

## MEETING RECORD

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Wednesday, May 4, 2011, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10<sup>th</sup> 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, Mike DeKalb, Brian Will, Tom Cajka, Christy Eichorn and Jean Preister 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 acknowledged the posting of the Open Meetings Act in the back of the room.

Sunderman then requested a motion approving the minutes for the regular meeting held April 20, 2011. Motion for approval made by Francis, seconded by Cornelius and carried 7-0: Gaylor Baird, Cornelius, Esseks, Francis, Partington, Sunderman and Taylor voting 'yes'; Larson and Lust abstaining.

### **CONSENT AGENDA**

#### **PUBLIC HEARING & ADMINISTRATIVE ACTION BEFORE PLANNING COMMISSION:**

**May 4, 2011**

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. 11010, CHANGE OF ZONE NO. 11013, CHANGE OF ZONE NO. 11012, SPECIAL PERMIT NO. 399C, USE PERMIT NO. 56F and STREET AND ALLEY VACATION NO. 11005.**

Ex Parte Communications: None

**Item No. 1.3a, Change of Zone No. 11012; Item No. 1.3b, Special Permit No. 399C and Item No. 1.4, Use Permit No. 56F,** were removed from the Consent Agenda and scheduled for separate public hearing.

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

**CHANGE OF ZONE NO. 11009,  
TEXT AMENDMENT TO SECTION 27.63.500  
OF THE LINCOLN MUNICIPAL CODE**

**and**

**SPECIAL PERMIT NO. 11006,  
FOR A SCRAP PROCESSING OPERATION  
ON PROPERTY LOCATED AT  
545 WEST "O" STREET.**

**REQUEST FOR DEFERRAL:**

May 4, 2011

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

The Clerk announced that the applicant has submitted a written request for an additional four-week deferral.

Francis moved to defer, with continued public hearing and action scheduled for Wednesday, June 1, 2011, seconded by Taylor and carried 8-0: Larson, Taylor, Cornelius, Gaylor Baird, Francis, Partington, Esseks and Sunderman voting 'yes'; Lust declared a conflict of interest.

There was no public testimony.

**CHANGE OF ZONE NO. 11012  
FROM R-2 RESIDENTIAL DISTRICT  
TO R-4 RESIDENTIAL DISTRICT**  
**and**  
**SPECIAL PERMIT NO. 399C, AN AMENDMENT  
TO THE VILLA APARTMENTS COMMUNITY UNIT PLAN,  
ON PROPERTY GENERALLY LOCATED  
AT NORTH 70<sup>th</sup> STREET AND CLEVELAND AVENUE.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

May 4, 2011

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

Ex Parte Communications: None.

These applications were removed from the Consent Agenda due to a letter received in opposition.

Staff recommendation: Approval of the change of zone and conditional approval of the amendment to the community unit plan special permit.

Staff presentation: **Tom Cajka of Planning staff** referred to the letter received in opposition from Bernie Lyons at 2630 N. 69<sup>th</sup> Street Court. Mr. Lyons has concerns about the location of the garage near his property and about maintenance issues between the back of the garage and the property line. He is also concerned about the garages facing 70<sup>th</sup> Street and how that would look in the future, and traffic.

Cajka also submitted revised conditions of approval to the special permit, adding Condition 2.12 as follows:

Show the building envelope along the south boundary at 20 feet except the apartment building setback may project up to 15 feet at one point as shown on the site plan.

Cajka advised that the change of zone request is from R-2 to R-4 on property located on the west side of 70<sup>th</sup> Street just a little south of Adams Street. The density on the R-2 zoning is currently maxed out. The special permit is to amend an existing special permit for a community unit plan. The Villa Apartments CUP was originally approved with 66 units in 3 buildings. This application seeks to add 48 more units in two buildings – 24 units in each building. Although the original CUP was approved for 66 units, there are 68 units built today. The staff is uncertain how the extra two units came about, but to make it all legal, this request is actually to add 50 units – 48 units plus the two existing extra units, for a total of 116 units. The R-4 density would allow up to 146 units, but they are only requesting 116.

Cajka referred to the concern raised by the letter in opposition about the garage and advised that there is a screening requirement for multiple family complexes, i.e. 50% screen along the property line from 6 feet to 15 feet above the ground elevation, so there will be screening along 70<sup>th</sup> Street and along the perimeter of the apartment complex. The staff has also asked for additional street trees to be planted along 70<sup>th</sup> Street to add to the screening.

With regard to the placement of the two buildings, Cajka explained that the north building is located a good distance (approximately 160 feet) from the residential lots to the north and the garage building is about 60 feet south of those buildings. The south building and garages are located a little closer to the residential to the south but the garages are still shown to be 20 feet from the south boundary. Although the building envelope on the plan shows it as 20 feet for the garages, the diagram shows one point of the building being no closer than 15 feet to the south boundary. Staff believes that the building will have less impact on the residences than if it were parallel to that lot line.

Esseks inquired as to the rationale for the new Condition #2.12 which allows for reducing the buffer from 20 to 15 feet. Is there a public welfare benefit issue or values that may be in jeopardy here? Cajka explained that the setback for this zoning district would actually be 5 feet, so it would be an increase of 15 feet for landscaping. Right now they are showing the building envelope at 10 feet. Staff is asking to move the envelope which would make it approximately 20 feet. They have not gotten the final design of the building yet so they want some flexibility. We are saying that the point of the building cannot be closer than 15 feet. The majority of the building will be 20 feet or more away.

Proponents

1. **Mark Hunzeker** appeared on behalf of **Mark Bousek**, the owner of the Villa Apartments. This is an application to add 48 units to this complex, which is in conformance with the existing Comprehensive Plan and also well in conformance with the existing draft language that is proposed for the new Comprehensive Plan. This proposal maximizes the use of existing infrastructure. There are no new streets, water lines or sewer lines required. It also provides affordable housing and different housing types and choices within the neighborhood. The construction will be compatible with the character of the existing neighborhood, utilizing the same materials and virtually the same building design as the buildings currently on the site. There will be some modification in the building plans to accommodate changes in codes, particularly ADA. But otherwise, the buildings will appear to have been constructed at the same time as the existing buildings with the same pitched roof and materials.

The drainage issue was a big concern that the applicant had coming into this project. They knew before they started that there was an existing drainage problem down in the area of Cleveland Avenue which is caused by the fact that that area is the outlet point for a very large drainage basin of about 300 acres which all converges causing an existing drainage problem. To address this issue, the applicant spent considerable money to do a detailed drainage study of this area using both the technology and the software to run the modeling to determine whether this development would have an impact on the drainage at that point. The conclusion of that study is that after development of this site, there will be very, very slightly less drainage than the existing drainage. Therefore, from the standpoint of the residents in that area, there will be no change as a result of this project. Public Works has reviewed and approved the drainage study report. In addition, Hunzeker advised that the city has a project planned in a park above this area which will have a small component of drainage control as well as some water quality improvements. It is located in the smallest of the three sub-basins and may make a slight difference. In summary, this project is in compliance with the existing criteria and will not have an impact on that existing drainage problem.

Hunzeker believes that this is a perfect match for the Comprehensive Plan goals – it provides housing choices and incorporates a project which is compatible with the character of the neighborhood. In addition, this developer has done his homework and spent time,

energy and money assuring the city staff that this project will not have an adverse impact on the neighborhood. Hunzeker agreed with all conditions of approval, as revised today.

Lust observed that one of the concerns was potential for pet nuisance abutting Mr. Lyons' property. Hunzeker responded, stating that the Villa Apartments complex has a substantial area of green space available for residents. That green space will be diminished slightly, but not greatly, by this project. In addition, there is a very substantial city park that is available for recreation as well as walking dogs, etc.

Hunzeker also advised that Mike Eckert of Civil Design Group has been in touch with Mr. Lyons and he believes the concerns raised in Mr. Lyons' letter have been addressed.

Larson referred to the northwest corner and wondered where the water goes. Hunzeker stated that there are a couple of box culverts that run under Cleveland Avenue to a point to the north where they go back underground and continue north quite a ways. The box culvert under Cleveland is not sufficient to handle a 100-year storm, so there is a point where, in the event of a 100-year storm, there will be some water that will certainly get into the yards of the abutting home owners. Larson wondered whether that would be a frequent problem. Hunzeker suggested that it is an issue that could be fairly significant in the event of a five- or ten-year storm. We understand that the neighbors have had and continue to have concerns and they are not happy that it has not been addressed in 20 years. But in fairness to Public Works staff and everyone who has worked on it, there is not a great deal you can do without literally buying several houses and wiping out the channel. We even ran a model which assumed that Cleveland Avenue was cut off at both ends, and it still was not good in a 100-year storm. The study shows that the drainage problem would be very slightly better with this development. It will not make it worse.

Esseks expressed concern that this development adds impermeable surfaces – more of this land is now going to be covered with building and parking lots. Is there on-site detention? Hunzeker stated that the study indicates that it is not advisable to do detention at that location – getting the water off this site sooner rather than later is better for the overall drainage picture. Soil types have a great deal to do with how much water runs off. The runoff at this site is .88 – the soil is very hard clay, so it runs off not quite as fast as concrete, but very close.

There was no testimony in opposition.

**CHANGE OF ZONE NO. 11012**  
**ACTION BY PLANNING COMMISSION:**

May 4, 2011

Larson moved approval, seconded by Francis.

Francis believes this is a good use for existing infrastructure. Having grown up at 68<sup>th</sup> and Walker, she does not believe there will be a lot of issues.

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.

**SPECIAL PERMIT NO. 399C,**  
**AMENDMENT TO THE VILLA APARTMENTS COMMUNITY UNIT PLAN.**  
**ACTION BY PLANNING COMMISSION:**

May 4, 2011

Lust moved to approve the staff recommendation of conditional approval, with amendment adding Condition #2.12 as recommended by staff, seconded by Gaylor Baird and carried 9-0: Gaylor Baird, Cornelius, Esseks, Francis, Larson, Lust, Partington, Sunderman and Taylor voting 'yes'. This is final action, unless appeared to the City Council within 14 days.

**CHANGE OF ZONE NO. 11014**  
**TO DESIGNATE A HISTORIC LANDMARK**  
**and**  
**SPECIAL PERMIT NO. 11007**  
**FOR HISTORIC PRESERVATION**  
**ON PROPERTY LOCATED AT**  
**2943 GARFIELD STREET.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

May 4, 2011

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

Ex Parte Communications: None.

Staff recommendation: Approval of the change of zone and conditional approval of the special permit.

Staff presentation: **Ed Zimmer of Planning staff** presented the proposals on behalf of the Historic Preservation Commission (HPC) and submitted the excerpt from the meeting record of the HPC with an affirmative recommendation.

Zimmer explained that this property is a 1916 grocery store building located in a residential neighborhood. There were a very large number of grocery stores positioned like this one during that time. A few of them wouldn't have been quite as large and grand as this one. The Hacs built their residence on the second floor. The front had a recessed entry with a double door -- one to the store and one to the apartment upstairs. The special permit requests to convert this to a duplex dwelling so that the upper floor would be returned to a residence and the main floor and basement would be the owner's residence. It was built within a couple feet of the east side lot line. This special permit would recognize that situation and would permit the duplex. There is enough footprint in the R-2 zoning for a duplex.

Zimmer pointed out that the applicant is requesting a reduction in the parking requirement by two stalls, which the Planning staff has not recommended but the HPC does recommend approval of the waiver to reduce the parking by two stalls.

Proponents

1. **Larry Buller**, 1921 Prospect Street, testified in support as the applicant. The property slopes toward Antelope Park with a retaining wall on the right hand side. That would currently hold two cars – tandem parking. There is somewhat of an access through the alley, but it is a very unimproved alley at this point, so he is trying to avoid plowing up some of the green space on the property for those two additional parking stalls being required by the Planning staff report.

Buller indicated that this will be his primary residence, and he will rent out the second floor.

Francis asked about the condition of the building when Buller purchased it. Buller stated that it was a shell when he bought it. He is in the process of putting all of the components back in. The upstairs has probably not been occupied for 10 years or longer.

There was no testimony in opposition.

**CHANGE OF ZONE NO. 11014**

**ACTION BY PLANNING COMMISSION:**

May 4, 2011

Francis moved approval, seconded by Esseks.

Esseks congratulated the applicant for undertaking this project, saving the building and living there and maintaining the property as it should be.

Francis knows that the applicant has restored other buildings in Lincoln and does a quality job.

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.

**SPECIAL PERMIT NO. 11007**

**ACTION BY PLANNING COMMISSION:**

May 4, 2011

Francis moved to approve, with conditions, seconded by Taylor.

Taylor echoed what has already been said. He appreciates the use of the property.

The Clerk questioned the motion to understand whether the intent is to approve the staff recommendation, which requires four parking stalls, or the HPC recommendation, which deletes two parking stalls.

The Commission sought clarification. Zimmer advised that Condition #2 of the Planning staff report would have the applicant amend the site plan to add two parking stalls, for a total of four. The HPC disagreed with that and the applicant had requested that the site plan be approved as submitted. The applicant is promising two parking stalls and the HPC has agreed with the applicant's request to reduce the parking stalls to two. In gathering information with the City departments, Zimmer advised that Public Works is recommending that the typical four stalls be provided and that is how it stands in the staff recommendation.

Esseks asked for the HPC's rationale for reducing to two. Zimmer stated that HPC agreed that the current site was the better choice, partly aesthetics. This is a location with 100 feet of street frontage so part of the reason was that there is street parking available.

Francis withdrew the original motion, and Taylor, the seconder, agreed.

Francis moved to approve the staff recommendation of conditional approval, with amendment deleting Condition #2, seconded by Esseks.

Taylor expressed concern about revising the staff recommendation. Francis thinks it would do more harm to the project and hurt the aesthetics of that lot by requiring the two additional parking stalls. It would require tearing up the back yard or side yard to provide those two parking stalls.

Taylor suggested that the staff recommendation gives the applicant the opportunity to provide two more parking stalls.

Zimmer advised that the purpose of Condition #2 is to require the applicant to amend the site plan to show four parking stalls. It is not optional. The HPC recommendation is to approve the landmark designation and to delete the two additional parking stalls on the special permit.

Sunderman stated that he will support the motion. He was leaning toward the four parking stalls if it was optional, but he does not want to make it a requirement, considering that the alley is unimproved and minimally maintained.

Lust commented that this is definitely a good project for both the neighborhood and that building and for rehabbing a historic landmark. She does not believe the two extra parking stalls in this area are necessary.

Gaylor Baird commented that the HPC endorsement regarding the parking is very helpful. The extra long street frontage also provides more comfort.

Motion for conditional approval, with amendment deleting Condition #2, 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. 11011**  
**A TEXT AMENDMENT TO TITLE 27 OF THE**  
**LINCOLN MUNICIPAL CODE**  
**TO ALLOW AGRICULTURAL ATTRACTIONS**  
**IN THE AG ZONING DISTRICT.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

May 4, 2011

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

Ex Parte Communications: None.

Staff recommendation: Approval, as corrected.

Staff presentation: **Mike DeKalb of Planning staff** explained that this text amendment makes provision for an amusement license approved by the County Board to be a conditional use in the AG zoning district. In March of this year, there was an application before the County Board for an amusement license in the AG district, but that provision has to meet the zoning code as well. That application for a pumpkin patch did not fit the zoning where it was being located. The Planning staff and the County Board agreed to put some language in the city code – three-mile jurisdiction - that if an amusement license is approved, it will also be in conformance with the zoning. The purpose is to keep the amusement license and the zoning requirements compatible within the AG area in the three-mile jurisdiction. It is also suggested that the limitations placed upon this as a conditional use, plus the County Board process for the amusement license, which provides public notice and public hearing, provides a similar level of protection as a special permit.

Esseks referred to the definition and wondered about adding “raising livestock”. It appears to be limited to land used for raising or harvesting crops and seems to exclude livestock, such as having children and adults tour the farm, pet the animals, etc. DeKalb suggested that the AG district already includes the raising and breeding of animals, so it is already built in. It is anticipated that the primary activities are in fact conversion or treatment of agricultural land, such as a corn maze, so that they can charge admission. If someone wanted to come in and show off their dairy farm, etc., DeKalb believes it is permissible under the AG use. The petting would be covered under the amusement license. He thinks it is well covered.

There was no testimony in opposition.

Larson inquired whether this changes the zone forever – that it only includes raising and harvesting crops for sale. DeKalb stated that it does not change the AG district. The AG district includes all segments of the agricultural use. This adds as a conditional use (without public hearing), provision for an AG attraction within the AG district for the purpose of doing a corn maze or special event or special fund-raising event, etc.

**ACTION BY PLANNING COMMISSION:**

May 4, 2011

Francis moved approval, as corrected, second by Esseks.

Sunderman believes this is a good move and will simplify the process.

Motion for approval, as corrected, 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 2:10 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on May 18, 2011.