

## MEETING RECORD

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Wednesday, July 11, 2012, 1:00 p.m., Hearing Room 112 on the first floor of the County-City Building, 555 S. 10<sup>th</sup> 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, Christy Eichorn, Brandon Garrett, Jean Preister and Michele Abendroth 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 regular meeting held June 27, 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.

### **CONSENT AGENDA** **PUBLIC HEARING & ADMINISTRATIVE ACTION** **BEFORE PLANNING COMMISSION:**

**July 11, 2012**

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

The Consent Agenda consisted of the following items: **COMPREHENSIVE PLAN CONFORMANCE NO. 12008, SPECIAL PERMIT NO. 11015A and SPECIAL PERMIT NO. 12027.**

There were no ex parte communications disclosed.

Item No. 1.1, Comprehensive Plan Conformance No. 12008, was removed from the Consent Agenda and scheduled for separate public hearing.

Francis moved approval of the remaining Consent Agenda, seconded by Hove 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. 12027, 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. 05012A**  
**AMENDMENT TO THE WOOD BRIDGE**  
**PLANNED UNIT DEVELOPMENT,**  
**ON PROPERTY GENERALLY LOCATED AT**  
**PINE LAKE ROAD AND HELEN WITT DRIVE.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

July 11, 2012

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

The Clerk announced that the applicant has submitted a written request for two-week deferral.

Francis moved to defer, with continued public hearing and action scheduled for Wednesday, July 25, 2012, seconded by Lust and carried 8-0: Gaylor Baird, Butcher, Cornelius, Esseks, Francis, Hove, Lust and Sunderman voting 'yes'; Weber absent.

There was no public testimony.

**COMPREHENSIVE PLAN CONFORMANCE NO. 12008**  
**TO REVIEW THE PROPOSED DECLARATION OF SURPLUS**  
**PROPERTY GENERALLY LOCATED AT**  
**SOUTH 21<sup>ST</sup> STREET AND O STREET;**  
**S. ANTELOPE VALLEY PARKWAY AND M STREET; AND**  
**CAPITOL PARKWAY AND J STREET.**  
**AS TO CONFORMANCE WITH THE COMPREHENSIVE PLAN.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

July 11, 2012

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

Staff recommendation: A finding of conformance with the Comprehensive Plan.

There were no ex parte communications disclosed.

Staff presentation: **Brandon Garrett of Planning staff** stated that this is a proposal to declare four very small properties in three general areas a surplus. The request is from Urban Development for three of the properties, and from Parks & Recreation for one of the properties.

Garrett explained that this item was removed from the Consent Agenda due to a letter received from the owner of adjacent property known as Lot 4, Spencers Addition. The adjacent property owner believes they have some claim to the ownership or the rights to purchase that portion of the property being declared as surplus; however, Garrett clarified that the role of the Planning Commission in the declaration of surplus property is a consideration as to whether the declaration of surplus is in conformance with the Comprehensive Plan. It is not the role of the Planning Commission to determine to whom the property will be sold.

Lust sought confirmation that the first step in selling city property is to have it declared surplus. Garrett agreed, and the City Council would be the final authority in declaring it as surplus. Lust clarified that whether the property is sold to the adjacent owners is a question for a different body on another day. Garrett concurred.

Cornelius then wondered why the letter is even relevant to the Planning Commission discussion. Garrett agreed that it should not be considered in the Planning Commission's recommendation; however, since the letter was received, the staff thought the Planning Commission role should be explained.

### Proponents

**1. Davis Landis of Urban Development** stated that the handling of surplus property occurs in Urban Development. This is a property that generally came in the acquisition of land from the Williamson car lots before the Antelope Valley project was undertaken. The city does not have a purpose for the two properties on O Street and Urban Development would be happy to put them back in private sector, although our goal is to serve "city value" – that it serves a reasonable rate of return but also serves city government, e.g. the Assurity project had an instrumental role in the parting with city-owned right-of-way. So when the city was able to add some of its land, not at a cost to the bottom line, but in a trade for the use of the parking facilities being created by Assurity, the city traded its land for the rights to use the parking lot. It will make the Plaza more available and gives parking to the public. When the city undertakes the decision for selling the land, the question will be asked, how does parting with the property – whether sale, lease or trade – serve and create civic value?

Hove inquired whether the city has anything specific in mind for these properties. Landis stated that the city does not. It is land relatively well-positioned for being part of a larger project. There has been some interest in the land. The City Council needs to agree that this is land the city does not need.

Support

1. **Carol Dunklau**, 2421 Sheridan Boulevard, testified in support as owner of the property adjacent to Lot 4, Spencers Addition. They want to purchase the property and are in favor of it being declared as surplus.

There was no testimony in opposition.

**ACTION BY PLANNING COMMISSION:**

July 11, 2012

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

**CHANGE OF ZONE NO. 05061A  
AN AMENDMENT TO THE  
SOUTHWEST VILLAGE PLANNED UNIT DEVELOPMENT,  
ON PROPERTY GENERALLY LOCATED AT  
HIGHWAY 77 AND WEST DENTON ROAD.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

July 11, 2012

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

Staff recommendation: Conditional approval.

Ex parte communications: Francis disclosed that she received a couple of phone calls when this hit the newspaper and the people she talked to were opposed. She suggested they come to the meeting and voice those opposition or write a letter.

Staff presentation: **Christy Eichorn of Planning staff** provided information about the location of the project; what is approved today; and what the applicant is asking be approved with this amendment.

The project is located on West Denton Road just west of Hwy 77. Today the area is in an approved PUD, meaning it is an overlay district, so although it says it has B-2 zoning, the B-2 is the underlying zoning. With the PUD, there is a development agreement that goes with the site plan that talks about how uses are to be approved in this area. The applicant has requested a change to mostly everything south of West Denton Road. The area generally is bounded on the east by Hwy 77, with significant floodplain and agricultural land to the south and bounded by Cardwell Branch on the south. There is more significant floodplain and acreages on the west side of the property. The area to the north currently does not have any development plans. It is an area that came into the city and was included in the annexation agreement but currently, there is one single-family residential

house on that property. The property to the north is still zoned AG and used for agricultural purposes.

Eichorn then reviewed the proposal in relation to the 2040 Priority Growth Area map. Everything to the south is for long term future development.

The PUD is currently approved for a total of 1,300,000 sq. ft. of commercial floor area, 300,000 sq. ft. of which is reserved for office or industrial use. With the proposed horse race course on the south side, they would be reducing the overall commercial square footage to 1,000,000 sq. ft. of commercial, within which 700,000 sq. ft. could be used for retail but still retaining 300,000 for office or industrial use, keeping this as a mixed use development. Some potential additional dwelling units were shown north of West Denton Road. The approved PUD showed 160 dwelling units where the horse track is planned to go. Those dwelling units have been moved to the north, providing for a mix of residential, commercial and office for that area to the north. If the race course does not happen, the overall PUD would retain the 1,300,000 sq. ft. of commercial space.

Eichorn then addressed the note in the development plan that says any use allowed today in the B-2 zoning district is allowed by right in the PUD, particularly in the area north of West Denton Road. This change is being made because there is a four-lane arterial north of West Denton Road on Folsom; we have Hwy 77 to the east; we have what will someday be a four-lane arterial in West Denton Road; and the floodplain and the creek to the south. This is a development that is contained within itself and when we have conditions associated with a use, it is to protect existing uses in that area. Because of the demographics of this area and the geographical nature, it just made sense to allow the uses in the district without any additional restrictions, particularly when there is not much development outside this area. However, there are some acreages and AGR zoned properties just to the west.

Eichorn clarified that this amendment does not change anything north of West Denton Road, but because we are making a change to the PUD we have to talk about it as one big entity.

### Proponents

**1. Rick Kiolbasa**, the developer, stated that there are five entities plus the city that have been involved working on this proposal to allow some development to occur. Nothing has happened for five or six years after spending several million dollars on this site. He has been working with the race track representatives to see how they can fit into this piece.

Kiolbasa then showed the layout of the race track. The area north of West Denton Road will essentially stay the same. The first phase will be the simulcast facility, sports bar and

restaurant, anticipating breaking ground this fall. Essentially, in 3-5 years, they would expand into doing the grandstand area, the additional parking and the race track. There is space for 1,000 horses and 1-mile track, making them competitive nationally.

With regard to the traffic plan, Kiolbasa pointed out that with 1,000,000 sq. ft., they have already built a lot of roads, water lines and sewer lines.

**2. Mark Palmer of Olsson Associates** appeared on behalf of the applicant and submitted a request to amend Condition #2.9, which refers to the phased development:

Show a south bound right and left turn provision at the Phase 2 driveway to the parking lot and a north bound paved left turn lane to this driveway, or, at the time of the Phase 2 construction, provide a traffic intersection analysis that shows these intersection improvements are not necessary to meet the intent of the Access Management Policy. Show 70 feet of right of way per subdivision requirements for the access points to 1st Street.

1<sup>st</sup> street is being realigned. It is a gravel road and they will be doing a slight realignment of that road to the east on property that the developers are purchasing. It is a gravel road with very minimal traffic from the south and they have been working with the city on the extent of the cost to the developer. The initial access will be Blue Flag Court. There is a future access at Folsom Street shown off of West Denton Road to circulate vehicles through the development, and an additional access on 1<sup>st</sup> Street. They have discussed paving that road and extending the pavement. It is floodplain property and it is on the edge of the Comprehensive Plan for 2040 growth. Therefore, they do not see any access needed other than for farming. Engineering Services had requested additional turn lanes at the intersection, but the developer would prefer to take a better snapshot and better analysis of the actual traffic during the Phase 2 construction and provide the improvements that are necessary to maintain the traffic that will be out there at that time.

Palmer agreed with all other conditions of approval. They have worked with the City and Watershed Management on the floodplain impacts. There will definitely be a lot less intensive floodplain impacts than previously planned on the original PUD. The interior of the race course will be green space and some floodplain storage. It is a less intensive use than what was previously planned.

Kiolbasa advised that they did hold a neighborhood meeting. The race track is a part of the overall development. There will still be some apartments, hotels and hopefully retail. They have restricted the PUD to not allow any sort of motorized racing, etc. There will be a land use restriction agreement in place for those types of uses.

Esseks observed that the first component will be the simulcast building and inquired whether this in some way will attract other development. Kiolbasa acknowledged that they have had additional interest expressed in the site since this proposal came forward. The

biggest hurdle was getting something across the highway and the attraction that a race track provides and the ability to have a restaurant and bar really does help with that.

Lust asked the developer whether he is sure that Wal-Mart is not going to move in there. Kiolbasa's response was, "we are all sure."

Hove inquired whether any TIF funds were used to develop this infrastructure. Kiolbasa stated that all improvements were developer funded – no TIF – but the developer will be reimbursed through impact fees for some of the facilities. Wal-Mart was going to be located on the north side.

**3. Alan Wood** appeared on behalf of the **Horseman's Benevolent & Protection Association (HBPA)** and advised that the hours of operation for the simulcast facility are intended to be 11:00 a.m. until 5:00 p.m. There will also be some operation between 7:00 p.m. and 10:30 or 11:00 p.m., but it is not anticipated that there will be any traffic during the time people are leaving for work or coming home from work. The simulcast facility will not generate that much traffic. The live racing will develop in four or five years.

Lust assumed there might be restaurant-type traffic in the evening hours. Wood acknowledged that this was discussed at the neighborhood meeting and the neighbors were satisfied. He also advised that there will be a deed restriction such that the height of the horse barns will not exceed 24'.

Butcher asked Wood to discuss the operation of the track itself. Wood understands that there will be evening races, but they would occur after rush hour. There would be day time racing on Saturdays and Sundays. **Lynne Schuller, Executive Director of Horseman's Benevolent & Protection Association**, stated that currently, their post times are at 6:45 p.m. on Friday evening and then 2:00 p.m. on Saturday and Sunday. Most of the traffic is well after rush hour and then on the weekends.

Esseks asked what kind of traffic is anticipated at this facility when fully developed. Schuller indicated that they are currently achieving an average crowd of 3500 for a time period of 4-5 hours. It concentrates for about an hour or two and then tapers off on either side.

### Support

**1. Tom Huston** testified in support on behalf of **SouthPort Ventures Company, LLC**, which owns the parcel in the northwest quadrant of this development, previously identified as the former Wal-Mart site. Any activity at this site is going to be a good thing. His client does not want the amendment to restrict the amount of square footage previously allocated north of Denton Road, and it does not. His client is satisfied.

**2. Pat Dussault**, 130 W. Winfield, testified in support. He owns one property removed to the south across Cardwell Branch. He stated that he is generally in support and appreciates the efforts to take any motorized racing off the table. This discussion has removed a lot of his concerns. He did request clarification as to the lighting that will be used at the race course, etc., and what other venues might be permitted at the facility, such as concerts.

Dennis Bartels of Public Works stated that the amendment to Condition #2.9 presented by the applicant has been reviewed by Public Works and he is satisfied with it.

There was no testimony in opposition.

Response by the Applicant:

With regard to the planned use of the infield in the race track, Alan Wood, attorney for the Horseman's Benevolent & Protection Association, stated that there is reservation in the PUD for festival use and outdoor activities. The race track is an expensive installation, with a surface that has to be protected for the horses. Therefore, it does not lend itself to a large rock concert type setting. He does not believe that there is any contemplation on the part of HBPA for a concert venue or anything of the like.

Schuller added that they do have bands that play during live racing in Omaha, but Omaha is a different business model than Lincoln. Omaha only had 6 live racing days this year, so to promote those six days, they make it more of a festival type atmosphere with bands playing when the races are over. There is nothing in this development agreement that would prohibit that, but as long as HBPA is the owner, there would never be a motorized activity on that surface.

**ACTION BY PLANNING COMMISSION:**

July 11, 2012

Lust moved to approve the staff recommendation of conditional approval, with the amendment to Condition #2.9 requested by the applicant, seconded by Sunderman.

Lust stated that she is happy to see something going into this area with a lot of money invested by the city.

Francis believes this is a good use for that area and she looks forward to seeing some growth out there.

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

**CHANGE OF ZONE NO. 12017  
FROM R-2 RESIDENTIAL DISTRICT  
TO O-2 SUBURBAN OFFICE DISTRICT,  
ON PROPERTY GENERALLY LOCATED  
AT N. 66<sup>TH</sup> STREET AND VINE STREET  
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

July 11, 2012

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

Staff recommendation: Approval, subject to a conditional zoning agreement.

Ex Parte Communications: Butcher disclosed that he was contacted by an adjacent resident, Greg Bodtke. He explained the ex parte communication policy and forwarded those e-mails on to the Planning Director and to staff. Lust disclosed that she was contacted by the commercial real estate agent for the applicant who wanted some general questions answered about hearing procedures. They did not discuss the substance of the application.

Staff presentation: **Tom Cajka of Planning staff** explained that this is request for change of zone from R-2 to O-2 at 624 N. 66<sup>th</sup> Street. The surrounding zoning is I-1, O-2, R-5 apartment complex, and the area to the north and east is R-2. The adjacent property to the south is currently vacant with some mini-storage to the east and medical office building and other offices.

The applicant desires to purchase the existing single-family house and convert it into an office for insurance sales. The existing building would remain. They will not be building anything new on the site. Cajka then discussed the site plan. There is not room in the front of the house for parking, so the applicant is showing a driveway coming off of 66<sup>th</sup> Street. This would require four parking stalls, with a driveway. The staff report talks about how approving this change of zone could lead to a couple other residential lots to the north also looking at potential future change of zone to commercial since there is commercial on two sides with a five-lane arterial road. That is why Planning staff is recommending an access easement in the rear. Future development would allow removing the driveways on 66<sup>th</sup> Street with one access on the south and another on the north.

Cajka advised that a zoning agreement is being recommended, including conditions to widen the driveway onto 66<sup>th</sup> Street for easier access in and out; to show a public access easement along the driveway and the north-south driving aisle; to install a 6' high solid fence along the north and east boundary; and to relinquish vehicular access to 66<sup>th</sup> Street if in the future another access point becomes available to the south. The staff is recommending two additional conditions in the zoning agreement, i.e. that the parking lot area/driving aisle be constructed in conformance with the City's parking lot Design Standards, and that no parking would be allowed in the front driveway area because the

access easement is only 10' wide, not allowing two cars to pass. By definition in the zoning code, a parking lot is 6 parking stalls or more, so they would not normally have to comply with the Design Standards, but the staff is suggesting that this be a requirement in the zoning agreement.

It appears to Esseks that this is a very, very narrow access from 66<sup>th</sup> back to the parking stalls. Is this unusual? Cajka agreed that 10' is narrow, but it is wide enough for vehicles one-way. He could not think of another example, but it has been reviewed by Public Works and Planning, and staff believes this is a workable design. Esseks believes it could be dangerous at nighttime and he will ask the applicant about the hours of operation.

Francis inquired whether the owner of the adjacent vacant property, formerly Dairy Queen, has been contacted about possibly allowing an access to the parking lot to allow a complete one-way path in and out of that space. Cajka acknowledged that this was suggested by Planning to the applicant. Planning has not approached that owner.

Butcher inquired whether there is any consideration or issue in regard to placing this much concrete in regard to water runoff into the adjacent residential property. Cajka suggested that the applicant's engineer be asked to address drainage questions. However, there is 19' of open space, so he does not believe there is any threat of drainage to the east as that property is higher.

Francis was interested to know when 66<sup>th</sup> Street was widened to five lanes, but Cajka did not know.

### Applicant

**1. Kari Hoeft**, 8441 Norval Road, the applicant who wishes to purchase the property, explained that they have a family-owned insurance agency and saw this property located on a main arterial road and adjacent to other commercial property. She did consider the option of the vacant lot next door; however, she was unable to reach anyone and it would not be financially feasible for their business plan. She advised that the operating hours are 8:00 a.m. to 5:00 p.m. She stated that her family is in the insurance industry, so they also have concerns and do have plans to put in a three-way mirror to provide more visibility and they have considered posting a sign to avoid accidents happening on the property. She assured that they have discussed some safety precautions.

Butcher inquired as to the costs anticipated in establishing this substantial parking lot and side access. Hoeft did not have an exact figure but she estimated \$4,000 to \$5,000.

Esseks inquired about the number of people that will be working in the building. Hoeft stated that there will be two currently, with the possibility of up to three in a year. Foot

traffic is less than it used to be because of technology. In their current location, they maybe have two clients come into the office; otherwise, everything is done via technology and telephone.

Butcher asked whether the garage will be converted. Hoeft acknowledged that the garage will be converted due to ADA requirements. They have had many discussions about the garage and it will be most beneficial for ADA because of the entrance in the back.

Francis inquired about overflow parking once there are three employees with only four parking spaces, one of which is handicap accessible. Hoeft stated that typically her husband is not in the office. He is the principal of the business and is out of the office doing marketing and making calls. They did try to contact the property next door which had been on the market to discuss an easement, but they were not successful in contacting the existing owner. If the parking becomes an issue, perhaps they could add another parking stall in the drainage area.

Francis inquired about any other sites that were considered. Hoeft stated that they got this idea by driving around Lincoln. There is a brokerage on 33<sup>rd</sup> & A Street. Some people that are in the industry have converted houses. This is a family-owned business and it comes down to financial concerns. They did consider leasing space, but it again comes down to financial issues. Leased space would cost more than purchasing and converting a residence. They have talked with different people in Lincoln and they have seen houses in commercial areas that have been converted. There is another one down the street at 1040 Cotner that has been recently converted.

### Support

**1. Lyle Loth, ESP Engineers**, 601 Old Cheney Road, appeared on behalf of the applicant. He has looked at the drainage situation. They propose to address the impervious surface by placing a 3" curb along the north property line and along the south of the parking lot. They would ridge the parking lot itself approximately at the mid-point of the parking lot. It would drain north and south to the curb line and then drain out between the houses or buildings to the street itself. It is extremely flat. They would not plan to do anything in the rear yard at this time, but today most of the rear area drains in all three directions. By putting the parking lot in this location, it actually slopes towards the house and also slopes in either direction. Any water falling on the parking lot will not go to the back lot line. They will be reducing the area of flow along that back property line. The 3" curb will keep anything heavy from going into the neighbor's yard and their basement.

### Opposition

**1. Greg Bodtke, and wife Dana**, live at 641 N. 67<sup>th</sup> Street, directly behind and to the east. Bodtke challenges the staff recommendations on the valuation of the property. If you stand on the property and look south, you see a car wash, veterinary clinic, etc. This is a

residential area to the east and north, all the way to 70<sup>th</sup> Street. The Meadowlane Area Neighborhood, which is a well-established family-oriented neighborhood, is opposed. The residents range from toddlers to 95 years of age. The neighborhood is friendly. We know people by name. We help them when branches are down and assist with scooping snow in the winter. This neighborhood is reasonable middle-class housing. It is reasonable for many young families. The crime rate in this area is low, with the exception of vandalism to the Dairy Queen and the car wash. Bodtke suggested that this rezoning is simply out of order. It is not compatible or appropriate with a residential neighborhood. This neighborhood depends on public services. The neighbors depend on the Planning Commission to watch their back and to prevent any kind of commercial intrusion into the neighborhood.

What's wrong with rezoning one house to O-2? There are two houses to the north occupied by elderly women. If this change of zone is approved, there is no guarantee that this property will remain office. It opens up a pandora's box to some pretty vast industrial or commercial development.

Bodtke also suggested that no one wants a parking lot in their back yard. We do not. We don't want a security fence that will be required by code. In a neighborhood meeting, Tom Cajka of the Planning Department presented the 25' public easement for future development of a paved access road through the neighborhood. This was a surprise to the neighborhood and is not acceptable.

Bodtke believes that approving this change of zone sends a message to the neighborhood. – business comes first.

Bodtke submitted proposed amendments to the staff report, specifically #4. If in fact there is no feasible way to stop this zoning change, then we still have yet to understand why an insurance office has to go into a residential building. There are many commercial options to develop. It is his opinion that this is not so much about an insurance office as it is a commercial opportunity. He opposes that.

In an effort to protect his own property, Bodtke submitted a request to add some special conditions. A 6' fence will not block the view of this parking lot from his kitchen. He would prefer an 8' privacy fence. He wants the lighting on the property to be restricted, specifically that no parking lot lighting be allowed on the east side of the property, with lighting fixtures less than or equal to the height of the fence, emanating to the south or east side, and that any outside lighting be a combination of motion-sensing.

Bodtke then suggested that perhaps the R-2 zoning could remain in place with special permission to develop a business, with the property reverting back to residential use if sold or leased in the future.

Bodtke submitted a petition containing 56 signatures of property owners in the neighborhood who are in opposition to this change of zone. He also submitted a letter from the Meadowlane Area Residents Association in opposition.

In summary, Bodtke reiterated that this change of zone is not appropriate for this residential neighborhood. If rezoned, the residential neighbors will be subject to engine noise, slamming car doors, and conversations that would not be blocked by 6' fencing. "Just imagine this back yard and put it in your back yard." If this change of zone is approved, Bodtke requested that the Planning Commission include the additional restrictions set forth in his exhibit. Greg and Dana Bodtke have lived in their residence for 17 years.

Butcher asked whether the Bodtke's were contacted by the applicants. Bodtke acknowledged that they were contacted, but all of this is occurring on very short notice. They were first contacted a little over three weeks ago. He did not have enough time to gather all of his information. They were contacted by a hand-delivered letter and visit. They have had phone conversations and a neighborhood meeting.

Esseks noted that there is a sign on the property indicating that it has been purchased. Bodtke stated that the previous owner for several years was Deb Burr – they had a good relationship with her, but the property has officially been sold to the applicants.

Butcher inquired whether the Bodtke's have any drainage or water issues. Bodtke stated that the fence is actually a low area. During a hard rain, there will be 3-4 inches of standing water along that fence line. He does have a concern about the drainage. By putting in a concrete area, the water is not going to be absorbed into the ground. Even though there is 19 feet of open space, he does not believe it is going to be sufficient. Bodtke is requesting a curb perimeter be put on the paved parking at a standard curb height to keep the water from draining onto their property.

Lust confirmed her understanding that Bodtke would not oppose the rezoning if the conditions and restrictions he is requesting are included. Bodtke clarified that his primary focus is to stop the rezoning. The five conditions he is requesting are in the case that all attempts to stop the rezoning fail. If you are not going to protect the neighbors, we simply fall back and ask you to protect us and the interest of our property in terms of light, sound, etc. We have no idea how this will affect assessed values on our property. The ability to sell our property will be decreased.

Lust referred to #5 on Bodtke's list of conditions:

We the owners at 641 North 67<sup>th</sup> Street will be performing trenching across the back lot of the property at 624 North 66<sup>th</sup> Street. This trenching would be required to upgrade our current electrical service. We will be trenching from the LES service pedestal approximately 10-12 feet to the North into our property. We have obtained required electrical permits and said work has been approved by the City and LES.

The area of trenching will be inside the 5 ft allowed Utility Easement. We require that liability for any damage to the existing tree be waived. All attempts will be made to avoid cutting major roots. Work on this project could commence as early as Saturday, July 14, 2012.

Lust inquired whether Bodtke is requesting to be allowed to go into the subject property. Bodtke stated that since he is not well-versed in the legal issues of trenching an easement, he thought he should make a record of it. An electrician has sought and received permits. The area of trenching will be done by hand and is within the 5' utility easement. He just did not want to show up in their back yard and start digging. LES recommended that he hand trench from the service pedestal into the fence and into the back yard. This requires him to access that easement.

Lust asked Bodtke whether he has reviewed any of the design standards for parking lots with which the applicant will need to comply. Bodtke stated that he is not familiar with parking lot design standards and does not know whether those design standards will satisfy his concerns.

**2. Brenda Reed**, 6601 Marcia Lane, which is three doors down from the property being proposed for rezoning, testified in opposition. Her parents built the house, and she has inherited the home. She does not want to have a parking lot built in her back yard. She does not want to go out on her deck and look at a parking lot. She has lived in this house for 20 years. It's bad enough to look at apartments; the last thing she wants to do is look at a parking lot behind her home. With a 6' fence, she won't be looking at anything. This is a great neighborhood. We know everyone's names. This is a residential neighborhood. She thinks the insurance company could certainly find another place to build their property and business. She has concerns about the parking. She does not think they have enough room for their parking and has fears that they will park in front of her house. She has a "no parking" sign in front of her house that is disregarded continuously. There will not be enough room to pass between the house and park behind that building. Her driveway exits out onto Marcia Lane.

**3. Alta Pershing**, 632 North 66<sup>th</sup>, next door to the subject property, testified in opposition. She is concerned about the drainage. We have already got five lanes of cement. She believes that the cost of her utilities will go up because there will be more heat from the concrete. She also believes that her property value will go down, yet property taxes will probably go up. She will end up losing money on her house. She is fearful that the water will drain into her basement. If they install a fence, what is she going to do about the weeds and snow drifts between their fence and her chain link fence? Pershing suggested that there has got to be some way to contact the owner of the Dairy Queen property for parking. She was unable to attend the neighborhood meeting.

Staff questions

Lust requested staff to address the conditions requested by Bodtke. Cajka noted that the 6' fence is required by the design standards. Bodtke is requesting an 8' fence. The design standards provide that the screening shall be 60% from the ground to 10' above the ground along the property line. Staff believes that the 6' complies with the design standards.

Cajka indicated that the restriction of lighting on the east side is not included in the staff's recommended zoning agreement. The city does have lighting standards on trespass and glare and on how bright lights can be. Those standards will apply to this property.

As far as trimming the trees, Cajka suggested that to be a private matter between the two property owners as well as the trenching.

Cajka advised that the curbing is addressed by the parking lot design standards and city criteria.

Esseks wants some guidance from the Comprehensive Plan on the issue of changing the boundaries of a residential area with single-family homes. This is a very difficult issue. There are three homes in a row that are residential. How do you change the edges of residential areas? These folks already have a vested interest in their properties. He does not see that the Comprehensive Plan provides enough guidance to deal with their very real interests. Cajka agreed that situations like this are complicated and tough to deal with. He totally agrees that it is a residential neighborhood to the east and above Marcia Lane. The question becomes: When you get into the transitional areas where you change the frontage and the character of the area, and it is no longer a local street but major arterial with commercial and industrial on two sides, where should the transition stop? The staff did discuss R-T instead of O-2 for transition.

Cajka suggested that there was a lot of misunderstanding at the neighborhood meeting – that the city was proposing that two additional lots be rezoned. Cajka clarified that the staff is not proposing that, but if anything did happen in the future, the city would want access to those two lots. Cajka also pointed out that there is industrial directly to the south, and the Health Department never wants residential next to industrial, nor does Planning. When we see opportunity to remove residential next to industrial, we would support that in most cases.

As far as future use of the property if the sale fell through and someone did something different, Cajka suggested that the Planning Commission could add a restriction in the zoning agreement that the only uses permitted would be for office or residential purposes. Retail is not allowed in O-2. O-2 uses are mainly office – medical, dentists, doctor, general office – single family housing, duplex and some special permitted uses. The positives are that this change of zone would get rid of residential next to industrial and provide a buffer between the industrial and the other two residential lots.

Lust confirmed that the property could still be used for residential with the O-2 zoning. Cajka agreed.

Gaylor Baird observed that the bulk of the concern has to do with the fact that there will be so much paving in the back yard and not with the house itself. She asked staff to speak about the parking requirements and whether there are waivers in an instance like this. Were there any conversations about alternatives for parking to provide some real compromise for the residences? Cajka advised that O-2 zoning requires 1 parking stall per 300 square feet of floor area. The house with the garage is around 1100 square feet, requiring four parking stalls. There is not a provision to ask for a waiver to reduce the parking since this is a straight zoning application and not a use permit. The parking must be on-site. It is not a district where you can have parking within 300' of the site.

If this change of zone were denied, Francis wondered whether the applicant could come back with a special use permit to have an insurance agency in this house and waive the parking and not disturb the back yard with all the concrete. Cajka advised that a change of zone to R-T would be required, with a use permit. R-T is more restrictive than O-2, allowing single-family, two-family, and office buildings with maximum footprint of 5,000 square feet. Francis believes that might be a better option for the neighborhood. Cajka suggested that it solves one problem but opens up another. It would remove the parking in the rear and would allow two parking spaces on the driveway on the front. Where do the other people park?

Esseks suggested that the lifestyle of the adjoining property owners would not be in jeopardy if they could get parking elsewhere. He is intrigued about the possibility of finding the owner of the defunct Dairy Queen and that owner might be willing to agree to an easement to allow the parking. He does not believe there is enough space for what is needed. Esseks wondered whether the Commission could consider delaying a decision to see whether the owner of that property to the south would agree to an easement. Cajka clarified that when staff suggested that the applicant talk to the owner of the south property, it was not to use their property for parking, but for an easement that they could then come through their property and access the parking without coming down the side of the house.

Lust is concerned that eliminating four parking stalls in the back yard will put parking into the residential area. There is nowhere else to park. Francis suggested that there is a vacant lot where Meginnis Ford used to be.

Butcher asked for clarification of the easement shown on the site plan. Cajka advised that the easement will continue up to the properties to the north and exit back out to 66<sup>th</sup> Street.

Butcher was interested in when this residence was built and how long the properties have existed in their current state. Cajka did not know.

Response by the Applicant

Hoelt stated that she did receive a phone call from the owner of the vet clinic across the street who indicated that this house was built in 1955. The bike path used to be a railroad track. She understands that the initial city plan did have this area all zoned industrial, and it was rezoned to build the houses.

As far as the fence, Hoelt believes that the 6' privacy fence is something that is residential in character and that it is not obtrusive. She fully intends to comply with the city's lighting standards. There is an existing light on the east side of the house on the back patio. Obviously, for security reasons, she would want to have lighting, whether the property is residential or commercial.

Hoelt stated that after submitting the application, she began providing letters to the neighbors and invited them to a neighborhood meeting. There were about 30 invitations sent and the owners of four dwellings attended, two of which are here today. The other two did not express any opposition verbally. This is a family-owned business trying to have an office. Commercial abuts this neighborhood. They are trying not to have an impact on the neighborhood. As far as the screening, Hoelt offered to plant some evergreen shrubs in the back that would grow 8-10 feet to add more screening.

With regard to paving, Hoelt stated that the site plan was prepared pursuant to the requirements of the O-2 zoning. They are required to have a handicap stall that is paved, but perhaps she could argue that it could be rock and that the parking lot could be other materials. "We don't want to be disruptive." Hoelt pointed out that the resident on Marcia Lane sees the pavement for the Dairy Queen and the car wash now, which is all there without any screening. Hoelt suggested that if anything, this might help seclude the commercial from some of the residences.

Hoelt indicated that she did consider the 8' fence, but there are different building code issues with an 8' fence – it has to be noncombustible, there are setback issues, and the price is \$6000 more. The required setback creates issues of mowing and weeds. She would be happy to have the chain link fence about the privacy fence.

**ACTION BY PLANNING COMMISSION:**

July 11, 2012

Lust moved to approve the staff recommendation of approval, subject to the zoning agreement, including the amendments proposed by staff, seconded by Sunderman.

Cornelius made a motion to amend to apply a condition to the zoning agreement that the property be restricted to office or residential use only, seconded by Lust.

Esseks feels uncomfortable about making a judgment. He would like to have more discussion about the important issue in that the Comprehensive Plan does not give us

enough guidance. How do you go about reducing the size of a residential area and expanding the size of office and commercial when there are families that will be in jeopardy in terms of lifestyle and the value of their property who oppose it? They have real interests – financial and lifestyle. This is not a good case and he also opposed the extension of the commercial area long A Street east of 33<sup>rd</sup> for the same reasons. He can see how the applicant wants to have an office at this location. But this is such a complex issue upon which he would like more discussion. He would prefer to delay to come up with some guidance.

Motion to amend carried 6-2: Gaylor Baird, Butcher, Cornelius, Hove, Lust and Sunderman voting 'yes'; Esseks and Francis voting 'no'; Weber absent.

Francis commented that she sees long term residents in this neighborhood who have invested for years and years, and the feeling of their neighborhood changed when 66<sup>th</sup> Street became a five-lane thoroughfare. Now when someone new is coming in and buys a property to use as office and not zoned for office, that's changing the whole dynamics. She will not support the change of zone.

Butcher stated that he feels like this is a situation drawing a line in the sand in regard to where we want commercial development to stop and where we want residential to begin. He believes that this is just the start in regard to how this continues on down 66<sup>th</sup> Street. There is continual commercial development just to the north as you get past Vine. Where do we stop and where do we begin? For that reason, he will likely oppose.

Esseks believes there should be room for a transition area. Obviously, office is a good transition, but it should be a property which can really minimize the impact upon neighbors. This property is too small. This should not be a precedent.

Cornelius suggested that there are two ways to look at it: 1) that it is commercial encroachment on a residential area; or 2) building a transition area between what is an industrial district and an existing residential district. We heard that this issue between the intensity of zoning districts was created when this residential district was created. He believes it is of value to have that transition here. The zoning agreement, having the restrictions that it has, will create something that is lower impact. The potential owner is agreeable to mitigating whatever negative impact there might be, but he believes it will be minimal. If the property were residential, the owner could build a fence today. For these reasons, Cornelius will vote in favor.

Motion for conditional approval, as amended, failed 3-5: Cornelius, Lust and Sunderman voting 'yes'; Gaylor Baird, Butcher, Esseks, Francis and Hove voting 'no'; Weber absent.

Francis moved denial, seconded by Esseks.

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

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Lust and Hove left the meeting.

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**CHANGE OF ZONE NO. 12019  
TO REDUCE THE BUILDING LINE DISTRICT  
ON PROPERTY GENERALLY LOCATED  
AT FIRST STREET AND HIGHWAY 2, CHENEY.  
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

July 11, 2012

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

Staff recommendation: Approval.

There were no ex parte communications disclosed.

Staff presentation: **Brian Will of Planning staff** explained the concept of the building line district, which is an overlay that has been part of the zoning ordinance for a long time, actually back to the 1950's. The intent of the building line district is to preserve a corridor free of buildings and other obstructions in those cases where the city may need additional right-of-way in the future.

Will explained that the property in question today is associated with a change of zone which was approved by the Planning Commission southeast of Lincoln at Hwy 2 and First Street, at the very eastern edge of Cheney. In that staff report, staff observed that the building line district in Hwy 2 as applied to this property may affect the development potential and the development plan of the applicant. As the applicant further considered the property, he agreed and that application has been delayed at City Council to allow this adjustment to the building line district to be considered.

This application is a request to reduce the building line district which exists in Hwy 2 from 125 feet to 108 feet. The recommended right-of-way for Hwy 2 is 140'. At this point, we have well in excess of what is being called for in the building line district in Hwy 2. The request today is to reduce the building line district down to an amount that is consistent with the zoning agreement requested as part of that change of zone. Applying the building line district, the setback would be another 20' back from the building line district, which would be well outside of the 30' landscape setback buffer requested in the zoning agreement.

The difference is 17', and that is how we came up with 108'. The associated zoning agreement calls for a 30' landscape buffer. The adjustment to the building line district equates to that 30' landscape buffer. If it didn't look like we were going to have adequate right-of-way, the staff would not be supporting this; however, at 125' from centerline, or 250' of width, the building line district is well in excess of the 140' of right-of-way called for in the Comprehensive Plan. The staff is confident that there is adequate right-of-way.

Cornelius clarified that the Planning Commission is being asked to make an adjustment to the building line district in order that the setbacks that were agreed upon in the zoning agreement work with regard to the building line district. Will stated that the Planning Commission is being requested to reduce the building line district from 125' to 108'. That reduction exactly equates to preserving that 30' landscape buffer/setback as required in the zoning agreement associated with the other change of zone.

Cornelius confirmed that this does not infringe upon Hwy 2. Will acknowledged that it is perhaps part of a larger issue, but the staff believes that the building line district preserves something well in excess of what the Comprehensive Plan is calling for in terms of right-of-way.

#### Proponents

1. **Derek Zimmerman**, 1248 O Street, Suite 600, appeared on behalf of the owner of the property at 1<sup>st</sup> and Hwy 2. He agreed with the staff report and staff presentation.

There was no testimony in opposition.

#### **ACTION BY PLANNING COMMISSION:**

July 11, 2012

Francis moved approval, seconded by Butcher and carried 6-0: Gaylor Baird, Butcher, Cornelius, Esseks, Francis, and Sunderman; Hove, Lust and Weber absent. This is a recommendation to the City Council.

#### **MISCELLANEOUS NO. 12007, TO REVIEW THE PROPOSED DETERMINATION THAT THE GATEWAY SENIOR LIVING REDEVELOPMENT AREA BE DECLARED BLIGHTED AND SUBSTANDARD, ON PROPERTY GENERALLY LOCATED AT 52<sup>ND</sup> & O STREETS.**

#### **PUBLIC HEARING BEFORE PLANNING COMMISSION:**

July 11, 2012

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

Staff recommendation: A finding that there is a reasonable presence of blighted and substandard conditions.

There were no ex parte communications disclosed.

Staff presentation: **David Landis, Director of Urban Development**, advised that the Gateway Senior Living Blight and Substandard Determination Study concludes that the statutory obligations of finding both blight and substandard conditions have been met. Two of the four structures were found to be in deteriorated circumstances. The buildings are older; the private service lines are 49 years of age; there are no sidewalk connections to the public street; the lot layout is irregular; the access driveway is in poor condition and not well-placed; and there are cracks in the concrete, all indicators that this is an area that meets the statutory definition of blight and substandard.

Landis stated that the city looks forward to doing business with the Gateway Senior Living Center in the future; Urban Development is proceeding toward a redevelopment plan and then drafting a redevelopment agreement in the event of a finding of blight and substandard conditions.

Esseks inquired about remedying the structural problems once the redevelopment is approved. Landis explained a couple of the improvements but suggested that that discussion occur during the deliberations on the redevelopment plan.

### Support

**1. Tom Huston, 233 S. 13<sup>th</sup> Street, Suite 1900**, appeared on behalf of **Gateway Senior Living and Gateway Properties**. On June 13, 2012, the Planning Commission approved a change of zone to R-2 and a special permit to allow additional density at this site. What is before the Commission today is the blight study. He stated that he will reserve discussions about the expansion plans for the hearing on the redevelopment plan.

There was no testimony in opposition.

### **ACTION BY PLANNING COMMISSION:**

June 11, 2012

Francis moved approval of a finding of a reasonable presence of blighted and substandard conditions, seconded by Butcher.

Butcher referred to his comments on previous blight studies, and he finds that this blight study encompasses the entire redevelopment plan area which the Planning Commission was briefed upon earlier today, so he will support this finding.

Motion for a finding of a reasonable presence of blighted and substandard conditions carried 6-0: Gaylor Baird, Butcher, Cornelius, Esseks, Francis, and Sunderman; Hove, Lust and Weber absent. This is a recommendation to the City Council.

There being no further business, the meeting was adjourned at 3:25 p.m.

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

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