MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, August 22, 2012, 1:00 p.m., Hearing Room 112 on the first floor of the County-City Building, 555 S. 10th Street, Lincoln, Nebraska
MEMBERS IN ATTENDANCE:	Leirion Gaylor Baird, Greg Butcher, Michael Cornelius, Chris Hove, Jeanelle Lust and Lynn Sunderman (Wendy Francis and Ken Weber absent; Esseks resigned); Marvin Krout, Steve Henrichsen, Brian Will, Tom Cajka, Brandon Garrett, 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 Michael Cornelius called the meeting to order and acknowledged the posting of the Open Meetings Act in the back of the room.

Cornelius then requested a motion approving the minutes for the regular meeting held July 25, 2012. Motion for approval made by Hove, seconded by Lust and failed 3-3: Cornelius, Hove and Lust voting 'yes'; Gaylor Baird, Butcher and Sunderman abstaining; Francis and Weber absent.

Lust moved to defer approval of the minutes for two weeks, seconded by Butcher and carried 6-0: Gaylor Baird, Butcher, Cornelius, Hove, Lust and Sunderman voting 'yes'; Francis and Weber absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: **August 22, 2012**

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

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 12023, STREET AND ALLEY VACATION NO. 12005, CHANGE OF ZONE NO. 12024 and COMBINED SPECIAL/USE PERMIT NO. 13A.**

Ex Parte Communications: None

Item No. 1.1, Change of Zone No. 12023, was removed from the Consent Agenda and scheduled for separate public hearing.

Sunderman moved approval of the remaining Consent Agenda, seconded by Sunderman and carried 6-0: Gaylor Baird, Butcher, Cornelius, Hove, Lust and Sunderman voting 'yes'; Francis and Weber absent.

CHANGE OF ZONE NO. 12023
FROM H-3 HIGHWAY COMMERCIAL DISTRICT
TO I-1 INDUSTRIAL DISTRICT,
ON PROPERTY GENERALLY LOCATED
AT NORTH 14TH STREET AND CORNHUSKER HIGHWAY.
PUBLIC HEARING BEFORE PLANNING COMMISSION: August 22, 2012

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

Staff recommendation: Approval.

There were no ex parte communications disclosed.

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

Staff presentation: **Rashi Jain of the Planning staff** explained the proposal where the property is currently split between I-1 and H-3 zoning. The applicant is requesting I-1 zoning for the entire property to do some special activities and outdoor events which are only allowed in I-1.

Proponents

1. Jeff Brauer, 14343 Yankee Hill Road, Bennet, the applicant and entertainment director for Tack Room Bar & Grill, LLC, explained that this change of zone was initiated because the Tack Room wishes to do a fund raiser for the Wounded Warrior project, conducting the event directly behind the building to keep it private. It will not be seen from the road.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION: August 22, 2012

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

STREET & ALLEY VACATION NO. 12006
TO VACATE THE EAST-WEST ALLEY BETWEEN
SOUTH 11TH STREET AND SOUTH 12TH STREET ON LINCOLN MALL,
and
COMPREHENSIVE PLAN CONFORMANCE NO. 12011,
AMENDMENT TO THE LINCOLN CENTER REDEVELOPMENT PLAN.
PUBLIC HEARING BEFORE PLANNING COMMISSION: August 22, 2012

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

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

There were no ex parte communications disclosed.

Staff presentation: **Brandon Garrett of Planning staff** presented a letter in support received this morning from Pat Anderson-Sifuentez, President of the Everett Neighborhood Association, pointing out that their support is not from a vote of the Neighborhood Association board members, but more from a conversation of several of the members. The letter points out that the Neighborhood Association would like to see some coordination of this redevelopment project with some improvements along 11th Street.

Proponents

1. David Landis appeared on behalf of the **Urban Development Department,** the moving party for this redevelopment proposal. In response to the letter from Everett Neighborhood Association, he confirmed that this project will be harmonized with 11th Street and that 11th Street to the south is being taken into consideration in discussion with the developers.

The purpose of the alley vacation and the change of boundaries of the Lincoln Mall Capitol Environs Redevelopment Project is to create a separate project area for the construction of “Landmark 3", a three-story building that will be adjacent to Lincoln Mall with parking garage in the rear. The property in question is currently a surface parking lot. This is the only space that is taken up by a surface parking lot on Lincoln Mall at this time. This is a soft block. It does not have a particularly attractive view, although it is not an ill-kept parking lot. The trees will remain.

This project is consistent with the Downtown Master Plan and the Comprehensive Plan in a number of ways – employment; higher and better use; it enhances Lincoln Mall; it improves usability and density as well as the look of the space. It creates first-rate office building space. This is a developer that does first-rate work that makes Lincoln proud. This building proposal has already been reviewed by the Nebraska Capitol Environs

Commission and will go back again on more than one occasion to make sure the design is consistent. The vacated alley will be used for the building and the parking garage; the utilities in the alleyway will be redirected around the facility without disturbing the trees.

Butcher noted that the current surface parking is private and wondered whether it will continue to be a private parking garage. Landis indicated that it would be a private parking garage for the Nebco buildings in the area.

Support

1. Kent Seacrest appeared on behalf of **Nebco, Inc.,** the developer, also testifying that this redevelopment project complies with the Comprehensive Plan and the Downtown Master Plan.

Seacrest submitted a proposed motion to amend Condition #1.2 on the alley vacation:

> Include retention of utility easements by City with deed transfer or provide for the relocation of all the utilities located in the alley as part of a redevelopment project, acceptable to the City of Lincoln.

Seacrest stated that the developer intends to relocate the utilities out of the alley. This will provide connectivity between the building and garage with underground utilities as part of the redevelopment plan.

There was no testimony in opposition.

Lust inquired whether staff agrees with the amendment. Landis agreed, stating that it is a good idea to move the utilities. There will be an underground connection between the building and the garage, thus the existing trees will not be threatened.

STREET & ALLEY VACATION NO. 12006
ACTION BY PLANNING COMMISSION: August 22, 2012

Lust moved to approve the staff recommendation to find the alley vacation to be in conformance with the Comprehensive Plan, with amendment to Condition #1.2 as requested by Kent Seacrest, seconded by Gaylor Baird and carried 6-0: Hove, Sunderman, Butcher, Gaylor Baird, Lust and Cornelius voting 'yes'; Francis and Weber absent. This is a recommendation to the City Council.

COMPREHENSIVE PLAN CONFORMANCE NO. 12011
ACTION BY PLANNING COMMISSION: August 22, 2012

Lust moved to approve a finding of conformance with the Comprehensive Plan, seconded by Hove.

Cornelius pointed out that the Commission has heard and read the ways in which this is in conformance. This is a continuing focus on Downtown as the center of our community and he is in favor.

Gaylor Baird complimented the developer, who also developed the neighboring block. Every time she drives by that building and parking lot, she feels some pride for the building and the parking lot. It is gorgeous. It provides an incredible pedestrian environment; it is truly a model; it has not gone unnoticed; and it helps give her confidence when looking at other such projects in the city.

Motion for a finding of conformance with the Comprehensive Plan carried 6-0: Hove, Sunderman, Butcher, Gaylor Baird, Lust and Cornelius voting 'yes'; Francis and Weber absent. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 12029
FOR THE EXPANSION OF A NONCONFORMING USE
ON PROPERTY LOCATED AT 2233 PARK AVENUE.
PUBLIC HEARING BEFORE PLANNING COMMISSION: August 22, 2012

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

Staff recommendation: Conditional approval.

There were no ex parte communications disclosed.

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At this time, Cornelius recognized and extended appreciation to the planner on this application, Rashi Jain, as this is her last Planning Commission presentation. She has resigned to move back to India for a time and then return to the United States to further her education.

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Staff presentation: **Rashi Jain of Planning staff** explained that this is an application for expansion of a nonconforming use at 2233 Park Avenue. Currently, the lot is smaller than required in R-2 which makes it a nonstandard use. There is an existing house and carport. The application is requesting this special permit in order to change the carport into a garage. The code requires that the expansion cannot be done without a special permit if less than 10' away from the rear lot line and 5' from side lot line. In this case, the garage will be 9' from the rear lot line and 3' from the side lot line, thus requiring this special permit.

The staff recommendation requires that the front door of the garage be 22' away from the lot line. Staff believes this will be a nice improvement of the neighborhood.

Proponents

1. Marla Payant, 2210 Park Avenue, the applicant, presented the request, which is based upon where she spends her treasured time and talent. She values her home, neighbors and neighborhood. The subject property is located across the street from her home. For over a decade she has watched a string of renters at 2233 Park Avenue who were not vested in the property or the neighborhood. She and her husband were witnessing the decay of the property and decided to purchase it. Besides the financial costs, she and her husband gave of their time and talents in painting, replacing light fixtures, flooring, etc. They viewed this as an investment in their neighborhood.

The Payants want to build a garage at this house. It would fulfill a functional purpose for a tenant of protecting the vehicle and property as well as an aesthetic function for the neighbors, replacing an unattractive carport with a garage.

Butcher inquired whether the applicants made contact with other property owners in the neighborhood. Payant replied that she talked to all of her neighbors. There are also two letters which have been submitted in support.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION: August 22, 2012

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

Lust stated that it makes her happy to see people reinvesting in the neighborhood and to improve a property that may have deteriorated over time. She expressed appreciation to the applicant for the labor of love put forth.

Gaylor Baird commented that Lincoln's older neighborhoods could use a lot more residents like this applicant in undertaking a challenge and doing it so well.

Motion for conditional approval carried 6-0: Hove, Sunderman, Butcher, Gaylor Baird, Lust and Cornelius voting 'yes'; Francis and Weber absent. This is final action, unless appealed to the City Council within 14 days.

WAIVER NO. 12013
TO WAIVE THE REQUIREMENT TO CONSTRUCT
A SIDEWALK ON PROPERTY GENERALLY LOCATED
AT SOUTH 40TH STREET & PIONEERS BOULEVARD
(4010 CLIFFORD DRIVE).
PUBLIC HEARING BEFORE PLANNING COMMISSION: August 22, 2012

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

Staff recommendation: Denial.

There were no ex parte communications disclosed.

Staff presentation: **Brian Will of Planning staff** advised that this application was not on the Consent Agenda because the staff is recommending denial.

Will recalled that the Planning Commission recently approved a special permit for a community unit plan (CUP) for Cech Addition. The subject property is one of the lots created by that CUP. The CUP provides authority to create the lots that are shown by final plat. The CUP is located at the end of Clifford Drive located just northeast of the intersection of South 40th Street and Pioneers Boulevard. What was previously one large lot can now be subdivided to create two lots. Final platting is the time when required improvements are either installed or guaranteed. Most of the improvements are in place for this final plat, except for the street trees and sidewalk.

The applicant is seeking to waive the requirement to construct a sidewalk. Her application letter indicates that she does not see the need for the sidewalk.

Will then reminded the Commission that Title 26, the Land Subdivision Ordinance, requires the construction of sidewalks on both sides of all public streets and roadways. The waiver process exists in those cases where there is some unique circumstance or hardship making it not feasible to install the sidewalk; however, in this case, the staff does not find any of those circumstances to warrant the waiver.

Will went on to state that there are sidewalks on the entire north side of Clifford Drive and then in front of two of the homes on the south side. The fact that sidewalks do not exist in front of all of the homes is not a basis for not continuing to improve the area. Staff views this as an opportunity to upgrade and bring all of the conditions in compliance. The final plat requires the sidewalk and it should be installed unless there is some undue hardship or unusual circumstance, which staff does not find in this case. Staff views the installation of this sidewalk as a continuation of the existing sidewalk system. The staff is recommending denial of the waiver, finding no basis or hardship or reason that it should not or cannot be installed.

Gaylor Baird inquired whether the sidewalk was shown on the site plan for the CUP when it was approved. Will stated that it was shown on the CUP as being installed. It has been on the site plan from the beginning.

Lust inquired whether the lots are vacant in the places where there are no sidewalks. Will explained that one of the lots is an outlot and this applicant was not able to acquire that outlot. Will has reviewed the history and record and he could not demonstrate clearly that a waiver had been granted on the other properties. Today, those sidewalks would be required. If they were waived, it should have been clearly stated in the record. Should any of these properties redevelop, they would be required to build the sidewalks. They could also voluntarily install the sidewalk.

Butcher also inquired whether there was a sidewalk requirement prior to the CUP when it was one property. Will believes that the cul-de-sac may have been in place prior to the lot. Will did not know why the sidewalk was not required to be built when the residence to the north was established.

Hove wondered about the age of this neighborhood. Will did not know but he would guess that the houses along Clifford Drive probably date back to the 1960's or 1970's. Hove asked whether there is anything besides redevelopment that would force the other homeowners to install the sidewalks that are missing. Will suggested that the homeowners could install the sidewalks voluntarily or the City can order them in.

Rick Peo, City Law Department, approached to advise that there is a mechanism whereby the City Council can order sidewalks to be constructed, and under limited circumstances, the Mayor has authority to order sidewalks for short distances. However, the City has not utilized that process very frequently. It is easier to require the subdivider to install the sidewalks. Hove then suggested that unless the City decided to force the issue and require sidewalks, there would still be gaps. Will concurred, but it would be a substandard condition and not a basis for approving a final plat without the sidewalk.

Proponents

1. Anne Cech, part owner of 4110 Clifford Drive and the applicant, presented her case to approve the waiver of the sidewalk in question. Cech submitted a map showing the sidewalk she is requesting be deleted. The sidewalk would end at the 4110 driveway, which has not yet been poured. There are sidewalks on only two properties, and one of those properties has a tree root resulting in a step up in that sidewalk. There would be 28' of parallel sidewalks from the stoop of the house to the driveway, with approximately 8' between the two for river rock or cement. Cech believes there are two potential issues, the first being snow removal – the snow plow comes off of 40th Street and pushes the snow to the area where 4110 is located. The sidewalk will become the usual mountain of snow. The cul-de-sac is always well cleared of snow. The second issue is water – there is a water shutoff which would be in the middle of the sidewalk. If there was a need to dig, it

would probably disturb the sidewalk. 4110 is the end of the water line which was drilled under the cul-de-sac from the previous end of the line at 4101 Clifford and where the water main is located. There is no need for a sidewalk that no one will use and which goes nowhere. There are two children across the street that go to school and have a sidewalk. There are two people with dogs who occasionally walk the dogs and also take the sidewalk across the street. Someone coming from 40th is the only one who uses the present sidewalk. There are no cars; never a street traffic problem; and no further building space is available.

Cech stated that she cares about the environment of this neighborhood. A sidewalk will not enhance the landscape of the block. The front yards are easier to maintain without the sidewalk with attractive landscaping. She wishes the same for 4010.

There was no testimony in opposition.

Butcher asked staff about the standard practice for snow removal when fully engulfed in a cul-de-sac. Will did not know, but it would be the same here as any other cul-de-sac throughout the city as far as snow removal. Will also pointed out that subsequent property owners would have the benefit of a sidewalk in front of their house.

ACTION BY PLANNING COMMISSION: August 22, 2012

Lust moved to deny, seconded by Gaylor Baird.

Lust stated that she is sympathetic that there is not complete sidewalk connectivity in this neighborhood, but the fact that something is existing in a substandard manner is not a reason to approve more substandard development. Sidewalk development and sidewalk connectivity is such an important part of good development that when we have a new subdivision and new CUP that specifically shows the sidewalk being put in as part of the subdivision, and there is no surprise to the property owner and it does connect with a sidewalk that leads to a detention pond and on to a public school, it is important to have that sidewalk.

Gaylor Baird agreed. She also shared sympathy because it is an inconsistent line, but rather than perpetuate the substandard condition, we need to try to make the city better and improve it when we can, even if it is an incremental improvement. We would hope the sidewalk will be completed on the south side.

Hove stated that he will oppose the motion. This is an unnecessary expense. It won't be used for a long time. He does not anticipate that happening in the next 20 years unless the city would require the south side of the area to install sidewalks.

Gaylor Baird challenged that we can't say for certainty that no one will use it. The homeowner may change. Someone with small children would not authorize their children

to walk in the street. Her toddlers learn to walk on the sidewalks in front of her house. Cars drive on cul-de-sacs. Sidewalks have been a big issue for the Planning Commission in terms of the health benefits and connectivity. Also in this case, we do have to be concerned about precedent. If we were to approve the waiver in this case, we would have to answer to future applicants who might want approval to exceptions to the guidelines of our Comprehensive Plan. While there is certainly complexity in this case, we need to make sure that this sidewalk is constructed for future homeowners and future developments and redevelopment in this neighborhood.

In addition to children and those who want to expand on health issues, Butcher observed that there are also those with disabilities and handicaps. Having this sidewalk will assist anyone that may have those concerns that may purchase any of these properties in the future.

Cornelius referred to the staff comments suggesting that we need to look at particular unique circumstances that create hardship in general. We don't see any topographic or geographic reasons why a sidewalk would be difficult to install. This body and the city in general have stated many times a commitment to pedestrian facilities and connectivity. We have responsibility going forward to put our money where our mouth is in that regard. Complete and fully connected sidewalk systems don't just appear in any existing neighborhood. They grow incrementally lot-by-lot. This sidewalk was shown on the CUP and it comes as no surprise. These requirements and standards exist to help incrementally build the sidewalk system that we wish we had.

Motion to deny carried 5-1: Sunderman, Butcher, Gaylor Baird, Lust and Cornelius voting 'yes'; Hove voting 'no'; Francis and Weber absent. This is final action, unless appealed to the City Council within 14 days.

There being no further business, the meeting was adjourned at 1:55 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on September 5, 2012.

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