

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, May 28, 2014, 1:00 p.m., Hearing Room 112 on the first floor of the County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Cathy Beecham, Michael Cornelius, Tracy Corr, Maja V. Harris, Chris Hove, Dennis Scheer, Lynn Sunderman and Ken Weber (Jeanelle Lust absent). Marvin Krout, Brian Will, Tom Cajka, Paul Barnes and Jean Preister of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission meeting

Vice-Chair Chris Hove called the meeting to order and acknowledged the posting of the Open Meetings Act in the back of the room.

Hove requested a motion approving the minutes for the special public hearing on the CIP, TIP and amendment to the LRTP held May 7, 2014. Cornelius moved approval, seconded by Scheer and carried 8-0: Beecham, Cornelius, Corr, Harris, Hove, Scheer, Sunderman and Weber voting 'yes'; Lust absent.

Hove then requested a motion approving the minutes for the regular meeting held May 14, 2014. Cornelius moved approval, seconded by Corr and carried 8-0: Beecham, Cornelius, Corr, Harris, Hove, Scheer, Sunderman and Weber voting 'yes'; Lust absent.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION

BEFORE PLANNING COMMISSION:

May 28, 2014

Members present: Beecham, Cornelius, Corr, Harris, Hove, Scheer, Sunderman and Weber; Lust absent.

The Consent Agenda consisted of the following items: **SPECIAL PERMIT NO. 555B, USE PERMIT NO. 57E and SPECIAL PERMIT NO. 09022B.**

There were no ex parte communications disclosed.

Item No. 1.2, Use Permit No. 57E, was removed from the Consent Agenda and scheduled for separate public hearing.

Cornelius moved approval of the remaining Consent Agenda, seconded by Weber and carried 8-0: Beecham, Cornelius, Corr, Harris, Hove, Scheer, Sunderman and Weber voting 'yes'; Lust absent.

**USE PERMIT NO. 57E, AN AMENDMENT TO THE
LINCOLN CROSSING USE PERMIT TO REMOVE THE THEATER
AND TO ALLOW A HOTEL AND OTHER COMMERCIAL PAD SITES,
ON PROPERTY GENERALLY LOCATED AT
NORTH 27TH STREET AND FOLKWAYS BOULEVARD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

May 28, 2014

Members present: Beecham, Cornelius, Corr, Harris, Weber, Scheer, Sunderman and Hove; Lust absent.

Staff recommendation: Conditional approval.

There were no ex parte communications disclosed.

Staff presentation: **Tom Cajka of Planning staff** advised that the Bicentennial Estates neighborhood is basically objecting to another hotel in this area, suggesting that there is an abundance of hotels, and that they would like to see the movie theater remain in this location.

Cajka then explained that this application is to amend an existing use permit by replacing the area where the potential movie theater was to be and showing a hotel and some other pad sites. Cajka displayed a site plan of the area showing the area between North Hill Road and Folkways Boulevard which was previously shown for a movie theater and parking. That area now is proposed to be a hotel and future pad sites.

Cajka observed that the movie theater was approved by special permit in December of 2003, so it has been more than 10 years since that was approved and nothing has been built. The hotel and other retail commercial uses are a permitted use in the B-5 district.

The applicant is also requesting an increase in height from 40 feet to 66 feet because of the cupola on the hotel; however, the majority of the roof line is about 47 feet.

Harris asked Cajka to point out the other locations in that area where the movie theater could be developed. Cajka stated that it would have to be north of Folkways Boulevard; however, that would require a change of zone from B-2 to B-5. Movie theaters are only allowed in B-4 and B-5. There is a lot of vacant space to the north.

Corr inquired as to why the theater has not developed. Cajka did not know, but he assumes it is a market issue.

Harris inquired whether there has been any communication with the neighborhood to see if any increase in height would be acceptable, or are they just opposed in general? Cajka indicated that he has not talked with the neighborhood association.

Beecham noted that the letter received addressed the number of hotels in the area. Do we have any kind of formula when looking for this kind of development? Cajka responded that the staff relies on the zoning code to see if it is a permitted use in that particular district. He noted that this application would have been approved administratively if it weren't for the height waiver.

Beecham inquired whether the change in height allows more rooms or is it mainly a design issue? Cajka suggested that the applicant wants four stories, and it would be almost impossible to do four stories with the 40' height limit. Cajka also observed that the staff and Planning Commission are seeing more and more of these height increase requests.

Proponents

1. Brad Marshall of Olsson Associates appeared on behalf of the applicant, Northridge Construction. Marshall acknowledged that this is a change from the movie theater, and confirmed that the applicant is only interested in doing the hotel being presented today. The applicant is looking to purchase the property. The topography sits way below 27th Street. There is a 3-story hotel on the west side, and even with the height waiver, this building and the signage would not sit above that hotel across the street. Signage is a very important aspect of the building as well as the architectural feature.

Marshall also explained that the current land owner had an interest in the theaters in Lincoln and has since been bought out by Marcus Theaters. When Marcus Theaters purchased the others theaters, they had no interest in this property to pursue that six-screen theater.

Beecham inquired whether the applicant has met with the neighborhood association. Marshall indicated that they did not have any contact other than the letter received in opposition.

Beecham then inquired whether the applicant would oppose a delay to allow them to meet with the neighborhood association and hopefully erase their opposition. Marshall was not sure whether the neighborhood is opposed to the hotel or the height restriction, which is the reason this application is before the Commission. This is a change to the site plan itself, and he believes it will be amenable for this site.

There was no testimony in opposition.

Marvin Krout, Planning Director, approached, stating that the reFORM initiative which is in process recommends an increase in the B-5 height limit from 40 feet. The staff and the Commission have seen several hotel requests needing a waiver of the height restriction

and one was approved at 84th and Highway 2. The best market is for 4-story hotels, and staff believes that the retail commercial district deserves that kind of height. It is something the Commission is going to see in the future.

Krout also advised that he has had discussion with Marcus Theaters and they indicate that they are interested at some point in time in seeing enough market that they can justify a north Lincoln theater. With the fact that we have a theater policy, he believes we are more likely to see that happen than if we didn't have a theater policy. They just need to see enough rooftops and activity in that area. Adding another hotel will add to the potential theater market in the future. The market is relatively flat in terms of the number of people going to theaters. There are other opportunities in this 27th Street corridor for the theater. This is similar to other requests the Commission has approved.

Weber wondered if approving this permit limits the hotel to four stories just for the signage, or could someone come back and have five stories? Krout stated that the staff did not differentiate between the architectural sign element and the cupola, but yes, it could potentially be an extra story.

Marshall stated that the intent is for the hotel to be between 100 and 110 units. They met with Building & Safety and asked about the appropriate way to go about this. The intent is only 4 stories, but the architectural pieces and the canopy are a little bit higher. Building & Safety's final opinion was to only request the height allowance.

Krout stated that the staff might have supported a 5-story in this particular location, but he does not believe that is the market. He offered to work on language that would be restrictive but he is not sure it matters at this location.

ACTION BY PLANNING COMMISSION:**May 28, 2014**

Beecham moved to approve the staff recommendation of conditional approval, seconded by Scheer.

Beecham commented that she is disappointed that there was not communication with the neighborhood association; however, she does not think that this is out of line with things done in the past, and there are still opportunities for a movie theater to go into this area in the future.

Corr understands the concerns of the neighborhood and feels bad that a theater has not developed. But, we have a project that we can accommodate right now.

Cornelius agreed. He also pointed out that this is not really a question of whether it is an appropriate land use for a hotel because a hotel is a permitted use in that district. The issue before the Planning Commission is really the height waiver and we have heard that there are unique circumstances, i.e. it sits low and the sign is high enough to be visible from

the roadway. He will support the application.

Hove also agreed. The economics for a movie theater is something that will happen at some point.

Motion for conditional approval carried 8-0: Beecham, Cornelius, Corr, Harris, Weber, Scheer, Sunderman and Hove voting 'yes'; Lust absent. This is a recommendation to the City Council.

**COMPREHENSIVE PLAN CONFORMANCE NO. 14010,
ASSIGNMENT OF CONSERVATION EASEMENT,
ON PROPERTY GENERALLY LOCATED AT
SOUTH 1ST STREET AND WEST SOUTH STREET.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:**

May 28, 2014

Members present: Beecham, Cornelius, Corr, Harris, Weber, Scheer, Sunderman and Hove; Lust absent.

Staff recommendation: A finding of conformance with the Comprehensive Plan.

There were no ex parte communications disclosed.

Staff presentation: **Paul Barnes of Planning staff** reminded the Commission that the owner of the land where the easement is located had requested a two-week deferral to address his concerns. Barnes understands there was a meeting with Mr. Talbert's representative and Watershed Management. At this time, the staff is still recommending a finding of conformance.

Beecham asked whether staff knows the outcome of the meeting held with the property owner. Barnes believes his representative had attended the meeting with Watershed Management staff. He believes they discussed the purpose of this action and they were answering questions about why the assignment had to take place.

Ben Higgins of Watershed Management acknowledged that he did meet with Mr. Talbert's representative and explained the assignment and he seemed to understand it and said he would talk to Mr. Talbert about it. Higgins has heard nothing since that meeting.

Support

1. Gus Ponstingl of Mapco appeared to answer any questions.

2. Andrew Willis, of the Cline Williams Law Firm, appeared on behalf of the Dallman Revocable Trust. After the last Planning Commission hearing when there was some confusion and questions, he communicated with Mr. Talbert and he has not heard anything

back so he believes his issues have been addressed.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

May 28, 2014

Corr moved to find the assignment of conservation easement to be in conformance with the Comprehensive Plan, seconded by Scheer.

Corr appreciates the attempts to alleviate concerns.

Motion for a finding of conformance with the Comprehensive Plan carried 8-0: Beecham, Cornelius, Corr, Harris, Weber, Scheer, Sunderman and Hove voting 'yes'; Lust absent. This is final action as to a finding of conformity. The acceptance of the conservation easement by the City of Lincoln will be scheduled on a future City Council agenda.

TEXT AMENDMENT NO. 14004

TITLE 27 OF THE LINCOLN MUNICIPAL CODE

and

TEXT AMENDMENT NO. 14005

CHAPTER 3.35 OF THE CITY OF LINCOLN DESIGN STANDARDS

RELATED TO COMMUNITY UNIT PLANS IN THE

R-7 RESIDENTIAL DISTRICT AND R-8 RESIDENTIAL DISTRICT.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 28, 2014

Members present: Beecham, Cornelius, Corr, Harris, Weber, Scheer, Sunderman and Hove; Lust absent.

Staff recommendation: Approval

Ex parte communications: Corr disclosed that she attended the Mayor's Neighborhood Roundtable on April 14, 2014, where these two amendments were presented and discussed.

Staff presentation: **Paul Barnes of Planning staff** explained that the two text amendments relate to allowing a community unit plan (CUP) in the R-7 and R-8 zoning districts. A CUP is a type of special permit that has been available in the zoning code as far back as 1953. It had been widely used in all the residential districts up until the 1979 zoning update, when the R-7 and R-8 zoning districts were created and, for some reason, a CUP was not allowed as a special permitted use in those two districts. Barnes also explained that the previous designation for R-7 and R-8 was also high density residential, and pre-1979, a CUP was allowed in those districts. Density of those two previous districts was nearly twice the amount available in the R-8 district today.

Barnes suggested that a CUP really is intended to provide some flexibility to a residential development. It does not allow for commercial uses within the special permit, but it does allow adjustments to the subdivision ordinance and the zoning code for such things as setback adjustments, some height adjustments, etc.

Barnes went on to state that today, a CUP is available in the AG, AGR, and R-1 through R-6 zoning districts. The R-7 and R-8 districts are mainly found around Downtown – they are the highest density residential designations, mainly located south of Lincoln Mall in between the traditional Downtown Lincoln and maybe in the less dense residential neighborhoods to the south. These types of developments are typically on smaller lots; whereas, a CUP requirement today is that you have to have at least 1 acre to apply for the special permit. That is not part of this amendment, but along with that there are certain deductions for smaller size CUP's, so if you had CUP less than 10 acres, you would have density bonus of 20%, and if less than 5 acres, the density bonus would be 10%. The R-7 and R-8 piece is not proposed to include the density bonus because those two districts are already on smaller tracts of land. R-7 and R-8 are high density zoning districts, so it would be contradicting the intent of those districts if we reduced the density further.

Barnes pointed out that these text amendments also relate to the parking requirements that exist for a CUP. Today in a CUP, regardless of zoning, the development is required to have at least 2 parking spaces per unit. The parking spaces can be reduced, but no less than 1.5 per unit. We are looking at 1.75 spaces per dwelling unit without the CUP. Today's proposal is to eliminate the special parking requirements and rely on the underlying zoning to provide the minimum parking requirements.

The other piece of the parking amendment is proposing to include language that would allow the Planning Commission to modify the parking requirements, either increase or decrease. It is important to note that in a case of the number of bedrooms in an apartment complex, there may be discussion of having more parking spaces required versus an apartment complex that is all single bedroom or studio apartments. This complies with the intent of the CUP in providing for that flexibility.

Barnes then referred to the amendment to the design standards. The design standards provide the density calculation to figure out how many units can be allowed in a CUP. The proposal is to add R-7 and R-8, so we need to assign a density to those as well. Barnes referred to the table in the staff report. In the design standards, the density calculation is based first upon the minimum lot area per unit. In R-1 through R-4 a deduction is figured in for planned right-of-way. R-5 and R-6 are different in that they apply a different ratio that the staff believes is consistent and should be applied to the R-7 and R-8 districts as well.

The proposal is to base the CUP density off of the base density in the district today, and not figure in the deduction for planned right-of-way. The R-7 and R-8 will be smaller developments and you won't have the larger 10-acre plus planned developments with internal street systems.

Barnes explained that the amendment to the design standards includes a clarification amendment to clarify how density is calculated with more than one zoning district within one CUP.

Beecham asked why R-7 and R-8 were not included in the 1979 update. Barnes stated that he research three boxes in long term storage and he could not find an answer to that question. He assumes it may have been because at that time there was a concern with that level of density.

Beecham asked whether the tables were presented to the Neighborhood Roundtable. Barnes stated that there was a memo attached to the agenda but the calculations for the tables had not yet been done at that time. The presentation focused on the overall concept.

Harris indicated that she visited with Barnes recently because she does have some questions. She confirmed that a CUP is already a negotiating tool – it allows certain adjustments and imposes certain voluntary restrictions. Are we already able to do what this amendment sets forth, or are we increasing our power in terms of the parking requirement by being able to increase and decrease? Barnes responded that the CUP's are reviewed on a case-by-case basis and how that proposed development type may impact adjacent neighborhoods and properties, so there are ways to increase or decrease the minimum requirements of that district today. He suggested that as part of an amendment, the staff is looking to put that into the text just to clarify that modification means increase or decrease.

Harris reiterated that without this language, are we able to do the same thing or does this add powers as to what the Planning Commission can dictate? Barnes suggested that would be part of the review process and staff recommendation. If it were something that would minimize impacts on adjacent neighbors, that is something that could be reviewed and approved by this body. The text does come directly from the use permit section of the code so it does provide some consistency.

Harris asked if use permits are final action by the Planning Commission. Barnes stated that use permits go to the City Council. The CUP is final action at Planning Commission. Corr noted that the requirement in R-5 and R-6 on the parking chart is a total ½ percent reduction. How was this calculated? Barnes stated that the staff looked at the difference between 2 stalls and 1.75 stalls. 1.75 is what is required today in R-5 and R-6. This is just saying that parking for CUP's should rely on the parking requirements of the underlying zoning district and not have special parking requirements.

Proponents

1. Chris Elsey of Elsey Partners in Manhattan, Kansas, supports the proposed text amendments.

There was no testimony in opposition.

These two text amendments were held over for action following public hearing on the proposed 1100 Y Street Community Unit Plan, which is next on the agenda.

COMPREHENSIVE PLAN CONFORMANCE NO. 14011,
AMENDMENT TO THE ANTELOPE VALLEY REDEVELOPMENT PLAN
ADDING THE “ELEVEN HUNDRED Y STREET PROJECT”;

and

CHANGE OF ZONE NO. 14011
FROM B-3 COMMERCIAL, R-4 RESIDENTIAL AND I-1 INDUSTRIAL
TO R-8 RESIDENTIAL;

and

SPECIAL PERMIT NO. 14008,
THE 1100 Y STREET COMMUNITY UNIT PLAN (CUP),
ON PROPERTY GENERALLY LOCATED AT
NORTH 10TH STREET AND Y STREET.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 28, 2014

Members present: Beecham, Cornelius, Corr, Harris, Weber, Scheer, Sunderman and Hove; Lust absent.

Staff recommendation: A finding of conformance with the Comprehensive Plan on the amendment to the redevelopment plan; approval of the change of zone; and conditional approval of the special permit, as revised on May 28, 2014.

There were no ex parte communications disclosed.

Staff presentation:

1. Wynn Hjermstad, Community Development Manager of the Urban Development Department, spoke on the redevelopment plan amendment. Amending the redevelopment plan is the first step in the process of acquiring tax increment financing (TIF) under the state statutes.

Hjermstad showed the location of the proposed project. The “slip road” that will be referenced from time to time is a little road coming off of 10th Street that is really just a slip-in road and is not declared city right-of-way at this point. With the railroad tracks, it is a challenging site. Hjermstad also showed the site plan showing Y Street and the slip road.

The building is situated as such because of the railroad tracks. The City has a policy of not locating residential development within 300' of a railroad track, thus the building was moved back to accommodate that standard. What is being proposed is 126 units with 163 parking stalls including 72 bike racks. In terms of TIF, some of the improvements which could be pursued include continuing to pave Y street; constructing a connector at 12th Street up to Charleston; paving the alley; constructing a median on 10th Street that would restrict left turns out of the project; constructing sidewalk along Y Street as well as 12th Street; storm sewer; sanitary sewer; street trees; and lights. These are improvements that are part of the project, but in terms of the redevelopment process these are items eligible for TIF.

Hjermstad advised that the developer has had neighborhood meetings, one with the adjacent property owners and then one that was neighborhood-wide. The proposal has also been reviewed by the Urban Design Committee (UDC), which did approve it, subject to returning to the UDC once the developer has more design items in place. The UDC suggested more parking lot screening and moving the building to provide more separation to the neighborhood to the north.

Hjermstad observed that it will be a tall building and putting it right up to the alley with single-family adjacent could be a big barrier. What the developer has done with the building is a "step" design so that it steps up as you move away from the single-family and from the alley, and they have done shade studies so that the shade of the building will not block out the single-family houses. The total cost of the project is 7.8 million dollars with approximately \$700,000 in TIF (these are preliminary numbers).

If the Planning Commission finds the amendment to be in conformance with the Comprehensive Plan today, Hjermstad advised that the plan amendment will go on to City Council for approval at the end of June. They are just beginning to work on the redevelopment agreement which goes to the City Council which spells out how TIF will be used, with construction to begin shortly after City Council approval of the agreement in August.

Beecham inquired as to the procedure if the UDC is not happy with the changes that come back. Hjermstad noted that UDC is advisory. **Marvin Krout, Director of Planning**, came forward and explained that UDC is advisory to the Mayor, so the Mayor will consider their recommendations as he goes through the negotiations on the TIF. In the CUP, there are references that do set the pattern in terms of setbacks and elevations and building materials.

2. Paul Barnes of Planning staff addressed the change of zone and CUP special permit. The change of zone is for the block north of Y Street currently zoned B-3, R-4 and I-1, and the proposal is to change the zoning to R-8, which is the highest density zoning district for residential in Lincoln. R-8 districts are primarily located near the south edge of Downtown. In this case, R-8 is a transitional zone between the traditional mixed use Downtown to the more traditional single-family neighborhood, which can be seen on the south end of

Downtown. There are railroad tracks that are heavily used to the south; Salt Creek Roadway, which is considered part of greater Downtown; adjacent to UNL campus; and some additional industrial uses to the south and west. Barnes suggested that this could be considered somewhat of a transitional zone already.

The CUP includes a request to waive the front and rear yard setbacks, reducing the front yard to zero feet for the building and the parking lot along the 10th Street slip-road and along Y Street and continuing to the east and wrapping around the parking lot. The rear yard setback reduction to 8 feet is for the rear of the building. There is discussion that a portion of Y Street would be vacated; however, that is not part of today's discussion. If Y Street is vacated, that would allow the building to shift to the south, creating more of a setback between the building, the alley and the residential houses to the north.

Barnes further explained that the CUP allows not only for the reduction in setbacks, but allows us to incorporate some of these design issues to the site and to the building that may otherwise cause a sensitivity to the adjacent neighborhood. The building elevations show a "step back" approach with a taller portion of the building along Y Street and then a step down to about 22 feet along the alley side. The building overall would be 4-5 stories, the fifth being a two-story mezzanine-type loft unit on the south. The exhibit specifies materials which would be used on the building, i.e. brick and mortar on the north side and more modern materials on the south.

Barnes pointed out that there is a revised staff recommendation to state that the building footprint and parking spaces shown on the site plan are conceptual and that minor adjustments could be made.

Cornelius inquired whether there was any response from the owners of the property currently zoned R-3 and R-4 to this zoning change. Barnes advised that the developer has all of the properties north of Y Street under contract.

Harris noted that the Comprehensive Plan shows this site as commercial and urban density residential on the future land use map, so urban density residential appears to fit right in. What about the commercial designation? Is there a conflict there? Barnes responded, stating that the future land use map in the Comprehensive Plan generally shows the properties fronting on 10th Street as commercial. The intent is that if a property were to redevelop and propose a commercial use, that would be supported. The Comprehensive Plan does not tie it to commercial only, but it is used as a guide.

Beecham inquired whether there has been any feedback from the property owners that front on Charleston. Barnes indicated that the Planning Department has not received any communications.

Proponents

1. Chris Elsey, Elsey Partners, 1532 College Avenue F19, Manhattan, Kansas, presented the proposal. Elsey Partners is a student housing development company, and they are primarily interested in this site because they want to promote walkability in this community. What he originally proposed was a substantially larger project of potentially three phases, with upwards of 1,000 beds, but that was not well accepted by the North Bottoms neighborhood. He has transitioned and moved the project to the current location on Y Street, which is sort of isolated and is on the east side of 10th Street. It does have the slip-road that comes off of the bridge, which is currently the only way in and out of the property. Elsey is proposing to add the connection to 12th Street along to the east. Elsey acknowledged that he did have some concerns from the neighborhood previously and he was hopeful that this site would be more isolated from the rest of the neighborhood. Elsey is attracted to this area because of easy walking distance, right off the pedestrian bridge, to the University, West Haymarket and Haymarket Park, and all the amenities around the arena. Elsey confirmed that he does have the entire block under contract. contingent upon approval of this project.

Elsey stated that it is on a 2.5-acre site, with a mix of one-, two- and three-bedroom apartments. Elsey Partners is a student housing developer, but these are not 4-bedroom and 4-bath suites. There are some one- and two-bedroom apartments. He would not prohibit other young professionals or empty nesters from living in these apartments, but he believes there will be a high percentage of students in this complex.

Elsey pointed out that he has pushed the building back as far as possible to the south to create more of a buffer to the neighbors to the north. There will be street trees and landscaping, and the building was moved to the south. The UDC was concerned about screening of the parking lot and the headlights, so a median was added to the parking lot to create screening to the neighbors to the north.

Elsey also pointed out that in this block along Charleston Street, it appears that there are only two owner-occupied's on that stretch and the remainder are rental units. He believes that this fact conveys that this is an appropriate location because there is a demand needing to be met with the existing demographics, particularly in this block.

Elsey showed images depicting that the building is stepped down from the south to the north. This basically reduced the bedroom count by 50, from 260 beds to 210 beds.

A shadow study was conducted with the winter solstice and that is how they determined the angle of the building. It will have no more shadow occurrence than a two-story building. They are proposing a landscape entry plaza on the south.

Beecham referred to the minutes from the UDC about how this will add to a historic area. She asked Elsey to address what has been done to blend in with the historic character. Elsey stated that they will accomplish that with the materials on the back side of the building. Most of those homes along Charleston are predominantly siding, but we wanted

to keep kind of a higher-end feel. There will be siding on the back of the building mixed with brick. Beecham wondered about windows/glass on the north side. Elsey acknowledged that there is some glass on the entry portion, and there are two-story apartments on the upper floor which will have larger 8x12 windows on the top. Beecham does not want the neighbors on Charleston to be looking at a solid wall in their back yards.

Elsey noted that they did not incorporate any balconies. The interior court yard includes a swimming pool so that the community space is located within the interior of the building to keep things isolated.

Corr asked whether the applicant was looking at both sides of Charleston Street. Elsey's answer was, "yes".

Harris referred to the photographs and rendering and asked whether those assume the vacation of the alley. Elsey explained that the mockups do incorporate vacation of 10 feet of the Y Street right-of-way. The right-of-way on the west half where the road is paved on Y Street is significantly larger than on the east half, so that is where they are proposing to be granted some of the right-of-way.

Corr asked how many of the houses on the Y Street side are owner-occupied. Elsey confirmed that he currently has those under contract, but there are three owner-occupied.

Corr noted that Urban Development talked about electric sub-metering for responsible energy consumption. Elsey explained that this was an attempt to not put 120 meters on the back of the property, so there is sub-metering where you can put one meter on the back and put just a little donut around the cable to monitor the usage by the residents. However, LES is not going to allow the sub-metering. There will be a meter, and Elsey Partners will receive an individual bill and assess it to the tenants. They intend to place a cap on the use of electricity for the tenants. The electric bill will be part of the rent. If the tenant exceeds the cap amount, they will be required to pay the additional amount separately. He wants to encourage responsible energy use. It has been found that DVR's and flat screen televisions actually have a pretty high load that people do not realize. The tenants will be so advised.

Support

1. Walt Bleich, 1062 Y Street, a 30-year resident of North Bottoms and one of the affected landowners, testified in support. When he was first contacted by Elsey, he did not have any interest in selling; however, during the negotiations they made a very fair offer which was hard to turn down, i.e. twice what the house is worth, so he has a vested interest in this project. He understands the opposition and suggested that a lot of it seems to be based on nostalgia, looking at the way the neighborhood used to be in the past and not the way it is today. The block has three owner-occupants. A fourth person whose parents own the house is living there. All of those houses are on contract. There are already students living

in those houses. He believes this project may alleviate a lot of the problems that he has seen by having these students living in the neighborhood. Philosophically, he is in tune with this kind of project. We need to move as a society more to vertically developing residential housing rather than simply spreading out and gobbling up good agricultural land. We need to revitalize the neighborhood. He does have some concerns with TIF transferring the tax burden to existing taxpayers, but he understands that seeking TIF has to do with improvements requested by the City or restrictions on the kind of project they want. His concern about TIF is alleviated by those improvements.

In terms of redevelopment, Bleich suggested that Lincoln is at a crossroads. We are heading toward a redevelopment brick wall with our natural resources, especially water. He understands there might be some long range plans by the City to find new water resources, but we need to either start to look at capping new redevelopment or we need to move forward with another pipeline. That discussion needs to happen as soon as possible.

2. Brian Mihulka, owner of 1108 Y Street, testified in support. He believes this is a good development, especially with the location near the railroad tracks. It is also a good transition and most of the houses are rentals at this point anyway.

Opposition

1. Wendy Thrasher, 806 Y Street, testified in opposition. She was also opposed to the original project. She believes that there is a lot of neighborhood opposition to this second project as well. At one of the neighborhood meetings in the beginning, Elsey continued to portray this as “student housing,” but when pressed, he defined it as “young urban professional housing”. Thrasher takes issue with the inappropriate placement of such a modern looking building in a historical district. There is a sign right by Y Street that glorifies the North Bottoms Neighborhood. A number of people living there actually built and kilned the bricks that built the Haymarket District downtown. She believes that this type of project is very disrespectful in that regard.

Thrasher also stated that she does not find fault that it would be beneficial to have more housing in the area to accommodate UNL students and workers in the Downtown area. But, she would like to preserve this historical neighborhood of the North Bottoms. If this is truly being portrayed as “student housing”, there needs to be a disclaimer that they are willing to rent to anyone. If portrayed as “infill housing,” it would be possible for a family to rent an apartment in this building.

Thrasher believes the plan needs more green space for children, such as a small playground. Urban professionals do tend to have young children and they need some place to play.

Thrasher also takes issue with restricting the electrical usage and including that as part of

the rent. It might perhaps even be unconstitutional. TIF will put a burden on the taxpayers. The property owners/neighbors have wanted that area improved for quite some time and now approximately one-fifth of this apartment building expense will be TIF.

With regard to parking, Thrasher stated that Elsey represented to the neighborhood at their last meeting that he would only have 70 parking spaces. Now suddenly it is more than 70. She has a hard time understanding the applicant and how quickly he is changing things.

Thrasher believes that the North Bottoms is a residential neighborhood and a historic residential neighborhood and it should stay that way. She strongly urged that the Planning Commission to table this proposal for further consideration.

2. Annette McRoy, 1142 New Hampshire, testified in opposition. She expressed confusion on this project because the City has worked very hard to preserve older neighborhoods over the years. In fact, the Neighborhood Design Standards were written a few years back for the core neighborhoods. She suggested that this project reverts all of the work that has been done over the years to protect our core neighborhoods. She understands it is private property. Since Elsey is going to own all of the property, is this the highest and best use of the property? She understands the housing stock may not be the best, but it was someone's home; it provided housing for students and young families.

McRoy stated that she does believe in redevelopment, but she does not understand how an urban apartment building fits in with an older neighborhood. She believes it is infill. She acknowledged that the project done along Vine Street turned out very well and that there are areas to do this. However, there are roads that have not yet been widened; we have not changed the Comprehensive Plan; we have not changed the long range plans; we have not included money in the CIP to do that because it would change the character of those neighborhoods. North Bottoms is a low to moderate income neighborhood, but it is her home and the home of a lot of other people. We need housing in the city to fit everyone's budget. McRoy takes offense that the North Bottoms is mostly rentals. She has met the nicest people in those rental projects. She grew up in North Bottoms. The neighbors have worked really hard to help change the stereotype of the North Bottoms. Now, to bring in an urban apartment building with young professionals and students, turns it backwards to where it was going. She cannot imagine anyone would allow putting an apartment building like this in the Near South. Yet, we are doing this to an area in which taxpayers' money has been spent to turn it around.

McRoy advised that the North Bottoms Neighborhood Board has not voted on this project. The developer held two neighborhood meetings. There were a lot of questions about traffic flow from the residences. The neighbors are concerned about the traffic from 12th Street into the neighborhood. There will be more people going into the interior of the neighborhood. Charleston is very narrow today. There is no parking on one side of the street today. Adding more cars will not be ideal.

With the developer showing a phase two of this project, McRoy believes they see this neighborhood as a dollar sign. They plan to buy properties on Charleston so it will keep creeping and creeping.

Corr asked how many attended the neighborhood meetings. McRoy thought that perhaps 30-40 people attended. Corr understands that the traffic concerns were number one. Were there other concerns? McRoy stated emergency vehicles being able to get into the area; TIF; does it fit? Those neighbors with which she has visited want what is the highest and best use going forward. She has some experience working with infill housing, and she believes we could choose to do something better. It appears that we are bending every rule to make this project work, so it really does not fit in with what the neighbors had in mind.

3. Alan Burbach, 1200 Claremont, which is two blocks north of where the traffic will come out, testified in opposition. There are only two ways out - across the neighborhoods to 14th Street by the Devaney Center or head back towards 10th Street. He suggested that half of the traffic will probably head toward 14th Street and go across the neighborhood. His property is somewhat removed from the building, so his primary concern is the traffic, especially on the narrow streets where you cannot get a car through if parking is allowed on one side of the street.

Burbach finds it odd to remove housing to put in an apartment complex and then calling it a "transition". The transition is more from Memorial Stadium to the neighborhood and less about the Downtown.

Staff questions

Beecham asked staff to address the traffic issues. Barnes advised that the applicant did provide a technical memo looking at the traffic impacts and driving habits of a university campus in Minnesota. It was provided to Public Works; that study said that for a student housing type of development, there would be approximately 1/3 of the amount of traffic than a traditional apartment complex. Public Works reviewed that study and accepted their methodology and analysis, and did not require a traffic study.

Corr then asked staff to address the parking requirements. Barnes stated that the applicant is meeting the parking requirements. It is based on the number of dwelling units. There are 126 dwelling units proposed and the parking lot would provide 162 spaces. The requirement for R-8 is 1/dwelling unit regardless of the number of bedrooms. The code does not base parking off of bedrooms, only the use and the zoning district.

Beecham assumes that student housing means unrelated individuals living together, with many of them not sharing a vehicle. The numbers being provided do not deal with that issue. Barnes stated that there is a special permit for dwellings for nonrelated persons, and that is when you have more than 3 nonrelated people living together, which is a different

CUP application. There is a parking requirement for that special permit of one space per resident, but this is not that type of special permit.

Response by the Applicant

With regard to the architectural character of the building, Elsey stated that the architect worked pretty hard and it did go before the UDC, and that's a pretty tough crowd with seven other design professionals on that board and they did recommend approval of the project. Quite honestly, some of them really appreciated the architectural character and the response to the different historic characteristics with the materials on the project.

With regard to the parking requirements, Elsey pointed out that they are also providing 72 bike stalls. Based upon an in-house parking study at Elsey's own complexes in Kansas and Oklahoma, it has been determined that the parking lots there are 1:1 ratio and 60% full on average and 80% at maximum, so he believes the parking requirement is justified and feasible.

Hove clarified that the parking ratio is 1:1 per bedroom at other locations, and the proposal here is 1 per unit.

Beecham questioned the conditions required by UDC. Elsey advised that the UDC had concerns about screening of the parking lot to the north and moving the building to the south with more landscaping. This has been shown but part of the right-of-way will need to be vacated to achieve that.

Elsey also observed that he has received a lot of feedback from the owners of the lots to the north and a lot of them are interested in potentially selling. So Elsey will be discussing with Planning and the UDC what the north side would potentially look like if there would be a phase two to this project. That would be an R-4 zoning, which would be significantly less than this project. He will be suggesting 2-story townhomes, but he wants to work through that with city staff. Any discussion on phase two is preliminary at this time.

Given that we are considering this particular project as creating a transitional buffer, Cornelius pointed out that Elsey is on record saying that any phase two that involves the north side is going to be sensitive to the historic neighborhood and more in keeping with the existing properties. Elsey agreed.

Derek Zimmerman appeared on behalf of Chris Elsey in rebuttal pertaining to the issue of Comprehensive Plan conformity, stating that one of the major goals of the Comprehensive Plan is to promote infill within the greater downtown area, and this project does that. He also pointed out that under the R-8 zoning, there are more units that could be allowed than are being proposed. This project is 48 less units than allowed in R-8.

Another goal of the Comprehensive Plan is to move properties out of the floodplain, and these properties which are currently in the floodplain will be taken out of the floodplain because of this project.

With regard to transition, Zimmerman pointed out that in the neighborhood focus area action plan for North Bottoms, one of the primary concerns was the conflict between industrial and residential. The industrial on the eastern portion will go away. There is property to the south with railroad tracks and other industrial uses, and this project will provide a buffer and greater separation to the neighborhood to the north.

Beecham asked Urban Development whether the redevelopment plan for the North Bottoms is the last time the city talked to the neighbors. Hjermstad recalled that there was a focus area, which is different from the redevelopment plan. Redevelopment plans are spelled out in state statute to get to TIF. Focus area plans (target area plans) are something that the City did and the North Bottoms focus area plan might have been done in about 2002. The focus area plans were initiated by Urban Development working with other departments. The idea was that it had to be a neighborhood association that wanted to work with the City and had to be low to moderate income to qualify for CDBG. The main reason that the focus area plans have gone away is because CDBG federal funds were cut and are no longer available. In the focus area plan, Urban Development did work with the neighborhood to identify short term (3-5 years) improvements that could be done. These focus area plans were very much lead by the neighborhoods. As a result of the focus area plans, sidewalks were repaired, alleys were graveled, neighborhood signs were installed, there were some park improvements, housing improvement programs, etc. She recalled that a partial streetscape on 10th Street was not completed because there was not enough funding, but they did do the lights and street trees.

Beecham believes that the Near South focus area plan included a long term vision. Was there anything like that in the North Bottoms plan? Hjermstad could not recall exactly but she believes there was an overall vision for the neighborhood that recognized how much of the neighborhood had become rental but still wanting to maintain the character of a historic, single-family neighborhood, although she also recalled that there was the recognition that the neighborhood is changing and how best to keep some of the character of the neighborhood. Hjermstad pointed out that this neighborhood has not been designated historic, but it is eligible.

Beecham asked whether there is anything preventing the neighborhood association from engaging with Urban Development to take a fresh look at it and update the focus area plan. Hjermstad advised that there are less people in Urban Development and about half as much funding so it's a matter of resources, but Urban Development staff could attend meetings and do whatever possible to be a resource.

TEXT AMENDMENT NO. 14004

ACTION BY PLANNING COMMISSION:

May 28, 2014

Cornelius make a motion to approve, seconded by Scheer.

(Editorial Note: The comments on this particular motion pertain to the entire 1100 Y Street Project package, including TX14004, TX14005, CPC14011, CZ14011 and SP14008].

Cornelius comments that this is about as complicated a package as the Commission has seen in a very long time, and it required a great deal of deliberation and consideration and he expressed appreciation for everyone's comments. When he read the text amendment regarding R-7 and R-8 and CUP's, Cornelius was concerned because of the city-wide application and the way this seemed to be a fairly sweeping change. Often the Commission is given a chance to deliberate in advance with a briefing, etc. But we did not in this case. One of the things which allayed his concerns was that R-7 and R-8 re limited in their use, i.e. small, any kind of CUP is by special permit and will come before the Planning Commission – a lot of checks and balances. It is actually putting greater restriction on these developments, but we are in effect creating a new R-8 zone to apply this project to. That gives him pause. R-8 is defined as a transition zone between higher intensity use and other residential. In this case, we have train tracks and industrial, the stadium, the campus and what is historically single-family residential on the other side.

Then he started reading the request for the special permit, and he tried weighing the pro's and con's. This is a residential neighborhood with a lot of rentals, but that's okay; and this is a high impact project. Otherwise, we would not need the text amendments. This does create a transitional area between the existing uses and the historical single-family residential area. We also heard that the area has a reputation for party houses and that this will change the character of this area that is affected – it turns it inward and reduces the size of the residences, and that is a good thing. It is relatively high-end rental and the residents will have to care somewhat about where they live. It is pedestrian oriented. It checks a lot of boxes when talking about the Comprehensive Plan conformity – high density infill; removing property from the floodplain; and redevelopment in an area that might otherwise have problems developing.

On the con side, Cornelius acknowledged that it has an impact on a lower density neighborhood with residential properties that are low to moderate income and those properties might feel put upon by having this right on the edge of the neighborhood. It requires a number of variances in spite of the proposed text changes. That gives him concern. And it is a radical change from existing conditions. Is that a bad thing? Cornelius is not sure that it is.

On balance, Cornelius stated that he is more in favor than against this package. If he were facing these challenges in his neighborhood, he might appreciate this project. He would be concerned about phase 2, but that's a future thing that will come before this body. And,

rest assured, this body will take into consideration the historical character of the neighborhood.

Scheer generally agreed with Cornelius, and he does not want to lose sight of the fact that for about 4 years, this community has had ongoing discussion about tools and ways to make things like this happen. This is what that looks like in reality. He is really pleased about the fact that we are to this point and actually doing something that we have been talking about for 3-4 years.

Harris agreed with what has been said. She commented that the Commission usually has a little more background on issues like this and she still feels that she would benefit from a little bit more background on the parking requirement and the ability to increase or decrease, especially with final action. She would be more comfortable delaying the parking requirement portion only. She needs to understand better how the text amendments affect the zoning in general.

Beecham expressed that she is concerned about this project because right now our design standards are based on matching the pre-existing neighbors on the block. She thinks that approving a project like this that is demolishing all of the houses on the block is setting a precedent to get around the design standards. We do have projects coming into older neighborhoods that take up an entire block and we need to address this issue. It could undermine the purpose of the design standards.

Beecham also cautioned about saying, "they are rentals, therefore they are expendable." A house that is a rental can be turned back into owner-occupied; a house as a rental can be a good neighbor; we do not want to assume that a rental house is not a valuable house.

However, despite those two things, Beecham stated that she does like the project because it is at the edge and not in the middle of the neighborhood; it is adjacent to a busy street; it is buffering the railroad; and she appreciates the fact that the developer has worked to alleviate the scale and tried to use some materials that will blend better with a historic area. She would agree that the parking issue could be delayed.

Corr commented that the text amendments gave her concern because it has city-wide ramifications. But, her concerns are somewhat alleviated because one must have a large area of land to work with and that will not happen very often in the city core. But, when someone purchases the whole block face, the design standards go out the window. She prefers the porches and the neighborhood look.

Then with the special permit, Corr commented that we have all known about some of the problems that North Bottoms has been challenged with – the party houses, litter, etc. – and she believes this project will help alleviate some of that. The only reason she will support is because it is on the edge and it is giving the buffer between an industrial use and the residential housing; however, moving on to the next street, Charleston Street, is going to

have to meet some of those neighborhood design standards. She wishes that this was more neighborly; it's going to have to stay rental and that is a disadvantage she does not like. However, she has concluded that the buffer and transitional outweigh some of the other negatives.

Motion for approval carried 7-1: Beecham, Cornelius, Corr, Weber, Scheer, Sunderman and Hove voting 'yes'; Harris voting 'no'; Lust absent. This is a recommendation to the City Council.

TEXT AMENDMENT NO. 14005

ACTION BY PLANNING COMMISSION:

May 28, 2014

Cornelius moved approval, seconded by Scheer and carried 7-1: Beecham, Cornelius, Corr, Weber, Scheer, Sunderman and Hove voting 'yes'; Harris voting 'no'; Lust absent. This is a recommendation to the City Council.

COMPREHENSIVE PLAN CONFORMANCE NO. 14011

ACTION BY PLANNING COMMISSION:

May 28, 2014

Cornelius made a motion to find the proposed amendment to the Antelope Valley Redevelopment Plan to be in conformance with the Comprehensive Plan, seconded by Scheer.

Motion carried 8-0: Beecham, Cornelius, Corr, Weber, Scheer, Harris, Sunderman and Hove voting 'yes'; Lust absent. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 14011

ACTION BY PLANNING COMMISSION:

May 28, 2014

Cornelius moved approval, seconded by Scheer and carried 8-0: Beecham, Cornelius, Corr, Weber, Scheer, Harris, Sunderman and Hove voting 'yes'; Lust absent. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 14008

ACTION BY PLANNING COMMISSION:

May 28, 2014

Cornelius made a motion to approve, with conditions, as revised, seconded by Sunderman and carried 8-0: Beecham, Cornelius, Corr, Weber, Scheer, Harris, Sunderman and Hove voting 'yes'; Lust absent. This is final action, unless appealed to the City Council within 14 days.

*** 5 minute break ***

COMPREHENSIVE PLAN CONFORMANCE NO. 13020,
PROPOSED DECLARATION OF SURPLUS PROPERTY;
and
CHANGE OF ZONE NO. 14012,
FROM R-1 RESIDENTIAL AND P PUBLIC USE TO
R-3 RESIDENTIAL AND FROM R-1 RESIDENTIAL TO P PUBLIC USE;
and
SPECIAL PERMIT NO. 14008,
LINCOLN HOUSING AUTHORITY 84TH STREET SITE COMMUNITY UNIT PLAN,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 84TH STREET AND SOUTH STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 28, 2014

Members present: Beecham, Cornelius, Corr, Harris, Weber, Scheer, Sunderman and Hove; Lust absent.

Staff recommendation: A finding of conformance with the Comprehensive Plan on the declaration of surplus property; approval of the change of zone, and conditional approval of the community unit plan (CUP) special permit, as revised.

There were no ex parte communications disclosed.

Staff presentation: **Paul Barnes of Planning staff** explained that the comprehensive plan conformance item is to review the surplus declaration of publicly owned and used property. The Lincoln Water Department currently owns the property at South 84th and South Street, and has owned it for quite some time. The Water Department did have a survey done to determine their current and future needs for this land and the survey shows this property as excess and they do not have a need for it in the future. The majority of the property is zoned R-1 with P Public on the northern end. The Comprehensive Plan does designate this property as “urban residential” and it does designate property for the water tank and fire station as public use.

Barnes went on to state that the proposal is to change the zoning from R-1 to R-3, which is consistent with the Comprehensive Plan and is considered an urban residential district. There is R-1 to the west; R-3 adjacent on the south; the R-3 to the south is within a community unit plan. This is a request for a community unit plan (CUP) to develop 72 multi-family units. The site plan would lay out nine buildings with eight units in each. There is a mix of one- and two-bedroom units; the parking is shown as both surface and garages. The R-3 zoning would require a rear yard setback of 30 ft. for this use, but in this case the applicant is showing an increased setback to 40 ft. along the properties on the west. This district (R-3) requires a 20 ft. front yard on 84th Street and the applicant is showing 25 ft. The side yard setbacks would be 5 ft., which is shown on the north part, but is increased on Outlot A to 25 ft. and there is a 110 ft. setback due to the LES overhead power line easement. There is a pipeline in 84th Street that does impact development on

this property. Due to the contents of the pipeline, the pressure and the size, there is a separation requirement of 175 ft. A portion of that does come onto this site, so the staff is recommending that there be no dwelling units within that hazard area. The applicant is showing a maintenance building, garage and some parking and circulation in that hazard area.

Barnes also pointed out that Outlot A is currently part of the Trendwood CUP, which covers the land to the south. This proposal is to consider removing Outlot A from the Trendwood CUP and add to this proposal. If this application is approved, that action would happen separately by administrative amendment. The outlot will consist of a clubhouse and additional garage.

Barnes acknowledged that some of the concerns of the opposition have to do with traffic. He advised that Public Works did look at the traffic generation. If you were to compare what could be built there today with R-1 zoning, there could be 49 single-family homes. What's the traffic impact of that many homes vs 72 units of multi-family? – the outcome was that it is essentially a wash during the peak hour.

As far as the concerns about drainage and grading of the site, Barnes advised that the applicant is proposing two detention cells to capture the rain water and retain it on-site. It is a requirement that runoff not be increased with this type of development so they would have to contain their own stormwater with those detention cells.

Barnes then addressed the waiver of the subdivision ordinance which currently provides that there cannot be more than 40 units with access off of a dead-end street. No other access would be granted on 84th Street or South Street due to the city-owned property with the water tank and fire station. This application requests 72 units off a dead-end street. This waiver has been granted in many other developments across the community. In the cases where the waiver has been granted, there has been a condition to consider providing a secondary emergency access, and there is a condition in this staff report that would put another sidewalk on the north end of the development widened to at least 10 feet to allow that emergency access. The Fire Department did review and recommended approval with a fire station adjacent to this site.

Beecham assumes that the restriction for the dead-end street is for safety. Barnes indicated that is why an emergency access in other developments have been recommended.

Proponents

1. Steve Werthmann, Housing Real Estate Manager for Urban Development, appeared on behalf of the Director of Urban Development. He stated that he is testifying on behalf of Urban Development for two purposes – one is that Urban Development is the applicant for the surplus property, and secondly, Urban Development is in support of this

project because it would provide much needed affordable rental units, which is part of the Comprehensive Plan. Urban Development is responsible for reviewing city-owned property for possible land which is not needed by the City and can be surplus. It is an ongoing process. The surplus process requires the participation of every single City department and the Mayor. On this particular project, Urban Development inquired of every City department and worked very closely with three particular departments, i.e., Fire, Water and Parks. "For Sale" signs were placed on the property in June of 2013, and it has been on the web site for over a year. Urban Development also provided an attachment to one of the City Council news releases in October. The property was advertised for a month and anyone interested was asked to come forward with an offer. There were 5 inquiries but only one group came forward to actually make a bona fide offer, i.e. the Lincoln Housing Authority (LHA).

Werthmann also noted that the City of Lincoln is a participating jurisdiction for HUD funds and the Urban Development Department is the administrator of such funds. In order to receive the funds, Urban Development is required to do a five-year consolidated plan, with an action plan for each of those years. Urban Development has partnered with several different non-profit housing organizations and LHA is the major organization that helps fulfill Urban Development's goal of affordable rental properties. In doing the consolidated plan, several studies on housing needs were done. Werthmann shared a housing needs summary table showing percentages of household income going towards rent, and the table reflects that it is more difficult for the lower income households to rent a unit that is affordable. Therefore, Urban Development is in favor of this project. LHA does provide affordable rental properties with a mixed income approach and they fulfill their commitment that they made over a decade ago to spread their projects all over the city so as not to impact any particular neighborhood.

It was confirmed that StarTran does run down 84th Street.

Corr asked if Planning was present at the neighborhood meeting coordinated by LHA. Werthmann stated that both Planning and Urban Development staff attended the meeting. It was a very good turnout with probably 30-40 people. The main concerns were traffic and water runoff.

2. Tom Huston, 233 S. 13th Street, Suite 1900, appeared on behalf of the Housing Authority of the City of Lincoln (LHA). LHA is one of those strange political subdivisions created by the city, authorized by the state and funded by federal law. LHA has a long history of providing affordable and safe housing in the City of Lincoln.

Huston focused his testimony on the special permit, submitting that the primary focus of LPlan 2040 was sustainability achieved through increasing density and infill development using existing infrastructure. He believes the staff report does a good job of finding compliance with the Comprehensive Plan. This project would not require any new infrastructure whatsoever. The promotion and creation of new affordable housing

opportunities throughout the community and the distribution of affordable housing throughout the community are also set forth in the Comprehensive Plan. Huston pointed out that LHA has projects throughout the community.

Huston noted that the City is in the process of declaring 9.37 acres as surplus; LHA has contracted to purchase the adjacent .64 acre owned by Lincoln Federal for a total of 10.01 acres. The proposed 72 units would be comprised of 20 one-bedroom and 52 two-bedroom units contained in the nine structures. The west boundary line is officially the rear yard requiring a 20' setback and the site plan reflects a 40' setback. It will be landscaped in compliance with the design standards (60%) and existing trees will be retained.

As an example of a LHA project, Huston shared a photo of "Prairie Crossing" located at 33rd and Yankee Hill Road, which consists of 76 dwelling units on 9.33 acres. LHA is in the business of providing affordable housing and this project would be a "mixed income project".

With regard to the detention cells, Huston submitted that there are hundreds around the city and they function well. These will be dry the vast majority of the time; however, they do not want to fence the detention cells because they will be maintained and mowed. LHA has developed similar projects, i.e. Woodbridge at 18th and Pine Lake Road (130 units); Summer Hill at South 56th Street & Union Hill Drive (40 townhome units approved 15 years ago within an existing neighborhood); and Prairie Crossing at 33rd and Yankee Hill Road. LHA takes great pride on construction and maintenance.

Scheer inquired as to the location of the detention cells. Huston stated that they are located on the western border and north of the maintenance building. The detention cell on the western border would be served with underground pipe.

Beecham wondered about fencing around the detention cell. Huston stated that the detention cells will not be fenced because LHA wants to be able to maintain them. Detention cells are designed for the water to absorb in. A retention cell is more of a permanent pool with the pipe up high. The detention cell slows the water down so that it ultimately drains.

Beecham asked about the kinds of trees and the topography. Huston pointed out that the apartments will be higher than the properties to the west. The City has made the decision to sell this property and it will either be developed with single-family, duplex or apartments. Anything that could be constructed will have to comply with the height limitation of a two-story structure, and this project will comply, with special attention being paid to the west because of the grade differential. The landscape plan would go through the building permit process. LHA's other properties have had very healthy landscaping.

Weber inquired about fencing on the west. Huston did not think it would have any merit. He also pointed out that the parking being shown is considerably more than would be

required. LHA wants to make sure there is adequate parking within the site so that there would be no on-street parking.

Harris wondered what type of design the Planning Commission could expect if this is approved. Huston stated that the design shown is one of the 8-plex buildings that would be located at this site. LHA desires to take advantage of this design and use it again because it has worked so well with Prairie Crossing.

Opposition

1. Mark Hunzeker appeared on behalf of **Ken Hake** who owns a pair of townhouses at the intersection of Karl Ridge Road and Viewpoint Drive. Hunzeker submitted that the City has owned this property since 1964, and has had that number of years to integrate into the neighborhood. The City wants to buy this property contingent on a waiver of its own design standards. The City is waiving its own rules to allow for an 80% increase of dwelling units taking access from a single dead-end roadway. The City now asks the Planning Commission to ...”put your unbiased blessing on the City staff recommendation of approval of the City’s application.”

Hunzeker stated that his client does not have any objection this project – no objection to the change of zone, nor the density bonus – but he does object to the waiver of the access requirement because it is needed.

Hunzeker noted that the staff mentioned several other such waivers approved in the past, but Hunzeker believes the staff would be hard-pressed to find a single one that dumps onto a residential street as opposed to an arterial or onto a collector street. There is no explanation for the lack of access to South Street or 84th Street, and the drawings included in the report really do not adequately show what the City owns and the possibilities that exist. Hunzeker pointed out that the City owns all the way to South Street, and South Street has an intersection at 84th Street with a median break. There is no explanation of why the City-owned driveway could not be provided to serve this project. There is also no explanation of why no access will be granted to 84th Street. There is 1350 feet of frontage from the center line of Karl Ridge Road to the center line of South Street that would allow for a right-in/right-out, if nothing else. Hunzeker believes that Lincoln Fire and Rescue intends to get rid of the fire station. There is an access point at that fire station that could be accessed at some point in the future, and there is no discussion of this in the staff report.

Hunzeker then requested that the Planning Commission pretend that this is a private property owner who has owned this property for 50 years and watched the surrounding neighborhood develop and done nothing, and now comes to the Planning Commission with a contract for a lot of money and requests a waiver of this “one little rule”, and don’t bother with the fact that the City could get access to South Street or 84th Street, if they asked for it.

Hunzeker submitted that it is important to decide this on the issue of whether or not this is an appropriate concentration of trips onto a residential street which has access to 84th Street at an uncontrolled intersection without even so much as a left turn lane. There is a 192-unit apartment complex immediately to the south but it has more than one access. Hove asked about the owner of the property in the northwest corner. Hunzeker stated that the City owns it.

2. Danay Kalkowski, appeared on behalf of **Somerset Apartments, LTD**, the owner of the complex at the northwest corner of 84th Street and Van Dorn Street. Somerset is not opposed to location of an apartment or multi-family use on this site; however, there are concerns about the site plan. The main concern is access and landscaping. A single access point outletting onto a residential street is not sufficient for the proposed density. Since the City owns the site and is using the change of zone and special permit as an attempt to maximize the density, they need to find a way to address the access issues, particularly when this is a site with known access issues.

With regard to landscaping, Kalkowski submitted that Somerset has worked hard to create a personality for their development that fits in with the residential neighborhood by adhering to very strict maintenance requirements and more than the required amount of landscaping on their site. No doubt, LHA is a good owner and does quality maintenance, but the owner would liked to have seen the landscape plan for this site to make sure there is adequate screening incorporated into the site – more than the minimum amount required.

Beecham asked Kalkowski to address the topography of Somerset with the neighborhood. This project is higher. Kalkowski acknowledged that they do have quite a bit of variance in height. Somerset has been there for some time so it now has mature landscaping. It's probably more the screening around the edges that creates the feeling for the neighborhood.

3. Ryan Gross, 2230 Devoe Drive, presented a petition on behalf of the residents of Devoe Drive, Karl Ridge Road, and surrounding streets (144 signatures representing 71 households) in opposition primarily because of safety issues and traffic concerns. His house backs up to where the detention pond will be located. What's going to happen when that detention pond runs over? This question has never been answered. This project is not compatible with this neighborhood. The neighbors would have no problem with LHA if it were single-family homes. We all want affordable housing, but we do not want to mask the fact that this does not fit. No one here is against affordable housing.

4. Eileen Warner, 2110 Devoe Drive, testified as a representative of the 144 signatures that they were able to acquire throughout the neighborhood. The people of Trendwood would like the Planning Commission to vote "no". She shared a previous site plan showing 80 units. The City has already put up a 10' fence to protect themselves. She then referred to the proposed site plan showing 72 units rather than 80, with the 40' setback rather than 30', but each unit is still going to take up two of the neighbors' back yards. In no way has

she found that this rezoning and special permit waiver relates to the City's Comprehensive Plan and the project does not meet the standards.

Warner then referred to the Comprehensive Plan, suggesting that there is already higher density to the immediate south of this location (Somerset) as well as a retirement community to the south. Also referring to the Comprehensive Plan, she suggested that there is poor access to alternative transportation. She called StarTran and it would take 2 ½ hours to take a bus to Walmart. If you wanted to go to work where they have jobs, you will have to take two buses and three hours to get there. There is no good way that StarTran can move socially economically challenged people.

Warner further referred to the Comprehensive Plan, suggesting that the proposal does not look anything like the neighborhood of Trendwood. It was named Trendwood because it has large mature trees. There is no green space in the proposal.

Warner cited the Comprehensive Plan encouraging safe and adequate affordable housing. Affordable housing does not maintain the vitality of this neighborhood.

Reciting from P.7.2 of the Comprehensive Plan, Warner submitted that this proposal is not near job opportunities; this is not an area to be preserved for special needs or multi-family use because it has already been zoned for single-family dwellings; this does not provide safe housing, hence the need for a waiver – it's a dead-end street. It is not safe.

Warner then referred to P.7.8 of the Comprehensive Plan which talks about infill and redevelopment occurring over long periods with good design. Warner does not believe this project meets good design nor appropriate placement.

Comprehensive Plan P.7.10 suggests that redevelopment should strive for compatibility with the character of the neighborhood. Warner stated that this development does not meet the character of the neighborhood due to the topography, height, lack of privacy and lack of green space.

Warner reiterated that a StarTran bus would take at least two hours to get to any particular area of benefit and this project does not fit the Comprehensive Plan nor the Trendwood neighborhood. She also pointed out that approximately 10 years ago, an application was made on this property for individual housing by the Nebraska Housing Resource and it was turned down.

5. Richard Metteer, 8214 Karl Ridge Road, who is the Neighborhood Watch representative, testified in opposition. He indicated that there was community involvement once the neighbors received a letter about Easter time. The neighbors have met weekly and have gone house-to-house. The neighbors are afraid because many of them are 80 years old and above. They are concerned about the safety.

Coming out of Somerset Apartments, Metteer submitted that the drive that is proposed to be used for this project is directly across the street from Karl Ridge Road, so many of the 192 apartments in Somerset will use that access as well. If you have not tried to enter 84th Street and make a left hand turn to go north, then you don't have any idea at all of what we are talking about in terms of getting onto 84th. It doesn't happen. You can't even make a left hand turn to go north. Instead, you are going to have movement to the west. South Street is not a main thoroughfare; it is 25 mph; it is residential. Children walking to school will cross 82nd Street and 79th Street before they get to a light to take them across Van Dorn Street. Metteer continued discussing the difficulty for traffic and pedestrians. There is also an issue about snow removal.

6. Karim Makkawy, 1900 Devoe Drive, testified in opposition. The neighbors have collected over 140 signatures in opposition. Approximately 15-20 individuals stood in the audience in opposition. Makkawy submitted that the issue is the safety and well-being of residents of their beautiful neighborhood as well as the fact that such a development runs counter to and is incompatible with the Comprehensive Plan. There are major concerns about traffic increases and congestion; emergency service access both to his neighborhood and the proposed area; impacts of auto activity on children attending four elementary and one middle school within walking distance; detrimental health ramifications of the standing water in retention ponds with no clear guarantee that this water will drain away immediately; no fencing around the retention pond; and inadequate attention to allay the neighbors' concerns and the concerns of a reasonable citizen.

Makkawy suggested that the incompatibility of this project with the existing neighborhood and surrounding area was not sufficiently taken into consideration.

Makkawy clarified that the neighbors do not oppose the development in terms of LHA. They are chiefly concerned with this project having a detrimental effect on their neighborhood's vitality and character. It is not a new neighborhood.

Makkawy then noted that the definition of "development" is "an act or process of growth or progress." She submitted that the proposed plan represents neither. It represents a precarious and radical shift in this neighborhood.

Staff questions

Corr asked staff to respond to the waiver/transportation issues. **Bob Simmering** of Public Works advised that the staff uses a publication from the Institute of Transportation Engineers to consider trip generation by any type of development. They have collected data for decades, the most recent update being 2012. According to that calculation, the trip generation for this proposed development is 6.65 trips per unit per day, i.e. 479 trips per day. Peak hour traffic is what is critical in many cases, so generally 1/10th of the traffic will be at peak hour, i.e. rounding to 48 trips during the peak hour. If this property were converted to single-family and the maximum allowable 49 units, there would be 490

trips/day, or 49 trips during the peak hour. It is essentially a wash. With 40 units allowed with a single access point, the trips would be 400/day or 40 during peak hour. The increase in traffic above what would be permissible is not tremendously significant.

As far as other access points, the staff looked at 84th Street and it is the desire of Public Works to see as few access points on 84th Street as possible. A right-in/right-out on 84th Street would require a right turn lane, which would be difficult.

With regard to access to South Street, it needs to be recognized that South Street is a utility corridor used by the water company, with a tremendous amount of various utilities in that street. There is a future planned second water tower there as well. That utility corridor is not a good place for a street. Again, staff believes that it is best with the single access point on Viewpoint Drive.

Scheer confirmed then that there is no other possibility for additional access. Simmering's response was that it is not impossible but Public Works does not support it. It would be a great hardship and very expensive to start relocating the water tower facilities. The peak hour trips do not justify an access on 84th Street.

Hove inquired whether Public Works has any concerns about exiting into and out of a residential area. Simmering pointed out that Viewpoint Drive is the stub street and is a public street at this point. It was built for the purpose of accessing this parcel.

Weber asked how the water retention ponds were engineered. Simmering explained that the requirement is that the condition of the drainage now is measured and any impervious surface then will cause greater runoff. The goal is to capture that runoff increase and release it at a slower rate. We collect the 100-year storm event and release it at the 5-year event. Weber then asked where the water would go if bigger than the 100-year event. Simmering stated that the City requires a grading plan before any construction. The way this site would be developed is that the drainage would go to the northeast, which would go toward the fire station and 84th Street. If there were any spillover, it would go in that direction, but any spillover is very unlikely.

Beecham wondered how much standing water will be in the retention ponds. Simmering suggested that the only concern would be immediately following the storm. The time discharge is less than 24 hours.

Beecham wondered whether the transportation guidelines referred to previously take into account the adjacent streets and how busy they might be. Simmering stated that Public Works has the ability to do a complete traffic study; however, the Access Management Policy does not require a traffic study until there are 100 vehicles on peak hour. Therefore, a traffic study was not required in this case. It is very expensive and not entirely accurate.

Beecham asked if there is any kind of board over Public Works if someone wanted an exemption to a policy or decision. Simmering suggested that the Director of Public Works & Utilities has authority over the entire department.

Scheer indicated that he is conflicted with the waiver. This is a good project but the waiver bothers him. About a year ago, we were briefed by the Health Department about these gas pipeline hazard zones. With that hazard zone clearly indicated on the plan, if something were to happen (although not likely) on 84th Street and we're loading 70+ units into this property with one access point, he believes that we have just compounded a situation where on one hand we have a Health Department that says this could be a real issue, and on top of it we are almost doubling the amount of units into this dead-end site. This conflict needs to be resolved. An additional South Street exit would allay this concern for him. Simmering's response was that it is really not possible to have a South Street access. It is not a good choice to go to South Street.

Corr noted that there is a house on the lot where there is a road to get to the water tower. If the house was torn down, would that provide enough room for access? Simmering advised that that house is part of the facility and used for managing that site. That probably would not be an option.

Cornelius asked Simmering to respond to Mr. Hunzeker's discussion about the future of the fire station and possible access to 84th Street in that area. Simmering indicated that he does not know anything about the future of the fire station.

All other things being whole, if we were here talking about a private developer versus the LHA development, Cornelius wondered where planning would stand on the issue of extra units over 40 with one access. Would there be the same willingness to make that variance? Barnes indicated that this was discussed at the Development Services Center team meeting with representatives of the Health, Public Works, Planning and Building and Safety Departments, resulting in the decision that if there can be a second access to 84th Street via a widened enhanced sidewalk as an emergency access, then the waiver would be supported.

Response by Applicant

Huston responded to the opposition, clarifying that LHA is not the City of Lincoln; it is a separate board that takes action on behalf of the Housing Authority, independent of the City. When the City advertised the property for sale, it was advertised with the restrictions on access, including prohibiting access to South Street and 84th Street. The Access Management Policy does allow a request for deviation for access to 84th Street, but he is being told that this project does not generate sufficient traffic to pursue access to 84th Street.

Huston acknowledged that he does not have a landscape plan to show at this time, but he will make one available to the neighbors prior to hearing at City Council. LHA takes great pains to design, prepare, maintain and operate very well landscaped properties.

Huston also submitted that we all know that the Comprehensive Plan is a guide – we know it is not code, it is not law, but it does have meaning. It has increased the focus on increasing density using existing infrastructure. The Comprehensive Plan also focuses on the need to increase affordable housing. LHA is responding to the RFP by the City for this site. LHA has no intention to have any adverse impact on any neighborhood.

Scheer wondered whether 50 units would be acceptable. Huston responded, “no”. Scheer urged that reducing the density, regardless of the Comprehensive Plan, would solve a lot of the problems. Huston’s response was that there are a lot of restrictions on this site and LHA tried to make it work. The overhead power lines took a lot of land out of production. The hazard zone also takes additional land. LHA did not come to this density number arbitrarily.

Beecham expressed her concern about putting someone who can’t afford a car in a place where they cannot get access to services. She asked whether the applicant has consulted with StarTran. Huston indicated that they have not gotten that far. LHA provides work force housing because with the financing involved, the tenants are required to be income qualified and have to have sufficient income to support even the reduced rent. A majority of their residents do have access to transportation.

Barnes reapproached to remind the Commission of the revised staff recommendation submitted today amending Condition #2.2 of the special permit as follows:

- 2.2 ~~Delete note 10 since building envelopes are not shown on the site plan. Replace Item #10 under General Conditions on the site plan with text that states, “The building footprints and parking spaces shown on the site plan are conceptual and are subject to minor adjustments.”~~

COMPREHENSIVE PLAN CONFORMANCE NO. 13020

ACTION BY PLANNING COMMISSION:

May 28, 2014

Cornelius made a motion to find the declaration of surplus property to be in conformance with the Comprehensive Plan, seconded by Scheer.

***(Editorial Note:** The following comments refer to the package as a whole, i.e. Comprehensive Plan Conformance 13020, Change of Zone 14012 and Special Permit 14009).*

Cornelius commented that the greatest concerns of the various testimony heard today were those of traffic and safety. There was some talk about how well this development fits into the neighborhood as well. There is another access point that is not in the hazard area, so if the worst ever should occur, there is a way in and out. With regard to traffic, if you listen to the experts and the engineers, there will be as many trips with R-1. As far as character of the neighborhood, this is directly across from another 192 units. There is a great deal of internal green space; it is an attractive development; and we know that these kinds of developments by LHA with a variety of economical residential units have been found to be assets to the neighborhood.

Weber commented that although the proposal is not popular with the neighborhood, it is in conformance with the Comprehensive Plan. He believes the change of zone makes sense. He agreed and is concerned with the traffic situation and cannot support the special permit without the second access.

Beecham expressed that she does like this project because of the placement of more density closer to our busy intersections rather than in the center of a neighborhood. However, she believes there should be access on 84th Street. The traffic counts may not qualify for impact to the neighborhood, but if you combine it with other units, it makes sense to get access on the main street. She will have a problem supporting the CUP.

Scheer agreed with the previous comments about the access. He will have no problem supporting the surplus property and the change of zone, but the waiver is the real issue for him. He does not know that the widened sidewalk solution is something that is very appealing for this 70+ units.

Sunderman stated that he is comfortable with the entire project except for the single entrance and exit. He will not support the CUP.

With regard to StarTran, Cornelius observed that it is hard, if not impossible, in this town to locate a development in any location that will take less than 2 hours by public transit anywhere but Downtown. That is not a problem of the developer but of public transit in general. One of the things the Comprehensive Plan attempts to do is address that in various ways, so he suggests that it is hard to let that argument carry water on this proposal.

Harris expressed her desire for more information on the future of the fire station because it would perhaps provide more clarity. If that fire station goes away, there could be more access.

Hove agreed. He has a problem with the traffic.

Motion for finding of conformance carried 8-0: Beecham, Cornelius, Corr, Harris, Weber, Scheer, Sunderman and Hove voting 'yes'; Lust absent. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 14012

ACTION BY PLANNING COMMISSION:

May 28, 2014

Scheer moved to approve, seconded by Cornelius.

Corr believes that R-3 is appropriate because it abuts R-3 to the south. It's really easy when you have this empty field next to you or in your back yard providing that "out in the country" feeling and to want it to stay that way. She understands the water and traffic issues, but she believes R-3 zoning is appropriate at this location. She does, however, have problems with the traffic and access.

Motion for approval carried 7-1: Beecham, Cornelius, Corr, Harris, Weber, Scheer and Hove voting 'yes'; Sunderman voting 'no'; Lust absent. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 14009

ACTION BY PLANNING COMMISSION:

May 28, 2014

Cornelius made a motion to approve the staff recommendation of conditional approval, as revised today, seconded by Harris.

Corr stated that she was excited when she first saw this project because she thought it would be close to SECC where there are a lot of students that might live in such a development. But then with the StarTran comment, they would have to go to 70th Street, up to "O" Street and all the way over, and that's going to take some time. It doesn't now seem as nice as she first thought.

Motion for conditional approval, as revised, failed 1-7: Cornelius voting 'yes'; Beecham, Corr, Harris, Weber, Scheer, Sunderman and Hove voting 'no'; Lust absent.

Sunderman moved to **deny**, seconded by Weber and carried 7-1: Beecham, Corr, Harris, Weber, Scheer, Sunderman and Hove voting 'yes'; Cornelius voting 'no'; Lust absent. This is final action unless appealed to the City Council within 14 days. (**Editorial Note:** On May 29, 2014, a letter of appeal was filed by Thomas Huston on behalf of the Housing Authority of the City of Lincoln.)

*** 5 minute break *** (Commissioners Hove, Sunderman and Weber left during the break)

**SPECIAL PERMIT NO. 1665C,
AN AMENDMENT TO THE VAN DORN MEADOWS
COMMUNITY UNIT PLAN (CUP),
ON PROPERTY GENERALLY LOCATED AT
SOUTH 70TH STREET AND HOMES PARK ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

May 28, 2014

Members present: Beecham, Cornelius, Corr, Harris and Scheer; Weber, Sunderman, Hove and Lust also absent.

Staff recommendation: Conditional approval.

There were no ex parte communications disclosed.

Staff presentation: **Bran Will of Planning staff** stated that this is the third amendment to the Van Dorn Meadows CUP, located southeast of the intersection of South 70th Street and Van Dorn. It is behind the grocery store and commercial. We are talking about the area at the very southeast corner of the CUP (Outlot B, 3.95 acres). Will displayed the original plan for Outlot B of Van Dorn Meadows demonstrating the original layout showing 9 lots (assumed to be 9 single-family dwellings), although potentially by right or by administrative amendment, the number of duplexes could be doubled in the R-3 zoning district. Will was not sure there is enough area to get 18 dwelling units, but somewhere between 9 and 18.

Will stated that the question he had several times during the review period relates to density. Sort of uniquely, this CUP has split zoning with R-3 to the north, the middle portion zoned R-4 and then the south is R-3. Staff discussed the number of units being proposed with a revised layout from 9 units to 10 two-family dwellings and a 20-unit multi-family apartment building. The density calculation for a CUP relates to the underlying zoning district. The design standards talk about specific density allowances based upon the zoning district. The result is that either the original 9 lots or the 30 requested by this proposal are within the original number allowed by the design standards.

Under the original CUP, up to 482 dwelling units would be allowed under the design standards. There were 448 dwelling units shown as approved under the CUP. Will pointed out that by administrative amendment, the Planning Director could have approved this plan because he is authorized to approve a minor increase in the number of dwelling units within the CUP as well as minor revisions to the site plan; however, in this case, after the applicant had shown the proposed plan to the neighbors, Planning staff knew there was opposition and the Planning Director would not approve administratively. And that is why we are here today.

Relative to the apartment building, which has generated the most opposition, Will advised that the staff is recommending conditions of approval to help mitigate the impact of that building, i.e. street trees; a revised grading and drainage plan; limit the height of the

building to two stories as opposed to three; and revising the building envelopes to show the increased setbacks being proposed. All factors taken together, the Planning Department is recommending conditional approval.

Will then addressed the waiver request to allow some parking in the front yard. Staff is recommending denial of that waiver.

Beecham wondered whether there has been discussion in general – not just on this CUP – about a nice prototype of mixed use. She drove by this site today and is curious what the thinking was as to why an apartment is an appropriate use in this particular location. Will indicated that the staff did debate that issue. Van Dorn Meadows is sort of classic in its layout, with higher density to the north, four-plexes on the east boundary adjacent to single-family, moving down to the open space/detention facility with two-family dwelling units adjacent to the single-family. With what is being proposed today, the question becomes: Is there some real good sound basis for denying this application, with all apartments and moving them close to the lot lines? But, as the applicant revised this plan showing the two-family dwellings to the east; they reduced the height of the building; and they increased the setbacks more than in other cases, staff believes that there was an attempt to mitigate the impact of that apartment at that location. We are talking about residential uses. They are proposing all residential dwellings and given that, there was not really a hard basis to recommend denial.

Proponents

1. Mark Hunzeker appeared on behalf of the developer, **Chateau Development**. This is an application to amend a CUP that was originally approved in 1989, 25 years ago. The applicant is not proposing a change of zone; they are not proposing an increase in the overall permissible density in the CUP. The bottom line is that, even with the proposed increase before the Commission, this proposal is 13 units less than what is authorized to be built within this CUP.

Hunzeker pointed out that Chateau is in the apartment business. They have owned apartments in Lincoln and have been good developers of multi-family housing in this community for a very long time.

Hunzeker submitted that this property is challenging for single-family development because of its irregular shape. In addition, about 11% of the total site lies inside the power line easement that runs across the northern side of the site. There have been efforts to market this site but the power line has not been helpful. There are a lot of costs associated with this site. Back when this was originally developed, Chateau had to build Holmes Park Road from the point at the edge of Fox Hollow all the way to 70th Street; and had to build Sherman all the way from the western edge of Fox Hollow down to Holmes Park Road, so there is a lot of cost that really affects what is already invested in this project.

Hunzeker also advised that originally, the developer took a plan to the Planning Department to develop some apartments which involved 66 units, and the Planning Department said they needed to work on getting the heights down and go for less units. The developer took a plan to the neighborhood association that showed 60 units. There was quite a bit of push-back so they went back to the drawing board and came back to the neighborhood association with a plan that had two apartment buildings for a total of 40 dwelling units. The neighborhood association didn't like that either – they said, “no, that's still too much, we don't like the apartments”. The developer again revised the plan and came back with this final proposal, which is 30 units total, involving 10 townhouse units on the east side (finished floor elevation is 8' below the finished floor elevation of the houses to the east); setbacks on the apartment building are 47 feet from Sherman; 47 feet from Holmes Park Road; over 100 feet from the south property line, and it's a two-story unit. This proposal stays within the allowable height in the R-3 district.

In summary, Hunzeker submitted that this is a project below the allowable density in the CUP; its density on the site alone is about what you would expect for a duplex development; it eliminates access to residential streets; it will vacate the Sherman right-of-way stub and Sherman will not be used for access; all access comes out to Holmes Park Road, which is a collector street. This proposal is 25% below the number of allowable units for a single access point; this project is in accordance with the Comprehensive Plan; and the applicant has absolutely no objections to any of the conditions of approval.

With regard to compatibility of the multi-family with the single-family, it seems that a mistake was made a long time ago when it was first suggested that multi-family dwellings ought to be physically separated from single-family dwellings. It has caused more conflict over the course of time than any single other issue. The apartments are residential in character and these units will be compatible and well managed.

Hunzeker observed that on the previously approved CUP at the north end, there is a progression of commercial to higher density residential to single-family, but there is multi-family immediately adjacent to single-family in other areas of the CUP. No one has ever suggested that the value of those single-family homes has been adversely affected. You will not find an appraiser anywhere who has looked at the sale data that would say that the values decrease. This is a project that is in accordance with the Comprehensive Plan and the CUP design standards, and Hunzeker requested approval.

Harris inquired as to the location of the street trees that would be planted in advance. Hunzeker stated that they are along Sherman and along Holmes Park Road, but there would also be screening along the property line. If you've been there, you know that there are a lot of mature trees along the east property line, and those will be saved. To the extent that it is a benefit, we are able to keep those trees because no one really likes to take them down and it is expensive.

Beecham asked Hunzeker to address the landscaping along the Sherman Street edge. Hunzeker indicated that there would be landscaping that would occur in the area of the turn-around in addition to the existing trees. There may be some berming that would go with that.

Scheer clarified that the trees shown to be removed on the east side will not be removed. Hunzeker agreed. Staff is recommending that removal not occur by the conditions of approval and the applicant will not object.

Hunzeker confirmed that there is going to be a sidewalk along Sherman on the south side.

Corr wondered whether the apartments or the single-family homes were developed first. Hunzeker believes that the single-family in Fox Hollow preceded virtually all of the multi-family development.

Corr asked for the elevation of the apartment building. Hunzeker stated that the site continues to drop from east to west, so generally speaking, there is a little bit of the site that is not being developed that drains to the north, but the rest of it drains "this way" so the finished floor elevation of the building will be below the finished floor elevation of the townhouses. The first floor elevation will be below the single-family dwellings to the east.

Scheer inquired about the view to the north facade of the apartment building. In other words, is this a double-loaded apartment building? **Mike Eckert of Civil Design Group** approached to explain that Chateau plans on emulating similar buildings done within the last four years. There is brick, there is break in elevations, lower level patio and upper level deck; center corridor. It can load from both sides.

Opposition

1. Rev. Dr. Rebecca Z. McNeil, 3411 Fox Hollow Road, serving as the Chair of the Fox Hollow and Sherman Townhomes Coalition that formed in opposition to this proposal, testified in opposition. She stated that she is speaking on behalf of many of the neighbors who have taken off work to attend this hearing and then asked those in the audience to stand. She stated that she is also speaking on behalf of the 320 concerned citizens who have submitted signatures in opposition.

First, on behalf of all these neighbors, McNeil requested some clarification regarding the submitted plan. In some of the communications it stated 5 duplexes, which will total 10 dwellings, but in other communications it says there will be 10 duplexes. The neighbors have deep concern that there may be an additional 20 dwelling units being added to this plan. We want to know exactly how many front doors and entrances there will be along the eastern edge of Outlot B.

These neighbors are opposed to the granting of this variance because it does not meet the standards of good planning practice. The stated purpose of the zoning code includes promoting the health and general welfare of the community; lessening congestion in the streets; preventing overcrowding of land; and to encourage the most appropriate use of land throughout the city. The Comprehensive Plan also specifies that new construction should be built consistent with existing neighborhoods and promoting home ownership should remain the focus in established neighborhoods.

McNeil submitted that this proposal is not sensitive to the existing neighborhood. It does not honor well-established best practices in city planning for appropriate transition from commercial to apartment to duplex to single-family homes, allowing for ample green space and compatibility of use. It leapfrogs or allows a slip-in of apartments into a lot abutting single-family homes in a way that has not been allowed previously anywhere, at least in our quadrant of the city. Currently, along Holmes Park Road, there are businesses (Russ's IGA and Park One Development) and then coming down, there are apartments, and then the retaining pond, and then we have the Sherman townhomes, and then we have single-family homes. To put an apartment building "here" is to leapfrog the already well designed transitioned neighborhood. Currently, those transitions are lovely.

McNeil also pointed out that Mr. Gaspar himself, when he appeared before this commission in 1997 regarding the plans to build the Park One office building, spoke about the transition plan for the neighborhood. Reciting from the minutes, "Mr. Gaspar also contends that this project gives a textbook transition from commercial to office to high density multi-family to four-plex to single-family," and that's at the northern end of the Chateau development.

McNeil suggested that a good plan has been in place for over 20 years, and this request is contrary to Mr. Gaspar's admitted best practice, substituting a 20-unit apartment building and duplex for the townhomes previously planned and publicized for Outlot B.

McNeil also observed that there has been no attempt to show that the buildings will be consistent with the existing homes. Unlike Sherman Townhomes bordering this property, this plan does not include lovely green spaces. The development would put apartments in the front yards of the Sherman Townhome neighbors.

McNeil pointed out that the recommendation of the Planning Department recognizes that the scale is not appropriate, however, suggesting it is mitigated by planting of street trees earlier than would otherwise be required. Item #16 suggests a way in which the impact might be reduced. In other words, "making it so it won't be as bad."

McNeil reminded the Commission that it is the Commission's calling to strive for the highest and best use of the land, not to attempt to minimize an unnecessary eyesore.

McNeil then discussed the school situation. This is a neighborhood where the schools are already stressed and over-capacity, where concerns for drainage and mitigation of runoff is well documented, and where on any given school morning traffic, Holmes Park Road is already backed up from 70th Street all the way to Sherman, and sometimes further back into the neighborhood.

Referring to the Comprehensive Plan, McNeil does not believe that granting this variance will promote the health and general welfare of the community; it will not promote home ownership; it will not facilitate the adequate provision of schools. She requested that the developer be required to keep the CUP which has been in place for over 20 years. The existing Sherman Townhomes are each owner-occupied. Building additional luxury townhomes on Outlot B won't increase the density and overtax congested streets and schools. If this change is allowed, this development will be attractive, especially to families of school age children and to young adults, which are precisely the most likely to further and unnecessarily burden the already overflowing traffic and schools.

McNeil also stated that drainage is a problem. Heavy rains already result in high water behind their homes and on occasion the catch basin to the northwest spills over onto Holmes Park Road. Citizens have made an investment of millions of dollars to clean and protect Holmes Lake. This variance unduly threatens that good civic work.

McNeil also suggested that approval of this proposal will put future tenants and other neighbors at risk for their personal safety with the entrance just north of a blind curve on Holmes Park Road. While Planning has told us that an increase in parked cars along Holmes Park Road will slow traffic, she can foresee that increase in parked cars and increase in young families is a recipe for disaster. Pedestrians cross Holmes Park Road to get to the dog run; pedestrians cross Holmes Park Road to get to the underpass to go to Holmes Park. If there is more density and more children and an increase in cars parked on the street, it will be very dangerous. That is an increased risk which the Planning Commission has the opportunity to prevent.

These neighbors are opposed to this variance because it represents a breach of trust; a failure on the part of the developer to act in good faith by maintaining the CUP which has been published for over 20 years. For the past 20 years, all of the present owners of Sherman Townhomes, and those on Fox Hollow Road, Fox Hollow Circle, Raven Court, and Holmes Park Road were told that Outlot B would be developed into more luxury townhomes. Outlot B has always been represented and advertised to be "Luxury Townhomes by Chateau Development". The Commission has received a letter from Nelda Hunt who sold many of the original townhomes attesting to this. The developer now simply states that he has changed his mind because he is a business man and is seeking the greatest return on his investment. McNeil suggested that such a change in plan is duplicitous. This is changing the rules of play in the middle of the game. It gives an unfair advantage to one business man over 320 neighbors. Gaspar's plan will adversely affect the quality of life of these neighbors; it will unnecessarily invade their privacy and the end

result will cause an involuntary transfer of wealth from the area homeowners to Chateau Development.

Those supporting McNeil's testimony again stood in the audience. For all of the reasons she has recited, McNeil urged the Planning Commission to please deny this request for a variance for Van Dorn Meadows, Outlot B.

With regard to the people signing the petition, Corr asked if the 320 signatures represent 320 property owners, neighbors, husband and wives, etc. McNeil acknowledged that some are from the same residence.

2. Rene Mayo-Rejai, 7515 Sherman Street, testified in opposition. Sherman Street is the only access way out of her neighborhood to get onto 70th Street. Every day in the morning, she meets a minimum of five to ten cars of parents taking their school children, turning on 70th Street, coming up to Sherman to cut through to get to Lux Middle School. She does not believe there has been a proper traffic count. She submitted that the traffic will exceed 100 cars per day if they were to do a proper traffic study. They often get backed up for three traffic light changes. 70th Street is the feeder for Lincoln East, Pius, Morley, the Catholic grade school and Lux Middle School. It is a very blind intersection. Sherman curves and dips down and you cannot see around the next curve. That will now be blocked by the garages. People are going to park on Sherman. Our only access point to 70th Street is Sherman. It cannot handle the traffic flow. There needs to be a proper traffic count during the school year.

3. Jim Klein, 3511 S. 75th Street, testified in opposition. He suggested that this is dealing with a "bait and switch" because when the existing CUP was filed, it showed the luxury townhouses and it showed single-family lots across the street from Sherman. Now, we are at the point where the use for that lot is being changed to apartments. If the reverse had happened – if that CUP had been constructed with an apartment complex in that area and the apartments had gone in first, do you think those luxury townhouses could have been sold and developed the way they were? The answer is "no".

Klein referred to the representation that this developer is in the business of building apartments. That was not what the developer said when he filed the original CUP. Now the townhouse development is there, and only now is he coming forth and saying he builds apartments. Klein believes the developer is trying to maneuver himself through the planning and approval process in a way that is unfair.

Klein submitted that what is being proposed is not consistent with the Comprehensive Plan because it does not promote private home ownership, and that is not what happens in this case. This plot is bordered on three sides by private owners.

Responding to the applicant's presentation about the apartments to the north that are adjacent to single-family homes, McNeil pointed out that what is next to those apartments

that are adjacent to the single-family homes up north is commercial. But with this apartment complex, you have single-family on three sides. The residents of this proposed development are actually going to be between apartments. That demonstrates that this proposal does not comport with the Comprehensive Plan because it does not promote private home ownership.

4. Steve Salisbury, 2941 Fox Hollow Road, testified in opposition. His concern is whether this development is in compliance with the requirements of the power lines. He is curious whether 47 feet from that power line meets the code. The power lines hang low and he wants to make sure they have enough clearance to meet code.

5. Sara Payne, 3308 Fox Hollow Road, testified in opposition. The trees that are currently in place are rather old. She believes the construction of this development will change the root structure of the trees and it will be difficult for them to survive. She does not believe they will be able to keep any of the current trees. The other trees on Outlot B are not in good condition, so if they are going to cut the land down then there is no way those trees will survive. There will be no trees left after construction. There will be nothing between the construction and the property owners on Fox Hollow Road. There will also be no barrier between Raven Circle and the building because all of those trees will have to be taken out.

Staff questions

Harris asked staff to address the power lines. Will stated that LES would tell us that you cannot place any building structure within the easement, but you can have plantings. Street trees adjacent to the street frontage would not be prohibited, but they would have to be a particular variety approved by LES. As far as he knows, there is no additional setback from that easement beyond what is shown. They just cannot have any buildings inside of it. Will also confirmed that there is sufficient clearance from power lines.

Cornelius asked staff to discuss the level of traffic on Holmes Park Road. Will stated that it is wider than a typical street - 36' versus 27'.

Response by the Applicant

Hunzeker noted that it has been suggested that the developer should be bound by the CUP that was approved 25 years ago. Almost everyone on this Commission has been here long enough to have seen more than one change in any particular CUP, and it is literally inevitable. It would be a mistake to discourage a developer from including all of his property within a CUP in order to master plan and give some level of predictability. There are always changes, particularly in large CUP's developed over long periods of time.

As far as the easement issue, Hunzeker clarified that the 47' measurement he was alluding to is the setback from the right-of-way line of Holmes Park Road to the building and from

the right-of-way line of Sherman Street to the building. The building sits outside the power line easement and is in compliance.

With regard to the suggestion that the trees won't survive the grading plan, Hunzeker believes that may be exaggerated. The slope anticipated from each property line down to finished floor elevation is less than a 3:1 slope, so he is pretty sure the trees will survive.

Addressing the traffic, Hunzeker pointed out that Public Works agreed that there is no need to do a traffic study. The traffic from this development will feed onto a collector street. The driveway that would put traffic on Sherman will be removed.

Hunzeker stated that he does not understand garages blocking views on Sherman Street because there is nothing in that front yard anywhere near that would block a view, and the corner is 47' off the right-of-way in both directions. It exceeds any sort of view triangle that is suggested almost anywhere.

Hunzeker then clarified that this application is not a variance. This is a change to a CUP, and multi-family housing is permitted in most zoning districts in CUP's. This is a request to amend the CUP to approve multi-family on this particular parcel where it has not previously been approved. Holmes Lake is not threatened. The developer has satisfied Public Works with respect to the grading and drainage study; the standards this development is meeting today exceed any that were applied to Fox Hollow or Sherman Estates.

Hunzeker then referred to a letter purported to be written on behalf of the homeowners association suggesting a compromise of 18 to 20 townhome units on this property. Putting that into context, Hunzeker pointed out that part of this application would abandon two units which are approved but unbuilt on the north side of Sherman and two units approved but unbuilt on the west side of Holmes Park Road, reducing the total number of units by four. Thus we're really talking about a net six units over and above what was proposed as a compromise. This does not inject that much change, and certainly not one catastrophic for the neighborhood.

As far as transfer of wealth, Hunzeker believes that any appraiser who has examined the actual sales data, will tell you that there is not an impact on property values.

This proposal is in compliance with the Comprehensive Plan; we are putting the traffic where it belongs; we are putting the number of units to a single driveway well within the parameters of the design standards; and we think this should be approved.

Corr inquired about the number of duplex units along the east side. Hunzeker stated that there will be 10 dwelling units (5 duplexes), 10 front doors and five structures. There will be 20 dwelling units in the multi-family, for a total of 30 dwelling units.

ACTION BY PLANNING COMMISSION:

May 28, 2014

Scheer moved to approve the staff recommendation of conditional approval, seconded by Harris.

Scheer stated that from a land use and zoning issue, he cannot find a reason not approve this. There is an issue referred to as "bait and switch", but he cannot deal with that as a Planning Commissioner. From a land use planning perspective, it would be really difficult to deny this.

Beecham disagreed. Apartments coming into a neighborhood like this can have an impact when built right across the street from single-family. That doesn't mean it can't work, but we need to be careful and thoughtful. In this case, driving through this neighborhood, Beecham felt like the area overall has a really nice layering effect that we try to accomplish with mixed-use development. She is not comfortable putting an apartment in the middle and she does not believe it is compatible with the area round it.

Harris agreed with Scheer. This seems to largely be a problem of timing. If this proposed project had come earlier, everyone would have understood the rules and some of the controversy could have been avoided. Since nothing is being requested out of the ordinary, and the fact that this could have been approved administratively had it not been for the opposition, she fears the consequences of the Planning Commission getting involved in the predictability of the market, which is a guiding principle of the Comprehensive Plan.

Cornelius agreed with Harris and Scheer, and to some extent with Beecham. It can be an issue when a higher density development goes in the middle of low density development. The Comprehensive Plan does not have a unitary goal. It has several goals, sometimes competing. Among those goals are, e.g., diversity of housing; affordability of housing; infill development. He believes that what is at the center of this issue is a predictability issue and that is not something in which the Planning Commission can get involved. If we had a firm set of strong design standards in place (which we are working towards with the reFORM initiative), this would be a lot less scary to talk about. He believes the new design standards would make a development like this less of a concern for the neighbors.

Motion for conditional approval failed 3-2: Cornelius, Harris and Scheer voting 'yes'; Beecham and Corr voting 'no'; Lust, Weber, Sunderman and Hove absent. Due to failure of the motion to carry by 5 votes, this application is automatically held over until June 11, 2014, for administrative action only. The public hearing has been closed.

There being no further business, the meeting was adjourned at 6:15 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on June 11, 2014