MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, March 7, 2012, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska
MEMBERS IN ATTENDANCE:	Leirion Gaylor Baird, Greg Butcher, Dick Esseks, Wendy Francis, Chris Hove, Lynn Sunderman and Ken Weber (Michael Cornelius and Jeanelle Lust absent); Marvin Krout, Steve Henrichsen, Brian Will, Tom Cajka, Christy Eichorn, Jean Preister and Teresa McKinstry of the Planning Department; media and other interested citizens.
STATED PURPOSE OF MEETING:	Regular Planning Commission Meeting

Vice-Chair Wendy Francis called the meeting to order and acknowledged the posting of the Open Meetings Act in the back of the room.

Francis then requested a motion approving the minutes for the regular meeting held February 22, 2012. Motion for approval made by Sunderman, seconded by Hove and carried 5-0: Gaylor Baird, Esseks, Hove, Sunderman and Weber voting 'yes'; Butcher and Francis abstained; Cornelius and Lust absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: **March 7, 2012**

Members present: Gaylor Baird, Butcher, Esseks, Francis, Hove, Sunderman and Weber; Cornelius and Lust absent.

The Consent Agenda consisted of the following items: **SPECIAL PERMIT NO. 12004.**

Ex Parte Communications: None

Item No. 1.1, Special Permit No. 12004, was removed from the Consent Agenda and scheduled for separate public hearing due to a letter of concern received from neighbors.

SPECIAL PERMIT NO. 12004
FOR EXPANSION OF A NONCONFORMING USE
FOR THE SALE OF ALCOHOL FOR CONSUMPTION
OFF THE PREMISES,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 48TH STREET AND VAN DORN STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: March 7, 2012

Members present: Hove, Butcher, Sunderman, Esseks, Gaylor Baird, Weber and Francis; Cornelius and Lust absent.

There were no ex parte communications disclosed.

Staff recommendation: Conditional approval.

This application was removed from the Consent Agenda due to a letter of concern received from residential neighbors.

Staff presentation: **Brian Will of Planning staff** presented this proposal for a special permit for expansion of a nonconforming use located northwest of the intersection of South 48th Street and Van Dorn Street. CVS currently occupies the north half of this strip commercial center. Will provided background information, indicating that the existing CVS store currently has a special permit for off-sale alcohol which was granted back in 1998. The Lincoln Municipal Code (LMC) was then amended in 1994, including special permit provisions for on- and off-sale alcohol, and at that time the City Council could approve adjustment to the required 100' separation from residential uses or districts, provided adequate mitigation were provided. The existing facility is only 35' from the adjacent residential zoning and residences to the west; however, at that time, the City Council approved this reduced separation, finding that there was adequate mitigation. Since then, the special permit provisions have been amended requiring the hard and fast 100' separation, with the trade-off being final action by Planning Commission, removing the requirement to go to City Council.

The current CVS facility is a nonconforming use. This an application to expand that nonconforming use in that the existing strip commercial center is going to ultimately be completely removed and a new CVS store constructed on the south half of the property with the tenant on the north half being unknown at this time. Today's request is to expand the nonconforming use, relocating it from the north half to the south half of the lot.

Will pointed out that the Planning staff is recommending approval, finding that in fact it is an improvement of the conditions on this property. Today the use is only 35 feet from residential to the west. This special permit increases that separation to 58 feet. The

applicant has also provided a list of design criteria which are consistent with the Comprehensive Plan. The applicant is voluntarily agreeing to incorporate the design criteria into this site plan and staff is finding that that design criteria enhances this site.

Esseks expressed an interest in the residential screening that is referenced on Exhibit #1 attached to the staff report, i.e. minimum 6 foot high fence will be maintained along the entire west property line, 10 foot wide green space and evergreen trees that will provide a 100% screen. The exhibit states “for reference only” and Esseks inquired whether these items are included in the conditions of approval. Will stated, “yes”. That attached landscape plan is part of the site plan, and that landscape plan specifically shows that screening – the fence and all of the landscaping on this site – so it is included in the approval.

Gaylor Baird noted that Public Works had questions about the trees along South 48th Street and wondered whether this has been resolved. Will believes the issue had to do with the location and size of the trees relative to visibility from Van Dorn Street. Parks has now reviewed the street tree plan and the issue has been resolved.

Esseks asked for the staff’s basis for supporting the reduction of the 100' separation from residential. Will explained that the ordinance today does requires the 100' separation from many things, including residences or residential zoning district. But there is another provision in the ordinance that recognizes that there are some uses that do not comply with those provisions today. That’s where this special permit to expand the nonconforming use comes into play. Analysis #7 in the staff report talks about the significant findings that need to be made – effects on adjacent property, traffic, and city utility service needs; density of land use zoning; and degree of hardship upon the applicant which would be caused by failure to grant the special permit. This tells us to consider the use today and its impact, and what is going to be caused by this proposed expansion or relocation. The staff has taken the position that this special permit does not make the condition worse, but actually improves the condition in this area.

Esseks confirmed that the existing CVS has been able to sell liquor for off-sale at this location since 1998. He wondered if there is any evidence that that has caused problems for the neighbors or anybody else. Will did not know of any such evidence. The setback is now 35', and at the time it was approved, the 100' separation could be adjusted by the City Council. It was approved in 1998 at 35', finding that the use is appropriate and the conditions on the site warranted the approval of the special permit. There is no evidence that this has caused any problems. The staff is not aware of any concerns or complaints or issues with this particular use at this location.

Butcher noted that there was an application in 2003 for an on-sale consumption permit. He asked about the number of liquor licenses for off-sale in this area. Will believes it is just CVS. A previous special permit for Jack’s for on-sale was denied because of concerns of

the neighborhood and the City Council. This is the only alcohol sales in this strip mall. Jack's is no longer at this location.

Proponents

1. Peter Katt appeared on behalf of the applicant. This is designated as the expansion of a nonconforming use, but in reality it is relocation to a new building on the existing site. CVS has been focusing on reinvesting and expanding their presence in our community and making significant investment for our community. What might not be known is that upon their acquisition of the Osco sites, CVS met with City staff and had discussion about all their potential locations and existing locations and had a general plan about the issues, points and requirements that the City thought might be important as they made their investments. This particular one took awhile because they had to assemble some property rights. They will tear down the existing strip center and build a new building and create one development parcel as a part of that.

Katt also explained that absent the need to relocate the licensed premise, CVS would not need any permission for anything. None of the landscaping, screening, or pretty building would be required. But, that has not been their practice and they are not interested in doing that. They have worked extensively with city staff. This will set a new standard on the 48th Street corridor which is in need of some upgrading and improvements in that area. This will set a very high standard for redevelopment of that particular area. For this purpose, the distance of the alcohol sales is nearly doubling from what it is today. Katt is not aware of any issues that have been created by the current sales at that facility.

In terms of meeting with the neighbors, Katt pointed out that the conditions that the staff and applicant have agreed upon were fairly extensive in protecting the neighbors' interest and there was no anticipation that the neighbors would be upset about improving the site characteristics, so they elected not to have a neighborhood meeting.

Katt has reviewed the letter with concerns expressed by the neighbors, and he believes that the issues in their letter have been adequately addressed. The letter talks about an original 100' buffer for alcohol sales, but that is not the case in this situation. The current distance separation is 35'. This special permit would increase that buffer from 35' to 58' for off-sale only.

Katt also pointed out that the landscape screen on the site is extensive. There is a full opaque fence plus a complete screen of 7' to 8' tall evergreen trees. He believes that the screening proposed will be more than adequate. All of the rooftop units are invisible being behind the parapet. There are significant grade variations between the properties to the west and this site. Katt submitted that the applicant has done every effort appropriate to mitigate any adverse impacts. Katt believes this proposal complies with the objectives set forth in the letter from the neighbors.

Gaylor Baird asked for discussion on the placement of dumpsters. She referred to the 16th& South site where there is well-intentioned screening of the dumpsters, but the screening is so significant and at such scale that it is ~~almost unscreened~~ in need of its own screening. She does not want a tower of brick right net to the sidewalk for this purpose. **David Barnett of Carlson Consulting Engineers,** stated that this site has a compactor tucked up along the side of the building with a privacy block enclosure around the compactor itself, screening that compactor from view. The dumpster will be moved down below street level and that will be screened with the same block enclosure matching the building materials. **(As amended by Gaylor Baird)**

Esseks inquired about what kinds of merchandise will be sold at the drive-through. Katt stated that it will only be used for pharmacy items.

Katt also confirmed that the hours of operation will not change.

Opposition

1. Wally Martin, 4633 Eden Circle, west of the site, related the concerns of the residential neighbors having to do with the 100' setback. She appreciates that CVS is putting in screening, but she does not know what an opaque fence looks like. The screening of the rooftop is still problematic because they have dealt with a whining turbine for over 10 years with no response to their complaints from CVS. She would hope that CVS would be forward-looking and become a more green architecturally oriented corporation – rooftop gardens and patios would eliminate the whining turbine. The neighbors are also concerned about what might be developed on the rest of the B-1 site. They are opposed to any on-sale alcohol establishments which would decrease the values of their residential properties. Martin is uncertain whether the rooftop units will actually be invisible. She would like to see what the dumpster screening will look like. She would like to see the applicant work with the neighbors.

Esseks inquired whether there have been any problems in the years that CVS has been at this location selling off-sale alcohol. Martin stated that they have picked up a lot of beer bottles, cans and lots of litter in that right-of-way. One of the neighbors cuts the right-of-way and the grass around the pine tree in the circle because they like it cut more often than the city does it.

Martin expressed concern about alcohol being sold at the drive-through window. She also discussed proper placement of the alcohol in the store due to 10% of the population that deals with addiction issues.

2. Ramona Maske, 4630 Van Dorn, right beside the retaining wall, testified in opposition, hoping to get the 100' separation. It would certainly make a difference in the noise for them. She requested that the diesel tractors not park next to the retaining wall during the construction as the gas odor causes problems in their home. All of the refrigerator trucks that come let their trucks idle and it creates a problem for them.

Esseks inquired as to what type of wall exists between the Maske property and the commercial property to the east. Maske stated that it is a concrete wall. Then they installed a wire fence. They did have evergreen screening until it died. They now have a 7' wood fence along the entire length of their property.

Esseks inquired whether the Maske's experience much garbage, etc., coming from the commercial property onto their property. Maske stated that kids walking along the sidewalk often dispose of their trash.

Butcher confirmed that Maske's lived there and were opposed when Jack's applied for on-sale. Maske stated that they did live there and they were opposed. Butcher then asked whether they had any problems with Jack's when it was just an off-sale establishment. Maske's response was, "no, but they didn't have any business."

Staff questions

In response to whether CVS could legally sell beer and wine from the drive-through window, Will advised that the special permit also requires a state liquor license. Relative to the LMC, he did not know of any such prohibition; however, he was not aware of a pharmacy that sells anything other than pharmaceuticals through a drive-through. This is perhaps covered in the state liquor license law.

Will also explained that an opaque fence is something you cannot see through, such as a wood or vinyl privacy fence. Staff did not want to be specific about the material, but it is for privacy – you cannot see through it.

Will also clarified that while this special permit applies to the entire lot, it is only authorizing off-sale in the store that is being shown. Someone could potentially come in at a later time and approach the Planning Commission for additional authority, but today it is only in the CVS store and only for off-sale. There is no implied or guaranteed future use for alcohol sales on the north end. Additionally, the conditions of approval provide a limitation, i.e. the owner agrees that no business will be allowed that makes more than 50% of their revenue from the sale of off-premise alcohol sales.

Francis inquired about uses that could go into the B-1 site. Will suggested that B-1 is the neighborhood commercial retail center, i.e. any number of retail uses, fast food, etc. Alcohol is by special permit.

Weber inquired what the buffer would be without the alcohol sales. Will explained that the applicant would not need the special permit if alcohol were out of the equation. The setbacks would be 20' rear, 30' or 20% of lot depth, and zero side yard. The building shown meets all of those setbacks.

Response by the Applicant

Katt suggested that the opaque fence would mean a continuation of the existing fence type on the neighboring properties. There is an existing chain link fence on top of the retaining wall. The only practical place to locate the fence will be for the wood fence to be on the back side of the retaining wall which will likely require permission of the neighbor.

There will be a 10' landscape screen on the entire site, with shrubs and 7-8 foot trees on the commercial side of the opaque fence. It is a very high level of screening.

Katt then suggested that some of the other concerns raised by the neighbors are not really related to this relocation. CVS is a good neighbor and wants to make every effort to accommodate and be a good neighbor. They are moving the buildings further away and the equipment will be new. Katt does not believe that screening the rooftop units will have an impact on the noise and CVS would prefer not to do that. When you put additional screens in addition to the height of the parapet walls, you build a fence 5' around the rooftop unit resulting in a visual footprint that is 10' further around every rooftop unit. That aesthetic draws attention to it and makes it more obvious than having the rooftop unit peak above the parapet. It is an aesthetic issue and of personal opinion. CVS would ask that there not be any additional screening requirements imposed on the rooftop units.

Hove asked what is envisioned for the adjacent lot. Katt stated that the developer does not have a specific user at this time, but they are anxious to have another user next to their property at a level that will be comparable to the investment that CVS has made.

Hove noted that the rooftop units will be new so hopefully they will be more efficient and quieter. Katt agreed.

ACTION BY PLANNING COMMISSION: March 7, 2012

Esseks moved to approve the staff recommendation of conditional approval, seconded by Hove.

Esseks believes that the plan that has been developed will be acceptable in terms of the buffers with the vegetative buffer of the trees and the opaque fence will help with the visual problems; he also hopes that the noise occurring now will be less of a problem because the building will be set back from 35' to 58' and that modern technology will mean less noise.

In addition, if the neighbors have problems, he encouraged them to approach CVS. And if CVS is not being a good neighbor, he encouraged the neighbors to contact Building and Safety to see if there is a city ordinance that forces them to be good neighbors.

Francis stated that her sympathy lies with the neighbors. It is a very unique situation in that the residential properties are so much taller than the business district and it is the "nature of the beast". But the new building will be an asset to the neighborhood and she believes that increasing the buffer from 35' to 58' is a plus.

Gaylor Baird expressed appreciation for the applicant's willingness to work on coming up with the additional visual and aesthetic designs. She believes it will be a visual improvement of that site.

Motion for conditional approval carried 7-0: Hove, Butcher, Sunderman, Esseks, Gaylor Baird, Weber and Francis voting 'yes'; Cornelius and Lust absent. This is final action, unless appealed to the City Council within 14 days.

ANNEXATION NO. 12001
and
SPECIAL PERMIT NO. 12005,
FOR A CLUB FACILITY,
ON PROPERTY GENERALLY LOCATED
AT NORTH 14TH STREET AND HILLTOP ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: March 7, 2012

Members present: Hove, Butcher, Sunderman, Esseks, Gaylor Baird, Weber and Francis; Cornelius and Lust absent.

There were no ex parte communications disclosed.

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

Staff presentation: **Tom Cajka of Planning staff** presented the proposal to annex approximately 59 acres. The only portion of the area being annexed that is not surrounded by city limits is a little sliver on the north side of the interstate. The applicant for the associated special permit requested a portion of the proposed annexation. The Planning Department has determined that the additional area should be annexed at the same time. There is water and sanitary sewer service available to serve all of the property. This area is also within Tier I, Priority A, of the 2040 Comprehensive Plan.

The special permit for a club is being requested by the Hilltop Foundation on behalf of the Girl Scouts Club of America, to be used mainly for vegetation purposes and some recreational area. They are proposing two phases, the first being a 2400 sq. ft. building

and parking that will be used for handicap accessible parking. The larger general parking area is located to the north with access off Morton Street. The phase two building will be 10,000 sq. ft. The club would be operated between April and October. The main purpose is to leave the area natural and open space, allowing the Girl Scouts to identify different types of plant species and trees.

Esseks noted that the nearest city fire station is at 14th & Adams. Cajka had not checked the distance to the 14th & Adams fire station but he pointed out that there is another fire station in the Highlands. Esseks believes it is important to approve development that is closer to fire stations. He does not want the distance to become too large. Cajka noted that there were no objections to this proposal from the Fire Department.

Proponents

1. Nate Buss, Olsson Associates, 4411 Kirkwood Drive, appeared on behalf of the applicant. The intent is to create an educational facility with a non-urban feel, keeping the land intact as an educational site. This will not have any adverse effect on the surrounding area.

2. Lisa Hiatt, Program and Outreach Director for the Girl Scouts, also appeared on behalf of the applicant and stated that the programs at the site will be environmentally focused -- outdoor environmental programming for our eastern Nebraska area for girl scouting. There is a lot of horticulture. Eventually, they want to have an arboretum where girls can have some gardening and environmental programming. There would be no more than 50 girls attending the day programs and there would be no overnight stays.

Butcher inquired whether there has been any outreach on behalf of the Girl Scouts to any of the neighbors in this area. **Michael Davis, Property Director for the Girl Scouts,** advised that the Hilltop Foundation, Robert Duncan and other folks that live around the area have been major participants in the discussion and he is not aware of any issues with the neighbors.

There was no testimony in opposition.

ANNEXATION NO. 12001
ACTION BY PLANNING COMMISSION: March 7, 2012

Hove moved approval, seconded by Butcher and carried 7-0: Hove, Butcher, Sunderman, Esseks, Gaylor Baird, Weber and Francis voting ‘yes’; Cornelius and Lust absent. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 12005
ACTION BY PLANNING COMMISSION: March 7, 2012

Hove moved to approve the staff recommendation of conditional approval, seconded by Butcher.

Butcher commented that he appreciates the diversity of this idea in north Lincoln.

Francis believes this is exciting for the Girl Scouts and it is nice to see it happening in north Lincoln.

Motion for conditional approval carried 7-0: Hove, Butcher, Sunderman, Esseks, Gaylor Baird, Weber and Francis voting 'yes'; Cornelius and Lust absent. This is final action, unless appealed to the City Council within 14 days.

CHANGE OF ZONE NO. 3310A
TO AMEND THE HAYMARKET PARK SPECIAL SIGN DISTRICT
AND TO DESIGNATE IT AS AN OVERLAY SPECIAL SIGN DISTRICT,
ON PROPERTY GENERALLY LOCATED AT NORTH 6TH STREET
AND CHARLESTON STREET, BETWEEN I-180 AND SUN VALLEY BLVD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: March 7, 2012

Members present: Hove, Butcher, Sunderman, Esseks, Gaylor Baird, Weber and Francis; Cornelius and Lust absent.

There were no ex parte communications disclosed.

Staff recommendation: Approval.

Staff presentation: **Christy Eichorn of Planning staff** explained that Haymarket Park is an existing special sign district. This proposal is an amendment to that district that has been in place since 2001. There are four revisions to the special sign district: 1) to slightly revise the boundary; 2) to clarify the underlying zoning and the impact; 3) to add a sign that does not currently meet the existing regulations; and 4) to clarify how billboards a/k/a off-premise signs are to be used.

Eichorn showed the area on the south which is being added to the special sign district. This could be the site for the new Breslow Ice Center in the future. When the special sign district was originally adopted, it was an entertainment district for baseball and softball type events, but it is envisioned that there will be some other uses in this area. This is an effort to be proactive in looking at the area and how it should be treated as a center or a package.

The Planning Commission will soon be reviewing a change of zone for this area from I-1 to P. The P Public district does not have any sign regulations. It is a district designated for government-type uses, which are not regulated through the zoning ordinance. Since we are going to have uses at the site that may not be government-owned buildings under government use, we need to make the sign regulations clear. Today they follow the I-1 zoning sign regulations. This special sign district amendment clarifies that they will continue to be regulated by I-1 despite the underlying zoning. The office uses up to the north end could potentially be rezoned to O-2. This will clarify that they can keep the same sign rights.

The sign being added is associated with Haymarket Park in response to a request from the Saltdogs and representatives of Haymarket Park and UNL that wanted to put in a new sign which was not in the existing sign package. The sign will be installed on the northeast corner of the special sign district, or the northeast corner of Haymarket Park. It is larger than most signs in the I-1 so we are making an adjustment through the special sign district. This adjustment is appropriate because it is part of a district with a very unique character, and it is far enough from the highway and other uses that a larger sign makes sense and seems reasonable.

This amendment will also make it clear that off-premise signs/billboards would not be allowed outside of the ball park. Off-premise signage is allowed within the ticketed area of the ballpark, and that is not being changed. None of the entities involved in the development of this entertainment district have billboards in mind.

Proponents

1. Charlie Meyer, President of **Lincoln Saltdogs** and Treasurer of **Nebco,** the owner of the Saltdogs, testified in support. The additional sign comes from the addition of the indoor practice facility for the men and women programs of UNL. Since this was developed in 2000, the whole intent has been to enhance the entrance/gateway into Lincoln. The proposed new sign is the only identifier that you will see coming in on I-180 identifying Haymarket Park and ties the baseball and practice facility together. We are excited about the other opportunities coming with the Arena and the Breslow Ice Center. He thinks this is a proactive approach.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION: March 12, 2012

Gaylor Baird moved approval, seconded by Weber.

Francis believes this is a very useful tool and she appreciates everything that is going on in the Haymarket.

Motion for approval carried 7-0: Hove, Butcher, Sunderman, Esseks, Gaylor Baird, Weber and Francis voting 'yes'; Cornelius and Lust absent. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 11044
FROM P PUBLIC USE TO R-7 RESIDENTIAL;
FROM R-7 RESIDENTIAL TO P PUBLIC USE; AND FROM
P PUBLIC USE AND I-1 INDUSTRIAL TO B-1 LOCAL BUSINESS,
ON PROPERTY GENERALLY LOCATED
AT NORTH 17TH AND R STREETS.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: March 12, 2012

Members present: Hove, Butcher, Sunderman, Esseks, Gaylor Baird, Weber and Francis; Cornelius and Lust absent.

There were no ex parte communications disclosed.

Staff recommendation: Approval, as revised.

Staff presentation: **Steve Henrichsen of Planning staff** explained that this change of zone had been delayed previously because there is a fraternity located south of 16th & Vine that has a minor boundary dispute with UNL and they do not want their property zoned to P Public. Currently, they have not yet had the survey done to clarify the boundary dispute.

Henrichsen submitted a revised staff recommendation requesting that the Planning Commission recommend to the City Council that if this boundary dispute is not concluded by the time the City Council takes action, that portion of the property be removed from the change of zone proposal and remain R-7 Residential. We could come back and do the rezoning to P at some point in the future.

There are other properties that started this application that are zoned part R-7 Residential and part P Public needing to obtain a building permit. They would like to move this application forward to the City Council and hopefully the property in question will be cleaned up by then. If not, it will be removed from the boundaries of this application.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION: March 7, 2012

Gaylor Baird moved to approve the staff recommendation, as revised, seconded by Esseks and carried 6-0: Butcher, Sunderman, Esseks, Gaylor Baird, Weber and Francis voting 'yes'; Hove abstained; Cornelius and Lust absent. This is a recommendation to the City Council.

There being no further business, the meeting was adjourned at 2:20 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on March 21, 2012.

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