

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, June 1, 2011, 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, Brian Will, Tom Cajka, Christy Eichorn, Jean Preister and Michele Abendroth 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 May 18, 2011. Motion for approval made by Francis, seconded by Lust and carried 9-0: Gaylor Baird, Cornelius, Esseks, Francis, Larson, Lust, Partington, Sunderman and Taylor voting 'yes'.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION BEFORE PLANNING COMMISSION:

June 1, 2011

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

The Consent Agenda consisted of the following items: **COMPREHENSIVE PLAN CONFORMANCE NO. 11005, CHANGE OF ZONE NO. 11015, CHANGE OF ZONE NO. 11016, STREET AND ALLEY VACATION NO. 11006 and MISCELLANEOUS NO. 11003.**

Ex Parte Communications: None

Item No. 1.3, Change of Zone No. 11016, was removed from the Consent Agenda and scheduled for separate public hearing.

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

CHANGE OF ZONE NO. 11009,
TEXT AMENDMENT TO TITLE 27
RELATING TO SPECIAL PERMITS FOR
SCRAP PROCESSING OPERATIONS,
AND
SPECIAL PERMIT NO. 11006
FOR A SCRAP PROCESSING OPERATION
ON PROPERTY GENERALLY LOCATED
AT 545 WEST "O" STREET.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 1, 2011

Members present: Partington, Esseks, Francis, Cornelius, Gaylor Baird, Taylor, Larson, and Sunderman (Lust declared a conflict of interest).

The Clerk announced that the applicant for Special Permit No. 11006 has submitted a written request for an additional two-week deferral.

Cornelius moved to defer an additional two weeks, with continued public hearing and action scheduled for Wednesday, June 15, 2011, seconded by Francis and carried 8-0: Partington, Esseks, Francis, Cornelius, Gaylor Baird, Taylor, Larson and Sunderman voting 'yes'; Lust declaring a conflict of interest.

Proponents

1. Russell Irwin, 3274 Merrill Street, testified as an interested citizen in support. He believes that this would be a good location since it is close to the existing location and would be easy for customers to find. It would be advantageous with there being a rail line and he sees no problem with hiding things behind a fence to make it more aesthetic. It would be a good use of an existing building rather than tearing down the building.

There was no other public testimony.

CHANGE OF ZONE NO. 11019
TEXT AMENDMENT TO TITLE 27
TO DEFINE AND ADD “ENTERTAINMENT RESTAURANT”
IN THE B-2, B-3, B-5 AND I-1 ZONING DISTRICTS.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 1, 2011

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

The Clerk announced that the applicant has submitted a written request for a four-week deferral.

Cornelius moved to defer four weeks, with continued public hearing and action scheduled for Wednesday, June 29, 2011, seconded by Francis and carried 9-0: Partington, Esseks, Francis, Cornelius, Gaylor Baird, Taylor, Larson, Lust and Sunderman voting 'yes'.

There was no public testimony.

CHANGE OF ZONE NO. 11016
FROM R-6 RESIDENTIAL DISTRICT TO
B-3 COMMERCIAL DISTRICT,
ON PROPERTY GENERALLY LOCATED
AT 27TH AND “N” STREETS.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 1, 2011

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

Ex Parte Communications: None.

Staff recommendation: Approval.

This application was removed from the Consent Agenda due to a letter of concern and request for delay received from a Woods Park neighborhood representative.

Staff presentation: **Christy Eichorn of Planning staff** explained that the change of zone area is generally located at 27th & N, i.e. a 25 ft. strip on the north side of N Street widening to about a 90 ft. strip along 27th Street. There are multiple property owners along the area of the change of zone. Currently, the Peoples Choice Credit Union located on the corner of 25th and N Street, owns the residences that currently exist on N Street, and then there are multiple owners along the strip. The applicants are interested in purchasing the property.

Eichorn explained that the zoning district line in this area is unique; however, not something specifically unique to this area. The reason for having a zoning district line that juts across the street is because there used to be a zoning pattern where they would leave a smaller area to provide a buffer when a particular property was rezoned to commercial. Back in 1988, there was rezoning that occurred on this block which rezoned a portion of the area to commercial. That change of zone was approved, conditioned upon leaving the R-6 zoning on the north side of N Street to buffer the residential houses along N Street and to keep the residential look to the street on both sides. The Comprehensive Plan does talk about having like uses facing each other.

Eichorn then showed an aerial of the site. The house shown will be demolished. There is a vacated street to the east which is used for access and parking, as well as two parking lots all the way out to S. 27th Street. On the south side of N Street there are triplexes on the corner, the Lighthouse (nonprofit), another nonprofit and another building on the south side of N which is used for law offices under a historic preservation special permit.

The staff considered the zoning pattern for the overall area in reviewing this change of zone request. The change that has occurred since 1988, is that there are not nearly as many single- or two-family residential units that line N Street at this corner. They are very large nonprofit buildings which serve well as a buffer between the commercial on north side and the R-6 residential on the south side of N Street. Moving closer to the Downtown, that commercial zoning district line starts at the Credit Union on N Street and becomes B-3 all the way to just past Elliott School, where it becomes B-4 and then B-4 Downtown all the way out to the west side of the Downtown area.

Eichorn stated that the staff is recommending approval of this change of zone request based on the current condition and zoning pattern of the area and based on the idea that it is good to promote redevelopment in areas, particularly those with vacant and under-utilized buildings. This corner is included in the very south end of the North 27th Street Redevelopment Plan and in the Antelope Valley Redevelopment Plan. The Antelope Valley Redevelopment Plan says that this area should be used for mixed use development purposes, but there is no particular Antelope Valley project associated with that redevelopment plan for this particular site, so there is no specific guidance for this corner besides the fact that the Antelope Valley Redevelopment Plan says it should be used for mixed use redevelopment purposes.

Esseks confirmed that if the applicant located the service station on the property to the north which is already zoned B-3, they couldn't use this strip for access to N Street. Eichorn acknowledged that to be one of the first questions that came up. When South 26th Street was vacated, there were provisions that would allow commercial access to both sides of the commercial properties on the north side of N Street. Generally, if they hadn't had that provision, then they would not have been allowed to use vacated South 26th Street for access to those properties. But, as it is now, Esseks observed they could not have normal direct access to N Street. They would have to go via South 26th Street. Eichorn

agreed. When South 26th Street was vacated, there were provisions for the two businesses to use the access. It no longer exists as a street. It is part of the two lots. There is provision for them to use that to get to the two buildings but they would not be able to have another curb cut for a commercial use to go through a residential area to get to a local street.

Larson inquired whether the vacated South 26th Street area is titled to those two property owners. Eichorn stated, "yes", and they have a permanent easement for access for those businesses along O Street.

Gaylor Baird shared some photographs she had taken of the buildings and uses in the area. She urged that there is a need to recognize that some of those property owners made a significant investment of resources to try and blend in with the residential neighborhood.

Lust inquired as to the use in the building on the property that is going to be developed. Eichorn stated that it is a vacant building.

Proponents

1. Mark Hunzeker appeared on behalf of the **Carey Johnson Oil Company**, and clarified on the map where the applicant proposes to develop on the site. The intent is to develop a more upscale convenience store. The purpose of acquiring property south of the alley is to replace a building on the south side of the alley. The pumps and everything else will be oriented toward O Street so that the result would be the Credit Union retaining the south half to two-thirds of the property it owns with the existing house on it. He understands that the Credit Union would like to use that property for additional parking. The request stops short of going all the way to 25th Street to maintain an open view from O Street to the Credit Union. As pointed out in staff report, any parking along N street will have to observe a landscape requirement in accordance with design standards.

The applicant did send an invitation to all property owners on both sides of N Street between 25th Street and 27th Street to attend a meeting to learn more about this project. No one other than the Credit Union representatives, who hosted the meeting, chose to attend the meeting. Since that time, the developer has had an opportunity to speak with the Woods Park Neighborhood Association president and has expressed to her that if there is a desire to have a meeting with the Board they would do that between now and the time this application goes to the City Council.

Hunzeker also observed that technically, the subject property is not within the Woods Park Neighborhood Association boundaries. There have been some concerns expressed via e-mail or letters to the Planning Commission, neither of which said they were in opposition to the change of zone, but simply expressing potential concerns or questions.

Hunzeker pointed out that the use of this site for the purpose intended is not dependent upon this change of zone. The change of zone will simply make the project a much better project, enabling the developer to orient the building to O Street, to make sure treatment of the N Street corridor is in accordance with design standards and to enable the Credit Union to expand parking accordingly.

Lust sought confirmation from Hunzeker that the building and car wash could currently be built on the underlying B-3 zoned property with or without this change of zone. Hunzeker acknowledged that the developer does not yet have a final site plan because they are still in the process of locating all the utility lines that are in the alley between 25th and 26th Street. He did acknowledge that it would be possible to just take the north half of this lot and do something which would probably be facing west so that the exposed canopies would be more exposed to the south without having to deal with any of the issues of the utility lines or design considerations as they relate to N Street. It could be done that way but that is not the type of project this developer wants to do. The desire is to change the zone to accomplish a better result for the whole block.

Esseks inquired whether the developer will change the surface of the 25' strip that is now zoned R-6. Hunzeker stated that the developer is not going to purchase any of the area zoned R-6, except that portion of the west half of 26th Street which extends down to N Street. That's the only piece the developer intends to purchase. Hunzeker pointed out, however, that there is an existing street that looks just like it did when it was an open public street. There is an existing brick drive and some landscaping along the west side. But that is not part of anything that is going to be changed.

Esseks inquired what could be done in that 25' strip that would alter the environment with these lovely buildings across N Street. Hunzeker stated that about half of what the developer is acquiring would be occupied by the existing street and then there is a sidewalk and some landscaping. He does not know what would be done other than plant some bushes or something that would be complementary to whatever the Credit Union does on their property.

Esseks inquired whether the developer has plans to purchase or develop any of the strip which goes east on 26th Street. Hunzeker stated, "no". There are three owners on that half of the block east from 26th Street. Over time, he would expect that at a minimum two of the ownerships would be combined and probably combined with the larger piece to have a project with a little more scale and economic viability.

Hunzeker clarified that there is an existing access on 25th Street; there is existing access on O Street; and there would be an access that would be clearly a secondary access to N Street. The primary access will be from O Street and 25th Street. The Credit Union will retain ownership all the way to 25th Street with some cross-easements for parking. There could be access by crossing the Credit Union property from 25th Street.

Gaylor Baird wanted to know what makes this a better project with the change of zone. Depending on the location of the utilities and configuration of the building, Hunzeker suggested that the point between the back side of the building (that sits on the south side of the alley) and the zoning district line (which is residential) may only amount to about 85', even though we are more than 120' to the south side of N Street. It would be 125' from the south side of the N Street right-of-way to the north edge of the strip of residentially zoned property, and another 85' to the back side of the building. The applicant needs 100' for the convenience store to be able to sell alcohol, and secondly, in order for the area to be utilized for parking, the Credit Union needs to be able to get into that 25' area to be able to utilize a double-wide parking bay and to be able to landscape it.

Larson thinks the convenience store makes the traffic situation different. Hunzeker explained that the idea is to face the building, the pump islands and the car wash all oriented toward O Street so that we do not have any more impact to the south. Larson is most concerned about whether N Street would be used as an access. Hunzeker stated that it could be. We have to keep N Street open no matter what. There is another building that utilizes N Street for its access today. Vacated 26th Street is going to stay the same regardless of what development occurs. It will be used for access to that area.

Hunzeker added that they hope to bury all of the utilities.

Hunzeker clarified that the existing building on O Street will be removed.

Francis inquired about the traffic count anticipated with the convenience store. Hunzeker did not have a number; however, he stated that he has done a number of these projects and there isn't a single person in that business who thinks that they can survive without being on a street that carries a lot of traffic. Francis is concerned about the cutting in and out through N Street and the location of Elliott School. Hunzeker pointed out that N Street carries a lot of traffic. There are a variety of uses that generate a lot of traffic that could have the same or more similar effect. It would be simple to put a fast food restaurant on the north side of the alley that would still have access coming out to N Street via vacated 26th Street. Almost any kind of business will generate a certain amount of traffic, and most will generate a fair amount of traffic in the early morning hours and almost any kind of business would have the same possible effect. Hunzeker believes the developer has a proposed site plan that will minimize that by keeping the car wash on the north side of the alley and by orienting the building to O Street.

Gaylor Baird stated that she still does not understand why the developer is taking the trouble to put together this long strip on N Street. She is trying to understand if the changes will be sensitive to the existing built environment. **(**As amended by Commissioner Gaylor Baird on June 15, 2011**)** She is concerned about the potential impact on existing investors across the street, especially given that the developer does not know whether the change of zone is needed because there is no site plan put together. Why are you trying to get this other strip rezoned? Hunzeker's response was that they

have talked to their primary neighbors on the east side of 26th Street, who were in favor. And the major property owner on the east side of 26th Street is very, very familiar with the challenges of redeveloping property in older areas. This change of zone is a way to alleviate one of those challenges in advance so that some planning can be done. Given the circumstances – the uses across the street and the lack of interest of owners on the south side of N Street in coming to our meeting – Hunzeker believes it makes sense to eliminate that barrier today and look forward to a day when someone puts something on those properties on the south side or on the entire block that would improve the entire area.

Larson suggested closing off access to 26th Street. We're all a little concerned about the traffic in and out on 26th Street as it might affect the properties across N Street. Couldn't you put up a private gate to allow access for his commercial traffic but prohibit public travel? Hunzeker agreed that could be done. We are talking about a two-block area bounded by 27th Street, O Street, and 25th Street carrying more traffic than most local streets, except N Street, which probably carries as much as any local street. It carries a great deal of traffic today. The ability to utilize O Street and to be able to access O Street at all times of the day conveniently may become more difficult if you do not have a possible relief. A secondary access to N Street is very reasonable for this entire two-block area. It makes sense from a traffic management standpoint and frankly, the amount of traffic on N Street today is great enough that you probably won't recognize much of a difference. The desire is to maximize the on-site circulation of traffic and being able to use a secondary access.

Larson is still concerned about why the developer is buying that little stub of ground that adjoins N Street. "If you are not going to use it, why would you want it?"

Lust inquired as to how long the existing building has been vacant and its previous use. Hunzeker believes it has been vacant for four years. It was previously an Asian market of some sort, and prior to that an office equipment store, and prior to that it may have been a grocery store. Lust observed then that the commercial building has always had the same type of access that is being requested now. Hunzeker agreed.

Esseks wonders whether this is really going to be that much change. He does not feel comfortable about making this more restrictive than it has been for years. Hunzeker referred to the ITE manuals – one of the big generators of traffic is a drive-thru bank. If you were to compare the access to that facility with that being proposed in some of the proposals coming forward, he does not think those access points would be able to exist.

Partington commented that the proposed use is probably a good use of the property but he is not sure what is being proposed without a site plan. And the applicant does not own the property upon which the change of zone is being requested. Partington inquired whether the site plan would be submitted to the Planning Commission if this change of zone is approved. Hunzeker believes that they may need to get a subdivision approved

administratively. B-3 is not a district which requires site plan review. Hunzeker assured that this developer will do a very good job, both architecturally and site planning-wise, taking care of the needs for this site and to end up with a view from N Street which is improved from what it is today. Today you have the overhead lines, vacant house and the back side of the old grocery store/market. Hopefully, you will end up with a brick facility with no doors that exit or enter from the south side, with architectural features that will be better than the standard you would see in most places; with buried utility lines and overall a more attractive area; along with a new parking area which would be landscaped along N Street for the Credit Union.

Cornelius commented that he is hearing a disconnect. Hunzeker drew some boundaries of a proposed project that do not coincide very well with the area of the change of zone application. There is some overlap. The change of zone encompasses a lot more than is necessary for this project. Hunzeker states that a project of this character could go forward without the change of zone. Hunzeker clarified that a project could go forward with these uses without the change of zone, but whether or not this developer will go forward remains unknown because we don't know whether that would be feasible given the type of stores that he builds. This change of zone creates a buffer from residential districts that will allow the sale of alcohol. Cornelius also observed that if the area remains residential, this change of zone allows traffic to cross where it would not if it remains residential. Hunzeker disagreed. It is allowable for that area to be used for commercial uses. That has been understood and the city would have a hard time prohibiting that. It will allow for the expansion of a parking lot for the Credit Union.

Cornelius sought confirmation then that the value of the change of zone is that it facilitates future development moving east. Hunzeker agreed.

Cornelius further sought confirmation that B-3 is a designation for redeveloping areas and it does allow mixed use, including second floor residential. Hunzeker agreed; however, he is not sure he would characterize it as a district intended for redeveloping areas. It is a district which has historically been on older commercial areas, whether here or Havelock or University Place or a number of other places.

Taylor would feel more comfortable if there was a site plan. The area of application seems separated from where the development is going to take place. He would be interested in a two-week delay for some clarification.

Hunzeker reiterated that the actual project that is dependent upon this change of zone is not taking place on the property that is being rezoned, but there are some time lines built into the developer's contract with the Credit Union which require this to get moving. They do not have the luxury to defer this indefinitely until we have all the questions answered. We need to move forward. We do have a two-block area which is almost all zoned B-3. We have a 25' strip along N Street that is zoned residential, which serves absolutely no purpose. It has no viable use whatsoever. It can't be used for any residential use because

it is not large enough. So, all that strip does is serve as an impediment to the redevelopment of the rest of that block. As staff points out, the zoning pattern proposed is consistent with the rest of the area and it makes sense. The issue before the Planning Commission is whether or not it makes sense to maintain a residential strip along N Street that can't be used for anything and serves only as an impediment to the development of the rest of that block. Half of that block is completely undeveloped and used as parking, and another piece is a vacant commercial structure which is adding nothing to anyone's property value. So to have that impediment to the east of that block makes no sense and argues in favor of approving the change of zone, regardless of the proposed use on the north side of the block.

After this discussion, Larson now believes the traffic issue is sort of non-existent. But it still seems odd that the developer is asking for zoning on the 25' piece of property that he can't use and that won't be of any advantage to him except on the distance requirement for alcohol sales. All of the rest of the benefits go to other people. He does not understand why this has to require all of this other area when it is such a minimal thing to the developer. It appears that the core issue is the access for alcohol sales.

Hunzeker concurred that it is a distance issue. The developer's preferred site plan requires this change of zone and he cannot do the project he wants to do without it. It is critical to his project. He could rezone something less than the entire strip along N Street, but why? The staff encouraged the idea of taking it all the way and we're not opposed to someone else gaining from this application.

Larson does not want to be pressured with a deadline that the Commission had nothing to do with. It is unfair for Hunzeker to put the pressure on the Commission to make a decision based on the developer's deadline. Hunzeker responded, stating that the site plan is irrelevant to this application for a change of zone. But Larson believes the site plan is an issue.

Hunzeker observed that a number of the Commissioners have participated in discussions over the past many months about how to encourage redevelopment in older parts of the community. This is a very small example of how some relatively minor things can stand in the way of redevelopment where you want it to occur. No one would deny that this is two blocks for redevelopment to occur, and this is an application which will facilitate that. This should shed a little light on the difficulty of doing those kinds of projects.

Cornelius confirmed that Hunzeker and the stakeholders are willing to meet with the adjacent neighborhood association before the City Council hearing. Hunzeker responded, "absolutely, yes".

Opposition

1. Jayne Sebby, President of Woods Park Neighborhood Association, testified that the neighborhood would love to see the entire two-block area redeveloped. The old buildings have seen their useful life and we need to look at how to improve the whole area. The Woods Park neighborhood goes from Antelope Valley (24th to 33rd), from O Street down to Capital Parkway, and includes 1500 residences. There may be two property owners in the strip that got informed, but there are 70 apartments alone in that building and she is sure they did not hear about this. Elliott School has hundreds of kids (K-6) and a community learning center, so there are kids going in that area from 7:30 a.m. to 6:00 p.m. The Lighthouse is a program for at-risk junior high students and teenagers who all walk and bike. She can't imagine that the Asian Center would want to lose their parking.

The Woods Park neighborhood would love to see the area redeveloped, but they are concerned about what kind of business goes in with all the children in the area. Voices of Hope is also in this area. N Street does receive a lot of traffic but she cannot imagine that it is one of the busiest streets in town. If there is any access at all onto N Street, any traffic going east hits a right-turn only on 27th Street. You can't exit to the left off O Street because of the median. All traffic going west or north would want to look around, come down N Street and go up 25th Street, which impacts the school, the Lighthouse, etc. The big exit is right up 25th Street to get to all the homes north of 27th Street.

The Woods Park Neighborhood is uncomfortable with any kind of business that sells alcohol with the number of juveniles that are in that area. They do not want to discourage any kind of development but they want to make sure the people in the area are kept safe.

Staff questions

Eichorn clarified that there is not a site plan. Whether the change of zone is approved or not, there is still B-3 commercial zoning for the entire area, so those vacant buildings can be utilized for anything allowed in B-3 whether it be a gas station, a fast food restaurant, retail store, church, etc. No matter what use goes into the subject property, the access on O Street will remain; the access on 25th Street will remain; and the access on the vacated 26th Street will remain. Although there is not a site plan, those access points are not going to change. There is still the potential for having those kinds or uses in the existing B-3 area, whether this change of zone is approved or not. The change of zone just makes a difference of where buildings can be placed.

Eichorn also clarified that N Street is 100' of right-of-way today. A building could still be placed within 100' anywhere on O Street that is going to sell alcohol, adult novelties, pay check advance, bank, etc. Keep in mind that this is already B-3. Not approving this change of zone does not stop B-3 uses, but stops being able to facilitate where the buildings within that B-3 area are going to be placed.

Sunderman pointed out that the Planning Commission is only being asked whether the strip of R-6 makes sense – this project aside, does that strip of R-6 make sense here? They have direct access so they won't necessarily have to come down to N Street to get to 25th Street to head north. Eichorn agreed. There is going to be a full public access easement across the parking lot or alley so that there is an exit on 25th Street to go north or east without having to come down to N. You would come down to N to avoid the light or to go south on 27th Street.

Sunderman inquired whether B-3 development projects come to the Planning Commission for review. Eichorn stated that the Planning Commission will never see a site plan in B-3.

Gaylor Baird inquired about the design standards in B-3 zoning. Eichorn confirmed that there will be design standards in terms of parking lots – minimum of a 6' landscaped area all around the parking lot with screening from zero to 30%. So all parking lots would have to be screened. Parking lot trees will be required, which are different from street trees. There are landscaping requirements depending on the square footage of the commercial area. Gaylor Baird wanted to know how those requirements affect the corner of 27th & N Streets on the N Street side. Eichorn stated that what is there today is grandfathered. If they were to repave the entire parking lot or do major construction on the buildings that rely on that parking, then they would be required to meet those parking lot design standards. If there were a subdivision by final plat, they would be required to put in improvements including sidewalks and street trees, which are separate from parking lot design standards. There would not be any design standards on the buildings. This is what concerns Gaylor Baird because those investors across N Street have already tried to blend with the surrounding neighborhood. Eichorn then suggested that even if the change of zone does not happen, there are no design standards. There is no requirement that any of the buildings be all brick or have all their windows oriented toward O Street or N Street, or porches, or pitched roof – the sort of things we often see in residential areas. Whether or not this change of zone is approved, there are no design standards for this corner today.

Gaylor Baird sought confirmation that there will not be any commercial development on the R-6 zoning. Eichorn explained that the R-6 was left for the green strip and front yard setback along N Street, similar to the residential houses previously referred to. That green strip will change because B-3 has zero front yard setback, but it requires compliance with the parking lot design standards. Nothing could be built in the R-6 strip. It provides a grassy area because there are no landscaping requirements and provides the additional 100' setback.

Sunderman commented that the R-6 zoning was left there before there were design standards for parking lots. Sunderman then inquired about the parking lot at the corner of 27th and N Streets. If the buildings north of that parking lot were redeveloped, would they lose that parking? Eichorn suggested that it would depend on the project. Sunderman then suggested that that corner does not provide any green space but a hindrance to further development.

Response by the Applicant

With respect to the apartment building at the corner of 25th and N, Hunzeker clarified that it is a condominium. The meeting invitation went out to the president of the condominium association and there was no response. All of the other property owners on both sides of N Street from 25th to 27th were also notified and no one attended the meeting. Maybe this property is appropriate for commercial redevelopment. It certainly has been zoned for commercial development for quite a long time. The residential strip is not usable for anything. By the time you provide the required front yard setback in R-6, there is nothing left. It is an impediment to the use of this property and it is an appropriate location for redevelopment. The staff has recommended approval. There are no immediate neighbors here to tell you that they are opposed. The only opposition we heard is from the neighborhood association whose boundaries may or may not include this property. The Urban Development map shows N Street as being the south boundary of the Malone neighborhood in this area. Woods Park has a right to express an opinion, being on the south side of N Street, but the concern about what kind of business, etc., is beyond their scope. Whether this project or another is developed on the area zoned B-3, it will be commercial and it will generate some amount of traffic. It will have some design standards that are required to be met, and depending on this decision today, maybe it will happen sooner rather than later.

With regard to traffic, Hunzeker suggested that north and westbound traffic will loop around to N Street to get to the light at 25th Street. He also suggested that the traffic issue about O Street is misplaced because of the direct access to 25th Street. Northbound and westbound traffic will use North 25th Street. Hunzeker is hopeful that the Planning Commission will recognize this area as being appropriate for redevelopment and remove this impediment now, and that this will also encourage redevelopment of the rest of the block.

ACTION BY PLANNING COMMISSION:

June 1, 2011

Larson moved approval, seconded by Taylor.

Larson's concern was traffic, which he believes has turned into a non-concern. He believes the basic reason for asking for this change of zone is the alcohol issue and we ought to just face that. He does not want to put up a bunch of bureaucratic barriers in front of someone who must make an investment to improve the economic development of an area that really needs it.

Esseks agreed that we should not stop redevelopment here. The Antelope Valley Redevelopment Plan calls for redevelopment in this area. But, we obviously have to be concerned about the interests of other citizens. As for the property owners who have invested in their properties on the south side of N Street, those are not really residential properties in a traditional sense, but rather a law office and two ~~central~~ social service areas

agencies. He is not sure the value of their property will be diminished by viable commercial uses across the street. (****As corrected by Commissioner Esseks****)

Gaylor Baird believes that is a reason to examine this from another angle, i.e., the Antelope Valley Redevelopment Plan calls for mixed use, and it talks about how this particular portion of O Street is supposed to be an attractive entry corridor. It also has specific language about improving the fragmented retail corridor right there. There is conflict between this and a subarea plan in our Comprehensive Plan. She is not excited about this project because in the past year, the Planning Commissioners have sat on the committee and looked at ways to encourage mixed use development and this is exactly where we have been talking about it. We want to encourage mixed use and alternative modes of transportation. A gas station, a convenience store, and a car wash are not going to help us get there. It is not comforting to her to rezone property in the absence of some of the property owners in question. It is not clear that the neighborhood association is entirely supportive or that the neighbors are supportive. Right now the R-6 is providing an existing green space buffer that may or may not go away. She will not support this change of zone.

Lust acknowledged that this particular property is on O Street. She also acknowledged that O Street is an entrance corridor. But we have had this entrance corridor with a vacant building for four years. The neighborhood association has expressed concerns but in general they are highly supportive of development of this corner. Commercial development can occur there no matter what we do, and the design standards have changed since this buffer was created. When looking at the people coming into this community on O Street, Lust believes it is a lot better to have a newly developed property than to have a vacant building that the neighbors even describe as an eyesore. So if we want to improve the area, approving the zoning change improves the area. It may not be perfect and may not be what we want, but that is not our role. Our role is to decide whether this 25' R-6 has outlived its usefulness and to determine whether we can encourage something better. Clearly this is better than a vacant building.

Partington commented that from a logical standpoint, there is no other use for that property and he thinks it is the rational thing to do.

Cornelius pointed out that the Commission has been talking for months in another venue about the long range plan for this community – about removing obstacles and creating opportunity for redevelopment. The concerns expressed by the neighborhood association are exactly the description of or contribute to the description of a good development – they enhance or at least maintain the safety of the area, including, e.g. having a restaurant that serves food. We are also presented with a land use situation that is to some extent nonsensical in a modern zoning ecosystem including the design standards used. Cornelius has come to the conclusion that this is an opportunity for good redevelopment. Redevelopment is to some extent blocked by the existence of the R-6 strip, which isn't even performing the function for which it was intended. This is a really under-utilized area of land, particularly on the N Street side. It is a red herring that we talk about in the

development of O Street because it is a strip of under-utilized land. We know what B-3 means. There isn't a whole lot of uncertainty there. The neighborhood association will be given the opportunity to meet with the applicant and he is hopeful that any concerns the local residential neighbors have can be addressed by the applicant at that meeting. Cornelius suggested that we need to use this opportunity and move forward. B-3 does facilitate mixed use development.

With the information that has been given during this testimony, Taylor indicated that he is comfortable and believes it is incumbent upon the Commission to vote positive. He expressed appreciation to the neighborhood association for expressing their concerns. He will agree with the staff recommendation.

Esseks endorsed Gaylor Baird's concern about the quality of the development. This is not an extraordinary development in terms of quality. But, hopefully, by approving this application, we will enhance our community's reputation for being open and fair to developers, but at the same time he wants to implore our Urban Development Department to go out and recruit the mixed use quality development which is the goal of the Antelope Valley Redevelopment Plan.

Cornelius agrees that this may not be the best quality development; however, what we have is an opportunity - an entire block that can be redeveloped – we have a developer coming to us telling us that there are problems finding that much land all together. This is an opportunity for a developer in our community and he hopes they can meet our expectations coming forward.

Sunderman stated that he will support the change of zone because it will simplify matters on this block. We have tools in the basket to compensate for the R-6 strip. The development of the block will be much easier now. As far as the convenience store, he thinks it will be a good part of the neighborhood; it will supply quick shopping possibilities for the residents; we are an auto-based society and still in need of these gas facilities; there is no reason to think they are not quality and he has no doubt the applicant will put in a quality business.

Motion for approval carried 8-1: Partington, Esseks, Francis, Cornelius, Taylor, Larson, Lust and Sunderman voting 'yes'; Gaylor Baird voting 'no'. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 11018
TEXT AMENDMENT TO TITLE 27
RELATING TO THE H-2 HIGHWAY BUSINESS DISTRICT
AND ASSEMBLY FACILITIES
and
CHANGE OF ZONE NO. 11017
FROM B-1 LOCAL BUSINESS DISTRICT TO
H-2 HIGHWAY BUSINESS DISTRICT,
ON PROPERTY GENERALLY LOCATED
AT NORTH 45TH STREET AND VINE STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 1, 2011

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

Ex Parte Communications: None.

Staff recommendation: Approval.

Staff presentation: **Tom Cajka of Planning staff** submitted one letter in opposition from the owner of the property in the shopping center on the south side of Vine Street, with concerns that the change of zone is inconsistent with the retail corridor and there are no incentives to draw people to the area. She believes this use should be in an industrial park area. Cajka also submitted a letter in support from the general partner of Gordmans in support, suggesting that light assembly is compatible with the uses in the H-2 district and is less intensive than manufacturing.

Cajka explained that the purpose of the proposed text amendment is to add assembly facilities as a conditional use in the H-2 Highway Business District and to eliminate the 20,000 sq. ft. floor area limitation in this district. The specific text provides:

(k) Assembly facilities, including but not limited to the assembly of equipment, instruments and appliances such as computers and musical instruments.

(1) Assembly facilities may include limited fabrication of finished parts to be used in such assembly.

(2) Assembly facilities shall not be converted to a permitted use unless all parking requirements of Section 27.67.020 for such use are met.

(3) All storage and display of merchandise shall be screened from public view by a fence, walls, shrubs, material obstruction, or all such storage and display shall be within the enclosure walls of a building.

Cajka further explained that “assembly facilities” are not manufacturing – it is assembly of pre-made components into finished products. Other conditional uses allowed in H-2 include contractor yards, recycling centers, vehicle body repair shops, auto sales, etc., and

staff believes that assembly facilities are compatible with other uses currently allowed in H-2.

Cajka further pointed out that the second part of the text amendment is to eliminate the 20,000 sq. ft. limitation of floor area for retail in H-2. B-1 does not have this size limitation. Along this North 48th Street corridor there are several big boxes that are adjacent, including Target, Super Saver, Best Buy, etc., which are in B-1 zoning but their parking is H-2 zoning. This was a way to get around the 20,000 sq. ft. limit in the H-2 district. More recently, the new HyVee was rezoned in order to also get around the 20,000 sq. ft. limitation. Staff believes that eliminating the 20,000 sq. ft. limitation will eliminate future rezoning requests to get around that limitation.

With regard to Change of Zone No. 11017 from B-1 to H-2 on property on the north side of Vine Street (the former Gordmans Store) from 45th Street east, Cajka explained that this change of zone is being requested to have an assembly facility in the building. H-2 is defined as a district for redeveloping areas intended to provide business and services oriented to major arterial streets. This H-2 would be across from residential, although there are several areas that already have existing H-2 abutting a residential district. Along the south side of O Street there are single family and duplex developments. Throughout the area there is quite a bit of H-2 abutting residential districts. The setbacks between H-2 and B-1 are the same for the front yard and rear yard. If abutting a residential district, the side yard is larger in H-2 than in B-1. A lot of the uses are similar between the B-1 and H-2, such as bank, service station, restaurants, retail uses. Some uses in H-2 but not B-1 include auto sales, mini-warehouses, recycling center, vehicle body repair shops. Although those uses are allowed in H-2, it is unlikely that anyone would use the building for any of those uses in this specific situation with the building being 100,000 sq. ft.

Upon further discussion, it was agreed that the word "chapter" should not be stricken from Line 21 on page 2 of the ordinance.

Cornelius wondered whether assembly facility is a use by special permit in either B-1 or H-2. Cajka stated that it is not. Currently, assembly facility is only in H-3 as a conditional use.

Esseks suggested that because this particular property is next to residential uses, the possibility of excessive sound or smell has to be taken into consideration. What is "limited fabrication of finished parts"? What does that mean? Are there sounds or smells that could be detrimental to the lifestyles next door? Cajka explained that to be how it is listed in the H-3 district and that text was basically copied to the H-2 for this text amendment.

Steve Henrichsen of Planning staff offered that in this case it is not referring to "finished" as a lacquer, but as a reference to complete and make a single part to go along with the rest of it. You may have 100 parts to make one thing. You may get 95 shipped in in boxes and put them together, but because of the nature you may need to create five parts

yourself to finish the whole thing off to make the 100 parts. We did not mean it to be so restrictive such that you could not make even one part to finish your product. In other words, it allows you to make, to a limited degree, some parts for the whole.

Cornelius wondered whether there are any examples of H-3 adjacent to residential in Lincoln. Cajka did not look at that issue, but assumes there are.

Proponents

1. **Jennifer Strand** with Woods and Aitken Law Firm, 301 So. 13th, Suite 500, appeared on behalf of **A.G. Realty Limited Partnership**, the owner of the building requesting this text amendment. A.G. Realty has a letter of intent with a local business that has outgrown its facility. They have not finalized the lease and thus are not releasing the name of the business at this time. Strand suggested that the use would be characterized more as a corporate headquarters with the incidental use of light assembly. The Gordmans building is 100,000 sq. ft. and it is anticipated that one-third will be used for light assembly and two-thirds for office. Light assembly does not include manufacturing. There may be some welding at most. It is a very clean use and is in no way characterized as an industrial use. It is compatible with the neighborhood. It will employ 150 individuals who will utilize the retail and restaurant services in the neighborhood. It is very difficult to find a creative use for the big box space that is vacated. Retailers have very specific requirements, so this is a creative adaption of what is currently a vacant building. There will be significant improvements made to the building – installing windows for natural light in the office portion, as well as repair and restriping of the parking lot and updating the landscaping as a corporate headquarters of a local business.

Gaylor Baird observed that the Planning Commission has been giving thought to how to use retail sites of this scale for redevelopment. There is a reason to get excited about this project. But when you change the zone it is changed for good. Would your client be open to entering into a zoning agreement to limit some of the heavier uses described in H-2 in case they vacate in the future? Strand does not believe the client, tenant, or owner would have a problem with that. There are similar use restrictions in the lease that is currently being negotiated. It will look like a corporate headquarters. The light assembly is not an intensive use. It is not manufacturing and it is not industrial.

Opposition

1. **Ann Bleed**, who lives in the East Campus Community Organization neighborhood (ECCO) testified, not necessarily in opposition, but with concerns about the change in the H-2 description as it applies to “assembly facilities.” This text amendment applies to all H-2 properties city-wide. It is not just this piece of property. ECCO would love to see this building be reused. But, as pointed out in staff report, there is a lot of H-2 zoning along 48th Street on the edge of this ECCO neighborhood. If you make the change and add assembly facility to H-2, then at what point would we be able to stop somebody from really doing what

we would consider as not being simply assembly but some kind of manufacturing that has noise or fumes? What kind of legal redress would there be to go back in on that H-2 zone to say no, this is not simply assembly but manufacturing. She wonders if it might be a good idea to do a little more thinking about the definition of an “assembly facility”. How would you prevent someone from slipping over the line in the H-2 area which is very prevalent on the edge of our neighborhood?

Rick Peo, City Law Department, explained that the issue with text amendments is, do you submit only the applicant’s requested changes, or does the staff make changes to make the amendments better? Peo explained that the staff tends to take a limited approach and that is why the language “not otherwise permitted in this chapter” was left in. This makes it explicit that we are talking about a permitted use in this chapter as opposed to being implied. Sometimes the other concern is that we have permissive zoning which means that unless you are listed, you are prohibited. The Planning staff has been looking at trying to go to some type of use-type concept to simplify this type of concern. Assembly facilities are allowed in other districts so we would need to amend all districts if we change the definition.

Esseks suggested that the concept of “assembly” is different from manufacturing. So can we be confident and ease the concerns of Ms. Bleed that this would not be a license to have noisy, smelly manufacturing? Peo confirmed that “assembly” is putting pieces together and not manufacturing, with minor exceptions. Those minor exceptions would be reviewed by Building & Safety or the Planning Department on a case-by-case basis.

Sunderman asked what protections the neighborhoods have from any negative results of things happening in this building or any building in H-2. Peo suggested that there are potential civil remedies for injunction if it becomes a nuisance. They will be required to comply with the health codes and noise ordinances. And, if 2/3 of the building is office, there should not be a problem because any nuisance would be detrimental to themselves as well as the neighborhood. If a new use were to come in, there would be Planning Commission review with a specific application and testimony. If it appears that the use is being abused, someone could petition to have the zone changed back to B-1.

Response by the Applicant

Strand does not believe this text amendment allows manufacturing in any H-2 zoning district and the neighborhood could use the recourse suggested. They are very close to finalizing the lease between Gordmans and the company and that announcement will be made before the City Council hearing so that the user can be present and articulate their views.

CHANGE OF ZONE NO. 11018
ACTION BY PLANNING COMMISSION

June 1, 2011

Taylor moved approval, seconded by Esseks.

Taylor believes this is a very good text change. It doesn't cause any problems and solves a lot of potential situations. There will not be any manufacturing done.

Cornelius agreed. The removal of the 20,000 sq. ft. restriction is valuable considering how we have poked holes in H-2. He shares the concerns raised by Ms. Bleed with regard to the impact that the language regarding "assembly" will have, but he trusts that we can use the condition process to avoid easily imagined scenarios where computers are being assembled out of 99 pre-manufactured parts versus a circuit board that is manufactured on-site which has an extremely negative impact on the area. It is a messy process and one part. That is something that is going to have to be considered every time one of these comes forward.

Motion for approval carried 9-0: Partington, Esseks, Francis, Gaylor Baird, Cornelius, Taylor, Larson, Lust and Sunderman voting 'yes'. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 11017
ACTION BY PLANNING COMMISSION:

June 1, 2011

Taylor moved approval, seconded by Gaylor Baird.

Gaylor Baird was hoping to add a friendly amendment to require a separate zoning agreement that limits the more intensive uses of H-2 listed in staff report, i.e. recycling center, vehicle body repair shop and vehicle sales in the front yard, etc.

Marvin Krout, Director of Planning, approached indicating that he understands the intent and the applicant's agenda and a zoning agreement could be drafted that would be acceptable, but there are some questions about some of the uses on the list, such as parking lot. He agreed to work something out before this is scheduled on the City Council agenda. He suggested that the Planning Commission could make a recommendation of approval, contingent upon a zoning agreement.

Henrichsen suggested that the motion could be approval, subject to a zoning agreement that limits the more intensive uses to the satisfaction of the Planning Department.

Taylor withdraw the main motion and the seconder agreed.

Taylor moved approval, subject to a zoning agreement that limits the more intensive uses of the H-2 zoning district, to the satisfaction of the Planning Department, seconded by Esseks.

Sunderman is confident that the applicant and City Council will come through with an appropriate zoning agreement to take care of any of the Planning Commission's concerns.

Cornelius believes the motion will both protect and be a benefit to the residential neighbors to the west.

Motion for approval, subject to a zoning agreement that limits the more intensive uses of the H-2 zoning agreement, to the satisfaction of the Planning Department carried 9-0: Partington, Esseks, Francis, Gaylor Baird, Cornelius, Taylor, Larson, Lust and Sunderman voting 'yes'. This is a recommendation to the City Council.

Five minute break

SPECIAL PERMIT NO. 11010
FOR AUTHORITY TO OPERATE A LIMITED LANDFILL
ON PROPERTY GENERALLY LOCATED AT
U.S. HIGHWAY 34 AND N.W. 48TH STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 1, 2011

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

Ex Parte Communications: None.

Staff recommendation: Conditional Approval

Staff presentation: **Mike DeKalb of Planning staff** explained the proposal for a limited landfill for a period of six months for a local dump on a 3-acre parcel at NW 48th & Hwy 34. It is not garbage but rather concrete and building demolition debris which currently exists on the site about 900 feet south of the proposed limits of the proposed special permit. The applicant will be required to receive a permit from the Health Department, and there are additional conditions which require a bond, a two foot cap, and identification of the minimum flood corridor to provide proper site drainage.

Francis confirmed that this special permit is for the purpose of filling in some low lying area that could be used later. DeKalb agreed.

Lust noted that there has already been dumping on this property without the proper permit. DeKalb concurred. This special permit will fix the problem.

DeKalb clarified that this special permit will allow the applicant to move some rubble that is on the land improperly. It will be covered and will meet Health Department regulations requiring a two foot earth cap. The time limit recommended is six months.

DeKalb also clarified that Condition #2.1.4 revises the notes on the plan to state that this landfill shall not be open to off-site fill. It shall only be used to accommodate the improperly dumped rubble on the site.

Francis sought confirmation that there would not be any hazardous material – no asbestos. DeKalb concurred. The Health Department should monitor and approve what's going into the landfill.

Esseks wondered what is being done about the illegal dumping as far as obeying the law. It is DeKalb's understanding that the landowner is under orders to remove the improperly disposed rubble, at the owner's cost, without any compensation.

Proponents

1. Mark Hunzeker appeared on behalf of the applicant and owner, **John Zakovec**. He agreed with the conditions of approval set forth in the staff report.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

June 1, 2011

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

Larson expressed that he shares the question asked by Commissioner Esseks with regard to any penalty for illegal dumping, but it is being taken care of by this special permit and there will be costs to move it again.

Motion for conditional approval carried 9-0: Partington, Esseks, Francis, Gaylor Baird, Cornelius, Taylor, Larson, Lust and Sunderman voting 'yes'. This is final action, unless appealed to the City Council within 14 days.

There being no further business, the meeting was adjourned at 3:40 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on June 15, 2011.