MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, December 12, 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, Chris Hove, Jeanelle Lust and Ken Weber (Wendy Francis and Lynn Sunderman absent); Marvin Krout, Steve Henrichsen, Brian Will, Christy Eichorn, Tom Cajka, 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 requested a motion approving the minutes for the regular meeting held November 14, 2012. Motion for approval made by Gaylor Baird, seconded by Hove and carried 5-0: Gaylor Baird, Cornelius, Hove, Lust and Weber voting 'yes'; Butcher abstaining; Francis and Sunderman absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: **December 12, 2012**

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

The Consent Agenda consisted of the following items: **COUNTY COMPREHENSIVE PLAN CONFORMANCE NO. 12018 and COMPREHENSIVE PLAN CONFORMANCE NO. 12019.**

There were no ex parte communications disclosed.

Lust moved approval of the Consent Agenda, seconded by Weber and carried 6-0: Gaylor Baird, Butcher, Cornelius, Hove, Lust and Weber voting 'yes'; Francis and Sunderman absent.

Note: This is final action on County Comprehensive Plan Conformance No. 12018 and Comprehensive Plan Conformance No. 12019 as to conformity with the Comprehensive Plan.

CHANGE OF ZONE NO. 12036
LANDMARK DESIGNATION AT 1717 D STREET
and
SPECIAL PERMIT NO. 12037
FOR HISTORIC PRESERVATION
ON PROPERTY LOCATED AT
1717 D STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: December 12, 2012

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

The Clerk announced that the applicant has requested deferral of the public hearing until Wednesday, January 9, 2013.

Lust moved deferral, seconded by Hove, with continued public hearing and action scheduled for Wednesday, January 9, 2013, at 1:00 p.m. Motion carried 6-0: Lust, Weber, Gaylor Baird, Butcher, Hove and Cornelius voting 'yes'; Francis and Sunderman absent.

COUNTY COMPREHENSIVE PLAN CONFORMANCE NO. 12021,
TO REVIEW A PROPOSED CONSERVATION EASEMENT
AS TO CONFORMANCE WITH THE COMPREHENSIVE PLAN,
ON PROPERTY GENERALLY LOCATED
AT NORTH 1ST STREET AND RAYMOND ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: December 12, 2012

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

There were no ex parte communications disclosed.

Staff recommendation: A finding of conformance with the Comprehensive Plan, subject to removal of land for right-of-way from the proposed easement area.

Staff presentation: **Sara Hartzell of Planning staff** explained that this conservation easement lies in the Little Salt Creek basin, one of the primary saline wetland areas in the County and habitat area of the Salt Creek tiger beetle, a federally endangered species. This easement would protect that habitat as well as some very valuable upland virgin prairie that has never been tilled. The staff is recommending a finding of conformance with the Comprehensive Plan with a condition.

We are familiar with the environmental resources goals and strategies in the Comprehensive Plan in that we value our environmental resources for our endangered species, floodplains and wetlands, and that is the purpose of this easement. It would be held by the Nature Conservancy, which is allowed to hold such an easement, but before they can hold the easement it has to be brought to this body for conformance with Comprehensive Plan.

Hartzell explained that the ownership of the property is intended to be transferred to the Lower Platte South NRD. The easement agreement specifies how land uses will be protected and enhanced. It also specifies activities that are not allowed such as the construction of roads, other than paths and foot trails and the construction of “two-track” trails for maintenance of property. The provisions also prohibit wholesale removal of non-native plant species that are not diseased, indiscriminate spraying, row crops, etc. - anything that would conflict with the purpose of the easement.

The reason for the condition of approval, i.e. subject to removal of land for right-of-way from the proposed easement area, lies in the legal description of the properties. There are three parcels, one of which is completely internal to the section. Two of the parcels border on roadways. The legal description is written to name the parcels, but when you look at the metes and bounds description, you see that those lines actually extend out to the center line of 1st Street and West Raymond Road. The County Engineer has expressed concern because the easement provides that roads can be maintained but not widened or improved. The County Engineer could need additional right-of-way if they wanted to widen the roads. These easements can be amended or the County could go through eminent domain to move that line. However, the County’s preference would be to change the legal description in the conservation easement to pull that line back and obtain right-of-way without eminent domain. That is the purpose of the condition of approval.

Proponents

1. Chris Helzer, the eastern Nebraska program director for the **Nature Conservancy,** 805 N Street, Aurora, NE, presented the proposal stating that the Nature Conservancy is a nonprofit conservation organization, based in Virginia, with a state office in Nebraska. The Nature Conservancy has owned the land as three different parcels since the early 1990's. The intent was to conserve the saline wetlands as well as the native prairie. The intent is to assure that the land retains its value when it is transferred to the NRD. The easement will stay in place when the land is sold.

Helzer also explained that the land is part of a mitigation bank with Burlington Northern. When Burlington Northern expanded the Hobson yard in the 1990's, it impacted some of the saline wetlands and those wetlands were mitigated on this property. The Corps of Engineers is also involved because they want the mitigation bank to stay in place.

Helzer then referred to paragraph 3.15 of the easement agreement, which has been amended to provide that "Existing roads may be maintained and repaired and may be widened and improved as set forth in Neb. Rev. Stat. § 76-2,117(2)." Therefore, he does not believe there should be any concern by the County Engineer.

Cornelius confirmed that the position of the Nature Conservancy is that the needs of the County for widening roads is already in the easement document. Helzer agreed.

Support

1. Steve Seglin, attorney for Lower Platte South NRD, addressed the apparent concern with respect to widening the roadway. He stated that they have had numerous conversations with the County Attorney in attempting to satisfy the County on this matter. They have agreed to insert language in the easement which makes it abundantly clear that the County can acquire the right-of-way anytime they want under the existing law, notwithstanding anything to the contrary in the easement. Now he is hearing for the first time that the County is concerned that they don't want to condemn the property. The NRD has had a longstanding relationship with the County and they have acquired numerous rights-of-way and they have never forced the County to condemn the property, to his knowledge in 40 years. The NRD has always taken the County's first offer as to what they think the right-of-way is worth. This has been a very complicated transaction. And now to go back and change the whole transaction and take this right-of-way out of the easement just seems totally unnecessary and will further slow down the process. Seglin requested that the Planning Commission approve this conservation easement without any further changes.

Opposition

1. Richard Grabow appeared on behalf of the **Lancaster County Attorney**. He stated that he was not appearing in opposition but wanted to clarify the County Engineer's concern. In the event the County needs the right-of-way later on, the County does not want to have to deal with the Nature Conservancy in going through a full-blown condemnation. He believes the proposed NRD language will achieve that purpose. The County's preference would have been a complete removal of the right-of-way from the legal description, but the Nature Conservancy and NRD have indicated that is too onerous. The County does not want to have multiple parties to deal with if the County does need the right-of-way. The County agrees to engage in negotiations with the NRD and have the easement not apply at that point. He believes, however, that this has been accomplished with the revised language submitted to the Planning Commission today, i.e., that the road may be widened or improved as set forth in the Nebraska statutes.

Lust confirmed that the County is not suggesting that the proposed easement is not in conformance with the Comprehensive Plan. Grabow agreed. It is more just a matter of

making sure that in the future, if we need to widen the road, that we can do that without having to go through a full-blown condemnation.

Hartzell reiterated that the proposed conservation easement is in conformance with the Comprehensive Plan as far as conservation of environmental values, but roadways are also in the Comprehensive Plan and we do not want a conservation easement to be an impediment to future public purposes such as roads.

Lust inquired whether the revised language complies with the Comprehensive Plan. Hartzell had not had an opportunity to review the revised language, but if it allows widening of the road, then she would agree that it conforms with the Comprehensive Plan.

Rick Peo of City Law Department stated that he drafted the resolution for the Planning Commission to find conformity with two provisions: 1) the ability to improve or widen North 1st Street and West Raymond Road is preserved by excluding the area designated as future right-of-way from the easement or modify the easement to allow such improvements; and provided that 2) such exclusion or modification is acceptable to the County Engineer and County Attorney. The Planning Commission can approve the resolution as drafted based on the understanding that the prohibition of widening the road has been eliminated from the language in the easement.

Response by the Applicant

Helzer apologized. He did not realize that the Planning Commission and staff had not been provided with the revised language. This has been an ongoing process. The revised easement agreement was submitted for the record. The Nature Conservancy is in agreement with the NRD.

Grabow indicated the County is also now in agreement with the revised language.

ACTION BY PLANNING COMMISSION: December 12, 2012

Lust moved a finding of conformance, with the revised language submitted in the easement agreement, seconded by Hove.

Cornelius suggested that since the Commission has heard that there is language in the current version of the easement that covers and allows widening of these streets as allowed under State statute and that the County Attorney agrees, he is inclined to vote a finding of conformance.

Motion for finding of conformance with the Comprehensive Plan, subject to the revised language in the easement agreement, carried 6-0: Lust, Weber, Gaylor Baird, Butcher,

Hove and Cornelius voting 'yes'; Francis and Sunderman absent. This is a recommendation to the Lancaster County Board.

COMPREHENSIVE PLAN AMENDMENT NO. 12003;
COMPREHENSIVE PLAN CONFORMANCE NO. 12020,
THE "1ST & CORNHUSKER REDEVELOPMENT PLAN";
and
CHANGE OF ZONE NO. 12029,
ASCENTIA PLANNED UNIT DEVELOPMENT,
ON PROPERTY GENERALLY LOCATED
AT NORTH 1ST STREET AND CORNHUSKER HIGHWAY.
PUBLIC HEARING BEFORE PLANNING COMMISSION: December 12, 2012

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

There were no ex parte communications disclosed.

Staff recommendation: Approval of the Comprehensive Plan amendment; a finding of conformance with the Comprehensive Plan on the redevelopment plan; and conditional approval of the planned unit development.

Staff presentation: **David Landis, Director of Urban Development,** addressed the Redevelopment Plan, which is the second of three steps the City would take along with the owner in movement towards an ultimate redevelopment of the land. The first step was that the land has been declared blighted and substandard. The second is to outline a general area for the redevelopment area with plans representing a higher and better use than what is there today, and, if approved, the City would then negotiate a Redevelopment Agreement which would go before the City Council for approval of the use of TIF to assist in the public benefits and public enhancements that would accrue should there be redevelopment of the property.

The proposed Redevelopment Plan contains all the statutory elements and describes the public improvements that are identified as being appropriate. The public improvements are a series of changes in the roads. The roads are private inside the two developments other than Nance Avenue, which is a city road but it is gravel. The public improvements would include a right turn lane at 1st & Cornhusker Highway; conversion of 1st Street from three to four through lanes; right turn lane at 1st & Belmont; realign existing intersection between Saunders Avenue and W. Dawes Avenue; allow right-in, right-out at intersection of 1st and Furnas Avenue; and construct turn lanes on Adams Street. These improvements would handle any significant increase in traffic.

The private improvements which are outlined in the Redevelopment Plan which are necessary to be in the Plan include free-standing retail of up to 150,000 sq. ft., specialty retail at a little over 5,000 sq. ft.; 100-room hotel, fast food restaurant, and office space of 190,000 sq. ft. The reason it is important to have these improvements in the Redevelopment Plan is that should a developer step forward, should financing be available and should they wish to use TIF, the improvements must be outlined in the Plan as it is today. It is possible to amend the plan, but this is a vision for what could be done with this land. And if a developer was found, the City would be able to act consistent with this plan and then undertake the negotiation of a Redevelopment Agreement. If the developer wants to do something different, the Redevelopment Plan would have to be brought back to the Planning Commission.

Landis stated that there is no developer at the present time, but there is an owner who wishes to prepare to redevelop.

Landis pointed out that there are two controversial questions: 1) this is important land with 200+ household uses – changing that use which dispossesses those 200+ housing units – that is a considerable impact on the residents; and 2) what are the relocation options that are available? In the event the City was a party by offering TIF, and there were people living at this location at the time of the redevelopment agreement, the City would be responsible for relocation consistent with the Relocation Act and it would be a TIF expense. The City would have the obligation to see that relocation standards are met. If there are changes before there is a redevelopment agreement, the responsibility for relocation assistance would be the responsibility of the owner.

What about the change of land use? Landis pointed out that most of the mobile home owners have the situation of a 30-day lease, and if we were to describe the worst case scenario, it would be for the owner to say he was going to get out of business and the tenants would be required to move in 30 days. That is within the legal framework the owner would have. Landis also indicated that no one is suggesting this is what is going to happen, but that is what happens with leased land. That's the underlying relationship.

Landis reiterated that there is not a specific plan today, but the land is very well positioned for being consistent with improvement for entryway purposes; there is a property owner that can vision a higher and better use, and that higher and better use is consistent with what the City would want to have happen; that is, nodes like this at a major intersection on the entryway with mixed use development.

Lust commented that if there are no TIF funds used or if the City is not involved in the redevelopment process, there is no guarantee of any relocation assistance. Landis acknowledged that there is not a relocation provision in existing leases. The underlying agreement is between the landlord and the tenant. Lust inquired whether it is the redevelopment agreement which is the point at which the City would work with the

owner on relocation assistance. Landis suggested that the applicant should respond to this question; however, if somebody came to Urban Development for a Redevelopment Agreement and it required the relocation, it would be the City's obligation to have a relocation plan in place that meets federal and state law; however, that is only if the Redevelopment Agreement includes TIF financing. Landis does not have an example of any Redevelopment Agreement without TIF financing. Landis does not see that there is a requirement to use TIF in a Redevelopment Agreement but we would have every reason to do so because the purpose of the agreement is to access a financing tool.

Brandon Garrett of Planning staff discussed the Comprehensive Plan Amendment. The applicant has requested a land use map change. The current land use designation on the 2040 Comprehensive Plan future land use map is Urban Residential. The request is to change a portion of that area from Urban Residential to Commercial. The southern portion of the site is zoned H-3 and currently does have a commercial designation. The proposed PUD is showing a Commercial designation for the now Urban Residential area.

Garrett pointed out that page 6.5 of the Comprehensive Plan refers to mixed use redevelopment and the Nodes and Corridors Map does identify this general area as an appropriate site for mixed use redevelopment.

Garrett also pointed out that the Comprehensive Plan outlines different types of centers. There are neighborhood centers, community centers, regional centers, etc. In this case, the square footage proposed would fall in the range of a "community center", so the proposed Comprehensive Plan Amendment would also be adding a community center designation at this site at 1st & Cornhusker. It is a type of commercial center. Community centers are to be spaced throughout the community. There are no community centers designated in the whole general area of northwest Lincoln. The nearest is on North 84th Street. After that you would look to 14th & Yankee Hill Road.

Garrett stated that the staff has determined that the applicant's proposal for a land use map change from Urban Residential to Commercial and to add the community center designation would be appropriate.

Lust commented that just because we change the zoning and the land use map doesn't mean that anything will change immediately in the area. In other words, the existing dwelling units just become a nonconforming use at that point. Garrett responded, stating that the Comprehensive Plan outlines the future appropriate land use, so we are not talking about zoning. The Comprehensive Plan Amendment just covers the future appropriate use of the land.

Tom Cajka of Planning staff presented the proposed Ascentia Planned Unit Development. This application is for a change of zone from H-3 Highway Commercial and R-2 Residential to R-3 PUD on approximately 72 acres. The property is north of

Cornhusker Highway; the west boundary is 1st Street; the east boundary is 4th Street; and the north boundary is Adams Street. Currently, there are two mobile home parks on this property. The site is adjacent to single-family and two-family residential on the north and east; there is single-family residential and another mobile home park and some vacant property to the west; there is a small park; and to the south across Cornhusker Highway is Oak Lake Park.

Cajka explained that the proposed PUD proposes a 450-unit apartment complex, a hotel and 392,000 sq. ft. of commercial floor area, including both retail and office use. The site is shown as a mixed use redevelopment node in the Comprehensive Plan today. The proposed PUD would be classified as a "community center", which can range in size from 250,000 sq. ft. to 600,000 sq. ft. Currently, there are no community centers in the northeast part of Lincoln.

Cajka also explained that the proposed PUD will require street improvements, including a traffic signal at 1st & Belmont; westbound dual left turn lanes at 1st & Belmont; right turn lane from N. 1st Street to Belmont Avenue; right hand turn lane from Cornhusker Highway to N. 1st Street; turn lanes in other interior streets and widening of 1st Street.

The PUD proposes design standards including pedestrian orientation, streetscapes, landscaping, siting of buildings and facades, and types of building materials to be used. This is an entryway corridor into Lincoln so the staff believes that some site design standards are appropriate to enhance this area.

Cajka then addressed the waivers being requested by the applicant:

1) information accompanying a preliminary plat to be submitted with an administrative amendment. This information would be more detailed plans such as grading and drainage, street profiles, utility plans and a more detailed site plan – this is a typical waiver with a PUD.

2) allow block lengths to exceed 1,320 feet. This waiver is acceptable due to the large commercial center plus there is a large drainageway that cuts through the property. Being bounded on one side by Cornhusker Highway prohibits any access to Cornhusker Highway.

3) parking in side yard. This waiver is standard in large commercial areas.

4) to allow cross-parking between lots in Area 1. This is common in large commercial centers where the parking does not necessarily have to be on your own lot with shared parking across lot lines.

Cajka stated that this proposal for a mixed use development and the proposed design standards could be a significant improvement to the area and entryway to Lincoln. It will provide needed services in northeast Lincoln.

Gaylor Baird understands the waiver of the block length on the side of the property that is along Cornhusker Highway, but she wonders whether it makes sense to have those sorts of waivers on the interior connected to the commercial areas which are supposed to be pedestrian-oriented. Cajka suggested that the internal street pattern could change in the future, but they are limited to access points on 1st Street and creating more streets crossing the drainage ditch is a substantial cost. A large apartment complex would not have a lot of streets.

Proponents

1. Mike Eckert of Civil Design Group appeared on behalf of the applicant. His firm was engaged by the applicant over a year ago to begin the process of looking at this property, i.e. how can we go about the process of getting the zoning in place so that they are ready to market the property at some point in the future. The off-site improvements have been determined and they have already agreed with staff on some design standards.

The role of Civil Design Group was to do the traffic study with more traffic study issues requested by staff, and they also worked on some design issues in order to establish hypothetical uses for the traffic study. As part of that, Eckert feels very good about the agreements they have reached with staff on the off-site improvements and believes this was a good approach. What is going to happen is out in the future. The developer will decide when to market this property.

Gaylor Baird inquired as to why the block length waiver is necessary. Eckert stated that it depends on how the block lengths get set up in the commercial area. It is unlikely that it will be broken but the applicant wanted to be able to do that if it becomes necessary.

Eckert also pointed out that there was a significant amount of work done on the hydrology. The drainage areas are shown as preserved minimum corridor areas.

With regard to the block length waiver, Cornelius believes they are usually discussed with respect to things like pedestrian easements and orientation. He is concerned about the design standard for pedestrian orientation and how that may or may not conflict with the waiver. He is hearing that there are separate conceptual units of development with pedestrian movements internally that might be divided by roadways that exceed the block length limit. Is that correct? Eckert responded yes, potentially, but the standard for pedestrian way easements is different than block length. We are not asking for a waiver of the pedestrian way easement, which is 1,000 ft.

2. Tom Huston, 233 S. 13th Street, Suite 1900, appeared on behalf of **Ascentia Real Estate** and its affiliates, **Countryside Mobile Home Park and Lincoln Mobile Home Park.** The PUD is a conceptual PUD – it does not have specific site planning tools, which is intentional. Rarely do we have clients with this kind of foresight – with a 5- to 10-year perspective in a planning process. That's what is happening here. The real matters of interest deal with the property, his client's plan for the property and the effect on the residents of the two mobile home parks. His client does not have a project planned or contemplated at this point. He is taking a 5- to 10-year perspective in planning for the future. His client recognizes it is unrealistic that the property will remain as it exists today, and he is trying to plan for higher and better use at some point in the future. He is trying to get some perspective on the requirement for internal and off-site improvements. It has been a planning exercise. He understands the concerns of the residents.

Huston stated that to date, his client has informed him that originally there was a letter sent to the residents in March, accompanied by a community meeting held on April 3rd. Another letter was sent in August, with another meeting held on August 29th. At those meetings, the owner pledged: 1) that they would continue to communicate with the residents; 2) that there are no current plans for the property; 3) that there would be a minimum of three months notice before any change would occur; 4) that any redevelopment would occur in phases, if at all; and 4) promised that the residents will be provided assistance with several options, including financial support.

Huston acknowledged that if his client asks for TIF funding, that would implicate the relocation rights; however, his client plans to implement a private relocation plan, excluding involvement of the City. His client has also pledged that any private relocation would comply with all statutory requirements.

Huston advised that there are a total of 420 lots or pad sites within the property. As of December 1, 2012, 274 of those lots are occupied, leaving 146 vacant lots. The owners of the property also own the adjacent mobile home park located west of N. 1st Street, i.e. Gaslight Village, with 137 vacant lots as of December 1, 2012. There are 274 occupied lots within the two mobile home parks, of which 14 of those lots contain mobile homes that are owned by the property owner. What are the rights relative to the residents that could be affected? Huston interprets that there are three possible profiles and scenarios:

> 1) pure renters – individuals that do not own the mobile home, renting as it is situated on a lot owned by the owner. Under the regulations, there are two aspects that would be available. There is a supplemental to cover the differential in the cost of rent and utilities for up to 42 months, capped at $5,250. For example, if the existing rent for a mobile is $1,000/month, and for a comparable property in a different mobile home park the rent is $1,100/month, that $100 differential is a part of the supplement calculated for up to 42 months, i.e. $4,200

available as part of the relocation package. In addition, the statute makes clear that the renter is also entitled to actual and reasonable costs to move personal property within a 50-mile radius.

2) moving homeowners – homeowners that own the mobile home that would be moving the mobile home to a different facility, hopefully Gaslight Village. This type of homeowner would be entitled to a similar type of benefit, i.e. a supplement to cover the differential of increased rent and utilities for 42 months, capped at $5,250. In addition, they are entitled to actual and reasonable costs to move the mobile home and personal property. The base cost starts around $1500 to move the mobile home – in addition, there are costs to moving decks, fences, car ports, etc. This type of profile that would be relocating the mobile home is entitled to that cost plus the rent differential.

3) remaining owners - because of the condition of the property or because they choose not to move the mobile home. There are mobile homes that are in deteriorating condition that are not capable of being moved. The statute provides a third level of benefit including the two above, plus a supplement to cover increased cost of acquiring a comparable replacement mobile home, subject to cap of $22,500. Huston interprets that it is really the cost of a comparable mobile home, less any salvage value of a home that cannot be moved.

Before his client considers repositioning this property, Huston stated that he wants to design and implement his own private relocation plan based upon the federal and state standards before a redevelopment project would move forward. His client has promised to stand by these standards.

Lust appreciates the outline of relocation benefits, but when the words “pledge and promise” are used, what enforcement mechanism is available for that pledge or promise? How do we have any guarantees? Huston suggested that the City does not have to approve any redevelopment agreement unless his client has honored the commitment and pledge. Without a private relocation plan, then all of the residents would be eligible for the benefits described. Lust pointed out that if the City is not involved in the redevelopment agreement, the City does not have to come up with a relocation plan. The private owner can do what he wants. Huston’s response was that he has never met a developer that would walk away from the TIF opportunity. The cost of the infrastructure will necessarily implicate TIF. Lust confirmed then that there is no enforcement mechanism. Huston suggested that his client would not be going through this process if TIF were not involved.

Eckert offered that the off-site improvements are over one million dollars. The developer anticipates the TIF will be used to assist in the payment of that. Would he forego potential TIF dollars and still be stuck with those obligations? Eckert suggested that it would be very unusual for someone to not utilize that tool.

Butcher wondered whether there are properties which might fall under multiple categories, such as some subleasing? Huston thinks that is possible but his client does not have any knowledge of any subleases. The benefits may be allocated a little differently but they would still be basically the same.

Cornelius asked Huston about the level of resident participation in the neighborhood meetings. Huston did not have the information.

Cornelius inquired whether there is an estimate or projection for the cost to implement the private relocation plan. Huston believes it would be over seven million dollars.

Lust inquired about the letters that were distributed to the mobile home owners. Huston did not have them with him to share. Huston did not know how the letters were distributed.

Opposition

1. Raul Alvarado, 267 Belmont Avenue, testified in opposition. He has lived there for three years. He owns his trailer and pays $350/month for lot rent. He lives there because it is cheap. He can't afford anything more. He suggested that the issue should be fixing the dirt road that makes everything look like a ghetto and dusty. His parents work hard and his father just built a shed for his house and now they are talking about us having to leave. It is not right. Please take this into consideration. He did receive the notice on his windshield. He did not receive anything in the mail. He did not attend the neighborhood meeting because he did not know about it.

2. Ema Gonzales, 275 Furnas Avenue, testified in opposition. She has lived there for eight years. She suggested that there are not very many people at this hearing because many of the residents do not speak English and they do not understand what the letters says. What can I do? Where do I move? I have three children.

3. Helen (?), resident of 258 Garber Avenue, testified in opposition. She purchased the mobile home for $2,000. It was in a very disgusting situation and she has remodeled and spent all of her savings ($8,000) to remodel. People do not understand the language. They need to at least take the time to make them understand. They need to understand that we are low income families.

Butcher asked how many of the residents are Latinos. Helen did not know but some are from Honduras, Guatemala, Mexico. She has been there for one year. The biggest concern is that the owner needs to understand that they do not speak the language. Why do they not take time to have a good meeting and talk about it? It is like someone is coming to destroy our home with a bomb and we don't know when. She knocked on doors to tell people about this hearing but they cannot take off work.

4. Steve Rogers, 2612 N. 3rd, testified in opposition. He has lived in the neighborhood for 15 years. His is an older home, which he fears will not be able to be moved. It is a double-wide and he does not know the condition underneath. The house is 35 years old. He has been somewhat reassured today with at least the appearance that there may be relocation plans or help. If they said, "let's relocate you today, we'll pay for it and get you moved," he would go for it today. It sounds positive, at least more than he thought, but he is still concerned. He would like more reassurance.

5. Yolande, DeLeon, 2700 N. 2nd Street in Woodlawn Estates, testified in opposition. She has lived there about 3 years and she is on disability. She had to retire from teaching and she has used her entire retirement fixing up her mobile home. It might not be able to be moved because it is a 1974 trailer and she is sick to her stomach because she has put $15,000 into it. She found a letter underneath a rock on her steps. She just had her bathroom redone for $5,000. This is not right.

6. Jaime Gomez, 2734 Candlewood Lane, testified in opposition. He has lived there for 14 years, and he lives week-to-week. He does not have any money to move the trailer. The other people didn't come because they don't speak English.

7. April Robinson, 318 Countryside Lane, agreed with the opposition. She moved in a year go and her husband has remodeled the whole trailer. They purchased it for $2,000 and it's probably now worth $8,000 or $9,000.

8. Rosa Hernandez, 2320 N. 3rd, testified in opposition. She has four children and they are very sad and worried about what is going to happen.

9. Kathleen Jenkins, testified on behalf of her parents who live at 215 Belmont. Basically, if they can be assured that the owner has honorable intentions and wishes to comply with what has been presented, then that will take their worries away. Unfortunately, things change and you cannot make people be honorable. Her parents are retired, on a very limited income and not well. They worry about these things and by the manner of communication, they do not know what is going on. It would help if they could have clear direction of what's happening.

Cornelius asked Jenkins how the owner should communicate. Jenkins suggested that the letter should be mailed several weeks in advance. Putting the letter on the windshield just doesn't work.

10. Yolanda Arroyo, 245 Alexander Road, testified in opposition. She came to the meeting because she does not know what is going to happen. She has lived there for 22 years, and she knows Lincoln is growing and getting beautiful. She is a single parent with two children, and she works really hard to have what she has. She is afraid. She would like to know more information of what's going to happen by turning that into a commercial area. It will look beautiful but what's going to happen to us? She is

comfortable where she is. She has remodeled. She has put everything into the house. What is going to happen with all of that? What am I going to do? If they will tell me there is a beautiful house for my children, I am happy. But who is going to provide it? Are they going to buy the mobile homes? There are a lot of Latinos that do not speak or read English. Where am I going to go when they tell me I have 30 days to move out?

Cornelius wondered whether Ms. Arroyo feels better now after the information that has been provided at this hearing. Ms. Arroyo stated that she needs more information.

Ms. Arroyo had the letter from the Planning Department advising her of this hearing. Butcher asked whether she had received any of the letters from the owner. She does not remember seeing any other letters. She heard from people talking about it.

Response by the Applicant

If the Planning Commission supports these applications today, Huston stated that he will recommend to his client that the City Council hearing be deferred until at least one more resident meeting is held where they can do a better job of notifying people and have some interpreters available.

COMPREHENSIVE PLAN AMENDMENT NO. 12003
ACTION BY PLANNING COMMISSION: December 12, 2012

Hove moved approval, seconded by Cornelius for purposes of discussion.

Lust stated that she is really torn on this action. When the Planning Commission discussed the blight study, they were all very concerned that the finding of blight wasn't going to benefit the residents that were living there. She certainly understands the existing situation that all of these people could be evicted with 30 days notice anyway, but it is very concerning that we're going forward with a process that is likely to use city tax dollars that is likely to displace people that are trying to do the right thing by investing in their own homes that they can afford; they have improved those homes; and just because the land use wants to change they may be displaced. She is somewhat comforted that there is relocation assistance available and happy that the owner's counsel is gong to recommend additional neighborhood meetings. If the residents have some reassurance about what is going to happen; that this is long term planning – years in the future; that there is relocation assistance available; if they had an understanding of how their homes could be moved, etc., Lust believes that would eliminate a lot of the concerns she has about the process. That said, she is going to support the applications that are before the Commission today, with the understanding that the applicant will defer City Council approval while they meet with the residents and explain to them what is going to happen, with interpreters present. She is hearing a lot of fear. If that can be alleviated, this process may turn out well for everyone involved.

Weber agreed. There is a lot of fear and confusion, and a lot of miscommunication. A lot of the fears can be helped by better communication in the future and explaining in detail what could happen whenever this might redevelop and that there is assistance available. Right now, a lot of people think they will be out on the street and no one here wants that to happen. He will vote in favor with the hope that the owner will communicate and answer questions and help people with their fears.

Gaylor Baird agreed with Lust. It might be helpful to the residents if the applicant would also provide more interpretation and if the letters about the meeting would be bilingual as well so that they can be mailed and understood.

Weber suggested that the time of the meetings with the residents ~~the Council hearing~~ be considered in terms of residents who work during the day, etc. **(**As amended on 1/09/13****

Hove stated that he will support the motion, also with the understanding that there will be relocation plans and following through with communication.

Butcher pointed out that the Commission is not here to define the contractual agreements between the homeowners and the landowner. It is an unfortunate situation that exists. Clearly, he also agrees that there needs to be as much open communication as possible in regard to the meetings, but his hope is that we don't find ourselves in a situation where a few months down the line some of these expectations are not followed through. He strongly, strongly encouraged the applicant to follow through on the guarantees and hold true.

Cornelius agreed. It is unfortunate that the Commission has been very focused on the relocation issue because the other side of the coin is that the applicant should be commended on the foresight to look into the future – to take a very long planning horizon of five to ten years and to try to line up everything to make this happen with the minimal amount of upheaval for the residents. It is unfortunate that because of barriers to communication, we have arrived at this moment where we are asked to vote with a fair amount of opposition and fear. He will support with the understanding that there will be letters in the languages involved delivered through the mail, and that the meetings will be at times when people can attend and that their fears can be allayed as this project moves forward.

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

COMPREHENSIVE PLAN CONFORMANCE NO. 12020
ACTION BY PLANNING COMMISSION: December 12, 2012

Lust moved to approve a finding of conformance with the Comprehensive Plan, seconded by Hove and carried 6-0: Lust, Weber, Gaylor Baird, Butcher, Hove and Cornelius voting 'yes'; Francis and Sunderman absent. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 12029
ASCENTIA PLANNED UNIT DEVELOPMENT
ACTION BY PLANNING COMMISSION: December 12, 2012

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

Cornelius expressed his frustration with not being able to provide reassurance to the residents because of language barriers. He stated that he will still support the proposal but it does give him pause.

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

COMPREHENSIVE PLAN AMENDMENT NO. 12004
and
SPECIAL PERMIT NO. 12035
FOR A SCRAP PROCESSING AND SALVAGE OPERATION
ON PROPERTY GENERALLY LOCATED AT
NW 48TH STREET AND W. CUMING STREET
(4400 W. WEBSTER STREET).
PUBLIC HEARING BEFORE PLANNING COMMISSION: December 12, 2012

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

There were no ex parte communications disclosed.

Staff recommendation: Approval of the comprehensive plan amendment and conditional approval of the special permit.

Staff presentation: **Brandon Garrett of Planning staff** explained that the proposed comprehensive plan amendment is requested in conjunction with the special permit for a salvage yard generally located northwest of the Airport, just south of the future service limit and west of the industrial park. The proposal is to change the land use designation

from Green Space to Industrial. The land is currently owned by the Airport Authority and zoned I-1 Industrial. The future service limit is just a little bit to the north, with future land use designation of AG. The staff believes this is an appropriate change in land use and future use of the property with a special permit. The area of the special permit roughly overlaps an area that was used as a fuel depot or fuel storage area. The storage units are gone but it is assumed to be a Brownfield site so a salvage yard is a very appropriate re-use of that land versus future green space or parks, and the city has no intention to expand the Bowling Lake Park to the north of this location.

Lust inquired about the adjacent public and semi-public lands. Garrett stated that the Airport Authority owns this land and the Airport property. The public and semi-public designation is essentially the larger area for the Airport with environmental resources for the creek in the middle. Just to the east is industrial designation and the existing Bowling Lake Park. It is used as a park with no intention of expanding.

Gaylor Baird requested Garrett to explain what it means to be able to use a “Brownfield” site and how that has value. Garrett explained that it is considered a Brownfield site because it was used in the past for fuel storage with potential contamination of the soil. But to be able to find a business that can utilize this site is a win-win. A salvage yard is as good a use as any you would be able to find for a Brownfield site.

Lust asked for further explanation of a Brownfield site. Garrett described it as one that has been polluted through various means – fuel, chemicals, etc.

Tom Cajka of Planning staff explained the special permit for a salvage yard on the site. NW 48th Street is located on the west, Bowling Lake and Cuming Street to the south, and it is sort of at the end of NW 44th Street. The property is zoned I-1 and salvage yards are allowed in this district by special permit. The proposed site is also shown as a light industrial center in the 2040 Comprehensive Plan. The applicant currently operates two other sites in this general area with special permits. With the approval of this permit, the applicant would be combining those two operations and moving them to this site. NDEQ currently monitors the site and will continue to monitor to determine if there is any contaminated soil that has to be removed. The applicant is also working with the City and Public Works to extend water and sewer service to the site about 800 feet up 44th Street.

In addition to the special permit, there are other city requirements for salvage yards which are monitored by Health Department.

One of the requirements of a salvage operation is to screen the site. The application shows an 8' solid fence around the perimeter of the site, which does meet the minimum city design standards. However, Planning staff did have some concerns with the visual impact on other areas, especially with Bowling Lake Park to the south. The applicant’s previous special permit required evergreen trees in front of the fence. The salvage is

currently much higher than the trees, but the trees will eventually shield the rubbage. Because of the elevation changes at this time, the staff is recommending deciduous trees along the fence line to the south rather than evergreen trees. The staff is not requesting any kind of screening trees to the west because NW 48th sits so much higher. The staff is requesting the tree screen on the north and south side. The area of the special permit is a little bit south of the property line, and staff believes that some screening to the private property would be a good condition and amenity for the area.

Gaylor Baird does not believe that either of the tree options are especially effective because you don't get great coverage. Is there anything about the height of the scrap pile that is regulated? Cajka advised that the previous special permit did have a condition that the salvage material not exceed 25', and that condition has been included in this special permit as well.

Proponents

1. David Borsuk of Sadoff Iron and Metal indicated that this is their third opportunity to work with the city staff and he personally thanked city staff for guiding him through this process.

Borsuk appeared 12 years ago for a special permit for a salvage yard at 5510 NW 39th. During the years, that facility has been expanded and they opened another facility one block south at 5020 NW 39th. These two facilities are no longer adequate, so Sadoff worked with Lincoln Airport Authority for this site. This site presents a unique opportunity for the Airport Authority, the city and Sadoff. This Brownfield site will be redeveloped and put on the tax rolls. It provides economic growth for all parties. The building and site improvements will exceed four million dollars and the building alone will be two million dollars.

Sadoff anticipates doubling their employment in addition to purchasing additional trucks, trailers, cranes and processing equipment. The success in Lincoln is a textbook example of economic development. Because of their success in Lincoln, they were able to purchase a company in Omaha. Borsuk suggested that this 12-year progression is consistent with the Comprehensive Plan for both economic development and Brownfield redevelopment.

Borsuk stated that the applicant is in general agreement with the staff report and recommendation, although they do have several concerns. Item #5 in the Analysis talks about completion of utility service to the property before building permit is issued. (However, this is not a condition of approval). Sadoff is aware that the Airport Authority and their design engineer are designing that process and he believes that the construction will begin in March. Sadoff would like to be in the ground next month.

Condition #1.4 requires the applicant to “Identify the scrap storage and future scrap storage area on the site plan”. Borsuk believes that they already show the scrap storage areas and he is not sure what is meant by the showing of “future scrap storage”. Perhaps the staff is wanting them to show what it is going to look like at full buildout, but not all of the property is going to be used.

The applicant is requesting that Condition #1.6 be deleted, which requires the planting of deciduous shade trees along the northern and southern boundary of the site. This is the biggest concern to the applicant. The site is defined by the chain link security fence, and the applicant has committed to install an 8‘ steel fence. In order to plant trees as requested, the applicant would need to provide a 30-45 ft. wide strip the full length of the property. If required to do this internally, inside the property limits, it would make the site unusable as it would impair the truck turning radius to service the warehouse. The trees could not be located in the green strip because that is part of the stormwater management plan and would require redesigning the stormwater management pond. Locating outside the fence line would require not only leasing additional property, but it would create additional stormwater issues as the conveyance system of ditches that control runoff from the west would then be the applicant’s responsibility. The applicant would then be responsible for all stormwater testing and stormwater quality. More important, it would take 15-20 years before these trees would have any desired effect on height and coverage. Borsuk referred to the letter sent to Planning staff by the applicant’s design engineer dated December 5, 2012, which outlines these concerns.

Borsuk then referred to the 25' maximum height for the stored salvage material set forth in condition #1.7. This condition was a carryover from the special permit granted 12 years ago and does not reflect the current operation needs of Sadoff.

Cornelius inquired when these issues were identified by the applicant. Borsuk stated that they only received the staff report and recommendation either Thursday afternoon or Friday morning of last week.

Hove inquired whether Sadoff would be vacating the existing facilities, Borsuk indicated that they would. The proposed site would be a consolidation of those two facilities. The other sites will be redeveloped for other uses within the Airport.

Borsuk added that Sadoff is working with DEQ as well as the Corps of Engineers on the Brownfield area. The entire area of scrap processing will be concreted. In addition, they will be bringing a city-type street sweeper to sweep the property to minimize dust and stormwater runoff. He also clarified that this area is not in the floodplain.

Lust inquired whether the applicant has discussed the clarifications with city staff. Borsuk stated that they have not because they were not aware of these issues until last Friday.

Given the number of questions, Cornelius wondered whether the applicant would be amenable to deferral until January 9th to address those issues. Borsuk stated that it would depend on the resolution of the issues. They are scheduled to be at bid opening next week and they would like to be in the ground, but if that was the only way to address it, the deferral would be better than having incomplete answers and incomplete action.

Support

1. John Wood, Executive Director for **Lincoln Airport Authority,** testified in support and on behalf of the applicant. This site was selected because this is a company that the Airport Authority has worked with for over 12 years and they have been an exemplary tenant. They now want to grow and invest several million dollars in the community and we are ready to help them do that. This site has major rail access; it is contaminated – it has fuel in it – there is no question about it. The tenant is not responsible for the existing condition. There are existing monitoring wells out there. Some will be closed and others will be relocated and it will continue to be monitored by the Corps. If it wasn't for this user, the site would probably remain as is for years, if not decades into the future. The fact that we have a tenant willing to go to the extra work and effort to work with these environmental issues, it's a win-win. Geographically, it is located in a remote corner of Airpark. It just makes a lot of sense.

With regard to the question about trees, Wood stated that the Airport Authority is in support of Sadoff's request not to have to plant the trees. Currently, the Airport Authority has several tenants with outside storage and none of them are required to have any vegetative screening. It is I-1 heavy industry. Sadoff's closest industrial neighbor is Weathercraft Roofing with an outside storage yard for their material. They are closer to Bowling Lake and more visible from Bowling Lake and they have been there for 7 or 8 years. It has not caused a problem, nor a complaint. The Airport Authority is the landowner/landlord for all of the property surrounding the site. The area to the north is also Airport Authority property. The only area that is owned privately is the area off to the northwest of the property, where there is a substantial natural tree mass sitting on that property. All the land around it is zoned I-1, heavy industrial. There is clearly potential for additional heavy industrial development in this area.

Hove inquired as to the plans for the two sites that will be vacated. Wood stated that one is located in a designated redevelopment area near Lincoln Composites. That will be cleaned up in the next year or so. As soon as Sadoff is off that site, those facilities will be demolished to make it shovel ready for future development. The second site is a building that will be put up for lease.

2. Bill Austin attorney with the law firm of Erickson and Sederstrom, appeared as legal counsel for the **Lincoln Airport Authority.** He submitted some proposed technical amendments to the resolution, requesting to delete the reference to the Airport Authority

as the permittee. He understands that it is customary for the City to include the owner as the permittee, but the Airport Authority is not the owner of the property. The City transferred this property to the Airport Authority in 1959 and the Airport Authority has custody and control of the property but the legal title remains with the City.

Therefore, Austin requested that the requirement to record the resolution with the Register of Deeds be deleted. This was a mass transfer of property by the City to the Airport Authority. There are no clearly delineated legal descriptions to attach to this special permit so when filed with the Register of Deeds, it will look like it is affecting the entire section. The Airport Authority would rather not have this filed and indexed against a whole quarter section of land. Austin has discussed this with Rick Peo of the City Law Department and they will resolve this issue by putting a memorandum on file that specifically states that this permit is affecting only a limited piece of ground.

There was no testimony in opposition.

Staff questions

Lust inquired of staff about the solution for filing of the resolution. Rick Peo believes perhaps that a letter of acceptance can be recorded which refers to the specific portion of the property affected. He has no objection to eliminating the Lincoln Airport Authority from the resolution itself.

Lust inquired whether a deferral is necessary. Would the staff want to defer to work out the conditions with the applicant? What is staff's position on the tree planting and whether that is typically required? And what about the 25' height limit? Cajka believes there might have been some confusion between what is required on a site plan for a special permit versus what is required for the building permit. The applicant has actually submitted more than is required. Planning would like to have everything on one sheet and one site plan. The applicant has submitted several pages including a grading and drainage plan and some other plans. Condition #1.1 through #1.5 will satisfy the Planning Department if everything can be shown on one site plan.

As far as the deciduous trees in Condition #1.6, Cajka pointed out that there is a lake/park to the south and a different property owner to the north. If this was completely in an industrial area, the staff would probably not be asking for the additional screening. The fence that is shown does meet the minimum City design standards. The trees would be additional screening which he believes is appropriate in this case.

With regard to the height of the salvage materials, Cajka suggested that 25' was appropriate on the other special permit and he thinks it is appropriate here so that we do not end up with a mountain of scrap.

Lust wondered about the utility extension set forth in #5 in the analysis. Dennis Bartels of Public Works indicated that this is typically a condition of a building permit. Building & Safety would have to give us an opinion as to at what point in time the fire protection has to be there. They will want some fire protection during the building process. The applicant has requested authority to construct the sewer and water and that is in the process. He did not know that Public Works would say it has to all be in place before the grading process can begin, but he knows the Fire Department will have concerns at some point in the process that they have adequate fire protection during the building process. Bartels pointed out that this is not a condition of approval of the special permit, but the building permit may require that services be extended to the parcel.

Cornelius wondered whether there are other industrial sites visible from Bowling Lake with external storage that do not require screening. Cajka referred to Weathercraft, but it is an allowed use in I-1 and does not require a special permit.

Marvin Krout, Director of Planning, stated that there should be an attempt made from the enjoyment of the lake and park area to try to screen the 25' height. It is a relatively short distance. There was some discussion about where this would be located and would it require more of a leased area and would it interfere with some of the drainage. Krout was not familiar with the details of the area, but there should be a way to locate some trees so that they do not interfere with the drainage. Perhaps the Airport Authority would be willing to accept trees outside of the leased area. Krout did not realize the portion to the north was also owned by the Airport Authority. The area to the west is well-screened. He agreed that a compromise on the trees would be possible on the north side.

Cornelius pointed out that with an 8' fence and some trees with a 20' pile, the trees hardly make any difference. Krout pointed out that evergreen trees grow more slowly than deciduous trees. All of the screening would be up higher. CVS was required to plant 18' trees. Hopefully this tenant will be here for a long time and those trees and the use of the park land will be there for a long time as well. Krout believes that this should be resolved today because Sadoff does have plans in process. He suggested that the applicant be asked about an acceptable height and that the Airport Authority be asked about the idea of planting some trees on their property to the south of this area.

Wood stated that the Airport Authority does not care if someone plants trees on their property, but from a practical standpoint, if you want to screen the view from the lake, it would be better to plant the trees up on the park instead of trying to hide the pile. Krout indicated that the staff would work informally with the Airport Authority on a solution.

Response by the Applicant

Borsuk requested a height limit of 40'. He would also agree to transplant the pine trees from the existing site. He agreed to revise the site plan as requested. The building

being constructed is a tilt-up concrete building that does not even need to be sprinkled. It is non-combustible.

COMPREHENSIVE PLAN AMENDMENT NO. 12004
ACTION BY PLANNING COMMISSION: December 12, 2012

Lust moved approval, seconded by Hove.

Cornelius commented that it might seem at first that there is a fairly radical change from green space to industrial on the land use map; however, we have learned that we are really dealing with a Brownfield site which is difficult to make provide public good as green space and he believes this is a good change for the area.

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

SPECIAL PERMIT NO. 12035
ACTION BY PLANNING COMMISSION: December 12, 2012

Hove moved to approve the staff recommendation of conditional approval, seconded by Weber.

Lust moved to amend by adopting the amendments to the resolution proposed by the Airport Authority's counsel concerning the items outlined in their motion to amend; to delete Condition #1.6; and to amend Condition #1.7 to change the maximum height from 25' to 40', seconded by Hove.

Motion to amend carried 6-0: Lust, Weber, Gaylor Baird, Butcher, Hove and Cornelius voting 'yes'; Francis and Sunderman absent.

Lust believes this is a good use for a Brownfield area.

Cornelius stated that he is hopeful to see fruit from the discussions between the Airport Authority and the Planning Department because he agrees that moving the trees closer to the park is a better idea. 40' is pretty tall, but he will support the motion.

Main motion, as amended, carried 6-0: Lust, Weber, Gaylor Baird, Butcher, Hove and Cornelius voting 'yes'; Francis and Sunderman absent. This is a final action, unless appealed to the City Council within 14 days.

CHANGE OF ZONE NO. 12021,
INTERSTATE LAND PLANNED UNIT DEVELOPMENT,
ON PROPERTY GENERALLY LOCATED AT
N.W. 12TH STREET AND CORNHUSKER HIGHWAY.
PUBLIC HEARING BEFORE PLANNING COMMISSION: December 12, 2012

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

There were no ex parte communications disclosed.

Staff recommendation: Denial.

Staff presentation: **Tom Cajka of Planning staff** explained that this is a proposal for change of zone from I-1 Industrial to a R-3 PUD. The site is located southeast of I-80, with Capitol Beach to the south and railroad tracks on the east side. The applicant has submitted two options for development of this property. Option A shows two hotels, a campground, cemetery and recreational employment center. Option B is similar except that it shows multi-family and a new road accessing Cornhusker Highway.

Cajka explained that the residential uses include multi-family and the campground. The Health Department does not support these types of uses at this location, specifically because of the proximity to other industrial zoned land and the railroad tracks. The new street in Option B would be an at-grade crossing at the railroad tracks and it would also cross a piece of property that is owned by Pfizer. There is a letter from Pfizer's attorney in the record stating that they have not consented to such a road and Pfizer is opposed to the application. The Planning Department has also received a letter from the representative of Union Pacific Railroad, also stating that Union Pacific does not consent to any crossing and the issue of the crossing is currently being litigated in the District Court of Lancaster County. Union Pacific also notes that the development does not meet their guidelines for separation between residential and other similar type uses, which is 1,000 feet. In addition, the at-grade crossing would be contradictory to the efforts of the Railroad Transportation Safety District to eliminate at-grade crossings. They have worked for years to eliminate at-grade crossings and do not support adding one. Eliminating at-grade crossings is also an objective of the 2040 Comprehensive Plan. Subsequent to the writing of the staff report, the Planning Department received information from the Department of Transportation reporting total daily train movements of 2 trains per day on this track.

Cajka pointed out that the only uses proposed that are not allowed in the I-1 district are the residential and the campground. The other uses proposed are allowed by right in the I-1 district.

Cajka reminded the Commission that the intent of a planned unit development is to promote public convenience necessity; protect the health, safety and welfare; to implement the goals and policies of the Comprehensive Plan; to permit flexibility in the regulation of land development; encourage innovation in land use, variety in design, layout and type of construction; and encourage the economy and efficiency in land use, natural resources, the provision of public services and utilities and the preservation of open space. A PUD is usually used for mixed use type developments with the mixed uses generally being a combination of residential/commercial/office, and not necessarily all three. The staff's opinion is that this proposal does not promote the health and safety by locating residential uses and a campground in close proximity to railroad tracks and industrial zoning. A train could block both access points.

Cajka went on to state that this site is also shown as industrial in the future land use plan and is shown as a moderate-to-heavy industrial center. The site lacks adequate road capacity and connection to existing neighborhoods and walkability. It would be fairly isolated.

Cajka pointed out that the Lincoln Airport Authority also has concerns – the area is located in an inner approach zone and is on an extended centerline of the runway. They would have low flying aircraft overhead on takeoffs and landings.

Cajka also stated that although fill has been brought into certain parts, the land is still designated in the floodplain. The owner has not done a letter of map revision to take those areas out of the 100-year floodplain.

In summary, Cajka observed that the site is next to railroad tracks, I-80, and industrial zoning; there is an electric substation to the north; and it is in the floodplain with only one access point that crosses a railroad track. All of this combined results in a poor site for residential and campground. The area should remain for light industrial or employment center type uses and remain I-1 zoning. Therefore, staff is recommending denial of this application.

Proponents

1. Peter Katt appeared on behalf of the applicant, explaining that this is a conceptual plan, not one that has a lot of detail. Jim Sherrets has owned the property for over a decade, and there is not a whole lot of difference today than 10 years ago.

2. Jim Sherrets, owner of the property, stated that he has made substantial investments in the site, a number of which have been for public benefit, e.g. nearly two million dollars and land has gone for the widening of Oak Creek for flood protection; it was done in good faith by interlocal agreement and he essentially paid for half of the project. The site was also used as a good faith effort for a fill location for Capitol Beach, which was silting in and they needed a place to put the soil. He has waited 12 years for

someone to express an interest in acquiring the property. The City was showing it all as floodway, which he believes was a mistake on their maps,. He literally had to sue the Corps to get them to change their map. The new Arena will help with the demand. It is a good site for hotels, some multi-family, for some assisted living and some nursing home locations. He has been in contact with an Omaha developer who is interested in putting in some low income housing, assisted living and nursing homes.

Sherrets stated that the site is "next to the planes" in the corridor. He is not worried about height restrictions.

In the time he has held this ground, we have all seen Waverly at the intersection of Hwy 6 be developed substantially. He has not been able to get the level of cooperation because the maps were wrong and because the City has not worked with him to develop it. The access has been deemed adequate – it was tested early on. He would like some assistance from the City on the uses which he believes are appropriate for this site.

Katt then reappeared and cited the meaning of "insanity - doing the same thing over and over again and expecting different results". He has driven by this site for over 30 years and it has always been a cornfield. Why? Here is an opportunity to take a cornfield at two of the key intersections in our community. Why is it a cornfield?

He started this process by meeting with the City staff. The reality is that the City has spent money out there before, such as the Northwest Corridors Blight Study and Redevelopment Plan. Access is the problem according to staff. He has met with staff and they agreed – the problem is access. The problem is that a private owner cannot fix access. The City needs to help. In the end, staff stated, "they will not lead that effort but they will be at the table." Two months later, the applicant gets the report back – no at-grade crossing – the City will not help the applicant get any more access to this site. We have a cornfield at a key place in our community that should be something more. The staff recommendation is to do nothing.

Katt then presented the proposed PUD. Contrary to staff's characterization, the PUD proposes the underlying H-3 (not R-3) zoning district with the ability to have all H-3 uses and R-5 uses (multi-family). H-3 is a very good use to provide transition between industrial and residential and interstates. It is an appropriate zoning for this purpose.

Katt then pointed out that the staff report talks about an 80–acre site. In reality, it is three separate components which are all out of the floodplain. There is water to the site and there is existing sanitary sewer that bisects the site. There is high dollar residential property at Capitol Beach and there is a successful multi-family student housing project which abuts the existing railroad and abuts the industrial property. These are examples within ½ mile radius of the site which contradict the staff's objections.

The surrounding land uses include H-3. This is a problem property that the city has identified and wants something done, but what is it? We have a lot of investment in this location. The industrial area abuts against one of the highest dollar value residential properties in the City; it is adjacent to an interstate; the Commission just approved a salvage yard along the Interstate. The Comprehensive Plan provides that mixed use redevelopment should target underdeveloped or redeveloping commercial and industrial areas. Katt believes that the PUD conceptual plan of underlying H-3 with R-5 permitted uses provides the necessary tools for the owner to try a different approach in the market place to get the investments necessary to be made.

Condition #1.1 of the staff recommendation to “Delete Note #3" (which provides for the H-3 and R-5 uses) guts the PUD.

Hove inquired about the current access points, Katt pointed to Cornhusker Highway (where there is a new convenience store) coming through N.W. 12th is currently the only access. According to the staff report, it appears that you can build all the property you want with one access point. Katt suggested that to be disingenuous because the market place has said industrial does not want to go here. We need to change the momentum and the mind set inside City Hall so that they will be receptive to the concept of finding some better access. Katt stated that they are not asking the city to pay for it, but to make some commitment to this location.

Hove wondered why the proposed access over the railroad crossing is the best one. Katt believes there are other potential areas, but talking about creating access depends on who you are having the conversation with. The one location included in this plan is the road that cuts across the Pfizer property, and if they oppose it, it is not going to happen. This is a conceptual location. There are other options, but they all seem a little bit more difficult to get done. Pfizer has an access on Cornhusker Highway; Burlington Northern has a vacated road right-of-way that should be converted and connect through the new roadway. There are a lot of creative solutions but one private landowner can’t solve those types of problems without the public being involved, and we’ve not found the public that has been willing to engage. This proposal is the best that can be accomplished with the tools they have to work with. Katt stated that they will continue to work on the access to Cornhusker Highway. Burlington Northern has recently indicated that they will settle and allow a road crossing on their property, so they are halfway there.

Hove inquired whether the applicant has applied for a letter of map revision to get the filled areas out of the floodplain. It is Katt’s understanding that is all done. The City fought fill on this area for years. The owner had to sue the Corps to get the right to do that. At the end of the day, the staff report tells you there is a conservation easement on file, the terms of which clearly indicate that the City, NRD and Corps agree to protect the old crossbow. It is no surprise that this floodplain has been filled, whether or not all the map amendments have been done. It is difficult to get those map amendments filed

because they don't want their maps to change. The fact is that it is filled and it is out of the floodplain.

Lust inquired whether the current access point crosses the railroad tracks. Katt responded, "yes, it is a public street crossing."

Lust inquired about the proposed nursing home use. Katt stated that the applicant has thought that that might be a good use in the multi-family area.

Opposition

1. Austin McKillip, of the Cline Williams Law Firm, appeared on behalf of the **Union Pacific Railroad.** The primary objection is that this application proposes an additional at-grade crossing from the property to Cornhusker Highway. Union Pacific does not consent to that crossing. There is no easement of record to cross the railroad. The easement crosses the property now owned by Pfizer and was released of record. Union Pacific opposes the additional at-grade crossing. The uses proposed do not line up with the minimum standards for development set forth by Union Pacific. Beyond that, Union Pacific has no objection to the development of the property.

Butcher inquired whether in general, McKillip would expect that any at-grade crossing along there would be opposed by Burlington Northern. McKillip answered in the affirmative. It is also inconsistent with federal development standards.

2. Terry Grennan, of the Gotch law firm, 9290 West Dodge Road, Suite 302, in Omaha, appeared on behalf of **Pfizer, Inc.** Grennan agreed with the staff recommendation of denial. It is in litigation and he believes they have some very strong defenses in that litigation.

Staff Questions

Butcher sought confirmation from staff that the recreational employment center could exist currently with the existing access point. Cajka concurred. The property already has I-1 zoning so we cannot prohibit them from developing those uses that are permitted in the I-1 district with the current access point.

Butcher asked what portion of the property is in the floodplain. Cajka believes that pretty much all of it is still classified as in the floodplain. **Dennis Bartels of Public Works** recalled some second hand conversations that there was a permit negotiated with the improvements down to the creek bringing all or a majority of this out of the floodplain. If they bring it up in accordance with that plan and get all the certification done, most, if not all would be removed from the floodplain. It has not all been finalized at this point in time. He does not know that the whole area has been filled in accordance with the plan that was approved.

Butcher asked staff to provide another example where we have a similar access issue with railroad crossings where there is no other access. Essentially this is on an island. Do we have any other such situations where we have railroad access that may block the ability for emergency vehicles to access an area like this? Cajka couldn't think of any.

Hove asked whether there is a point of access that could make it work. Is there a place that would make sense to the southeast? Cajka suggested that the site is pretty constrained. Capitol Beach is to the south; Capitol Beach Road is a private road; you have to cross the creek; further east you have the railroad track that extends quite a ways from there. An overpass had been discussed at one time but there are limitations because LES has some pretty heavy overhead power lines in this area. The owner's engineers also considered an underpass, but they determined that it would not work either. It is a constrained site with one access point and that's how it was developed.

Hove suggested that there is obviously a higher and better use than farm land. What would make more sense? Cajka stated that a lot of people like I-1 because it is the most permissive in the zoning code, allowing almost any type of commercial, retail, office, industrial type uses, warehouses, contractor storage yards – a multitude uses are allowed in I-1. The one use not allowed is residential type uses such as the housing and campgrounds. He believes I-1 would allow the highest and best use.

Weber wondered whether the trains ever stop. Cajka did not know.

Cornelius asked for staff's reaction to the assertion that this is not a R-3 PUD on I-1 but a H-3 PUD. Cajka explained that the reason this was put in the report as a R-3 PUD is because the application letter submitted states, "The proposed R-3 PUD application shows a mixed use development including H-3, H-4 and R-5 uses in three areas. Based on that letter, the staff believed they were applying for the R-3 PUD. However, Cajka pointed out that bottom line, the underlying zoning doesn't mean a whole lot because the PUD is what approves the uses, setbacks, density, etc. Regardless of R-3 or H-3, you are still going by whatever the PUD allows.

Response by the Applicant

Katt stated that the key issue on this request has to do with the ability to use some amount of this ground for residential purposes. That's the fundamental change that we are asking. If you look at the site, that corner is a phenomenal corner for residential use – you won't find a better view of the Capitol from that point; it's in the middle of wetlands habitat, etc.; it's across from Capitol Beach Lake – so if you carve this site into its component parts and if you look at what we have proposed, with some separation, and if you ignore what Union Pacific wants (1,000 ft. buffer), is it an appropriate use? Can that be justified? Residential districts are within all of those uses in those areas within ½ mile of this site. You are not placing anyone in jeopardy in allowing that residential component to develop. The H-3 is extremely flexible. Try to sell a motel developer a site

in an I-1 district where a tannery can go in next-door, or a salvage yard, or any of the list of horrible uses that can happen with an industrial zoning district. That is a significant factor why people have not invested here. Zoning provides the protections. We have to change the zoning here. We can talk about some variations and tweaks on the uses, but Katt urged residential is a more than fair use of the back part.

In terms of the fill, Katt stated that the front area has not fully been filled, thus the recreational use.

Katt requested support of this proposed PUD and to allow a component of it to be used for residential purposes.

Butcher asked whether the applicant has looked at any way to find access off of or under I-80. Katt suggested that at this point, access is not the biggest fundamental issue. The market, the people that want to invest in this location, are not concerned about the access point – it's the ability to have the residential use. As long as it remains industrial, nothing will be built. We need to get to the point where staff believes it is a credible possibility that this property might be developed.

Butcher stated that the emergency access is his concern. With a train on the track we have no emergency access. Katt suggested that as a practical matter, emergency vehicles can get there. He then referred to the rail line on Hwy 2. We have the benefit of that not having any trains right now, but if they start to ship coal again, there are going to be mile long trains. In other words, we take reasonable risks all the time. This is not an active main rail line. It is a spur used to store additional trains and to service the Airpark – two trains a day – not a high level of risk. If we're talking about establishing some additional emergency access points, that might be accomplished but that is irrelevant until there is support of a project.

ACTION BY PLANNING COMMISSION: December 12, 2012

Lust moved to deny, seconded by Butcher.

Lust supports the staff analysis that residential is not appropriate in this area. Specifically, Analysis #4 in the staff report states that, "The City Fire Department does not support residential populations with the only access being across a railroad track."

Cornelius is excited for the possibilities for this land, and he is sympathetic that there has been no action there. It is an interesting place – it's got the development downtown; it's got Capitol Beach to the south – but we are in the position of having to deal with a chicken and egg problem. This looks like a place for some exciting residential development but we have a variety of voices telling us this is not appropriate because of the level of access. He has concerns approving a PUD with the loose ends that this has.

Motion to deny carried 5-0: Lust, Weber, Butcher, Hove and Cornelius voting 'yes'; Gaylor Baird, Francis and Sunderman absent. This is a recommendation to the City Council.

MISCELLANEOUS NO. 12014
TO REVIEW THE PROPOSED BLIGHT AND SUBSTANDARD DESIGNATION OF THE 18TH AND Q REDEVELOPMENT AREA.
PUBLIC HEARING BEFORE PLANNING COMMISSION: December 12, 2012

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

There were no ex parte communications disclosed.

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

Staff presentation: **David Landis of Urban Development** appeared as the moving party. UNL, the owner, and a private developer have had the blight study done, and the blight study finds that of the four statutory substandard factors, three of them had a strong presence, and of the twelve blight standards, nine were present, with dilapidated and deteriorated structures, age and obsolescence of the area.

This proposed redevelopment area is immediately adjacent to an area that has previously been designated as blighted and substandard, i.e. the Antelope Valley designation runs sort of north and south along the channel. This is the next block over. UNL and the private developer would like to ultimately get to a Redevelopment Plan, which the Planning Commission should see in January, and then they are working toward a redevelopment agreement to be approved by the City Council for development on that block.

The Commissioners did not have the blight study in their packets, so Landis provided further explanation. The vacant lots and structures are not in good status. It is eventually the hope that this will become a parking facility with some residential on top of it. The existing structures are in dilapidated and deteriorated state. It is public land in B-4. This will be garage space for UNL and privately owned residential which means it will have tax value.

As the first step, the property needs to be designated as blight and substandard. The block is currently a surface parking lot with a couple of old and deteriorated buildings. It is surrounded by areas that are already blighted and substandard. UNL owns the entire block.

Weber wondered why the area of application includes a roadway. Landis explained that the redevelopment plan often determines where the curb line should be. Money will be spent in the right-of-way and if there is the need for a deceleration lane, we would want the area described so that we could use TIF to pay for public enhancements that would occur in the City's right-of-way. It is very common to see the existence of the City's right-of-way in that designation.

2. Tom Huston appeared on behalf of **America First Real Estate Group.** He stated that the site is currently owned by the University and the only reason it was not included in the Antelope Valley Redevelopment Plan and blight study is because it was owned by the University. It is correct to characterize this site as meeting the criteria for reasonable or strong presence of substandard and 9 of 12 of the blighting factors. Why was this not included in a prior blight study? Because UNL intended to build a parking garage, then decided to consider making it more than the typical parking garage. They issued the RFP and his client was successful and will be constructing more than just a parking garage. They intend to construct three stories of residential on top of the existing parking garage. The University will own the ground and private development will exist in the condominium units that will be separate from the University. Ultimately, this is step one. It is important for this to move forward. The RFP from UNL is insistent that the new parking garage has to be open in August of 2014. Based upon that schedule, they need to get into the ground in March.

Huston will be back before the Commission with a second package – the Redevelopment Plan, change of zone and street vacation vacating 18th Street to move the building further away from Antelope Valley Parkway to create more green space. This is an exciting counterpart to the Assurity project and will reflect a huge investment in the city and in Antelope Valley.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION: December 12, 2012

Lust moved to approve a finding of reasonable presence of substandard and blighted conditions, seconded by Butcher.

Lust thinks this looks like a great project.

Butcher noted that in this case, we are going to see redevelopment of the entire designated area and it is a great and exciting use for it.

Motion carried 5-0: Lust, Weber, Butcher, Hove and Cornelius voting 'yes'; Gaylor Baird, Francis and Sunderman absent. This is a recommendation to the City Council.

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Cornelius then acknowledged that this is Greg Butcher's last meeting as a Planning Commission member and expressed appreciation for his service.

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There being no further business, the meeting was adjourned at 5:05 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on January 9, 2013.

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