MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, May 30, 2012, 1:00 p.m., Hearing Room 112 on the first floor of the 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 and Lynn Sunderman (Ken Weber absent); Marvin Krout, Steve Henrichsen, Brian Will, Tom Cajka, David Cary, Christy Eichorn, Rashi Jain, Stacey Groshong Hageman, 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 for the special public hearing held on the Capital Improvement Program and Transportation Improvement Program held May 9, 2012. Motion for approval made by Francis, seconded by Hove and carried 8-0: Gaylor Baird, Butcher, Cornelius, Esseks, Francis, Hove, Lust and Sunderman voting 'yes'; Weber absent.

Cornelius then requested a motion approving the minutes for the regular meeting held May 16, 2012. Motion for approval made by Francis, seconded by Hove and carried 7-0: Gaylor Baird, Butcher, Cornelius, Esseks, Francis, Hove and Sunderman voting 'yes'; Lust abstained; Weber absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: **May 30, 2012**

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

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 12012, CHANGE OF ZONE NO. 12014, CHANGE OF ZONE NO. 12013, SPECIAL PERMIT NO. 435F and SPECIAL PERMIT NO. 12021.**

Ex Parte Communications: None

Item No. 1.3a, Change of Zone No. 12013, and Item No. 1.3b, Special Permit No. 435F, were removed from the Consent Agenda and called under Requests for Deferral.

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

Note: This is final action on Special Permit No. 12021 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. 12013,
FROM H-2 HIGHWAY COMMERCIAL DISTRICT
TO R-2 RESIDENTIAL DISTRICT,
and
SPECIAL PERMIT NO. 435F,
TO EXPAND THE BOUNDARIES,
ON PROPERTY GENERALLY LOCATED
AT N. 52ND STREET AND O STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: May 30, 2012

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

Staff recommendation: Approval of the change of zone and conditional approval of the amendment to the special permit.

There were no ex parte communications disclosed.

The Clerk announced that the applicant has requested a deferral of the public hearing until June 13, 2012.

Lust moved deferral, with continued public hearing and action scheduled for June 13, 2012, seconded by Gaylor Baird and carried 8-0: Butcher, Gaylor Baird, Sunderman, Hove, Francis, Lust, Esseks and Cornelius voting 'yes'; Weber absent.

There was no public testimony.

COMPREHENSIVE PLAN AMENDMENT NO. 12001,
DOWNTOWN MASTER PLAN UPDATE.
PUBLIC HEARING BEFORE PLANNING COMMISSION: May 30, 2012

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

Staff recommendation: Approval.

There were no ex parte communications disclosed.

Staff presentation: **David Cary of Planning staff** reviewed the proposed amendment to the Comprehensive Plan which incorporates the update to the Downtown Master Plan (DTMP) as a subarea plan of the 2040 Comprehensive Plan. The 2005 DTMP is a very comprehensive document with many different facets. This update addresses some very specific items based on changes that have occurred and new concepts that have been brought forward. The Planning Commission received a briefing on this update from the consultants, Crandall Arambula, on March 21, 2012.

Cary advised that anything addressed in the 2005 document that is not addressed in this update remains as a part of the DTMP. This update provides specific updated guidance on the following:

--Replacing the proposed Park Blocks, Promenade and one-way bike lane concept on M Street with improvements on N Street, from 7th to 21st Streets, including a two-way protected bike facility in place on one vehicular lane and a one-way bike lane;

--Modifies the Promenade concept to focus on N Street (instead of M Street), 14th Street (instead of Centennial Mall), R Street and 11th Street, including proposed two-way protected bike facilities on 14th and 11th Streets; and

–Refines the Primary Retail Corridor to focus on P Street form 11th Street to Centennial Mall, and to encompass N. 14th Street from O to Q Streets.

There have been many letters in support including the Health Department, Parks & Recreation Department, the Mayor's Pedestrian/Bicycle Advisory Committee, Great Plains Trails Network and others. The staff recommendation is approval.

Proponents:

1. David Landis, Director of Urban Development, advised that the Lincoln Downtown Master Plan Update document was drafted by a coordinated effort of Planning, Public Works and Urban Development based upon the consultants' work. A lot of cities in this country have no need to update their DTMP because nothing has been happening in their downtown. That is not true for Lincoln. Landis provided a list of the places that were in the 2005 plan that have come to fruition in 2012. This has been a very valuable document in charting the course and the City of Lincoln is actually using its DTMP.

Landis then explained that this update for a N Street improvement for a bidirectional protected bikeway facility from Arena Drive on the west to 21st Street on the east is an example of the desired "Complete Streets", to ensure that all users of the transportation system are considered in street projects. This N Street protected bikeway facility will allow us to link our nationally recognized system of bike trails to the east side of the city and to the west side of the city. This is the last mile of bike trail that will link those two systems. It is a new configuration.

Landis pointed out that there is a Promenade in the 2005 DTMP in Centennial Mall. This update suggests that the Promenade be moved from Centennial Mall to 14th Street, and from R Street to Q Street from 12th to 11th. Landis pointed out that this does not suggest that there be a "complete street" on every street in the Downtown, but that there be a framework of "complete streets" to take the place of other streets designed for car traffic and moving things quickly in and out of Downtown. In other places, it is suggested that we take time to make sure they are compatible for pedestrians as well. We want pedestrians on P Street. We re-examined the 2005 suggestions and have decided the 9th to 11th on P Street is secondary retail. There is more retail from 11th to 14th and from O to Q Street. This recalculates the downtown retail corridor. We have had 25 retail stores open in Downtown in the last two years. Some of them are restaurants, but out of the 16 restaurants, only 7 are replacements. The other nine are soft goods stores. We want to sharpen the idea of walkability from 11th to 14th, from O to R. This update also extends the street layout into Antelope Valley and into the Arena area, subtracting the area that went south.

Esseks inquired how the existence of a plan which is updated actually promotes decisions by investors to come here. Landis suggested that a plan gives a vision; it allows people who care about this city to ask what the city is going to do. For example, the 2015 movement – the existence of the plan prompted private citizens to help with the funding to help us get there. It had to do with the P street corridor. In subsequent years, private donors from 2015 and from DLA stepped forward, made donations and matched city money. This allowed retail shops to open up on this corridor and it has promoted private investment. When there are additional retailers and a growing sense of community, it furthers and prompts more investment. Landis also pointed out that the street car shows continuing civic commitment to a transportation system. The plan begins that element of commitment, but a plan alone won't have that effect. The plan has to be seen as a meaningful document in which we are making progress. On the other hand, the image of all the places in which the DTMP has begun to take shape and fruition adds to the energy of Downtown. It is a plan and it is action.

Gaylor Baird asked about the public input in this process. Landis stated that there was a minimum of 18 meetings with property owners repeatedly, residents repeatedly, the University and public meetings. It stretched over a number of months. Some of the meetings were done by invited audiences and some have been public notice meetings, generally with the presence of the consultant. The culmination of that was a public meeting at the Cornhusker, having been well advertised and attended by 120 people. The estimated 18 meetings before that time had stretched over 6-8 months.

Support

1. Terry Uland, President of the Downtown Lincoln Association (DLA), indicated that the DLA is pleased that the 2012 Downtown Master Plan update is ready for consideration. The DLA has been happy to contribute resources, time and effort to get these amendments to the Planning Commission. The 2005 DTMP has been critical in focusing the strategies and strides of the Downtown. The DLA Business Improvement District voted unanimously to recommended approval on May 22nd.

2. Elisabeth Reinkordt, testified in support on behalf of BicycLincoln, an organization recently founded in Lincoln, as a Downtown employee and as a bike supporter. Bicycling is crucial to Downtown in attracting young professionals to say and work in Lincoln. Young professionals are relying on bikes for transportation and it is a more affordable transportation system. Lincoln is currently ranked third in the country in the National Bike Commuter Challenge. If you look toward the importance of this infrastructure for young professionals, they are looking to start families and in order for the bike commuters to

continue, having safe ways to transport children by bicycle is important. That is why the protected bikeway is important in particular. This is an excellent step for the City. She spends more time Downtown when she travels Downtown by bicycle. This is critical infrastructure for the future of our city and cause for her to stay in this community.

Reinkordt further explained that the there is currently a national commuter challenge that began on May 1st, put together by the League of American Bicyclists. Communities can sign up and form teams in their work places. It is a challenge to encourage people to attempt commuting by bicycle and using bicycles for transportation, where you log your miles. Lincoln is currently being beat by two cities in Wisconsin; however, Lincoln is ranked third and way ahead of Omaha.

Butcher inquired whether BicycLincoln had sufficient opportunity to review this plan. Reinkordt reiterated that the organization was just founded in the winter but they did participate in the public meeting at the Cornhusker.

3. Barb Fraser testified as Chair of the **Mayor's Pedestrian/Bicycle Advisory Committee (PBAC),** in strong support, especially because of emphasis on improving and planning for the needs of pedestrians and bicyclists in Downtown, both short term and long term. This offers a more balanced transportation system. Pedestrian environment along the Promenade is a great benefit to the Downtown. The PBAC is in favor of the protected two-way bikeway to attract many more types of bicyclists into Downtown. Adding to the protected bikeway on 14th Street would help make a logical complete system that connects the heart of Downtown to the rest of Lincoln. This makes the final link to bring people into the Downtown for work, events and shopping. The PBAC requests that the final design should provide for the safest operation for all users. This may include dedicated left turn movements and signage at key intersections. The PBAC agrees that the use of Centennial Mall for such facility does not function adequately. The proposed 14th Street and N Street seems to make a more complete connection.

Fraser advised that on May 14th, Lincoln was named a bronze level Bicycle Friendly Community. The proposed changes in the DTMP provide additional leverage in moving forward to higher levels of distinction. Omaha is also a bronze level community. There is great interest and support for bicycling and walking.

4. Jim Greenwood, 3210 South Gate Circle, testified in support of N Street joining the east and west. He lives south and works Downtown. He commutes regularly to work and participates in the bike challenge. The daily issue is the competition on N Street between bikes and commuter traffic. The protected bike lane would be very valuable.

5. Ryana Swift testified in support of the protected bike lanes. Her family probably spends more entertainment dollars Downtown than any other place. It is important to continue that and having the infrastructure and protected bike lanes is a great way to do this. It is essential for people with children.

There was no testimony in opposition.

Response by the Applicant

Landis expressed appreciation to the DLA for sharing in the costs of bringing the consultants to this process.

ACTION BY PLANNING COMMISSION: May 30, 2012

Francis moved approval, seconded by Gaylor Baird.

Francis believes this is a good plan and she looks forward to seeing the fruits of the labor.

Butcher commended the bicycling community for being actively involved in this process. The safety involved in further development of this process in regard to pedestrians and traffic needs to be a strong consideration. He commended the staff for continuing to develop this effort.

~~Gaylor Baird expressed her excitement to see this living document, which is in conformance with our larger living document, the Comprehensive Plan, because of all the people who have stepped forward to provide their testimony, input, concerns and cares about our community. She is excited to see improvements in connectivity and refinements in those improvements. It will be a vehicle for redevelopment.~~
Gaylor Baird stated: It's exciting to see, as Mr. Landis indicated, that this is a living document. It is in conformance with our larger living document, the Comprehensive Plan. It's living not only because we are seeing all this movement as a result of the plan but also because of all the people who have stepped forward to provide their testimony, their input and their concerns and cares about our wider community. It is exciting to see the improvements in connectivity and the refinements in those improvements. It clearly appears to be something that will strengthen downtown and be a vehicle for economic development. It is very much in conformance. **(**As amended at the request of Commissioner Gaylor Baird: 6/13/12**)**

Cornelius commented that the value of the plan is demonstrated by the visual aids that indicate the impact the plan has already had in the Downtown, Haymarket and Antelope Valley areas.

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

CHANGE OF ZONE NO. 12008,
TEXT AMENDMENT TO TITLE 27
OF THE LINCOLN MUNICIPAL CODE,
and
MISCELLANEOUS NO. 12002,
TEXT AMENDMENT TO THE CITY OF LINCOLN
DESIGN STANDARDS,
TO REFORMAT AND STREAMLINE THE
ZONING ORDINANCE BY CREATING
"USE GROUPS".
PUBLIC HEARING BEFORE PLANNING COMMISSION: May 30, 2012

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

Staff recommendation: Approval.

There were no ex parte communications disclosed.

Staff presentation: **Christy Eichorn of Planning staff** explained that this is a proposed format change to the existing zoning ordinance with the ultimate goal to provide consistency and clarity throughout all of the chapters of Title 27. Tables were added to provide consistency and clarity; redundancies are reduced by taking out language in multiple chapters and consolidating it into single chapters; and then reformatted that reorganization so that it is easier to read by those that read it every day and by the average citizen who may be read it less frequently.

Eichorn advised that the Planning Department has done public outreach on this legislation. This effort has been ongoing for at least two years – the staff met with the Planning Commission four times; met with the Mayor's Neighborhood Roundtable three times; met with representatives of the Realtors Association, Chamber of Commerce and Home

Builders Association; and had a working use group to go through some of the ideas on how best to reformat to make it more user friendly.

Eichorn pointed out that Appendix D of the staff report addresses changes that have been made since this proposal was released on April 9, 2012, when copies were provided to the public and the Planning Commission. There have been some changes since that time to continue to clarify and be consistent.

In addition, Eichorn announced that a new tool has been developed on the City's Web page where you can type in a use and find out what zoning districts and conditions would be allowed. It should make searching the ordinance much easier than today.

Eichorn clarified that this does not make any changes to the zoning districts or zoning height and area regulations, although that information has been taken out of individual chapters and moved it into one chapter and put into a table. Although no specific changes were made to height and area requirements, there were a few uses to which changes were made which are addressed in the staff report.

Gaylor Baird asked Eichorn to clarify whether or not any changes are being made in the public's ability to offer input or ask questions about any applications. Eichorn stated that nothing has changed in that regard. No changes were made to the special permit chapter.

There was no testimony in opposition.

CHANGE OF ZONE NO. 12008
ACTION BY PLANNING COMMISSION: May 30, 2012

Lust moved approval, seconded by Francis.

Lust congratulated staff on all of the comprehensive work that went into this change. It is going to be a great development for the ease of use of our zoning ordinance. This took a lot of work and a lot of time and is going to be a great improvement.

Francis added that the staff has always gone above and beyond to make things a little more clear for people using the information and the consistency is a great thing for our city and the staff. She expressed appreciation to staff for the hard work.

Gaylor Baird also expressed appreciation to Christy Eichorn for her leadership. This has been a long process.

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

MISCELLANEOUS NO. 12002
ACTION BY PLANNING COMMISSION: May 30, 2012

Lust moved approval, seconded by Lust and carried 8-0: Butcher, Gaylor Baird, Sunderman, Hove, Francis, Lust, Esseks and Cornelius voting 'yes'; Weber absent. This is a recommendation to the City Council..

CHANGE OF ZONE NO. 12009,
TEXT AMENDMENT TO TITLE 27
OF THE LINCOLN MUNICIPAL CODE,
and
MISCELLANEOUS NO. 12003,
TEXT AMENDMENT TO THE CITY OF LINCOLN
DESIGN STANDARDS,
RELATING TO THE ADMINISTRATIVE AMENDMENT
LANGUAGE FOR COMMUNITY UNIT PLANS
AND PLANNED UNIT DEVELOPMENTS
WHICH EXCEED THE ZONING DISTRICT HEIGHT, ETC.
PUBLIC HEARING BEFORE PLANNING COMMISSION: May 30, 2012

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

Staff recommendation: Approval.

There were no ex parte communications disclosed.

Staff presentation: **Steve Henrichsen of Planning staff** introduced the proposed text amendments on behalf of the applicant, indicating that this proposal is certainly something that is part of implementing the Comprehensive Plan because this change will help to streamline the process. The staff has worked with the applicant to try to address several changes in addition to the heart of the matter for the applicant, i.e. to potentially allow for minor increases in the height for apartment complexes (multi-family) in existing community unit plans (CUP) and planned unit developments (PUD) administratively. This is not a city-

wide change in terms of the apartment height. This would affect apartment complexes that are already inside an approved CUP or PUD.

This amendment also addresses how we approve tandem parking, suggesting that it is appropriate to make this an administrative process to allow parking in the driveway leading up to a garage in an apartment complex. There is also an amendment that would increase the amount of screening whereby an apartment complex above the height limit would be required to increase both the height of the screening that is required and, if there are garages or parking in that setback, to increase the density of the screening as well.

The proposed amendments to the Design Standards for CUP's provides measurable standards in the placement of taller buildings.

Henrichsen then discussed Analysis #4 on page 2 of the staff report which sets forth situations where the Planning Commission approved tandem parking. On all of those occasions there was no controversy. Developers have been more than willing to provide the minimum 22 feet of space between the garage door and the driving aisle. People will have to plan for this in advance.

Henrichsen then referred to Analysis #7 on page 3 of the staff report, which sets forth the situations where the Planning Commission has approved minor increases in height. In a lot of these cases, the height limit was approved and there was not any controversy in regard to having the apartment buildings a little bit higher.

The heart of these amendments is to allow existing apartment complexes in a CUP or PUD to add up to 10 feet in height administratively, if they can meet all screening conditions, site plan conditions and buffering.

Esseks inquired whether there is any recourse if the administrative amendment is denied. Henrichsen explained that if an administrative amendment is deemed not appropriate by the Planning Director, the applicant would have the ability to appeal the administrative amendment to the Planning Commission or submit a full amendment to the Planning Commission.

Lust asked for the definition of a two-family dwelling. Henrichsen stated that it is in the zoning ordinance and recognized as a duplex – two dwelling units within one single family lot.

Proponents

1. Mike Eckert, Civil Design Group, appeared as the applicant. He indicated that he had approached the Planning Department on this issue awhile back because in working on multi-family complexes, there has been a shift from single-family to two-family developments and it has become increasingly more difficult to get by with the 35' height limits in existing CUP's and PUD's. The garden level style apartments are just not done anymore because of ADA accessibility requirements. Sprinkler systems are now required in all multi-family which also plays a part in the need for increased height. There is also a market demand, whether single-family or multi-family, to move from 8.5' ceilings to 9' ceilings. Most are coming in at around 38' to 42' in height. This legislation is restricted to existing approved CUP's and PUD's.

With regard to the tandem parking stalls, Eckert pointed out that apartment buildings now have attached garages. The Planning Commission currently has authority to decide if the stalls or a percentage could be counted toward the overall parking requirement. Because it is becoming more and more common, it would be helpful to make this an administrative approval. These are common and changes that are widely accepted today.

There was no testimony in opposition.

Henrichsen reapproached to clarify the definition of two-family dwelling. It also includes townhomes or single-family attached – two units, each on their own lot attached to each other.

Henrichsen also informed the Commission that this proposed legislation was discussed with Jon Carlson of Stronger Safer Neighborhoods and was presented to the Mayor's Neighborhood Roundtable, with no negative feedback.

Cornelius inquired whether there is any movement toward changing the maximum height limit in the ordinance as it stands, instead of making this subject to administrative approval on a case-by-case basis. Henrichsen indicated that to have been the first discussion, but that would be a much bigger step and would have a more global city-wide impact. This proposal seems to get to the heart of 95% of the cases where it may be an issue. However, it does not preclude staff from looking at that in the future. Cornelius observed that there are not as many new multi-family developments coming forward. Henrichsen agreed that this issue is occurring more in existing CUP's or PUD's where there is additional land providing opportunity to add more units.

CHANGE OF ZONE NO. 12009
ACTION BY PLANNING COMMISSION: May 30, 2012

Lust moved approval, seconded by Francis.

Francis appreciates the explanation and believes it certainly makes sense. She is glad to see someone from the public wanting Planning to implement this to make things more streamlined.

Cornelius does see the applicability of this legislation to the implementation of the Comprehensive Plan, i.e. streamlining the process for infill development.

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

MISCELLANEOUS NO. 12003
ACTION BY PLANNING COMMISSION: May 30, 2012

Lust moved approval, seconded by Francis and carried 8-0: Butcher, Gaylor Baird, Sunderman, Hove, Francis, Lust, Esseks and Cornelius voting 'yes'; Weber absent. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 12019
TO PRESERVE A LANDMARK BY PERMITTING
THE UTILIZATION OF THE PROPERTY FOR
OFFICE AND EDUCATIONAL USES,
ON PROPERTY LOCATED AT 700 NORTH 16TH STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: May 30, 2012

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

Staff recommendation: Conditional approval.

Ex Parte Communications: Gaylor Baird disclosed that she made a charitable donation to the people involved in this organization. Her donation does not constitute a personal financial interest. She has overheard discussions on this application but no one was seeking her input or vote – just general discussions about what transpired before the

Historic Preservation Commission meeting. She does not believe this information will interfere with her ability to participate in this discussion. She believes those involved understand her independence in her role as a commissioner.

Marvin Krout, Director of Planning, explained that the historic preservation planner, Ed Zimmer, has declared a conflict of interest on this case. He introduced Stacey Groshong Hageman, who is a relatively new staff planner in the Planning Department who was hired specifically to deal with design and preservatiom issues. She has learned the ropes very quickly and is processing this case.

Staff presentation: **Stacey Groshong Hageman of Planning staff** stated that this special permit application concerns a lot known as the Lewis-Syford House, which is less than .5 acre on the east side of North 16th Street just south of Vine, in an area surrounded by fraternities and sororities that adjoin the UNL city campus. The Lewis-Syford house was built in 1878, and remains with its initial features – the house, carriage house and small shed in the back yard – which have all remained as original structures. This is considered a rare example of the French Second Empire Style in Lincoln and is a unique remnant of the residential neighborhood on the north edge of Lincoln.

The property was individually listed on the National Register of Historic Places in 1971, and then listed as a contributing structure in the Greek Row Historic District in 1997. In 2008, when the property was owned by the Nebraska State Historical Society Foundation, it was designated as a landmark, which designation makes any alterations to the property subject to review by the Historic Preservation Commission and qualifies the site to be approved for a special permit which can modify the zoning standards.

In addition to the local landmark designation, there is a preservation easement which gives the City Council even more authority to govern the future of this property. In 2009, the property was sold to the Kinder Porter Scott Family Foundation, which is the nonprofit submitting this application. The owner has a prospective tenant – another nonprofit – that would like to reuse the property as a private school for children with autism, serving up to 15 children in grades K-12. The proposed use is consistent with the R-7 zoning district. The applicant has requested to modify the rear yard and off-street parking requirements.

Hageman displayed the proposed site plan, which shows a new building in the rear yard. The carriage house is proposed to be a main building in conjunction with the school use and will remain in its current location. This special permit requests to reduce the required rear yard setback from 30' to 15'5" . The applicant is also proposing to locate only one (1) parking stall on the site. The requirement is 12. The applicant has provided a letter from

the University of Nebraska-Lincoln which documents the applicant's potential to secure 15 stalls in the University parking garage to the east. The site plan involves restoration of the existing main home/structure which is in need of major repair. It is proposed to be used for administrative offices and small group classes. The carriage house will be used with the new two-story building in the rear yard for classroom space. The driveway on the north side of the site near 16th Street would remain. There is a historic retaining wall around the site along the front edge and north side.

Hageman further explained that once the driveway reaches past the retaining wall, it would widen to allow for two-way traffic and a drop-off zone. Hageman pointed out that Public Works is recommending that the driveway be widened at 16th Street, avoiding potential for cars to back onto 16th Street or stop on 16th Street for drop-off. This would require shortening the foundation wall and would have a significant impact on the appearance from the street. To preserve the character of the site, the Planning staff is hoping that the limited use of the driveway would allow for it not to be widened. The site plan also shows the potential for one lane to extend behind the carriage house and around the rear of the property with connection to the church on the lot to the south, which may become a new sorority house.

Hageman suggested that the issue with this application is balancing the change in the character of the lot against the potential for productive reuse. The Historic Preservation Commission (HPC) was asked to review this special permit and by a 4-3 vote recommended that it be denied because the proposed alterations are too extensive and the proposed use is too intensive for the site. The HPC denial of the certificate of appropriateness is appealed to the Planning Commission.

Also related to this special permit, Hageman advised that the City Council will be asked whether to amend the 2008 preservation easement because the current language in that easement does not permit construction of any new structures on the site.

Hageman advised that the Planning staff supports the proposed permit subject to conditions, which include locating the proposed new building as far to the back of the lot as allowed, obscured by the existing house and landscaping; that the new building be no taller than the existing house; that transition and scale from the 5-story new dormitory behind the lot to the east be provided; and an appropriate design in terms of materials and detailing. The conditions preclude the reduced rear yard setback until the applicant is able to provide evidence of the availability to provide 15 off-site parking stalls in a lot or garage within 1200 feet of the property. The architectural details, landscaping and site plan must be re-submitted to the HPC for Certificate of Appropriateness. The architectural recording

of the carriage house construction is to be performed prior to and during its deconstruction at the expense of the owner. The applicant should contract to provide an archeological investigation. Approval by the City Council of an associated request for an amendment to the preservation easement will also be required.

Lust sought clarification as to what the Planning Commission is being asked to approve or deny. Is it just the waiver of the rear yard setback and the parking requirements? HPC voted to deny the plan as submitted, but one of the conditions of approval on the special permit is that the applicant get HPC approval. This is confusing. **Marvin Krout, Director of Planning,** advised that the purpose of the special permit is to modify the rear yard and parking requirements. The Planning Commission is also basically acting on the recommendation about the certificate of appropriateness that was denied last month by HPC. By approving this special permit, the Planning Commission would be overriding the recommendation of the HPC on the Certificate of Appropriateness that would allow for the new structure on the site and the other alterations. These kinds of modifications to the zoning standards also have to go to the City Council. It is typical for HPC to approve something conceptually, subject to a later, more detailed submission and review of plans prior to a building permit. That condition is basically saying that if the City Council approves the special permit which approves the modifications to this site with the new building over the objections of the HPC, the details of the new building, the reconstruction of the existing building, and any alterations to the landscaping would still go back to HPC so that they can verify that the work is in keeping with the basic commitment that is being made to restore the existing house before building permits are granted.

Lust noted that the report indicates that HPC did approve it on April 19th. Did they then rescind that approval? Krout advised that in April, a plan came forward to HPC. The applicants wanted to know if they were headed in the right direction. Four weeks later they came back and responded to questions from HPC and provided more detail, but the HPC voted 4-3 at that time to rescind that original action and decided that all in all the proposed alterations were not consistent with the intent of the landmark designation. The action by the Planning Commission is a determination and recommendation as to whether the work is appropriate and, if so, it waives the rear lot and parking standards.

Gaylor Baird asked staff to clarify for everyone how the role of HPC is different than the role of the Planning Commission in terms of how the Planning Commission evaluates these applications. **Rick Peo, City Law Department,** explained that this is a property that has already been reviewed by HPC for finding of historic landmark status. What is before the Planning Commission today is the question as to whether it should be allowed for a particular use in order to allow it to be preserved. That process of determining whether this

use is appropriate goes back to HPC for initial recommendation as to whether the proposed construction activities are appropriate or inappropriate for preservation. The HPC has recommended, “no” – it’s too much. But if the special permit is approved by the Planning Commission and/or the City Council, a finding of certificate of appropriateness will be deemed to have been approved or issued. The HPC would be given the opportunity to review the plan to determine if it is consistent with what is approved by this special permit. This process also requires a determination as to whether there needs to be an amendment to the preservation easement, which is outside the scope of the special permit. If this special permit goes forward to the City Council, a proposed amendment to the preservation easement would be drafted and submitted to City Council at the same time.

Peo went on to state that the HPC action is advisory to the Planning Commission, and the Planning Commission action is advisory to the City Council. If this didn’t have some waivers, the Planning Commission would be making the final decision. It is critical to remember that the approval of the special permit is actually approving the finding of certificate of appropriateness for the proposed work.

Esseks inquired about a written report from HPC. It does not appear to be attached to the staff report. Why did they vote 4-3 to deny? Hageman stated that HPC voted 4-3 to recommend that it be denied because they felt the proposed alterations were too extensive to the site and because they thought the use was too intensive. The additional paving in the yard and the addition of the new building were the issue. Krout added that the important thing for those voting against the application was that the landmark designation was related to the entire site, not just the house or buildings, but the idea that this is a very rare remaining remnant of what a single-family neighborhood looked like in this part of town before UNL and related facilities occurred. It was the aspect of the relatively low intensity of the use of this lot and the openness of this lot that was a part of the consideration for the landmark designation. It is important to note that the preservation easement reinforces that language by stating that no new structures are permitted, and that preservation easement was dedicated to the City by the Historical Society Foundation. That preservation easement would need to be amended by the City Council to remove that limitation to allow this additional structure in the rear of the property. The question for the Planning Commission and City Council is whether or not there is another user out there who can put this property to a lighter use that does not require additional structures on the property, which was the original hope and intent that came with the landmark designation of the property, or is this a good opportunity to restore the house and related structures which are in deteriorating condition?

Proponents

1. Jordan Berger, appeared on behalf of the applicant/owners who have owned the Lewis-Syford house since 2009. They have been working diligently to find a tenant to occupy the house. It is challenging because it is a 1500 sq. ft. historic house, with the second floor not being inhabitable for residential use and with a basement where foundation walls are crumbling and falling apart. The owner knew that renovation would be necessary and to make that financially feasible, they would have to find a user that could pay the estimated cost to renovate the house to make it safe, i.e. $350,000 to $400,000, not including the carriage house. It would mean $20/sq. ft. lease rate, which is very expensive.

Berger submitted that the house has deteriorated for lack of being occupied. The FEAT Academy (Families for Effective Autism Treatment) would be a great user for the property. A previous user with grant funding did not materialize. Another structure on the property is necessary to make it functional for FEAT. Without a user like this, the house will continue to sit there and deteriorate. The owners feel strongly that having this special permit approved is the right action with a $450,000 investment into the house and additional investment in the aggregate nearing $1 million. The applicant/owner is open to the archeological dig. The carriage house is unfit as a structure as it is today.

Francis inquired about the size of the new building proposed to be constructed. Berger believes it will be a 1800 sq. ft. footprint, two stories, which will be the classroom setting. The house will provide one-on-one environment.

2. Chrissy McNair, the founder of the FEAT Academy, explained that it is a nonprofit which exists to provide financial assistance to families with children with autism seeking intensive treatment. FEAT is now going to be the nonprofit for the center-based program. Primarily, FEAT is addressing a huge need. Many people are aware of the increased incidents in autism – 1 in 88 children are affected with autism. The number for boys is 1 in 54. The program exists to provide a need for the families, many of which are struggling. Autistic children are integrated in the public school setting, and there is a population of children for which this does not work well. The goal of the FEAT Academy is to give the child and the family those skills. The need is also great within the community. As the numbers increase, these children are becoming adults and integrating into the population. The FEAT Academy will advocate on behalf of families with autism so that our community can better understand their needs and grow to understand the talents and strengths and positive things they bring to our community.

McNair advised that the vision of the program is to take the science of applied behavior analysis and combine it with an academic setting. The Academy works on academics as well as life, social, community and behavior skills and talent. The Lewis-Syford house will serve as a hub for the early childhood program, and then satellite locations will be used for the rest of the program population. The Lewis-Syford site will then be used as administrative offices and for one specific population with no more than 15 students.

McNair stated that this site was chosen by FEAT because they will have owner support and that is something that is very rare and very needed in a nonprofit. That partnership formed with the family foundation is incredibly valuable to success. The proximity to the University allows FEAT to utilize university students and expose the college community to FEAT's population. The proximity to the interstate is also important.

McNair further suggested that this site provides a natural setting. The primary classroom experience will take place in a separate building and the house will be used for a more natural setting, working on social skills, cooking skills and self-care skills. McNair referred to a treatment center in Denver, Colorado – the Joshua School – as an example of where a historic home is used and has proven to be a welcome and effective place for this type of curriculum.

Francis inquired about the age group of the 15 children at this location. McNair stated that the first year it will be K-8. In the second year, they will start to look at early childhood, then 9-12. Eventually, but not necessarily at this site, they want to serve all ages.

Esseks was interested in the concept of interaction with students of UNL. McNair indicated that it would be very controlled. They are currently working with one of the professors in the College of Special Education on how to work with students and teach them how to do applied behavior analysis. They will also be working to develop a volunteer program – a buddy program with mentors and volunteers.

Hove inquired as to the capacity at this site. McNair confirmed that they could have no more than 15 students in terms of traffic flow and staff. The staffing is a 1:1 staff/student ratio.

McNair stated that the organization is funded through private donations and in-kind.

3. Christy Joy, the project architect and representative of Ayars and Ayars, confirmed that it is an 1800 sq. ft. footprint building being added to the site; they will rebuild the carriage house; there will be 15 parking spaces in the parking garage to the east. She showed the

proposed exterior modifications. As many trees will remain as possible. The materials will complement the existing design and structure. The main level of house will be used for offices as well as the upper level. The 1800 sq. ft. building will have classroom and group room activities with windows between all rooms for observation.

Opposition

1. Bob Puschendorf, Deputy State Historic Preservation Officer with the Nebraska State Historical Society, testified in opposition. He respects the goals and objectives for the school and the owner, but he is opposed to this special permit.

Puschendorf does not believe the staff report has adequately addressed the deliberation by the Preservation Commission and the parameters that body was required to set forth in its note to deny the permit. This house was designated as a local landmark in 2008. Accompanying the landmark designation were preservation standards and guidelines applying to future actions and activities regarding the property. These are the guiding standards required to be reviewed by the HPC, which is comprised of professionals and lay members with an interest in the preservation of Lincoln's historic places. Puschendorf urged that the Planning Commission consider the action by HPC.

Puschendorf went on to state that the preservation guidelines adopted were the formidable Secretary of the Interior Standards for Rehabilitation. These are the standards that are generally accepted by local, state and federal preservation organizations and programs. This proposal does not meet three of those ten standards: 1) every reasonable effort shall be made to provide a compatible use for the property which requires minimum alteration to the building, site and structures and its environs; 2) the original distinguishing qualities and character shall not be destroyed; and 3) every reasonable effort shall be made to protect and preserve archeological resources affected by or adjacent to any project. In this case, the original surface of the site will be destroyed by the land leveling and construction of a new addition or new school.

In summary, the action to approve the special permit will degrade the qualities that made the house eligible for landmark designation. Furthermore, such action is not consistent with the recommendation which the HPC made under the preservation ordinance.

With regard to the preservation easement, Puschendorf assumes that the Planning Commission action on the special permit will constitute a recommendation to remove

provision 7 of the easement pertaining to new construction. The easement includes a provision that could allow this action based on changing conditions. Puschendorf does not believe the existing property has changed in character or potential.

Lust asked Puschendorf whether the primary objection is the additional building. Puschendorf agreed that to be the primary issue, and the Historical Society does support the other conditions in the staff report that the alterations be reviewed by the HPC.

Lust inquired then about the carriage house. Puschendorf acknowledged that the structure is not in good condition, but he does not know whether a structural engineer has looked at it. It's a catch 22 – once you destroy a historic building you can't put it back up again, so it would not be historic to the site.

Hove wondered whether Puschendorf believes it is better to keep the building in the condition it is in. Puschendorf acknowledged that it is declining in condition. However, the preservation easement requires it to be maintained. He is not certain to what extent that has been done.

Hove wondered why the State Historical Society Foundation sold the property. Puschendorf explained that the Foundation is a fund-raising branch for the Nebraska State Historical Society and they do not manage properties. It was in their ownership since the 1960's. The easement is held by the City. It is required that the City monitor that easement to be certain that the conditions are being upheld. The Historical Society did send a letter to the Planning Department expressing concern that it is not being maintained.

Hove believes there would need to be some type of revenue generated to keep up the building. If it is uninhabitable, what are you going to do with it? Puschendorf suggested that the house was purchased with that condition and the landmark status. He does not know what the changing conditions are. What has happened since 2009? The owner does contend that they have looked at other options. The State Historical Society Foundation did have a human resource office in the building for a number of years and continued to occupy it until shortly before it was sold.

Gaylor Baird observed that the Planning Commission has been told that the main question is to determine whether there is the likelihood of another user out there with a lighter intensity use with more minimal alterations to the site. She inquired of Puschendorf whether he knows of any examples of possible other users or what kind of use might

represent a lower intensity use or less alterations to the site. Puschendorf acknowledged that it is not easy with the size of the house, but the previous use is a good example of a function that existed in the house that worked for the University.

Francis inquired as to the size of the house and number of rooms. Puschendorf did not know. It was stated that the upper floors could not be used.

2. Becky Martin, President of the Preservation Association of Lincoln (PAL), testified in opposition. The house is one of the five oldest known remaining houses in the City. The Second Empire Style is very rare to be seen in Lincoln. The site is complete because it has the carriage house and the old outhouse/shed. Lincoln is fortunate to have this gem all intact. The easements were attached to the house and the property as a whole, and that was the way it was when it was purchased by this applicant. It is to be kept intact. Easements are a part of the Comprehensive Plan and are used on properties to preserve their public interest. The staff report states "...and preserve the existing buildings which are deteriorating."; also that the property "...has deteriorated due to a lack of regular maintenance." This should not be a reason for removing easements. This easement was there to prevent such deterioration. The carriage house will lose its historic significance if rebuilt. The building plans do not show the widow's walk iron work or the front yard fencing. The HPC was advised that that detail was left off the site plan for streamlining the drawings, but the widow's walk iron work and the front yard fencing are historic factors to its historic designation. Adding a new structure destroys the uniqueness of the whole property. The easement was attached to make the entire site significant. On May 17th, the HPC voted to deny this special permit request, and PAL urges the Planning Commission to also deny the special permit and request for change in easements.

Butcher inquired about the uses taking place in the other known old houses. Martin replied that the Brown house in her neighborhood on 27th near M Street is used as a duplex. She did not have any more information, except that she knows one is used as a museum.

3. Peter Bleed, citizen of Lincoln, who also served on the Nebraska State Historical Society Preservation Board for a number of years, testified in opposition, stating that he is a preservationist. This is a town that works well together and discusses issues like this. He loves living in a community which is history-comfortable and recognizes some diversity and variety of time. The Lewis-Syford house is an interesting place. It shows what early suburban Lincoln looked like. This was a wonderful vista that this house sat upon. It also happens to be in relative good condition. It wears its history, but comfortably.

Bleed suggested that this is not a complicated issue. The basic issue is that the owners of the property want to change the house, change the land and how it is treated, and put something more there. They also want to change the way this town is treating this piece of property. None of this needs to happen. Everything being considered today does not require a change. He does not believe the proposed modifications are a good use of this piece of property.

Bleed reiterated that today's actions are unnecessary at best. The State Historical Society Foundation acquired this propertry at some point and there was a plan for a museum. The Historical Society used it in a variety of ways and then transferred it to the Foundation. In the 1980's, UNL maintained the property as an office through 2008 or 2009, but they announced that they wished to change that function. The Historical Society Foundation decided that it was improper to have three museums within four blocks of 17th and O so they could not maintain it and UNL was uncertain what they would do. A variety of options were considered and some were rejected. Bleed was president of the Historical Society Board at that point in time, and with the guidance of the Board, the Historical Society staff, the Planning Department, the National Park Service, and the Planning Commission, an easement was crafted by a board member of the Society Foundation, a local lawyer. It was widely developed and discussed in the newspaper. The Society then said they would try to find a buyer with the easement in place. The buyer was well aware of the easement and accepted the ownership of the building with the easement. It was to be used as some sort of a residence.

Since that time, very little has happened. The building has been allowed to deteriorate. Before the title was transferred, the building was occupied and in relatively good condition. Since that time, no attempt has been made to use the space on a regular basis except tailgating facilities behind the house during the 2011 football season. If the Planning Commission grants this special permit, there will be negative impacts – the easement will be gutted; trust in Lincoln will go away; it will set a precedent that suggests that you cannot bargain with the city; and the historic qualities of the building will be significantly modified.

Bleed asked the question, who enforces easements? The building is in the condition it is now because the easement has not been enforced.

Rick Peo, City Law Department, appeared to clarify the conditions of approval set forth in the staff report. He believes that it is unclear what is being approved and suggested the following amendments:

This special permit approves the historic preservation use of the Lewis-Syford House and premises for a private school with a maximum of 15 students and approves waivers to the rear yard and off-street parking requirements for a private school, subject to general conformance with the approved site plan and the following conditions:

2. Architectural details for all proposed repairs to and reconstruction of existing buildings, proposed new construction including signage, and proposed alterations to landscaping or to the proposed site plan must be submitted and approved ~~for a Certificate of Appropriateness~~ by the Historic Preservation Commission as being consistent with the Certificate of Appropriateness deemed to have been granted by approval of this special permit.

He also advised that enforcement of the easement is the responsibility of the city of Lincoln. The Law Department would be the entity to enforce if the terms of the easement have been violated for lack of maintenance and repairs. The preservation easement is not an issue before the Planning Commission. It is an easement with a lot of flexibility. There have been changes to the existing building with the consent of the city. The only change that does not have the consent of the city is adding new structures. In order to accommodate that change, the City Council would have to amend that easement.

Gaylor Baird asked whether the Planning Commission should be considering the issue of the existing deterioration of the house. Peo advised that the easement talks about normal maintenance and repair and maintaining structural integrity. He stated that he could not speak to whether or not the easement has been violated. He does not have enough information to make a decision on that today.

Gaylor Baird inquired about the Planning Department preferring an option that did not widen the entrance to the driveway. How safe is it in terms of dropping off children, etc.? Hageman explained that Public Works has recommended that it be widened for the reasons mentioned earlier – the possibility of cars stopping on 16th to let other cars out of the driveway since it is only one-way, and the potential for cars to back out onto 16th Street. There is a drop-off zone by the house on the lot but that would be a very limited use because they will also have a drop-off on 16th where there is metered parking. It limits the use of the driveway. The Academy will have staff that stands outside with the children and they have offered to stagger the arrival and departure times of the students.

Dennis Bartels of Public Works & Utilities, advised that Public Works had recommended that the driveway be widened to a two-way width of 18 feet. 16th Street is designated as

an arterial and there are high traffic volumes and pedestrian traffic. His concern is that while someone is dropping off or waiting at the sidewalk, another car that wants to get in is going to have to wait for the driveway to clear. If this is to be approved, he suggested that the City Council will have to also approve an amendment to driveway standards because 10' does not meet the standard for a two-way driveway. That is a design standard that would not be reviewed by the Planning Commission. The City Council will need to act on the Public Works recommendation for an 18' driveway. Gaylor Baird inquired whether that recommendation goes away with the parking agreement with the neighbors to the south. Bartels acknowledged that there is a parking stall back there and one or two cars can park on 16th Street. Gaylor Baird noted that it appears that the intent of the driveway is to be one-way. Bartels believes it will function fine if they can accomplish the two-way, but they will have to understand that that is not guaranteed.

Lust understood that the 15 parking stalls from UNL would be primarily for the staff and not for drop-off. That is also Bartels' understanding.

Gaylor Baird asked staff to address the safety concerns relating to the potential for dispersing drop-off between designated parking spots in front of the house and the driveway, and potentially the way the drop-off is organized. Hageman suggested that this is also a preservation issue with the historic retaining wall that would have to be moved or shortened in order to provide the wider width of the driveway.

Gaylor Baird asked whether there are any other concerns about traffic. Krout stated that the staff will need to determine for sure whether or not there is a separate standard that the City Council must waive or whether it can be done as a part of the special permit. Krout also suggested that the opening of the Antelope Valley Parkway as a complete through way will take a fair amount of traffic off of 16th and 17th Street today, so 16th and 17th will not act quite the same as they do today. The staff has been having discussions with UNL about the possibility of converting 16th and 17th, north of O Street, to two-way streets to have more local function and to have slower traffic. That has been in the discussion stages. Public Works is intending to do a survey after the Antelope Valley Parkway is up and running to see how much traffic it is carrying and what it does to 16th and 17th Street.

Cornelius asked Peo to lead him through how the enforcement mechanism for the preservation easement might be triggered. Peo stated that the enforcement is basically going to be by restraining order or injunction where you get a court to order cease and desist based on what is not being accomplished, i.e. maintenance not being conducted or a building being removed. You are always going to face the issue of who is going to pay for the cost of maintenance repair if you get a judgment. In other words, cost will be an

issue. There is a means and mechanism and more likely a court proceeding of injunction. The easement does provide the ability to do repair work and build the property back but the City does not have the funds to advance to accomplish that.

Cornelius asked whether there is an agency for detecting violations of easements. Peo stated that the City has the right to observe the property and reasonable rights of ingress to review the premises. The City has the ability to do inspections upon reasonable notice.

Response by the Applicant

Berger stated that to the best of his knowledge, the house was vacant when purchased in 2009. They do have photos of the house and it is in the same shape now as when they purchased it. To say it is falling apart due to negligence by this owner is not correct. The question was about the overgrowth of the landscaping and not necessarily deterioration. The owner cut the trees and bushes because it was severely overgrown. They assumed that there were some leaks in the roof and those were repaired. The shed in the back and the carriage house were both well on their way to being structurally unsound when purchased by this owner. He is surprised the same standard was not held when UNL was a tenant of the house.

Lust asked the applicant whether he agrees that the house has been vacant for several years and deteriorated as stated in the staff report. Berger agreed that it has been vacant since acquired by the present owner, but with no further deterioration. They fixed the roof. He suggested that “several years” is subjective. It has been vacant for five years.

Cornelius noted that the applicant’s testimony suggests that the second floor is unusable, but apparently the floor plans indicate that it is to be used. Berger explained that there are some life safety issues. It could possibly be used from a residence standpoint, but commercially, there are some fire escape challenges which they believe they can overcome with certain uses and some sprinklering. Could it be used today? No. The applicant has met with Building & Safety and their primary concern is the second floor and getting people out. But with some design and improvements, the applicant believes it can become usable space.

With regard to the driveway, Berger indicated that the plan is to stagger the times of the students coming and going. They won’t have 15 showing up at the same time. It is not a traditional school. With the 1:1 ratio, the teacher can be out with the student and help direct traffic.

Lust inquired whether the owner will have a structural engineer look at the carriage house. Berger stated that the boards are nailed to a frame and the posts are rotted at the bottom. The most important thing is safety, and the owner is concerned about it as it sits today. If this project were not to move forward, it is not safe, it is not locked, and it is a danger.

Gaylor Baird noted that the staff report mentioned plans for glass connection between the carriage house and new building. Berger indicated that they have decided to eliminate that because of the significance of the carriage house.

ACTION BY PLANNING COMMISSION: May 30, 2012

Esseks moved to approve the staff recommendation of conditional approval, as amended by Rick Peo on behalf of the City Law Department, seconded by Sunderman.

Esseks believes that the Planning Commission must be pragmatic. This is not a house located in a still residential section of the city. It is located in a very busy university setting. He cannot see a family purchasing this house and putting in the money to maintain it. Older properties require money to maintain. Even Harvey Perlman, Chancellor of UNL, worries that no financial acceptable use will be found. We are talking about institutional use of the property. Here, an institution has come forward serving a very important clientele of autistic children. The plans look very good. He is appealing to his colleagues that the property needs a user that can maintain it while providing benefits to the community, and he believes this group is very likely to serve a portion of the community that has a real need. With the amendments, Esseks believes this is a very good use of the property.

Lust stated that normally she is highly in favor of redevelopment of older properties and reuse. Redevelopment in the core of the city is a great thing for the city; however, we are not just talking about an older building – we are talking about a historically significant building and property. That is what we need to understand – historic preservation is not just for this particular house but for the property as it is designed with the carriage house, shed, and with the existing land as it has existed over 100 years. She totally supports the FEAT organization. It is a great cause and highly needed, but she is just not sure this is the place for it based on the concerns of the HPC and the fact that they did not vote to approve this development.

Francis stated that she also does support FEAT. It is a great organization and it is great that they want to have a program with 1:1 staff/student ratio for 15 students, but she does not believe this historic site is the right location.

Gaylor Baird commented that this is an incredibly complex site. There are competing values at stake. One of the things we were told to weigh is whether or not there is a better land use for this site that would meet the HPC's preference that it be a lighter, less intense use. And what we have heard from testimony is that there are very few uses that even qualify. She would like to see this property remain the gem that has been described and yet as discussed, we have pretty much heard that it would be a university office use. While that is a compelling alternative use, we have the Chancellor telling us that the University has no plans for any alternative university use. This makes Gaylor Baird lean towards approving the special permit, despite the many competing values the Commission is being asked to evaluate.

Cornelius also believes this is very complicated and he is uncomfortable having to weigh this item in view of deterioration that has occurred over time, and he is not comfortable saying who was responsible for the deterioration. It does not appear that there is a clear cut enforcement mechanism to keep that deterioration from happening, and we are told that we can't consider other uses because it is cost prohibitive. That is disappointing. In listening to the testimony, Cornelius took interest in the standard that the HPC used in judging this application where they found three specific items that it did not meet. The most important one in our discussion now is the question of, has there been reasonable effort made to find a compatible use with not as high impact as the proposed use? The impact of the proposed use seems to come largely from the proposed new construction and that is of greatest concern. Would it be possible then to find a compatible use that does not require that level of new construction? This property is challenged because of its size and age, its current state of condition, and its location in the middle of campus. This particular use seems like a well chosen one, considering the location. It would be an educational facility located within an educational facility. However, given the intensity of the use, he has difficulty supporting the motion. He believes there has to be a less intensive use that can be sensitive to the entire site.

Esseks pointed out that the owner still has to have enough rent per month to maintain it. Properties like this can be maintained if the more intensive uses are supplementary and can be located around it. This is surrounded by university dormitories. He just does not see how they are going to get anyone who can pay for the maintenance of this property without a use such as is proposed with the auxiliary buildings which make the income of the property sufficient to pay for the maintenance. Esseks believes that it is unrealistic to expect someone to come in and retain the property the way it is now.

Lust suggested that the Commission must keep in mind that these are not unsophisticated purchasers that bought the property in 2009 with full knowledge of the preservation

easement. She stated that part of her is a little unsympathetic to the idea that they cannot maintain the property without a more intensive use when they bought the property knowing of the historic designation and that the City took the additional step to have a preservation easement. They bought it in 2009. They knew about the historic designation.

Francis further commented that she has dealt with people who bought historic properties. Anyone who buys a historic property commits to taking care of it without worrying about making a return on their investment. She suggested that a historic property is a labor of love more so than a business investment.

Hove pointed out that this property has been under-utilized for 30 plus years and he is glad someone is trying to do something with it. It is sad we cannot find another user. The State Historical Society Foundation tried to find someone for many years and they could not. He thinks it is a good use.

Butcher expressed his concern that we keep focusing on no building of new structures but we also know that the two agreeing parties put in a mechanism to meet changing conditions. He has not heard what they meant by "changing conditions". Does that encompass the inability to use this historic landmark – to have any use of it other than sitting there? When they engaged in this easement, they understood that change would come down the line, and maybe this is the time.

Motion for conditional approval, as amended, carried 5-3: Butcher, Gaylor Baird, Sunderman, Hove and Esseks voting 'yes'; Francis, Lust and Cornelius voting 'no'; Weber absent. This is a recommendation to the City Council.

ANNEXATION NO. 12003
and
CHANGE OF ZONE NO. 04075C,
AMENDMENT TO THE VILLAGE GARDENS
PLANNED UNIT DEVELOPMENT,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 56TH STREET AND PINE LAKE ROAD.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: May 30, 2012

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

Staff recommendation: Approval of the annexation, subject to a revised annexation agreement, and conditional approval of the amendment to the PUD.

There were no ex parte communications disclosed.

Staff presentation: **Brian Will of Planning staff** noted that these application were on the Planning Commission agenda two weeks ago and delayed at the request of the applicant. About a year ago, the third major amendment to the PUD came through the process, changing the zoning and annexation area. This is a request for both annexation and change of zone in an area that has been shown as part of the larger concept plan of Villages Gardens from the beginning.

Will advised that there is one waiver relative to block length which the staff supports. The only issue relates to access. There is drainage through the site. Staff is supportive of the waiver of block length but suggests that pedestrian access be accommodated. The other issue is connection to Pine Lake Road. As written, staff is recommending that only 60 additional lots be platted until the connection where Blanchard Boulevard is extended to Pine Lake Road. Without that connection, a great majority of the additional traffic would funnel back through the existing development. The applicant is going to suggest a motion to amend which is agreeable to staff. It increases the number of lots from 60 to 66.

Proponents

1. Danay Kalkowski appeared on behalf of the applicants, 1640 LLC and Aspen Builders. This applicant is currently the developer of the property along Yankee Hill Road known as Village Meadows. This proposal basically expands and amends the existing PUD, including an additional 40+ acre area, half of which includes the LPS site and residential property to the east. The plan we are showing does require waiver of block length. The applicant is continuing to work with the City and NRD to provide areas for over-detention, which would provide a public benefit for this entire drainage area by providing additional capacity. This allows some bigger areas with less crossings, but to do that, the waiver of block length is required. The applicant agrees to include the pedestrian/bicycle crossings requested by Planning.

Kalkowski advised that there will be an amendment to the annexation agreement that will go forward to City Council which addresses the park issue on the LPS site.

Kalkowski agreed with all conditions of approval with the exception of Condition #2.3. Kalkowski submitted a proposed motion to amend:

2.3 Add a note which states "NO MORE THAN ~~60~~ 66 LOTS SHALL BE PLATTED IN PHASE II ~~PRIOR TO~~ UNTIL AN EXECUTIVE ORDER FOR THE EXTENSION OF BLANCHARD BLVD ~~BEING EXTENDED~~ TO CONNECT TO PINE LAKE ROAD IS APPROVED BY THE CITY. LOTS SOUTH OF BRIDLE LANE WILL NOT BE COUNTED WITHIN THE 66 LOTS."

The applicant was able to meet with Planning and Public Works after the staff report came out. This section of Blanchard Boulevard directly south of Pine Lake Road is a really expensive section of road to build with a drainageway necessitating the construction of a triple box culvert to accommodate the drainage and trail crossing underneath. The proposed amended language provides more flexibility in being able to time that connection in relationship to the actual plans for development. 66 is a better number for the applicant. Staff is in agreement.

Gaylor Baird referred to the comments by the Fire Department, which come up almost every time there is an annexation request. The Fire Department is recommending approval:

> under the condition all parties understand the location of these acres relative to the nearest fire station is approximately 2 miles to the corner of 56th and Pine Lake Road with a response time greater than 7 minutes to this intersection.

~~Gaylor Baird believes this to be a big city-wide problem. This is specifically saying they want people to understand that that is the kind of response time they can expect. Is the applicant addressing this concern or how can it be addressed?~~ Gaylor Baird stated: We have had briefings with the Fire Department to help us understand that 4 minutes is the standard for response time acceptability, and this is a big city-wide problem and there are things being considered to address it, being very creative and intelligent changes and proposals to locations of fire stations; however, this is specifically saying that they want people to understand that that is the kind of response time that they can expect. Is there any way you are addressing this concern in your development, or do you have any ideas how it can be addressed so that this recommendation that people are aware can be addressed? Kalkowski suggested that the only way to put people on notice is to actually file something of record that is in the of title. Even then, very few people actually look at the title commitment. Kalkowski believes it really comes down to the community-wide issue and the Fire Department continuing to try to make their issue known, i.e. that we will have this issue about response times while the city grows. This proposal is right next to a

developed area. Kalkowski did not have any ideas about how to address this with respect to this specific development. **(**As amended at the request of Commissioner Gaylor Baird: 6/13/12**)**

There was no testimony in opposition.

ANNEXATION NO. 12003
ACTION BY PLANNING COMMISSION: May 30, 2012

Lust moved approval, seconded by Francis.

Gaylor Baird stated that she will continue to raise this issue on annexations. ~~It is a very real cause for concern should someone need emergency assistance. Four minutes is the standard and we are obviously not hitting that. She is hopeful that the public will make an informed choice when they purchase these lots, recognizing this constraint on the choice that they make.~~ with the hope that this is at least my opportunity and our public body's opportunity to draw attention to this issue, which is not insignificant because while hopefully an infrequent cause for concern is a very real one should someone need emergency assistance. A response time of 7 minutes is definitely a matter of life or death and brain death. According to the Fire Department, 4 minutes is the standard and we're obviously not hitting it. So my hope is that the public will just make an informed choice – not that people should not live on the edge or they should not build new homes, but that when they do that they are making an informed choice recognizing that that is a constraint on the choice that they make. **(**As Amended at the request of Commissioner Gaylor Baird: 6/13/12**)**

Motion for approval carried 6-0: Butcher, Gaylor Baird, Hove, Francis, Lust and Cornelius voting 'yes'; Weber, Sunderman and Esseks absent. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 04075C
ACTION BY PLANNING COMMISSION: May 30, 2012

Lust moved to approve the staff recommendation of conditional approval, with the amendment to Condition #2.3 requested by the applicant, seconded by Francis and carried 6-0: Butcher, Gaylor Baird, Hove, Francis, Lust and Cornelius voting 'yes'; Weber, Sunderman and Esseks absent. This is a recommendation to the City Council.

There being no further business, the meeting was adjourned at 3:55 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on June 13, 2012.

Q:\PC\MINUTES\2012\pcm053012, as amended.wpd