AMENDED MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, March 1, 2017, 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	Tom Beckius, Tracy Corr, Tracy Edgerton, Deane Finnegan, Chris Hove, Maja V. Harris, Dennis Scheer, Sändra Washington, Ken Weber; David Cary, Steve Henrichsen, Rachel Jones, Andrew Thierolf, George Wesselhoft, 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 at the back of the room.

Hove requested a motion approving minutes for the regular meeting held February 15, 2017. Motion for approval made by Finnegan; seconded by Beckius, and carried, 8-0: Beckius, Corr, Edgerton, Finnegan, Scheer, Washington, Weber, and Hove voting 'yes'; Harris abstaining.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: **March 1, 2017**

Members present: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Scheer, Washington, and Weber present.

The Consent Agenda consisted of the following items: **COMPREHENSIVE PLAN CONFORMANCE NO. 17002, COMPREHENSIVE PLAN CONFORMANCE NO. 17003**, and **USE PERMIT NO. 126F**.

There were no ex parte communications disclosed.

Note: An amendment was made by Staff prior to the hearing to correct a clerical error on **COMPREHENSIVE PLAN CONFORMANCE NO. 17003**.

Harris moved approval of the Consent Agenda, including the Staff amendment to Comprehensive Plan Conformance No. 17003, seconded by Weber and carried, 9-0: Beckius, Corr, Edgerton, Finnegan Harris, Scheer, Washington, Weber, and Hove voting 'yes. This is a recommendation to the City Council on all items.

ANNEXATION NO. 17002 - TO ANNEX APPROXIMATELY 61.91 ACRES, MORE OR LESS, GENERALLY LOCATED AT SOUTH 90TH AND A STREETS.
PUBLIC HEARING BEFORE PLANNING COMMISSION: **March 1, 2017**

Members present: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Scheer, Washington, and Weber present.

Staff recommendation: Conditional Approval.

AND

CHANGE OF ZONE NO. 17002 - FROM AG (AG DISTRICT) TO R-3 (RESIDENTIAL), GENERALLY LOCATED AT SOUTH 90TH AND A STREETS.
PUBLIC HEARING BEFORE PLANNING COMMISSION: **March 1, 2017**

Members present: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Scheer, Washington, and Weber present.

Staff recommendation: Conditional Approval.

AND

PRELIMINARY PLAT NO. 17001 - WHITE HORSE, CONSISTING OF 154 SINGLE-FAMILY LOTS, GENERALLY LOCATED AT SOUTH 90TH AND A STREETS.
PUBLIC HEARING BEFORE PLANNING COMMISSION: **March 1, 2017**

Members present: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Scheer, Washington, and Weber present.

Staff recommendation: Approval.

There were no ex parte communications disclosed.

Staff Presentation: **George Wesselhoft of the Planning Department** stated the application area is approximately 61 acres located between A Street to the south and the Mopac Trail to the north. As part of the request, the City requests a small area of trail property that adjourns the site also have a change in zone. The annexation area is located in Tier I, Priority B for development. All utilities exist adjacent with City-planned extensions

of water and sewer. Given these conditions, annexation would be consistent with the Comprehensive Plan. One condition of the annexation is a signed annexation and zoning agreement.

The preliminary plat proposes 154 single-family lots. The streets would include a new roundabout on A Street. Street connections would be made to the Indian Hills Subdivision to the west and an extension is proposed across Mopac Trail property. An extension is also shown to the east for when those areas develop. The sewer extension will be a 15-inch trunk line, subject to Lincoln Public Schools approval. The water line will be a 16-inch line along A Street to 94th Street.

The applicant also requests waivers to allow block lengths of 1,320 feet for Blocks 4, 7, 8, and 9; removal of the required pedestrian easement for Block 6, which only slightly exceeds the 1,000-foot limit; lot lanes that are radial and perpendicular to street right-of-way; a waiver from sanitary sewer directional flowage; and finally, separations to street design standards as far as arterial streets being closer.

Twelve lots would not be served by sanitary sewer until the property to the east is developed. One issue that came up in the neighborhood meeting was sidewalk connectivity to the west, which will be required to extend and is the developer's responsibility.

Proponents:

1. Mark Hunzeker, 1248 O Street, Suite 600, came forward representing the applicant who also developed Indian Hills to the west in the 1970s. It has been a long wait for the arrival of sewer in order to develop. The lots will be generously sized and this will be upscale housing. Lots of this size are in short supply. The conditions proposed by Staff are acceptable.

2. Nate Burnett, 601 Old Cheney Road, Suite A, came forward on behalf of the applicant and stated that notes 1.5 and 1.6 on the preliminary plat should be kept because they make it easier for any builder who comes in for permits. Items 1.7 and 1.9 of the conditions relate to the sidewalks being constructed as lots are final platted. A street profile has not yet been finalized so it is difficult to show sidewalks. Deleting 1.9 and submitting an escrow to reserve funds for the sidewalk is what is proposed as an alternative.

Hove asked if these changes have been shown to Staff. Burnett said just prior to the meeting.

Harris asked for clarification about why the applicant would like to keep the notes on the preliminary plat. Burnett said the notes make it easier for the builders when they apply for permitting.

Washington asked about the status of the property to the east. Burnett said they have worked with that developer to come forward with a preliminary plat or CUP. There is potential for a lift station. They cannot be built until the lots have sewer access.

There was no testimony in opposition.

Staff Questions:

Wesselhoft stated the notes on the plat related to setbacks and utility easements are not standard so Staff asks that they be stricken. The note about the utility easements could become an issue if utility companies have to get permission. The condition that notation be added for grading is because it could be two decades before the area is urbanized so the recommendation is for grading and sidewalk to be done in the short-term.

Hove asked if Staff is supportive of any of the amendments suggested by the applicant. Wesselhoft said staff would like all of conditions to remain as recommended by staff.

Scheer asked for clarification regarding the deletion of notes on the preliminary plat. Wesselhoft replied staff recommends approval as outlined in the staff report.

Scheer asked about the erosion control. Wesselhoft stated that is a given and is therefore not appropriate.

Harris asked why there would be an issue with accepting an escrow. Wesselhoft said it is related to the timing of the sidewalk. The grading and connection should be done in the short-term.

Applicant Rebuttal:

Hunzeker said these amendments are new to him. It is his understanding that the City is about to do a study on A Street and that information would make it easier to determine where the sidewalk will go. Until then, we suggest an escrow.

Harris asked what time period the applicant foresees. Hunzeker said he is not sure but requests for proposals have been issued for that study.

Corr asked if there is a phasing plan for the development. Burnett said the first phase will be the roundabout on A Street with 30 lots in the southwest corner, which makes the connection with Chaparral Street. Corr asked when construction will start. Burnett said they would like to begin grading in the spring with utilities in the summer or early autumn. The sewer is being worked out now with the Wastewater Division to discuss the alignment.

Corr asked when the sidewalk situation needs to be settled since development will begin along A Street.

Steve Henrichsen of the Planning Department came forward to clarify that the sidewalk issue is not related to payment. Item 1.9 indicates that the grading plan should be revised to reflect the grade to allow for the sidewalk at this time. In the future, the sidewalk may be lost but, in the interim, pedestrians could use the sidewalk. It is about providing a grading plan, not payment for the sidewalk.

Hove asked if staff prefers that the condition be kept. Henrichsen said yes, it is preferred that all conditions be kept as stated.

Robert Simmering of the Public Works Department came forward to state that a platform for the sidewalk is requested and not necessarily that future grades be matched. It is fine to show grades now, recognizing that a full build-out does not have to be shown.

Harris asked if that information changes the stance of the applicant. Burnett said they are fine with the deletion of the notes. They are also fine showing grades if it is recognized that full build-out does not have to be shown.

ANNEXATION NO. 17002
ACTION BY PLANNING COMMISSION: **March 1, 2017**

Corr moved approval, seconded by Edgerton.

Hove opened discussion on all related applications. He stated he will support this project. It makes sense to continue development. He advised that much of the discussion today could have been worked out in advance of the public hearing.

Scheer agreed that this is a logical extension of existing development and these will be popular, well-designed homes.

Motion carried, 8-0: Corr, Edgerton, Finnegan, Harris, Scheer, Washington, Weber, and Hove voting 'yes'; Beckius abstaining. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 17002
ACTION BY PLANNING COMMISSION: **March 1, 2017**

Weber moved approval, seconded by Washington and carried, 8-0: Corr, Edgerton, Finnegan, Harris, Scheer, Washington, Weber, and Hove voting 'yes'; Beckius abstaining. This is a recommendation to the City Council.

PRELIMINARY PLAT NO. 17001
ACTION BY PLANNING COMMISSION: **March 1, 2017**

Corr moved approval, seconded by Finnegan and carried, 6-0: Corr, Edgerton, Finnegan, Harris, Washington, Weber and Hove voting 'yes'; Beckius abstaining; This is ****FINAL ACTION**** unless appealed to the City Clerk within 14 days.

CHANGE OF ZONE NO. 16042 - FROM R-2 (RESIDENTIAL) TO B-3 (COMMERCIAL) FOR A NEIGHBORHOOD CAFÉ, GENERALLY LOCATED AT 3255 A STREET. PUBLIC HEARING BEFORE PLANNING COMMISSION: **March 1, 2017**

Members present: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Scheer, Washington, and Weber present.

Staff recommendation: Conditional Approval.

There were no ex parte communications disclosed.

Staff Presentation: George Wesselhoft of the Planning Department stated this site is south of A Street and just east of Normal Boulevard. The building was constructed in 1964 and was formerly occupied by a dentist's office. The request is to change the zoning from R-2 to B-3. R-2 zoning is adjacent to the west and B-3 to the east. The applicant will use the existing structure and parking for a restaurant. It was discussed that other commercial uses would be allowed under the B-3 zoning. Therefore, similar conditions to those of the credit union across the street are required. These conditions prohibit certain uses such as those relating to vehicle sales and services and drive-thru restaurants. A neighborhood meeting with the Woods Park association was held and they voted in support of the proposal and did not express concerns about potential changes in use in the future. Alcohol sales would require a special permit and are not requested or proposed at this time. It is unclear whether or not the building would meet the spacing requirements if that were requested in the future. There are site-specific conditions related to parking and access.

Harris asked where the trash will be located. Wesselhoft said he does not recall but the applicant is on hand. Harris noted the close proximity to the residential area. Wesselhoft said there is a standard screening requirement for dumpsters. Harris asked if any location would be better than another and if it would be worthwhile to specify a location in the conditions. Wesselhoft replied that he will defer to the applicant. He suspects that for convenience, the dumpster will be close to the building.

Harris asked if there is a guess as to how close the building is from the lot line as it relates to the potential for a request for a liquor license. Wesselhoft indicated that a survey would be required to determine that. The applicant is not proposing that.

Harris asked whether nearby property owners would have more protections in terms of intensification of potential future use on the site under the zoning change with the agreement, or if the site became an approved non-conforming use. Wesselhoft said there would be potential for some other use in the future under the proposed zoning. Right now, that would be office or conversion to residential. The agreement would limit the heavier uses, though there could be a use that could have more impact.

Harris asked if this is considered status quo compared with the current zoning. Corr mentioned that she was part of the process when the conditions were added to the credit union to limit undesirable uses, and this would be a very similar situation. Wesselhoft said there is more protection with the current zoning. Hove noted that although that is the case, it prevents the applicant from doing what they want.

Washington said she likes to see the improved walkability in the area and this concept adds a positive to the neighborhood. She has concerns about the sale of alcohol. It could become an issue in the future.

Brian Will of the Planning Department came forward to state this property is constrained by its small size. Typically, a 100-foot separation from the property line must exist. That being the case, there is virtually no way to make it work.

Proponents:

1. Danny Osmanovic, 3255 A Street, came forward as applicant to state he will never apply for a special permit for alcohol. The street is very busy and this is a small location. If people want alcohol, they can go somewhere else. This is intended to be a neighborhood café where anyone can come and enjoy themselves. The trash will be located at the back of the building and a privacy fence will be installed. He thanked commissioners for reviewing his proposal.

Harris asked to see the location of the dumpster. Osmanovic pointed out the location in relation to the back door. The trash will have a fence all the way around it so it will not be visible and will avoid creating any hazard.

There was no testimony in opposition.

Staff Questions:

Will came forward to clarify that it was not clear initially what the use of the building would be. There is an exception for restaurants where the separation is reduced down to 25 feet since a restaurant is a markedly different use from a bar or other on-sale establishment. It would be close but, with some building modifications, there is a chance the building could qualify.

Scheer asked what the distinction is between a restaurant and a bar. Will said it is related to the percentage of food versus alcohol sales. The majority of a restaurants revenue is generated by food sales.

Harris asked if the neighbors immediately adjacent had been notified. Wesselhoft said that the petition that was submitted includes businesses and other property owners, and perhaps not the immediate neighbors. However, no opposition has been submitted. They have been notified and the sign has been posted for a long time.

CHANGE OF ZONE NO. 16042
ACTION BY PLANNING COMMISSION: **March 1, 2017**

Beckius moved approval, seconded by Finnegan.

Corr stated that she forgot to disclose as an ex parte communication that she had a brief conversation with the applicant.

Beckius said he is excited for the potential reuse of this building, especially in this area at 33rd and A Streets where many new businesses are emerging. He will support the application and looks forward to seeing the business up and running.

Harris explained that her questions did not stem from criticism about this application but because if this applicant was no longer there, the zoning will remain. This is a tricky sliver of land and may not be appropriate as a residential lot, so this use makes sense. If neighbors had come forward in support, this would have been a "slam dunk" vote.

Corr stated she is very familiar with the area. The B-3 zoning does not concern her since the neighbors are already next door. Many of the houses that face Normal Boulevard are rentals so that may be some reason why they were not heard from. This will be a great addition. There is another neighborhood café with limited morning and noon hours and they have been there for many years.

Wesselhoft came forward to confirm that the motion for approval is subject to the zoning agreement. Beckius and Finnegan agreed that it is.

Hove echoed the thoughts of his fellow commissioners and said he is excited to see the business grow and flourish. He wished the applicant good luck.

Motion carried, 9-0: Beckius, Corr, Edgerton, Finnegan, Harris, Scheer, Washington, Weber, and Hove voting 'yes'. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 17003 - FROM AGR TO RESIDENTIAL AND RESIDENTIAL TRANSITION DISTRICTS, GENERALLY LOCATED AT 6000 S. 84TH STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: **March 1, 2017**

Members present: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Scheer, Washington, and Weber present.

Staff recommendation: Conditional Approval.

AND

SPECIAL PERMIT NO. 17002 - TO ALLOW FOR A 51-UNIT CUP WITH WAIVERS, GENERALLY LOCATED AT 6000 S. 84TH STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: **March 1, 2017**

Members present: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Scheer, Washington, and Weber present.

Staff recommendation: Conditional Approval.

There were no ex parte communications disclosed.

Commissioner Scheer declared a Conflict of Interest and exited the chambers.

Staff Presentation: **Brian Will of the Planning Department** stated this site is approximately 20 acres and is owned by the New Covenant Community Church. A CUP is requested for the eastern eight acres and it is recommended that all but the northeastern most corner be rezoned R-3. The excluded corner would be rezoned R-T. The change of zone is appropriate at this location and is compatible with adjacent properties.

There are site constraints on this property. There is drainage running though the center and the pipeline planning area extends across the northern portion of the site. Because of that, certain uses would not be recommended. That is why the northern corner is recommended to be a transitional zone rather that strictly residential. The other constraint is access. There is not an opportunity to make connections to the east or south so there will be a single access point off of Foxtail.

Drainage flows from north to south and there is an effort to preserve the drainage way with the trees. To that end, the applicant proposes a slightly modified site plan, along with a motion to amend, which Staff supports. This needs to be done today because it will revise the legal description.

Will went on to add that in order to make sure there is not a good case to return to ask for residential in the transitional area, Staff requires a zoning agreement prior to City Council. Harris asked if the agreement will be attached to the change of zone. Will said yes.

Corr asked if there was any danger being near the pipeline area with only one access out. She noted the outlot in the southeastern corner and wondered if there was any option for a connection there. Will stated there is no opportunity for a connection from the outlot. The pipeline planning area is designated more as an area impacted by the immediate consequences of a disaster. Corr said she was thinking of an event like a fire. Will said he believes that is a natural gas line that predates development.

Proponents:

1. Craig Zachariasen, 6721 S. 66th Street, came forward as associate pastor of New Covenant Community Church to state that the addition of homes to the site enhances the area for the City, provides more housing, and helps the church to reduce debt and redirect resources to the church.

2. Tim Gergen, 1111 Lincoln Mall, came forward to state that the motion to amend is related to how the trail connects to the cul-de-sac. An effort was made along with the City to preserve the natural drainage corridor. With the exception of a future road crossing the creek, this will the only time this area will need to be dealt with.

Hove asked if the applicant agrees with the R-T zone suggested by Staff. Gergen said yes. The pipeline easement area was originally missed. The church has already received proposals for that corner that would fit the R-T zoning.

Corr reiterated her concerns about the pipeline. Gergen responded that the pipeline planning area is a recommendation and does not impose any requirements. If there were to be an incident, it is more likely 84th Street would be shut down rather than the local roads.

Corr asked if the proposed amendment decreases the number of dwelling units. Gergen said it reduces the number by one.

Corr asked if there is any chance the pedestrian way could become a road to add access. Gergen said the parcel in that corner is a detention cell for another development and is too narrow to meet design standards. Public Works would not be supportive of any odd layout.

Opponents:

1. Kathleen Barnard, 8620 Remi Drive, came forward to state that her back fence will face the new homes. She is not necessarily in opposition, but has questions. She wondered if these properties will be owned or rented and what their value will be. Her concern is trying to fit that many units into a condensed area might lower property values for surrounding homeowners. She wondered if it would be possible to install a brick wall similar to the one along the eastern edge of the property prior to the start of construction.

Corr asked where another fence would go. Barnard said along the southern edge. Corr asked if a wooden fence would be acceptable. Barnard said that depends on who would be responsible for maintaining it.

Barnard went on to wonder which homeowners association the new area would belong to. She also mentioned concerns about the drainage, noting that during the last large storm, the house to the west on Remi Drive had a buildup of water.

Staff Questions:

Harris asked whether a fence or wall is something that Planning Commission could require. Will said he does not think that can be required. Harris asked about the screening. Will said there is no screening requirement between homes. That does not prevent any homeowner from putting up a fence on their own property. There was no requirement for the wall to the east.

Edgerton asked if these will all be single-family dwellings. Will said that technically, they are two-family dwellings. Single-family attached units are each within their own lot so they are not even duplexes, according to zoning ordinance definitions.

Corr asked about requirements in the R-T zoned area. Will said the area will require a use permit so any proposal will come before Planning Commission and there will be a screening requirement.

Corr asked about the lot sizes in comparison to the surrounding areas. Will said they are in the middle; larger than the ones to the east and smaller than those to the south.

Washington asked for more information about the drainage way and the conceptual layout of the roundabout in the southwest. Will said it is a requirement for any subdivision to show connection with adjacent property. In this case that is the church to the east. There is no development being shown, but the requirement asks to show where a connection could be if development were to occur. Washington said she was thinking of protecting the drainage way. Will replied that this is the top of the drainage so a bridge would be small.

Edgerton expressed concerns about the drainage and the accumulation of water mentioned by the neighbor. Will said Watershed Management looked closely at this property and are interested in the preservation of the drainage way. They would not ask for conditions that would make conditions worse. It is likely that the grading plan of the applicant may improve things for the area.

Applicant Rebuttal:

Zachariasen apologized that they did not have time to reach out to the neighbors and he is glad Barnard came forward with her concerns.

Gergen said that was due to the back and forth with Watershed Management. The lot sizes are in the middle and this will offer a great mix of options and amenities in the area. It is typical to leave fence decisions up to individual property owners. Brick walls are expensive and some want fences while others like the connectivity.

Edgerton asked about the phasing of this project. Gergen said the infrastructure all extends from Foxtail so it will all be done in one phase.

Finnegan asked who put up the brick wall. Gergen said the other developer to the east must have. Finnegan asked if it was a different developer. Gergen said yes.

CHANGE OF ZONE NO. 17003
ACTION BY PLANNING COMMISSION: **March 1, 2017**

Corr moved approval, as amended by Staff; seconded by Beckius.

Hove said he intends to support this project. This fills in an area in a way that makes sense and it is great for the church to be able to let go of the land currently not being used.

Beckius stated he will also support this. He thanked the neighbor for coming forward with questions and concerns. The land use is appropriate and is a good mix with other residential projects in the area.

Motion carried 8-0: Beckius, Corr, Edgerton, Finnegan, Harris, Washington, Weber, and Hove voting 'yes'; Scheer declared a Conflict of Interest. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 17002
ACTION BY PLANNING COMMISSION: **March 1, 2017**

Beckius moved approval, as amended by the applicant; seconded by Finnegan.

Washington asked for clarification as to whether the motion included the amendment proposed by the applicant that includes the decrease down to 50 units. Beckius and Finnegan confirmed.

Motion carried 8-0: Beckius, Corr, Edgerton, Finnegan, Harris, Washington, Weber, and Hove voting 'yes'; Scheer declared a Conflict of Interest. This is ****FINAL ACTION**** unless appealed to the City Clerk within 14 days.

TEXT AMENDMENT NO. 16020 - AMENDING VARIOUS SECTIONS OF THE LINCOLN MUNICIPAL CODE RELATED TO MOTOR VEHICLE SALES.
PUBLIC HEARING BEFORE PLANNING COMMISSION: **March 1, 2017**

Members present: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Scheer, Washington, and Weber present.

Staff recommendation: Conditional Approval.

Corr disclosed that Staff made a presentation at the Mayor's Roundtable meeting she attended.

Staff Presentation: Andrew Thierolf of the Planning Department stated that although there is a single applicant, this text amendment that would apply City-wide. Currently the front yard requirements for car sales include a 12-foot setback with screening of 60%. The applicant is proposing to reduce that to a 6-foot setback with increased screening up to 3 feet. Staff recommends denial of that change. The 12-foot setback was established in 2002 after an extensive and thorough process. The distance was selected as a compromise so that, instead of getting a special permit, a dealership could use the front yard. There is not a compelling reason to change that. The H-3 District is mainly along Cornhusker Highway and West O Street, both identified as important entryway corridors, so they would not benefit from this change.

The next requested change is in the side yard. The applicant is proposing to allow car sales within the side yard, currently not allowed. Staff recommends denial of this portion of the application also. Parking is not allowed in the H-3 Districts now, so it does not make sense to allow it.

Finally, parking standards now are calculated using a ratio based on floor area. Guidelines differ from district to district. Staff recommends approval of the parking reduction for car dealers less than two acres in size. Building size does not relate to parking in these cases, and the dealers have less space, only one or two employees, and shoppers tend to park near the car they are interested in, so in a sense the driving aisles serve as parking. Larger dealers do not have the same parking issues, so Staff proposes to keep those requirements the same.

Beckius asked for explanation regarding the applicant not being in conformance. Thierolf said the applicant submitted a final plat to move the lot line and that is when the issues were discovered. Beckius noted that it was not the case that this came forward as a result of complaints. Thierolf agreed.

Beckius referred to a survey that was done that indicated that upwards of 90 percent of dealers were out of compliance. Thierolf said 21 dealers were assessed and only 1 met standards. Edgerton asked if that included front and side yard areas. Thierolf said mainly front yard.

Edgerton asked for more information about this particular sight. Thierolf explained that the applicant was seeking to move the lot line farther west. Staff then noted that because of the regulations, they would have to be 15 feet beyond what they requested to continue to park cars along that side where they are currently parked.

Corr asked if the rules are only enforced on a complaint basis. Thierolf said that is correct and Building and Safety has only ever received a couple of complaints. Corr noted that it is a safe assumption that people simply don’t realize the rules that should be followed.

Harris asked what percentage of dealers are not in conformance and are using the screening. Thierolf said the he is not sure if any are. Harris asked for confirmation that the screening requirement is also lacking. Thierolf said yes, he would be surprised if anyone is in full compliance with the screening requirement. Harris noted that even at 60%, the screening is not really happening. Thierolf said that for parking lots, there is a 90% requirement and there is a fair amount of compliance with that. Harris wondered if there was a misunderstanding about the display of cars for sale verses the parking of a car. She asked if there was consistency in the requirements between the two in that regard. Thierolf said most of those lots predate the screening requirements. He does not believe any are doing the 90%.

Edgerton asked for clarification that a text amendment change would affect all categories in the H-2 and H-3 districts for auto sales. Thierolf said yes, all dealers in those districts would be affected. The parking reduction applies to all.

Beckius thanked staff for providing the history of the standards in place. He asked how the distance of 12 feet was arrived at. Thierolf said that in 2002, the idea was to meet somewhere near the halfway point of 6 feet and the existing 25- or 30-foot requirements that were in place. In 2002, it was also the case that cars could not be in the front yard without a special permit. Beckius asked if the special permit was to allow people to get to the 12-foot distance, to get closer to the lot line. Thierolf said it was to allow people to go into the front yard.

Edgerton asked if the property to the west is an empty lot. Thierolf said it is.

Weber asked if all of the cars currently parked on that west side are not allowed, since the existing rule does not allow use of the side yard. Thierolf said the side yard is 15 feet.

Harris asked what the issue would be with the 6-foot setback with 90% screening. Thierolf said that when the 12-foot standard was developed, it was a long process with much input. That has not happened in this case. The letter has been sent out and other staff was consulted. We are not comfortable with changing something that went through such an intense process then. Our position is that it is better to leave it where it is.

Harris asked if enforcement will still be on a complaint-based system. Thierolf responded that Building and Safety are having discussions about that now. This has brought the issue to the forefront .

Harris asked what the consequences are after a complaint has been made. Thierolf said first a letter is issued, then a fine is charged for continuing to be in violation, and ultimately, it could be taken to court.

Washington complimented the detail of the staff report. It is her opinion that some form of education needs to go out to dealers to address issues of compliance. If they are behind the curve in understanding the rules now, it seems rules would be difficult to enforce if they are changed.

David Cary, Director of Planning Department, stated these questions are well-taken and have been discussed internally. The discussion moving forward includes what type of strategy will be best in terms of the level of enforcement and being fair and consistent. Those discussions will continue to take place regardless of the outcome today. The issue of enforcement is separate from the text amendment before commissioners today.

Beckius asked when the department became aware that the applicant was out of compliance. Thierolf said the issue was raised when they applied to move the lot line. Staff has been working with them for awhile and this text amendment might be their only option.

Proponents:

1. Ryann Glenn, Husch Blackwell, 215 S. Main Street, Council Bluffs, IA, came forward as legal representative to the applicant. She stated this came to light when her client entered a purchase agreement for the small strip of adjacent property. To make that legal, we needed to go forward with the plat. Based on the report from Staff, the 12-foot distance in the front yard was settled on after some discussion about having allowing the 6-foot. What we propose will actually further the Comprehensive Plan goals for creating a more aesthetically pleasing entryway corridor because fewer businesses will be grandfathered in and the screening will increase. The changes in the side yard do not negatively impact Comprehensive Plan goals. There is not much green space on the property now so that would not be negatively impacted. We do not request that the separation be removed when the lots abut residential area. The majority are not near residential, but that safety net remains. Our client is trying to be a good business owner and neighbor. The requirements were only brought to light with the request for the change of plat. Rather than giving up, we have continued to work with the City to find a solution.

Beckius asked if the applicant understands what the impact would be to the use of their lot if they were to be in conformance today. Glenn said yes. The front yard is the best area to market cars but there is no way there would be enough space while maintaining the setback. Specific to this property, there is a lot of inventory. With the adjustments that are requested, the client will have more usable space because they would legally be allowed the entire side yard. The applicant intends to reduce inventory and to conduct a good design study to create the best, most aesthetically pleasing layout.

Beckius asked the logic of the 6-foot setback. Glenn said they would have asked for zero, but wanted to show good faith and work with the City. We understand the concept of the entryway corridor. The 6-foot distance still allows for a landscape barrier and for people to park cars along the front property line.

Beckius asked if the applicant is in conformance today. Glenn said they are not because communication with the City has been ongoing for the past several months and it was agreed the client would not be enforced against as we worked towards a resolution.

Harris noted no use is allowed now in the side yard. She asked the applicant to address the fairness factor of introducing car sales and not other uses. Glenn said that the majority of properties in H-2 and H-3 being impacted are related to vehicles sales. It did not seem to make sense to say parking lots can park in the side yard, but not vehicles sales. This seemed like a streamlined solution that would be easy to enforce.

Opponents:

1. Terry Barber, 300 N. 44th Street, Suite 205, came forward as legal representative to the property owner to the west. They are in general agreement with Staff in that, as a matter of conscience, they cannot support the proposed changes. Prior to purchasing the neighboring property, the applicant was located around the intersection of 11th and Cornhusker where they had issues with some uses going beyond the borders of their property. This indicates that this may be an ongoing challenge. The lot lines in the exhibits shown are not correct; they are actually farther to the east than indicated. There is a survey that indicates that roughly 60% of the paved area to the west is the part under contract. The applicant believed they were getting property up to the edge of the concrete, but that was not the case and, naturally, there was disappointment. His client agreed to sell the excess concrete area in order to make this work. It was noted about how many ways this car lot is in violation. The text amendment changes are not only extensive, but ill advised at this time, given the background. The point of the changes would be to increase the number of vehicles allowed. If you look at this lot in comparison to others, the difference is notable. His client has not come forward with any complaints because the applicant has only owned the property for 15 months and we have been trying to get things worked out. The number of spots now in the lot is very likely double what the concrete on the property was striped for.

Beckius asked if the lot line is actually farther east than shown. Barber said yes, by about 40 feet. Beckius asked if there is a parking agreement in place to account for use of the land not owned by the applicant. Barber said an easement was given to the owner of the steakhouse previously located on the property. That was for overflow parking. They entered into the sales agreement with the applicant thinking it would move things along to a good conclusion.

Hove asked if everything up to the edge of the concrete is being sold. Barber said that is correct.

Edgerton asked if they were still moving forward with the sale. Barber said yes. The challenge is that the property needs to be used the way it ought to be under the current standards.

Washington asked if they are only willing to move forward on the sale if the applicant comes into compliance. She noted it is difficult to reconcile the testimony in opposition with the pending sales agreement. Beckius agreed. Hove asked if the opposition is to the fact that the rules are not being followed, as currently set forth. Barber agreed that was the case. Their concern is for any situation similar to this. Edgerton asked if they are concerned with how this might affect the resale of the land. Barber said yes, and on how the changes might reflect on future uses of the land to the west.

Staff Questions:

Harris asked if parking would be allowed in the front subject to the 6-foot setback and 90% screening unless parking predates the requirement. Thierolf said if this sight were still a restaurant, it would be grandfathered in because the lot was already built. Once the use changed, it is no longer grandfathered in. With the change, there may not be any car sales that are legally conforming. Harris questioned whether, if this went ahead, dealers would suddenly have to pay for screening. Thierolf said no, because before the 12-foot requirement, they had to be out of the front yard entirely.

Washington asked for clarification that as of 2002, car dealers in H-2 and H-3 needed to be 12 feet off the front yard, and the review by Staff has found that very few are meeting that. Thierolf said that is correct.

Rick Peo, Law Department, stated that many of the lot uses were for businesses with associated parking. If the business converts to auto sales, that parking changes to a display area, and not a parking area. That has different setbacks and likely contributes to the enforcement issue. If we go forward, it will be important to look at doing the educational component first, then maybe allowing a time line to be brought up to speed, and then there would probably have to be continuous enforcement. It would take diligence to get compliance over time. It is also important that no dealer is singled out.

Beckius noted that a car dealership is no longer parking, it is product display. So, in theory, the ordinary rules don't apply. In that way, the stalls are no longer relevant. Thierolf agreed.

Harris asked what other uses could hypothetically make it into the side yard. She wondered if this would only apply to car sales. Thierolf said that some heavier commercial uses, like contractors, might want to use side yards for parking.

Beckus asked if there is a safety component that creates the need for a buffer between the lot line and a parked vehicle and if this is a safety issue or an aesthetic one. Thierolf said it is more that uses have to be outside of the setback. Cary said there is a standard setback for both parking and display situations. It is 12 feet for sales and 6 feet for parking. Beckius asked the reason for the difference in the two. Thierolf reiterated the involved process that went into deciding on the 12-foot setback.

Beckius asked why there is a difference between a car that is a product and a car that is parked. Cary said the difference is that a car on display will remain there. In contrast, parking is a transient use. Beckius said the flip side of that is that no one tells a business owner that they cannot have parking in their lots after hours. Cary agreed that is the case, as long as parking follows the established setback.

Hove asked if new dealerships are following the 12-foot rules. Thierolf said most of them are meeting it, though some may not have the 60% screening. The dealers to the south are not within the affected districts. They are within a special development permit and have their own, likely higher, setbacks.

Edgerton asked how the applicant would have to adjust parking in the side yard if the staff proposed text amendment went forward. Thierolf said the line would presumably move to the edge of the pavement and there would need to be space there for the setback, so they would need to rearrange.

Corr wondered if the change would get rid of grandfathering. Thierolf said that is correct, but clarified that it pertains to parking lots.

Washington asked if the suggestion made by the applicant that grandfathering would be eliminated was correct. Thierolf said there could be a miscommunication.

Applicant Rebuttal:

Glenn said there is confusion about the grandfathering because the proposed text specifically states that an associated outdoor area is permitted in the font yard, provided that the front yard shall be screened. The original proposal would have allowed her client's property to be grandfathered in so that even if we had 6-foot setback, we would not have to do the required landscaping. At the Mayor's Roundtable, it was received that there was concern about the amount of businesses that could be grandfathered in. The proposal presented today has no language that allows for an exemption so the recommendation would be a 6-foot setback with 90% screening. If that needs to be clarified with an amendment, that is possible.

With respect to the side yard, Mr. Barber pointed out the subdivision request was submitted to offer the client the ability to purchase the entire concrete area. That request was submitted by Mr. Barber's client. It does not make sense to allow us to purchase that large piece of property while speaking out against the use of that side yard.

To reiterate, the applicant wants to be a good neighbor and fully intends to look at the layout of the lot to use it in the most aesthetically pleasing way. That can be accomplished if there is more legal space to use. There is no safety concern in place and the uses of parking and vehicle display for sales should be treated the same. It makes it much easier to explain and to ensure compliance.

Thierolf offered that any car dealer established from 2002 through today would be grandfathered in if this change moves forward.

Harris asked who would be responsible for installation of screening. Thierolf said property owners. Harris asked if a dealership would remain grandfathered in if ownership changed, as long as the use remained. Thierolf said yes. Realistically, almost every car dealer would not be grandfathered in. Most of them have less than a 6-foot setback so they would all be subject to these changes.

~~CHANGE OF ZONE NO. 16042~~ TEXT AMENDMENT NO. 16020
ACTION BY PLANNING COMMISSION: **March 1, 2017**

Corr moved approval, seconded by Finnegan.

Finnegan said she is concerned that there is confusion about the current standards, so if they are changed, she wonders what the impact will be and whether there will be unintended consequences that have not been reviewed. Because this is a text amendment, the impact to every dealer must be considered. Her heart goes out to this applicant, but because so much thought went into these decisions in 2002, a change would add chaos. She drove along West O and it is a mess and does impact aesthetics. She supports the staff recommendations.

Beckius said he is troubled that there is non-conformance to such a huge degree. The flip side is the context. These areas are along major thoroughfares with tens of thousands of travelers. If this was a community problem, it would have been brought up before. He understands why the setbacks are in place, but the community does not seem to question them. The historical context of the 2002 changes lose some significance if the community has not cared. If an action is taken that will beautify areas, isn't that for the better? It seems requiring more beautification, even if it means moving cars by 72 inches, is a better alternative. If there were a motion to reduce the setback to six feet, he would support it.

Washington said that she feels this came forward too soon and more information was needed. She needs to understand the impact this will have on other dealerships. She would love to see Cornhusker have a more beautiful entrance. Beckius raises a good point that we are not getting complaints, so she questions what problem is being solved today. She understands the applicant wants to use the side yard, and because of the shape of that particular property, that makes sense, but it may not for other properties.

Scheer stated he will support the motion, as made. A large aspect of this discussion is trying to make a single property work with a text amendment. That is wrong. The broad impact of a text amendment needs to be thought of in a broad way because there could be unintended consequences. Beckius made a good point about community comments and maybe there would be more if this were brought up in a broader way. He is not uncomfortable with some of the proposed changes, but this body would not be approaching it the right way with a text amendment for rectification of a problem on a single property.

Corr said she would like to see another group to discuss this matter. People in the industry will be more fluent in the unintended consequences of such a change. Parking is a pet peeve of hers. People may not complaining could just be because they do not know the rules. Cornhusker was an industrial thoroughfare, but that has changed. Ift the goal is to beautify this, it needs to be looked at. She is also hesitant to reward non-compliance.

Harris said she agreed with Beckius. On the face of this, she would not be inclined to approve parking in the side yard, but to streamline parking and display because it seems ripe for confusion. She will support the recommendation of Staff because she is concerned about the details she may not be seeing today. Having testimony from other dealers about their experience and about the broad consensus for beautification would help, but as it stands, she does not feel comfortable changing the rules for many because of one.

Weber stated he would be fine with a 6-foot setback but is concerned with the use of the side yard and how it will affect others. He is generally not happy with the way this was brought forward, but he will support the recommendation of Staff.

Motion carried, 7-2: Corr,, Finnegan, Harris, Scheer, Washington, Weber, and Hove voting 'yes'; Beckius and Edgerton dissenting. This is a recommendation to the City Council.

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

Note: These minutes will not be formally approved by the Planning Commission until their next regular meeting on Wednesday, March 15, 2017.

F:\boards\pc\minutes\2017\pcm030117