

MEETING RECORD

NAME OF GROUP:

PLANNING COMMISSION

**DATE, TIME AND
PLACE OF MEETING:**

Wednesday, August 25, 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, Jim
Partington, Lynn Sunderman and Tommy Taylor;
Marvin Krout, Steve Henrichsen, Mike DeKalb, 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 acknowledged the posting of the Open Meetings Act in the back of the room.

Sunderman then requested a motion approving the minutes for the regular meeting held August 11, 2010. Motion for approval made by Francis, seconded by Lust and carried 8-1: Cornelius, Esseks, Francis, Larson, Lust, Partington, Sunderman and Taylor voting 'yes'; Gaylor Baird abstained.

CONSENT AGENDA

**PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:**

August 25, 2010

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

The Consent Agenda consisted of the following items: **SPECIAL PERMIT NO. 10029.**

Ex Parte Communications: None

Taylor moved to approve the Consent Agenda, seconded by Francis and carried 9-0: Gaylor Baird, Cornelius, Esseks, Francis, Larson, Lust, Partington, Sunderman and Taylor voting 'yes'.

Note: This is final action on Special Permit No. 10029, 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. 10028
FOR AUTHORITY TO CONSTRUCT AN OFFICE
BUILDING FOR EXPANDED HOME OCCUPATION,
ON PROPERTY GENERALLY LOCATED
AT S.W. 114TH STREET AND W. ROCA ROAD/HIGHWAY 33.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

August 25, 2010

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

Ex Parte Communications: None.

Staff recommendation: Conditional approval.

Staff presentation: **Mike DeKalb of Planning staff** submitted a proposed amendment to Condition #2.4:

The applicant/permittee shall submit to the satisfaction of the Director of Planning, an elevation and floor plan for the new building that is residential in character and could be converted to a single family home. Upon ceasing of the expanded home occupation, this building must be converted and used as a permitted or accessory use allowed in the zoning district.

The purpose of this amendment is to address some of the concerns the neighbors have raised as far as visual compatibility.

DeKalb explained that this is a request for expanded home occupation for an office. The applicants are moving their existing home occupation of chiropractic office into a new building. There are two parcels totaling about 31 acres in size. The general location is east of Elsner Estates and about three miles from Crete to the west. The proposed site for the new building is near the highway, with an existing common driveway used by three addresses. The proposed structure will be located in the southeast corner of the property.

Larson inquired as to how far the building will be from the highway. DeKalb stated that it would be 100' back from their south property line. State Highway 33 has a wide right-of-way so it is probably 150' or more from the pavement. It does sit up on top of a hill.

Francis inquired whether the two separate tracts have the same owner. DeKalb stated that to be the case, and the special permit is over both tracts – there must be a residence with the business in order to have the home occupation. Francis then suggested that the tract for the new building could be built upon as a single family home without any further hearings or notice. DeKalb agreed. The existing house on Lot 14 is 10 acres – it would be grandfathered and buildable. Therefore, Lot 34 with 21 acres could have a residence on it.

Lust inquired about the multi-colored structure that appears in the photographs. DeKalb believes that shelter/shed may be removed or replaced. It is currently used to store model airplanes.

Proponents

1. Larry Morten, 3831 Eagle Ridge Road, 68516, attorney, appeared on behalf of the applicants. Mrs. Crist practices her chiropractic business in their residence now. Mr. Crist is currently attending chiropractic school in Iowa and will join the practice when he graduates and gets his license, so they will need a larger facility. They would like their practice a little closer to the highway, with better visual appearance from the road for patients to see.

Morten submitted that this special permit is sound planning practice because they do intend to comply with every element of the County Zoning Resolution and will meet all of the conditions set forth in that resolution. However, they are requesting a variance of the 200' side setback on the east side because of the lay of the land. There is a severe hill which is terraced. The building costs would be much greater if they had to move the construction site to comply with the 200'. There is also a 100' easement on the east side, so there is actually 200' to the nearest neighbor to the east.

Morten also clarified that the shelter for the model airplanes will be removed. In fact, that will most likely be the actual site of the building. They do not yet have a site plan, but the idea is that this building will resemble a residential dwelling so that it fits in with the surrounding area. He believes most of the neighbors are supportive. In fact, he believes the neighbors have more complaints with the model airplanes, and that will cease.

Lust inquired whether the applicant is in agreement with the revised condition of approval requiring that the floor plan for the new building must look residential in character and could be converted to a single-family home. Morten stated that the applicants are agreeable to this condition. There will hopefully be a better looking building than what is there now.

Francis noted that the neighbor to the east wrote a letter in support of the setback variance. Is that the only neighbor to the east? Morten believes there is a neighbor to the northeast (Mr. Seacrest). Ms. Crist stated that Seacrest owns two of the properties on the drive which they share.

Larson inquired about the two buildings to the east. Ms. Crist stated that one is a home and other is a huge storage shed.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

August 25, 2010

Francis moved to approve the staff recommendation of conditional approval, as amended, seconded by Larson.

Francis thinks this is a win-win situation. If they were building a single-family residence, we wouldn't be here and they could still have an chiropractic office out of their home.

Gaylor Baird thought staff did a good job of answering the questions and concerns raised by the neighbors with regard to landscaping, location, access and usage.

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

WAIVER NO. 10017,
TO WAIVE THE REQUIREMENT TO CONSTRUCT
A SIDEWALK IN THE PEDESTRIAN EASEMENT
CONNECTING SALINE DRIVE AND CORNFLOWER DRIVE.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

August 25, 2010

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

Ex Parte Communications: Esseks shared photographs that he took of both the north and the south ends of the pedestrian easement. Esseks did not have any communication with the homeowners.

Staff recommendation: Denial.

Staff presentation: **Tom Cajka of Planning staff** explained that this is a request to waive the requirement to construct a sidewalk within a pedestrian easement. The easement is located from Saline Drive down to Cornflower Drive. The subdivision ordinance requires that sidewalks be constructed within pedestrian easements. This easement was shown on the preliminary plat approved in February of 1996, and was also subsequently shown on two final plats, Northridge Heights 7th and 9th Additions. The pedestrian easement is required when a block length exceeds 1,000 feet, and the block lengths from Meridian Drive to 34th and from Meridian Drive up around 34th Street both exceed the 1,000 foot block length. The developer of both final plats did post sureties for construction of the sidewalk within the pedestrian easement.

Cajka also advised that the applicant did submit evidence that the homeowners association voted in 2006 to eliminate the sidewalk, but they did not follow through with submitting any waiver application until now.

Cajka stated that it is not the responsibility of the homeowners association to construct the sidewalk. The developer is responsible to construct the sidewalk and that is why they posted sureties with the final plat to guarantee the improvements. The developer was prepared to construct this sidewalk but it has been put on hold while this waiver goes through the process.

Cajka also pointed out that a lot of times these applications are to waive the pedestrian easement itself, but in this case the homeowners association is only requesting that the construction of the sidewalk be waived. This pedestrian easement opens up into a large open area owned by the NRD containing wetlands, so staff takes the position that the sidewalk would provide access to view that wetland area. Without a sidewalk, it would limit the accessibility to that area for strollers, wheel chairs or people on bikes, and it would not allow for people to access the wetlands area in inclement weather.

In addition, Cajka advised that the trails plan in the Comprehensive Plan shows a future bike trail going through the open area – an exact location has not yet been determined – but this sidewalk could be a connection to the bike trail in the future. There is also a neighborhood park (Schleich Park) to the south. With the pedestrian easement sidewalk it would make it a little shorter for children to walk to the park and not rely on someone to drive them there. The sidewalk may encourage other people to walk rather than drive to that park.

Cajka informed the Commission that the Planning Department expanded the normal area of notification on this application and sent letters to property owners beyond the 200'. Only two responses were received in opposition to construction of the sidewalk.

Esseks inquired whether we have any precedence for waiving the construction of the sidewalk. Cajka believes such waivers have all been reviewed on a case-by-case basis, and sometimes they have been waived and sometimes they have not. Usually, the request is to waive the pedestrian easement and the sidewalk.

Gaylor Baird observed that there is a lot of emphasis on connectivity in the Comprehensive Plan. She has not seen this Commission vote very many times to waive the sidewalk. If on a case-by-case basis, what kind of compelling reason does the staff need to recommend waiving the sidewalk? Cajka suggested that topographic constraints would be a reason to waive the requirement.

Esseks recalled that the Commission voted to waive one in the southwest because of an enormous draw from the property down to the street. It was a topographic problem.

Larson inquired as to ownership of the land where the sidewalk would be constructed. Cajka stated that the Lower Platte South NRD owns the property upon which the sidewalk would be constructed. He believes the homeowners association has an agreement with

the NRD that the homeowners maintain some of the common area, with the remainder being left natural.

Taylor inquired where the future trail would be located relative to this sidewalk. Cajka did not know as the exact location of the trail has not been determined at this time. The Comprehensive Plan Trails Map does show a future trail somewhere east of the pedestrian easement.

Esseks asked Cajka whether it is his understanding that one could walk from the sidewalk to the open space if there is no private property in between. Cajka stated that part of the pedestrian easement is on private property. If the pedestrian walkway were paved, Esseks wondered whether someone could go into the walkway at midpoint and then turn east to get to the open area. Cajka responded, "yes, the NRD is not objecting to the sidewalk." Francis pointed out that this subdivision was originally platted in 1996 and the sidewalk was shown on the original plat, so this is not anything new that was added after the homes were built. Cajka agreed.

Gaylor Baird noted that one of the property owners has a concern about drainage if the sidewalk is built. Who pays to maintain the sidewalk? Cajka believes the maintenance would be an expense of the homeowners association.

Proponents

1. Stephanie Biernbaum, 3340 Watercress Lane, 68504, President of the Northridge Heights Homeowner Association, testified in support of the waiver. There was a unanimous vote of the entire neighborhood of 234 homes to eliminate the sidewalk seven years ago. They have collected 63 signatures over the past few days, so it is not just to the two people who wrote letters that are opposed to this sidewalk. Part of the reason they do not want the sidewalk is the maintenance and upkeep. The homeowners association cannot afford any more maintenance and upkeep of common areas. There are five easements going into the wetlands, plus the common area, and three circles. They are required to do the snow removal, ice removal, mowing of the turf and fertilizer with association dues of only \$50.00. Their costs will increase at least \$1,000 a year if this sidewalk is constructed. It is a very wet area. Every spring and every fall it floods from the runoff from the homes. The wetland area on the other side is a protected wetland. The tall grass area varies from year-to-year depending on how wet it is and how far back they can take care of it.

If the sidewalk area is not properly drained, it is going to cause lots of ice that will require repeated upkeep. The homeowners are also worried about the liability. It is downhill into this common area. There is no lighting. In addition, she believes it is against the law for people to wander off into the grassy wetland area. When people go out into the wetlands, the neighbors call the police. There are rules posted outside Schleich Park and over by Cracker Barrell indicating that you cannot walk into that area. The sidewalk is not going

to give anyone access to the wetlands – in fact, it might encourage people to go into the wetland, which is not where they are supposed to be. The sidewalk would be next to two culverts, and the homeowners believe this to be a safety issue. This is not a park area. It is not a place where people will congregate. It is just an area of grass that the homeowners are required by the NRD to maintain.

Cornelius asked for clarification of the additional cost to the homeowner association if this sidewalk is constructed. Biernbaum stated that the snow removal is estimated to be a minimum of \$300 to \$400 for the whole stretch – that is just for two snows. With such a big area, it is going to drift with freeze and melt bringing ice back onto the sidewalk with the downhill slope. The area where the sidewalk would be constructed is now tall natural grass, so there will be more area for the homeowners association to mow. Their budget is \$11,700/year and they have spent over 1/3 just for maintenance of the common areas.

Gaylor Baird inquired whether all of the homeowners pay dues. Perhaps the dues could be increased by \$5.00 per household per year. Biernbaum agreed that it is not much money for an individual, but to get the dues raised would require the agreement of at least 200 homes, and not one of them is willing to agree. Not one person in this entire neighborhood is in favor of having this sidewalk. No one sees the reason for it. If the park were somewhere else in the neighborhood, they would understand, but the sidewalk would not be inside the neighborhood. It is beside the townhomes, which are not in the homeowners association. Schleich Park is just a little kid park with a couple little swings and slides and a basketball court. It would be a long walk from the sidewalk for someone to walk with a young child. They drive or ride bikes to the park. She would not ever ride a bike on the easement sidewalk up and down the slope. It is too steep. They have found no reason in the neighborhood that the sidewalk would make the neighborhood better. There is a mowed trail into the wetland from Schleich Park, but no one is allowed to leave that trail.

Esseks observed that the homes which border this pedestrian walkway are all single-family detached homes. Biernbaum acknowledged that to be true – they are all single-family residences and they do pay the \$50.00 annual homeowners association fee.

Francis inquired about the homeowners association dues when Biernbaum purchased her home. Biernbaum indicated that it was \$50.00 nine years ago. The dues have not been raised but the lawn care fees have increased.

2. Verna Hawkins, 3621 Saline Circle, 68504, Treasurer of the Northridge Heights Homeowners Association, testified in support of the waiver. She has lived in Lincoln for a long time; it is a really great place to live and has been very well planned. She is in favor of the trails and walkways that promote health, exercise, etc., but that doesn't mean that every sidewalk in every spot is appropriate. The cost of building this sidewalk is small compared to the years of maintenance. The association is spending over half of their dues on care of the common areas, and the homeowners do not get anything out of the common

areas. The common areas are narrow strips that go between the houses from the street back to the wetland, the purpose of which is so that the NRD has access to the wetland. It is not for anyone else to use. The neighborhood association spends the money so that the common areas do not become an unsightly nuisance. That is the only reason they have to be maintained. They must pay for the snow removal because there is no way they could be sure to keep the snow off with volunteers.

Liability is an issue. If anyone were to slip and fall or get hurt in one of these common areas, all of the homeowners would be open to a lawsuit. Besides the increased costs of maintenance for snow and grass, she believes that their insurance premiums will increase. There is no street light so it would be very dark. She believes the sidewalk would have to be daylight use only.

Hawkins also pointed out that the wetland all along the east is a habitat for animals. This is very close to the area where the Tiger Beetle is located. For that reason, many of the homeowners do not use chemicals on their lawns to prevent bugs and mosquitoes. While the wetland is beautiful, it really does produce mosquitoes and ticks. She doesn't even let her dogs out much in the summertime because of the mosquitoes and ticks. She can't imagine anyone taking a child and walking on that sidewalk during the mosquito and wood tick season. The sidewalk will be right next to the wetland. There is standing water in the wetland – there is a lot of marshy area and there is a pond close to it. It is not the kind of place to which people should have access.

This neighborhood is very much in favor of outdoors, exercise and sidewalks, if it is appropriate. The neighborhood association worked with the NRD to establish a one-mile wetland trail that goes to and from the park. It is higher and dryer. The homeowners association maintains that foot trail.

Hawkins reiterated that this is one thing that the neighborhood is unanimous upon. This sidewalk is not a good investment of their money. The homeowners would not get any good out of this sidewalk. So, if the homeowners don't want it and it is not benefitting anyone else, it seems appropriate that the sidewalk not be required.

3. Paul Babi, 6336 Cornflower, testified in support. The easement is on the east side of his property line. He found out this morning that the sidewalk being constructed would make him responsible for anyone slipping and falling to the end of his property line, and for the snow removal and ice melts. All of the other areas in the homeowners association were notched out in the original plan so that there was not a home built in the common area. This is the only common area in the whole neighborhood set up such that he is responsible for the community sidewalk. If the neighborhood was in favor, he could understand, but in this case there is no one in favor of having the sidewalk.

Babl submitted a petition in support and showed on a map the homeowners that have signed the petition in support of this waiver.

Babl is also concerned about skateboarders. He does not understand how skateboarders could be legitimately restricted from using this sidewalk, and he does not see how to protect his own liability issues.

Babl also has a big concern with the storm drains. He can see some young child getting back into those storm drains. He suggests that the sidewalk should be fenced off if it is constructed.

Babl also stated that there is a common concern that this would be an automatic dog walking area if the sidewalk is constructed. The neighborhood wants to avoid these issues. There is a "no trespassing" sign posted by the NRD into the wetlands.

With regard to the sidewalk being a possible entrance to a bike trail, Babl suggested that a better access to that trail would be from the commercial area right south of the neighborhood.

Lust confirmed that Babl understands that it is the "paving" of the sidewalk that the waiver is about. There will still be a pedestrian easement in that location, so people can walk through his property with their dogs now without having the sidewalk. Babl indicated that he understood, but just not very many people do go down into that area.

There was no testimony in opposition.

Staff questions

Esseks inquired about the liability issues. Who is legally required and responsible to maintain this sidewalk? Cajka stated that he had asked the Law Department that question and he does not have a definitive answer. They thought there could be some liability to the property owner but they were hesitant to state it as a fact one way or the other.

Esseks asked if there is any information from Public Works and the NRD indicating that we cannot have a safe sidewalk in this area. Cajka stated that the NRD was contacted and they are not opposed to the sidewalk being installed. There was also an engineering consulting company working with the contractor to build the sidewalk and they did not approach the Planning Department with any concerns about the slope or drainage issues.

In looking at the aerial photo, Partington believes that the primary function of this real estate is drainage into the wetlands area. He does not believe there should have been a sidewalk planned across it in the first place. In his opinion, this is not an appropriate place for a sidewalk. Cajka reiterated that the preliminary plat done in 1996 shows this pedestrian easement in this location, and at that time, there would have been grading and

drainage plans as part of the preliminary plat that were all approved by Public Works. But, Partington pointed out that people who have been living there are opposed.

Given we have a pedestrian easement at this location, Cornelius asked staff to elaborate as to the responsibilities for maintenance and liability of the homeowners association as it stands. Cajka explained that the pedestrian easement allows the public to access that area and continue to use it. The City does have a weed ordinance so he assumes that grass or weeds would have to be kept down. He assumes they would have the same liability issues if someone walked in that easement and tripped and fell the same as if the sidewalk was constructed. However, Cornelius suggested the difference is that without the sidewalk, there is less opportunity or attractiveness for someone to walk there. Cajka concurred.

Larson believes the property owner should be responsible for the maintenance of the easement. Cajka stated that the NRD is the owner of most of the property except for where it crosses Mr. Babl's lot. Larson wondered why the homeowners association is paying the obligation of the NRD. Cajka believes the homeowners association has some type of agreement with the NRD for maintenance.

Taylor recalled a previous waiver that the Commission approved because the sidewalk would not be used. It was inconsistent with the topography of the land, and that was the reason why that waiver was granted. He is interested in connectivity, but we have a situation here where the majority of the neighbors are not interested in the sidewalk being constructed. He also respects the resources and wisdom of the staff in coming up with their recommendation; however, it is difficult to think positively and joyously about denying this waiver based upon the desires of the neighbors.

Esseks wondered whether definitive comments would be available from Law and Public Works about the maintenance and liability issues if this were delayed two weeks. Isn't there some way to engineer the sidewalk so the drainage and other problems can be resolved? Cajka believes he could get those answers in two weeks.

Response by the Applicant

Biernbaum stated that the property in the common area is owned by the NRD. When the neighborhood was developed, there was a transfer agreement which requires the homeowners to maintain it. The homeowners association is required to carry the insurance, provide snow removal, and take care of the turf and trees on the property. The development company, Home Development, signed the agreement with the NRD. All of the common areas are turf areas so that the NRD has access. There are only three common areas that are inside circles. None of the common areas are park areas for the neighborhood. The maintenance and liability are issues. The NRD is not going to come and scoop the snow.

Cornelius noted that on the aerial photos the northern end looks as though there is foot traffic along the path. Is it being used for foot traffic currently? Biernbaum stated that is actually one of the easements that goes between two homes so that the NRD can have access. It is more than 20' wide. The lawn care people use that as their entrance.

ACTION BY PLANNING COMMISSION:

August 25, 2010

Taylor moved to approve the waiver of the sidewalk construction, seconded by Partington.

Lust stated that she feels for the concerns of the homeowners, but this area has been approved for a sidewalk for a long time. The pedestrian easement already exists. The plans for the sidewalk were provided for when the property was initially developed. The developer made the arrangements for the homeowners association to take over maintenance. She thinks they can raise their dues, which they have not done in several years, for the sidewalk maintenance. The fact that we are not being asked to also waive the pedestrian easement creates more of a safety hazard in her mind. She does not see any difference in the liability concerns in that regard.

Esseks stated that he will vote against the motion and then move for a two week delay. He is fearful that this could be used as a precedent case against present and future pedestrian easements because some of the reasons given could be found throughout the city – the dogs will be there, skateboarding, nuisance for the adjacent property owners, etc. Esseks is hopeful that the sale price of the properties took into account the possibility of such an inconvenience. He is afraid a decision like this would be used to undermine the whole principle of pedestrian easements and sidewalks. He does not want to lose that excellent design principle. However, this could be an example of a bad decision on the part of the developer that this is an inappropriate place for an easement. He would like information from Public Works and the NRD as to whether it would be a sidewalk covered with ice causing more serious drainage problems. A two-week delay could provide this input from the expert resources.

Secondly, if this gentleman who has his property next to the easement on Cornflower is legally responsible for what happens on the sidewalk, this needs to come to light and we need to bring about some change. He does not want to say yes until we get some additional information from the experts.

Gaylor Baird understands that it must be frustrating for the residents, but the Planning Commission is under a mandate to look at the big picture, city and county-wide, and these waivers do raise questions. We are trying to create a larger picture of our community where it is easier for our people to be connected and get exercise, etc. If we vote on this today, she will oppose the waiver; however, if we get different information and confirm that this sidewalk should have never been put at this location, then she would be more open

to considering a different vote. As it stands, it is hard to look at our mandate as a commission and the principles of planning that we are asked to observe and to vote in favor of the waiver.

Francis stated that she would not vote to support the waiver, but she would vote to delay for a couple of weeks. She does want our connectivity to the neighborhoods. The homeowners need to do their due diligence. There was plenty of notice given that there was a sidewalk easement there since 1996. But she does want to know what the NRD has to do with this and the legal responsibility of the homeowner. She will not support the waiver but she would support a two-week delay.

Taylor questions whether this is a precedent, but he is not opposed to a delay. He believes the Commission has waived sidewalks in the past.

Partington does not think the Commission is giving enough respect to the opinions or requests of the people who have to live with this easement. It is a unanimous view, which he believes takes priority over a theory of connectivity.

Gaylor Baird observed that the theories may not be as easily tangible or understood today because it doesn't exist. There is potentially a bike trail in the future and potentially these residences won't have traffic dumped into the neighborhood. It is more of a long term vision. You can't see it today, but it is something we have to take into consideration.

Lust pointed out that the arguments from the homeowners could be used to oppose every single sidewalk in the city – costs for maintenance, liability issues, dogs, etc. We can say the same thing about every single sidewalk in the city, so it is precedent-setting when we start to pay attention to those types of arguments about sidewalks. She would like to see this deferred.

Larson wondered whether the agreement between the developer and the NRD requiring that every homeowner belong to the association, and thereby is obligated to pay his or her share of this maintenance, is recorded on the title. If so, it would seem that these homeowners had adequate notice that there was an obligation that has been in existence now for 14 years. The cost seems to be minimal to the homeowners and he sees no reason for the waiver.

Sunderman stated that he will vote against the waiver today, but is willing to delay for two weeks.

Motion to approve failed 2-7: Taylor and Partington voting 'yes'; Esseks, Francis, Lust, Larson, Cornelius, Gaylor Baird and Sunderman voting 'no'.

Esseks moved to defer for two weeks to receive opinions from the Law Department and Public Works as to who is legally liable for the maintenance and for any injuries occurring

on the sidewalk, and whether this is a feasible place for a pedestrian sidewalk open to the entire community, seconded by Taylor.

Motion to defer, with continued public hearing and action scheduled for September 8, 2010, carried 8-1: Esseks, Taylor, Francis, Lust, Partington, Cornelius, Gaylor Baird and Sunderman voting 'yes'; Larson voting 'no'.

There being no further business, the meeting was adjourned at 2:30 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on September 8, 2010.

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