MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, May 16, 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, Dick Esseks, Wendy Francis, Chris Hove, Lynn Sunderman and Ken Weber (Jeanelle Lust absent); Marvin Krout, Steve Henrichsen, Nicole Fleck-Tooze, Ed Zimmer, Brian Will, Brandon Garrett, Rashi Jain, Sara Hartzell, 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 May 2, 2012. Motion for approval made by Sunderman, seconded by Francis and carried 7-0: Gaylor Baird, Butcher, Cornelius, Esseks, Francis, Hove and Sunderman voting ‘yes’; Weber abstained; Lust absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION BEFORE PLANNING COMMISSION: May 16, 2012

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

The Consent Agenda consisted of the following items: SPECIAL PERMIT NO. 12018 and SPECIAL PERMIT NO. 12020.

Ex Parte Communications: None

Item No. 1.2, Special Permit No. 12020, was removed from the Consent Agenda and scheduled for separate public hearing.

Francis moved approval of the remaining Consent Agenda, seconded by Hove and carried 8-0: Gaylor Baird, Butcher, Cornelius, Esseks, Francis, Hove, Sunderman and Weber voting ‘yes’; Lust absent.
Note: This is final action on Special Permit No. 12018 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.

COUNTY SPECIAL PERMIT NO. 12015
AND CITY SPECIAL PERMIT NO. 12016,
FOR A RECREATIONAL FACILITY LOCATED
AT SW 29TH AND W. WITTSTRUCK ROAD.
CONT’D PUBLIC HEARING BEFORE PLANNING COMMISSION: May 16, 2012

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

Sara Hartzell of Planning staff advised that the applicant is requesting a deferral of the public hearing until Wednesday, June 13, 2012 (as opposed to May 30, 2012).

Francis moved to defer, with continued public hearing and action scheduled for June 13, 2012, seconded by Esseks and carried 8-0: Weber, Esseks, Hove, Cornelius, Sunderman, Butcher, Gaylor Baird and Francis voting ‘yes’; Lust absent.

There was no other public testimony.

ANNEXATION NO. 12003
and
CHANGE OF ZONE NO. 04075C,
AMENDMENT TO THE VILLAGE GARDENS
PLANNED UNIT DEVELOPMENT,
ON PROPERTY LOCATED AT
SOUTH 56TH STREET AND PINE LAKE ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: May 16, 2012

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

The Clerk announced that the applicant has submitted a written request for two-week deferral of the public hearing.


There was no public testimony.
SPECIAL PERMIT NO. 12020,
FOR EXPANSION OF A NONCONFORMING USE
ON PROPERTY GENERALLY LOCATED
AT SOUTH 1ST STREET AND F STREET.
PUBLIC HEARING BEFORE THE PLANNING COMMISSION: May 16, 2012

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

Staff recommendation: Conditional approval.

There were no ex parte communications disclosed.

This application was removed from the Consent Agenda at the request of the applicant.

Planning staff presentation: Rashi Jain of Planning staff advised that this is an application by First Street Bible Church located at 1st and F to add a handicap entrance with parking lot at the back of the building with two handicap parking stalls.

Proponents

1. Pastor Robb Rexilius, First Street Bible Church, appeared to answer any questions. The church is continuing to try to do things within the community and the church building to service the older members who have not had the handicap access at this point.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION: May 16, 2012

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

Francis believes it is a great idea anytime a church wants to improve the site for accessibility.

Motion for conditional approval carried 8-0: Weber, Esseks, Hove, Cornelius, Sunderman, Butcher, Gaylor Baird and Francis voting ‘yes’; Lust absent.

Note: This is final action, unless appealed to the City Council within 14 days.
COMPREHENSIVE PLAN CONFORMANCE NO. 12006
PROPOSED DECLARATION OF SURPLUS PROPERTY and
CHANGE OF ZONE NO. 12011
FROM B-4 LINCOLN CENTER BUSINESS DISTRICT TO P PUBLIC USE DISTRICT, AND FROM P PUBLIC USE DISTRICT TO B-4 LINCOLN CENTER BUSINESS DISTRICT, ON PROPERTY GENERALLY LOCATED AT 21ST & M STREETS.
PUBLIC HEARING BEFORE PLANNING COMMISSION: May 16, 2012

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

Staff recommendation: A finding of conformance with the Comprehensive Plan on the proposed declaration of surplus property and approval of the change of zone.

There were no ex parte communications disclosed.

Planning staff presentation: Davis Landis, Director of Urban Development, advised that the land in question includes the property owned by the NRD and occupied by People’s City Mission; land occupied by Parks & Recreation for maintenance operations, including the Muny bath house; and the Windstream property, which is privately held. One of the purposes of this proposal is to match the P zoning with B-4 in furtherance of the city's desire to place the property on the market.

With regard to the surplus property, there are no other plans for the use of this property by any city department. The building belongs to the NRD and they agree with the idea of moving towards the sale of these properties. Landis believes there will be interest in development of this property. The area of surplus is 6.5 acres plus the Muny bath house, for a total of 7.4 acres. It is in the heart of Downtown, where one does not find six or seven available pieces of property for sale. It overcomes one of the chief problems of establishing developments in highly dense areas that have been built up for a long time, and that is property acquisition. For example, Assurity required 16 separate acquisitions. Here we have one piece in coordination that is proximate to the Union Plaza Park. We have a valuable commodity and the city would like to put it back on the tax roles and in private hands. It is well located for a multi-use purpose. Landis stated that the city would prefer to have the Muny bath house stay and be part of a rehabilitation; however, it is the intent to create an invitation for RFP (request for proposal). In that setting, we usually indicate what we want to build. An “invitation” for RFP says, if you can think of a money-making idea, we’d like to know what it is. We don’t try to tell the market what they have to do but invite the market to tell us what they think can be done with this property.
Landis submitted that this is a good location for some services (commercial use) and for some residential, but if there is a better and more profitable use or a use that can bring a better rate of return, the city is prepared to examine the idea.

Generally, if you were to find a theme, it is to take land which now has uses which we can meet in other parts of the city, aggregate that land, take it to the market place and move the land to a higher and better use that makes use of the fact that it is strategically located in Antelope Valley, and continue this dynamic of having lifted land out of the floodplain, out of its industrial or commercial uses into higher and better denser uses with more tax value, more tax base and more economic value to the community.

Lynn Johnson, Director of Parks & Recreation, described what happens on the site today. The central portion is currently the Parks maintenance facility – two maintenance sections occupy one of the buildings and the Community Forestry and public garden section occupies the other building. This property was identified in the Antelope Valley Redevelopment Plan for redevelopment. As the city looked at acquiring the Experian property, the vision was the Experian property would be able to accommodate most of the functions off this site. The eastern portion is the former Muny pool bath house built in 1920, which was the original bath house for the pool located to the east. It has been in Parks & Recreation use since the pool was closed. For the last 10 years, Parks has done some adaptive reuse of the interior and it is actually office space for the Parks Planning and Construction and the Athletic section.

Johnson advised that the Parks & Recreation Advisory Board is recommending that the western portion of the property be declared surplus, with the eastern portion with the Muny bath house not surplused. Today, two Parks functions occupy that building and it continues to be a good use of that building. The Advisory Board does understand that there is probably a broader economic development perspective on this and their discussion recognized that thought, but as they narrowed their thoughts they came back to Parks occupying it today and recommending against declaring that portion surplus.

Johnson then clarified, however, that the staff recommendation is that all of it be declared surplus.

Butcher wondered whether the Parks functions in the eastern portion would be able to move to another facility if that property is surplused. Johnson stated that there is a small house over by Auld Pavilion, the former home of the Child Advocacy Center, which is vacant. It has been converted to office space and a portion of the functions from the Muny bath house would be moved to that building. Parks has some other underutilized space that could be used as well.
Francis inquired whether there is a lot of walk-in traffic at the bath house offices. Johnson acknowledged that Planning and Construction does get a little walk-in traffic on a limited basis; however, there is a fairly significant amount of traffic moving in and out of the Athletics Office.

Francis inquired whether these offices could be found just as easily if they were relocated. Johnson believes that is possible. The Athletics Office was in an old library building in Van Dorn Park for a number of years and it became too small and hard to access. They relocated to this space temporarily, and when Antelope Valley construction was taking place, they moved to the Ager Golf Course building temporarily and then moved back.

Gaylor Baird confirmed that the Parks Department would like to encourage its preservation in some way as well as the Parks Advisory Board. Help us understand our choices. If we allow it to be surplused, will it likely be torn down? Landis suggested that there are two tools available to development: TIF, which does not have a relationship to the historical use, and use of historical tax credits, which is a tool that can alter the financing for a project and produce a third party influx of resources. If the property is surplus, the RFP would state that preservation of that building is our preference. Attached to that is the possibility of a financing tool if the building is kept and refurbished. On the other hand, if surplused, the city is asking for any and every idea and we will sift through for the best. We would have the discretion to either choose to keep the building -- to not sell that land and keep control – or sell to a developer who might raze the building.

Johnson also advised that the draft RFP states that it is the city’s preference that the building be preserved. As the evaluation of the proposals comes in, we think that one of the evaluations will be whether someone is making good and creative use of that building.

Cornelius clarified that a proposed development will receive approval if it includes a component which preserves that building. Landis agreed that to be the preference. If you get two different price tags, at some point the city might sell that land for a purpose that did not include the preservation of that building if it was a development that is attractive, etc. It is fair to acknowledge that it is in play, but with a preference. That’s about as good as we can do.

Butcher inquired about the accessibility to the bath house should the western parcel be redeveloped. Johnson explained that today the access to the building parallels the channel and comes to the parking area east of the building. There is a very large sanitary trunk line that runs through this area that will be a constraint. If the city retained ownership, we would ask for an access easement across the remainder of the property. Lower Platte South NRD will need access for maintenance of the channel. As the redevelopment proposal comes through, we will be looking for those access easements.

Butcher inquired whether there is any historical designation in regard to this building. Landis stated, “no, it is part of the Antelope Valley project.” This site was reviewed for
National Registry eligibility and, oddly enough, it was found not to be eligible. However, the staff report states that subsequent improvements to the building and its setting prompt its re-evaluation, and it is likely the building could successfully be nominated to the National Register. Landis pointed out that it is ironic that recent changes may have made the building more historic.

Esseks wanted to establish for the record that the property on the corner of N and 23rd now used by the City Mission is not a subject of the Planning Commission recommendation today. Landis responded by stating that, “we do not own that land.” We do have a working relationship with the NRD. They are a public entity. We need the whole property to be B-4. Then when we surplus it, our land will be part of a larger silhouette including the NRD and hopefully Windstream. We will describe all of that land in the RFP. The developer would have to deal with all three of us collectively. We don’t now own it, but we are working in concert with them and anticipate the RFP would include their land.

Johnson advised that the NRD board has had the discussion and they do plan on making it available for sale. The Mission is occupying on a month-to-month basis and they have identified a new location. It is already zoned B-4.

There was no testimony in opposition.

**COMPREHENSIVE PLAN CONFORMANCE NO. 12006**

**ACTION BY PLANNING COMMISSION:** May 16, 2012

Hove moved to approve the staff recommendation of a finding of conformance with the Comprehensive Plan, seconded by Francis

Cornelius commented that he is heartened that consideration has and will be given to the preservation of this building which might or might not be eligible for landmark status.

Motion carried 8-0: Weber, Esseks, Hove, Cornelius, Sunderman, Butcher, Gaylor Baird and Francis voting ‘yes’; Lust absent. This is a recommendation to the City Council.

**CHANGE OF ZONE NO. 12011**

**ACTION BY PLANNING COMMISSION:** May 16, 2012

Francis moved approval, seconded by Hove.

Cornelius finds this exciting. He knows we hear over and over the theme of land assembly being one of the obstacles to infill and redevelopment, and infill and redevelopment are major goals stated in the Comprehensive Plan, so he will support this motion.
Motion for approval carried 8-0: Weber, Esseks, Hove, Cornelius, Sunderman, Butcher, Gaylor Baird and Francis voting 'yes'; Lust absent. This is a recommendation to the City Council.

**CHANGE OF ZONE NO. 12010**

**TEXT AMENDMENT TO TITLE 27 OF THE LINCOLN MUNICIPAL CODE TO ALLOW THE CITY COUNCIL TO WAIVE THE 100-FOOT SEPARATION REQUIREMENT FOR OFF-SALE ALCOHOL.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:** May 16, 2012

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

**Staff recommendation:** Denial.

There were no ex parte communications disclosed.

The Clerk announced that there is one letter in opposition from the Near South Neighborhood Association.

**Planning staff presentation:** Brian Will of Planning staff explained that this text amendment relates to off-sale only. Staff is recommending denial because the proposed language is somewhat vague and would make it very difficult, if not impossible, to enforce. For example, paragraph (k)(1)(I) refers to “significant” vertical grade. During review of applications, terms such as “significant”, “adequate” or “approximate” raise red flags in the eyes of those regularly reviewing applications. Paragraph (k)(1)(ii) talks about relationship of the licensed premises to a park where the portion of the park lying within 100 feet of the licensed premises is “used primarily” as a roadway or parking lot. Also, “landscaped area not intended for active play” – these are difficult terms to evaluate and define.

Another issue is applicability. In terms of the Walgreens at 14th & Superior Streets, the proposed conditions provide that, “The licensed premises is located on property which lies at the intersection of two major arterial streets, each of which have not less than two through lanes of traffic in each direction.” The staff does not understand the relationship of the two major intersections to the areas to the north and east of the building at the 14th & Superior site.

Yet another objection is equity. As these rules are written, it would be clear that there is only a limited number of sites around the city where it could be applied. There are multiple other sites around the city that currently do not meet the regulations. Written this narrowly to define or allow a couple of specific sites would certainly open the door for other sites around the city to come in and attempt to develop specific provisions for their sites as well.
Will recalled that back in 2004, there was a provision in the special permit ordinance that allowed the City Council to adjust or to vary that required 100’ separation down to something less. The finding to allow that reduction depended upon a finding of “adequate mitigation”, and that terminology caused problems. Adequate mitigation has different meaning in different places to different people, and that provision resulted in an inconsistent application and less than fair treatment. The staff would suggest that those amendments in 2004 which deleted that ability of the City Council to adjust the 100’ separation established a firm 100’ separation, and granted approval authority to the Planning Commission. Therefore, this proposal is actually a step backwards – going back to previous provisions which lead to uncertainty and unequal treatment.

Butcher inquired whether the staff has any concerns about the proposed paragraph (3) in regard to no adverse effect on applicable day care facility, park, church, etc. That also seems like language that is up for interpretation. Will agreed. However, we do have some special permits such as nonconforming use where there is at least some area for some subjectivity to be entered into the equation. That proposed language is not completely dissimilar than some other provisions in the code, but standing alone, the staff would have that same concern.

Proponents

1. Mark Hunzeker appeared as the applicant, stating that the purpose of this application is to return a small part of the discretion to the City Council that it once had in the issuance of special permits for the sale of alcohol for consumption off premises. This amendment affects only off-sale. It allows for the reduction of the 100’ separation requirement for uses such as residential or parks under very limited circumstances. For example, either there has to be a significant grade separation or, in the event adjacent to a park, the area within that 100’ protection zone has to be used for a parking lot or roadway and not a playground.

Hunzeker acknowledged that this text amendment is narrowly drawn; that it applies to a limited number of sites that is purposeful. He understands the concern about too much discretion; however, he suggested that the staff criticism as being vague or lacking defined terms is misplaced. The very fact that the current ordinance language is so objective and so rigid creates inequities itself. The B-2 and the B-5 districts allow for liquor sales which violate the usual 100’ separation from all the protected uses – not just residential and parks – with no mitigating circumstances required and no discretionary findings that abutting property won’t be adversely affected, and it is not limited to specific unique circumstances. The permit is allowed in those districts if the front door is 100’ from a protected use or 150’ if the door faces a residential district. Both locations identified in the staff report meet the B-2 and B-5 requirements – they’re just not zoned B-2 or B-5, but they would meet the additional criteria of this proposal.

Hunzeker submitted that every special permit that the Planning Commission issues involves some subjective evaluation being required, and it is actually required by the
special permit chapter of the ordinance. Section 27.63.010 requires that, “The planning commission shall impose such conditions as are appropriate and necessary to ensure compliance with the comprehensive plan and protect the health, safety and general welfare in the issuance of any such special permits.” Hunzeker stated that if one can define half the words in that sentence, in 25 words or less, he’ll give in.

Section 27.63.020 provides that, “Before the issuance of any special permit for any of the buildings or uses enumerated in this chapter, the Planning Commission shall hold a public hearing upon such application and shall consider the effect of the proposed use upon the surrounding neighborhood, the Comprehensive Plan of the City of Lincoln, the community as a whole, and other matters relating to the public health, safety and general welfare.”

Hunzeker went on to state that even the planning director gets involved because he has authority to make administrative changes to permits which have been issued. He is authorized to approve amendments under certain circumstances, one being a minor increase in total floor area. “Minor increase in total floor area” is certainly no more precise than “significant grade separation”. In addition, the provision states that no amendment shall be contrary to the general purposes of this chapter.

Therefore, Hunzeker observed that the Planning Commission is accustomed and sometimes required to deal with discretionary approvals using words that are less than precisely defined. This proposed language does not preclude other sites from meeting the criteria; the subjective evaluation is no more than what is done already on a regular basis. It will allow for issuance of special permits in limited circumstances and in the sound discretion of the elected City Council subject to the approval by our elected Mayor. This is not throwing things open to arbitrary decision making. It is a mechanism by which certain circumstances can be recognized of having met the general purpose.

There was no testimony in opposition.

Francis inquired how a business might proceed if they cannot meet the 100’ separation. Will explained that as part of the liquor license review, they need to insure compliance with local zoning regulations. The Liquor Commission will tell them to go to the city and see if they meet the requirements. It starts with a pre-application meeting and the staff will evaluate their site relative to the criteria described in the ordinance. There is no provision to adjust that 100’ horizontal separation. If they do not meet the criteria, including the 100’ separation, they cannot apply for the permit. He believes the current regulations were designed to prevent locations that are not desirable for liquor sales.

Francis recalled an exception being made for the 9th Street Grill. Will explained that was for on-sale (not off-sale). He added that multiple changes have been made to these permits over time where we have noticed a flaw or something inappropriate or not intended.
That applicant made the case that a restaurant is not a bar – it is a different entity – and alcohol associated with that use is less intensive. That separation was reduced down to 25’. That was only for on-sale and only for a restaurant.

Sunderman asked whether the City Council currently has discretion on the 100' separation. Will reiterated that that provision was taken out in 2004 when final approval of liquor special permits was granted to the Planning Commission.

Sunderman inquired about how the B-2 and B-5 are treated differently for off-sale. Will also referred to B-4, where alcohol sales is a permitted use in the downtown that is not regulated by special permit. The B-2 and B-5 are two use permit districts for planned commercial districts -- by use permit, the city has review authority in those developments. Those sites are typically large and integrated. There is not as much conflict. They still have criteria and separation requirements.

Sunderman suspects that the reason this ordinance, unlike other ordinances for special permits, really gives the Planning Commission no discretion as far as adjustment to the separation is because of the emotionally charged aspect of it. Will explained that it goes back to 2004. There were applications which did not meet the required separation, but proposed what they felt was mitigation. That mitigation was debated and subject to dispute. Sometimes they were approved based upon that mitigation and sometimes not. That was the basic rationale for eliminating that subjectivity, i.e. what is adequate mitigation – is it a 6' fence, a 10' fence, vertical separation, etc. – sites were not being treated fairly. It was difficult to be equitable every time. So the trade-off was to make it straight forward and objective and require the 100' separation with Planning Commission having the approval authority.

Response by the Applicant

Hunzeker suggested that the main thing to remember is that the Planning Commission does have this kind of discretion in virtually every other permit. This provides that the application will go on to the City Council for their determination and their approval or disapproval. There is no appeal. Special Permits have been issued where you have not only replaced but literally torn down and expanded nonconforming uses where there were previous liquor licenses in place, and ended up with much smaller setbacks and less mitigation than this will require. The lack of any discretion does impose some hardships and creates inequities. There are circumstances in B-2 and B-5 where liquor licensed establishments are closer to churches than this proposed amendment would permit to residential districts or parks. He gave Clocktower Shopping Center as an example – there is a church immediately next door. Hunzeker suggested that this is just a matter of returning a little bit of discretion to the City Council.

Gaylor Baird clarified that this is an amendment to the zoning ordinance but it really only affects a few limited sites. If this does not pass, what is the process for these specific sites
that meet the proposed criteria for seeking approval for changes to the special permit? Will stated that if these locations do not meet the requirements under the provisions today, there is no remedy. That is what the provisions were intended to do – to prevent alcohol at those locations. The only other possibility would be some other significant action such as rezoning to B-2 or something like that. But with no other significant changes, they cannot apply for the special permit.

Hunzeker agreed that there is no other alternative, particularly in cases where you are surrounded on two sides by a park. The option of rezoning enough land to come under B-2 or B-5 does not exist, and if you think about the area in the vicinity of 48th & O, there isn’t enough room there either. There is no more commercialized area in the city.

**ACTION BY PLANNING COMMISSION:** May 16, 2012

Francis moved to deny, seconded by Esseks.

Francis believes there are other avenues for this, e.g. the CVS at 17th & South.

Esseks observed that it was the City Council’s judgment and action in 2004 that there should be one clear criterion, and that is the distance from the applying property to the surrounding uses that the City Council wants to be protected. It seems that the City Council needs to make the change back if it wants other criteria. The applicant has offered us three specific criteria – significant vertical grade; within 100’ of a park when used primarily as a roadway or parking lot; and landscaped area not intended for active play. Esseks does not believe these are convincing mitigating circumstances.

Cornelius agreed that this is an emotionally charged issue. That is one of the reasons that these sorts of applications are difficult and also why the existing ordinance is drawn as narrowly as it is. Because of that, the conclusion has been reached that this 100’ separation requirement is something that we find useful. It is a tool that allows us to create a transition on the boundaries of residential districts that are bordered by commercial–districts where we know that off-sale won’t be sold. In general, we have found that the current wording works. Sometimes people can’t get the permit that they want, but in general, it is not difficult to find a place to buy off-sale liquor. Because this is an emotionally charged issue, Cornelius finds himself sympathetic to the argument that perhaps a degree of discretion might be useful in these cases, but he would rather see that pursued through a broader public process with generalized review and input from various stakeholders.

Motion to deny carried 7-1: Weber, Esseks, Hove, Cornelius, Butcher, Gaylor Baird and Francis voting ‘yes’; Sunderman voting ‘no’; Lust absent. **This is a recommendation to the City Council.**
SPECIAL PERMIT NO. 10005A,  
AN AMENDMENT TO EXPAND CAMP SONSHINE,  
ON PROPERTY GENERALLY LOCATED  
AT SOUTH 25TH STREET AND BENNET ROAD.  
PUBLIC HEARING BEFORE PLANNING COMMISSION: May 16, 2012

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

Staff recommendation: Conditional approval.

There were no ex parte communications disclosed.

Planning staff presentation: Sara Hartzell of Planning staff explained that this is an amendment to an existing recreational facility special permit at approximately SW 25th and Bennet Road on about 20 acres, which is a portion of four larger parcels. The property is zoned AG and received a special permit for a recreational facility for Camp Sonshine in 2010 for up to 80 campers during the summer months. They subsequently received a waiver to the paved parking requirements from the City Council in 2010.

The proposal is to expand this special permit to include up to 300 campers and 40 staff members. The application provides a four-tiered phased approach to move up toward the 300 campers, as well as mitigation efforts at each one of those steps. Staff is recommending approval based upon those steps. The staff finds that the applicant has addressed the requirements for a recreational facility. The staff and applicant will be doing more work on the site plan to be more specific on location and type of some of the future uses. Increased parking at these different tiers has not yet been included, so staff will be working with the applicant on that as well.

Hartzell advised that the Health Department and County Engineer both noted dust emission issues on the county roads. That has become part of the applicant’s mitigation efforts.

Hartzell further pointed out that the traffic counts included in the staff report were up through June of 2011. Another traffic count study was done in April of this year, and the results were as follows:

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<tr>
<td>North leg</td>
<td>243 trips</td>
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<tr>
<td>East/West leg</td>
<td>135</td>
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<td>South leg</td>
<td>124</td>
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Based on the traffic counts, it is reasonable to say that the change shows that approximately 220 trips per day can be attributed to the camp.
This application also seeks authority to have an after school program for 20 children during the school year.

Hartzell then addressed the conditions of approval, indicating that this approval would allow up to 300 users, up to 40 staff and a residence for the operator. The conditions of approval describe the four tiers, including the number of campers, mitigation efforts to control dust from Saltillo to the entrance; arrangements for car pooling and to communicate transportation information to the parents.

--Tier 1 allows from 80 to 150 campers;

--Tier 2 moves from 151 to 180 campers, continuing with the Tier 1 actions, closing the existing driveway and changing the entrance to some point on the east/west leg, the safest location to be identified by the County Engineer;

--Tier 3 continues the actions in Tiers 1 and 2, moves from 181 to 200 campers, adds a bus option, asking for minimum of 40 campers to be picked up at one or more drop-off sites;

--Tier 4 continues the actions in Tiers 1, 2 and 3, proposes a north entrance somewhere between Bennet Road and the first of the two curves, continues busing with minimum of 80 campers to be picked up and requires the submittal of a traffic evaluation to the County Engineer.

At each one of these steps, the County Engineer would like to see some kind of evidence that previous mitigation efforts have been addressed, so the applicant will be asked to provide documentation of the traffic information and coordination of car pools.

Hartzell proposed an amendment to Condition #1.6 as follows:

Provide minimum opening elevation for buildings. Also supply confirmation that the Nebraska Department of Natural Resources has reviewed the dam for safety, or work with DNR to receive this review.

There was a previous question about the dam on the property and whether it had received review for safety. After doing some calculations on that dam, it has been determined that the size of the body did not meet the minimum for safety reviews to be required. Therefore, that language is being stricken from Condition #1.6.

Proponents

1. Jeff Keiser, the founder and one of the directors of Camp Sonshine, testified in support. It is exciting to be here two years later and having some growth problems during a time of economic uncertainty. As we talk about enrollment and expansion, it is more than
just numbers – it is an actual child who lives in Lincoln and around the community and each one has a story.

The camp is growing because of our great care and attention to each individual child. These kids that are leaving our camp programs are heading home as different kids with more confidence; they know more about who they are; they go back to school as leaders with their peers; and they are treating parents and siblings differently. Camp Sonshine provides a constructive place to be during the summer months. We are looking for ways to expand to reach more kids.

2. **Mark Hunzeker** appeared on behalf of **Camp Sonshine** to address the conditions of approval. He acknowledged that the applicant has worked with the staff and has experienced excellent cooperation from both the County Engineer and the planning staff on this application.

Hunzeker proceeded to submit proposed amendments dealing with the conditions for moving from tier-to-tier. The amendments are minor changes but they clarify a couple of things. From Tier 1 to Tier 2, he wants it to be clear that the driveway for the residence right at the corner remains in place for the residence. There would be a new driveway established for the camp and separation of the two driveways so that the camp does not spill out onto S. 25th Street right at that corner the way it does today.

He proposed one minor change to Tier 3 with respect to the number of campers to be picked up at a drop-off site. Rather than making an immediate leap from zero to 40, he is proposing that it be 20% of the total number of campers. In Tier 4 he is proposing that 25% be picked up rather than 80.

In addition, Hunzeker requested to delete Condition #2.1.c to construct an access from S. 25th Street near Bennet Road and make that one of the possibilities of a requirement based on a traffic study to be completed at the time they reach that tier, rather than having to show that access on the site plan now.

Camp Sonshine is glad to be having this conversation in the context of moving toward an ultimate goal and not having to come back and amend the a special permit every so often. They did not expect to be back to modify quite this quickly but the camp has been very well received. Approximately 25 people stood in the audience in favor of this application.

Francis inquired as to who will pay for the proposed traffic study in Tier 4. Hunzeker stated that it will be the applicant who will bring that forward as a part of moving to that tier.

Weber inquired whether any drop-off sites have been identified. Hunzeker stated that there are a number of churches which are supportive of this effort, some of which have buses. He does not know that anything specific has been identified as yet, but they do have a pretty active car pooling arrangement. One of the reasons the traffic counts are not as big
as you might think is that there are a lot of families bringing more than one child and a lot of families who are already car pooling. There is also an effort underway to increase that number.

Hunzeker offered that to some degree the traffic counts for the time when camp is in session are exaggerated, not just because of the camp, but the fact that they are in the summertime rather than during the school year, which he believes contributes to a number of trips that probably do not occur during the school year. They have been able to work with the County Engineer on these traffic count concerns.

There was no testimony in opposition.

Francis asked for a staff response to the proposed amendments. Hartzell agreed with the applicant’s proposed amendment to Condition #1.2 and the residential driveway. As far as the percentage increases, she agrees that it is reasonable to have more of an increment rather than a giant step each time.

She suggested that Condition #1.4 be changed such that a traffic study be submitted “for approval” of the County Engineer.

Hartzell disagreed with the request to delete Condition #2.1.c to show the future driveway from South 25th Street near Bennet Road. She suggested that since that driveway is still a possibility perhaps the conditions should stated: “Show the possible future driveway from S. 25th Street near Bennet Road which may be constructed as part of the Tier 4 mitigation efforts, if required by the traffic study.”

Hunzeker agreed with Hartzell’s suggested amendment to Condition #1.4. However, the difficulty with the issue of showing that driveway is two things: 1) it was something that was a sort of “off the cuff” idea early on in the process discussed as one way to address the concerns of the County Engineer. It seems that we would prefer not to identify that as a likely scenario because whenever they reach 200 campers, the traffic study may not identify that as being a desirable solution and frankly, it does put the traffic very, very close in proximity to one of the neighbors who may not really like that as much. This applicant wants to be a good neighbor. If the traffic study identifies it, it is already included as a possibility in Condition #1.4.

Hartzell then agreed to delete Condition #2.1.c.

The staff and applicant agreed on the following amendments:

1.2. Tier 2: Between 151 and 180 campers. Continue with Tier 1 actions; Additional mitigation efforts; Close existing driveway and Begin using new entrance drive to the west of current residential drive location with approved access permit, and separate the new camp drive from the residential drive.
1.3. Tier 3: Between 181 and 200 campers. Continue Tier 1 & 2 actions; additional mitigation efforts; implement bus transportation option, with a minimum of 40% of campers picked up from 1 or more “drop off” sites.

1.4. Tier 4: Between 201 and 300 campers. Continue Tier 1, 2, & 3 actions; construct an entrance that takes access from South 25th near Bennet Road and record an access easement prior to this Tier increase; pick up a minimum of 80% of campers from “drop off” sites; submit to the for the approval of the County Engineer a traffic evaluation study and address most important concerns affecting traffic impacts from previous tiers and proposed Tier 4 increase, including construction of an entrance which takes access from South 25th Street, if required by traffic study, taking into account trip reduction from busing more than 25% of campers.

1.6 Provide minimum opening elevation for buildings. Also supply confirmation that the Nebraska Department of Natural Resources has reviewed the dam for safety, or work with DNR to receive this review.

2.1 Revise the site plan to show, in addition to the building locations:

   e. Show the future driveway from South 25th Street, near Bennet Road, to be constructed and an access easement recorded before Tier 4 level would be allowed.

**ACTION BY PLANNING COMMISSION:** May 16, 2012

Francis moved to approve the staff recommendation of conditional approval, with the amendments requested by the applicant and staff (as set forth above), seconded by Hove.

Francis stated that it is great that Camp Sonshine had to be back here in two years time. This is exciting. Keep up the good work.

Butcher expressed appreciation for putting together the mitigating circumstances in looking forward to the project as it grows. He thanked all of the young people that attended the meeting and for taking part in this process.

Cornelius is impressed by the product. It is clear that there was a great deal of cooperation on both sides, coming up with creative things to allow us to approve this without having to come back as the camp grows and grows.

Motion for conditional approval, as amended, carried 8-0: Weber, Esseks, Hove, Cornelius, Sunderman, Butcher, Gaylor Baird and Francis voting ‘yes’; Lust absent. This is final action unless appealed to the City Council within 14 days.
** five minute break **

SPECIAL PERMIT NO. 12014,
PLEASANT HILL ACRES COMMUNITY UNIT PLAN,
ON PROPERTY GENERALLY LOCATED AT
S. CODDINGTON AVENUE AND W. PLEASANT HILL ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: May 16, 2012

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

Staff recommendation: Conditional approval.

There were no ex parte communications disclosed.

Planning staff presentation: Sara Hartzell of Planning staff explained that this is a community unit plan (CUP) application for six dwelling units on about 33 acres at W. Pleasant Hill Road and S. Coddington Avenue. Most of the waivers requested are standard in acreage developments. There was an associated application for change of zone that was heard by the Planning Commission previously and was recommended for approval to the City Council to change this property from AG to AGR. That application is currently on the City Council agenda for action.

Hartzell further pointed out that the 32.9 acres shown would be qualified for 10 dwelling units. The applicant is not requesting a density bonus for this property. There is an amount of floodplain restricting the number of dwelling units and they are only requesting six. A single road is shown from Equestrian Estates to the north coming south curving around and adjoining into Custer Ridge Road, which is an existing county gravel road. Pleasant Hill and S. Coddington are paved. The original application requested direct access to Pleasant Hill Road for the existing dwelling unit which is going to be Lot 1, Block 1, as well as a proposed dwelling unit as Lot 4, Block 2. The staff is requiring that the private roads as shown be changed to public because Pester Ridge Road is a public road. The conditions also request more detail in drainage calculations and that tree masses be identified indicating those that will remain and that will be removed.

The applicant is requesting a waiver of block length. The major roadway along the east, the drainage way and connection to Custer Ridge Road to the south would give us enough reason to waive this block length requirement. The requested reduction in the yard setbacks makes the yard setbacks for the future subdivision more urban residential and brings them into line with the residential zoning. Staff is recommending approval of these waivers.
The applicant is also requesting a waiver to the horizontal street alignment because they are not able to meet the required 100’ tangent length before it starts into the curve. They are asking for a reduction to 55’ and both the County Engineer and Public Works agree.

The provision for future street extensions is part of our build-through requirements which basically provides for future subdivision of this property into smaller lots. As part of build-through, future extension of roads to serve those lots is required to be shown. The staff is recommending approval of this waiver. If a road is included in this area that would serve the south, the staff is recommending that that road be included in Lot 3 of Block 2, and that it be allowed to be shown as an easement and not built at this time as long as there is an agreement to build the connection when requested by the County Engineer. The conditions also require that a connection be shown between Pester Ridge Road to the south boundary to provide more connectivity. The staff is also recommending that the access directly to Coddington from Lot 4 be removed and shown through an access easement.

Hartzell then proposed an amendment to Condition #2.4:

2.4 Provide a connection from Pester Ridge Road to the southern boundary (along the west lot line of Lot 3, Block 2) to be shown as a build through connection. Note the area of the future connection as “un-buildable” and that this connection will not be required to be graded at this time. – connection from pester ridge from the south.

Staff agrees that this connection can be shown at any point.

Proponents

1. **Mike Eckert with Civil Design Group** agreed with the staff presentation and the amendment to Condition #2.4. There are numerous waivers because of the unique nature of this parcel with the drainage way and treating Coddington as a minor arterial. The applicant worked these waivers out with staff to protect the property owners to the south.

There was no testimony in opposition.

**ACTION BY PLANNING COMMISSION:** May 16, 2012

Francis moved to approve the staff recommendation of conditional approval, with the amendment to Condition #2.4, seconded by Weber.

Cornelius observed that there has been cooperation between the applicant and staff and it seems to have worked out very nicely.
Motion for conditional approval, as amended, carried 8-0: Weber, Esseks, Hove, Cornelius, Sunderman, Butcher, Gaylor Baird and Francis voting 'yes'; Lust absent. This is final action unless appealed to the City Council within 14 days.

CHANGE OF ZONE NO. 11028,
TEXT AMENDMENT TO TITLE 27 OF
THE LINCOLN MUNICIPAL CODE
TO ALLOW THE SALE OF ALCOHOLIC
BEVERAGES FOR CONSUMPTION ON THE
PREMISES IN THE B-4 LINCOLN CENTER BUSINESS DISTRICT
AS A PERMITTED CONDITIONAL USE.
CONT’D PUBLIC HEARING BEFORE PLANNING COMMISSION:

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

Staff recommendation: Denial.

There were no ex parte communications disclosed.

Planning staff presentation: Marvin Krout, Director of Planning, explained the steps that have been taken since the applicant, Cecil Steward, a downtown resident, requested the Commission to place this application on pending. This application relates to alcohol sales for on-site consumption, specifically for bars – not restaurants – to treat the downtown area more like neighborhoods are treated in terms the 100’ separation requirement from residential uses. Currently, the B-4 district is a very liberal district with uses allowed by right, including residential and commercial, and there is no restriction between commercial and residential uses – no spacing requirements, residential uses are allowed on top of or next to alcohol sales, etc. Alcohol sales can locate adjacent to residential uses.

Krout further explained that the concern of this applicant is that as the downtown becomes what he considered to be more of a mixed use district with more residential uses, there should be similar protections to encourage new residents to move in without being unnecessarily impacted by the noise of other activities that late night bars can cause in the downtown area. The request as it was presented was to have a 100’ spacing requirement from residential uses and from other uses that were indicated as sensitive uses, i.e. downtown day care centers, churches, parks, schools, etc. This would have a real impact creating a lot of nonconforming uses. It would also put some real limits on where anyone can locate a new bar in the downtown area.

Krout recalled that there were a number of speakers in opposition to this proposal, suggesting that people do self-selection when they come downtown – that you expect to be in a mixed use district including bars, etc. It would have an impact on downtown revitalization by having this kind of rule imposed in the downtown area. Staff agreed and
recommended denial. Staff suggested that noise requirements that the city already has could be enforced on a more formal basis. Staff also recognized that there have been recent amendments to the state law that give the State Liquor Commission more discretion to be able to consider neighborhood input and concerns when making decisions about liquor licenses. In other words, staff believes that there are other potential venues than using the zoning code.

Krout advised that at least one or two meetings were held with an ad hoc group of stakeholders, mostly downtown business people and property owners, hosted by the Downtown Lincoln Association (DLA). Meetings were also held with the City’s Internal Liquor Committee consisting of two City Council members, representatives of several departments, representative of UNL, and other interests in the alcohol sales industry. They did not come to any conclusions but it did lead to then a discussion with the applicant, the City Clerk and Carl Eskridge about notification – about providing at least more opportunity for downtown residents or other residents to be notified of the pending liquor license applications. During that discussion, it was discovered that there is an ordinance in effect today that requires the posting of a sign on the property prior to City Council hearing on a proposed liquor license. That had not been enforced for many years, so the City Clerk has been asked to enforce that notice requirement. That has been occurring for two months. In addition, the City Clerk created a link on the City Web site that lists, in advance, the upcoming hearings and the names and addresses of licensees who would be appearing at those City Council hearings. With the improved notification process, he believes that the applicant is prepared to withdraw this request.

Esseks noted that page 6 of the staff report indicates that there is provision in the state statute that allows the Liquor Commission to consider the issue of concentration of bars that is not being utilized. Is there a reason for that? Krout stated that it has not been brought to their attention and maybe it’s a question of knowing that there are hearings and how to voice your concerns. The more recent law is that the Liquor Commission can indicate concerns about the effect of concentrated or additional facilities on the city’s ability to financially provide enforcement.

Esseks confirmed then that a concerned citizen could request the City Council to speak on behalf of him or her on this issue of over-concentration. Krout suggested that the City Council can take a position about that and make a recommendation to the Liquor Commission, which would be considered along with direct testimony at their hearings as well.

Proponents

1. **Cecil Steward**, the applicant, 125 N. 11th Street, in downtown Lincoln, does not believes it is quite fair to characterize these issues as emotionally charged. They are also economic liabilities in the context. They are planning and quality of life issues which he was very much concerned about. Steward stated that he was one of the first to move
downtown. He and his wife have lived at this address for 17 years. And what they saw they believed was a change coming for Lincoln and that Lincoln had some inherent and historical character that would make the city and downtown distinctive, unique and highly desirable as a socially interactive and pleasant place for day-to-day accommodations and for entertainment and just general urban lifestyle. He truly believed that Lincoln was to become an urban place. Along with that comes the land use construct that exists and they realized that they knew exactly what they were getting into. Sandy’s Bar was directly across the street from his residence at the time. When Sandy’s moved, there was a parking reconfiguration in the immediate vicinity that helped a lot, but the net effect over these 17 years has been that they really have not had disruptions that were life changing or life threatening at all and he would recommend downtown living to anyone.

However, Steward explained that the tipping point for him was discovering by accident about 10-12 months ago that a change of property ownership was occurring 25 feet from his back door and what had been a very compatible and desirable neighbor in a printing company was to become a bar. Steward acknowledged that he did not take this discussion on with any illusions that he could dissuade that land use action, but it was a tipping point to realize that his property and his investment is just as valuable as a business, as a bar, as a service station, or any one of the other mixed use characteristics of downtown, and he had the distinct feeling that as a residential property owner he was being denied certain rights of access of information having this happen without any knowledge or forewarning or ability to express his opinion.

Steward expressed appreciation to the DLA, the Planning Department staff, Councilman Carl Eskridge, City Clerk and other people, including bar owners and people who have vested interests in the entertainment character of downtown, for their interaction in a very professional, deliberate and considerate way on this issue. Steward believes that the net effect has been an immediate solution to the notification issue, which was the essence of the problem, but he would encourage the Planning Commission to look askance at this as an ongoing issue in this community. It is partly history. We have had some difficulty. We have still not solved the bar concentration issue, but he thinks the University has worked very hard at that and the bar owners are working hard on the control issues, and frankly, in seven months of operation with this bar 25’ from his back door, he has not had any difficulty with the traffic, with the night circumstance or with the owner. All of these issues can always be worked out among reasonable people.

Steward urged that if we want to become the urban place, it is going to be a constant need for attention by this body, by the City Council and by the people of this city.

Steward stated that he is withdrawing this application.

Cornelius agrees that it is something that we need to continue to be vigilant about.
Steward also stated that he is aware that there is a revision coming up on the Downtown Master Plan and he thinks this will be another key opportunity to think collectively about what kind of downtown we really wish to have.

There being no further business, the meeting was adjourned at 3:15 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on May 30, 2012.