MINUTES
PUBLIC HEARING AND ADMINISTRATIVE MEETING
OMAHA CITY PLANNING BOARD 1:30 P.M. – October 6, 2010
LEGISLATIVE CHAMBER - OMAHA/DOUGLAS CIVIC CENTER
1819 FARNAM STREET

Certification of Publication: Planning Board Administrator certifies publication of this agenda in the Daily Record, the official newspaper of the City of Omaha on Monday, August 23, 2010.

MEMBERS PRESENT: Anna Nubel, Chair
John Hoich, Vice Chair
Arnold Nesbitt
R. J. Neary
Thomas O. Kelley
Van C. Deeb
Greg Rosenbaum

MEMBERS NOT PRESENT: None

STAFF PRESENT: Rick E. Cunningham, Planning Director
Chad Weaver, Assistant Planning Director
Dave Fanslau, Manager, Current Planning
Cheri Rockwell, Current Planning
Alan Thelen, Law Department
Debbie Hightower, Recording Secretary

Ms. Nubel, Chair, called the meeting to order, introduced the Planning Board members as well as the Planning Department staff, and explained the Planning Board’s public hearing procedures.

PUBLIC HEARING AND ADMINISTRATIVE MEETING

The requests listed below were voted on concurrently in accordance with the Planning Department’s recommendation report.

No one appeared in opposition.

Subdivision Plats

8. C10-10-138 (D) C12-10-139
   James Buser, Attorney

REQUEST: Preliminary and Final Plat approval of PEARSON’S FIRST ADDITION, a minor plat outside the city limits, with rezoning from AG to DR

LOCATION: Southeast of 192nd and “F” Streets

Mr. Hoich moved to APPROVE the rezoning from AG to DR and approval of the preliminary plat, subject to: 1) A note on the final plat to the effect that there will be no further requests by the property owner to subdivide Lot 1, Pearson’s First Addition administratively; and 2) A note on the final plat stating that there will be no access allowed to 192nd Street and only one (1) access allowed to “F” Street for use by one (1) single family residential dwelling. Approval of the final plat as amended by the conditions of preliminary plat approval and, subject to submittal of an acceptable final subdivision agreement prior to forwarding the subdivision request to the City Council. Mr. Deeb seconded the motion which carried 7-0.
REQUEST: Preliminary Plat approval of PACIFIC STREET WEST REPLAT SEVEN, a subdivision outside the city limits, with rezoning from R6 to DR, R4 and R6

LOCATION: Southwest of South H.W.S. Cleveland Boulevard and Blue Sage Parkway

Mr. Hoich moved to APPROVE the rezoning from R6 to DR, R4 and R6. Approval of the preliminary plat subject to: 1) Extending the proposed storm sewer located between Lot 14 and 15 to the drainageway shown on the plat; 2) Including the area behind Lots 15-23 in an outlot; 3) Compliance with the City’s storm water quality ordinance; 4) Including provisions for the use, ownership and maintenance of the additional outlot(s) in the amended subdivision agreement for Pacific Street West; 5) Coordinating with and approval of the boulevard improvements with the Parks Department; 6) Maintaining an acceptable debt ratio of 4% or less for the SID; and 7) Submittal of an acceptable final subdivision agreement amendment for Pacific Street West. Mr. Deeb seconded the motion which carried 7-0.

**Overlay Districts**

REQUEST: Approval of an MCC-Major Commercial Corridor Overlay District

LOCATION: Southwest of 84th and “F” Streets

Mr. Hoich moved to APPROVE. Mr. Deeb seconded the motion which carried 7-0.

**Rezonings**

REQUEST: Rezoning from GO and LI to LI

LOCATION: 10755 Burt Street

Mr. Hoich moved to APPROVE. Mr. Deeb seconded the motion which carried 6-0 with Mr. Neary abstaining.

**Subdivision Plats**

REQUEST: Preliminary Plat approval of SMOKY RIDGE, a subdivision outside the city limits and approval of a Special Use Permit to allow development in the North Hills Environmental Resources Overlay District

LOCATION: Northeast of 72nd Street and Northern Hills Drive

Mr. Hoich moved to LAY OVER. Mr. Neary seconded the motion which carried 7-0.

**Conditional Use Permits**

REQUEST: Approval of a Conditional Use Permit to allow Safety services in a DR-ED District

LOCATION: Northeast of 72nd Street and Northern Hills Drive

Mr. Hoich moved to LAY OVER. Mr. Neary seconded the motion which carried 7-0.
Rezonings

12. C10-10-141 (D) Piano Building, LLC

REQUEST: Rezoning from GC/ACI-2 to CC/ACI-2
LOCATION: 4900 Dodge Street

Mr. Hoich moved to LAY OVER. Mr. Neary seconded the motion which carried 7-0.

Special Use Permits

18. C8-10-150 (D)
Jeremy Bryant

REQUEST: Approval of a Special Use Permit to allow Personal services in a GI District
LOCATION: 2922 North 61st Street

Mr. Hoich moved to LAY OVER. Mr. Neary seconded the motion which carried 7-0.

Master Plan Referrals

1. C3-10-092 Planning Department on behalf of the City of Omaha

REQUEST: Approval of an amendment to a Blighted and Substandard Designation
LOCATION: 33rd Street on the east, Charles Street on the north - to include a three-block area between Charles and Seward Street and between North Saddlecreek Road and 50th Street, 52nd Street on the west between Charles and Leavenworth Streets, then extending to 60th Street on the west between Leavenworth and Pacific Streets

At the Planning Board meeting held on October 6, 2010, Ms. Bridget Hadley, City Planner, Planning Department, presented the request. Ms. Hadley stated that this is a simple amendment to a previous request that was approved in August 2010. A request was made by representatives and City Council members of the area to include the three block adjacent areas bounded by 50th Street on the west, Northwest Radial to the east, Seward to the north, and Charles to the south. This area largely encompasses a business district where Sgt. Peffer’s is located. There are several businesses in the area that would like to take advantage of Tax Increment Financing (TIF).

No one appeared in opposition.

Mr. Neary moved to APPROVE. Mr. Nesbitt seconded the motion which carried 7-0.

Special Use Permits

3. C8-10-117 Violet Iluebbey

REQUEST: Approval of a Special Use Permit to allow Day care (general) in a R5 District
LOCATION: 2440 Spaulding Street

At the Planning Board meeting held on October 6, 2010, Ms. Violet Iluebbey, 10430 North 150th Street, Bennington, Nebraska, presented the request. Ms. Iluebbey stated she is the owner of the building and requests that she be able to provide day care services for 20 children from 6 a.m. to 6 p.m. or 12 children from 6 a.m. to 12 midnight.

No one appeared in opposition.

Mr. Chad Weaver, Assistant Planning Director, Planning Department, stated that the planning department recommends the operation of the day care to be 6 a.m. to 6 p.m. and no more than 12 children.
Mr. Kelley moved to APPROVE the Special Use Permit to allow *Day care (general)* in an R5 District subject to: 1) Compliance with the proposed site plan; 2) No more than twelve (12) children at a time; 3) The hours of operation being limited from 6 a.m. to 12 midnight; 4) Compliance with all applicable development regulations; and 5) Obtaining a Certificate of Occupancy from the Planning Department Permit Division prior to operation of the facility. Mr. Nesbitt seconded the motion which carried 5-2 with Mr. Neary and Ms. Nubel dissenting.

**Conditional Use Permits**

5. C7-10-118
   NewStreet, LLC

   **REQUEST:** Approval of a Conditional Use Permit to allow *Outdoor entertainment* in a CBD District (pending)

   **LOCATION:** Northeast of North 15th Street and Mike Fahey Street

At the Planning Board meeting held on October 6, 2010, Mr. Jerry Slusky, 8712 West Dodge Road, reappeared before the board on behalf of the applicant. Mr. Slusky stated that the rules have been established for events around the College World Series. A set of rules have been crafted in addition to the CWS rules. He stated that they are in full agreement with the planning board except for two items. Firstly, the city would like their two blocks not have the ability to sell beer to the public during the College World Series, except in corporate tents. This facility will have a liquor license to sell beer, wine or liquor. He stated he disagrees that there will be an impact on other nearby establishments. He stated that the second item is the planning board department would like a five year term but it takes longer than five years to recoup any investment therefore his client would like the opportunity to continue with a ten year conditional use permit. If after ten years, the city finds that NewStreet defaults, the board could terminate the agreement based on the fact that NewStreet has not conformed. After five years, a proposal will be submitted and if there is a disagreement between the department’s view at the five year look, it would come before the board and the board would make a decision.

Mr. John Henry Muller, 1111 North 13th Street, representing the North Downtown Alliance, referred to a document, dated September 20, 2010, that was submitted via e-mail to the board members. The North Downtown Alliance is a neighborhood association consisting of a group of residential and business owners that want to ensure that all changes are positive for the entire year. Mr. Muller stated there are approximately 60 active businesses and 30 paid members.

Mr. Robb Nansel, 737 North 14th Street, one of the owners of Saddlecreek Records Development appeared before the board in opposition. He stated that he and his partner initially wanted Saddlecreek Records to be part of a neighborhood but through the process, the planning department presented a vision of North Downtown. The North Downtown Master Plan specifically calls for mixed-used environments, significantly denser than most metropolitan regions, parking structures instead of parking lots, and a district defined by street level retail, sidewalk cafes and an active street life. Other mixed used developments are welcomed and subscribing to the vision that the city put forth. He stated that “The Yard” does not meet any of the qualifications: no permanent jobs, no permanent investment, no tax and no property tax. The issue is about deciding where the city wants to be and not about selling beer for two weeks out of the year. There is plenty of beer to go around but he stated he is worried about the other 50 weeks of the year. He stated he could support selling beer from private tents but the language should be cleared up with regard to an invitation.

Mr. Nesbitt questioned Mr. Nansel as to how we get from where we are to where we need to be within in the next ten years. Mr. Nansel stated his company, Saddlecreek Records, is an example that the property can be developed now.

Mr. Rosenbaum asked Mr. Nansel for his opinion about the competition that will take place with regard to NewStreet being more temporary. Mr. Nansel responded that he is concerned about the neighborhood as a whole and the creation of an urban active neighborhood. He does not believe there will be enough activity and create the sort of environment for North Downtown.
Mr. Matt Johnson, 1510 Cuming Street, owns a bar and restaurant in the Tip Top Building and also helped form the neighborhood association. He stated he wants more bars in the neighborhood but the biggest problem is the allowance of the temporary use. He stated he is not concerned about the beer sales but the use of "The Yard" for the other 50 weeks out of the year.

Mr. Mike (unknown), Holiday Inn, 1420 Cuming Street, represents the hotels in the North Downtown area. He stated the hotels are against the development because owners of the hotels have invested and want to see a neighborhood with businesses and vibrancy 365 days out of the year with multiple stores and restaurants such as the Old Market. This project will limit the vibrancy in the area and does not support the Master Plan and what was envisioned for the area. He stated he is concerned that there will be a six-month time period where there will be limited activity in the area and guests will go elsewhere and stay at other hotels within the downtown area.

Mr. Joe Gudenrath, 1620 Dodge Street, Executive Director of the Downtown Improvement District and a member of the Old Market Business Association, Board of Directors Alliance, appeared before the board in support of the Mission Statement and the vision that the North Downtown Alliance has for the area including the best use for this property. In comparison, the Old Market area is governed by the Landmarks Commission therefore some property owners are restricted and become frustrated but this has ensured the quality of development in the area. He stated he believes the Planning Department and the Planning Board should require the type of development that would benefit the entire area year round.

Mr. Slusky agreed with the opponents that NewStreet desires to complete a major development. There is no better use for the property that would be more complimentary and helpful for the area businesses to get through the difficult times and then to come back with a major development and bar within a few years. The land is currently zoned HI (heavy industrial) and could have many uses.

Ms. Nubel verified that the zoning is no longer heavy industrial but NBD so there is no longer a threat of a heavy industrial use. Ms. Nubel asked Mr. Slusky to explain the contrast between a few years and ten years and what would have to happen within the economy to make a more permanent development possible. Mr. Slusky responded that banks would have to start lending, consumers would have to start spending, and apartment/office owners and retailers would need to lease space. Ms. Nubel asked Mr. Slusky if he could give the City a guarantee that there will someday be a permanent development. He answered that he would have to defer to NewStreet for that answer but the history of NewStreet is in major real estate development and holdings. Ms. Nubel questioned Mr. Slusky on the types of events to be held during the months between November and April in the outdoor venue. Mr. Slusky answered, that for example, one major corporation has contacted Plantit Omaha regarding an “Outdoor Winterfest” that would take place during two weekends in December.

Mr. Neary asked Mr. Slusky about the size of a tent in relation to "direct sales". Mr. Slusky stated that the agreement says that sales of beer will be in conjunction with events. During the College World Series, approximately 90% of the space will be retail and one bay will be for the sale of beer. He stated that NewStreet would consider a size limit to the space for direct beer sales.

Mr. Hoich indicated that there seems to be no objection to beer sales from the neighbors.

Mr. Neary referred to the North Downtown Alliance statement and asked Mr. Muller to explain the policy that is similar to a policy used in Lincoln around Memorial Stadium. Mr. Muller stated that he believes the policy in Lincoln is that only the bars that have a liquor licenses all year round and have an investment in the neighborhood are able to have a beer tent and allowed to sell beer.

Mr. Chad Weaver, Assistant Planning Director, Planning Department, stated that with regard to the College World Series events and beer sales, a set of regulations were drafted that indicated that there will only be beer tents available to the public that are on-site. That concept was in place when "The Yard" came forward, therefore it is not proper for someone to come into an area and make an investment that differs from others and reap the reward. When at Rosenblatt, during the College World Series, there were a number of properties that existed for no other purpose than to be there for the College World Series. Along with other issues, the Planning Department feels strongly, as the neighbors do, that this does not subscribe to the long-term vision of the North Downtown plan. The two and five year time lines
are very critical and a ten-year guarantee is too long. There are some benefits that could be reaped from this ground and area, if done properly. The Planning Department recommends approval of the conditional use permit subject to the 21 items listed in the recommendation report.

Mr. Deeb asked Mr. Slusky, provided that this is approved with the beer sales, if the space is spoken for or will it be a lease opportunity. Mr. Slusky stated that the Lozier Group and Planit Omaha will apply for a permanent liquor license and the space will not be for an outsider or a third party. Mr. Deeb asked Mr. Slusky if nearby establishments, that have invested in the area, would have an opportunity to participate in the beer sales for the two weeks during the series. Mr. Slusky answered that it would be a business decision for his client but would not be a bad idea.

Mr. Slusky submitted the language regarding the ten years with a five-year look and the beer sales during the series.

Mr. Neary commented that this case is difficult with well-intentioned people. For the board, the City of Omaha has invested $140 million into the neighborhood as well as other property owners but he questioned if this specific request fits into the Master Plan. Mr. Neary stated that Saddlecreek Records was only built three years ago and there have been other phases. He stated that he understands the owner would want to get through these economic times.

Mr. Rosenblatt Rosenbaum stated that one of the big concerns is the competition and he would be more inclined to make and/or approve a motion with a five-year term. He indicated he is opposed to beer sales during the series but would be in favor of the request subject to the 21 points from the department’s recommendation.

Mr. Hoich stated he would like to add the beer sales due to the lack of opposition. Mr. Neary indicated he was confused on that issue and indicated that he believes the neighborhood establishments are opposed. Mr. Weaver replied that the neighbors do not seem to be concerned with the competition for beer sales if the development is a permanent investment in “brick and mortar”. Mr. Nansel agreed with Mr. Weaver that the development should be a year round permanent investment.

Mr. Jerry Banks, NewStreet Properties, 6336 Pershing Drive, stated that not only with the investment in the land, the development would add an additional 1 to 1.1 million dollars of capital improvements that will include some “brick and mortar” improvements. He stated that, of course, the College World Series is important and is a known but the rest is an unknown but “The Yard” will aggressively go after and maximize the remaining 50 weeks of the year. He indicated that he wants to have a Master Plan development and not run an event center. In the meantime, he stated he is trying to take a piece of vacant property that is grass and weeds, beautify the area and bring economic vitality to the area in the interim. He stated he is fully dedicated to maximize the value in the property and agreed to be held to higher standards such as the construction of permanent restrooms. He stated they are honest in their intentions and continue to make accommodations with neighbors. He pointed out that there have been no requests for a dollar of TIF, tax abatement, city money or contributions from anyone.

Ms. Nubel asked Mr. Weaver if the beer sales permit could be changed at any time. Mr. Weaver answered that the city could come back at any time and request an amendment.

Mr. Slusky asked that the conditional use permit be approved, as written by the department, with two exceptions to the recommendation: 1) beer sales for the public in a space not to exceed 2,000 square feet during the College World Series; and 2) the term to be ten years with a five year look.

Mr. Deeb moved to APPROVE the Conditional Use Permit to allow Outdoor entertainment, subject to: 1) Submitting a revised site plan in compliance with all applicable regulations (Article XIV. Off-street Parking and Loading Regulations, Article XXII Urban Design, etc.); 2) Submitting a landscape plan in compliance with all applicable regulations (Article XII Landscaping and Screening, Article XXII Urban Design, etc.); 3) Compliance with Entry Features Concept Elevations (as also approved by the Public Works Department for any features located within the City right-of-way) and subject to a Maintenance Agreement approved by both parties; 4) Compliance with the concept fencing elevations submitted; 5) That any proposed lighting be in compliance with all applicable regulations and The Downtown Master Plan; 6) That on-street
parking, sidewalk and landscaping improvements be provided along 15th Street in conformance with Article XXII Urban Design of the Municipal Code and all other applicable regulations within thirty-six (36) months of the date of the issuance of the Conditional Use Permit, so long as NewStreet, LLC, or its affiliates, continue to own the property and operate it as an Outdoor Entertainment Facility; 7) Providing permanent restroom facilities that include: 4 male water closets/urinals, 2 male lavatories, 5 female water closets, 3 female lavatories, 2 drinking fountains and 1 family restroom facility; 8) Any temporary restroom facilities installed for an event be delivered no more than 1 day prior to said event and be removed from the site within 2 days following said event; 9) Compliance with the Permanent Restroom Facilities Concept Elevations; 10) Outdoor entertainment being limited to: sponsored community events, outdoor exhibits, outdoor concerts and/or festivals, company picnics, fundraisers, graduation and wedding ceremonies and/or private parties, convention and trade shows. Other similar events may also be approved, provided they meet the terms of the Conditional Use Permit. Approval of a Temporary Use Permit by the City will be required prior to each one of the stated Outdoor entertainment events allowing time for a complete application submittal, adequate review and subsequent inspection by the appropriate City authorities (i.e. Permits & Inspections, Fire, Planning, etc.) for compliance with all applicable regulations; 11) Events being limited to no more than eight (8) consecutive days duration; however NewStreet, LLC, or its affiliates, shall have the right to request approval for occasional, specific events that may last longer than eight (8) consecutive days, which request shall not be unreasonably withheld by City authorities, as long as the request is in compliance with the conditions of the Conditional Use Permit. Temporary events during College World Series may continue for a period not to exceed fifteen (15) days; 12) The sales of alcohol will be required to be tied to specific temporary events held on site and available to invitees or attendees of the event, not the general public. During the College World Series in particular, the applicant will be allowed to sell beer to the general public from a tent not to exceed 2,000 square feet in size. Hospitality tents would be allowed, but must be strictly limited to invitees, with invitations not being available for purchase by the general public from the Hospitality tent operator. This however, does not limit the Hospitality Operator from selling or obtaining sponsorships from businesses or corporations that includes invitations for the sponsoring business or corporation use; 13) The sale of alcohol only being allowed with the appropriate city approvals acquired by the applicant; 14) All signage in compliance with all applicable regulations and policies and approved by appropriate permits; 15) The hours of operation being compatible with other permanent business enterprises in the neighborhood, generally from 10 a.m. to midnight, including installation and/or dismantling of an event structures and accessory equipment; 16) The operation shall conform to any special event rules or guidelines (such as during the College World Series) as they may be put in place by the City unless otherwise addressed in the approval of this Conditional Use Permit; 17) Security personnel being on-site during any and all events; including set-up and break-down time periods; 18) The applicant contracting with a professional maintenance team and have a permanent year-round maintenance schedule; 19) City Council approval of N.D. Park and rezoning to CBD and recording of the plat with the Douglas County Register of Deeds; 20) The Conditional Use Permit is for a term of 10 (ten) years, but subject to evaluation of the use after five (5) years. After 5 years, the permit may be terminated should the Planning Board, after a public hearing, determine that a) NewStreet, LLC or its affiliates are in material breach of the terms of Conditional Use Permit, or b) if NewStreet, LLC fails to provide sufficient documentation establishing that a permanent mixed use development is not yet economically feasible. The operation of the site (not the use) may be evaluated periodically within these timeframes; and 21) The Conditional Use Permit being limited to this applicant only (not transferable to any other person or entity). Mr. Hoich seconded the motion which carried 4-3 with Mr. Kelley, Mr. Neary and Ms. Nubel dissenting.

(REGULAR AGENDA)

Master Plan Referrals

6 C3-10-140 Planning Department on behalf of the City of Omaha

REQUEST: Approval of amendments to Chapter 55 Zoning regarding urban design

LOCATION: Omaha and 3-mile extraterritorial jurisdiction

At the Planning Board meeting held on October 6, 2010, Mr. Chad Weaver, Assistant Planning Director, Planning Department, presented this request. He stated that the Planning Department recommends approval.
Mr. Weaver stated that this request is to amend a calculation change regarding the spacing of sidewalks and greenspaces, the location of wording and supporting graphics and illustrations for clarity and proper reference.

No one appeared in opposition.

Mr. Rosenbaum moved to APPROVE. Mr. Neary seconded the motion which carried 7-0.

7. C3-10-143
   Planning Department on behalf of
   the City of Omaha
   REQUEST: Approval of the Environment Element of the
   City of Omaha Master Plan
   LOCATION: Omaha and 3-mile extraterritorial jurisdiction

At the Planning Board meeting held on October 6, 2010, Ms. Connie Spellman, 705 North 57th Avenue, Project Manager and Director of Omaha By Design, presented this request. Ms. Spellman stated that the visionary environmental element for the City’s Master Plan took two years of planning by over 175 volunteers and over 4,000 hours. The effort was skillfully guided through the leadership of Steve Jensen, previous Planning Board Director; Rick Cunningham, current Planning Board Director; and Mike McMeekin, representing the private sector and Omaha By Design. Omaha By Design was the project manager with a budget of $75,000.00. Funding was primarily through the storm water management funds that Public Works manages through the Department of Environmental Quality, Metropolitan Area Planning and the Missouri River Natural Resources District. Six public meetings were held during the planning sessions with over 35 presentations to various community and business groups to educate about this initiative. The public is encouraged to use the website and social media to keep track of the progress that is being made. The material presented from the document covered five different areas to include the Natural Environment, Urban Form and Transportation, Building Construction, Resource Conservation and Community Health. The document has the five key areas plus twenty-five goals with 362 strategies and recommendations for the future.

Mr. Mike McMeekin, 14710 West Dodge Road, President of Lamp, Rynearson & Associates, stated the environmental element would make Omaha a much better place to live. The Master Plan represents the long-term vision for the city. The Environmental Omaha Plan will make Omaha more resilient to the future shortages of resources and the potential of future increases and costs in resources.

Mr. Dave Ciaccio, 111 North 13th Street, Chairman of the Natural Environment committee represented the areas of natural and biological sciences by focusing and ensuring that recommendations were realistic, achievable and implementable.

Mr. Martin Shukert, 693 JE George Boulevard, addressed the Urban Form and Transportation section. Two fundamental issues that were addressed were how to increase the density of the city and how to change the way that people travel in the city. This will require a process that will take a long period of time and discipline within the community.

Mr. Jay Noddle, 2287 South 67th Street, Chairman of the Building Construction portion of the Environmental Element, stated that four goals were established that involved existing building stock, existing undeveloped land, commercial construction and residential construction.

Mr. Daniel Lawse, 315 North 36th Avenue, Sustainability Manager and private citizen, represents the Resource Conservation goals. He stated that the document is very important to ultimately create a better quality of life for citizens and businesses. The resources include water, air and climate, energy, purchasing, waste/recycling and human resources such as green jobs, technology and work force development.

Ms. Mary Balluff, 2310 South 148th Avenue, represents the goal for Community Health. She stated that Omaha ranks 146 out of 182 cities in terms of health. The quality of life is associated with the city and homes that we live in and forms of transportation that is used. The vision is for an active, safe and healthy Omaha that builds on and improves the city as it grows.

Mr. Rick Cunningham, Planning Board Director, stated the Environmental Element Plan is an important
vision document that will provide the end goal for the City of Omaha.

No one appeared in opposition.

Mr. Chad Weaver, Assistant Planning Director, stated that the Planning Department recommends approval.

Mr. Neary moved to APPROVE. Mr. Kelley seconded the motion which carried 7-0.

**Subdivision Plats**

10. C10-10-134  
C12-10-148  
Parkway Properties, LLC  

REQUEST: Preliminary Plat approval of Q STREET ACRES REPLAT 2, a subdivision inside the city limits, with rezoning from DR to GI (portions of which property lie within the flood fringe)

LOCATION: Southwest of 69th and “T” Streets

At the Planning Board meeting held on October 6, 2010, Mr. Todd Weidemann, 10250 Regency Center, presented the request on behalf of the applicant, Parkway Properties, LLC. The request was held over from the previous month due to concerns regarding neighborhood dust. After the last meeting, information was solicited from the opponent and a formalized plan was written with regard to watering of the existing facilities and speed limit to provide a clear understanding in being a good neighbor. The access drive will be paved in addition to 69th Street, adjacent to Fun-Plex, to take care of the dust issue. A row of trees will be planted on the north side of the property to help with dust mitigation. The remaining portion of the site will be gravel and used for storage of the pipe.

Mr. Peter Katt, 1248 “O” Street, Suite 600, Lincoln, Nebraska, represents Mr. Dwight Anderson d/b/a Fun-Plex Amusement Park. Mr. Katt indicated that on a preliminary plat there is currently an open drainage ditch on the west side of 69th Street that is a maintenance problem. Currently, Public Works is not requiring the open drainage ditch to be enclosed within a standard storm sewer. The proposed plat shows 69th Street as an access but the currently vacated “T” Street is used as an access drive for the existing concrete plant. The original site plan that was approved with the plant expansion never showed or authorized the use of vacated “T” Street for access to the facility. A request would be to either eliminate the “T” Street connection or pave the connecting street to 69th Street to help eliminate the dust control problem. He stated that dust has an impact on his client. The requirement that must be met is “no person may cause or permit an open area to be constructed, used, without applying all reasonable measures from becoming airborne to where it becomes visible from where it originates.” The City of Omaha standard is that dust from operations and use of property has to remain on the site. As recent as October 4, 2010 there was dust originating in terms of the offsite migration of dust. The applicant has indicated that they made significant efforts to reduce the dust generating from the facility within the last 30 days. Even with all their best efforts, the applicant still cannot comply with the dust standard for dust generation off site. There is no doubt that the current facility cannot be in compliance with the Omaha Air Quality requirements. In the relevance, the requested rezoning is to be a continuation and expansion of the existing business but the gravel on the current property is difficult to control in terms of dust. Dust occurs from the property, not only from just truck traffic and movement of traffic, but anytime the wind blows over 30 miles per hour, dust is leaving the site. He indicated that his client’s major economic operating times during the summer are Saturdays and Sundays where 80% of revenues are generated. With regard to the zoning request, he asked to deny or delay the request for the new property until the applicant can demonstrate dust control on the current facility and show that they can operate within the air quality standards.

Mr. Kelley asked Mr. Katt if he was familiar with the recommendation report from the planning department with regard to a drainage study to be done. Mr. Katt replied that he received a response from staff that indicated there would be no requirement but the staff already concluded that the storm sewer is not required and were not aware of his client’s issue. He stated he wanted to have on record that there is a problem, the street needs to have a storm sewer system and the open ditch is difficult to maintain in the current condition. The condition of the open drainage ditch will make it more difficult, if not impossible, to
Mr. Kelley asked Mr. Katt if the dust issue could be addressed when it happens because there is a mechanism to address dust issues. Mr. Katt answered that the balance of the site is still gravel and he stated his client is concerned that if the applicant operates the new facility the same as the existing facility, the dust will continue. He stated that his client does not want to spend time calling people at City Hall to complain about a dust problem.

Mr. Weidemann stated that on October 4, 2010 a report was made but there was no violation issued for the recent complaint when there were 35 mile per hour wind gusts. There have been efforts made to be in compliance, not only for the existing facility, but also for the proposed facility. In addition, the paving on 69th Street will be a substantial cost savings to the opponent as well as help with the dust mitigation.

Mr. Mike Paukert, Public Works, City of Omaha, stated a private driveway vacated a portion of the street and the private driveway is being constructed for the site. Storm sewers are not required for private driveways unless needed as shown in the drainage study. The drainage works currently and any maintenance issues can be reviewed. The applicant has detention basins on site for water treatment and flow treatment. In response to Mr. Kelley, Mr. Paukert agreed that any other findings from a study would be taken into consideration.

Mr. Chad Weaver, Assistant Planning Director, stated that there are ongoing efforts with Public Works and the applicant is generally following the guidelines set forth therefore the Planning Department recommends approval subject to the four items listed on the recommendation report.

Mr. Kelley moved to APPROVE the rezoning from DR to GI (portions of which property lie within the flood fringe) and the Preliminary Plat, subject to: 1) Including the proper petition language to vacate the street right-of-way; 2) Dedicate a turnaround easement at the terminus of 69th Street; 3) Submittal of an acceptable drainage study; and 4) Submittal of an acceptable subdivision agreement with the final plat. Mr. Rosenbaum seconded the motion which carried 6-0 with Neary dissenting.

Mr. Chad Weaver, Assistant Planning Director, stated that when railroad property is vacated, it takes on the zoning of the adjacent property. In this case, the property is adjacent to railroad/industrial area, is not accessible and any industrial, commercial or storage uses are not appropriate therefore the Planning Department recommends denial.

Mr. Neary moved to DENY the proposed rezoning. Mr. Nesbitt seconded the motion which carried 6-0 with Mr. Deeb absent.

Mr. Chad Weaver, Assistant Planning Director, stated that when railroad property is vacated, it takes on the zoning of the adjacent property. In this case, the property is adjacent to railroad/industrial area, is not accessible and any industrial, commercial or storage uses are not appropriate therefore the Planning Department recommends denial.

Mr. Neary moved to DENY the proposed rezoning. Mr. Nesbitt seconded the motion which carried 6-0 with Mr. Deeb absent.

Rezonings

14. C10-10-152 
   Ronnald Leimbach 
   REQUEST: Rezoning from R4(35) to LC 
   LOCATION: 3803 & 3804 South 34th Street

At the Planning Board meeting held on October 6, 2010, Mr. Ronnald Leimbach, appeared before the board. Mr. Leimbach stated that when he purchased the property from the railroad it was zoned RR but is now zoned as residential. He stated he would like to build storage units on the property.

No one appeared in opposition.

Mr. Chad Weaver, Assistant Planning Director, stated that when railroad property is vacated, it takes on the zoning of the adjacent property. In this case, the property is adjacent to railroad/industrial area, is not accessible and any industrial, commercial or storage uses are not appropriate therefore the Planning Department recommends denial.

Mr. Neary moved to DENY the proposed rezoning. Mr. Nesbitt seconded the motion which carried 6-0 with Mr. Deeb absent.

Special Use Permits

15. C8-10-144 
   AT&T Mobility 
   REQUEST: Approval of a Special Use Permit to allow a Broadcast tower in a R2 District with a waiver of Section 55-146 Height to allow a 116 foot tall monopole 
   LOCATION: 5118 Hartman Avenue

At the Planning Board meeting held on October 6, 2010, Mr. Sam Mandolfo, 2611 South 117th Street,
appeared before the board on behalf of AT&T Wireless Mobility Singular. Mr. Mandolfo stated that he has reviewed the analysis and recommendation report. A significant number of properties were considered but the subject property is a church located in a residentially zoned neighborhood. The city recommended 48th and Curtis at Wakonda School but it did not meet the qualifications by engineering. The engineers also rejected a church at 50th and Jaynes because it was located outside of the search ring. As indicated, an additional tower would eventually be needed to the south and east but the proposed site is within a small search ring and would provide adequate service for a very underserved area. The tower at 55th and Kansas is an AM tower and therefore would not be compatible. The church would be provided with additional revenues by leasing a 20’ x 40’ area for three carriers. Mr. Mandolfo stated a full cell tower provides better coverage but AT&T would not be opposed to a stealth pole. He stated that adequate screening would be provided.

Mr. Neary questioned why the tower had to be so tall for such a small search ring. Mr. Mandolfo answered that the tower needs to be over the trees and at a maximum height to provide adequate coverage.

Mr. Kelley asked Mr. Mandolfo if he would be agreeable to laying over the case.

No one appeared in opposition.

Mr. Chad Weaver, Assistant Planning Director, stated that the Planning Department recommends denial due to the aspects of the site, the height of the tower and the amount of coverage.

Mr. Rosenbaum moved to DENY. Mr. Hoich seconded the motion which carried 6-1 with Mr. Deeb dissenting.

**REQUEST:** Approval of a Special Use Permit to allow Day care (general) in a R4(35) District

16. C8-10-145 Xiomara Cruz

LOCATION: 3020 South 44th Street

At the Planning Board meeting held on October 6, 2010, Ms. Xiomara Cruz, appeared before the board. Ms. Cruz stated she would like the opportunity to care for 12 children in her home.

No one appeared in opposition.

Mr. Chad Weaver, Assistant Planning Director, stated that the planning department recommends approval of the special use permit subject to the four items on the recommendation report.

In response to Ms. Nubel, Ms. Cruz stated she is willing to comply with the four items in the recommendation report.

Mr. Deeb moved to APPROVE the Special Use Permit to allow Day care services (general) in an R4(35) District subject to: 1) Compliance with the proposed site plan; 2) The hours of operation being limited from 6 a.m. to 6 p.m.; 3) Compliance with all applicable development regulations; and 4) Obtaining a Certificate of Occupancy from the Planning Department Permit Division prior to operation of the facility. Mr. Neary seconded the motion which carried 7-0.

**REQUEST:** Approval of a Special Use Permit to allow Automotive sales in a CC District

17. C8-10-149 Khalil Eljamal

LOCATION: 12901 “Q” Street

At the Planning Board meeting held on October 6, 2010, Mr. Khalil Eljamal, appeared before the board. Mr. Eljamal stated that he currently owns a used car business at 60th & L and plans to move to the building that he owns at 129th and Q Street.

No one appeared in opposition.

Mr. Chad Weaver, Assistant Planning Director, stated that the planning department would like to work
with the applicant to remedy certain problems on the site. He stated that the planning department recommends a lay over.

Mr. Nesbitt moved to LAY OVER to allow applicant time to provide additional information. Mr. Neary seconded the motion which carried 7-0.

19. C8-05-175
Rainwood Hill Properties, LLC

REQUEST: Approval of a Major Amendment to a Special Use Permit to allow a Nonputrescible landfill in AG

LOCATION: Southwest of 120th Street and Rainwood Road

At the Planning Board meeting held on October 6, 2010, Mr. Mark Williams, Parsonage Vandenack Williams, 5332 South 138th Street, appeared before the board on behalf of the applicant. Mr. Williams stated that the request is for a major amendment to a special use permit to remove an arbitrary five-year term that was agreed to with Mr. Hal Daub and a group that he represented five years ago and to change the future renewal and revaluation of the permit. When this process was started five years ago, the Masons, who owned property on the north side of Rainwood, were in the process of raising substantial funds to develop the property. Mr. Hal Daub represented the Masons and an agreement was made with the Masons that required that the landfill permit expire within five years. He stated the Masons are currently selling the property and based on that, Mr. Daub agreed and submitted a letter agreeing to remove the five-year term. The landfill will be closed and all operations will cease when there is a certificate of occupancy submitted for that property.

Ms. Helen Hadan, 11906 Hadan Street, appeared before the board in opposition. She stated she lives near the landfill to the east. She stated that in 2005, Dan Rock, McArdle’s attorney, sent an amendment/agreement and asked if the agreement was acceptable and if any other neighbors had concerns about the agreement. The agreement was to be a limited landfill for five years with dust control and the mud was to be scraped from the road and the trucks were to only run on Rainwood Road. In February 2006, a permanent wasteland fill title was filed with the State of Nebraska. On September 2007, a notice was published in the Omaha World-Herald stating the landfill had public notice of intent. In September 2008, before the planning board, McArdle stated he only needed an additional two years to complete the project. This summer the operation of the landfill and grinding starts at 6 a.m. and runs until 9 p.m. She stated that her windows and inside her house are full of grinding dust and she has to turn on her windshield wipers to remove dust from her vehicle. McArdle promised to end the landfill in April 2011 and make the landfill farmable again. She stated she is concerned about safety for children who will attend a new junior high school and elementary school that will open on State Street.

Mr. Deeb questioned Ms. Hadan as to when the dust started. Ms. Hadan stated the nightmare started 20 years ago, the grinding started approximately five years ago but the dust became unbearable in 2008. She indicated she did not say anything for the past two years because she believed there was going to be an end to the landfill. She stated that Mr. Daub has no further interest in the landfill because his client’s property has been for sale since 2009.

Mr. Williams stated that he would like to address several issues but he stated that his client is concerned about being a good citizen. He stated that when Mr. McArdle purchased the property approximately five years ago he worked with the city, county and state permit department and wanted to do everything the correct way. It is clear by state law that the landfill cannot operate a demolition and landfill without a state permit. The state permit process, which took almost four years, was a cumbersome part of the process. However, it is important to know that the agreement entered into was with the Masons as represented by Dan Rock and did not include any of the other neighbors. Mr. Williams stated that there have been no complaints or citations within the past five years on the property. The dust control plan is being followed and the crushing equipment has an air quality permit and is in compliance with the permit. He stated he does not believe the dust problem is entirely created by his client.

Mr. Nesbitt questioned Mr. Williams as to who else would be creating the dust. Mr. Williams stated the area is agricultural and the dust could be due to the fact that the area is not a densely populated residential concrete-covered area. The actual landfill operation is small and is confined within the center
of the property with a natural berm and treed areas on the east side. There is no guarantee that the dust does not reach the neighbors but the client is taking all precautions to minimize the dust concerns.

Ms. Nubel stated that grinding dust is very difficult to remove and she believes that the dust is linked to the site. She stated that another letter and photos were received from a concerned neighbor showing a mud-packed cement road and it seems that this is an indication that the street needs to be cleaned. She stated that the trucks should not leave this kind of debris on the streets. Mr. Williams stated that the site does have a sweeper, the entrance is paved and the trucks are to exit north to Rainwood. He stated his client is committed and willing to do more to assure that the streets are kept clean.

Mr. Deeb asked Mr. Williams and his client to be a good citizen and meet with Ms. Hadan to address her concerns and commit to doing the right thing. Mr. Williams answered “yes” but the Hadan’s have been involved with the prior owner of the property and there are a lot of ill feelings toward his client's property. The previous property owner did things that were not in the best interest of all concerned. The grinding operation has an air quality permit, is tested and is in compliance with all air quality regulations. He stated he would be willing to sit down with Ms. Hadan and look at other options such as a street cleaning schedule.

Ms. Nubel asked how much time would be needed before the expiration in April 2011. Mr. Williams stated that the landfill operation was intended to be 20 years which is the economic time period to recoup an investment. The state permit cost was approximately six figures which is a substantial investment. He stated his client would like to run the recycling and landfill operation as long as possible but understands that the location and Master Plan are not compatible therefore if a certificate of occupancy is issued to the north, the operation will close. The evaluation term would be shortened to September 2012 and the request is to be on the same schedule as the state.

Mr. Deeb stated he is extremely passionate when a person has a property that is making a neighbor's property less enjoyable.

Mr. Neary asked Mr. Williams if it would be feasible to lay over the request for 30 days. Mr. Williams stated the permit expires in December 2010 therefore he is concerned about possible layovers with regard to the City Council hearing. Mr. Williams stated he is committed to talking to the neighbors.

Mr. Chad Weaver, Assistant Planning Director, asked Mr. Williams with regard to the 2 ½ years that Ms. Hadan refers to in her letter. Mr. Williams stated the original agreement with the Masons was for a five year term which was 2 ½ years ago. The language that was agreed to was a reevaluation and a renewal of the permit. He stated his client has been very open and has complied with the state, county and the city council and was asked to work with Mr. Daub concerning an agreement with the Masons. He stated he is committed to have a meeting with Ms. Hadan and other neighbors and listen to their concerns.

Mr. Weaver stated there are issues and rules in place that govern the site and there should be better efforts to make sure that the trash and mud stay on site. He stated that the planning department recommends approval of the Major Amendment special use permit subject to the seven items on the recommendation report.

Mr. Rosenbaum moved to APPROVE the requested Major Amendment to the Special Use Permit to allow a Nonputrescible landfill in AG, subject to: 1) To the extent it is determined by the applicant to be commercially reasonable, excavate, recycle and properly dispose of prior buried materials; 2) Continue to farm the area currently under cultivation (the green area on the colored plans); 3) Comply with the site and operating plans; 4) Comply with Chapter 33 of the Municipal Code and all state and county requirements; 5) Reevaluation and renewal of the Special Use Permit September, 2012, and thereafter, every five (5) years by the Planning Department, Planning Board and City Council; 6) Compliance with the Agreement between Rainwood Hill Properties, LLC and York Rite Masonic Temple dated December 15, 2005, as amended by the August 31, 2010, Husch Blackwell correspondence agreeing to removal of the five (5) year term which is attached to and incorporated into this Exhibit “B”; and 7) All other original conditions of approval as applicable. Mr. Hoich seconded the motion which carried 6-1 with Mr. Nesbitt dissenting.
Mr. Hoich indicated that he believes Mr. McArdle will work with Ms. Hadan. Mr. Rosenbaum stated he believes that Kevin McArdle will take care of the problems as they arise and meet with the neighbors before the City Council meeting.

**APPROVAL OF MINUTES**

Mr. Neary moved to APPROVE the meeting minutes of September 1, 2010 as written. Mr. Nesbitt seconded the motion which carried 6-0 with Mr. Kelley abstaining.

**ADJOURNMENT**

Mr. Hoich moved to ADJOURN the meeting at 4:40 pm. Mr. Deeb seconded the motion which carried 7-0.

Date Approved

Anna Nubel, Chair

Debbie Hightower, Planning Board
Recording Secretary