MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, August 26, 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, Michael Cornelius, Dick Esseks, Wendy Francis, Roger Larson, Jeanelle Lust, Jim Partington and Tommy Taylor (Lynn Sunderman absent); Marvin Krout, Steve Henrichsen, Mike DeKalb, Ed Zimmer, Brandon Garrett, Jean Preister and Teresa McKinstry of the Planning Department; media and other interested citizens.
STATED PURPOSE OF MEETING:	Regular Planning Commission Meeting

Vice-Chair Michael Cornelius called the meeting to order and introduced Jeanelle Lust as the new member of the Planning Commission. Cornelius also announced that he and Lynn Sunderman have been reappointed.

Cornelius then requested a motion approving the minutes for the regular meeting held August 12, 2009. Motion for approval made by Francis, seconded by Larson and carried 6-0: Gaylor Baird, Cornelius, Esseks, Francis, Larson and Partington voting 'yes'; Sunderman and Taylor absent; Lust abstained.

The next item of business was election of chair and vice-chair for a two-year term. Francis nominated Lynn Sunderman as chair, seconded by Lust and carried 8-0: Gaylor Baird, Cornelius, Esseks, Francis, Larson, Lust and Partington voting 'yes'; Sunderman and Taylor absent.

Larson nominated Cornelius as vice-chair, seconded by Gaylor Baird and carried 8-0: Gaylor Baird, Cornelius, Esseks, Francis, Larson, Lust and Partington voting 'yes'; Sunderman and Taylor absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: **August 12, 2009**

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

The Consent Agenda consisted of the following items: **COMPREHENSIVE PLAN CONFORMANCE NO. 09009, an amendment to the LINCOLN CENTER REDEVELOPMENT PLAN.**

Ex Parte Communications: None

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

COMPREHENSIVE PLAN CONFORMANCE NO. 09005, PROPOSED AMENDMENT TO THE LINCOLN CENTER REDEVELOPMENT PLAN TO ADD THE "BLOCK 68 REDEVELOPMENT PROJECT". PUBLIC HEARING BEFORE PLANNING COMMISSION: August 26, 2009

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

Ex Parte Communications: None.

Staff recommendation: A finding of not in conformance with the Comprehensive Plan.

Staff presentation: **Brandon Garrett of Planning staff** submitted an addendum to the staff report to advise that the initial staff report did not cover in detail the 11th Street promenade component of the Downtown Master Plan. The Downtown Master Plan, among many of its concepts, has a component called the 11th Street Promenade. The details of that Promenade, specifically along 11th Street, show an enhanced pedestrian environment which would also be conducive to recreational activities, according to the Downtown Master Plan. The proposal as submitted does not address the 11th Street component of the Promenade. The 11th Street Promenade does not propose to take any additional right-of-way, all being within the existing 100' right-of-way being reapportioned and redesigned. This is another element of the proposal that is not in conformance with the Comprehensive Plan.

Regarding the "Marketplace" retail identification for this block in the Downtown Master Plan, the main component is a grocery store and this was meant to enhance any downtown living or housing so that the residents would have easy access. This is another reason for a finding of not in conformance. **(*Editorial note*:** *Later in the public hearing testimony, it was acknowledged by Planning staff that this is an error in that the grocery store is identified to be in the next block between 9th and 10th Streets in the Downtown Master Plan and not on this block).*

With regard to the M Street "Park Blocks" concept (directly south of this block along M Street), the Downtown Master Plan proposes to acquire an additional 50' to accommodate the concept, which would add a similar promenade and would accommodate additional trees, parking and a reverse lane of traffic. M Street is envisioned as a connector corridor between Antelope Valley recreational opportunities and anything in the future that might occur in the south part of the Haymarket. It also ties in with the notion of the promenade system. There would be a M Street promenade for the four blocks to the east, which has been narrowed because those 4 blocks have already been built out. This concept is also not addressed in the proposal before the Commission, and is yet another reason for a finding of not in conformance with the Comprehensive Plan.

Garrett advised that the Planning staff and Urban Development staff have agreed that this proposal is not in conformance with the Comprehensive Plan. A finding by the Planning Commission of not in conformance does not mean that the City Council could not go forward with a more identified plan that does not meet the goals or intent of the Downtown Master Plan. This is now an opportunity to voice concerns or raise the issues to put the Council on notice as to the conformity issues. (***Editorial note***: *Later in the testimony, Rick Peo of the City Law Department, advised that the City Council must find the proposal to be in conformance with the Comprehensive Plan before approving a redevelopment agreement pursuant to the Community Development Law in the state statute).*

Garrett further explained that this proposal takes up the whole block of M Street. The Downtown Master Plan is very detailed in identifying what is to occur block-by-block. There are three issues that occur on or adjacent to this block that would impact any proposal, i.e., the 11th Street Promenade, the Marketplace concept, and the M Street "Park Blocks" issue. We would be looking for something that either showed that 50' on the south side of M Street as green or open space, or at least something that met the spirit or intent of the linkage between Antelope Valley and the Haymarket.

Esseks wondered whether the property owners would have to give up the 50'. Garrett believes it would require further discussion. He would presume that the City would play a key role through negotiations.

Lust sought clarification that none of the other blocks in the Downtown Master Plan have any build-out or any plans for this promenade. Garrett stated that this would be considered the first opportunity to implement that concept. The Downtown Master Plan was adopted in 2005 and development in general has been very slow. This seems to be one of the softest blocks in terms of developing this concept because it is all surface parking today. Any development on this block should be able to conform to this idea.

Larson inquired whether the staff has negotiated with the applicant about the 50'. Garrett stated that a detailed site plan has not been formally submitted. He believes it is still being discussed, designed and negotiated. We are still talking about an enhanced environment along M Street. The general concept should be honored. Larson suggested that possibly the application is premature.

Cornelius confirmed that a finding of nonconformance by this body does not shut the door on this application but gives the Planning Commission opportunity to provide input to the City Council on what we think would be more suitable with the spirit and intent of the Downtown Master Plan and the Comprehensive Plan. Garrett agreed. The Planning Commission's role is to provide a recommendation to the City Council.

Esseks likes the idea that the Planning Commission cannot find a proposal in conformance with the Downtown Master Plan unless a fairly detailed site plan is also submitted.

Marvin Krout, Director of Planning, acknowledged that this may be an awkward process – this is a step of approving an amendment to the redevelopment plan. Then the next step is a redevelopment agreement with the developer. Thus, the Planning Commission does not get to review a detailed site plan. What we are attempting to convey is that the plans reviewed, but not officially submitted, do not conform to these aspects of the Downtown Master Plan. There is really no argument about that. The Planning Commission is almost bound to make a finding that, as submitted, the redevelopment plan amendment without some designation for an open space corridor, is not in conformance. The M Street "Park Blocks" concept is something that does need to be recognized at this stage of the plan, but he believes the discussion will continue with the developer about how to try to meet the spirit of this M Street connection, and that the City Council will make their own decision when they review the redevelopment agreement and a site plan. Even a finding of nonconformance does not prevent the City Council from approving a plan that is not in conformance. A plan is a plan. It's not an absolute – it's a guide.

Rick Peo, City Law Department, disagreed and clarified that the determination of whether or not this proposal is in conformance is more important in this situation than typically in the applications reviewed by the Planning Commission. Under the zoning code, the issue of conformity is not as critical because the Supreme Court says that the Comprehensive Plan is a general guide. However, the Community Development Law of the state statutes provides that the governing body or the City Council <u>may not</u> approve a redevelopment plan amendment which is not in conformity. It is not a question of waiting for the redevelopment agreement to come forward. The City Council is going to have to find conformity before they can adopt the plan amendment to even add the project. It is Peo's opinion that the Planning Commission recommendation is going to be critical as to what the shortcomings might be because those might be able to be corrected between now and City Council action to bring it back into conformity. The Planning Commission is making a recommendation to the City Council. It is the City Council's decision as to whether it is in conformance or not, and the City Council must find it in conformance before moving to the

next step. The City Council must make a finding of conformance before they can adopt the project as an amendment to the Redevelopment Plan. Peo acknowledged that the process has some deficiencies. He also pointed out that once a redevelopment plan or amendment is brought forward, the Planning Commission only has 60 days to make a determination, so it is not something that can be delayed.

Proponents

1. Dave Landis, Director of Urban Development, the applicant, explained that one of the motivating factors in bringing this forward in this manner is because the chief lender to make the project work is the use of federal HUD money that is stimulus package money. It is not open-ended. It's competitive money designed to get construction done and jobs filled. This is a significant motivating factor that is not normally present.

Landis stated that Urban Development is prepared to accept the finding of not in conformance. He also agreed that it does not conform to the M Street Promenade in the Downtown Master Plan, nor is it a grocery store. It is hard to pick where the developer will build what we want them to build. We don't have a "Marketplace" here, but instead about 110 hotel rooms, 550 stalls of parking and 120 rental units, with first floor retail – about a forty million dollar development. The development will comply with the Downtown design standards, but it is not a grocery store.

Landis suggested that the M Street promenade is a visionary view. It runs for about 16 blocks of Downtown Lincoln, 11 of which are occupied by buildings that do not comply with this rule.

Landis then suggested that the rental, parking, hotel and design standards are in conformity with the Downtown Master Plan because it is a mixed use, which is in conformance with the Comprehensive Plan. This is active commercial with retail on the first floor – that is conformity. This is off-street parking that takes 200 existing surface parking stalls and turns it into 550 stalls of parking, something that is a premium and something we want downtown. The density of this development compared to what is there now is consistent with the Plan. The under-utilized blocks is another consistency. And there would be an enhancement to the streetscape. Landis does not dispute that it does not conform with the M Street promenade. They need the 50 feet because it is six floors of hotel, or 4 floors of parking, or 9 floors of rental.

Landis went on to discuss the promenade issue, which will require access to 50' of eleven different blocks. The four blocks in the middle are 100' wide, pushed to the south, with smaller sidewalk so that there can be more space on the north side. He would propose a different M Street promenade that does not require the 50'.

Landis stated that, “we can pull the plug today or we can continue to talk about and reflect on our options, including challenging the developer to make this block as sensitive, or we can simply just stop talking and not continue.” That’s where we are.

Landis confirmed that the entire block is currently owned by one landowner who will continue to own it – the developments will have long term leases. The HUD money will go to the rental units on the north side of the block.

Landis further stated that this is not a done deal. They are in the middle of negotiations and they may not get there. His best guess, however, is that they will not ultimately bring a design to the City Council that will have the 50'. The City Council will have to make a judgment as to whether every single aspect of the proposal does not conform to the Comprehensive Plan.

Larson observed that this block is extraordinarily important to th Downtown. Landis agreed, and it is the softest block for development, the least dense and the most available for intensification. This is the first of potentially eleven times the Commission may be faced with this issue. He does not predict that there will be a site plan that includes 50' of new city right-of-way on that block.

Lust asked Landis to clarify in one sentence what he wants and expects the Planning Commission to do today. Landis stated that he is fighting for a period of time to allow him to continue to work on the project and bring it to a level where the City administration can say it is a good project. Then he will go to the City Council. He will suggest that possibly it is not in conformance with the M Street promenade, but still could be found to be in “general” conformance with the Comprehensive Plan because it does so many things that we want to have happen in downtown Lincoln.

Partington suggested that if the Downtown Master Plan is standing in the way of a better idea, perhaps we adopted a Downtown Master Plan that is too tight and not flexible enough. Landis stated that he does not want to dispute the vision of that Downtown Master Plan – that kind of a street would be a magnet. But to get there from here, we are going to have to solve eight or nine other existing buildings. He does not dispute the vision or beauty of the Downtown Master Plan.

Esseks noted that a third issue raised by the Planning staff is the promenade plan for 11th Street, specifically the multiple driveways on 10th Street and 11th Street which could interfere with this promenade vision. Landis advised that he had a meeting with transportation and the developers about the multiple access points. Public Works was very clear and he believes the developers left the meeting understanding that they had an obstacle. It is going to take reconfiguration and rethinking for those two parties to agree. In the event they propose a design and project that does not serve the city’s interest or has safety problems or undermines civic objections, Urban Development will respectfully decline the project. If the developer is faced with challenges that add to their cost and

provides a site plan that is unworkable, “they will tell us we blew it and they will go someplace else.”

Cornelius stated that the Planning Commission is particularly sensitive to the idea that they are being asked to take on faith something that will come back and impact the Commission in the future. This has happened recently. We see a block with some lines drawn on it and some good feelings, and yet we also have a very specific plan that is the product of a great deal of public process, and possibly the one block where we will have the easiest time and good intentions. If this body decides this application is not in conformance with this specific plan (Downtown Master Plan), does that stop the conversation? Or can we make a recommendation that allows the conversation to continue? Landis stated that he is not asking the Planning Commission to take it on faith and promises. He acknowledges that there is a broader scheme of conformance and that is the City Council’s political question. Landis will not dispute a finding of nonconformance by the Planning Commission. He suggested that in the broader scheme of things, the question to the City Council is not identical. He believes there are many ways in which the project is in conformance.

Gaylor Baird was disappointed to see a real disconnect between Urban Development and Planning. Probably not practical and probably not cost-effective, but she does not want to lose the “Park Blocks” vision. It is exciting. If we see this ultimately develop without the “Park Blocks”, are we likely not to see any of the 11 blocks go that route? Landis again pointed out that the ultimate forum for this political question will be the City Council. If you really want the Downtown Master Plan as it is envisioned, he accepts that this is the test case and it is problematic. To get to that iconic street, you have to do this eleven times in which the existing landowners have no obligation to do anything different and have a right under the zoning law to rebuild the structures that they have. We’ll have to do this eleven more times and find a way to jump over the obstacle.

Gaylor Baird inquired how this street was picked during the Downtown Master Plan process for the “Park Blocks” concept. Landis suggested that it links to Antelope Valley.

2. Mark Hunzeker appeared on behalf of **Randy Acher,** the owner of this block, and the redeveloper. It is very important in the context of redevelopment and new development in our downtown area that we not let perfect be the enemy of good. Remember that the Downtown Master Plan is only a part of the Comprehensive Plan. The Planning Commission recommendation is whether or not this redevelopment plan amendment is in conformance with the Comprehensive Plan. The Downtown Master Plan is a subset of the Comprehensive Plan. The promenade concept is a small piece of that subset of the Comprehensive Plan. This project has housing, retail, hotel and entertainment in the Downtown, all of which we have been seeking or at least subsidizing for 30 years. There is a lot of good here that is clearly in conformance with the Comprehensive Plan. Hunzeker does not believe that it is incumbent upon the Planning Commission to make a recommendation which is black and white. The Planning Commission could find that this redevelopment plan amendment is in “general” conformance with the Comprehensive Plan,

and could except from that recommendation whatever the Commission finds is not in conformance with the subset Downtown Master Plan, which is the promenade. He does not believe that this relatively small divergence from the Comprehensive Plan (a county-wide plan) requires the Planning Commission to find that the entire project is not in conformance. The Planning Commission can express their concerns for the promenade concept and for seeking agreement with the developer to address those concerns as part of the redevelopment of this site without saying that it is not in conformance.

Hunzeker also pointed out that the statutory standard talks about the "general planned development for the city". It does not use the term "Comprehensive Plan". That is a term of art. The general plan for development of the city is a term much broader than the Comprehensive Plan. He believes this redevelopment plan amendment can be found to be in conformance with the general plan of development of the city to develop a square block of downtown with housing, retail and entertainment, and hotel and parking – that is a 40 million dollar investment that we would all like to see in downtown Lincoln.

Hunzeker asked the Planning Commission to consider the possibility of a finding of general conformance, subject to the concern with respect to the promenade.

Hunzeker also advised that the grocery store is not an issue with this block. The grocery store recommendation in the Master Plan is for the block between 9th and 10th, not 10th and 11th. He believes the staff made a mistake.

Marvin Krout acknowledged that the grocery store in the Downtown Master Plan is between 9th and 10th, which in some ways makes more sense being between the two major one-way streets. He apologized for this error. The grocery store is not an issue. That leaves the 11th Street promenade and the 10th Street Park Blocks issues. The 11th Street promenade is a detailed issue of how to treat the right-of-way. Krout suggested that if this block were to be in conformance with the Downtown Master Plan, it would show a strip of open space along N Street in addition to the commercial, parking and residential retail uses. It is up to the Planning Commission to decide how to interpret the finding and whether the "Park Blocks" issue is important enough. The 11th Street promenade is a landscape plan for the city right-of-way that the city owns and controls. It is up to the city to decide how it is going to allow driveways along that promenade. The site plan showed so many driveways on 11th that there was nothing left to promenade along.

Esseks does not believe the Planning Commission has enough understanding of what is being proposed. We have a staff report identifying three major deficiencies, and now we are down to maybe just one. It would be helpful to see how the plan does meet the major goals of the Downtown Master Plan. The Planning Commission is supposed to be a source of good advice to the City Council.

Hunzeker sympathized with the awkward position for the Planning Commission. This is different from the usual process of bringing forward a plan that is more or less completely

fleshed out by the time it gets to the Planning Commission. In this type of situation, the detail ends up happening after the finding of general conformance and during the negotiations of the redevelopment agreement. All of that level of detail is yet to come. We are not interested in spending several weeks of meetings to get to that detail unless we know we will have a redevelopment plan to accommodate the development. The vision of this block is that the north 1/3 of the block along N Street is proposed to be a building that will house 120 units of rental housing above the first floor; the first floor will be retail and there will be surface parking for that retail behind the street facade along N Street. There will also be subsurface parking for the residential units in that area; there will then be a 500+ stall multi-story parking garage standing south of that building; and to the south of that will be a hotel projected to have 100-115 rooms with the street level of that being occupied in a large part by an entertainment venue and banquet facilities. The M Street side will likely have a significant portion of the street level pulled back from M Street, with the hotel going up over an outdoor plaza area, along with a drop-off for hotel guests, etc. The development will have to meet all of the downtown design standards for the buildings. They have discussed dressing up the facade at the parking garage to meet the intent of the design standards; the time is very short on the residential portion because there are some deadlines that need to be met with respect to financing that building.

In addition, Hunzeker does not remember a time when Lincoln's Comprehensive Plan has not actively and strongly encouraged all of these kinds of uses in the Downtown area. To have the opportunity to do that on an entire block is very rare. If we were to put a price on 50' of a full block face of this property equivalent to what the city has paid for not even a full half block along Q Street, you would be looking at somewhere beyond three million dollars just for the land. This project needs to move forward. It is only out of conformance with one relatively small aspect of the Comprehensive Plan. In the big picture, Hunzeker believes that this is something that is clearly in conformance with what the Comprehensive Plan is about. He believes it is legitimate for the Planning Commission to find that the amendment to the redevelopment plan is generally in conformance with the Comprehensive Plan, but for the M Street promenade.

Hunzeker and Landis confirmed that the residential portion is a market rate project. It is stimulus package market rate, which means there is not a low or moderate income portion. It is designed to build and put people to work.

There was no testimony in opposition.

Staff questions

Partington believes the staff position and Hunzeker's position are pretty clear, but it is unclear to him what Urban Development is asking. The Planning Commission generally tries to support the staff position, and he wondered whether there is any flexibility now in the staff recommendation with the testimony today. Krout again apologized for the grocery store error. He also apologized for indicating that the City Council could approve

something that is not in compliance with the Comprehensive Plan on redevelopment plans (which is different than CIP or zoning actions). Krout believes that the Downtown Master Plan is a significant piece of the Comprehensive Plan. That is what is going to make Lincoln different from other downtowns. If the Planning Commission believes it is worth the effort, the Commission would probably find that this is not in conformance with the Comprehensive Plan and Urban Development would still be able to discuss this issue with the developer and come to the City Council with something close to the spirit of the Comprehensive Plan. Then the City Council could take the broader view of making a finding that the redevelopment plan is in conformance. The City Council might find differently than the Planning Commission, but maybe there will have been some further negotiation along the way. If the Planning Commission believes that the "Park Blocks" idea is not practical and that it is unlikely to happen, then the Planning Commission might take Hunzeker's approach and find that there are many other ideas in the Master Plan and that this proposal is generally in conformance.

Francis believes that the Comprehensive Plan is a guide to be used. The Planning Commission is to review the land use - there will be more details at City Council. She believes that the Planning Commission has received more details on this than they do on a lot of things. She is okay with the lack of information since it is just preliminary.

Larson believes this is too good of a project to deny and he will be making a motion to find nonconformance technically, but generally it is so close that we would advise the City Council to find a way to make this project happen because we feel it is so important to the City. Krout believes that the Planning Commission can make that motion or a more black and white motion. Whatever the recommendation, the City Council will have to make a finding that it is or is not in conformance. The Planning Commission should indicate whether or not the issue of "Park Blocks" is important.

Gaylor Baird inquired about when and why the "Park Blocks" issue was included in the Downtown Master Plan. Krout suggested that many buildings were cleared in order to create the Boulevard in Paris. When Chicago created the Great Lake front, it had to acquire lots of land in small increments over a time and negotiate with developers who owned lake front land. We were challenged when the consultants came in to try to find the ingredients that fit Lincoln and would make Lincoln unique. What is unique is the grid and how it expands and the wide streets. The Master Plan enhances that character. If you think about it, there are no green spots in downtown Lincoln other than the Foundation Garden and Centennial Mall. Most downtowns have significantly more open space. It was an important vision at the time.

If this were not an application that was sort of being fast tracked because of stimulus funds, Cornelius wondered what level of detail the Planning Commission could expect. Krout indicated that it wouldn't necessarily be any more or any less information than what has been submitted in this case. Remember West Haymarket – we certainly have a lot more information about that project than we did at the time. That's true of other areas as well.

Cornelius asked Krout to clarify the remaining staff objections. Krout suggested that the grocery store is a non-issue. And because the 11th Street promenade is in the right-of-way and so detailed and so unlikely that Public Works will approve the number of access points, the Planning Commission does not need to make that a part of its consideration of conformance. The remaining issue is the "Park Blocks" concept – the idea of a wider right-of-way where you could have a double row of trees which takes at least 30' of right-of-way.

Esseks believes the big difference seems to be the slip road. Krout agreed that we probably don't need a slip road to do the "Park Blocks" concept. In fact, we suggested that the developer might find his auto access in back of the hotel in the alley rather than off the street. It is possible that they could move that access point to the rear and would not need the slip road and then you would not need 50' of right-of-way. Marvin suggested that if the Planning Commission votes that the plan is in conformance as presented, that is a signal to the City Council that the "Park Blocks" are not that important and that this project is more important than trying to make that concept happen. A finding of not in conformance tells the developer and the City Council that is what should happen as a part of this project.

Cornelius inquired whether there will be a negotiated redevelopment agreement prior to the City Council determination of conformance. Krout advised that the City Council will make its decision on the amendment to the redevelopment plan prior to reviewing the redevelopment agreement.

Cornelius asked, "how finely can we split this hair?" Are we discharging our duty if we say it is in "general" conformance with the overall Plan, but not in conformance with these details that are important. Peo advised that, "we are not looking to a degree of certainty". It really is weighing the critical factors and the major features of the Comprehensive Plan that have to be met and satisfied. There is also an overlay district of the Master Plan having more significant detail for this area to show a wide boulevard type park feature. You have to weigh that as the significance of not being able to meet that element. It is going to be a judgment call by the Planning Commission. The Planning Commission is weighing the major features of the Comprehensive Plan in making the analysis whether the proposal falls short.

Gaylor Baird referred to Analysis #7 in the staff report:

> Regardless of conformance to the Downtown Master Plan, the following should be resolved when a detailed site plan is developed:
>
> a) Pedestrian environment and circulation....
> b) On-street parking...
> c) Bicycle circulation...
> d) Downtown Design Standards...

If the site plan is not created prior to City Council determination of conformance, Gaylor Baird wondered how binding any of these notations are to the actual development of the site plan. Krout indicated that they are not binding. They are for the City Council's attention when the redevelopment agreement comes forward.

Response by the Applicant

Landis confirmed that the development will meet the design standards. The other pieces are in the middle of negotiation. He does not dispute the Planning Department's conclusions. He believes there is a broader context which he expects to argue at the City Council level. Landis believes that the M Street promenade is a generational issue and it will take us a long time to get there. It has to have eight or nine separate development plan amendments. The whole purpose of this block is to move as expeditiously as possible. We are talking about being into the ground next year. The HUD funds are not the problem – the HUD funds are promised. If there is a problem, it will probably be the lender that supports the hotel. There are Public Works problems to solve on access points, sewer lines, water lines, electric lines, etc.

ACTION BY PLANNING COMMISSION: August 26, 2009

Motion #1: Larson moved a finding of conformance with the Comprehensive Plan, with the addendum that we recognize that it is not 100% in conformance, but because of the importance of this project we recognize the City Council can approve it, seconded by Francis.

Esseks would prefer the motion be amended to say that we recognize the problem with the M Street promenade and we hope progress toward achieving that goal is still possible. Larson accepted this as a friendly amendment.

Gaylor Baird commented that we all want to see things work for Downtown for both the short term and the long term. The problem with a friendly amendment like that is that we can hope that they will work it out, but by saying it is in conformance we are saying it is okay if not worked out and that it is not a key element of the Downtown Master Plan and Comprehensive Plan. She values green space and she cannot agree with that. She wants to be part of a generational change. She is not willing to give up on it. It is the character of our community to work hard for things. We can agree that there are things about this "Park Blocks" idea that are not practical, and are difficult and may cost money, but something that could be iconic for our community and could make people want to work here. Great cities look great. She would challenge developers to not only consider projects which are good for our economy but which are more vibrant visually. It provides more recreational opportunities. She wants to send the message to City Council that we recognize the practical considerations, but that we want a great vision and a great city.

Larson agreed, but looking at the whole project, there is going to be some problem on trying to conform with the "Park Blocks" concept between 10th and 11th, and certainly the problem is going to be even worse in the next two blocks, so there is going to have to be some sort of accommodation started and he thinks this could be the transitional block to squeeze trough the bottleneck between 11th and 13th.

Esseks applauded Gaylor Baird's image of the city and stated that he shares it. We have invested a lot of our resources in the Antelope Valley redevelopment which has very aesthetic and recreational goals; however, this particular proposal hopefully will evolve so that there will be somewhat less than 50' of right-of-way. The way to make M Street be a promenade in the foreseeable future is to work on a parcel-by-parcel basis to maximize the additional right-of-way for greenery and open space. He is afraid the idea of a slip road is probably impractical. The extra 20 to 30 to 50 feet for green space for walking will probably be our best chance for success.

Gaylor Baird urged that if the Commissioners believe that this is a key element to make something great, then it seems it should be found not in conformance to make sure that the message is conveyed. If we don't, every single block in this potential plan is going to be able to make a similar argument.

Taylor believes that this project fits well with the vision that he sees for our City. He does not look at this as necessarily being in conformance, but he agrees that it is in "general" conformance. It is going to be a hard thing to do but the most great accomplishments are achieved by making hard choices and hard decisions.

Cornelius believes 100% that this is the way we want to go with Downtown generally. He also 100% agrees that what we are talking about the very first block implementing this particular part of the Downtown Master Plan. While the Master Plan is a small part of the overall Comprehensive Plan, it is a key part, particularly for the city. While the "Park Blocks" concept is a small part of the Downtown Master Plan, it is a key part. The reason we are here is because our job is to advise the elected officials and while he is excited and enthusiastic about the project, he believes that saying it is more or less in conformance is not really doing our job as well as we can. He wants to find it not in conformance because it is not in conformance with these key parts. He does not want to discourage the project, but it gives guidance for negotiation between now and then. There is opportunity for creative architecture and interesting street facades.

Larson then suggested that maybe a vote for nonconformance is a clearer message and, upon further discussion, he withdrew his motion and Francis agreed as the seconder of the motion.

Motion #2. Cornelius moved a finding of nonconformance based on the "Park Blocks" issue, but encouraging the project, finding it generally exciting and interesting but we are compelled by the plans we have, i.e. the Downtown Master Plan and the Comprehensive Plan, seconded by Partington.

Lust disagrees with a finding of nonconformance. She agrees that we have a wonderful plan for the city but as this discussion has gone on, the only one objection is the "Park Blocks" concept and that gets down to the width of a slip road. It would make a lot more sense to say we agree that this project generally conforms with the Comprehensive Plan, except for this one element.

Esseks does not recall being part of the discussion regarding the M Street promenade. He thinks it has good possibilities, but he is not sure the slip road is necessary. The 100' can be well configured for open space and he likes the idea of working with individual property developers to give an additional 20-30 feet whenever they can. We are being too constrained if we insist every project along M Street meet this goal because there are so many buildings of relatively new construction. It is an interesting goal but it needs to be approached in a more pragmatic way. He does not believe we should be hanging everything on this one aspect. He thinks it is in general conformance.

Taylor wants to find it in conformance, with the one exception.

Motion #2 for finding of nonconformance failed on a tie vote of 4-4: Partington, Larson, Gaylor Baird and Cornelius voting 'yes'; Esseks, Taylor, Francis and Lust voting 'no'; Sunderman absent.

Motion #3. Lust moved a finding of general conformance with the Comprehensive Plan, with the exception of the "Park Blocks" specification for M Street, seconded by Taylor and carried 5-3: Esseks, Taylor, Larson, Francis and Lust voting 'yes'; Partington, Gaylor Baird and Cornelius voting 'no'; Sunderman absent. This is a recommendation to the City Council.

*** 10 minute break ***

COUNTY CHANGE OF ZONE NO. 09018,
TEXT AMENDMENT TO THE LANCASTER COUNTY
ZONING RESOLUTION RELATING TO
EXPANDED HOME OCCUPATIONS.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: August 26, 2009

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

Ex Parte Communications: None.

Staff recommendation: Approval.

Staff presentation: **Mike DeKalb of Planning staff** explained that this is a proposal that came out of discussion with the County Board over a year ago to expand the opportunity fur rural ag businesses. The staff produced a report in December, 2008. The County Board asked staff to move ahead with this proposal, which adds provision to the AG zoning district in the County which would allow for a special permit for expanded home occupation. It adds a home occupation by right, with the provision for one employee. The special permit adds the flexibility for businesses in the home with notification to neighbors, a public hearing and review, and the opportunity to add appropriate conditions, where necessary.

Partington believes that it's a good idea to encourage businesses in the rural area in the county but he had in mind that it would relate to farming, farm equipment, trucks, etc. It has kind of morphed into a list of items that he is not sure about, such as conference centers and some other items that look like they could be rolled into a smaller package of different businesses. He also pointed out that the boarding of horses is already a permitted agricultural use in AG zoned areas.

DeKalb acknowledged that the laundry list was developed through a process of asking people for input, the intent being that these are expanded home businesses which may include such uses but are not limited to such uses. Some of these things are either almost exact duplicates or shades different, such as garden centers vs. landscaping business vs. landscaping contractor. He agreed that riding academies and stables are permitted by right. This would be duplication unless used with a waiver for something less than 10 acres. He agreed that there are duplications and overlap.

As a resident of rural Lancaster County, Partington does not believe that there will be a large movement of people from town buying 20 acres to set up a business in Lancaster County. Those existing 20- or 160-acre plots are generally in the farming business to some extent or another and none of these limits will apply to a farming operation. There is no way to enforce any of these limitations. DeKalb agreed that many of the residential uses are obviously farm related, but we do have a substantial segment of rural acreage owners. As far as enforcement, AG is a very broad inclusive use permitted by right and there is no limit on employees or percentage of outbuildings, etc. If people start plugging these things in, how do you count heads or employees, etc.? The main thrust in developing this legislation was to give more flexibility and more expansion. Building & Safety agreed that specific enforcement case-by-case is going to be a problem. It will be complaint based. As far as people moving out there, DeKalb agreed that there will not be big rush buying 20's – but folks in the construction business see saving money by moving out of town. The County Board is looking for accommodation of expansion of what people do in the county.

Esseks noted that a meeting was held with the villages and towns and that they were generally supportive of expanded home businesses provided that businesses are still

directed to the towns. Did they make some useful distinction between the types of businesses? DeKalb indicated that they did not. The towns and villages like the general idea of expanded home occupation as long as there is notification to the neighbors with public hearing and to keep to a reasonable size. They were thinking that the true business distinction – retail and commercial – should still be directed to the towns and they still believe that will happen. They want to encourage the home business. The distinction as written is more than two outside employees or more than the percentage of square footage.

Esseks had a concern about the amount of space that can be devoted to the business, i.e. 20% under Article 15, and up to 50% under Article 13. It appears that someone could come in and get a building permit for an additional barn or machinery building, thus as he adds farm buildings, he is also adding potential space for his non-farm business. DeKalb agreed that this is where the two uses could overlap. Under AG, you can build as many outbuildings as you want without building permits. Under the current language, there are no outside employees; 20% of all buildings can be used for the home based business; and you can have a sign. The proposed language would allow one outside employee in the home occupation; and under the special permit, two outside employees plus residents; 50% of the buildings, 10,000 sq. ft. inside the building and 15,000 sq. ft. outside the building with a 20 sq. ft. sign located in the front yard. We have expanded the list of potential uses. A provision has also been added that the County Board may grant waivers to the uses, the setbacks, the acreage and the square footage.

Gaylor Baird entered into a discussion with the Commission about visual screening to protect neighbors, motorists, etc. She compared the visual screening requirements that are in place in the city regulations where there is outdoor storage of vehicles or repair vehicles. Perhaps it is worth considering applying similar language to the county. The screening requirements in this legislation are vague. DeKalb explained there is a different level of regulations and of specificity in terms of review and technicality in the city jurisdiction. The city has a lot of regulations that do not exist in the county. In the city, we have adopted design standards often referenced in the zoning code. Lancaster County does not have a separate set of adopted design standards relative to zoning and subdivision. In drafting this legislation we took the approach that we would propose to review the screening requirement on a case-by-case basis, such as the Hwy 77 scenario or any entrance into the city. In a more rural application where someone was mostly inside the house, there is much less of a need for screening.

Partington understands the need for screening in a case like the RV storage. But, living on 160 acres, he is a little concerned about being worried about his neighbor's screening activities. Screening from an existing residence would make sense, but most of us who live in the rural area try to maintain our property. He is opposed to arbitrary screening from someone who can barely see you anyway.

Taylor asked for an explanation of the purpose of screening. DeKalb stated that the purpose for screening is to provide a visual barrier to create better neighbors and good relationships between land uses. Visual blight can be an impact on certain land uses.

Esseks inquired whether the County has a set of references for when screening requirements are necessary. DeKalb stated that the County Zoning Resolution does not include specific screening requirements. Good planning is to use locally relevant and reasonable standards that are in place today, such as using the city requirements for county uses as a checklist.

Partington pointed out that this legislation includes a requirement for a home business to have a 200' setback for all outside activities. Today's home occupation does not have that requirement.

Gaylor Baird wondered what screening requirements the staff would require where someone is setting up an outdoor vehicle storage business if the topography of the land does not help with the screening. DeKalb suggested it could probably start with 50% screening, 6 ft. high, but he would prefer the language that is proposed, assuming the staff does their job well. It provides more flexibility to tailor the requirements of screening to what is being permitted. The county does have the provision for wireless towers to screen around the base, but it is never applied because it would require screening in a cornfield in most cases.

DeKalb suggested that screening of at least 50% would normally be applied to incompatible uses or visible locations.

Esseks raised the issue of resources for enforcement. If the market for acreages stays down for some time, he can see a lot of folks out there needing income from other sources and taking advantage of this opportunity. That is going to increase the need for enforcement. We need to raise with the County Board whether they are willing to put more resources into enforcement. DeKalb explained that there is an interlocal agreement with Building & Safety as the enforcing agency for the zoning code. Building & Safety can log their person hours in those enforcement efforts and bill the County Board and be reimbursed for that staff time. If we don't get compliance it goes to the County Attorney office for enforcement. The Planning Commission is meeting with Building & Safety and the Health Department on September 9th relative to enforcement on soil mining. He has also talked to the County Board about this issue. It has been a point of discussion and he has to have faith that there is a reasonable level of enforcement based on complaint basis. Most times and most places, if folks know the rules, they will try to follow the rules. Under the special permit, we've got an extra hammer to the extent that we can call the question and go to the County Board and ask for a hearing on the special permit and it can be revoked if not in compliance.

Esseks noted that the names and addresses of people or businesses who collect and pay sales taxes are a matter of public record with the state. Under Article 15, perhaps the county couldn't once every couple of years send out a reminder to these business owners as to their responsibilities under this resolution – a systematic exposure to the regulations so they really can be good neighbors.

Partington clarified that under this proposal, there is a laundry list of home businesses, so the restrictions apply only to that new list. The existing regulations still apply to the permitted uses. DeKalb confirmed. The existing language applies if it is a permitted use. It is only when you cross the line and what you are doing no longer fits into a permitted use that these restrictions come into play.

Public Testimony

1. Joe Swartz, who lives in the country, sees problems with the setbacks and the screening. If there is a fence required, there are weed problems. In the country, a lot of people would rather plant trees than put up a fence. It might take a long time to grow but it is more natural. As far as setbacks, 200' is valuable land. His driveway is almost ½ mile long. If he had to have a setback for his driveway, he would be looking at 1.5 acres. It would cost him money every year to do that. His closest neighbor on that side is 1300' away. He thinks a case-by-case basis is better for the screening requirements. If you make a lot of rules on these small businesses working out of their homes to get started, that may put them out of business because they can't afford it. What if you have a business with two full-time employees but you have to have seasonal employees? Does that put you in violation?

DeKalb responded, stating that the flexibility with the screening gives staff the opportunity to apply that appropriately, whether it be fence, berm or plant materials or trees. As far as the setback, the 200' distance protects you from your neighbors today and tomorrow. However, this requirement can be waived by the County Board. We did look at all the surrounding counties, and found that zoning is very unique and tailored to the local jurisdiction based on their own circumstances. What is being proposed fits the circumstances of Lancaster County.

DeKalb clarified that "outside" business related activity means "outside of the building".

ACTION BY PLANNING COMMISSION: August 26, 2009

Esseks moved approval, seconded by Gaylor Baird.

Partington agrees that rural Lancaster County is mostly a farming operation. He does not believe this is going to make much difference. Farmers have machinery and the Right to Farm Act. By and large, they keep the county in as nice condition as they can. Trying to over-regulate an agricultural environment is a challenge that he does not think we want to get into. It is an attempt to address a non-problem.

Cornelius extended appreciation to Mr. Swartz and the discussion about the screening. He believes this change gives us the ability to screen when it is appropriate and to not require it when it is not appropriate. He was concerned because of the enforcement issues but the Planning Commission will be talking about that in a couple of weeks. Otherwise it seems like a valuable addition.

Motion for approval carried 8-0: Esseks, Taylor, Partington, Larson, Francis, Gaylor Baird, Lust and Cornelius voting 'yes'; Sunderman absent. This is a recommendation to the Lancaster County Board.

There being no further business, the meeting was adjourned at 4:25 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on September 9, 2009.

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