MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, April 8, 2009, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska
MEMBERS IN ATTENDANCE:	Leirion Gaylor Baird, Gene Carroll, Dick Esseks, Wendy Francis, Roger Larson, Jim Partington, Lynn Sunderman and Tommy Taylor (Michael Cornelius absent). Marvin Krout, Steve Henrichsen, Mike DeKalb, Ed Zimmer, Brian Will, Tom Cajka, Christy Eichorn, Brandon Garrett, Jean Preister and Teresa McKinstry of the Planning Department; media and other interested citizens.
STATED PURPOSE OF MEETING:	Regular Planning Commission Meeting

Chair Gene Carroll called the meeting to order and introduced Chad Nabity from the Hall County Regional Planning office in Grand Island.

Chad Nabity, President of the Nebraska Planning and Zoning Association, made a special presentation awarding the President's Special Service Award to the Planning Department and the Mituso Kawamato Excellence in Planning Award to Mike DeKalb of the Planning Department. Chair Carroll expressed appreciation on behalf of the Planning Commission to the Planning staff and to Mike DeKalb.

Carroll then requested a motion approving the minutes for the regular meeting held March 25, 2008. Motion for approval made by Sunderman, seconded by Francis and carried 8-0: Gaylor Baird, Carroll, Esseks, Francis, Larson, Partington, Sunderman and Taylor voting 'yes'; Cornelius absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: April 8, 2009

Members present: Gaylor Baird, Carroll, Esseks, Francis, Larson, Partington, Sunderman and Taylor; Cornelius absent.

The Consent Agenda consisted of the following items: **COMPREHENSIVE PLAN CONFORMANCE NO. 09004, ANNEXATION NO. 08005, CHANGE OF ZONE NO. 09008, USE PERMIT NO. 09001, CHANGE OF ZONE NO. 09007, SPECIAL PERMIT NO. 09004 and USE PERMIT NO. 140C**.

Ex Parte Communications: None

Item 1.1, Comprehensive Plan Conformance No. 09004, was removed from the Consent Agenda and scheduled for separate public hearing.

Larson moved approval of the remaining Consent Agenda, seconded by Sunderman and carried 8-0: Gaylor Baird, Carroll, Esseks, Francis, Larson, Partington, Sunderman and Taylor voting 'yes'; Cornelius absent.

Note: This is final action on Use Permit No. 09001 and Special Permit No. 09004, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

There were no requests for deferral.

COMPREHENSIVE PLAN CONFORMANCE NO. 09004
TO AMEND THE LINCOLN CENTER REDEVELOPMENT PLAN,
"LINCOLN MALL CAPITOL ENVIRONS REDEVELOPMENT PROJECT".
PUBLIC HEARING BEFORE PLANNING COMMISSION: April 8, 2009

Members present: Sunderman, Francis, Gaylor Baird, Larson, Partington, Taylor, Esseks and Carroll; Cornelius absent.

Ex Parte Communications: None.

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

This application was removed from the Consent Agenda at the request of the applicant.

Staff presentation: **Brandon Garrett of Planning staff** presented the proposal to amend the existing Lincoln Mall Redevelopment Project Area to include portions of the Capitol Environs District, including rights-of-way around the Capitol square, one block of J to the east, two blocks of Centennial Mall and one block of Goodhue Blvd. The other part of this proposal is to amend a portion of the language to allow some additional redevelopment activities to occur, such as the addition of hardscaping and public art to the improvements of Centennial Mall. The staff finds the proposal to be in conformance with the Comprehensive Plan.

Gaylor Baird wondered why this area was not included originally. Garrett explained that the whole area is part of the Lincoln Center Redevelopment Plan, but within that plan there are several different redevelopment project areas. This proposal just adds rights-of-way within the existing general area.

Proponents

1. David Landis, Director of Urban Development Department and the applicant, explained that the area that is now part of this particular district stops right at the edge of the State Capitol. The boundaries were originally structured to accommodate a particular project, which was the Landmark building, which produced a TIF increment for which we could make adjustments all up and down the connection from the State Capitol from the County-City Building. Since that time, the TIF increment that has been generated by that project has been greater than anticipated. There are resources over the next 10 years that will generate about two million dollars. All of the original plans have been met and there are now additional resources. It is perceived that what was a very handsome addition could be expanded to other areas for which the city has not heretofore been able to generate resources to make changes. The new redefinition is to include public rights-of-way that more accurately conform with the Capitol Environs theory that perfect framing of the Capitol be done from all four angles. He is predicting that some of the resources will be used on Centennial Mall.

Landis submitted a proposed amendment to the project to allow consideration of these resources as part of the ongoing repair and maintenance program.

Landis further pointed out that the Comprehensive Plan and the Downtown Master Plan celebrate the role of the State Capitol and this project is in conformance with that. There are four approaches to the State Capitol and they will do as much as possible. This plan has been endorsed by the Nebraska Capitol Environs Commission, and the Nebraska Capitol Environs Commission will also see the specific designs.

Esseks inquired as to the property tax implications. Landis stated that this will make no change or alteration to the existing property taxes. This allows for more flexibility and opportunity to use those resources. This is a district that will generate TIF for a few years.

Landis clarified that the TIF funds must be spent within appropriate boundaries and this alteration will allow TIF to be used within these new boundaries. The resources must be spent inside the project area.

Larson inquired why this amendment only goes two blocks north of the State Capitol rather than all the way up to R Street. How do you arrive at an amount in establishing the endowment for future care of the Capitol? Landis explained that there is no plan for that endowment. The goal is to have some seed money that comes from this source to challenge the private sector to assist. The reason we are going two blocks is because of the kinds of expenses involved when looking at hardscaping that amount of land. All of the resources that we can identify would easily be spent in the two-block area. We would love

to go further, but to do that we will probably need another project close to the area and also challenge private sector contributors, such as the State, DLA, abutting landowners. We will come back to the Planning Commission when we have a plan to go further.

Larson believes that the Centennial Mall is a tremendous argument for this and he is glad to see that being done.

2. Rick Noyes, President of Downtown Neighborhood Association, testified in support. This is a project that really speaks to the original legislative intent of the TIF law.
There was no testimony in opposition.

ACTION BY PLANNING COMMISSION: April 8, 2009

Larson moved a finding of conformance with the Comprehensive Plan, as amended, seconded by Gaylor Baird and carried 8-0: Sunderman, Francis, Gaylor Baird, Larson, Partington, Taylor, Esseks and Carroll voting 'yes'; Cornelius absent. This is a recommendation to the City Council.

COMPREHENSIVE PLAN CONFORMANCE NO. 09003,
FOR DECLARATION OF SURPLUS PROPERTY;
CHANGE OF ZONE NO. 08074,
FROM I-1 INDUSTRIAL DISTRICT TO R-2 RESIDENTIAL DISTRICT, P PUBLIC USE DISTRICT AND H-3 HIGHWAY COMMERCIAL DISTRICT, FROM P PUBLIC USE DISTRICT TO H-3 HIGHWAY COMMERCIAL DISTRICT, AND FROM R-4 RESIDENTIAL DISTRICT TO P PUBLIC USE DISTRICT;
CHANGE OF ZONE NO. 09006
FOR A LANDMARK DESIGNATION;
and
STREET & ALLEY VACATION NO. 09003
TO VACATE THE REMAINING PORTION OF THE NORTH-SOUTH ALLEY BETWEEN NORTH 26TH STREET AND NORTH 27TH STREET, NORTH OF CENTER STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: April 8, 2009

Members present: Sunderman, Francis, Gaylor Baird, Larson, Partington, Taylor, Esseks and Carroll; Cornelius absent.

Ex Parte Communications: None.

Staff recommendation: A finding of conformance with the Comprehensive Plan on the declaration of surplus property and alley vacation; and approval of the change of zone and landmark designation.

Staff presentation: **Tom Cajka of Planning staff** discussed the surplus property application. The property is bounded by 27th and 26th north of Center Street and is currently owned by the City, with one building, that being the former Carnegie Library. The request to surplus is to help facilitate the development of the Matt Talbot Kitchen and Outreach program. Currently, NeighborWorks uses the library building as their offices and they will be relocating to 23rd and P Streets.

Ed Zimmer of Planning staff explained that part of the preparation for surplusing this land is intention by the City to request a landmark designation on the historic library building before it leaves city possession. The building was built in 1908 at 27th & Orchard Streets, designed by a very significant German architect. This building operated as a library until 1982, and then was the last of the five Carnegie Libraries in the Lincoln system to cease operation as a library and became office use by the city for 10 years. At that time, a proposal came forward to redevelop the site and save and relocate this building. In 1992 the building was moved to North 27th Street and placed on a new foundation and basement. By designating the building as a landmark, there will be continuing city input and design review of any future changes to the building. The Historic Preservation Commission has reviewed this request and recommends approval.

Carroll understands that the future owners are talking about adding onto this building. How does that affect the historic designation? Zimmer explained that the preliminary plans appear to utilize elements of the historic building and carefully locate the additions to the west and north side so that the principal east and south street facades are very well preserved. They are talking about materials and architectural elements that are very sympathetic to the building. The Urban Design Committee has had a first look at the new proposal and it will move forward to the Historic Preservation Commission.

Cajka then explained the change of zone for the surplus property area and some adjacent areas. The surplus property area is zoned P and I-1. It can no longer have P zoning when changed from public use and the I-1 is not appropriate. The proposal is to rezone to H-3 enabling Matt Talbot to do what they want to do.

The staff has also found that the zoning in the surrounding area did not match what exists and took this opportunity to make some other zone changes. The strip of I-1 on the east side of 27th Street next to residential will be changed to R-2. The proposed zoning for the area south of Center Street and north of Fair Street where the Lincoln Water System buildings are located is P Public since it will remain city-owned property.

Esseks inquired about the effect of the H-3 zoning, wondering whether there are buildable lots so that someone could come in with any H-3 authorized use which might not make the residents across the street to the east very happy. Cajka explained that the area being rezoned to H-3 is the same boundary as the surplus property being sold to Matt Talbot. A final plat is currently in process showing all of that as one lot and it will be utilized entirely by Matt Talbot. Esseks is concerned about a change in use in the future not coming back

to the Planning Commission and City Council. Cajka did not believe there was anything that would prohibit subdividing. H-3 would allow mostly office and retail.

Carroll confirmed that the lots being changed from I-1 to R-2 on east side of North 27th Street are currently owned by the City. Cajka concurred and believes they are platted lots that would be buildable. The City is not planning to surplus that area at this time. The zoning is being changed to provide a buffer.

Cajka then explained the request to vacate the small piece of the alley between N. 26th Street and N. 27th Street, north of Center Street, that was not previously vacated. The future plan for Matt Talbot shows a building going across this alley.

Proponents

1. DaNay Kalkowski appeared on behalf of **Matt Talbot Kitchen and Outreach** in support. Matt Talbot Kitchen and Outreach is currently located at 1911 R Street and it has become necessary to relocate to accommodate the Assurity redevelopment project on a quick timeline. Matt Talbot worked with the city to find a suitable site for the relocation and to that end the property at 2121 N. 27th Street was identified as an appropriate site. The City moved forwarded to amend the N. 27th Street Corridor and Environs Redevelopment Plan to include the Matt Talbot Kitchen and Outreach project. Since that time, Matt Talbot has been working closely with the City on a redevelopment agreement that would provide for the sale of this property to Matt Talbot. NeighborWorks was intimately involved in the discussions. As part of the negotiations, the four actions on today's agenda are vital and necessary for this redevelopment project to go forward. The landmark designation is a requirement of the redevelopment plan. The area of the alley vacation would affect the setbacks for the building.

Kalkowski also advised that on March 31, 2009, Matt Talbot and the City jointly held a neighborhood meeting on these proposals, with four people attending. On Monday, the City Council had a public hearing to discuss the redevelopment projects for Assurity, Matt Talbot and NeighborWorks, recognizing that all three projects are interrelated and need to be approved as a package. There was strong public support for the three projects which will basically be a 62,000,000 million dollar investment in Lincoln. This approval is essential to move forward with the redevelopment project on a timeframe that allows them to be out of the way for the Assurity redevelopment project.

Kalkowski showed the site plan for the final plat being processed. There are many LES easements going through the site. The large majority of the site to the south is where the building will be located with the parking lot to the north. There would not be a lot of area to the north that would be usable upon completion of this project.

There was no testimony in opposition.

COMPREHENSIVE PLAN CONFORMANCE NO. 09003
ACTION BY PLANNING COMMISSION: April 8, 2009

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

CHANGE OF ZONE NO. 08074
ACTION BY PLANNING COMMISSION: April 8, 2009

Francis moved approval, seconded by Larson and carried 8-0: Sunderman, Francis, Gaylor Baird, Larson, Partington, Taylor, Esseks and Carroll voting 'yes'; Cornelius absent. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 09006
ACTION BY PLANNING COMMISSION: April 8, 2009

Francis moved approval, seconded by Gaylor Baird and carried 8-0: Sunderman, Francis, Gaylor Baird, Larson, Partington, Taylor, Esseks and Carroll voting 'yes'; Cornelius absent. This is a recommendation to the City Council.

STREET & ALLEY VACATION NO. 09003
ACTION BY PLANNING COMMISSION: April 8, 2009

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

CHANGE OF ZONE NO. 09004,
A TEXT AMENDMENT TO THE
ZONING ORDINANCE RELATING TO
NONCONFORMING AND NONSTANDARD USES.
PUBLIC HEARING BEFORE PLANNING COMMISSION: April 8, 2009

Members present: Sunderman, Francis, Gaylor Baird, Larson, Partington, Taylor, Esseks and Carroll; Cornelius absent.

Ex Parte Communications: None.

Staff recommendation: Approval.

Staff presentation: **Christy Eichorn of Planning staff** stated that the purpose of this text amendment is to delete the requirement for a special permit for additions or expansions to existing homes that do not currently meet the existing setbacks of their zoning district. Eichorn has processed about nine of these special permits in the last two years and there has been no opposition and they were all on the consent agenda. This would be a streamlining effort. This text amendment would allow the expansion of a nonstandard single-family or two-family dwelling into a required yard in the R-1 through R-8 districts as a conditional use under the following conditions:

1) The proposed building expansion shall not extend further into any required yard than the furthest extension of the existing wall of the single- or two-family dwelling and shall maintain a minimum required setback of three feet for a side yard and ten feet for a front or rear yard.

2) The proposed building expansion shall comply with all other height and area regulations of the zoning district in which the building is located.

3) The use of the building shall remain a single- or two-family dwelling.

4) This does not allow for the enclosure of front porches that encroach into the front yard setback.

There was no testimony in support or opposition.

ACTION BY PLANNING COMMISSION: April 8, 2009

Partington moved approval, seconded by Francis and carried 8-0: Sunderman, Francis, Gaylor Baird, Larson, Partington, Taylor, Esseks and Carroll voting 'yes'; Cornelius absent. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 08004A,
TO CONTINUE AND EXPAND THE
EXCAVATION OF SAND, GRAVEL AND SOIL,
ON PROPERTY GENERALLY LOCATED
AT NORTH 40TH STREET AND WAVERLY ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: April 8, 2009

Members present: Sunderman, Francis, Gaylor Baird, Larson, Partington, Taylor, Esseks and Carroll; Cornelius absent.

Ex Parte Communications: Francis disclosed a phone call from Mr. Umberger and she referred him to staff.

Staff recommendation: Conditional Approval.

Additional information for the record: **Mike DeKalb of Planning staff** submitted a letter in opposition from Mark and Leah Umberger, who are the next door neighbors to the west. Their objection is the standing water being 100' from their barn and being a breeding ground for West Nile Virus. They are also concerned about dust and blowing dirt.

Staff presentation: **Mike DeKalb of Planning staff** presented the proposal for a continuation and expansion of the existing soil mining operation at 40th & Waverly Road. The operation has been going on for about 3 years. The revised plans submitted with this application keep the same access point for construction vehicles and for the house onto Waverly Road, but the existing drive is shifted to the west showing an expansion of the lake area and an expansion to the south. This application was submitted under the new soil mining language in place so there is a groundwater report. The staff report is written based upon the Planning Commission's prior approved conditions, updated to the new regulations. One condition previously approved was that the mining operation be allowed Monday through Friday in response to neighborhood concern. That condition was appealed to the City Council and the City Council changed the operation from Monday to Saturday. The applicant may be asking for an amendment to change Friday to Saturday.

Esseks inquired whether the new regulations approved by the City Council included a provision for annual review by the Planning Director. Mike pointed out that this was previously only a one-year permit. It had been ongoing for two years without a special permit. The new regulations do include a provision for revalidation by Building & Safety each year. It is built into the regulations so a separate condition is not required.

Francis inquired as to how long it should typically take for someone to get their pond filled. This seems like it is taking an unusually long time. DeKalb suggested that it would probably take a year or so. Soil mining excavation permits have varied from one year to three years.

If the end objective is to build a pond on an acreage, Francis would assume that the criteria for removing the dirt and for replenishing the area surrounding the pond would be a little different versus soil mining. DeKalb stated that a special permit is not required to dig a pond. In this case, we are addressing it as a soil mining operation. We are trying to make sure that it is operated safely and restored to as stable a state as possible. Relative to maintaining the water level, language has been added to require that the water level must be maintained.

Francis noted the letter from Peter Katt requesting that the existing bond be returned to Land Construction. DeKalb advised that Land Construction will no longer be the contractor. That bond will be held until the property is restored or the bond is replaced. If this special permit is approved and the permittee puts up a new bond, the existing bond will then be released.

Proponents

1. James Peterson, 3601 Waverly Road, Davey, NE, the applicant, indicated that he is asking for a three-year permit to try to finish what he started with Land Construction about three years ago. Land Construction was unable or unwilling to finish the pond due to the amount of dirt they needed or did not need. During that three years, he has had other contractors ask about getting dirt but he was under exclusive contract with Land Construction at that time to take dirt on an "as needed" basis. He is hoping to open this up to all the excavating companies around Lincoln. He has no objection to any of the conditions of approval; however, he would ask that he be allowed to operate Monday through Saturday.

With regard to the bond, Land Construction put up the performance bond a year ago. They were supposed to seed and grade the banks, which they have refused to do. Under this new permit, Land Construction is no longer involved; however, Peterson believes that Land Construction should be obligated to seed and grade what they had said they would do under the performance bond.

Peterson stated that, "Nobody wants this done more than I do." He has put a 10' strip at the base of the water along the bank to provide some safety. He believes that by opening this up to other contractors to haul dirt out he might be able to get it done. It could be finished within a few months or it might take longer, depending upon the need for the soil. He does not know exactly how long it is going to take because he is at the mercy of the contractor who wants dirt.

Peterson explained that the City Council approved operations on the previous special permit on Monday through Saturday. This provides the opportunity to work on Saturday when there might be inclement weather during the week.

Peterson suggested that West Nile Virus is usually not a problem with moving water – it is more of a problem with stagnant little bodies of water like mud holes. Peterson explained that the pond will be extended about 150' to the west and about 200' to the south. By enlarging the pond, he is hoping to have enough money from the dirt contractors to make it the size he wants.

With regard to Mr. Umberger's concern about the water being close to his property, Peterson pointed out that Mr. Umberger has horses closer to his property than the pond will be to the Umberger house. There are odors and flies from these horses, so he does not believe Umberger has anything to complain about.

2. Ryan Brandt, who helped Mr. Peterson with the engineering part of his design, appeared to answer any technical questions.

Esseks noted that in order to have a satisfactory level of water, one proposal in the report is that a separate well would be dug and water from that well would maintain the level of the pond. How practical is that in terms of the cost of developing the well? Brandt stated that they did not do a cost-benefit analysis, but that would be more of a backup measure. Under the existing permit, a portion of the excavating area was dug down to the first level of water and it has maintained a rather stable water elevation since it was dug. He does not believe pumping will be necessary. It is being suggested only as a precautionary measure for dry years.

Esseks inquired about the depth. Brandt stated that it was excavated to 20' and it has probably silted in some since it was dug.

Francis inquired how long it would take to make a pond this size working five days a week with a dedicated contractor. Brandt did not know.

Opposition

1. Tom Keep testified in opposition, observing that Land Construction got what they wanted and left the site with no new vegetation or topsoil. What had been a 3:1 slope at the upper end is now a 10' high wall which does not meet the requirements of the permit. The soil that is left is going to be below the water table and Land Construction doesn't want it, yet they want the bond released.

Keep is asking that the conditions of these permits be followed so that we don't end up with terrible messes on the landscape. He does not know that Mr. Peterson is assured of ending up with a pond under the new permit. It is kind of like strip mining. We need to make sure all of the conditions are met. He does not believe that any soil that would end up being below the water level is going to be excavated. He does not see a plan of how they are going to excavate below the water table that exists. Keep believes that the contractors will take the soil out of the driveway to the west and leave again. However, Keep agrees that if this is approved, there are conditions that are good enough that at least restore this to some kind of reasonable appearance and use, but only if the conditions are satisfied.

2. Karen Kurbis, 17500 N. 84th, testified as one of the group who has diligently been working with soil mining for three years to get a new ordinance in place. The concern is, "what's left to take?" Land Construction wants out. Who else is going to do it? She talked about the soil mining permits that are already in place. Where are you going to get a contractor to move the dirt? It is also a traffic and safety concern. It would be nice if they could get this pond done and over with. Why three more years?

3. Robert Pester, 40th& Waverly Road, testified in opposition. He did not know anything about this meeting until Saturday when he received the letter from the Planning Department dated March 27th. He is not prepared. All of the neighbors have been grumbling about this.

If he had more time, he would have had a bunch of signatures here. He is concerned about the truck traffic. There are 14 driveways and residences on the north side of Waverly Road from 40th to Hwy 77. It is a safety issue. They leave mud on Hwy 77. He has a son who has West Nile Virus and will have problems for the rest of his life. Who will be responsible for mosquito control on that pond?

Staff questions:

Esseks is worried about setting a bad precedent with this permit. Three years were not enough. You've got landscape that has not been restored. A steep drop is not a safe type of landscape, and now they are asking for three more years, based upon market conditions. Possibly we can justify this in the sense that the property owner had a bad contractor. If the permit is extended, Esseks believes there should be at least partial restoration.

DeKalb observed that the first two years were not under a special permit. Apparently, there was an agreement between the landowner and the contractor to excavate for purposes of a pond. There was no time limit, no conditions and no disturbed area, although he did have a 404 permit and floodplain permits. A year ago, they expected to be able to finish in one year. We have drawings that show the final contours that will be brought to a nice grade and we have a bond. If they walked away today, we would require that it be restored as approved in the previous special permit. DeKalb suggested that renewing the special permit gives us the opportunity to hear what is going on and set conditions as appropriate, with a higher bond and monitoring conditions. In this particular circumstance, it was perhaps little pieces being done instead of a full operation and the one year was not enough. The precedent set is that if you do not complete the job, you lose your bond, or you submit a new special permit.

DeKalb also clarified that the total parcel of land is 25 acres – the land disturbance is probably 20 acres, which is the number in the new ordinance.

Carroll inquired whether there is any part of the site that is finished. DeKalb does not believe so. Carroll then suggested that this applicant would have to post a new bond, but he would still be under the 20-acre rule and would have to reclaim in 3 years and it would be monitored once a year.

With regard to notification, DeKalb stated that this application was submitted on March 12th and the property was posted with a sign within one week and has been out there for a month. The Planning Department makes the effort to get notification out ahead of time. Taylor inquired whether Land Construction has fulfilled their obligation in terms of bonding in order to reclaim their deposit. DeKalb stated, "no, they have not". We are still holding that bond. They won't get it back until it is replaced or the conditions of the prior special permit are met. This special permit will replace the prior special permit and the obligations will be transferred to this special permit and landowner. The landowner himself is applying

for this special permit and will be responsible for whoever does the excavation.

Gaylor Baird wondered whether staff is confident that the concerns of the opposition will be addressed adequately under the new ordinance provisions. DeKalb stated that the staff and group worked over a year to develop the standards and there was a lot of effort on addressing the ability of the city to enforce. He believes the new standards are much better and is hopeful they will accomplish what is being requested.

With Land Construction having left, Francis stated that she is having trouble thinking that a property owner can subcontract with a couple of different land companies and get the job done in a timely fashion and without causing great disturbance and a lot of traffic issues on the property. Is it uncommon for the landowner to be the contractor? DeKalb agreed that it is not the usual situation. Most of the circumstances have been a contractor/excavator making the application with the permission of the landowner. He understands that the applicant does have some preliminary agreements with excavators lined up to proceed with the operation.

Gaylor Baird inquired whether Building & Safety will then inspect the property as the bond is transferred to evaluate the obligations that Land Construction needs to meet prior to the bond being released. DeKalb advised that the new provisions are complaint driven. A licensed engineer must sign off that those conditions have been met before the bond is released, plus the one-year sign-off by the Building & Safety Director that the conditions are being met. There will be a much better effort to monitor the conditions.

Esseks inquired about the expansion in terms of cubic feet of dirt. DeKalb did not know. As far as area, it is probably about a 25-30% expansion in area by adding the area to the west and to the south.

Carroll believes it would be an additional 277,000 cubic yards.

Response by the Applicant

Peterson agreed that the cut on the end is 10 feet, but the reason is that he had a contractor in there that was hauling dirt out of there, but when the permit expired he had to shut them down. They will be coming back if the permit is approved. Peterson also pointed out that he has nine letters with no objection from the neighbors up and down the road. He also pointed out that this is not a daily operation.

Gaylor Baird asked the applicant to express his plans to help make sure this project is completed. Peterson stated that he will be responsible for seeding the banks and he will seed the banks as soon as they are done digging on them. Under the State DEQ permit, he is obligated to seed the banks that are not being used. He does not mind being responsible for the seeding, but he finds it hard to swallow when he had a contractual agreement with another company who did not do their part. Peterson acknowledged that

from here forward, he is responsible for everything that needs to be done.

Gaylor Baird inquired whether the applicant has an estimate of how long this will take. Peterson did not know. He is contacting construction companies and trying to get people to come in and get it finished.

Francis asked the applicant what kind of assurances he can give that he is doing due diligence to have the pond finished and excavated versus trying to find people to buy soil. Peterson stated that he has had positive contact from numerous contractors. He did have one come out but his permit had expired. He has been calling contractors and he has had positive feedback, but until they need the dirt he cannot force them to come out. If he had deep pockets he would pay them to haul the dirt out. By enlarging the pond, he is hopeful to have enough money from the dirt to excavate what hasn't been dug out himself to get it finished.

Partington inquired about the water table and whether there is water flowing into the pond from the water table. Peterson stated that there is one area on the west where there are springs and water. His pond has stayed within 1-2 foot of the normal level all year around. If he stops now, he would have one area to the east that would have water in it and the rest of it would be three foot above that. His choices are to go forward and finish the project, or leave it the way it is, or flatten everything out and plant crops on the bottom.

ACTION BY PLANNING COMMISSION: April 8, 2009

Taylor moved to approve the staff recommendation of conditional approval, seconded by Carroll.

Taylor stated that he empathizes with the neighbors, but this project has been ongoing and it looks like he is making some progress – not nearly enough – but to stop it right now might defeat the purpose of the operation and he believes the property owner has the right to do it. He wishes there was a more definitive plan in place in terms of how deep and how broad and a timeline, but he thinks the property owner should be allowed to go forward; however, he does not want to include operation on Saturdays.

Esseks stated that he highly approves the conditions of approval but he is concerned about the 25-30% increase in the area planned for excavation. He is not sure the Commission should support an expansion when the work thus far has been substandard.

Sunderman agreed with Esseks. He does not see positive progress on the original plan. He would support the application under the original excavation plan in place of the new expanded area. And, he would be in favor of adding Saturday.

Francis agreed with Esseks. There have been three years of non-progress and she is concerned about the expansion and that there is no more commitment from the contractors to buy the soil. She appreciates the desire for a pond, but she is concerned about a three-year extension in the current state of things.

Carroll suggested that approving this application puts the property owner under stricter regulations with the new ordinance. It puts a lot of good things in place that are not there now. If he does not find a contractor, he will need to seed it now under the new requirements. Moving forward by approving this special permit gives the city better control than it has now. The bond amount will increase, which helps for restoration of the property. The expansion being 277,0000 cubic yards is not a large amount of increase. He thinks overall it is beneficial to approve it. It will be reviewed annually under the new stricter regulations. If there is a problem, the applicant would lose the permit after the first year. Carroll believes it will be a better situation for everyone if this special permit is approved.

Gaylor Baird confirmed that the same new ordinance provisions would apply if the Planning Commission approved the original site as opposed to the expanded site.

Carroll suggested that it is a trade-off that he is willing to give. The initial bond amount is not enough to cover the costs of restoration.

Esseks made a motion to amend to substitute the original excavation plan, with the new conditions that will hopefully bring about the public's interest, seconded by Sunderman. Esseks is not confident that expanding it is either going to be feasible or is a good precedent.

Partington is concerned with the whole situation, but he does not believe turning back is a viable option. He does not see the resources coming without the continued excavation to finish the project.

Gaylor Baird wondered whether it is to be assumed that the existing soil there is too wet to be useful. Partington understands from the applicant that when they get to that point, there would be equipment rented to finish the pond.

Carroll agreed that contractors will not come in to remove anything below the water table so that will be at the expense of the applicant, and he is trying to sell more dirt and that is why he agrees that the applicant will need the funds to make the site whole. If we rely on what is existing now, he does not believe it will move forward. It will take a long time to get the site corrected. If the area is not allowed to be expanded, the applicant will not have as much dirt to sell and there will be no contractors available and it will sit in the state it is today and will not change. The bond is not enough to pay for the restoration. It becomes a quandary of which way it goes because there are not enough funds to finish it. The new bond amount looks at the real cost of restoration.

Gaylor Baird is assuming that a higher bond should prevent this kind of situation from recurring in the future. Carroll pointed out that the actual cost of restoration was researched when the new ordinance was written and that was taken into account in the bond amount. He thinks it will cover it in the future for this site or any other site.

Carroll further pointed out that the new ordinance requires an annual review.

Sunderman is not confident the larger site has been planned real well. If the smaller site is approved, the applicant can always come back and amend the special permit.

Motion to amend to approve the special permit, with conditions, without the expanded area failed on a tie vote of 4-4: Sunderman, Francis, Larson and Esseks voting 'yes', Gaylor Baird, Partington, Taylor and Carroll voting 'no'; Cornelius absent.

Carroll pointed out that the original and new site plan are all graded to the requirements. He does not believe there is any information missing on the new site plan. It conforms with the regulations in place today. It is the same as the old permit only a little bit larger.

Partington agrees that it complies with the regulations, but the applicant is dependent on the contractors to come in and move the dirt. Being this far into it, he does not think it can be reversed.

Sunderman stated that he will vote in support. He would prefer starting with a smaller site and work to a larger site, giving the applicant an opportunity to prove the ability to handle this. But, right now, with the option of a special permit expiring with insufficient funds to do the restoration and bring the site back to where it needs to be versus going with a larger site with better protection, he will vote in favor.

Esseks stated that he will vote against it because there is bond money that can be used to restore this site. He is bothered by the substandard work that has been done so far and he cannot justify an expansion of tearing up the landscape. It is not in the public interest to set up that type of precedent.

Gaylor Baird stated that she will vote in favor because we are obviously in a time of transition. This is our first test of the new standards and policies. She will form her own opinion when we have had an opportunity for the new regulations to work. She does not want to be in this situation again.

Francis agreed with Gaylor Baird in that we have worked hard to put some checks and balances in place and this will be a good test of those. She is disturbed that it has taken three years to not get this large hole completed. Hopefully, with the annual review, we will be able to see some significant improvement and, if not, it will be time to pull the permit.

Gaylor Baird is hopeful there will be some accountability and measurability and an attempt to get some of the work completed with the bond in place before it is replaced.

Motion for conditional approval carried 7-1: Sunderman, Francis, Gaylor Baird, Larson, Partington, Taylor and Carroll voting 'yes'; Esseks voting 'no'; Cornelius absent. This is final action, unless appealed to the City Council.

There being no further business, the meeting was adjourned at 3:15 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on April 22, 2009.

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