard, which is an arterial street. That zoning agreement would require that access to Pioneers Boulevard be relinquished with access taken off 80th Street, and that an access easement be granted across the lot so that access can be granted in the future for the property located further to the west where there is potential for a commercial center.

Proponents

1. Tim Gergen of Olsson Associates appeared on behalf of the potential user of this property. They have worked with the City for quite some time on the best possible way to utilize this property potentially for a small family-owned dental office. After numerous meetings, the decision was made to rezone to O-2. Gergen stated that the applicant agrees with the conditions of approval to relinquish access, providing access to the other parcel to the west. He believes that is best for the overall development in this area.

Opposition

1. Larry Pfeil, 7820 Viburnum Drive, testified in opposition:

1. The conclusion of the staff report contains the statement: "...a change of zone to O-2 is appropriate and will be compatible with the surrounding properties." Pfeil believes that this is in direct conflict in that the staff report shows that lot is surrounded by property zoned for residential.

2. The first item in the Comprehensive Plan specification section of the staff report states this area is "...designated for urban residential land uses." Pfeil believes that the zoning would be in conflict with that.

3. a) the existing median on 80th Street has a cut that does not appear to align with the proposed point of access;

b) this portion of S. 80th is used in part by residents of the Grand Lodge, a retirement facility. Permitting access to a commercial development will lead to confusion due to traffic leaving the lot in question and cutting across this median;

c) traffic sight lines are poor for drivers forced to use the cuts due to the density of trees on the medians; however, removal of the trees would destroy the look and feel of this area;

d) the Grand Lodge is served by multiple providers that use large semi-tractors and trailers to deliver their products. The S. 80th Street median does not allow for easy access to the Grand Lodge. This type of traffic is conducted during the hours that the dental office would be generating traffic.

4. Analysis #2 indicates that the lot in question would be taken out of the community unit plan. Does this mean that the owner of the lot will not be obligated to pay dues and assessments to the homeowners association? If so, the homeowners association would not collect dues and assessments but would remain obligated to continue to maintain South 80th Street. Snow removal, for example, on the streets within the CUP, is the owner's responsibility and not the city's.

5. This request appears to be an attempt to promote commercial creep. The CUP has already experienced this with the nursery at the corner of Lucile and Viburnum Drive. What assurance is there that additional lots of the CUP will not be rezoned? The residents purchased homes based on the understanding of the commercial areas that were delineated at the time of purchase. If zoning changes are allowed which change the character, the result will be loss of value to current owners of residential property and it will forever change the intended purposes of this residential community.

Esseks clarified with Mr. Pfeil that his concern is that if there is access allowed through an easement, then this puts all of the area currently zoned residential into play for rezoning to commercial. Pfeil agreed. Esseks inquired whether there are any natural barriers between where Pfeil lives and the property which he is afraid would become the subject of commercial creep. Pfeil stated, “no, nothing to speak of,” i.e. no trees, no hills.

Esseks inquired as to the amount of the homeowner association dues currently being paid by the owner of the subject parcel. Pfeil did not know; however, the residential owners pay $135 per month to the homeowners association. He does not know what they do with the money but part of it goes for snow removal, trash pickup, maintaining the common area, etc.

Hove observed that this location is at the intersection of two fairly busy streets and inquired of Pfeil whether he believes the use should be residential. Would a home be built at that location? Pfeil responded stating that the Grand Lodge is located at the same corner, which is residential and built on that same intersection.

2. Larry Rennecker, 7831 Viburnum Drive, testified in opposition, adding that the potential easement lends itself to other commercial property in the area, which gives him further alarm. The R-3 property is owned by the Grand Lodge and whether they develop it or not, it was intended to be residential. When Rennecker purchased his property in 2006, he came down to City Hall and he talked with the Grand Lodge. There were certain areas defined for commercial at that time. They agreed to the change for the nursery property only. Part of that condition in working with the developer was that there be no traffic coming in on Preserve Lane. There is an office building that previously exists. This change of zone will diminish the value if the remainder of the property is converted later.

<u>Staff questions</u>

Esseks observed that this is a conflict between residential and non-residential uses. Is this property being considered for rezoning inappropriate for residential use? Are there some obstacles there? Will advised that the property is at an intersection adjacent to Pioneers Boulevard, which is an arterial street. As part of the CUP for The Preserve, the subject site

is shown as apartments. Part of the thought process in reviewing this application is the impact of what is approved versus what is being requested. Looking at trip generation, it is slightly more for an office use, but we could probably argue that the operating characteristics of the typical office setting provide an offset to that trip generation with the typical office use of 8:00 a.m. to 5:00 p.m., Monday through Friday. It would be considered a transitional use to the residential. Will also recalled that many of the members of the Planning Commission have previously heard a lot from the public indicating that they would prefer office to multi-family residential. When considering the impact upon the neighboring properties, the staff takes the position that O-2 doesn't really represent a significant detrimental increase as far as impact.

In addition, Will observed that as you look on to the west, there is a B-2 neighborhood center. We are asking that direct access to Pioneers Boulevard be relinquished, with an access easement from wherever the driveway is located (somewhere across the property) to the western property line to facilitate the future potential office zoning for the adjoining property. We want to eliminate the need for additional driveways on Pioneers Boulevard.

Relative to the median opening, Will did not claim that to be a bona fide or permitted median crossing. But it is concrete and does look like it is used. In any event, traffic could come down 80th Street to the existing median opening.

Will also clarified that the staff is not talking about an access easement to the property to the south. The staff would not make the same findings to support a change to O-2 zoning for that larger property to the south. It is currently designated for some sort of elderly retirement housing as part of the larger CUP. We view that to be an appropriate use and that would be our position if some sort of further zoning action were requested.

Cornelius asked Will to describe the differences that apply to the property to the south that make it different from the subject corner property. Will stated that part of it relates to the built environment – Grand Lodge across the street; to the west there are existing attached single-family dwellings; the lots to the south are platted and several have been built. As far as compatibility and consistency, he does not see how you make a case for appropriateness on some commercial zoning for that property to the south. The character between the two properties are different – one fronts on an arterial street and lends itself to some sort of shared access to the larger commercial center versus the larger lot to the south surrounded by residential development.

Esseks wondered why someone would want to locate a store or commercial use there (south) because there would not be much visibility from Pioneers. Will stated that he hesitates to predict the market factors, but he agreed that the visibility for the subject site at the intersection will be important for the business and its customers. You would not have that visibility on the tract to the south.

Butcher inquired about the property located directly to the west. Will stated that it is currently zoned R-3 and occupied by a single-family dwelling. Butcher then inquired about the aerial map with regard to development of the B-2 to the west. Will agreed that the map is out of date because there is an aquatic facility being built there. The two lots immediately to the west were originally left out of the CUP and use permit because they are occupied by separate owners and dwellings. One has since been purchased by the developers of The Preserve. They front on Pioneers but they have shared access through the larger center as opposed to access on Pioneers.

Butcher wondered whether there would be any future potential if that residential use is converted that access on 80th would be closed to allow more commercial flow. Will explained that the attempt is to lay the groundwork for the property to the west. Then we have shared access to the entire center from 80th Street, using the existing drives off Lucile. It is anticipated that the residential driveway could potentially be eliminated in the future.

Butcher inquired whether the 80th Street access could be eliminated. Will's response was, "perhaps."

Response by the Applicant

Gergen explained that the homeowners association dues are not necessarily tied to the CUP. They are usually two separate legal documents. Being removed from the CUP does not necessarily relieve them of the the homeowners association responsibility.

With regard to removal of access to 80th Street, Gergen suggested that the appeal of this lot on the corner is definitely the access quickly from Pioneers onto 80th Street. Connectivity is very important for offices and businesses. Removal of the access point would greatly hinder that lot and the user may not develop that lot if that access is taken away. Providing connectivity to the other commercial lots along Pioneers is mutually beneficial. Connecting to the residential further to the south would not be in this applicant's best interests. Connectivity of all the office and commercial businesses along Pioneers would be beneficial for the project.

ACTION BY PLANNING COMMISSION: January 11, 2012

Lust moved approval, subject to the zoning agreement, seconded by Esseks.

Cornelius observed that this appears to be a change to a relatively low impact commercial district. We have heard the planning principles which indicate that the danger of a higher impact use for the property to the south is minimal. This property is well-suited to a commercial use, which further drives the change from R-3 to O-2. He will support the change of zone.

Motion for approval, subject to a conditional zoning agreement, carried 8-0: Lust, Butcher, Gaylor Baird, Weber, Hove, Sunderman, Esseks and Cornelius voting 'yes'; Francis absent. This is a recommendation to the City Council.

There being no further business, the meeting was adjourned at 1:30 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on January 25, 2012.

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