MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, July 13, 2011, 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, Tom Cajka, Rashi Jain, 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 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 June 29, 2011. Motion for approval made by Lust, seconded by Francis and carried 8-0: Gaylor Baird, Cornelius, Francis, Larson, Lust, Partington, Sunderman and Taylor voting 'yes'; Esseks abstained.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: **July 13, 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. 11024, North Hills Planned Unit Development; SPECIAL PERMIT NO. 11016; and SPECIAL PERMIT NO. 11017.**

Ex Parte Communications: None

Item No. 1.1, Change of Zone No. 11024, was removed from the Consent Agenda and scheduled for separate public hearing. Taylor 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'.

Lust moved to reconsider Special Permit No. 11016 to allow testimony in opposition, seconded by Francis and carried 9-0: Francis, Lust, Partington, Cornelius, Gaylor Baird, Larson, Taylor, Esseks and Sunderman voting 'yes'. This application was called for public hearing immediately following Requests for Deferral.

Note: This is final action on Special Permit No. 11017, 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. 11019
TEXT AMENDMENT TO TITLE 27 OF THE
LINCOLN MUNICIPAL CODE RELATING TO
"ENTERTAINMENT RESTAURANT".
REQUEST FOR DEFERRAL: July 13, 2011

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

The Clerk announced that the applicant has submitted a written request for an additional two-week deferral of the public hearing. Lust moved to defer, with continued public hearing and action scheduled for July 27, 2011, seconded by Gaylor Baird and carried 9-0: Francis, Lust, Partington, Cornelius, Gaylor Baird, Larson, Taylor, Esseks and Sunderman voting 'yes'.

There was no public testimony.

SPECIAL PERMIT NO. 11016
FOR A SALVAGE YARD OPERATION
ON PROPERTY GENERALLY LOCATED
AT NORTH ANTELOPE VALLEY PARKWAY
AND DAWES AVENUE.
PUBLIC HEARING BEFORE PLANNING COMMISSION
UPON RECONSIDERATION: July 13, 2011

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

Ex Parte Communications: None.

Staff recommendation: Conditional approval.

Staff presentation: **Steve Henrichsen of the Planning staff** explained that this request for special permit is on property located on the west side of North Antelope Valley Parkway, south of Cornhusker Highway, including two properties that have frontage on Dawes

Avenue and Saunders Avenue. The existing business is parking cars on the south side of the area and wishes to keep the cars there for salvage. Sometimes the cars are there for repair or for sale at a later time. It was brought to their attention that they need a special permit to operate in this manner. The applicant has worked with property owner to the west in order to come in with one application for this salvage yard.

The analysis in the staff report finds that the proposal generally conforms with all conditions. It is not within any of the entryways. There is commercial/industrial zoning to the north, south, east and west with commercial operations in this area. Staff did not find a significant impact on entryways or on adjacent properties and thus recommends approval, with conditions.

Proponents

The applicant did not have any comments.

Opposition

1. **Ernie Larkins, Larkins Heating & Air Conditioning,** testified in opposition. His property is just west of the area that the applicant is fencing in on Saunders Avenue. His is one of the first businesses that located in this area years ago. He had to put the culverts in for the driveways. The applicant started his business and has the entire front of the property filled in with no culvert underneath. The water can't go to the ditch and drain. Larkins is also starting to experience big trucks parking in his front yard west of the applicant's property. Larkins owns six lots to the west of the subject site. He needs to get his service and supply trucks in and out. He does not need anyone else blocking his driveway. Larkins stated that he is definitely opposed if the applicant wants to join the Dawes and Saunders properties and close the alley. With six electric meters coming off the alley, the utility companies have to be able to get to that alley so he does not want it closed.

Esseks inquired about the problem of inadequate drainage – he asked Larkins if he is getting water off of the applicant's property. Larkins stated that he is not getting it now, but he gets it from all the rest. He built down there years ago. He had to set his buildings up, but since then the area has changed. Now everyone that builds down there has to build their ground way up to the newer level, leaving him in a hole. When they filled up the alley and built the alley up, he began getting water in all his buildings when there is a good rain. Larkins has protested and stopped the paving about three times because they will raise the street six inches, and with all the property around his business that is raised up for building, he believes the ditch will be filled in if there is no culvert. He can't get the city to keep the ditches clean.

Esseks also inquired whether the access to Larkins' property is blocked by vehicles parked on the applicant's property. Larkins indicated that the applicant has parked there quite a few times, but Larkins will have them towed away because he has no trespass signs.

Staff questions

Esseks inquired of staff about the issue of drainage. **Dennis Bartels of Public Works** stated that at this point in time no site study was submitted and there is not a complete site plan to know if there are any changes that are going to have to be made. He envisioned a fence around an empty lot. There is a condition that will require a site plan and Public Works will definitely review the drainage.

Gaylor Baird inquired whether building a fence would contribute to a drainage problem in any way. Bartels stated that he does not anticipate it, and it certainly could be designed not to add to the problem.

Larson was interested in seeing a site plan or area plan. Bartels explained that the site plan was a hand drawn pencil sketch with no drainage or other information other than a basic concept. The Larkins property is straight west and the alley does flow down towards Larkins. It is a rock alley. His building is lower than the surrounding buildings. Bartels does not anticipate a lot of change in the existing conditions with this special permit.

Larson did not believe there was enough information presented to understand the request for special permit. Bartels showed a map and explained the location of the building and the parking lot, the vehicle storage area and the location of the Larkins property and streets.

Partington noted that one of the conditions of approval is a floodplain permit – would that require that there be no adverse effect on the neighbors as far as drainage? Bartels explained that he would only have to obtain the permit if he were going to do some fill. Public Works has asked for a more detailed site plan. There are already some problems in the neighborhood with it being a rural type street with the ditches. The oldest development in this area that has occurred over a long period of time was pre-floodplain and before changes in the floodplain regulations.

Lust inquired whether there will be any construction taking place with this special permit, except perhaps putting up a fence to screen the property. Bartels explained that when the staff reviews a salvage operation in a floodplain, the applicant has to show that the salvaged vehicles or the salvaged material will stay on the property in the case of the flood waters getting to the elevation of the property. The fence could be constructed so it would be strong enough to contain a vehicle that might float in the floodplain. There is no building shown to be constructed on this lot.

Esseks would think that city ordinances would protect the Larkins property, and that there could be mandated culverts or on-site retention so that this change of land use will not worsen the situation. The situation may already be bad, but he does not want to make the situation worse and wants some assurance that we are protecting Larkins from a situation getting worse. Bartels suggested that the applicant could submit a drainage and grading plan along with the other information required.

Larson expressed his confusion with this whole application. He would like to suggest a deferral and ask the applicant to come back with an explanation showing the location and the adjacent properties.

Gaylor Baird clarified that this is a special permit to determine whether the applicant can add to his business and get new revenue from selling used auto parts. He wants to perform another function with those autos. It is the job of the Planning Commission to determine whether or not the opposition's concerns are relevant to this particular request. As she understands, the opposition relates to the culvert, drainage, big trucks blocking the driveway and potential closing of the alley.

Rashi Jain of Planning staff suggested that the Planning Commission could add the requirement for a drainage plan. She clarified that the alley is not going to be closed and is fully accessible.

Bartels suggested that the trucks blocking the driveway would be a police enforcement issue.

Bartels also stated that the alley will not be vacated unless the entire two blocks are vacated, and that would require signature from 100% of the owners abutting that alley. He does not believe that is going to happen. The alley will remain open.

Response by the Applicant

Pete Troy, the applicant, stated that he has no intention to close the alley or mess with the drainage. He just wants to fence the lot to be able to add to the business. He tries to keep the trucks off to the side when they are loading and unloading and they try to move them as quickly as possible. He has talked to all the neighbors and he assured that he will comply with their parking concerns. He tries to keep things out of the way. He has no intention of changing any of the drainage. He agreed that the drainage is an issue, but it is something that they have already been dealing with.

Sunderman sought confirmation that the use will remain the same. Troy concurred. He stores cars on the lot and sells the auto parts. He just wants to fence it in so he can sell the auto parts.

Lust sought confirmation that the fence is the type that would make sure stored material does not wash away. Troy agreed. He has started a plan for the building and he believes he is complying with the floodplain requirements for the fence.

Taylor confirmed with the applicant that what he is doing will not raise the elevation of the property in any way that would impact the Larkins property. Troy stated that he is trying to make the situation better. He is going to concrete the lot, but he's cutting it out and making it the same level and it still flows away from his lot down to the storm drain at the corner of his lot. He also did a little grading and got the water to flow toward the storm drain.

Gaylor Baird inquired whether the culvert is covered up. Troy stated that there was no culvert when he moved in. He did have his lot graded and sloped it to try to get the water to flow. It is his understanding that he can fill it in as long as the storm drain is left there. Troy believes that what he has done has helped the situation because now it actually flows down toward the storm drain.

Gaylor Baird asked the applicant whether he anticipates that there will be an increase in the number of large trucks coming to the business. Troy stated that he does not anticipate an increase. It is small scale. Nothing is going to change. He just wanted to be legal about selling the parts.

ACTION BY PLANNING COMMISSION July 13, 2011

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

Esseks made a motion to amend to add a condition of approval that the drainage problems be addressed through a plan submitted to and approved by Public Works. Motion failed for lack of a second.

Sunderman understands that the use of the property is not going to change substantially. The applicant is following the requirements to obtain a special permit for the type of business he is operating. Sunderman understands the drainage concerns and it is something the city needs to deal with. The floodplain permit is a proper venue to address that issue.

Motion for conditional approval carried 7-2: Francis, Lust, Partington, Cornelius, Gaylor Baird, Taylor and Sunderman voting 'yes'; Larson and Esseks voting 'no'. This is final action unless appealed to the City Council within 14 days of the action by the Planning Commission.

CHANGE OF ZONE NO. 11024,
NORTH HILLS PLANNED UNIT DEVELOPMENT
ON PROPERTY GENERALLY LOCATED
AT NORTH 14TH STREET AND FLETCHER AVENUE.
PUBLIC HEARING BEFORE PLANNING COMMISSION: July 13, 2011

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

Ex Parte Communications: None.

Staff recommendation: Conditional approval, with amendment to Condition #1.1.

This application was removed from the Consent Agenda due to the amendment to Condition #1.1 as recommended by staff.

Staff presentation: **Tom Cajka of Planning staff** explained that the amendment to Condition #1.1 changes the limitation on reserving a minimum of 5 acres of the property for commercial uses from five years to three years. Staff met with the developer and after discussion, the staff and developer came to agreement that the three-year limitation is adequate. If the property is not able to be developed into commercial uses in three years, it can be used for residential development purposes.

Cajka explained that this application is for a change of zone from B-2 to B-2 Planned Unit Development (PUD). Currently, the property is approved for 198,825 sq. ft. of commercial floor area under a use permit. That use permit was approved in April 2008. The developer has not been successful in promoting this for commercial uses and is coming back for a PUD to have the flexibility for a mixed-use development to include residential. The B-2 district (without the PUD designation) allows residential but only above the first floor, with the first floor being commercial. Some of the residential uses that this will allow include multi-family dwellings, townhomes, domiciliary care, elderly housing, etc.

Cajka explained that the original use permit included an agreement with the neighborhood to the south that there would be certain design criteria for the buildings and that criteria has not changed and will be incorporated into the PUD.

Cajka pointed out that one of the concerns of Planning, Health and NDOR is the location of the residential in proximity to I-80. A concept plan presented at the neighborhood meeting shows some apartment buildings further away from the interstate with no active outside area facing the interstate. Before any building permits are issued, the developer will have to do an administrative amendment to the PUD showing a more detailed site plan and grading and drainage plans.

Cajka explained that it is customary with a PUD to show a generic site plan showing the boundary of the PUD and some proposed types of uses. Currently, the developer is showing potential residential and potential commercial area. The PUD would allow 565 dwelling units and 198,825 sq. ft. of commercial floor area. The developer could, in theory, build all of that, but that likelihood is slim due to the constraints of the size of the lots and the parking requirements. To meet those parking requirements, they would probably have to build a parking garage.

Proponents

1. DaNay Kalkowski testified on behalf of the owners, acknowledging a draft concept plan. This property has a long history – it was zoned B-2 clear back in 1999 when they did a preliminary plat for the North Hills residential area to the east and south. The purpose at that time was to put those potential property buyers on notice that this area would be commercial in the future. In 2004, the developer came forward with a site plan to ask for a use permit to go along with the B-2 zoning. At that time, Fletcher Avenue was not constructed. They received Planning Commission approval of that site plan but shortly thereafter, the bond issue failed so the timing, funding and construction of that roadway came into question and the developers decided to put the use permit on hold before taking it on to the City Council. In 2007, they started meeting with the neighbors, and in 2008, the use permit was approved for 198,000+ sq. ft. of commercial. They did have a lengthy process of dealing with the neighbors. The use permit site plan dealt with design standards for the building, lighting standards and the provision for no loud speakers facing Fletcher. Those same conditions are being carried over in the site plan for the PUD.

Kalkowski pointed out that almost 12 years have passed since the zoning was changed and today the clients have not been able to physically land a commercial tenant on this property, forcing them to have a complementary use. This site is surrounded on three sides by some pretty major roadways. It looks like a site that is ready for a little bit of density and/or commercial uses.

Kalkowski explained that this request for PUD allows the developer to continue to utilize the B-2, but gives the flexibility do some multi-family housing on this site. The owners have immediate plans to utilize the northern half of the site for multi-family housing, believing the multi-family use is appropriate for this site because it is surrounded by the three roads. This use would be less intensive than the commercial, thus a fit for the neighborhood, and a good alternative given what's happening with the market.

Kalkowski indicated that all of the conditions of approval are acceptable to the owners.

Kalkowski also pointed out that there is residential to the east and south, but it is really quite a distance away. There is a drainage outlot, so between Fletcher and the outlot there is about 350' and even more on the lots to the south. The neighbors are far enough away

that they do not get any notice of hearing from the Planning Department. However, the developer sent notice to about 51 neighbors closest to the property. Seven people attended a neighborhood meeting and most were opposed to apartments, no matter what we were showing on the site plan. They preferred the commercial use. However, there is support for the apartment use from another 4-5 neighbors.

2. Mike Eckert, Civil Design Group, explained that the site plan approval will be done by administrative amendment but the developer wanted to share the details that they have so far. Eckert showed exhibits depicting the location of the buildings, etc. The developer is planning to do a two-story building with attached parking so the density would only be 143 units on 9.5 acres. They have worked with staff relating to the area abutting the interstate, and they have located some garages out there with 20' setback, and then the drive aisle, so the buildings are 93' from the property and 256' from the center line of the nearest traveled lane on the interstate. They will do additional screening behind the garages to help with the noise issue. There are distances of 362' and 394' feet from the buildings to the nearest property line of adjacent residential on the other side. It is an area that is quite dense in vegetation at this time.

Eckert then showed a rendering of the proposed apartment buildings, called “the big house”. It will fit in with the neighborhood very well. There will be 11 units in each building.

Eckert also acknowledged that the property is a little bit lower than the interstate. Upon further review, because it is below the interstate, NDOR is not sure that the berming and screening will be necessary. Their concerns are not when you are inside the building, but outside in passive recreational activities. Most of those activities will be on the south side of the building, even further form the interstate. Between Fletcher and Kennedy continues to drain from west to east. Most of the drainage on the site simply goes back to the interstate. There is a natural drainageway with a pond owned by the homeowners association and there is a covenant to share responsibility for maintaining that area.

Gaylor Baird confirmed that it is the southern half of this property that is still being considered to be held for commercial. Eckert agreed. They are continuing to actively market the commercial but it has proven difficult because 14th Street does not connect to the interstate and they are a mile way from 27th Street. They would love to get some type of neighborhood service, and that’s why they will give it three more years to market for commercial before building more residential.

Kalkowski added that they are still waiting for 14th Street to be improved because the neighbors are concerned about a traffic signal at 14th & Fletcher. The 14th Street improvements are scheduled to start next spring and finishing in this area by next fall with traffic signal potential for next fall.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION: July 13, 2011

Francis moved approval, with conditions, as amended, seconded by Taylor.

Francis thinks this is a good opportunity to use this land that has been vacant for a long time. She is impressed that the developer was able to hold five acres open for the next three years to see if they can get commercial uses.

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

COMPREHENSIVE PLAN CONFORMANCE NO. 11007
DECLARATION OF SURPLUS PROPERTY
LOCATED GENERALLY AT NORTH 14TH STREET
AND MANATT STREET.
and
STREET & ALLEY VACATION NO. 11008
TO VACATE N. 13TH STREET, HARTLEY STREET
AND EAST/WEST ALLEY BETWEEN
NORTH 13TH STREET AND NORTH 14TH STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: July 13, 1011

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

Ex Parte Communications: None.

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

Staff presentation: **Tom Cajka of Planning staff** addressed the proposal for declaration of surplus property. It is an area in the southwest corner of 14th & Manatt Streets, which is part of the bigger Belmont Park; however, this area is not used for park purposes at this time; there is no playground equipment, parking or recreational use. The Parks Advisory Board met on June 9th to review this proposal and recommended approval, finding that the remaining area of the park was a suitable size. There is an existing storm sewer that runs through some portions and the city would retain an easement unless the storm sewer is relocated. At least 50 years ago, some of the alley ways and a portion of the street was vacated, but the city still retains ownership of the vacated property even though Belmont School has basically built over the top of it. That property is proposed to be given to LPS at no cost. 14th Street is in a building line district, so the City is requesting to maintain additional right-of-way along 14th Street.

The purpose of declaring the property as surplus is to sell to a private charitable organization called Educare, that works in conjunction with the school districts for educational programs for preschool-age children.

As part of the Educare project and the surplus property proposal, there is a need to vacate streets and alleys. The south half of Hartley will be purchased by LPS and part of 13th Street will be purchased by the Educare program.

Cornelius confirmed that there are no existing streets or alleys existing there now. Cajka agreed. It is right-of-way only on paper.

There was no testimony in opposition.

COMPREHENSIVE PLAN CONFORMANCE NO. 11007
ACTION BY PLANNING COMMISSION: July 13, 1011

Francis moved to approve a finding of conformance with the Comprehensive Plan, seconded by Cornelius.

Francis believes this is long overdue since the school has been built over it.

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

STREET & ALLEY VACATION NO. 11008
ACTION BY PLANNING COMMISSION: July 13, 2011

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

There being no further business, the meeting was adjourned at 2:05 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on July 27, 2011.

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