REVISED MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, March 30, 2016, 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:	Cathy Beecham, Michael Cornelius, Tracy Corr, Maja V. Harris, Chris Hove, Jeanelle Lust, Dennis Scheer, Lynn Sunderman and Ken Weber; David Cary, Steve Henrichsen, Tom Cajka, Rachel Jones, Brian Will, Geri Rorabaugh and Amy Huffman of the Planning Department; media and other interested citizens.
STATED PURPOSE OF MEETING:	Regular Planning Commission meeting

Chair Chris Hove called the meeting to order and acknowledged the posting of the Open Meetings Act in the back of the room.

Hove requested a motion approving the minutes for the regular meeting held March 16, 2016. Motion for approval made by Harris, seconded by Beecham and carried 5-0: Beecham, Harris, Lust, Sunderman ,and Hove voting 'yes'; Cornelius, Corr, Scheer and Weber abstaining.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: **March 30, 2016**

Members present: Beecham, Cornelius, Corr, Harris, Hove, Lust, Scheer, Sunderman and Weber.

The Consent Agenda consisted of the following items: **ANNEXATION NO. 16003 and CHANGE OF ZONE NO. 16009; COUNTY SPECIAL PERMIT NO. 16005; and SPECIAL PERMIT NO. 16007**.

There were no ex parte communications disclosed.

Items 1.3, **Special Permit No. 16007**, was removed from the Consent Agenda and had separate public hearing.

Cornelius moved approval of the remaining Consent Agenda, seconded by Beecham and carried 9-0: Beecham, Cornelius, Corr, Harris, Lust, Scheer, Sunderman, Weber and Hove voting 'yes'.

Note: This is final action on **County Special Permit No. 16005**, unless appealed to the County Board by filing a letter of appeal with the County Clerk within 14 days.

SPECIAL PERMIT NO. 16007
TO ALLOW RECONSTRUCTION AND EXPANSION OF AN EXISTING GARAGE ON PROPERTY GENERALLY LOCATED AT
1821 SOUTH 13TH STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: March 30, 2016

Members present: Beecham, Cornelius, Corr, Harris, Hove, Lust, Scheer, Sunderman and Weber.

Staff recommendation: Approval.

There were no ex parte communications disclosed.

Staff presentation: **Rachel Jones of the Planning Department** came forward to state that this special permit is for an expansion of a non-conforming use which includes the reconstruction and expansion of an existing, non-standard garage that is currently deteriorating. The west, east and north walls of the new garage will be in the same location that they are today, but the south wall will be 3 feet, 8 inches closer to the house to allow for a second parking bay and additional storage. The garage will be 9 inches from the west property line and 3 feet, 2 inches from the north property line. There is a letter in support from the Everett Neighborhood Association.

Beecham asked if there were any concerns from the neighbor whose garage protrudes into this lot, or from others about the distance of this garage from the property line. Jones said the applicant spoke with all of his neighbors and there were no issues. The other garage is constructed over the property line but that is not an issue here because the garage is still at least 3 feet from that north property line. They will not be required to fire insulate that wall, but they will have to fire insulate the west wall because it is only 9 inches from the property line.

Beecham asked for confirmation that the north wall will be in the same location as it is today. Jones said yes, the north, west and east walls are being reconstructed in the same location. Beecham said it is only the wall closest to the house that is moving. Jones said that is right.

Hove asked if the applicant is here today. Jones said she did not believe so.

There was no testimony in support or opposition.

SPECIAL PERMIT NO. 16007
ACTION BY PLANNING COMMISSION: **March 2, 2016**

Lust moved Approval; seconded by Beecham.

Beecham stated she had asked for this to be removed from the Consent Agenda to make sure there was no conflict with the owner whose garage protrudes over the property line. It sounds like there are no issues and like the neighborhood is in support so she will support this.

Motion for approval carried 9-0: Beecham, Cornelius, Corr, Harris, Lust, Sunderman, Weber, Scheer and Hove voting 'yes'.

Note: This is final action on **Special Permit No. 16007**, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days.

CHANGE OF ZONE NO. 16007
FROM R-1 (RESIDENTIAL DISTRICT) TO R-2 (RESIDENTIAL DISTRICT)
ON PROPERTY GENERALLY LOCATED AT
4811 BRADOCK COURT.
PUBLIC HEARING BEFORE PLANNING COMMISSION: **March 30, 2016**

Members present: Beecham, Cornelius, Corr, Harris, Hove, Lust, Scheer, Sunderman and Weber.

Staff recommendation: Conditional Approval.

There were no ex parte communications disclosed.

Staff presentation: **Brian Will of the Planning Department** came forward to state that this property is located to the south of LaSalle Street, just south of the major intersection at South 70th Street and Pioneers Boulevard. This request for a change of zone comes about as the result of one property owner attempting to put an addition on his house. This has proved to be challenging due to the fact that this is an irregularly-shaped lot due to the cul-de-sac.

The proposed addition is along the northeast section of the existing home. It would go 5 feet into the current setback. The change in zone would allow for a change in setbacks which would solve the problem for the expansion occurring in the side yard. It would not solve the problem for the front yard setback, however, due to a provision in 27.72.080

of the Zoning Ordinance that states “that once an area is developed, if 40% of structures are built at a certain setback that is greater than allowed by the underlying zoning, that distance becomes the new setback”. When you look at this area, most homes are built at approximately a 30-foot setback. Even if the zoning is changed, we are required to fall back to this provision and, therefore, the proposed expansion in the front would not be allowed.

It is important to note that the Planning Department is in the process of working on some “clean-up” items to the Zoning Ordinance. It has been questioned for several years whether this particular provision is worth keeping or modifying. The current discussion suggests that the code could be amended so that this provision would apply only to R-1 zoning, where there are large setbacks of 50 feet or more and an adjustment to one home would be a significant change in character from surrounding homes. This is in contrast to a neighborhood like the one the applicant lives in, where a change of 5 feet would not change the character and would hardly be noticeable.

Will concluded by saying that this is an application brought forward by a property owner, and though Planning would not have sought out this change, we feel it is appropriate and would not cause a significant impact to this area.

Lust asked for clarification regarding the potential future text amendment change and how it will help the applicant accomplish the expansion. Will said that after the text amendment, the provision will only apply to the R-1 zone. If this body approves the applicant’s request for a zoning change today, his property would be zoned R-2 so that the 40% provision would no longer apply. Right now the provision applies to all residential zoning districts.

Harris said that if this applicant had not come forward, Planning would not have seen as much value in rezoning this area. She wondered whether requesting a waiver to setbacks would have been a simpler option, given the fact that the lot has some irregularities. Will said there is no zoning overlay, such as a CUP or PUD, in this area, so the only other potential remedy is through the Board of Zoning Appeals, but that is typically a last resort. The available option is to rezone the property. An appeal could be requested after all other remedies are exhausted. Will added that although he cannot predict what the appeals board would do, this may not be a good case for appeal due to the fact that there is no undue hardship or unique characteristics that deny the typical use of this property.

Harris said it is her understanding that the applicant did speak to all neighbors and there were no concerns expressed. She noted that if the 40% rule were eliminated, property owners gain the ability to build out, but they lose some separation and privacy that may be valued. She wondered if the neighbors had an accurate understanding of what they could be giving up. Will said he cannot speak for all of the neighbors, but the three he spoke with seemed to have a good sense of what this change was about. At first glance, the zoning change makes it appear that the setbacks will be reduced, but that is

not entirely the case unless the text amendment occurs. That is a caveat that only a few experts know about, but it was explained to those who asked questions that the second action of the text amendment will be needed to reduce the front setback.

Harris said 3 of the property owners out of the 13 who will be affected called in and were made aware that Planning is potentially seeking the text amendment. She asked if it is fair to assume everyone else received notification. Will said they all got the same notification. Harris expressed that there is no way of knowing for sure since there is no one present to testify. Will said he would not speculate about whether they understand everything involved. The notification was sent out as ususal, and he has a high level of confidence that folks in the immediate area are aware. One called because they saw the sign in the yard, so that is further notice that something is going on.

Beecham said this feels like a big bandage for a small cut. She is uncomfortable with rezoning the entire area and wondered if there was a different mechanism. She understands that this does not meet the conditions to apply for a waiver, but wondered if a better solution should be created to deal with situations like this. Will said there are options and he does not believe any additional remedy is required. A zoning change is a valid solution. Major zoning changes have been made in the past at the request of neighborhoods. Beecham said those were usually driven by more than one property owner. Will said they did a good job of getting the word out and getting neighbors involved. In this case, this is a single, motivated applicant. Beecham said it does not seem like we have done the due diligence of holding public meetings. She does not find this case similar to the larger rezonings. Rezoning seems like too big a solution.

Steve Henrichsen of the Planning Department came forward to offer background on past down-zonings. Those areas were larger and, while there were meetings to discuss those changes, no one-on-one contact was made with each property owner. Having approximately 4 out of 12 surrounding homeowners make contact on any project is a good turnout. In contrast, he offered that there have been cases where a residential area was changed to commercial, houses were removed, and a convenience store built, and only one person called. The letters went out and the large, yellow zoning sign was displayed on the property. The usual process for this type of change was followed. The Staff Report also notes that the cul-de-sac to the south is also zoned R-2. The area is surrounded by residential zoning and this change does not put this cul-de-sac out of character.

Beecham said with past actions, the question was whether or not the change made sense for the entire area. She wondered if there should be a special permit or some option to address cases where one person wants a different setback rather than rezoning the entire block. Henrichsen there are many tools to accomplish that very thing. In this case, there is no CUP or PUD. There has been no opposition to this change and, in fact, there may be others who would take advantage of the potential to expand.

Beecham asked if there is any differences in allowed uses between R-1 and R-2. Will said the uses are exactly the same. Duplexes are not allowed due to smaller lot size. The net difference is a 5-foot adjustment to setbacks.

Beecham asked what the applicant will do since this will not solve his problem. Will said the applicant is on hand to answer questions. He understands that there is a potential that the text amendment might not pass.

David Cary, Planning Director, came forward to state that the point Commissioner Beecham is making is well-taken. It is important to consider the context of the area. In this area, if starting from scratch, this could have easily been zoned R-2 or R-3. Going to R-2 does not change the lot layouts, which are really more akin to R-2 than R-1. The other point that Will alluded to is that the Board of Zoning Appeals is a last resort. This is the proper process for the applicant to take. Spot zoning is something to avoid, so doing a logical, inclusive change of the whole cul-de-sac is a consistent and appropriate action.

Corr said she understands the point being made by Commissioner Beecham. If this were any other application, we would have strongly suggested a meeting with the neighbors. Will said the applicant did meet with neighbors. Corr said going door-to-door is completely different from a full meeting where staff might be present to answer questions and verify what was said; the word of the neighbors is just hearsay without a group meeting. She went on to say that she was part of the down-zoning referred to earlier and there was spot zoning. Will said this area is adjacent to R-2, so this is expanding that chunk. There are multiple ways to see it. ~~There are reduced setbacks so houses could end up closer together, but there is also extra use of the house on the property. Many see that as an advantage.~~

Lust asked for clarification about which portion of the proposed expansion cannot be accomplished by the change of zone. Will answered none of the front yard area. The house sits at 30 feet now. Lust wondered if there was some portion that could follow along the arc of the property line. Cornelius noted that it would be an impractical footprint. Lust said the entire front area is out and Will agreed. Lust said she is trying to determine how to distinguish the side area from the front. Since there is no guarantee about the text amendment, she wonders whether this project will go forward at all and what it will look like. That way, there is some concept of what will be gained by approving the change of zone today.

Cornelius wondered how the text amendment would apply to the situation and if the property would be grandfathered to state that at the time of the change of zone, the construction was such that 40% had setbacks of 30 feet and, therefore, that limitation still applies. Will said the provision refers to all districts right now and has nothing to do with the change of zone. Lust said a non-conforming use would have the opposite effect. Cornelius confirmed that in talking this point out, he understands.

Harris asked why this application would not be brought forward at the same time as the ordinance change, since this application hinges on the approval of that change. Will said an applicant could do that. Harris asked why that option wasn't chosen. Will said it is the choice of the applicant. Staff cannot tell people when to move forward or not. We have explained the additional component to the applicant, and his decision was to bring this portion forward.

Cornelius asked for clarification that all of the property owners in the change of zone area have been notified. Will said yes.

Corr asked for confirmation about the number who called in. Will said three.

Cornelius went on to ask for confirmation that there was no opposition. Will said correct; people simply had questions and those were answered. Cornelius asked if the notification went to all property owners within 200 feet of the boundary. Will said that is correct.

Proponents:

1. Paden Daly, 4811 Bradock Court, came forward as applicant. He addressed the question regarding whether or not neighbors know this action could decrease their setbacks by 5 feet by stating that they are aware of that change. When he spoke to them at first, he was unaware of the provision referred to earlier, so their assumptions was the 5-foot change.

Beecham asked about the timing and pursuing this change of zone before the text amendment. Daly said it seemed logical to do as much as possible before pursuing an appeal. He was also unsure if he would be required to pay a fee again.

Lust asked whether Daly would regroup and build only a portion in the side yard if the text amendment never goes through. She wondered if he had a contingency plan. Daly said it may not work. His house does not sit perpendicular to the property line. As it sits now, he could probably only add around 4 feet of additional space, which does not make sense financially.

Corr asked if he meant that he would not do any additions to the side if he cannot do the additions to the front. Daly said he does not know because they have not gotten that far yet. He wanted to see how far he could get through the process first. It might be an option. Corr said she thinks that is what Lust was getting at with her question. She wonders if he will be able to achieve what he needs to. Daly said not really, but he will take what he can get and take a chance on the text amendment.

Lust asked if there is anything vitally important to the project that will go in the 5-foot area under discussion. Daly said yes. The depth of the garage is only 19 feet. He is in a wheelchair that takes up 24 inches. His truck is around 18 feet, so he does not fit between his vehicle and the wall. He has looked at others homes in other locations, but he is retired from the Department of Defense Marine Corps and he goes to the VA often. This location is close to everything he needs and he likes where he is.

Harris asked if it was his original intent to only rezone his own property. Daly said yes. Harris said this was a recommendation to him from the Planning Department. Daly agreed. Harris reiterated that Mr. Daly had no intention for his neighbors to be part of this process. Daly said yes, but none of them mind. If Commissioners required a meeting with them, that would be fine, but he does not think many would attend. They are all very nice, mostly retired people and are good neighbors.

Opponents:

There was no testimony in opposition.

Staff Questions:

Harris asked if rezoning only this property was totally out of the question. Will said Staff would recommend against that. If there is a zoning action, it should be a larger area. Rezoning the entire cul-de-sac is logical. Doing only one lot would be true spot zoning and that would be a bad idea. Staff believes the likelihood of neighbors supporting this action is greater than 50% in this case. We are before you today with zero opposition.

Harris went on to ask how this action relates to the goal of the Comprehensive Plan since one component of that is maintaining predictability. She wondered if this action follows a normal pattern that is predictable for those homeowners and if it is unusual for the request of a single homeowner to spur this type of change. Will responded that there are examples of one or a few property owners bringing these changes forward, so in that respect, the request is not that different. The Planning Department was not actively seeking out this change for this area, but the Comp Plan supports questioning the best use of the land and allows for changes. In some cases, a change in setbacks could change the character to a point where it is no longer suitable. This adjustment is not that big in the big picture. R-1 was singled out as the area that would still be covered by the provision because with large-estate lots, a significant change in setbacks could change the character. This neighborhood is not like that.

Beecham stated that she believes that the applicant spoke with the neighbors, but she would have felt more comfortable knowing with certainty that they understand the change. It’s not always clear from the notices what the ramifications will be. She wondered if there is a rule-of-thumb for holding public meetings with staff present. Will said there is no rule-of-thumb. When there is an inquiry about a zone change, staff

advises the applicant to go to neighbors and neighborhood associations before spending the money and time on the application process. We cannot require them to do so, but it is in their best interest. Additionally, staff cannot invite themselves to these meetings. Some do not want staff present.

Daly said the group of neighbors impacted by this is only 13 homes.

Corr expressed that these questions are not about Mr. Daly's particular application, but about the process. Daly said he understood. If Commissioners wanted 100% approval, he suggested the best way to get it from his neighbors would be by making phone calls.

CHANGE OF ZONE NO. 16007
ACTION BY PLANNING COMMISSION: **March 30, 2016**

Lust moved Conditional Approval; seconded by Cornelius.

Corr said she is fine with this particular application and the R-2 zoning of the entire cul-de-sac, mainly because it is adjacent to a nearly identical R-2 cul-de-sac to the south. She stated for the record that all of these applications need to be treated the same, so if there is a change of zone, we need to encourage them to have a meeting and not just approach neighbors one by one. She would be suspicious of any applicant who did not want Planning staff present at a meeting. Many questions always come up and people need the expertise and objective information and observation from staff. She encourages staff to tell every applicant the same thing.

Harris said she would have been more comfortable if this application had come forward at the same time as the text amendment then everyone would know for sure that the applicant is achieving his goal rather than potentially rocking the boat, only to be unable to accomplish the desired outcome. She plans to support this application and asked questions not out of objection, but out of concern for neighbors and due process. Planning Commission is not final action, so there is time for any neighbors who would like to keep the extra separation of the R-1 zoning to come forward and voice that.

Cornelius said he will support the application. He wanted to talk about the process, including the public process, in the context of today and historical changes of zone. Worth mentioning again is that there already is a different recourse that addresses the micro-scale issue of needing more space and that is the Board of Zoning appeals. Whether or not an applicant should go that route first or attempt a neighborhood-wide change of zone is open for debate. He is comfortable with either process. He is also comfortable with the public process and believes Planning treats these applications the same. Advertising rules are very specific. Staff has said, and he has witnessed, that it is not necessarily Planning who puts these together, but rather, motivated neighbors who try to bring others onboard. This is a much smaller situation and he is comfortable that the notifications went out, questions were asked and answered, and that there was

opportunity for neighbors to talk to each other. If there had been any opposition to this, we would have seen at least one person here today. He is comfortable with the processes and will support this application.

Weber said that when considering these types of requests, he places himself in the shoes of the neighbors. He does not see anything negative and, in fact, sees this as a positive if another neighbor wants to expand. There does not seem to be any opposition. If the request was for a 10- or 15-foot reduction to setbacks, that might cause some alarm, but driving through the neighborhood, it would be difficult to notice a 5-foot change without a tape measurer.

Lust said that while she appreciates what the applicant is trying to do and the reasons for bringing the application forward today, she wishes there were some way to make sure that Mr. Daly's project was getting approved. She is supportive of the change of zone for this neighborhood but is concerned with the idea that the specific project is dependent upon a future ordinance change. She stated for the record that this particular change of zone is appropriate but cannot be sure what the next step will be since that is not what is before this body today. At least today's action accomplishes some of the goals of the applicant.

Sunderman said he will support the application. This is a reasonable and just use of the property and the applicant has done nothing incorrectly by bringing it forward; he would have chosen the same thing if in the same position. The discussion that this application got caught up in was about public process, notification and education. This body, along with staff, may need to consider a workshop on this topic to come up with something more concrete rather than the pseudo-regulations.

Scheer said he wanted to expand on Commissioner Lust's comments since the next steps are tenuous. The applicant may want to work with an architect and see how the expansion can work without the additional 5 feet in the front yard. In looking at the schematic floor plans, it looks like it might be possible to make it work.

Beecham said she has no objections to this project, which makes sense. She is comforted by the surrounding R-2, so this would not be out-of-line. She still feels that this is a big bandage on something small in a case where a single resident wants to make a change. She wishes there were some way that an applicant could meet some conditions to be approved because, in the future, there may be a case where there will be a lot of objections, and it seems important to give the individual some flexibility without rezoning an entire area.

Hove said he intends to support this. We have discussed an item that has no objection whatsoever for the last hour. The fact is, it is good for the individual and could be good for the neighbors. They have been made aware of the change and are supportive.

Motion for Conditional Approval carried 9-0: Beecham, Cornelius, Corr, Harris, Lust, Scheer, Sunderman, Weber, and Hove voting 'yes'. This is a recommendation to the City Council.

Other Business:

Steve Henrichsen of the Planning Department came forward to give a preview of potential future changes. Staff has been working on approximately 30 potential zoning amendments. Some items are issues and questions that came up when working through individual applications. All of these items have been gathered and kept in mind as possible items to investigate more thoroughly. Examples include smaller changes, such as the reduction in B-5 parking requirements, which have already been approved more than 50% of the time. Others might include more substantial things like the topic discussed today. There have been cases where things were very problematic when at first they seemed innocuous. For example, in old neighborhoods, at the end of a long block, there could be 2 lots where the houses are setback 50 feet. The lot between those then has to be setback the same distance, even though everyone else in the neighborhood is at 25 feet. We have been working with Building and Safety and City Attorney. There will probably be a workshop where we can sit down and go through these items. We would also seek more public input. This could possibly occur this summer. The applicant here today is not the only one who would like to have some of these items move forward.

Another working group is currently discussing accessory buildings, specifically garages. Commissioner Beecham has been part of that process, along with neighborhood builders and neighborhood groups. That would also have a separate meeting where the topic could be taken to the public and the Mayor's Neighborhood Roundtable. Those are the two items in progress to improve our process and the Zoning Ordinance.

There being no further business to come before the Commission, the meeting was adjourned at 2:10 p.m.

Note: These minutes will not be formally approved by the Planning Commission until their next regular meeting on Wednesday, April 13, 2016.