MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, December 16, 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, Lynn Sunderman and Tommy Taylor; Marvin Krout, Steve Henrichsen, Brian Will, 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 Lynn Sunderman called the meeting to order and requested a motion approving the minutes for the regular meeting held December 2, 2009. Motion for approval made by Cornelius, seconded by Francis and carried 9-0: Gaylor Baird, Cornelius, Esseks, Francis, Larson, Lust, Partington, Sunderman and Taylor voting 'yes'.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: **December 16, 2009**

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

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 09027, SPECIAL PERMIT NO. 384G and SPECIAL PERMIT NO. 09027.**

Ex Parte Communications: None

Item No. 1.1, Change of Zone No. 09027, was removed from the Consent Agenda and scheduled under Requests for Deferral, **and Item No. 1.2, Special Permit No. 384G,** was removed from the Consent Agenda and scheduled for separate public hearing.

Esseks moved to approve the remaining Consent Agenda, seconded by Francis and carried 9-0: Gaylor Baird, Cornelius, Esseks, Francis, Larson, Lust, Partington, Sunderman and Taylor voting 'yes'.

Note: This is final action on Special Permit No. 09027, 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.

CHANGE OF ZONE NO. 09027
FROM R-3 RESIDENTIAL DISTRICT TO
B-2 PLANNED NEIGHBORHOOD BUSINESS DISTRICT,
ON PROPERTY GENERALLY LOCATED AT
LUCILE DRIVE AND PIONEERS BOULEVARD.
REQUEST FOR DEFERRAL. December 16, 2009

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

Ex Parte Communications: None.

Staff recommendation: Approval.

This application was removed from the Consent Agenda and called under Requests for Deferral, due to a written request by the applicant for deferral of the public hearing until January 13, 2010.

Cornelius moved to defer, with continued public hearing scheduled for Wednesday, January 13, 2010, seconded by Francis and carried 9-0: Gaylor Baird, Cornelius, Esseks, Francis, Larson, Lust, Partington, Sunderman and Taylor voting 'yes'.

There was no other public testimony.

SPECIAL PERMIT NO. 384G,
AN AMENDMENT TO EXPAND THE
EXISTING HEALTH CARE FACILITY
LOCATED AT 4720 RANDOLPH STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: December 16, 2009

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

Ex Parte Communications: None.

Staff recommendation: Conditional approval.

This application was removed from the Consent Agenda and scheduled for separate public hearing at the request of the applicant.

Staff presentation: Brian Will of Planning staff explained the proposal to expand the Tabitha Health Care Facility located at 4720 Randolph Street. This amendment to the special permit revises the facilities on the current campus as well as an expansion of the special permit to include six residential lots. The expansion includes two 12-unit "Green Houses" and the addition of a 12-unit hospice facility on the main campus.

The only issues of concern to staff were screening and separation for the two new Green Houses northwest of the campus, and those concerns are covered in the conditions of approval.

Proponents

1. Joyce Ebmeier with Tabitha Health Care Services, 4720 Randolph, presented on behalf of the applicant. Tabitha has provided care in the Lincoln community for over 124 years at its current location. Tabitha has been the first to develop and implement a broad range of elder care services. Today, Tabitha Nursing and Rehabilitation Center is the largest provider of skilled Medicare services in the State of Nebraska. The action requested today would allow Tabitha to construct and operate a 12-bed skilled hospice facility and two 12-bed "Green House" homes in close proximity to the main campus. All three locations will be licensed and will be considered part of the existing license by the State of Nebraska. All beds will be certified and eligible for participation in Medicare and Medicaid programs.

For the past 30 years, Tabitha's facility-based program has operated in the oldest part of the main building. The proposed structure is designed intentionally to support delivery of the hospice philosophy. It will contain oversized rooms to accommodate family visits and overnight vigils. All areas will be accessible to wheelchair. There will be space for children to play while family members are engaged in visits.

The Green House homes are residences for elders who require long term skilled nursing care. This is a radical departure from the traditional nursing home. The two Green House homes will expand capacity to de-institutionalize long term care for older adults. Elders, family members and staff satisfaction ratings have improved and staff turnover has declined significantly. Today, the waiting list is 85 and growing. The two additional Green Houses will be home to 24 elders.

Ebmeier advised that this proposal has been submitted to the Witherbee Neighborhood Association on three occasions with no objections to the plans, and the Association has submitted a letter of support. In addition, Tabitha hosted a special meeting for neighbors on November 18th – two people attended and no opposition was raised. The home of one attendee, Rick Bagby, is located on the northwest corner of 47th & L. Mr. Bagby has asked Tabitha to be conscientious of the view his family will have. While the Tabitha plans do not

involve those lots, Ebmeier stated that Tabitha is committed to honor his request should Tabitha build there in the future. The plan is to commence construction in early Spring 2010.

2. Gus Ponstingl, Architectural Design Associates, also testified on behalf of the applicant to present a brief explanation of the amendment to the special permit. This amendment adds a 12-bed hospice care facility to the main campus and expands the campus to the north with two 12-bed nursing facilities called "Green Houses". Ponstingl submitted a short written explanation of the "Green House". The concept is a registered trademark for a radical departure from traditional skilled nursing homes and assisted living facilities, intended to de-institutionalize long term care. They look and feel like a home. The two Green Houses are to be constructed as an expansion of Tabitha along N. 46th Street where six lots with dilapidated homes will be razed. The new Green Houses will have a residential look and will positively enhance the look and feel of the neighborhood.

Ponstingl went on to state that the hospice care facility will be included within the northwest corner of the existing campus. Currently, a small pavilion and parking lot occupy that space. Attractive garden space will surround the new facility. Existing mature trees will remain where possible.

Ponstingl requested an amendment to Condition #1.2 as follows:

> 1.2 Show a ~~20'~~ 10' setback from the rear lot line to the new parking lot between the dwellings in the Northwest Area and to include a 6' solid fence and provide 80% evergreen landscaping from 6' to 12' high in the 10' setback west of the parking, as shown on the site plan.

Ponstingl indicated that he had worked with staff earlier today to get this wording correct and staff is in agreement. The staff had required a 20' setback in that space for the parking. The footprint of the unit does not allow for the increase of this setback for the parking and the applicant is requesting the current code requirement for a 10' setback. The applicant has agreed to include a 6' high fence and screening, which they had intended to do anyway. This will be a low impact parking lot. The residents do not use the parking facilities. The parking is intended for short term deliveries. There is ample parking in the main parking lot on the campus as well as the parking lot to the east along 48th Street.

There was no testimony in opposition.

Cornelius asked staff to verify agreement with the revised condition. Will agreed. The staff has been working with the applicant and agrees with the language submitted.

Esseks wondered whether the 10' setback provides for adequate screening for the adjoining residential area. Will suggested that with a fence and live plants for screening, the 10' is acceptable. In general, this is a use that is appropriate in a neighborhood, and

specifically, is a critical key component in this neighborhood. We want to make sure it can co-exist in a compatible way. This will be in excess of what design standards typically require for a parking lot.

ACTION BY PLANNING COMMISSION: December 16, 2009

Lust moved to approve the staff recommendation of conditional approval, with the amendment to Condition #1.2 requested by the applicant, seconded by Taylor.

Sunderman believes this to be a nice addition to Tabitha. Tabitha has been with this community for a lot of years and is a very fine facility taking great care of people. The Green House concept is an exciting venture to where health care is headed.

Motion for conditional approval, as amended, carried 9-0: Gaylor Baird, Cornelius, Esseks, Francis, Larson, Lust, Partington, Sunderman and Taylor voting 'yes'. This is final action, unless appealed to the City Council within 14 days.

COMPREHENSIVE PLAN CONFORMANCE NO. 09013
AMENDMENT TO LINCOLN CENTER REDEVELOPMENT PLAN TO ADD THE "CATALYST ONE/CIVIC PLAZA REDEVELOPMENT PROJECT", ON PROPERTY GENERALLY BOUNDED BY 13TH, 14TH, P AND Q STREETS.
PUBLIC HEARING BEFORE PLANNING COMMISSION: December 16, 2009

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

Ex Parte Communications: None.

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

Staff presentation: **Brandon Garrett of Planning staff** explained that the north half of the block is shown in the Redevelopment Plan to be mixed use and public parking. According to the proposed Redevelopment Project, there would be retail on the ground floor, some levels of parking with housing on top of the parking. The second major element to this project is the Civic Plaza located at 13th & P Streets. The Planning Department recommends that this be found in conformance with the Comprehensive Plan. It also appears that this application is consistent with the Downtown Master Plan.

Larson expressed concern about restricting traffic on 13th Street. Garrett explained that to be part of the approved Downtown Master Plan concept. It appears there would be at least one lane going each way on 13th Street. Larson does not see the space for that between Wells Fargo Building and University Towers. Sunderman clarified that the project before the Commission today does not affect 13th Street at this time. Garrett further clarified that

this project does not propose at this time to shift the paving or the through-way of 13th Street, but this project also does not keep that from happening as envisioned in the approved Downtown Master Plan.

Esseks inquired as to the practical implications of approval this proposal – are we inviting developers to come forward with plans? Garrett explained that the amendment to the redevelopment plan would allow development to proceed as outlined in the project proposal.

2. Dallas McGee of Urban Development provided additional background on the project. This is a project that was identified in the Downtown Master Plan as one of several catalyst projects that could occur right away. After the Downtown Master Plan was adopted, the city assembled the site and sought proposals from developers. A developer was selected in April of 2007 (the Synergy Group). The city negotiated with the Synergy Group and was not able to come to a redevelopment agreement because of the inability to finance the project. The city then used this site as a temporary surface parking lot. In the summer of this year, Mayor Beutler directed Urban Development to see if there was additional interest in development of this site. An invitation for redevelopment proposals was prepared and proposals were received. The Urban 38 Group was selected as the developer. Their proposal is very similar to what was identified in concept in the Downtown Master Plan. They proposed an active street level with retail uses; the city had already proposed a garage structure on this site, and the project would include that garage structure of 400-600 parking spaces, with residential units above the garage structure.

The process includes this amendment to the redevelopment plan, which would allow for TIF to be collected and used to help finance the public improvements. Once the plan amendment is approved by the City Council, Urban Development will then begin negotiating a redevelopment agreement, which will answer a lot of the detailed questions about the number of parking spaces, the relationship to the Civic Plaza at 13th & P (another catalyst project), etc.

In terms of 13th Street, McGee advised that the Downtown Master Plan did identify a larger Civic Plaza of about 20,000 square feet. In order to achieve that, some of the right-of-way on the east side of 13th Street was actually made part of the plaza. They will be looking at that as well and building a plaza that is consistent with this development but also consistent with the project budget and the plans for the future.

Larson inquired how the parking garage will be financed -- will it be out of the city parking budget? McGee responded, stating that the city identified the need for a parking garage on this site years ago. Parking enterprise funds have been identified that will be used to build the parking. Most of the parking will be made available for retail uses. The Downtown Master Plan suggests a retail corridor along P and Q Streets and parking would be made available for retail uses as they develop. The developer would like about 100 stalls for the residential development, and 400-600 stalls are envisioned in the garage. There will be five

or six floors of parking. The residential will probably be another three floors on top of the parking. This is much smaller than the original proposal that came forward with two taller buildings.

Sunderman inquired whether the Civic Plaza will carry into 13th Street. McGee stated that when the proposal was developed, the consultants suggested that for a plaza to be successful, there are several things that must be done and one of those was to have sufficient size in order to be attractive as a plaza. That size was identified from 18,000 to 20,000 square feet. Our intent is to accomplish the plaza within the space that we have available. The plan from Urban 38 addresses the north half of the block, but we want to make sure that that is designed in conjunction with the Civic Plaza.

Gaylor Baird inquired as to the space now available in the temporary parking lot. McGee stated that it is 14,200 square feet, i.e. two city lots – it is on the small side. The north half of the block is approximately 142' in depth. A parking garage of two bays would need to be about 125', so there is a little bit of space available on the north half of the lot. We will be looking at that and what impact this will have on the alley as well as the two lots that were originally identified.

Larson stated that he is still concerned about the parking. Will the city own the parking area? McGee responded that it will be a public parking garage, financed the same way as the other city-owned garages. Urban Development will be visiting with some adjacent owners and structure an agreement with the developer that the adjacent owners would have the right of first refusal for a negotiated number of stalls. Most of the garage would be available for other users.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION: December 16, 2009

Larson moved to find the proposed amendment to be in conformance with the Comprehensive Plan, seconded by Lust.

Gaylor Baird stated that she grew up in Portland where the consultants came from, and there is a civic plaza in downtown Portland. It became a thriving public square where people congregated, with book stores and cafes for people of all ages to congregate. It adds to the vibrancy of a downtown. This is an exciting project.

Taylor likes the way the area is being used. It speaks well for the direction we are going.

Motion for a finding of conformance with the Comprehensive Plan carried 9-0: Gaylor Baird, Cornelius, Esseks, Francis, Larson, Lust, Partington, Sunderman and Taylor voting 'yes'. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 09028
FROM P PUBLIC USE DISTRICT
TO R-4 RESIDENTIAL DISTRICT,
ON PROPERTY GENERALLY LOCATED
AT S. 10TH STREET AND SOUTH STREET
PUBLIC HEARING BEFORE PLANNING COMMISSION: December 16, 2009

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

Ex Parte Communications: None.

Staff recommendation: Approval.

Staff presentation:

1. Rick Peo of City Law Department submitted a written opinion which he prepared for this meeting. There has been a lot of press in the paper and conversations in public regarding the merits of the sale of Lancaster Manor to a private entity. There are a lot of concerns as to the effect that sale will have on the current residents and employees, and whether or not it is proper for the property to be sold. The main concern expressed by Peo is that the Planning Commission and this public hearing is being made a focus of continuing that battle. Peo urged that this forum is not the proper place for that discussion as to the merits of whether Lancaster Manor should or should not be sold. The Planning Commission's function is to be looking at the land use ramifications of changing the zoning from P Public Use to R-4 Residential, as requested.

The Planning Commission's role is limited by certain principles of law. The main features of the law are that zoning deals with land use and not ownership. Over the years, the courts have frequently and unanimously denied decisions made based on the ownership of the property as opposed to the use itself. The enabling statutes allow the city to adopt a zoning code which gives the city the right to regulate land use, but those regulations do not authorize the city to regulate type of ownership.

Peo suggested that one needs to consider the purpose of the P Public Use District. It was adopted in 1979 when the city recodified the zoning code. Prior to that time, public ownership was in the same district as any other use. The P District was created primarily as a way to identify and inventory public property within the city. It was not intended to impose use restrictions or prevent the sale of public property. The zoning committee considered the specific question: What happens if the public decides to sell the property? At that time, it was recognized that the zoning would have to change. P is for public-owned and public-used property. If transferred to private ownership, that private owner has the

right to use the property. To do that legally, the new owner needs to be provided with an appropriate change of zone.

What is the appropriate change of zone for Lancaster Manor? Peo observed that the Planning Department has looked at the surrounding properties and finds that R-4 is the appropriate change of zone. It is in conformance with the Comprehensive Plan and does not have any adverse affect on the properties. Pursuant to the Lincoln Municipal Code, the Planning Commission makes a recommendation to the City Council as to the effect on adjacent lands and conformance with the Comprehensive Plan. That is the limit of the Planning Commission's review. The Planning Commission is not here to view the worthiness of the sale of the property or whether you agree to the sale, but only whether the land use is appropriate in the R-4 District and in conformance with the Comprehensive Plan.

Based on the facts, Peo suggested that the Planning Commission's "hands are pretty well tied." It is Peo's understanding that the property is merely changing ownership; there will not be any change in the land available to Lancaster Manor; there is no change in use; there are no new buildings being constructed; and nothing is changing to impact the abutting properties. It will be the same tomorrow as it is today. He does not want this hearing to become a battle ground for something over which this Planning Commission and the City Council have no authority.

Lust observed that the written opinion talks about opening the city up to litigation by considering the merits of the sale in reviewing the change of zone. She inquired whether the Law Department has reviewed the actual purchase agreement to see if there are any provisions conditioning the sale on the change of zone. Peo stated that he has not read the purchase agreement and that the change of zone might be a typical contingency, but he does not believe that is a way out for the Planning Commission. There are several potential litigations, including whether the decision was arbitrary and capricious; interference with contract rights; interference with the sale of land; inverse condemnation; etc. We must focus on the role and responsibility of the Planning Commission.

Lust did not disagree. She agreed that it is not the role of Planning Commission to make a decision as to whether Lancaster Manor should be sold. But, she is trying to analyze how likely litigation may be in this situation if the purchase agreement has provisions that would allow for the contingency of the change of zone. Peo believes the judgment would be whether the action on the change of zone was arbitrary and capricious. This is not a spot zone to R-4. In Peo's opinion, R-4 is appropriate.

Gaylor Baird inquired whether Peo has any knowledge of the legal arrangements regarding the parking lot that is shared by Lancaster Manor and Trabert Hall. Peo has heard that there is shared parking and that the County intends to retain those rights upon sale of the property. He believes the County Board will be retaining an easement for parking for

Trabert Hall. That easement would run with the land. The County has the ability to reserve rights in the deed.

2. Christy Eichorn of Planning staff substantiated the reasons that R-4 zoning is appropriate in this location. In 1979, the city revised their zoning ordinance and made changes to the zoning districts. All of the property surrounding this change of zone prior to 1979 was zoned B (two-family district). The P district was added in 1979, the purpose of which was intended to provide a district essentially for mapping purposes to identify real property presently owned and used by government agencies for some form of public use. However, the P district is not intended to be applied to land used by government agencies on easement or leased basis. If owned by a public agency, it is to be zoned P. If not owned by a public entity, it is to be zoned by something other than P.

This property was rezoned from B two-family to P Public in 1979. The B District is equal to today's R-4 zoning district. All of the property around this P area is zoned R-4. East of Lancaster Manor we see a spot of R-4. Prior to 1998, St. Francis Chapel was owned by Lancaster County and operated by a nonprofit. In 1998, the chapel was sold and intended to operate as a private church. At that time, since the property was no longer owned by the County, the property was rezoned to R-4. It was said at that time that R-4 would also set a precedent for any future redevelopment of adjacent public properties. It was always the intent that if it was no longer zoned P, it would revert back to R-4. Everything south and east of this area is also zoned R-4. It makes sense to have a cohesive zoning district.

If Lancaster Manor becomes a privately-owned entity, it would be a health care facility. Health care facilities are allowed in R-4 by special permit. If the zoning is changed from P to R-4, the property would be deemed to have a pre-existing use permit. If any changes were ever made to the site, such as expanding the building, etc., then they would need to amend a pre-existing use permit and have a site plan like any other health care facility in the R-4 zoning district.

Lust inquired whether there is anywhere in Lancaster County that has P zoning that is not owned by a public entity. In other words, P is simply a mapping function indicating that the parcel is owned by a public entity. Christy agreed. When the zoning ordinance was updated, it was determined that it would be best for the community to identify those public properties by putting it on the zoning map. There was no regulatory intent other than identification.

Gaylor Baird noted that purportedly the County will have a permanent parking easement on the southernmost parking. How much parking is there now and how much will be available for Trabert Hall? Eichorn suggested that this information would be contained in the purchase agreement. Gaylor Baird pointed out that the staff report does make the case that there will be sufficient parking. Eichorn explained that the applicant had shown staff that they had ample parking and that they intended to use the southernmost parking for Trabert Hall.

Proponents

1. Kile Johnson appeared on behalf of Lancaster County and as representative for Lancaster County in the purchase agreement. This is an existing facility. There is no change in the property; no change in use; no change in purpose; same clients; same residents. With reference to parking, Johnson noted that St. Francis Chapel is immediately to the east. Currently, there is no access right to St. Francis to come in off South Street. That road has been there and they have been using it for years, but part of the purchase agreement assumes there will be an access agreement granted to St. Francis to come in off South Street. That same access will be granted to Lancaster County to Trabert Hall. There are 30 stalls on the south edge of the lot which will be retained and leased by Lancaster County. The parking lot contains about 180 stalls; the requirement for Hunter Management to operate Lancaster Manor is one stall for three residents; there are 293 licensed beds; so that would be 98 parking stalls that would be required for Hunter Management. North of the leased area for Trabert Hall, there are over 150 parking stalls, so there is adequate parking for Hunter Management. The 30 stalls for Trabert Hall with the parking on the east and along the east side of Trabert Hall should be adequate for Trabert Hall parking.

Lancaster County has been in contact with St. Francis and there will be continuing access and continued use of parking. Nothing is changed as far as St. Francis is concerned. St. Francis has also been put in contact with the attorney for Hunter Management with regard to any problems that arise in the future. This transaction will give St. Francis access rights off South Street which they clearly did not have before. St. Francis can also use the south lot on Sundays. The purchase agreement gives Hunter Management the right to lease two stalls from the County for bus parking in the parking lot on the east side. Johnson also explained that Hunter Management will own that strip and lease it back to the County – Hunter Management will be in charge of maintenance and will pay taxes on it.

Opposition

1. Becky Gaston, 726 S. 30th, testified in opposition. She works at Trabert Hall and has concerns about the change of zoning for the parking lot. The 30 spots in front of Trabert Hall that will be leased back to the County are not sufficient. There are 20 people in her office alone and many other agencies in the building. She generally has to parking in Lancaster Manor's lot. She is worried that this would then require people to park on Saratoga Street, which is residential and runs next to the school. The only other way into the lot is a one-way street out and onto a residential street. She does not believe the parking lot area should be included in the change of zone.

Gaylor Baird asked whether Gaston knows how many people work in Trabert Hall. Gaston indicated that she had called Property Management and they could not answer that question. She knows that the building offices adult probation and parole, senior day care, VA, child assistance, etc.

2. Larry Hudkins, who serves as a County Commissioner of Lancaster County and chair of the Public Building Commission, indicated that his testimony today is as a private citizen and resident of Lancaster County in opposition. This change of zone is for the area east of 10th & South Street, typically the area which encompasses Lancaster Manor, Trabert Hall, St. Francis Chapel, the old detention center and the recycling center. This change of zone is not in the best interests of the citizens of Lincoln and Lancaster County. He pointed out that in the area immediately east of the Lancaster Manor building (commonly referred to as the parking lot for Lancaster Manor), there are two entrances off of South Street, one directly into the Manor parking lot and another further east which mainly services St. Francis, the recycling center, the transit parking and Trabert Hall. All three floors of Trabert Hall are occupied, including 14 child support attorneys, with a lot of traffic coming in and out. There are 30-36 parking stalls which are almost always utilized by Trabert Hall. There are 120 stalls beyond that that can serve Lancaster Manor. Even if you split the line, there are 150 stalls available.

Hudkins submitted that there is indeed a change. This is a change of zone on ground which has not traditionally been used by Lancaster Manor. In 22 years that he has been a County Commissioner, the bottom area and some of the rest has been used by Trabert Hall. There is a change because the whole area is now being deeded to Hunter Management, including the second entrance. That is a major change.

Hudkins requested that the Planning Commission look at the parking and the signs that designate the parking for Trabert Hall and the use; look at the impacts of the South Street main entrances. He contended that Hunter Management does not need this excessive property. Hunter Management needs a maximum of 100 parking stalls. They would have far in excess just with the old area – they do not need the rest of this area. Access to Trabert Hall and the rest of that property can be diminished if Lancaster County does not own the access. Lancaster County has a 99 year lease in place with St. Francis that provides that Lancaster County will lease it for $1 each year. That guaranteed that Lancaster County owned it and they had access.

Hudkins further submitted that the area for this change of zone is an expanded area that was not declared surplus and was not subject to public hearing for disposal of additional County property. For example, when the County disposes of a vacated street in a rural town in Lancaster County, the Board is required to have a public hearing before receiving funds for the vacated street. There is much more at stake in this situation. There is change in control of and ownership of the second access from South Street. There is a sign on the exit to Saratoga that says one-way, so the only access is at South Street. You cannot enter off of Saratoga.

Hudkins urged the Planning Commission to reduce the area of the change of zone. He believes that Hunter Management can purchase Lancaster Manor with what has traditionally been used in the parking lot. They do not need the excess land.

Lust noted that Mr. Hudkins' concern seems to be the parking at Trabert Hall. This is a request for change of zone. How would you propose that this body come up with a solution to the parking problem that is within the scope of the Planning Commission authority, which is zoning? Hudkins proposed that the Commission ask the applicant to redefine the area to include only the area necessary to service and to consummate the sale, or ask them to stipulate and put the boundaries back on the map. Lust inquired whether Hudkins is suggesting that the Planning Commission tell the applicant to change the terms of the purchase agreement. Hudkins stated, "no, you simply would change the zone on the area in blue (on the map he submitted) and not the expanded area."

Esseks clarified that the zoning for Lancaster Manor (where people are being taken care of) has to be changed to something besides P because it will no longer be owned by a public entity. He inquired whether Hudkins is proposing that the Planning Commission recommend only a change for that part of the whole area, and then leave the entire parking area in P zoning. Hudkins' response was, "not necessarily, my only concern is the expanded area beyond what is used for Lancaster Manor. The application is for an area that exceeds what is traditionally used for Lancaster Manor." He objects to this area being expanded in the purchase agreement. He sees no reason why Hunter Management needs to own the additional land. They have enough parking without the additional land. There is not an exact legal description because the whole area was owned by the County exclusively.

Cornelius wondered whether Hudkins is suggesting that we have a zoning district that crosses property boundaries. Hudkins does not know where the property line is. But he does know that the boundary could be established with a survey and a property line could outline what has been the historical use of Lancaster Manor. His main concern is that we would be deeding excess property without declaring it surplus and going through the hearing process.

Lust suggested that this issue would be more appropriately addressed in the purchase agreement. If Lancaster Manor has agreed to sell this much property to Hunter, she does not believe that the Planning Commission can arbitrarily change parcel lines and not change the zoning on part of it. Hudkins thought perhaps two different proposals were submitted. If that is the case, he requested that this application be rejected and that the Planning Commission take into consideration a second request for a property line which more accurately portrays and exhibits what is actually used by Lancaster Manor. But, Lust confirmed with Hudkins that he would agree that everything being requested is being deeded to Hunter Management. Hudkins assumes that if this zoning request is granted, it will all be a part of the purchase agreement.

Sunderman reminded the Commission that their role is not to get into the actual sale of the property. The question for the Planning Commission is whether or not R-4 is the appropriate zoning for this parcel that is being sold.

Gaylor Baird observed that Mr. Peo had suggested that the Planning Commission is to look at the affects on adjacent lands and the land use ramifications of a zoning change. She is curious about sufficient parking for Trabert Hall because it is an adjacent land use. We have someone from Trabert Hall very concerned about sufficient parking; we have the applicant saying it is enough for Trabert Hall and Hunter; and Mr. Hudkins is saying that traditionally, Trabert has needed more. She wants to know whether there has been any study done to determine what is sufficient for Trabert Hall and the adjacent lands. We do have data for Lancaster Manor, but what do the surrounding uses need? Hudkins stated that he does not know that there has been a study done for Trabert Hall and he does not know the number of people going and coming from Trabert Hall, but he does know there have been problems with the amount of parking. Lancaster Manor needs 100 stalls and this change of zone gives them 150 stalls. When you change the zoning, are you changing the zoning in such a way that detracts from the public's access, enjoyment and investment in Trabert Hall, the recycling center, St. Francis and the old detention center.

Taylor believes that the proper boundaries should be related to the property being sold. Since the County is selling the property, he believes they should be considerate enough about the employees of Trabert Hall and the surrounding adjacent uses to make sure of the proper division. It is not the Planning Commission's role to do that. It appears that the Planning Commission is being placed in the middle of this to make a decision. Taylor questions if the County Commissioners are really doing their job or have done their job. This seems to be a very unfair situation for the citizenry. The Planning Commission is not a bureaucratic entity. We are citizens that are concerned about the community and we want to do what is best for the citizens. He is almost of the opinion that this should be somehow tabled or reopened for discussion and then brought back to the Planning Commission in order to make a mindful, considerate, intelligent and inclusive decision. He is not satisfied approving this change of zone just because it is the Planning Commission's job to do so.

Partington inquired about the use of Trabert Hall. Hudkins stated that it has been used for the good of the community. It has been the home of the Lincoln Action Program for many years. Other uses include Cedars Home for Children, county attorney, and excess office space for Lancaster County housing many county offices at about 1/3 rate less than in the County-City building. It is very valuable and highly utilized space for Lancaster County. Partington agrees that any plan for sale should have made adequate provision for parking for the existing county building.

Esseks confirmed with Hudkins that Lancaster County owns Trabert Hall, and as a commissioner and private citizen, Hudkins is concerned about the viability of the use of Trabert Hall because of where the zoning line is going to be drawn. Could that viability be secured by permanent easements allowing access to South Street and a permanent easement for the bottom row of parking stalls? Hudkins agreed that would be better than nothing, but why does Hunter Management want to own more than they actually need, and

does this diminish the value of Trabert Hall and other property if you need to ask for permission to do things to the property?

Lust inquired whether Hudkins is indicating that "this" area of parking is actually going to remain as possible parking for Trabert Hall through an easement granted to the County as part of the sale. Hudkins stated that he does not know. Lust then asked Hudkins whether it is his understanding that Trabert Hall can still use all of this parking space because of an easement. Hudkins stated that he does not know.

3. Kim Kaspar, President of AFSCME Local #2468, testified in opposition and advised that there are currently 11 offices in Trabert Hall. In looking at the parking situation faced by Trabert Hall, the 30 spots out front are not enough. What is not being considered is the foot traffic that goes in and out of Trabert Hall – about 3,000 people/month. There is not any parking on Saratoga; there is not a lot of space for employees and that amount of foot traffic. She requested that the Planning Commission give more consideration to just how much room there is available for everyone utilizing this building at this point in time and the access. She expressed confusion about the "permanent" easement. She had understood that it was going to be a 5-year easement in the contract.

4. Bob Van Valkenburg testified, stating that he is not in support and not in opposition. "The people that put your families over a barrel need to straighten this out before they ask you to make a decision." Van Valkenburg stated that he has not been hired by anyone nor asked by anyone to be here. He is just here because anything that appears in the newspaper may or may not be based on fact. Van Valkenburg believes that the Planning Commission has been put over a barrel – the Planning Commission has not been made aware of the fact that the applicant has been fined for Medicare fraud – what else is going to go wrong? We need to tread cautiously. There is going to be litigation on this. He has heard that the only reason one of the County Commissioners wants to get rid of Lancaster Manor is to dump the union. "If you want to be part of the charade to dump the good workers, that's your call, but you will have to account for it." The Planning Commission does not know anything about the mismanagement of that facility and it has never been brought to the public light. He is bothered that one of the County Commissioners has a relative that represents Hunter Management. The Planning Commission needs to be concerned with absolute honesty. Van Valkenburg has never seen a legal description for the parking. "This is a pig in a poke." They don't even know what they are selling, and they are asking for zoning for property that they can't even define.

Van Valkenburg went on to state that Lancaster Manor has been mismanaged for decades. The County Commissioners have been spoon-fed garbage and they don't know the truth.

Van Valkenburg urged that the Planning Commission not be stampeded into "something you will be sorry for." Get the facts before you make the decision. Find out whether the company that wants to do what they want to do is actually the honest citizen that you want to bring to our town. If this is just to dump the union, it is deplorable.

Van Valkenburg also noted that the demographics of a nursing home design used to be 66 2/3 employees for every 100 beds. 293 beds means 193.4 parking places just for staff. What about the people that have friends and relatives that visit them in the nursing home? It is most prudent not to rush into this. Demand that you get the truth, the whole truth and nothing but the truth before being pressed into making a decision that our City and our Mayor and the County Commissioners may later regret.

*** 5-minute break ***

5. Staff Sergeant Mark French, who uses Trabert Hall all the time, testified in opposition based upon the parking situation. The Planning Commission should hold off on this zone change because it might reduce the amount of parking to Trabert Hall. If it does reduce the parking available for Trabert Hall, it will put a lot of veterans at a disadvantage. He has had to park on the street many times that he has had to visit his VA representative. We need to be able to use the services that are provided to us.

6. Marlene Lauer, a Lancaster County citizen, testified in opposition. The major agencies that she has worked with for the last 20 years have made a lot of referrals to assistance located in Trabert Hall. She is concerned that there will not be ample parking. The parking lot on the far east side is full of rural transit vans so there is no parking available there for Trabert Hall. The only access that would be left that would be maintained by public holdings would be a very, very narrow access one-way out of the property, which she believes is a huge disservice to the county citizens. Most of the veterans of Lancaster County utilizing that agency are elderly and what a disservice to them to have to park on the street or somewhere far away. The County needs to maintain more access and more accessible access to the property. The Planning Commission has been put in a very bad position to make a decision about something where all the facts are not available. We need to protect the city and the citizens of Lancaster County and Lincoln and maintain access to and from Trabert Hall. The general assistance provided by the Welfare Distribution Center is on the rise, receiving 30-50 people a month. The Lancaster County Veterans Administration has 12-15 veterans visiting per day. We need to insure that the citizens have access to Trabert Hall.

7. Lynn Smith, who was born and raised in Lincoln and is now living in San Diego, testified in opposition. Her mother and aunt are residents of Lancaster Manor and she makes this trip every 30-45 days to visit them. What started out to be the sale of the Manor has in fact turned into such a fiasco and the bickering and the arguing goes on and on. Whatever the Planning Commission decides is going to have a domino effect and it will affect everyone in one way or another. She has done her homework; she did get the facts;

she knows the truths and the lies; she is very strongly against what is going on. What is going to happen to all that property? What is Hunter Management going to do with it? She believes this is much more than a zoning matter. It is going to affect the people of Lincoln. She is disturbed how this is all coming together. The purchase agreement is not available – nobody has a clue – and the rules are changing every ten minutes. Nobody has the facts. Before making any decisions, we need to know the real facts and the real truth. She is very discouraged about how this has been handled.

Staff questions

Lust asked staff to define the area of the change of zone on the map provided by Commissioner Hudkins. Eichorn clarified that the Planning Commission is making a decision on whether R-4 is an appropriate district for this parcel. She received this assignment on November 30th and since then, "this" has been the boundary provided to the Planning Department as the property being sold and what would need to be rezoned from P to R-4. It follows the parcel line that was established by the County Assessors office probably years ago. It does not follow a specific lot line. The staff would recommend R-4 as the zoning for anything that would be allowed in R-4 if proposed to go into this location. A public agency is also allowed to function in any other zoning district. It does not have to function just in the P zoning district. If part is zoned to R-4 and used by public agency, it can continue to do so. If there is a permanent easement over the parking currently being used and zoned to R-4, Trabert Hall can still continue to use parking that is in the R-4 zoning district as long as they have a permanent parking easement. Eichorn also pointed out that there are no parking requirements in the P zoning district. This is the forum for discussing the R-4 zoning and not the forum to discuss concerns about the sale of the property.

Eichorn stressed that if this property gets rezoned to R-4, there will be a pre-existing use permit, so any changes made to the site – the building, the parking lot layout, major access, etc. – would have to go through a process to amend that pre-existing use permit.
Lust suggested that some of the members of the public are being mislead by the parking situation because as she understands it (using Hudkins' map), the County is selling to a certain point; however, from that line there is a permanent parking easement. Eichorn agreed. Lust believes that parking at Trabert Hall is not going to change at all under the terms of the agreement. This whole issue of parking is another way to get this body to become concerned about the sale.

Francis asked staff to confirm that the legal description on page 65 of the Planning Commission agenda matches the parcel. Eichorn concurred.

Francis then recited from page 63 of the agenda (page 3 of the staff report), Analysis #4:

> Today Lancaster Manor and Trabert Hall share the parking lot on the parcel used by Lancaster Manor. The county will have a permanent parking easement on the southernmost row of parking which will allow parking for Trabert Hall no matter who owns Lancaster Manor or what the zoning is.

Eichorn explained that analysis to be based on information given to the Planning Department by the applicant in terms of easements that they will keep on the property to accommodate parking for surrounding properties. All of the questions in relation to who gets to use what parking and when would need to be addressed by the applicant. The Planning Department is only looking at the zoning. She knows about the easements because the applicant volunteered that information in response to whether or not they are impacting the neighbors.

Esseks believes that among the responsibilities of the Planning Commission is to be concerned about the impact on adjacent properties. Commissioner Hudkins raises the issue of parking, but also access to South Street, and his map shows that P would still be used for the easternmost driveway going out to South Street. Another way of doing this is a permanent easement or other legal condition granting use to Trabert Hall. Esseks believes that the Planning Commission does have a responsibility to be sure that Trabert Hall, an important building property, has adequate access to South Street. How can we achieve that goal? Eichorn suggested that the attorneys can provide the language that is in the easement. From Planning staff's review, the access has not changed – there is still access from South Street to Trabert Hall - the narrow access is there today and that is limited access today, so that is not changing. The access to Trabert Hall from South Street is not changing because of the permanent access easement. We are not discussing the sale of the property. We are discussing whether or not the zoning proposed is the correct zoning for that property. It is not our duty to use zoning to stop the sale of a property.

Esseks still believes that the access from Trabert Hall to South Street is a liability question and a serious public issue. What do we do? Eichorn suggested that the entity selling the property also owns Trabert Hall. When they made application to the City to change the zoning, they are telling us that they are going to provide adequate parking by permanent easement and we would assume they are not trying to hurt another one of their own properties. Right now, there is no requirement for any particular number of parking stalls for Trabert Hall because it is a public agency. If there are parking issues, they need to deal with those parking issues. The change of zone was submitted to the Planning Department; the applicant and the Planning Department understood it could not remain P. The Planning staff found that there was no detrimental impact to the surrounding properties and that it is in conformance with the Comprehensive Plan. The issues of parking will need to be dealt with within the pre-existing use permit. None of the uses are changing.

If this were a private property and an owner wanted to divide it in such a way that eliminated the capability to have adequate parking, Partington wondered whether that would be allowed. Eichorn suggested that if they were dividing the land as a private entity,

they would have to do a final plat and would have to provide access to the lots and the existing buildings. There is no final plat in this case and thus no subdivision requirements. They are still providing access to Trabert Hall through permanent access easements.

Partington expressed confusion about the easements. What do they involve? He has heard that the amount of parking is allowable but the people say it is not enough. Why is this subject before us? Eichorn explained that any site plan issues regarding parking need to be answered by the applicant.

Cornelius inquired whether the "permanent parking easement" implies access to South Street without an access easement. Eichorn confirmed that there is a parking and access easement coming from South Street down past the church, but she does not know for sure where those easements are because in reviewing any change of zone, the staff does not ask the applicant for their purchase papers or sale documents. The applicant must provide the boundary and the proposed use. The staff then makes a determination and recommendation based on that, not based on the sale of the property.

Cornelius confirmed that there is no property subdivision in this situation. Eichorn concurred.

Taylor believes the change of zone from P to R-4 is clear. He needs assurance of what property or easements will belong to Lancaster Manor and that Trabert Hall will have the necessary space they need. He does not see that there is going to be a particular problem with the access. If the County has a permanent parking easement to the southernmost row of parking for Trabert Hall, no matter who owns it or what the zoning is, he does not see a problem. But, if the easement is only for 5 years, then there needs to be some clarification.

Based on discussions he has heard and questions being asked, Peo suggested that the Planning Commission is outside the scope of their authority. He knows one of the criteria is the effect on abutting properties, but the amount of parking retained is not the responsibility of the Planning Commission. That is the County Board's responsibility to determine. The County Board has indicated that they have retained adequate easements in parking for Trabert Hall. There are no regulations in the P zoning on public use; in fact, we probably don't have the ability under the zoning code to regulate the County. This is not a fight in which the City should be involved. If there is a change of ownership, we have to rezone the property. That zoning does not set any standards for easements, parking rights, etc. It is strictly a mapping of this use as a health care facility under private ownership. P public is a fictitious district – it does not regulate legitimate uses that apply to everyone – it was established as an ownership district and it has created a problem. If the County had only leased this land, it would never have been zoned P. This is just a mandate that sale of public land to a private owner requires the private owner to have the right to use the property and that requires the rezoning.

Cornelius suggested that this is largely an administrative matter. The Planning Commission is a deliberative body, so why does this question come before us? Peo suggested that the city created the problem by creating the P district.

Cornelius wondered whether the Planning Commission could recommend approval of the change of zone, contingent upon the sale of the property. Peo agreed that could be a potential recommendation – that the zone change would not become effective until the date the sale closes.

Esseks wondered why the Planning Commission couldn't also recommend to rezone to R-4, contingent upon evidence that Trabert Hall's users have adequate access to South Street. Peo believes that is a different scenario. It is not our law to impose requirements on the County to suggest they do not know how to protect their property or operate their own facility. The testimony and the map show that Trabert Hall has its own site by County Assessor standards; the Manor has its own parcel site; we believe the County should be sophisticated enough to protect itself and we don't regulate the County. But, Esseks observed that there are various principles in the Comprehensive Plan, one of which is to have adequate access to and from the separate parcels.

Response by the Applicant

Johnson reviewed the lot lines. There will be permanent easements. There will be a permanent easement coming in South Street going south to get into St. Francis, and there will also be a permanent easement that runs with the land and runs down into the area of the driveway in front of Trabert Hall. There will be a permanent easement running with the land covering the 30 stalls at the south end of the parking lot. The County Board has made the determination that there is adequate parking. The east lot currently has vans parked there – that is a management decision. They can be parked elsewhere. There would be another 30 stalls on the east side; another 25 stalls in the center area; another 25 stalls on the other side; there are stalls at the west side of the east lot; there are stalls coming around and down to South Street. As a management decision, the County can also make this two-way, with a permanent easement coming off South Street. Trabert Hall people do have access to and from South Street, and they have an exit access to Saratoga currently that could easily, with management, be two-way. The area south of Trabert Hall is wide open. The County could make a parking lot south of Trabert Hall as a management decision.

Johnson clarified that there has been no discussion about a 5-year easement or lease. The documents are posted on the County Web site; the permanent easements that run with the land are reflected in those documents. The parking required for Lancaster Manor is 98 stalls. There remained about 150 stalls after the parking for Trabert Hall.

There is a lease between St. Francis and the County that allows cross-use of the parking.

Larson does not understand why the County didn't sell less and retain the two southern rows of parking for Trabert Hall.

Gaylor Baird appreciates knowing about the access and the permanent easements. If this is a County building and it does not have a required number of stalls, then that issue diminishes in our discussion.

Kerry Eagan, Chief Administrative Officer for the County Board, the applicant, stated that the tax ID parcel that presently exists is the subject of the change of zone. There was discussion about County ownership across the south 30 stalls, but there is no difference whether we own it fee simple or whether we have a permanent easement. Based on legal advice, it was more expedient to go with the tax parcel, especially with the permanent easement providing the access that Trabert Hall needs for the public. There will be no additional pressure put on the one-way street to Saratoga. In fact, we are trying to discourage that.

With regard to the 99-year lease with the Chapel, Eagan clarified that it was sold. That property was declared surplus in 1998 and it was sold. The Lancaster Manor property was not surplused because there is still a public purpose being served even though in private ownership. There are separate powers that say the County has the power to own, lease buy or sell county property that fulfills a public purpose – providing for the elderly, the young, the disabled, the vulnerable, etc. That type of situation obviates the need to declare the property surplus. The purchase agreement guarantees that there will always be a nursing home operated on that property. The County Board felt it was best to preserve the long term sustainability of this facility. This was not a rush decision. The Board has been looking at the finances of the Manor for many, many, years. This is not a snap decision of the County Board. It has not been taken lightly. The goal is to preserve this property as a nursing home.

Eagan also advised that the Director of Veterans Affairs and General Assistance indicates that he has never had a complaint about the parking. The Board did take that into consideration and Trabert Hall will have adequate parking. If not, we can require the rural transit vans be parked somewhere else, but it has not been necessary.

Eagan does not know where the 5-year easement comment came from. It has always been contemplated as a permanent easement.

Partington expressed appreciation to Eagan for clarifying the issues. What is Trabert Hall used for with the veterans? Eagan stated that the Veterans Service Officer offices there and has been combined with General Assistance. That building still has a lot of life and it will continue to be used to serve the County's needs. It is also on the historic registry.

ACTION BY PLANNING COMMISSION: December 16, 2009

Taylor moved approval, seconded by Esseks.

Taylor believes everything has been clarified and he is well-satisfied listening to the arguments on every side. He thinks it is clear. He believes that the fears are misplaced. It appears that the problems of parking are going to be solved. There is no need for additional parking and it appears that we have more parking than is being used right now.

Lust expressed her frustration that people were attempting to use this body inappropriately. She does not believe there was ever a parking issue based on the permanent easements that are in the purchase documents. She believes the parking issue was brought forward as a last ditch effort to try to somehow stop the sale of Lancaster Manor and she does not appreciate it. This is a body that is to decide the zoning and land use and that is our purpose. She does not believe that this body should be dragged into a political debate over whether Lancaster Manor should or should not have been sold. The R-4 was the only decision to be made by the Planning Commission. The public designation was simply a mapping designation to indicate it was owned by the public body.

Gaylor Baird believes that this was an important discussion and educational. She has had a lot of things that have been clarified and she believes the easements were valid issues. The Planning Commission's role is to assess whether this did have a negative impact on adjacent land use, and the access to South Street was a valid concern that had to be addressed by the applicant. While some of the comments from the public have to do with the larger question, we were told that we could not address those. It is always nice to have people come to express their concerns. She has come to the conclusion that despite the initial concerns about parking and access, those can be addressed by the County on their existing property and they do have permanent easements in place. Given all of that she feels compelled to vote in favor. But, it was only this discussion that lead her to come to this conclusion.

Partington believes that the County Commissioners are individuals of integrity, including Commissioner Hudkins. It was confusing, but the easements have been clarified. He does not believe it is his duty to tell the County Commissioners how to handle their real estate.

Esseks agreed with Partington and Gaylor Baird.

Sunderman commented that this is simply a case of a landowner (in this case, the County) selling a parcel of land already on the books and any easement issues that were involved were taken into account with the sale price. It goes back to a label. It has to have another zoning under private ownership and R-4 is appropriate.

Motion for approval carried 9-0: Gaylor Baird, Cornelius, Esseks, Francis, Larson, Lust, Partington, Sunderman and Taylor voting 'yes'. This is a recommendation to the City Council.

There being no further business, the meeting was adjourned at 3:50 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on January 13, 2010.

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