

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, April 7, 2010, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Leirion Gaylor Baird, Michael Cornelius, Dick Esseks, Wendy Francis, Roger Larson, Jeanelle Lust, Lynn Sunderman and Tommy Taylor (Jim Partington absent); Marvin Krout, Steve Henrichsen, Nicole Fleck-Tooze, 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

Chair Lynn Sunderman called the meeting to order and requested a motion approving the minutes for the regular meeting held March 24, 2010. Motion for approval made by Francis, seconded by Cornelius and carried 6-0: Gaylor Baird, Cornelius, Esseks, Francis, Larson and Taylor voting 'yes'; Lust and Sunderman abstained; Partington absent.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION BEFORE PLANNING COMMISSION:

April 7, 2010

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

The Consent Agenda consisted of the following items: **COMPREHENSIVE PLAN AMENDMENT NO. 10002 and STREET AND ALLEY VACATION NO. 10005.**

Ex Parte Communications: None

Larson moved to approve the Consent Agenda, seconded by Francis and carried 8-0: Gaylor Baird, Cornelius, Esseks, Francis, Larson, Lust, Sunderman and Taylor voting 'yes'; Partington absent.

CHANGE OF ZONE NO. 10007
FROM AG AGRICULTURAL DISTRICT
TO AGR AGRICULTURAL RESIDENTIAL DISTRICT
ON PROPERTY GENERALLY LOCATED
AT NO. 98TH STREET AND HOLDREGE STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 7, 2010

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

Ex Pate Communications: None.

Staff recommendation: Denial.

Staff presentation: **Tom Cajka of Planning staff** submitted five letters in support from surrounding neighbors and a staff memo in response to questions raised by Commissioner Gaylor Baird pertaining to the impacts of acreage subdivisions after annexation into the city. Cajka indicated that a lot of the time, the main annexation questions deal with the school district. When an area is annexed, it automatically becomes a part of the Lincoln Public Schools District and the owner would have to pay property taxes to LPS and the owner would no longer pay taxes to the school district of which they were previously a part. They do, however, have to continue paying the other school district if there are outstanding bonds, but they do not have to pay any of the old LPS bonds.

Another big issue with annexation is property taxes. Upon annexation, the owner would be paying the LPS and city property taxes. They would no longer be paying for a rural fire district or the old school district. Typically, it is estimated that there would be a 5 to 20 percent increase in property tax after being annexed.

Another question is whether the owner can continue to keep a septic tank and well. They are allowed to keep both, i.e. they can continue to keep the septic if the public sanitary sewer is more than 300' away and is not accessible. If city services are accessible and within 300', the property owner can be required to hook onto city service. They can continue to use the well but would be obligated to get an annual permit and inspection.

As to the issues regarding converting acreage lots to urban size lots, a lot of times it doesn't always work out well for the street layout system and the location of the utilities for those bigger lots without some kind of criteria for placing the houses on those three-acre lots.

Another issue is that in the areas where the city will most likely be annexing in the near future, if the owners invest in the cost of septic system and well, they may be required to abandon it and incur costs 5 years down the road.

Specifically regard this change of zone application, Cajka explained that the applicant is seeking a change of zone from AG to AGR on 12.75 acres, located northeast of the intersection of 98th & Holdrege. This area is shown as Tier I, Priority A, in the Comprehensive Plan and for future urban residential. Urban residential means a density of one to fifteen lots per acre. The area is adjacent to the city limits.

Public Works has stated that they anticipate city sewer and other utilities to serve the area of this application will be accessible within the next five years.

The applicant has submitted a proposed final plat and concept plan for build-through. Although he has shown a concept plan for build-through, the city has no jurisdiction to require that because the lots meet the minimum size for the AGR district. There is no way the city can enforce the build-through concept.

Cajka pointed out that 98th Street and Holdrege Street are arterial streets. City policy is to limit the number of accesses onto an arterial street. This would include at least two more access points on 98th and on Holdrege. Cajka showed the site plan for the proposed final plat, including one driveway for the existing house and another driveway would be added to 98th and another to Holdrege Street.

If this change of zone is approved, staff would recommend or encourage that the applicant submit a preliminary plat to show how a street could be built so that all three lots could have access off an interior street, with just one access onto either 98th Street or Holdrege Street.

Lust confirmed that one of the concerns about allowing acreages in the Tier I, Priority A, area is that any future subdivision would require cooperation of all owners in the area to subdivide. In this instance, she understands that the houses are all going to be owned by one family. Cajka agreed; however, we don't know what might happen in the future as far as ownership.

Esseks wondered what conditions are required if build-through objectives are not required. Cajka stated that he had looked into whether the property would be automatically annexed; however, it would not because the state statutes do not automatically annex lots of this size. If the property is zoned AGR, the applicant would have to meet the minimum lot size in the subdivision requirements. Build-through, with a proposed street layout and utilities, in this situation, cannot be required.

Esseks noted that Exhibit #2 showing the build-through concept indicates the possibility of future urban size lots and asked Cajka to elaborate the staff's concern about the proposed layout. Cajka indicated that Public Works had issues with the street connections, plus that concept plan would require the cooperation of all the property owners.

Francis inquired as to the size of the two acreages to the east. Cajka believes they are a little larger than the proposed (5 acres). Francis then inquired as to the problems presented by the two larger lots during the growth period. Cajka stated that it will be somewhat of a problem for the whole area because there are smaller acreage lots throughout the entire area. Annexing acreages and converting them over has been somewhat of an issue in getting everyone to agree and make it work. The acreages to the east were platted when 5-acre lots were allowed. Francis wondered whether they would be considered grandfathered in if they did not want to be annexed. Cajka stated that there is no grandfathering. The property owners can always object to being annexed, but it would not be based on whether or not they were a legal lot when platted.

Francis inquired about any current acreage subdivisions within the city limits that have stopped any build-through plans. Cajka could think of acreage developments that did come back and do a layout for platting in the future, such as north of Superior, west of 14th by I-180 and southeast on Pioneers and 70th behind the church. Francis wondered whether there is any way to put deed restrictions on this applicant's subdivision to show the concept plan. Cajka suggested a conditional zoning agreement, but he would need to confirm with the City attorney.

Esseks inquired about the future status of 98th Street and Holdrege Street – are these in our plan as major or minor arterials? Cajka stated that they are minor arterials, shown to be improved to two lanes plus turn lanes. Esseks wondered whether the city has enough right-of-way there now. Cajka did not know but suggested that the right-of-way could be acquired with the final plat.

Esseks noted that staff argues that with rather low density development in this area, extending sewer and water lines by the city would be less cost-effective. Cajka indicated that the staff has not done a cost analysis, but there is less benefit overall to run sewer and water for three lots as compared to multiple lots in a regular city-type subdivision.

Proponents

1. Kent Prior, the owner of the land in question and the applicant, explained that he has had a “choose and cut” Christmas tree farm on this property for 18 years. He wants to build another house on the property along Holdrege Street to continue to have the farm and to have the support of his daughter and son-in-law to help on the Christmas tree farm. It is a viable business. He pays taxes and employs people to help operate the farm. That is the basis for this request – it is necessary to construct another house for his daughter and son-in-law.

Prior suggested that the Planning Commission needs to have a better understanding of the area and how it sits. The Planning Commission was not provided with the topographical survey that he had prepared showing the existing house, the Christmas tree sales shed, cover for the nursery, equipment storage, and the parking lot for Christmas tree sales.

There could be 30-40 cars there at a time during sales, and the remainder of the property is planted to Christmas trees. There is a major drain all the way through the property. This is not property that sits on top of a hill. It is not prime developable ground. There are acreages with houses in the area and adjacent to this property. The property is on a side drain to Stevens Creek - it is not on a major drain.

With regard to the guiding principles in the Comprehensive Plan for orderly development, Prior suggested that these principles are not the final and only conclusions that can be applied to the proposed change of zone. He believes that a very narrow and very restrictive interpretation has been made to justify denial. He suggested that the low density rural designation as made by Comprehensive Plan on the west side of 98th Street and urban residential on the east side of 98th Street was arbitrary because they both existed at the same time. The planners talk about designated Comprehensive Plan specifications which he finds to be guiding principles, which are two different things. There is a significant difference between a specification and a principle. Therefore, to suggest that the guiding principles are the letter of the law is incorrect and a misinterpretation of the intent of the Comprehensive Plan.

Prior urged that the requested change of zone to accommodate construction of a maximum of two homes does not inhibit future urban growth. Why would you want to go further out when you have the land available already? There seems to be a frame of mind that the acreages and the urban use cannot co-exist.

With regard to the proposed building-through plan, Prior stated that there is nothing in the design standards that prohibits the change of zone to accommodate the area of application. The area of application has the potential for future services. The sewer service has to pass through Waterford Estates and the City is unable to predict when that service will be available. Prior believes that the lack of infrastructure and the inability to predict a timetable for the services to be available supports this request for change of zone.

Prior also pointed out that the development of new acreages is not precluded within Lincoln's 3-mile jurisdiction. This acreage already exists and is proposed to be revised with due regard given to the guiding principles.

Prior also believes the proposal is consistent with land use, both pre-existing and adjacent. The proposal is for continuation of agricultural production which exists on the site. There is not a requirement for this change to be accompanied by information of water quality and quantity. This area of application has existed for 30 years and a new area of acreages is not being created by the proposed change.

With regard to utilities, Prior noted that there is a major trunk sewer proposed in the 6-year CIP for the sanitary sewer; phase 2 has been bid and will be under construction shortly; and phase 3A and 3B are currently under design without a schedule. Funding for 3A is projected to be available. Funding for 3B is not available until revenues are increased with

rate increases. Thus, there can be no predicted timetable when adequate funding can or will be made available. The sanitary sewer for 3B only connects to an existing sanitary lift station to serve Waterford Estates. Service to the area is outside control of the city as it comes through Waterford Estates.

Prior then proceeded with comments pertaining to the staff analysis, reiterating that there is no written policy that precludes or prohibits this change of zone request.

Analysis #3 states that, "The Comprehensive Plan discourages acreage development within the Urban Growth Tiers for Lincoln's three-mile extra territorial jurisdiction." Prior pointed out that he cannot find a written policy that acreage development is prohibited within the 3-mile jurisdiction. He cannot just pick up the Christmas tree farm and move it. The property for the change of zone is not located along a major drain, and, in reality, there is less than 25-50 acres that sits upstream of this proposed property for any potential build-through. He has prepared a build-through concept that does not preclude the extension of utilities or development of the available area to the adjacent acreages.

Response to Analysis #4: Prior contends that future urban residential is preserved by the plan he has proposed. AGR does not diminish this potential with the additional house on one lot.

Response to Analysis #5: Prior stated that there is potential for construction of only two additional houses with only two additional buildable lots. No consideration has been given to the specific nature of the lots being created. Each lot has only one location upon which to build.

Response to Analysis #9: The change of zone is being requested to accommodate creation of an additional buildable lot. With the surplus of buildable lots and the economy, he cannot be assured that the sanitary sewer service will be available in 5 or 10 years. The sewer has to come through the last phase of Waterford Estates.

Response to Analysis #10: Prior suggested that there is nothing difficult about the urbanization of the individual lots. The proposed outlot preserves the necessary corridor.

Response to Analysis #11: There is no reliance upon the adjacent landowner to develop the land. The corridor being preserved allows for future development for the neighbor to the east.

In summary, Prior stated that his primary goal for this change of zone is to continue with a viable enterprise. The proximity to the city is not deterrent to the tree farm. "We can live with the city but it appears the city cannot live with us". He does not believe there is a strong basis to prevent what he is requesting to do. He sees nothing written that says that this cannot occur beyond the guidelines. There are many aspects that need to be considered. It has been stated that the build-through concept is unworkable for future

development and results in additional driveways. He pointed to the driveways on the map. The only driveway that needs to be created is the one on Holdrege Street. He spent time working on the build-through concept with Public Works. It was reviewed with Public Works and the same engineer that recommended denial sent Prior an e-mail which differs significantly.

Prior confirmed that he wants to build one additional house on the southeast corner of the lot along Holdrege Street. Prior also confirmed that he is going to maintain ownership of the entire property. He is going through the subdivision because it is required. He could theoretically do four lots but he has chosen not to. He assured the Commission that he is not subdividing to sell off his property.

Francis assumed Prior has met with his neighbors. Prior confirmed that they had met and that no one had any concerns about adding one more house.

Support

1. Analisa Petersen, the applicant's daughter, testified in support. She wants to help maintain the tree farm, and she reassured that the property will remain in the family.

There was no testimony in opposition.

Staff questions

Esseks noted that the property is currently in agricultural use and wondered whether the applicant can build another house on the same parcel with the existing AG zoning. Cajka advised that he would need a 20-acre parcel to do that. He only has 13 acres so it is limited to one house. He could have two separate parcels but he would still need the AGR zoning. In the long run, it would be easier to get two property owners to do something rather than three. But the change of zone to AGR does not meet the policies or the guidelines written in the Comprehensive Plan.

But, Francis suggested that the Comprehensive Plan is just that – a guideline and direction. It is not intended to be the letter of the law. Cajka agreed that it is not law, but it is a guideline that the community as a whole has adopted to lay out how the city will grow in the next 25-30 years.

Gaylor Baird believes approval of this change of zone would be setting a new precedent in conflict with the Comprehensive Plan. Cajka believes that the Comprehensive Plan is pretty evident and clear when it states, "Acreage areas will be directed to areas outside of the future urban growth areas in order to minimize conflicts between urban and acreage uses and so that the City may provide urban services as efficiently as possible." New acreage development generally is not encouraged in the urban growth tiers for Lincoln's 3-mile jurisdiction except for areas already shown in the Comprehensive Plan for acreage development. Planning staff believes it is pretty clear that these areas should not be

subdivided into three-acre lots. It is a lot easier when the city develops into an urban type subdivision when it is a larger area.

Cornelius asked Cajka to outline the process by which urban residential land uses in these outer areas, as the city limits move and the area becomes developed, are reconciled with existing agricultural uses that are there for the long run. Cajka responded that when the city grows out to agricultural uses, there are usually a lot of complaints from the new city urban dwellers about odors and that type of thing. He acknowledged that that would not be much of an issue in this case with a tree farm. Sometimes the acreage people thought they were moving out in the country and they don't want the city and a lot of neighbors.

Taylor asked Cajka to respond to the applicant's testimony and proposed build-through concept plan as it relates to Analysis #9 and #10. Cajka stated that the testimony does not change the fact that different owners could make it difficult in the future. Staff understands that one of the lots will be for a family member, but that still leaves a third lot available for sale. We do not know what is going to happen on the third lot. Even though the applicant is showing a build-through concept, it is not required. In general, in the past we have found that with multiple owners it is more difficult to bring them all together to get them to agree on some kind of concept plan or layout for an acreage type development for utilities and streets.

Gaylor Baird asked the Director of Planning how exceptional this case is or how precedent-setting it is. We have a number of arguments outlined by the staff in terms of conflicts with the Comprehensive Plan, and that it is potentially more costly to the city in the long term due to services to fewer residents and also that the build-through is not binding. On the other hand, we have the testimony explaining the purpose of the second dwelling; the owner is still going to remain a single owner; and it is not a typical livestock situation. What is the precedent we would be setting here? Or could we look at this as an exceptional case with the existing land use, etc.? Marvin Krout, Director of Planning, responded, stating that each case presents a unique set of circumstances. It is true that the Comprehensive Plan is a guideline. If it was all prescriptive, we would not need the Planning Commission. The Planning Commission is asked, as a body of citizens who bring a variety of perspectives, to weigh in on that question. If you ask a planner, we will say that everything is precedent. There is no question. This is just one of those balancing acts that the Planning Commission is asked to do. Someday we will be annexing those acreage properties and you will be asking the staff how we got into this mess. You get into this mess by approving these types of changes. It is going to be pretty bad whether or not you approve this additional change of zone. The staff reviews applications from the technical viewpoint, and from the standpoint that every decision the Planning Commission makes ends up being a precedent against those guidelines the next time someone comes in. Krout does not believe there is a hardship in this case. He

believes this is a fairly classic case. The staff attempted to balance it. There are rules and guidelines and every time you make an exception you make it easier to make another exception.

Larson had assumed that all of the surrounding area outside the city limits was pretty much undeveloped, so this would be an island of acreages within a sea of undeveloped land, but now he sees that the whole area around it is acreage lots with residences, obviously less than 20 acres. How did that happen? Krout suggested that it happened before a lot of the current guidelines were in the Comprehensive Plan. A lot of the acreages close to the city were permitted under less restrictive rules at the time. It is true that this is a problem area, whether this gets subdivided into two more lots or not.

Larson believes we create a different kind of island in a sea of acreages if we don't approve this. Krout acknowledged that this one will be a little smaller than the existing acreages if Prior is allowed to subdivide.

Given the goals of the applicant, Cornelius asked whether the applicant's proposal is the best that we could come up with. Or is there a different creative way to approach this which would maximize the City's options going forward as well as allowing us to help Mr. Prior meet his goals? We talk about expansion of nonconforming uses; we've got less than 20 acres in the AG zone already; we've got a request that is trying to use AGR to fill a different need than actual subdividing for development. Krout suggested that if the applicant were to create one more lot as opposed to two, he would be more consistent with the size of the acreages all around him and would have less of a problem with two family members as opposed to a third owner. It would be more consistent with the older division of land to the east.

If the zoning is changed to AGR, Sunderman wondered whether the applicant could come back through and plat three lots. Krout stated that unless there is a zoning agreement, there can only be two lots.

Cornelius wondered whether a zoning agreement could include a binding requirement for the build-through as a covenant on the property. Krout believes that would be possible. We don't really know that that will work, but it would at least be a starting point. Then he would have to come back and lift that agreement if he wanted to do something different.

Response by the Applicant

Prior reiterated that he spent considerable time trying to work with Planning and Public Works to bring a plan to the Commission so that this could be approved. He attempted to establish those alternatives and he was told there were no alternatives to go to the Planning Commission. He found that there is an opportunity for build-through with temporary access and future acreages. He believes he has done everything. There is right-of-way for the future four-lane road; he granted the city an easement for the water line

and the city purchased some of his property for the four-lane road. You already have 60' for the four-lane road. You will have 60' for Holdrege with the administrative subdivision, if approved.

Cornelius asked the applicant whether he is amenable to making the build-through plan binding on the property through a zoning agreement with the city. Prior's response was that he made an offer when he first came in and got no response. He was told there was no way he would get this change of zone approved. So he did not carry his discussions any further with Planning and he went to Engineering Services. He thought he had a solution and then this staff report changed everything. He has tried to follow the prescription for the subdivision ordinance. The administrative plat takes no exception to anything. He has preserved future ability to develop this property by creating the outlot. Mr. Harms to the east has the 70 acres and is one of the individuals that is in support of this application.

Prior stated that he offered to do the build-through. It takes considerably more effort and is expensive. He prepared one plan as best advised to do, and now the Commission is suggesting that he go back and do it all over again.

Taylor observed that a lot of time and effort, wisdom and judgment is the result of guidelines of the Comprehensive Plan. We have to consider how this decision is going to affect all of our future decisions. We trust the Planning Department to give us a recommendation and we find a reason to override their decision or agree with it. These decisions have been formally placed in position so that when a presentation such as this is made, we have to line that up with the future of our community and how we go forward. So sometimes we have to make decisions we don't want to make. What is your willingness to go further to satisfy your needs and the needs of your family and also rightly address the future of our community? Prior stated that he cannot maintain the tree farm with one access to facilitate the three lots. He has to use the access off the existing roadways.

Lust asked the applicant whether he would be agreeable to a condition of approval to sign an agreement with the City that says that the build-through is binding. Prior would not have a problem if it is the build-through as he presented, as long as he can have access off Holdrege Street. He has access off 98th.

ACTION BY PLANNING COMMISSION:

April 7, 2010

Lust moved to approve the change of zone conditioned upon the applicant entering into a zoning agreement with the Planning Department integrating the final plat design, seconded by Larson.

Cornelius commented that despite Planning assertions, this does feel like a relatively unique situation. Among the factors that make this unique are the extensive amount of effort that the applicant has put into producing an application that tries to comply with the

principles of the Comprehensive Plan. This is a relatively large agricultural use parcel in a grouping of relatively small acreages currently. We have stipulated as part of our motion for approval that the applicant will have to work to meet those guidelines as set forth in the Comprehensive Plan, and for those reasons he will support the motion.

Esseks stated that he will vote against the motion. He is very uncomfortable ignoring the explicit objective of the Comprehensive Plan, i.e. that acreage areas will be directed to areas outside of the future urban growth areas. We are not asking the applicant to move his farm. It is his idea to create two new lots. It is a very bad precedent to grant AGR to someone who wants a lot for a family member plus another lot. He sympathizes with the Planning Director's position. This area is already difficult to develop at urban densities, for which the Plan calls. He believes the precedent is so bad he will have to vote against the motion.

Francis appreciates the applicant's willingness to work on the build-through plan. Yes, this goes against the Comprehensive Plan, but it is a guideline and there are always going to be unique situations where a family member might want to join the family business. She believes the applicant might be in favor of just two lots, but that is not before us.

Lust does not believe we need to live in fear of precedent. Precedent needs to be analyzed to see if it applies to the particular situation. Just as every situation is unique, the precedent that you go back to is the one that is more like what you are looking at. In this area, there is already precedent for acreage lots. Prior is not asking to change the situation on this property, except to have the ability to continue an existing situation by having the next generation take over this tree farm. She agrees that we should always tread lightly in granting exceptions to the Comprehensive Plan, but the proper analysis of precedent is to look at unique situations, and that is what this body is for.

Larson stated that he would be opposed if the property were on the absolute fringe, but it is surrounded by existing acreages of smaller size, and since there is an assertion by the applicant that his family is going to continue to operate the tree farm, he thinks it is worth making the exception.

Gaylor Baird commented that it is so easy to see both sides of this equation. It is a difficult decision. She believes the arguments add up to a case for this being truly exceptional and that we are not necessarily sending a message to future applicants. While she has reservations, she believes that she will lean toward this being a unique situation worthy of approval.

Taylor indicated that he will support the motion.

Gaylor Baird further commented that it is rarely persuasive to say that if the problem exists, it is okay to repeat it, but the fact that this applicant is so willing to work with the city to achieve the goals by submitting the build-through plan, then she is less concerned with that

act because this area is already problematic. The binding agreement creates a little pocket of effort that meets the goals of the department.

Motion for approval, subject to zoning agreement, carried 7-1: Cornelius, Larson, Lust, Taylor, Gaylor Baird, Francis and Sunderman voting 'yes'; Esseks voting 'no'; Partington absent. This is a recommendation to the City Council.

Commissioner Lust left at this point in the meeting.

ANNEXATION NO. 10002

and

SPECIAL PERMIT NO. 872G,

AN AMENDMENT TO THE

FIRETHORN COMMUNITY UNIT PLAN,

ON PROPERTY GENERALLY

LOCATED AT SOUTH 84TH STREET & VAN DORN STREET.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 7, 2010

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

Ex Parte Communications: None.

Staff recommendation: Approval of the annexation and conditional approval of the amendment to the community unit plan.

Staff presentation: **Brian Will of Planning staff** explained the proposal. The area proposed for annexation is southeast of the intersection of 84th and Van Dorn, just northeast of Lincoln Benefit Life. About a year ago, the area just to the south was annexed for a maintenance building in support of maintenance activities for the golf course so that utilities could be provided to that property. This request will allow a second clubhouse to be placed on this site and utilities can be provided to that property. The associated amendment to the CUP is for the addition of the second clubhouse. This application was deferred two weeks ago because the area initially proposed for annexation expanded after the submittal of the initial application.

Proponents

1. Derek Zimmerman appeared on behalf of the tenant for the proposed site to answer any questions. He agreed with the staff recommendation and the conditions of approval on the special permit.

There was no testimony in opposition.

ANNEXATION NO. 10002

ACTION BY PLANNING COMMISSION:

April 7, 2010

Larson moved approval, seconded by Francis and carried 7-0: Cornelius, Larson, Taylor, Esseks, Gaylor Baird, Francis and Sunderman voting 'yes'; Lust and Partington absent. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 872G

ACTION BY PLANNING COMMISSION:

April 7, 2010

Taylor moved to approve the staff recommendation of conditional approval, seconded by Larson and carried 7-0: Cornelius, Larson, Taylor, Esseks, Gaylor Baird, Francis and Sunderman voting 'yes'; Lust and Partington absent. This is final action, unless appealed to the City Council within 14 days.

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CHANGE OF ZONE NO. 10003,
FROM R-2 AND R-5 RESIDENTIAL TO
O-2 SUBURBAN OFFICE AND B-3 COMMERCIAL,
and
SPECIAL PERMIT NO. 10008,
FOR AUTHORITY TO SELL ALCOHOLIC BEVERAGES
FOR CONSUMPTION OFF THE PREMISES,
and
STREET & ALLEY VACATION NO. 10002,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 16TH STREET AND SOUTH STREET.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 7, 2010

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

Ex Parte Communications: Francis disclosed that she had a conversation with Sandy Wacker and showed her how to get onto the Web site to review the staff documents.

Larson disclosed that he had a conversation with Mark Hunzeker but they did not discuss this application whatsoever.

Staff recommendation: Approval of the change of zone; conditional approval of the special permit; and a finding of conformance with the Comprehensive Plan on the alley vacation.

Staff presentation: The staff presentation occurred at the public hearing held on March 10, 2010.

Chair Sunderman explained that he is giving some additional time to Mark Hunzeker, who represents the applicant on this proposal, to discuss the difficulty of redeveloping in the older areas of the city.

Proponents

1. Mark Hunzeker appeared on behalf of **B&J Partnership**, the owner of most of the property within this application.

Hunzeker began his testimony by stating that it is a very time-consuming, expensive and difficult process to assemble sites for redevelopment in older parts of the community. The Nebraska Community Development Law provides cities with a variety of tools with which to assist developers and to bring redevelopment plans to fruition. The most powerful tool that it is given is the power of eminent domain. The city is authorized not only to condemn property to acquire it, but then in addition and in conjunction with that, to sell property at what is called “fair value”, as opposed to what is a more common term, “fair market value”. It means that you can actually sell property at a discount to a developer which the city has acquired at fair market value – in other words, to assist in the assemblage of property for redevelopment.

Lincoln has rarely used that power on behalf of private developers. And in the recent past, Hunzeker could not think of an example. There have been a few over the past 20-30 years, but in the recent past, the city has determined it is not going to do that on behalf of a private developer. It is undeniable that the city's decision not to use eminent domain makes it more expensive and sometimes impossible for private redevelopers to assemble parcels for redevelopment in accordance with redevelopment plans adopted by the city.

Hunzeker went on to state that the city also clearly has the power to use its zoning power in aid of the redevelopment process. The statute actually says that the governing body of a city, to the greatest extent it deems to be feasible, shall afford the maximum opportunity to the rehab or redevelopment of the area by private enterprises. You are strongly encouraged to utilize whatever powers you have to encourage those areas to be redeveloped by private enterprise rather than by the city. The governing body shall give consideration to this objective in exercising its powers under the Community Development Law including the exercise of its zoning powers. The statutes encourage the city to use its zoning power to assist private enterprise.

Hunzeker further suggested that rezoning property which abuts a redevelopment project, especially upzoning of that property, is clearly within the statutory language. There is no harm to any value (arguably the value of the property upzoned would increase); there is certainly no taking; the existing land use can continue indefinitely; and the purpose of the law is served.

Lincoln has used zoning in the past to implement neighborhood subarea plans. In fact, the Planning Commission has downzoned property over the objection of owners to implement those plans. The Planning Commission has downzoned some people against their will, arguably depreciating their property values, for the purpose of implementing a subarea plan.

Hunzeker submitted that this process as we are engaged in today is broken. Thousands and thousands of tax dollars are spent on blight studies and more thousands, if not tens of thousands, on redevelopment plans. The Planning and Urban Development Departments create these voluminous reports to justify action by this body, by the City Council and by the Mayor to declare areas blighted and to adopt redevelopment plans, and private enterprises which come in and express interest in pursuing those plans are welcomed into the dark maze. What happens then is that the developer eagerly pursues amendments and demands of the staff thinking that their cooperation is going to gain a recommendation of approval. Months later, sometimes after more than \$100,000 has been expended, the objections of a handful of people send chills down the backs of the staff and an e-mail from some previously silent city official declares opposition to the project and the staff requests delays and rethinks its recommendations and essentially says they may reverse their professional recommendation based on that sort of opposition. The message that sends to developers is this – no plan adopted by the city can be relied upon to support any project which requires any further approval. No amount of time or money spent to satisfy staff concerns is of any benefit; no professional recommendation will stand in the face of any opposition; and finally, if you own property within the redevelopment area, don't do anything to improve it, to rehab it, to even maintain it, until city and neighborhood leaders come together and beg you to do something with it. Hopefully, at that time, the neighborhood will still be economically able to support the redevelopment project.

The applicant for this specific project, B&J Partnership, has probably done more rehab and redevelopment in this community of older commercial areas than the next five redevelopers combined. They are the anchor owner of the entire South Street corridor. They are the anchor owner in the Haymarket. They have made huge investments in this community and should be appreciated and encouraged to do more.

CVS Pharmacy is a national publicly held retail pharmacy chain. They anticipate investing 30 million dollars in this community in new stores; they have three locations where they are ready to start construction and four others (including 16th & South) that are in various states of assemblage and/or process. The corporate approval process for CVS to get approval to build something like this is rigorous and competition for their investment capital comes from all over the country. They, too, deserve fair treatment and ought to be welcomed to spend their money here rather than somewhere else. And if they perceive that their capital is not welcome here, they have plenty of other places to put it.

This project is at the intersection of two major arterial streets, where there is currently an Amigo's, Pizza Hut, old office building, and a historic landmark house. B&J Partnership has agreed to acquire property from Amigo's Holding Company and the Pizza Hut, and they have negotiated the termination of leases on both of those sites. They have been through and are still in the process of gaining Historic Preservation Commission approval to move the landmark rather than demolish it. And they have worked for eight months with the staff to get this site plan as close as possible to the ideals that the staff was seeking.

Hunzeker then referred to the staff report, noting that this type of project is encouraged throughout the community; the change of zone will help create a larger developable redevelopment site; and the zoning will be mostly the same as the rest of the South Street corridor. The Comprehensive Plan provides that development in neighborhood commercial centers such as the South Street corridor shall transition from more intensive commercial uses to residential, and that more intensive commercial shall be located near the arterial street. "That's us."

There are several conditions including pedestrian traffic, screening, restricting the location of certain uses on the site, limiting signage and preserving an addition of new street trees, and the applicant agrees with all of those conditions.

The "hiccup" that nearly reversed the professional recommendation of staff has been resolved. The Planning Commission now has letters from both of the homeowners who are next to this site and who are not going to become part of this project. They have no objection to being rezoned O-2, and their letters also state that they have no objection to the special permit for the sale of alcoholic beverages on this site.

Hunzeker believes that after this length of time, to be here with 100% concurrence with the staff report, is nearly a miracle. It is very unusual not to at least have one or two little issues to resolve when we get to this point.

Larson noted that there are four properties being rezoned and inquired whether the applicant owns the other two. Hunzeker responded affirmatively.

Gaylor Baird inquired whether the applicant made any attempt to purchase the two homes in question being changed from residential to office use zoning as a part of this theoretical buffer. Hunzeker stated that there has been a variety of discussions between his client, the CVS agents and those homeowners, but at this point their agreement is confidential.

Esseks noted that among the objections from neighbors is that this development will create traffic problems for them. Hunzeker pointed out that circulation will be off of 16th Street and off of 15th Street. There has been a lot of discussion about the separation of the drive from South Street to meet the minimum standards. He believes they do meet the minimum standard, but barely. On 16th Street, there are currently at least two, and he thinks three curbcuts that serve the two fast food restaurants along 16th Street. In addition, there is an alley that runs behind those fast food locations that this applicant is proposing to vacate, and there is access that runs all the way to South Street. In terms of traffic impact on

neighboring residential areas, Hunzeker does not believe this project will hurt it and may help it. In fact, he thinks it will help to the extent that the alley has been a kind of short cut to the north as opposed to coming back onto South Street or onto 15th Street before going north.

Hunzeker advised that the drive-thru transactions peak at 10 per hour in the 5:00-6:00 p.m. hour. They drop down to less than 2 per hour between 10 and 11 p.m., and drop down to less than 1 from 11:00 p.m. to midnight.

South 15th Street is a two-way street.

Larson noted that there is no traffic signal at 15th & South. Hunzeker agreed, but if you were going west from this site, going out to 15th Street and making a right turn onto South Street, it would be a fairly easy maneuver. There is not a turn lane on South Street at 15th Street. They intend to improve the pedestrian access to the site by taking the sidewalk currently existing against the curb on South Street and move it back 6' from the curb and place it partly on an easement on the applicant's property. A 6' separation from curb to sidewalk should improve the safety and certainly feels better. The problem is that when South Street was widened, there was not a lot of additional right-of-way taken. Hunzeker believes that was in large part because there were businesses that had buildings right up to the property line.

Francis inquired about the projected vehicle traffic count through a typical CVS pharmacy of this size. Hunzeker did not have those numbers, but based on what he has seen of the drive-thru traffic, it is a whole lot less than it would be for a Mexican food place or a pizza place. As far as the retail space involved, he did not have the number available.

The business hours of CVS will be 24-hours-day.

Esseks suggested that one of the concerns about traffic is the increase in the number of vehicles that will turn on 15th and then go north to what is now a largely residential area. Hunzeker does not know why anyone would go north on 15th Street unless they lived there. It's not an easy place to go through, especially if you are in a hurry. It is not a convenient way to go. If he were headed north and west or even north and east, he would be more inclined to get on South Street to get a much more direct route north. But, it's also better to have them on that street than going up the alley.

Opposition

1. William Carver, 2202 Washington Street, testified in opposition on behalf of Near South Neighborhood Association. The Association was originally concerned because the applicant did not have the consent of the two property owners on the northwest corner and the precedent which that would set. A store the size of CVS could be located on this site without the rezoning; however, they could not get the liquor special permit without the

rezoning. There is a Walgreens that did not receive a liquor license. Rezoning these two residential properties will meet the 100' buffer. Kabredlos at 17th & Washington was denied because of the 100' buffer. The tobacco store at 17th & Washington would like to get a liquor license but they would also have to deal with the 100' buffer. The Association's concern is the precedent that this could set. The Near South Neighborhood Association is not opposed to the project itself, but is opposed to the rezoning in order to get the liquor license.

Francis noted that the initial letter from Near South really did not take a stand, so she wanted to know what has changed between then and now. Carver noted that the Association did oppose the rezoning. They chose not to deal with the special permit or the street and alley vacation, because without the change of zone, those two things will not happen. He now understands the property owners have signed letters agreeing to the rezoning.

2. Susan Melcher, who lives in Near South, testified in opposition. Several things bother her – she does not oppose the development per se, but she opposes bending the rules for the liquor permit. It seems that you have the distinction between commercial zoning and residential zoning for reasons. It is her understanding that if you change the zoning on these two houses, they will continue to be used as residences and not businesses, so it does not make any sense why you would say it is okay for them to do something contrary to what they are going to be. They are going to be commercial zoned, so why not operate as businesses? The obvious answer is that you are bending the rules to allow a business to sell liquor in less than the 100' buffer. She is not opposed to the business per se, she just thinks that whoever develops there should follow the existing rules without going through this process of bending rules. There are two other pharmacies within walking distance, i.e. Russ's and Walgreens. There are several liquor stores within walking distance. We do not need another pharmacy at this location. That street has a variety of shops – coffee house, grocery, fast food, retailers, paper seller, beauty salon, x-rated shop. Whether or not CVS builds there is not going to bring the whole neighborhood down, but all of the other business have found a way to follow the rules. This sets a bad precedent.

3. Dennis Banks, Pastor of Reach Out Christian Center, located at 2015 South 16th Street, testified in opposition. One of the proposals is to change the zoning for the house just to the south of his church from R-2 to O-2. Why are the owners in favor of changing the zoning? What are they planning to do with that property? It is right next door to the church. The church purchased this facility from Houses of Hope about a year ago and they have over 200 people a week attending AA and NA meetings. They are opposed to adding another place where people can purchase liquor as another temptation for the people who come in and out of this facility. Other than that, he believes the owners have done a good job in addressing the traffic issue, as long as they are not going to use the adjacent alley.

4. Denise Connelly, who lives in the Near South Neighborhood, testified in opposition. The Near South Board of Directors was told by the applicant that the two houses being changed to office/commercial zoning will remain residential. They want them rezoned in order to get the liquor license. Near South was also told that CVS would not come to this location if they cannot get a liquor license at this location. She does not believe this will increase the value of those two residential properties.

With respect to traffic, Connelly pointed out that the main traffic at this type of facility is the parking lot, as opposed to the drive-through. She likes CVS but she does not agree with rezoning an area to benefit a business. It's not like this is vacant land. There is revenue already being generated by those properties. It is not right to rezone this area when it is going to remain in residential use when the only reason to change it is for the liquor license.

5. Sandy Wacker, 1430 Peach Street, testified in opposition. She has talked to a lot of the neighbors about this project and one of the biggest concerns is the traffic. 15th Street is used a lot now and that will increase with the CVS facility. There is a lot of traffic through the alley. There are probably at least three locations where you can access that alley, one of them right behind the Chapin house. There are four blocks on Rose Street before you can have access on 16th Street. The neighbors are not opposed to this being a commercial location, but there needs to be a plan in place to deal with the extra traffic on 15th Street.

Another concern is the business bringing alcohol sales to a neighborhood that does not need another outlet to add to its problems. Alcohol issues are prevalent in the neighborhood and it discourages a new homeowner from choosing to buy in the neighborhood.

Wacker is now aware that the two homeowners are not opposed to the zoning change. She does not know why Mr. Chapin changed his mind since the last meeting. She is very concerned about setting this precedent. What would keep the Commission from not doing this for someone else? A lot of the neighbors are opposed to an additional location for the sale of alcohol.

Wacker inquired as to whether a traffic study was done. There is a lot of commercial area to the east.

6. Brad Nelson, who has lived for 12 years at 1464 Plum Street, testified in opposition. He moved into the neighborhood because it was nice and quiet. He talked with Craig Smith who informed him that there would be an office building; and then he heard it was going to be a Starbucks, which would have been acceptable; and then this latest project he found out about just a month ago in a flyer from Near South Neighborhood Association. He was shocked. There are no provisions in this plan for a vital neighborhood. He is extremely opposed.

Nelson also pointed out that one of the residential property owners whose property is being rezoned, Scott Chapin, agreed that it was not good and he previously sent a letter in opposition. Now he has submitted a letter with no objection, so something happened that caused him to change his mind. He was hopeful that the neighborhood would have the opportunity to negotiate with the applicant to make changes and make it more a neighborhood friendly facade, etc. He wants the neighborhood to be a nice place so that people will want to move into the neighborhood. He does not want the property values to diminish.

Nelson also advised that he has had numerous problems with alcohol on his property. People have been arrested for urinating in his yard and being passed out in his yard. There are some low rent properties in the neighborhood. What is a store open 24-hours-a-day going to do to the neighborhood? If we want to revitalize our neighborhoods, we should think about doing it from the ground up. Neighborhoods are built by residents and we should be promoting a healthy environment so that it encourages people to take pride in their property and to want to be part of a place where you can walk and live. He wishes that the neighborhood could be involved in the planning more up-front.

Staff questions

In response to what uses are allowed in O-2, Eichorn explained that O-2 is an office district which does not allow much retail or residential. It allows churches, parking lots and other office type uses.

Sunderman wondered why staff suggests that O-2 is appropriate. Eichorn explained that we generally use O-2 or R-T as transition districts between heavily commercial districts to transition into residential districts. Office use of O-2 and R-T provides a buffer. That is why we felt this to be an appropriate area for that transition instead of expanding the B-3 further.

If this proposal is approved and the volume of traffic going north on 15th Street becomes a serious nuisance, if not a dangerous nuisance, Esseks wondered whether the city can take steps to slow down that traffic. Eichorn believes that there could be steps taken in terms of additional signage, perhaps no parking on 15th, an additional stop sign, etc., if traffic becomes an issue.

Taylor inquired as to the buffer north of CVS pharmacy. Eichorn explained that it would be the O-2 Suburban Office District zoning. Eichorn explained the zoning at the map. The O-2 will buffer the residential on the other side of the alley from the heavier commercial uses in B-3 along South Street.

Gaylor Baird asked staff to discuss the purpose of the 100' buffer and how it came about. What process was undertaken to establish that distance and with what kind of community input? Eichorn stated that the 100' separation protects the older areas, such as South

Street and other areas zoned B-1 or B-3 – it limits the areas where businesses that sell alcohol can be located. Often-times, it can be challenging to redevelop in those sorts of areas because there are the restrictions of the 100' buffer. By limiting the sale of alcohol, it keeps a whole bunch of businesses that might be selling alcohol from clustering together in a particular area.

Gaylor Baird suggested that in this case, we would overturn that buffer and make it relatively meaningless. Therefore, we do stand the potential to have other applicants stand before us saying it is not fair if this particular location can get around that buffer.

Eichorn believes there was community input. The City Council decided that the 100' buffer would provide some sort of security to older neighborhoods so that they are not inundated with places that sell alcohol. The Planning Department found that the O-2 was appropriate and in accordance with the South Street Redevelopment Plan; we have used O-2 as a transition in other areas; and we found that O-2 would be appropriate on the merits of O-2 zoning in any particular area.

Eichorn also pointed out, however, that since the very beginning of discussion on this proposal, the Planning staff told the applicant that they would have to get the support of the two owners in order for the Planning Department to recommend approval. It was never the Planning staff intent to say we would support the change of zone to O-2 without the property owners' consent. At the time of the last Planning Commission hearing when staff asked for a four-week deferral, the Department had not had any response from those property owners one way or the other, despite the posting of the sign in their front yard, the letter notice and a visit to the homes, leaving a business card. Thus, staff moved forward as if these owners did not have an opinion. Shortly before the last public hearing, a letter was received from Mr. Chapin in opposition to certain things and Eichorn wanted to get more clarification from him. She has since spoken with him on several occasions and then the two letters were received this morning indicating no objection to the change of zone. Had these owners come back in opposition, the staff recommendation would have been changed.

Gaylor Baird indicated that she is not arguing that O-2 is not an appropriate transition, because when you ask yourself if these two owners wanted to have a true office function, that seems like a legitimate rezoning. But is staff not troubled by the fact that this would be a 24-hour liquor store right next to residential? There is no plan to make those houses an office use. Doesn't the developer need to purchase those properties in order to create the zoning situation? Eichorn believes that to be a question for the developer. The staff's interpretation of the code is that O-2 is appropriate for this location.

Esseks asked staff to clarify that a vote for this change of zone is not "bending the law". The law requires a 100' separation between an enterprise that sells alcohol and other things in a residential "district". If we rezone those three properties, that 100' buffer is realized. Eichorn agreed.

Response by the Applicant

Hunzeker explained the creation of the 100' buffer. He was a party to that legislation. In fact, he drafted it. It is not the product of any desire to protect anyone from anything other than his client (which was then an organization called the Retail Package Beverage Association), and the purpose of that 100' separation was to make it difficult to find a place to do business in competition with the traditional off-sale stores. We drafted that ordinance for the very purpose of protecting those old retail outlets from competition. The City Council at that time was a little frustrated by the State Liquor Commission not taking its recommendations into account and we simply created this process for the special permit as a means of having a public hearing and opportunity for there to be input on a particular site in order for the City Council to have a better basis to go to the Liquor Commission and in some cases recommend denial. That's all it is. It really never had anything to do with the protection of residential areas. In fact, the original ordinance had a 100' separation between the licensed premises and residential "uses", not residential districts, because there are a number of places where residential uses are on commercially zoned property, and it was changed to residential "districts" as a means of making it more restrictive. The suggestion that we are in some way "bending rules" is not the case. All of the rules are being complied with, and the two property owners whose property is being rezoned to O-2 to accommodate that are in favor of it. In fact, the third property owner, Dennis Walls, has also written a letter in support. So three of the four closest residential owners have now said they favor this project.

With respect to traffic, Hunzeker pointed out that Public Works did not make any comments or have any issues with the traffic. This proposal eliminates access to one arterial street and consolidates three accesses into one on 16th Street.

With respect to the liquor for consumption off the premises, Hunzeker suggested that virtually all of the objections to this project could be made against any redevelopment of this site. There is no evidence that increasing the number of locations for alcohol sales increases consumption. The sale of alcohol in this context is a red herring issue. Just as the ownership of the two houses along 15th Street, it doesn't make this project any less compliant with the Comprehensive Plan, the South Street Corridor Redevelopment Plan or the Blight Study. The city laid out the welcome – "we're open for redevelopment in this corridor." We have two very responsible, very capable private parties who came knocking at the door and they were told they were welcome.

Eight months later and over \$100,000 later, the questions before the Commission are three: Do our duly adopted plans have any meaning whatsoever? Do we deal with private enterprise which responds to our plans in good faith? Or, do we abandon our duly adopted plans and repudiate good faith dealings in the face of modest political opposition. The answers are yes, yes and no. Hunzeker requested approval.

Taylor stated that he is convinced that nothing has been done to bend the law or twist the law. But, we have to listen to the conscience of the community that is involved here. It does mean more liquor. This is a very fragile neighborhood. We definitely welcome CVS pharmacy because it is needed, but he is opposed to creating a buffer for the purpose of alcohol sales. Hunzeker suggested that the opposition of the Near South Neighborhood and others who have suggested that they are not opposed to this projected but for the sale of alcohol, is either misinformed or disingenuous. When we went to the neighborhood we made it very clear that we could not have this project at all without the sale of alcohol at this location. It is not a choice of whether you have the store with no alcohol or have the store with alcohol. It's either have the store with alcohol or no store.

Hunzeker further stated that knowing the history of the arbitrary 100' separation requirement, it is very frustrating that we have this issue arise with respect to a project which is clearly in conformance with the Comprehensive Plan and all of the redevelopment plans for this corridor, as well as in compliance with the staff's recommendation. And yet, the sale of alcohol becomes the focus. It is part and parcel of this application. Without it we will not have the project.

CHANGE OF ZONE NO. 10003**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

April 7, 2010

Larson moved approval, subject to a conditional zoning agreement, seconded by Esseks.

Francis stated that her biggest concern was the lack of the owners' permission for the change of zone and that changed today with the letters we received, so she will be in support.

Esseks commented that the applicants have put together sufficient land for the project, including agreement of two private owners whose land is essential to achieve the 100' separation. He does not feel comfortable judging whether CVS or its alcohol sales are appropriate for this location. He does not have that professional background, and the community's Comprehensive Plan and the South Street Redevelopment Plan do not make those choices for us, so he feels he should vote yes.

Gaylor Baird believes the critical issue in this case boils down to whether or not we intend to uphold a buffer between places that sell alcohol and residential uses. It is not a question of whether or not it is legitimate for CVS to sell alcohol. It is a question of whether or not the Commission is willing to contradict the Comprehensive Plan. There is the real fact that people perceived that buffer as providing some safeguard in their home value and the potential negative consequences of having alcohol consumed near their home. And for all the other businesses that have been following this rule, we have to be prepared to answer to future applicants. In this case, the buffer is purely theoretical. She does not understand labeling residential homes as O-2 with no plan for that kind of function or change to occur. In effect, we are allowing alcohol sales without the buffer next to residences without any

change to the residences. There are unintended consequences of the decision to support this application without a true buffer. This development could still occur without the alcohol permit. If they could purchase the properties and truly make them office space or eliminate the residential use, this development could still occur. We do not know if that discussion has occurred.

We have heard from a number of residents and their voices count for something. Gaylor Baird is concerned about setting a precedent for future additional outlets for alcohol in the neighborhood. It is not just a neighborhood of crime and problems, but actually a neighborhood of people working to restore historic homes. It is an award-winning neighborhood. "I don't think we bend the rules if we support this. We change the rule of a 100' buffer." She cannot support the application as it stands despite her support for a project of such nature and trying to redevelop in an older neighborhood.

Taylor stated that he really would like to support this project but he finds it very difficult, especially in terms of the O-2 for those residences. It is obvious to him that the only reason those property owners are not objecting is because of some influence that they are receiving from the applicant. In other words, it is not their idea. He would be more comfortable if it seemingly was their idea, just as much as it was the idea of CVS to appropriate that property. He is not comfortable with the way this is being done. He cannot support this project.

Esseks suggested that it is difficult for the Commissioners to put themselves in the heads of these two property owners. They have agreed. Why they have agreed is not clear and we can speculate. My speculation is that the applicant has been able to persuade both of these gentlemen that it is in their interest to go to O-2, and that it can provide them with some interesting opportunities such as combining the properties and making them into office, etc. These homes are not exactly brand new or in outstanding shape. They face a commercial development right to the south. The land has already been cleared. He believes that the Commission should trust the decisions of the property owners. It is not a bad place to have O-2.

Cornelius stated that he has reviewed the ordinance for the special permit and interpreted that there is a 100' buffer required between the sale of alcohol and residential "districts", and that is different from residential "uses". Further, as has been pointed out, we have two property owners who own land which have heard that O-2 is an appropriate zone and those owners have said yes, for whatever reason. "I am not qualified to judge their reason. It is enough for me to hear that they said yes." Cornelius also believes that this is an attempt to use a zoning district for exactly what it is intended to be - a buffer between a more intense use and a less intense use, and secondarily, to provide the necessary buffer required by ordinance for a special permit to sell liquor. He will support the motion.

Larson believes it has been established that the applicant has met all of the legal issues completely. He understands the reluctance of some to vote for it because of the moral or

ethical issue of the 100' separation, but the two properties that are affected have indicated that, for whatever reason, they favor the application. Thus, he believes we have met the meaning of the 100' separation whether it was for the protection of the homeowner or for competitive reasons. He will vote in favor.

Taylor stated that he does not disagree with any of the comments or decisions made by the other Commissioners, but he is still opposed.

Sunderman stated that he will support the application. He believes the O-2 is an appropriate buffer and the owners are in favor. As far as the B-3 where CVS is coming in, he believes it will improve traffic flow by reducing three access points to S. 16th down to one and eliminating one access to South Street. 15th Street is still a concern but it will be a concern no matter what is developed here. He believes it is a good plan that has been well thought-out.

Motion for approval, subject to conditional zoning agreement, carried 5-2: Cornelius, Larson, Esseks, Francis and Sunderman voting 'yes'; Gaylor Baird and Taylor voting 'no'; Lust and Partington absent. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 10008

ACTION BY PLANNING COMMISSION:

April 7, 2010

Cornelius moved to approve the staff recommendation of conditional approval, seconded by Francis and carried 5-2: Cornelius, Larson, Esseks, Francis and Sunderman voting 'yes'; Gaylor Baird and Taylor voting 'no'; Lust and Partington absent. This is a final action, unless appealed to the City Council within 14 days.

STREET & ALLEY VACATION NO. 10002

ACTION BY PLANNING COMMISSION:

April 7, 2010

Francis moved to find the alley vacation to be in conformance with the Comprehensive Plan, seconded by Cornelius and carried 5-2: Cornelius, Larson, Esseks, Francis and Sunderman voting 'yes'; Gaylor Baird and Taylor voting 'no'; Lust and Partington absent. This is a recommendation to the City Council.

There being no further business, the meeting was adjourned at 4:15 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on April 21, 2010.