MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, December 14, 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, Greg Butcher, Michael Cornelius, Dick Esseks, Wendy Francis, Chris Hove, Jeanelle Lust, Lynn Sunderman and Ken Weber; Marvin Krout, Steve Henrichsen, Nicole Fleck-Tooze, Brian Will, Christy Eichorn, David Cary, Brandon Garrett, Rashi Jain, Sara Hartzell, Jean Preister and Teresa McKinstry of the Planning Department; media and other interested citizens.
STATED PURPOSE OF MEETING:	Regular Planning Commission Meeting

Chair Michael Cornelius called the meeting to order and acknowledged the posting of the Open Meetings Act in the back of the room.

Cornelius then requested a motion approving the minutes for the regular meeting held November 30, 2011. Motion for approval made by Francis, seconded by Esseks and carried 9-0: Gaylor Baird, Butcher, Cornelius, Esseks, Francis, Hove, Lust, Sunderman and Weber voting 'yes'.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: **December 14, 2011**

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

The Consent Agenda consisted of the following items: **SPECIAL PERMIT NO. 11029 and SPECIAL PERMIT NO. 11031.**

Ex Parte Communications: None

Item No. 1.2, Special Permit No. 11031, was removed from the Consent Agenda and scheduled for separate public hearing.

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

Note: This is final action on Special Permit No. 11029, 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.

SPECIAL PERMIT NO. 11031
FOR A PARKING LOT IN A RESIDENTIAL DISTRICT ADJACENT TO A CHURCH,
ON PROPERTY GENERALLY LOCATED AT SOUTH 1ST STREET AND G STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: December 14, 2011

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

There were no ex parte communications disclosed.

Staff recommendation: Conditional approval, as revised.

Staff presentation: **Rashi Jain of Planning staff** presented this application for a parking lot behind a church. The existing house will be removed and used as a parking lot. The applicant is requesting a reduced front and side yard setback to the east. The conditions of approval require additional landscaping. The staff has also made a revision to Condition #2.1 as follows, which has been agreed upon by the applicant:

2.1 Increase the width of the driveway on G Street to 25 feet ~~from property line~~ with ~~a~~ 15 feet radii for a 55 feet wide curb cut. The driving aisle within the parking lot may remain 24' wide. ~~turning radius and a 25 feet curb cut~~.

Proponents

1. Pastor Rob Rexilius, 5630 Ezekiel Place, appeared on behalf of the applicant. He is the relatively new pastor for what used to be First German Congregational Church at 1st & F Streets. It is now known as First Street Bible Church. The church was built in 1920. Up until February of 2010, there was a declining congregation that met there. They were down to about 12-15 people and they called Faith Bible Church and requested help. Pastor Rexilius stated that he was commissioned by Faith Bible Church in February or March of last year, along with about 75 of their church body. The congregation is now about 140 on a Sunday morning, so they went from about 8 households with a gravel parking lot on the south side of the alley that parks about six cars, to 60 households represented in the church body. On a given Sunday, there are 40-50 cars that are parked at the church. In

addition to convenience for the congregation, the church is interested in creating more parking for the few hours on a Sunday morning. In addition, the Foodnet site that used to be at 8th & D Streets is requesting to operate out of this church building. That has caused some parking concerns as well. The primary purpose for this special permit is to ease the parking, whether it is a special event or each Sunday morning, and then Saturday morning for the Foodnet. Without this special permit, there is only room for 13 cars to park. This special permit will allow 25-36 stalls plus the 6 stalls on the south side of the alley.

Pastor Rexilius advised that the applicant has talked to a number of the members and neighbors and all of the response has been positive, except for one neighbor concerned about the established trees having to be removed.

Pastor Rexilius offered that this is a property that has been deteriorating for a number of years, but the church facility has been maintained well by the members. The church membership is committed to a future there and would request and appreciate approval of this special permit to allow the most off-street parking possible.

2. Dave Johnson, Studio 951, 800 P Street, also appeared on behalf of the applicant to answer any questions.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION: December 14, 2011

Francis moved to approve the staff recommendation of conditional approval, as revised, seconded by Esseks.

Francis believes this is a great opportunity to help bring a neighborhood back and keep it thriving. It is nice to see the church is growing.

Gaylor Baird expressed appreciation for the agreement to provide landscaping where adjacent to other residences.

Motion for conditional approval, as revised, carried 9-0: Francis, Lust, Butcher, Gaylor Baird, Weber, Hove, Sunderman, Esseks and Cornelius voting 'yes'. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 11040,
TEXT AMENDMENT TO TITLE 27 OF THE
LINCOLN MUNICIPAL CODE RELATING TO
SPECIAL PARKING REQUIREMENTS FOR ROOMING AND
BOARDING HOUSES AND FRATERNITIES AND SORORITIES.
PUBLIC HEARING BEFORE PLANNING COMMISSION: December 14, 2011

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

There were no ex parte communications disclosed.

Staff recommendation: Approval.

Staff presentation as applicant: **Christy Eichorn of Planning staff** explained this proposal to remove the gender distinction on parking requirements for fraternities and sororities. These parking requirements have not been updated since 1979. The staff spent some time researching other communities in regard to the parking requirements, particularly college towns. It was found that there is a wide variety of parking standards. Some were based on per resident; some like ours today based on livable square footage (which is hard to define); some based on the number of beds; some based on 1:1 ratio, and most commonly a 2:1 ratio. In addition, staff researched the Lincoln community and the universities and colleges that we have in terms of location in proximity to the colleges that they service and in what zoning districts they are allowed. Today, fraternities and sororities are only allowed in R-6, R-7 and R-8 by right. And generally, those zoning districts are in proximity to the location of the universities.

The staff is suggesting that the parking requirements would be easier to understand based on a per resident ratio rather than a livable square footage ratio. For both fraternities and sororities, it appeared that the closer they are to the university, potentially the less parking they might need. The legislation is drafted such that if the fraternity or sorority is more than 600' away from a university campus, the facility would be required to have .75 parking stalls per resident, and if closer than 600', then it would be reduced to .5 stalls per resident.

Eichorn pointed out that currently, many of the fraternities and sororities in Lincoln are located on UNL main campus, which is B-4 zoning. B-4 zoning does not have any parking requirements. A lot of those fraternities are pre-1979, which means they were built without parking requirements and they would not be required to meet the parking requirements after this text change unless they wanted to add to their building and have more residents.

Eichorn also pointed out that rooming and boarding houses are currently part of the zoning ordinance and are only allowed in the B-4 District basically because they are not

mentioned anywhere else. Again, there are no parking requirements in B-4. Therefore, this text change removes the parking requirements for rooming and boarding houses, taking away that reference in the code.

Esseks was curious about where the .75 and .50 ratios came from. Eichorn stated that they are similar to those being used at KU.

If a fraternity or sorority were to expand, Butcher wanted to know how they would have to comply with the parking standards. Eichorn suggested that it is going to depend on how they do the expansion. Internal renovations that would cause more beds would not affect their parking. If they were to add a building and connect together, it would trigger more than a 50% improvement and they would be required to meet the parking standards. However, if they are in a historic building, there is the option to apply for a historic preservation permit to have some leniency on the parking. There is also the potential to apply to the Board of Zoning Appeals for parking adjustments. In addition, if they are currently a nonconforming use, there is the possibility to apply for expansion of a nonconforming use, which would be reviewed on a case-by-case basis regarding adequate parking.

Butcher confirmed that this amendment will affect all new fraternities and sororities built. Eichorn agreed.

Butcher then inquired whether the new fraternity proposed on Holdrege Street across from East Campus meets this proposed requirement. Eichorn believes that facility will meet the requirement. This text change, however, is not retroactive.

Hove wondered how many of the existing facilities will conform to this guideline or be grandfathered. Eichorn stated that the staff has not made that determination and does not know how many would become nonconforming with this text amendment. Hove imagines that most of them would be nonconforming. Eichorn agreed.

Opposition

1. Ann Bleed, 1315 N. 37th Street, appeared on behalf of the **East Campus Community Organization (ECCO).** She stated that the Organization is not opposed to the need for the basics of this text change. They understand the need for parking for fraternities and sororities. In fact, not long ago, ECCO testified in support of the AGR Fraternity change of zone to allow a new building on Holdrege Street in the neighborhood. ECCO recognizes that fraternities are an important part of the unique fabric of their neighborhood and want to work with them to make sure they are functioning in the neighborhood. However, wherever you have land use issues that are different, there is always a potential for conflict, and parking is definitely a conflict between the neighbors and the university fraternities.

ECCO has some questions about the assumption used in this text amendment. According to statistics developed by UNL, over 90% of the students have cars when they come to campus, and a good number have two vehicles. The students who do not have cars are primarily foreign students or people financially challenged. Therefore, it is very likely that over 90% of these students in fraternities and sororities will have at least one vehicle. Furthermore, based on ECCO's conversations with fraternities, most of the students do have cars; they do use these cars, especially near East Campus, to go downtown, to a movie, to a restaurant or to a party. A lot of times these cars are not used to go to campus. So they do have cars and two of these fraternities are also within 600' of the university.

ECCO has questions about the assumption that just because you are close to the university, you are going to have less cars or you will have other parking spaces. The fraternity members do not park their cars on East Campus. They park in the parking lot by the fraternity or on the street. The ECCO neighborhood already has parking problems on the street because of the proximity to the university. For these reasons, Bleed indicated that ECCO questions the 600' assumption.

Another more minor question relates to the fraternities and sororities in R-6 zoning. Bleed assumes that this particular requirement for parking takes precedence over the general requirement for parking in R-6.

Bleed reiterated that ECCO is very interested in working with fraternities in their neighborhood, but until there is a better understanding of the basis of the 600' assumption, ECCO questions that assumption to require .5 parking spaces per resident as opposed to .75.

Lust wondered whether Bleed was saying ECCO would rather have the fraternities be required to have a 1:1 ratio for parking so that they are not parking on the street. Bleed stated that she is concerned about the .5 simply because they are within 600' of the university. Based on ECCO's understanding in talking with students, just because you are within 600' does not mean you are not going to have as many cars. That assumption is what we would like to have more information upon because it does not appear to be correct. We understand that the existing fraternities are grandfathered; however, it is possible that in the future the fraternities will grow and will want to construct a larger facility.

Lust asked whether Bleed is suggesting that there not be the .5, but rather .75 across the board. Bleed stated that her first question is whether we can substantiate the assumption that you don't need as many parking places. If that assumption is correct, ECCO might agree, but they question that assumption. Unless there is a real push to have this text amendment proceed soon, ECCO would like to have more information and more opportunity to work out some of the issues.

Esseks asked staff to address Bleed's comments. Eichorn stated that one of the reasons staff considered the proximity was in relation to thinking about other dwelling type units

currently located on university campuses, specifically dorms. There are no parking requirements or ratios for the dorms at UNL or Wesleyan. They just build parking lots and give out parking stickers on a first come-first serve basis. The fraternities and sororities, especially those close to campus, function in a similar way. Staff had the expectation that the students might have a car just like a dorm resident would. All of the parking facilities on campus could potentially be used by fraternities and sororities as well. We thought that it would be fair to assume that there would be a portion of those students who would park their cars on campus in the student parking lot (especially if 90% really do have cars) and keep them there because there is no parking on their fraternity or sorority lot today. It was based on the assumption that they would leave their cars there and everything would be in walking distance if within 600'. Eichorn acknowledged that there is no kind of scientific fact to prove that assumption – just a general observation of how staff thought students might move on and off campus and facilities. It would then be the expectation that those students living in facilities further away from the university would get in a car or at least car pool. Staff believes that it would be better to have a higher parking standard for that situation.

With regard to the AGR Fraternity on East Campus, Eichorn explained that the parking requirement agreed upon for that new facility was .5, so it would fall within what is being proposed in this text amendment. When that discussion took place, one of the things that the community did not want to see was high parking requirements that would require the fraternity to tear down houses to put in more parking stalls where the parking needs might not be necessary.

Cornelius observed that this seems to be changing the entire approach to allotting parking for fraternities and sororities – going from the livable space model to the resident model. Is there value to deferring this? Eichorn stated that staff did look at the livable square footage ratio but there is no definition for “livable square footage”. Student housing that is generally further away from campus and in a community unit plan is based on a 1:1 ratio as opposed to livable square footage. We don’t have very many parking codes today based on livable square footage, but rather based on dwelling units or 1:1. We were trying to find a better solution.

Cornelius expressed his concern about making this change. He does not believe there is any dispute that 90% of the students have a vehicle, in which case, we are forcing half of those residents to park on the street or somewhere else. His experience is that there is a lot of parking on the street as opposed to buying a parking permit. Since we are making the change, doesn’t it make some sense to try to resolve this conflict? He stated that he is totally sympathetic to the fact that we do not want acres of parking surrounding these fraternity and sorority houses, but because this seems to be a complicated issue, maybe a deferral is in order. Eichorn suggested that to determine whether there is going to be a value to deferring, we need to focus on the question. Should there be one flat standard, and should that be .5 or .75? Maybe there is a third question as to something other than that. Staff has worked for several months in coming up with the .5 and .75. She does not

know that she will be able to come back with any other research or scientific facts beyond what we have now. The other challenge is trying to figure out where to draw the line. The reason we used 600' is because in our code today, you are allowed to have parking off your premises within 600' in order to meet your parking requirements. If we want to go with one number, then we have to determine whether we are comfortable with those students who live within 600' meeting the same parking requirement and same needs as those folks who just bought an old house that they are going to use down at 27th & Old Cheney. Do they need to have the same parking standard as those who live across the street from the university? Eichorn did not know whether staff would be able to come up with any better solution with a deferral.

Esseks confirmed that the lower ratio of .5 for fraternities and sororities located within 600' is based upon the assumption that there are student parking spaces available 24 hours a day, seven days a week. Eichorn stated that it is the assumption that a student who lives in a fraternity would have opportunity to go to the university to get a year long parking pass to park on campus. Esseks asked whether we know from the parking manager at UNL or Wesleyan that they are allowed to park there 24 hours 7 days a week. Eichorn did not know and did not ask that question, but she assumes it would be 24 hours.

Eichorn pointed out that the parking requirement in R-6, R-7 and R-8 is 1:400 sq. ft. in R-6 and R-7, and 1:700 sq. ft. in R-8, which is much lower than .5 and .75. Today, if you are in one of the higher density districts it would be very common to find three unrelated people living in an apartment, with all three of them having cars. Today the code only requires 1 parking stall for each of those apartment units. We are requiring more for fraternities and sororities than what we are requiring for apartments in the same district.

Butcher suggested that perhaps the ratio should be based on proximity to downtown as opposed to the university. Maybe the needs are different at the different campuses. Eichorn believes this is a good point and staff might consider how we might do that. Staff ended up with this language because we were trying to keep it simple.

Butcher thinks the division is the 24-hour residential leak. He does not believe that the downtown fraternities and sororities have the residential leak out into the community like you do at the other campuses. Eichorn suggested that consideration could be given to .5 if within 600' of the main campus (UNL), with .75 at all other campuses. Butcher agreed that is the idea but he does not know whether that is feasible.

Gaylor Baird suggested that the decision should be based on what problem we are trying to solve. The gender equity issue is clear. Are there other problems that have compelled staff to bring up this amendment about the ratio of parking to number of residents? Eichorn indicated that she contacted the Lincoln Police Department, UNL Police, UNL Parking Division, Nebraska Wesleyan and Union College. None of these entities indicated that they have ever had any problems with parking and fraternities and sororities. They are allowed to park in the public right-of-way. They don't get very many complaints. By adopting these

numbers, Gaylor Baird wondered whether we are changing anything in practical terms or is this roughly what the parking ratios are today in these facilities? Eichorn reiterated that it is hard to define “livable square footage”. If we assume that in one fraternity you have a bedroom that is 400 sq. ft. and four people in that bedroom and another one with two people, etc., etc., there are no rules or regulations to say how many people you can fit into a particular area. From a zoning perspective, there was no way to draw that table and to give an accurate representation. Gaylor Baird then clarified that the intent of the text amendment is not to change parking – just to clarify. Eichorn agreed.

Cornelius wondered whether the staff would want to have a workshop if they voted to defer this application. **Marvin Krout, Director of Planning,** suggested that the Commission could defer for six weeks with a workshop in four weeks. This has become more complicated than he expected. Eichorn suggested that if the Commission votes to defer, a workshop would be helpful. She believes that staff did put their best foot forward with this amendment and did spend a lot of time on it. Staff would need guidance.

Francis knows that East Campus is a very unique situation and it’s hard to know who is parking where, whether it be a resident of the fraternity or sorority or just a general student. She does not know that parking issues are ever going to be resolved.

Butcher believes that the problem is the 24-hour parkers. People come to East Campus, park there and go to class for their day or hour – they don’t stay for 24 hours, but the residents of these facilities park there as residents. They are the ones parking overnight and for long periods of time rather than other students attending the school.

Gaylor Baird suggested that we are not here today to talk about those problems because we have not had those complaints. We are trying to amend for gender equity purposes and to just try to enumerate in real numbers what the existing situation is today, not based on livable square footage but in terms of a resident ratio. She is comfortable with trying this and seeing how it works. We don’t have any data to try to do differently.

Lust asked how long the staff has been working on this proposal. Eichorn advised that the original question came in about a year ago and it was researched over the summer. Staff took this proposal to the Mayor’s Neighborhood Roundtable. It has probably been in process for six months. Lust wondered whether anything would be done differently if this is deferred. Eichorn suggested that if the Commission chooses to defer, the staff would need a workshop for the Planning Commission to give additional direction.

Esseks wondered whether students within 600' can find 24 hour parking over several days a week. If they can, the distinction between .5 and .75 becomes meaningful. Eichorn responded that she would like to say that every student on the university could pay a parking fee and get a parking permit. But not every single student at the university is able to get one of those parking passes.

Sunderman inquired whether the .5 is on par with the zoning districts within which the fraternities and sororities would be located. Eichorn stated that today, multi-family dwelling units would require 1 parking stall per dwelling unit. It is very likely that you could have three cars per dwelling unit.

ACTION BY PLANNING COMMISSION: December 14, 2011

Lust moved approval, seconded by Francis.

Lust believes the staff has worked on this for a very long time and researched as much as possible. They have answered the questions that can be answered. She is concerned that there will be no more information if this is deferred. She is comfortable with the work that has gone into this proposed change. The goal was to correct the gender equity in the ordinance and to have the ordinance make sense. This makes a lot of sense. She is worried that if we defer we are trying to solve a problem that does not exist.

Gaylor Baird commented that she is also comfortable voting on this proposal today. If there are some unintended and unforeseen consequences, we can deal with them as they arise.

Cornelius agreed that we need to keep in mind the reason for this change. He is sympathetic to the idea that livable space doesn't make a lot of sense, but changing the entire way we measure the parking average for fraternities and sororities does nothing to resolve gender bias in the ordinance. This would have been simple to vote upon had the change been to strike the sorority language and roll them together, and then if we need to make a change to how we measure the parking spaces, we could do that and have that debate at that time. All that being said, he stated that he will vote in favor of this change. He believes it is already the case that people who attend the university have trouble finding parking and they sometimes park on the street.

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

**COMPREHENSIVE PLAN AMENDMENT NO. 11001
TO REVISE LANGUAGE IN CHAPTER 7,
NEIGHBORHOODS AND HOUSING, RURAL AREAS,
TO ENCOURAGE MORE OPTIONS FOR CREATION OF
SMALL LOTS IN THE AG DISTRICT WHILE MAINTAINING
THE OVERALL DENSITY OF 1 DWELLING PER 20 ACRES.
PUBLIC HEARING BEFORE PLANNING COMMISSION**: December 14, 2011

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

There were no ex parte communications disclosed.

Staff recommendation: Approval.

Staff presentation: **Sara Hartzell of Planning staff** explained that this proposed amendment addresses the 20-acre rule. Currently, there is language in the Comprehensive Plan that encourages overall density of 32 dwelling units per square mile, or 1 dwelling unit per 20 acres. There was talk by the County Board about reducing that density, but it has since been clarified with the County Board that their intent is to maintain that constant density.

LPlan 2040 was sent forward in September of this year and during the briefings, the County Board brought up several different amendments and it was determined those amendments needed to go through a public process. The Plan continued through its approval process and these staff reports were posted about three weeks before the normal date that staff reports would be posted for this hearing.

This particular proposal addresses a piece of language in the Neighborhood and Housing Chapter, i.e. the 20-acre rule which states:

> Areas not designated for acreages should remain agriculturally zoned and retain the current overall density of 32 dwelling units per square mile (1 dwelling unit per 20 acres).

This amendment adds language:

> However, consideration should be given to new ways that smaller lots within the County jurisdiction can be subdivided and sold, while still maintaining the overall density and maintaining good access management along the County's section line roads.

Staff would be looking at different ways to create smaller acreage type lots, i.e. 3-5 acres, but maintain that overall density by protecting that portion of land that would come to a total

of 20 acres. Staff is moving ahead with the zoning changes and subdivision changes and drafting language to make sure that this is done correctly and make it as simple as possible. The staff is recommending approval as set forth on page 2, Analysis #1 of the staff report.

Support

1. Tom Keep, 8601 Davey Road, stated that he would support this change as long as it can be administered properly. In other words, he wants assurance that the density of 32 houses per section can be administratively maintained. The problem becomes "somebody came first". Have they already used up the quota? He understands that existing new land that was split out would have to have the additional acreage that would be placed in an outlot. His concern is that the procedure is such that the density can be maintained.

2. Wayne Nielsen, 14000 North 70th Street, stated that he is not sure whether he is in support or against. He has always been in favor of the present 20-acre rule that has been in the Comprehensive Plan in the past. The history goes back to when a committee of us met in the late 1950's to set up a proposal for what to do with acreages in the county, which became the 20-acre rule that was adopted in 1979. The 20-acre rule has more positives than negatives, although he acknowledged that it is not perfect. However, it has reduced urban sprawl in the County.

If changes are to be made in the area of rural density, Nielsen suggested that consideration should be given to the urban sprawl situation. That is foremost and was foremost on our original premises and the affect on rural school districts. The transportation budget is one of the rural school's largest expenses. The more urban sprawl you have and the density increases, the bus transportation gets enormous. Even on cluster arrangements now, the county takes over the maintenance of the road and the buses have to travel into the cluster development and pick up the kids and the rural mail carrier must also go into the cluster development.

Nielsen stressed that there is no shortage of acreages available for people to live upon. There are 20-acre lots where you can farm right up to the house. The 3 to 5-acre lots bring this into question.

3. Mike DeKalb, recently retired member of the Planning Department for 36 years, testified in support. He was involved in the 1977 Comprehensive Plan that produced this language and was involved in writing the text for the AG and AGR in 1979. From his point of view, the 20-acre rule has had a gigantic effect on the growth and sprawl of the city and potential sprawl in the county. It would take forever to fill up Lancaster County. The 20-acre rule of 32 dwelling units per square mile has been very effective in preserving farming, environmental issues, roads and services, and preserving the tax base. It has been very effective in many ways. He is very glad the County Board reassessed their thoughts and clarified their position.

Esseks inquired whether DeKalb experienced problems with telling property owners that they could not create separate lots for their children because the zoning regulations were so restrictive. DeKalb acknowledged that this question has been asked but there are many ways to address it. He has always been able to address it in Lancaster County. There are lots of tools to get there.

Opposition

1. Harry Muhlbach, 14305 North 56th Street, testified in opposition. He stated that he is not against the density. The 20 acres is still a problem. His farm got split up because of an acreage – they were required to panhandle the driveway all the way to the highway. This needs to be stopped. It needs to be an easement. The panhandling separates the property and it land-locks the land. Another problem exists where you have 80 acres. You are entitled to four lots. You have to own the 20 acres and then sell 5 acres out of each 20. Is it saying that you can sell less than 5 acres but you still have to divide the whole 20 acres to begin with? The cost of land is prohibitive.

Muhlbach suggested that maintaining the 20-acre rule, even with the new language, does not appear to be making any changes to make it easier to get to a small lot. There is unproductive ground out there in smaller parcels that should be able to be sold. It is not taking production away. It provides opportunity for someone who does not want to live in town.

Somehow the wording needs to be changed so that the density can stay the same but make it more accessible by the smaller lots. Most people can't afford to buy 20 acres. It is discriminatory against lower income families by making it impossible to live in the country. This rule requires them to purchase more land than they need or would use.

Weber believes the proposed language is the way Muhlbach wants it to be. If you have an 80-acre farm, you can divide it into five small acreages in the corner and retain ownership of the entire farm. Muhlbach agreed that you can do that but you have to go through the planning process.

2. Dave Nielsen, who farms north of Lincoln, testified in opposition. He does not know what he's speaking on. He is concerned about where the County Commissioners might take this. "To encourage more options for creation of smaller lots" is very vague. We have had discussions on this for 18 months and now in the 11th hour three County Commissioners have decided they want to do something different. Where are we going to go with this vague language? He would like to see lower density. Taking the 20 acres down to five has advantages and disadvantages. Maybe you are conserving more farm land, and maybe not. By reducing the costs, is it government's responsibility to make

affordable housing for people out in the rural area without any economic advantage? It puts more strain on county workers, rural fire districts, and schools. The acreages probably don't pay their way.

For example, Nielsen's school children get picked up at 7:35 a.m. and don't get home until 5:00 p.m. That's a pretty long day. More people puts more pressure on the school system and the school buses.

Nielsen also pointed that increasing the density increases the issue of residents not liking the dust during harvest, grain dryer noises, etc. Then you get complaints. Nielsen is very concerned where this might be headed with the County Commissioners that we have in place.

Cornelius sought confirmation from staff that the specific regulations are not in the Comprehensive Plan. These are things that are being considered which are encouraged by the proposed new language. This is an envision of what we are working toward. It is "work in progress" only. Hartzell explained that currently, an 80 acre parcel with a county road can be split into four 20's with a buildable lot with each parcel having their own individual driveway. The code now also allows two 3's per 40 – allows a 40-acre parcel to split off into two buildable lots as long as the total of the buildable space stays at about 10 acres to have a 30-acre unbuildable lot left over. That option allows sharing of the driveways.

With this new language in the Comprehensive Plan, the staff would be looking to expand those opportunities such that on 80 acres, you could bring the two 3's per 40 together. Then all four of the lots can share the driveway. We would also propose some kind of public access easement to provide the possibility of a road at a later date if there were changes, but still maintaining the unbuildable outlot.

Lust suggested that one of the concerns is that you would have to buy the whole 80 acres before you do that. She confirmed that the developer would own the 80 acres but the four smaller lots could be sold individually. Hartzell explained that the individual landowner could have the survey done. It would be a final plat, not a CUP. The shared driveway requires far less engineering. It would be a private driveway.

Esseks believes that Mr. Nielsen raises an important point – although the technical density is 1/20, in reality right now it is a lot less. His argument is that we may be making it less expensive to move out there. Hartzell suggested that if you believe in a market driven economy where supply and demand balance out and determine the price, we do have a very large supply of small lots between our grandfathered lots and our existing CUP's which are cluster subdivisions which are available. We already have the ability to do the two 3's per 40. We have a very large supply of lots out there. She does not believe it will be the tipping point.

Sunderman commented that if he sells off the 4 three-acre lots, he could not build on the remaining 60 acres. Hartzell stated that the remaining 60 acres would be designated as an outlot and would not be buildable but it could be farmed.

Sunderman suggested that most acreages sold now are in the 5-acre range. Hartzell agreed that it is more 3-5 acres as opposed to 20. She has reviewed some lot prices and found many 20-acre parcels that were in the $60,000 to $70,000 range; many 3-acre parcels that were in the same range; and many ½ acre parcels in that price range. Therefore, it appears that you are paying for location and amenities.

Cornelius also pointed out that one of the ways we protect farmers' livelihood is the "by right to farm" legislation. Residential neighbors might complain about their farmer neighbor, but the reality is that the right to farm is protected by law. Hartzell agreed; however, it does not protect you from complaints.

ACTION BY PLANNING COMMISSION: December 14, 2011

Lust moved approval, seconded by Weber.

Francis stated that she is not sure how she will vote. She believes that the 20-acre rule is working quite well the way it is and there is no rhyme or reason to the costs of the lots. It all depends on what it is close to, what it has access to, i.e. rural water, paved roads. She does not know that this is going to benefit anything. She appreciates Mr. DeKalb's testimony . She is not sure we really need this change. She thinks there are avenues in place to get a smaller section out of the 20-acre lot.

Cornelius agreed with Francis. In some ways this seems like a solution in search of a problem. When this was originally raised – the question of higher density development in the County – it raised alarms for a lot of people. Since then, there has been a meeting of the minds and some degree of reconciliation and general agreement that the 1/20 isn't a bad thing overall. The language in the Plan purports us to look for more creative ways to have smaller lots, but there really isn't a market demand for that. In fact, we have a surplus of acreages in the county. He is not sure what purpose this serves other than to increase on infrastructure. He is not sure there is a great degree of value to this.

Motion for approval failed 4-5: Lust, Weber, Hove and Sunderman voting 'yes'; Francis, Butcher, Gaylor Baird, Esseks and Cornelius voting 'no'.

Francis moved to deny, seconded by Cornelius.

Sunderman is interested in coming up with something different than the 20-acre rule. It creates so much confusion and there are so many tools in the basket to use at this point in time.

Motion to deny carried 5-4: Francis, Butcher, Gaylor Baird, Esseks and Cornelius voting 'yes'; Lust, Weber, Hove and Sunderman voting 'no'. This is a recommendation to the Lancaster County Board of Commissioners.

COMPREHENSIVE PLAN AMENDMENT NO. 11002
TO REVISE LANGUAGE IN CHAPTER 7,
NEIGHBORHOODS AND HOUSING, RURAL AREAS,
TO SPECIFY THAT "BUILD-THROUGH" STANDARDS
SHOULD ONLY BE APPLIED TO AREAS WITHIN THE
CITY OF LINCOLN 3-MILE JURISDICTION.
PUBLIC HEARING BEFORE PLANNING COMMISSION: December 14, 2011

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

There were no ex parte communications disclosed.

Staff recommendation: Denial.

Staff presentation: **Sara Hartzell of Planning Staff** explained that this is also a proposal from the County Board. Currently in the city jurisdiction, which extends 3 miles outside the city limits, there are "build-through" requirements that are applied to any cluster development in the AG and AGR districts that are not going to be annexed into the City. The problem that arises from these developments is that they tend to form almost a blockage to development of the City when there are no easements for utilities, no roads planned anywhere, and the houses are in the center of the lot. "Build-through" was an attempt to address those concerns. It was adopted in 2004 by the City Council and recommended by the Planning Commission unanimously.

The language in the 2030 Comprehensive Plan and now in the 2040 Comprehensive Plan encourages the County Board to consider the application and adoption of "build-through" standards for those applications that are in areas that are within the growth tiers of Lincoln but outside the three-mile jurisdiction – areas that Lincoln will be growing into in the next 50 years or beyond. Hartzell showed the areas on the growth tiers map to which this would apply. Some of these areas, particularly Stevens Creek, are areas where the city is making big investments in utilities to serve that future growth area. It is possible that the Tier III areas of Stevens Creek could move into the growth area sooner than the year 2060. The desire is for the County Board to consider the application of these "build-through" standards in areas like that where it is possible that development might occur sooner rather than later. We are not asking them to adopt "build-through" in the entire county, but to consider it during the review of those developments.

The County Board recommendation is to strike the language so that "build-through" is only applicable to areas in the three-mile jurisdiction of the city.

Assuming the County Board does not accept the Planning Commission recommendation to not make any changes to the 20-acre rule, Lust wondered how important the "build-through" standards might be with more of those smaller lots. Hartzell does not believe the issues are tightly linked. Most cases of the "build-through" would have to be done through the CUP cluster development. The final plat for the smaller lots on 20 acres would not require the level of engineering you would need to get the lots platted.

Lust suggested that the "build-through" standards are mostly designed to give people notice as to the appropriate location for their house in an acreage development so that if services reach them they are not in an inconvenient location. Hartzell agreed. The residents of those lots don't have a clear idea of how they would be able to subdivide. This does allow them to think ahead. There is considerable expense to the landowners when annexation occurs and the services come in. This allows them to subdivide and sell a parcel that might help pay for the costs of bringing the services to their house. It could be viewed as a benefit to the property owner.

Hartzell further pointed out that there must be city services before the property can be subdivided. There are written agreements in the subdivision that provide that no owner will try to block the provision of the services. The cost of the pipe is based on frontage.

Marvin Krout, Director of Planning, also advised that staff does ask for covenants to be filed to put the property owners on notice that this is a subdivision that has been set up to facilitate development, but in the end the only way to get a whole system of water and sewer is to get a majority of the property owners to agree to assess themselves. The covenants cannot be relied upon in 50 years to force someone to pay for assessments. It is possible for a property owner on the edge of a subdivision to provide water and sewer to two or three lots and rezone to higher density without affecting the other property owners. If you are in the middle, you will need the majority of your neighbors to agree to extend those services. We have actually approved some of these subdivisions at urban densities with community water and sewer as a temporary, so that there is no further splitting up of lots, with the larger area being an outlot.

Sunderman stated that he has been in favor of "build-through", but it is not as easy a process as he originally thought. Krout suggested that it is easier if you do the urban clusters, but that narrows the market to people who are willing to have just an urban lot out in the country. The idea is to try to prepare future homeowners for the possibilities and get them thinking about it and understand it before they buy it. Otherwise, you are not facilitating the possibility that it can be subdivided again. It creates a lot of problems when the roads fall apart because they are built to a different standard, or when the water wells go bad or the septic tanks go bad.

Sunderman wondered how likely it is that there will be the acreage concentration like we have on 56th Street with current zoning rules. Krout pointed out that all of the yellow areas represent areas that have the potential and presumption for AGR zoning. Outside of those

areas, the presumption is that the 20-acre density is maintained unless and until services are out there. That is up to the Planning Commission and the County Board in approving change of zone requests. There is some yellow within the growth tiers.

Gaylor Baird clarified that under the existing language, the County Board is not actually required to require these "build-through" standards but they have the option. This amendment is about an option, not a regulation. Hartzell agreed. The current language asks that they consider adopting and applying "build-through" standards for areas outside the Lincoln three-mile jurisdiction but inside the county. As an alternative to deleting the language, the staff has suggested the following amendment:

> For areas outside of the Lincoln three mile jurisdiction but inside a future Lincoln growth tier, the County should consider ~~adopting and~~ applying "build-through" standards, on a case-by-case basis, when a proposed development is in a location that is more likely than others to have city services extended in the foreseeable future.

Lust clarified that the staff is not recommending approval of the County's proposed amendment which would strike the language about "build-through", but staff is proposing an amendment to the current language. Hartzell suggested that the new language is an option, but the staff's preference is to keep the language the way that it is today.

Esseks inquired about the cost involved in coming up with a "build-through" development. Hartzell explained that if you had 20 acres, you would not be large enough to do one of the cluster developments with "build-through". You would be required to have 75 acres in AG to do a CUP. She did not have the cost information. Upon further discussion, it was determined that it would add to the cost, but maybe not that much.

There was no testimony in support.

Opposition

1. Mike DeKalb, retired County planner, appeared in support of the staff recommendation of denial. This is simple. In the years he was in the Planning Department, he helped develop the "build-through" language; he developed the zoning overlay; he handled the six to twelve "build-through's" that we have in the 3-mile jurisdiction, so he knows how they work. Today, the 3-mile jurisdiction requires a CUP with "build-through" standards. It's predesignating it so that the city services can get through in the future. It takes care of the problems now that will occur later. The whole idea was to pre-design to give you some framework of options built in place with some agreements and language. The existing language only asks the County Board to consider the option to use "build-through" standards outside the three-mile.

Lust asked DeKalb what the additional cost to the owner and developer has been, in his experience. DeKalb suggested that in all the cases he worked on, it is as much an art as it is a science. You're already doing a CUP with an engineer on-board. It's just an add-on and the cost is relatively modest.

ACTION BY PLANNING COMMISSION: December 14, 2011

Lust moved denial of the County Board's request, seconded by Gaylor Baird.

Gaylor Baird believes that the "build-through" standards make perfect sense; they provide predictability for property owners; they prepare for efficient delivery of vital services; they are an exercise in fiscal responsibility; they avoid future conflicts; and lastly, they are not required outside the 3-mile limit. The County Board is simply being encourage to consider the "build-through" in the spirit of cooperation. A vote to cordon off and only apply them in certain areas and to suggest that they not be encouraged for other areas does not make sense.

Francis agreed with Gaylor Baird.

Lust does not understand why the County Board does not even want to consider it as a possibility. The language is not requiring them to do it, but just to give it a little bit of thought on a CUP outside the 3-mile jurisdiction.

Sunderman stated that he would prefer the alternative language suggested by staff. It adds extra cost. The only place he can see where it would be useful is in the growth tiers. He likes the "build-through" concept, but how are you going to get everyone to agree for it to happen? The chances of that happening outside of three growth tiers are so small.
Esseks likes the idea of flexibility, and a case-by-case basis would be appropriate. But he has lived in parts of Illinois where something built two years ago is a terrible impediment for rational development around the city. He fears that these belts of low density residences can be a terrible impediment to natural growth. "Foreseeable future" is a subjective concept. For the light green areas in Tier III, he believes it is an important standard to uphold.

Cornelius also agreed with Gaylor Baird's comments, particularly the point that the existing language is not compulsory or regulation but merely asks for consideration. Further, he would argue that we are talking about the growth tiers inside and outside the 3-mile jurisdiction, and he suspects that there is some value added to the land in the growth tier merely by being in the growth tier. Regardless of the fact that we probably won't get there for 60 years or so, consideration of a "build-through" standard levels the playing field and for that reason he thinks it is reasonable to ask the County Board to consider the "build-through model when considering development outside the extra-territorial jurisdiction.

Motion to deny carried 7-2: Francis, Lust, Butcher, Gaylor Baird, Weber, Esseks and Cornelius voting 'yes'; Hove and Sunderman voting 'no'. This is a recommendation to the Lancaster County Board of Commissioners.

COMPREHENSIVE PLAN AMENDMENT NO. 11003
TO REVISE THE COUNTY FUTURE LAND USE PLAN
TO SHOW COMMERCIAL AND INDUSTRIAL USES AT THE
INTERSECTION OF HIGHWAY 2 AND HIGHWAY 43/SOUTH 162ND STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: December 14, 2011

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

There were no ex parte communications disclosed.

Staff recommendation: Denial.

Staff presentation: **Sara Hartzell of Planning staff** explained that this amendment applies to three different areas of the Plan -- the introductory chapter, the Vision chapter and the Plan Realization chapter.

This is a request by the County Board to designate an area of over 200 acres for commercial and/or light industrial use about two miles north of Bennet, surrounding the intersection of Highway 2 and Highway 43/South 162nd Street.

The text change requested is in Chapter 5 as follows:

> Add language to page 5.5 of Business & Economy: Lancaster County, Outside of Lincoln to read:
>
> > Uses near the interchange of Highway 2 and Highway 43 (the Bennet exit) should be limited to commercial immediately surrounding the interchange that generally supports the agricultural community and those traveling through the area. The remainder of the designated area should be reserved for a potential large industrial employer which may desire to locate in a rural area with limited services and would be compatible with the surrounding rural residential area.

This proposed amendment was delayed to give the Village of Bennet an opportunity to review the proposal. The Village Board met on December 12, 2011, and their Planning Commission met on November 30, 2011. The minutes of their Planning Commission indicate a 3-2 vote to support the denial – they do not want to see this change. The Village Board came to the conclusion unanimously that they do support this change. A couple of the Village Board members also recommended that the commercial on the south side

should be brought further south to include 40 additional acres that would reach down to the Bennet one-mile jurisdiction because it might draw more people into Bennet.

The staff is recommending denial based upon the long standing policy of directing commercial and industrial development into the villages. It affects the vitality of the community when businesses locate outside of the community and what that does to the businesses already in the community.

Esseks inquired whether the Village Board had a formal vote. Hartzell indicated that they did not. The Lancaster County Commissioners who attended the meeting did not ask for a vote. They were only seeking their input.

Esseks pointed out that for some time, our Comprehensive Plan has stated, and the 2040 Comprehensive Plan states the policy of directing industrial and commercial development to existing municipalities. This would be an exception. What is there about this particular set of parcels that would justify an exception to such a long-standing and really important policy of growth? Hartzell explained that the Lancaster County Commissioners believe that there has been interest in this area before. They believe that the improvements of the interchange, the improvements to Hooper Road and the connection to 148th would be a draw for this particular interchange; there was also talk about missed opportunities for large employers in the past (reference was IBM) and needing to provide some opportunities.

Hartzell did point out that there are quite a few different ways to have business or a commercial enterprise in the AG district, such as by special permit. The staff offered to look at more of those uses that would be considered appropriate for agricultural areas that may be commercial uses, but certain members of the County Board believes it is important to show the surrounding property owners what might be there in the future.

Francis wondered whether the infrastructure would come from. Hartzell stated that there would be rural water available. She assumes that any sewer would be done privately. The road improvements would have to be negotiated for a contribution from the developer for that improvement. Fire protection would always be supplied by the local Rural Fire District and law enforcement would be the County Sheriff.

Weber thinks there is a possibility that there would be certain types of businesses that would not want to locate in Lincoln or Bennet that are not necessarily agricultural. This would be a good location for something like that and there should be some provision or language that could be incorporated. Hartzell stated that staff would agree that there are certain businesses that are more appropriate to be located outside the city limits in some cases, such as a cement plant (a use previously denied by the County Board). But Hartzell reminded the Commission that the Land Use Plan is not set in stone. There is always the opportunity to make a change if an appropriate use comes along.

Support

1. Doug Jose, 8900 S. 162nd Street, testified in support. He stated that he is pleased to at least see consideration for commercial around the interchange rather than industrial. He opposed the concrete plant and the traffic that it would generate up and down 162nd. If this area is developed as commercial, what are the requirements in terms of grassed, treed areas, etc.? He is concerned about what happened on the other side of the highway when the store was built. There was some requirement for landscaping which was never done. He is concerned about what the corner will look like unless there are some requirements for landscaping, where the entrances will be, embankments, etc. What does it mean to have it designated as industrial? There are a lot of industrial uses that may be more favorable than others.

Opposition

1. Mike DeKalb, retired County planner for the Planning Department, testified in opposition. He has done a lot of work over the years on this intersection, i.e. AG to AGR, AG to Commercial, and worked with Bennet for many years. One of the things he has felt strongly about is not only the Comprehensive Plan where growth is to be directed towards the towns and the cities, but the fact that the small communities need the tax base, the infrastructure, etc. In this case, Bennet has historically said no, they want the growth to come to the village. They are trying to protect that. He is torn to find out that their Village Board took a poll of their membership in support. It does impact the town, the services of the town and the entrance to the town.

DeKalb is concerned about creating large chunks that have a presumption of approval when shown as industrial and commercial. The county has one industrial district and one commercial district. It does not have permits or design standards. He is concerned about pre-approving and pre-designating that much land for those powerful uses. The impacts are not manageable. DeKalb supports the staff recommendation of denial.

In addition, DeKalb pointed out that there is language in the Comprehensive Plan today, and always has been, that when the “big gorilla” comes to town, we will try to look to accommodate it. IBM goes back a long, long ways. It was actually approved in the middle of Stevens Creek on East Holdrege Street. They were investing in the land ahead of time for future plans. They had no services. The city and county agreed to approve the change of zone. What happened is IBM went back later and took another look at all of their parcels across the US in land banking and decided they didn’t need it. The local farmers bought it back and it was changed back to AG. Taking this big of a chunk at this corner and quasi pre-approving at this point in time is a mistake and there is a big lack of infrastructure.

Sunderman inquired again why the cement plant was denied. DeKalb stated that the staff recommended approval contemplating that a cement plant might not be a good neighbor in town and better in a remote location. It was denied by the County Board because the

neighbors around there had objection to the impact on their properties. The AGR was approved, and if it develops, there will be more residential neighbors in the area.

ACTION BY PLANNING COMMISSION: December 14, 2011

Francis moved to deny, seconded by Esseks.

Francis pointed out that there is nothing formal from the Village of Bennet. Although she believes it would be a good area for some commercial or industrial at some point in time, she is concerned about the infrastructure. She would rather make this decision once they have a business that is really interested in that area and get the business to pay for the improvements.

Lust indicated that she does not want to lose sight of the forest through the trees. We have to keep in mind that the policy of encouraging commercial and industrial development in the cities and in the towns in the county has served the county and the cities and the villages very well for a long, long time. We win national awards for how good the economy is doing in Lancaster County and Lincoln. She does not believe the fact that good planning has been a part of that should be ignored. It is important to never "ghettoize" your city by allowing development to be outside of the city and not have that development support the tax base in the city. She understands what the county is wanting to do, but she thinks when those opportunities have come in the past, the Planning Department has shown a willingness to look at it, even approve it, so she does not think that we are going to miss the opportunity if IBM came to town again because it's not in the Comprehensive Plan. We meed to stick with the horse that got us here.

Esseks does not want to be a hypocrite by making an exception to a major principle in the Comprehensive Plan to direct commercial and industrial development to municipalities. We make exceptions when someone comes forward with an unusually good project and we change the plan later. Let's wait for that project to come forward. Let's not make the change now. Otherwise, we're setting a precedent. We cannot turn our back on this long standing principle.

Sunderman stated that his biggest concern is the infrastructure – roads, water, fire, law enforcement – whether they can handle this sort of thing. This is not the place for it.

Cornelius echoed the comments. In particular, that of principle – the principle in the plan of directing commercial and industrial development to incorporated areas. The value of that almost cannot be overstated and in particular, the realization that the tax base that that generates is shared by both the municipality and the county. The county does not lose by that principle. While we don't have formal support from Bennet, we do have formal opposition in the form of the recommendation from their Planning Commission. He sees potential for unintended consequences and he will vote to deny.

Motion to deny carried 8-1: Francis, Lust, Butcher, Gaylor Baird, Hove, Sunderman, Esseks and Cornelius voting 'yes'; Weber voting 'no'. This is a recommendation to the Lancaster County Board of Commissioners.

COMPREHENSIVE PLAN AMENDMENT NO. 11004
TO AMEND THE PRIORITY GROWTH AREAS MAP
TO CHANGE THE DESIGNATION OF PROPERTY
GENERALLY LOCATED WEST OF NORTH 56TH STREET
BETWEEN ALVO ROAD AND ARBOR ROAD FROM
TIER 1, PRIORITY B, TO TIER 1, PRIORITY A,
AND TO EDIT TEXT ON THE PRIORITY GROWTH AREAS MAP.
PUBLIC HEARING BEFORE PLANNING COMMISSION: December 14, 2011

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

There were no ex parte communications disclosed.

Staff recommendation: Approval.

Staff presentation: **Brandon Garrett of Planning staff** presented the proposal to amend the 2040 Comprehensive Plan to make a correction to the Priority Growth Areas Map. Tier I, Priority A, includes areas within the city limits or areas with preliminary plans such as a plat or PUD. In this case, we overlooked the preliminary plat for a commercial area on North 56th Street that should be in Tier I, Priority A, rather than Tier I, Priority B.

The other amendment to the Priority Growth Areas Map is to change the notation of "Downtown/Antelope Valley" to "Greater Downtown" to be consistent with other language and notations in the plan, which includes Downtown, Haymarket, Antelope Valley and Innovation Campus.

There was no testimony in support or opposition.

ACTION BY PLANNING COMMISSION: December 14, 2011

Francis moved approval, seconded by Lust and carried 9-0: Francis, Lust, Butcher, Gaylor Baird, Weber, Hove, Sunderman, Esseks and Cornelius voting 'yes'. This is a recommendation to the City Council.

COMPREHENSIVE PLAN AMENDMENT NO. 11005
TO MAKE REVISIONS TO CLEARLY DIFFERENTIATE THE COMPREHENSIVE PLAN DOCUMENT FROM THE LONG RANGE TRANSPORTATION PLAN DOCUMENT.
PUBLIC HEARING BEFORE PLANNING COMMISSION: December 14, 2011

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

There were no ex parte communications disclosed.

Staff recommendation: Approval.

Staff presentation: **David Cary of Planning staff** explained that this proposed amendment will clarify the difference between the Transportation Chapter in the new Comprehensive Plan and the separate Long Range Transportation Plan (LRTP) document. The two are compatible and they support each other, but as discussed previously, the LRTP has a lot more detailed information. This will make sure we are clear that there are two separate documents but that they are supportive and consistent with each other.

There was no other testimony in support or opposition.

ACTION BY PLANNING COMMISSION: December 14, 2011

Francis moved approval, seconded by Lust.

Cornelius stated that as a result of these changes, he is hopeful that as we go forward we don't see the kinds of "hiccups" we had in terms of budget, such as arguments about sidewalks, etc.

Motion for approval carried 9-0: Francis, Lust, Butcher, Gaylor Baird, Weber, Hove, Sunderman, Esseks and Cornelius voting 'yes'. This is a recommendation to the City Council and Lancaster County Board of Commissioners.

COMPREHENSIVE PLAN AMENDMENT NO. 11006
TO ADD INTRODUCTORY LANGUAGE
CLARIFYING THE PLAN'S PURPOSE AS A POLICY GUIDE.
PUBLIC HEARING BEFORE PLANNING COMMISSION: December 14, 2011

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

There were no ex parte communications disclosed.

Staff recommendation: Approval.

Staff presentation: **Nicole Fleck-Tooze of Planning staff** explained that this is language proposed by the Planning Director as introductory language. During the approval process, the City Council and County Board discussed the purpose of the plan and there was interest expressed by individual members about clarifying the purpose and clarifying that the plan is not a regulatory document. The result was that the Planning Director agreed to examine and propose some language.

Fleck-Tooze acknowledged that during the workshop prior to this meeting, the Commission discussed revisions to the language proposed by Commissioner Lust, which include some relatively minor edits to the language in the staff report and includes language suggested by the City Attorney's office, as follows:

> LPlan 2040 is the latest edition of the Lincoln-Lancaster County Comprehensive Plan. The Comprehensive Plan is intended as a guide to local government officials, institutions, businesses, landowners, and the general public in making decisions on public and private investment for land development. The plan provides a vision, based upon demographic and economic projections and ~~developed with~~ broad public input, for the pattern and character of the community as it grows. Comprehensive plans deal with the arrangement of different land uses, the standards for development, and the provision of transportation facilities, utilities, and other community facilities and services – ~~all~~ with ~~due~~ regard for expanding housing and employment opportunities, ~~recognizing~~ the community's financial limitations and economic realities, and ~~conserving~~ its natural and cultural resources. State statutes require that comprehensive plans be developed by planning commissions and adopted by cities and counties, as a basis for establishing zoning regulations and to consider before the~~y~~ city or county buy<u>s</u> or sell<u>s</u> land, construct<u>s</u> or improve<u>s</u> public facilities, ~~and~~ or take<u>s</u> other actions affecting public improvements.
>
> While the Comprehensive Plan sets forth general guidelines for decision-making, ~~but is not legally binding on the planning commission or elected officials. There may be occasions where a decision that deviates from some provision in the plan is justified, and that is legally permissible~~ failure to adhere to the plan is permissible in specific instances in which circumstances justify deviating from its terms and provisions. ~~But the plan is an important expression of community consensus on charting our future at this point in time. If generally followed,~~ However, the plan ~~can~~ is designed to provide a ~~more~~ predictable environment for public and private investment decisions~~, and with more coordinated decisions, we should see greater overall economic growth, lower taxes, and a higher quality of life~~.
>
> LPlan 2040 looks out nearly 30 years in the future because the decisions ~~we make~~ made today about land use and public facilities ~~today~~ will affect the community for generations. However, ~~we recognize that~~ economic, social and environmental

factors change over time, as do preferences and priorities of local citizens. Therefore, the Plan ~~should be reviewed annually and~~ is updated as needed~~, with more significant updates every 5 to 10 years, so it can~~ to remain relevant over time.

Fleck-Tooze stated that the Planning staff does not have any concerns about the proposed revisions.

Lust inquired whether there has ever been introductory language in any of the Comprehensive Plans in the past. To the best of her knowledge, Fleck-Tooze does not believe there has ever been any specific introductory language, at least there was not any in the 2030 Plan.

Lust then inquired whether other cities and counties use introductory language. Fleck-Tooze suggested that they do. The staff did review some language in other plans and it seemed to make some sense.

There was no testimony in support or opposition.

ACTION BY PLANNING COMMISSION: December 14, 2011

Lust moved to approve the amendment to add introductory language, as revised by her own proposal, seconded by Francis.

Lust stated that she even hesitates to vote for her own language. She is not sure that the Comprehensive Plan needs introductory language. She is mostly concerned about people relying on the introductory language. She believes that there are situations where we do have to follow the Comprehensive Plan, although it is meant to be a guideline. However, she hesitates to attempt to summarize complicated legal issues in three paragraphs. That said, she does think that a little guidance and introduction to a very lengthy document that explains the purpose and overview is probably a good thing, in general. She is comfortable with the revised language that has been proposed. In general, she will support the amendment but she does have some hesitancy about the need for it.

As stated in the workshop, Francis reiterated that she does not think the language is necessary, but she will support this amendment because Lust did a good job of narrowing it down. The Comprehensive Plan is and always has been a guide. She is disappointed that other bodies think it is necessary to include three paragraphs to say it is a guideline.

Gaylor Baird agreed with Lust and Francis. The language is good and perfectly reasonable and especially clarifies things for a new reader of the Comprehensive Plan. However, what is problematic about this whole exercise, and what she wants to say on the record is that it is coming from a place that appears to be quite critical of the process that we all undertook and the professionalism of the people sitting at this table, at least those who

were here throughout the LPlan process. The LPAC was asked to come up with this plan, and that was a citizen/commissioner body of people appointed who represented all sectors of our community. There was a farmer, design professionals, architects, business men and women, academics, community volunteers, representatives of rural areas and people who lived in the city. It was our charge to come up with a plan, defined as a plan and a guideline, for the future of our community and what we think it needs to be mindful of as we progress. To have preferatory language requested that talks about paying more attention to reality, current conditions, respect for individual rights and the fiscal ability of the government units and the private sector says to her that this particular council person was not paying attention to what we were saying and what we did during those meetings in a close and thoughtful way.

We had an incredible team of experts over the series of a year come and speak to us. We had economists, we had census demographers, we had experts in sustainability, we had representatives of different communities come and talk about the issues that they faced, all of which were ways to try to gather data to inform our plan and our decision making. We talked often and with great purpose about the economic constraints that we faced going forward. We spent a lot of time, especially in the area of transportation, talking about how do we cut valuable projects down into the timeline that we have – how do we cut them down for the budget that we have but still try to get them done in a meaningful and efficient and effective way – how can we serve the needs of the community given the constraints we face. We had a budget called the fiscally constrained plan.

Gaylor Baird then pointed out that anyone who pays attention to these meetings, or watches Channel 5, will recall that at almost every other meeting, someone in this body states for the record that the plan is a guide – that it is not something that binds our hands but something that is meant to provide a vision and a source of reference. It is meant to provide predictability for our community and set expectations so that we aren't making decisions in a vacuum. It helps us avoid conflicts that we might otherwise face. The fact that we update the plan is another acknowledgment that it is a plan and a guideline and that it isn't just something that is "black letter law" as is stated in the Council member's document.

On top of that, Gaylor Baird pointed out that about 90 plus percent of what comes through this body does get approved and gets fair and thoughtful consideration. It is rare that the Planning Department presents anything that then isn't given a real fair shake and a real professional assist.

What is disheartening about this whole exercise – aside from the insult to which others referred in our briefing – is that the language is not only perhaps unnecessary but perhaps somewhat insulting – it is a waste of taxpayer dollars. The amount of time that the Planning Department has spent working on this particular language and the amount of consultation with attorneys has been not only a waste of taxpayer dollars but it has also taken their time away from other more pressing matters.

Gaylor Baird stated that she wanted to get this all on the record because she thinks it's the elephant in the room and she thinks it needs to be said out of respect for the dozens of people who worked on this, for the public input that we received and took into careful consideration, for the data, for the awareness of our fiscal constraints. While setting a hopeful vision for the future, this plan is very much grounded in reality and she is very proud of the plan and the Planning staff and the public who came forward to help shape it.

Esseks added that in some parts of this country, there are written Comprehensive Plans which are put on shelves and no one looks at the plan once it is on the shelf. Here, in his 6.5 years on the Planning Commission, the plan has been used as a real guide. At the beginning of each staff report, there is a statement about conformity with the Comprehensive Plan. We have a state statute that says zoning should be in conformance with the Comprehensive Plan. We have a Supreme Court ruling that says the proposed land use should take into account the Comprehensive Plan, and that the proposed land use will be judged in its relationship to what is ~~approved~~ found in the Plan. It is useful for us to be united. All this effort has a statutory and practical basis. We really do use the plan as an important document and guide. **(**Amended at the request of Commissioner Esseks: 01/09/12**)**

Butcher expressed his concern that the introductory language really doesn't change anything on the back end in interpretation of the plan. This may muddle it more for some lay people as they get into the process and look at it, and it may enlighten someone who did not understand the plan, but on the back end under the law, this language has no determination. He thinks its inclusion can be for the benefit of some and also to the detriment of others.

Cornelius agreed with Butcher. It might be helpful to some and it may not be very helpful or perhaps hurtful to some. He is not sure this language has a whole lot of benefit overall. The purpose and scope of the plan are self-evident. There is language throughout the plan describing itself as a guideline and an aide to decision making by policy makers, and the legal standing of the plan is a matter of law. Further, the plan obviously is a living document; it receives annual review – we look at it and revise it; and every five years we make a major revision like the one we just undertook, and for those reasons he will vote no on including this language.

Motion to approve the comprehensive plan amendment, with amended language as proposed by Commissioner Lust, carried 6-3: Francis, Lust, Weber, Hove, Sunderman and Esseks voting 'yes'; Butcher, Gaylor Baird and Cornelius voting 'no'. This is a recommendation to the City Council and the Lancaster County Board of Commissioners.

There being no further business, the meeting was adjourned at 4:05 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on January 11, 2012.

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