Mr. Hoich, 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.

(HOLD OVER CASES)

Master Plan Referrals

3. C3-11-138 (D) Lanoha Real Estate Company (Laid Over from 8/3/11) REQUEST: Approval of an amendment to the Future Land Use Element of the City's Master Plan from low density residential to office/commercial

LOCATION: Northeast of 85th Avenue and Cass Street

Mr. Neary moved to LAY OVER. Laid over until the associated rezoning and conditional use permit requests (Case #C10-11-140 and C7-11-139) can be recommended for approval. Mr. Deeb seconded the motion which carried 6-0.
Rezonings

6. C10-11-140 (D) C7-11-139
   Lanoha Real Estate Company
   (Laid Over from 8/3/11)
   REQUEST: Rezoning from R2 and LO to LO with
   approval of an MCC Overlay District and
   approval of a Conditional Use Permit to allow
   Medical office in a LO District
   LOCATION: Northeast of 85th Avenue and Cass Street

Mr. Neary moved to LAY OVER. Laid over to allow time for the applicant to resubmit revised plans that comply with all applicable regulations. Mr. Deeb seconded the motion which carried 6-0.

(REGULAR AGENDA)

Subdivisions

14. C10-11-167 (D) C12-11-168
    Sean Negus
    REQUEST: Preliminary Plat approval of COUNTRY
    CLUB HILLS, a subdivision inside the city
    limits, with rezoning from R3, R5 and GC to
    R5
    LOCATION: Southwest of 63rd and Girard Streets

Mr. Neary moved to LAY OVER. Laid over to allow the applicant time to: 1) Revise the plat to include all of the abandoned railroad right-of-way; 2) Revise the plat to include all of 6221 Girard Street; 3) Apply for rezoning from R3, R5 and GC to R3; 4) Apply for a Special Use Permit for 6221 Girard Street; 5) Provide a drainage study signed by a professional engineer; 6) Provide the supporting documentation for the Post Construction Stormwater Management Plan; and 7) Meet with neighbors prior to the next public hearing. Mr. Deeb seconded the motion which carried 6-0.

Rezonings

18. C10-94-158 (D)
    Kimley-Horn and Associates
    REQUEST: Approval of a Major Amendment to the Mixed
    Use District Development Agreement for
    Vintage Oaks
    LOCATION: Northeast of 168th and Harrison Streets

Mr. Neary moved to LAY OVER. Laid over in order for the applicant to meet with the Planning Department to prepare a complete submittal for review. Mr. Deeb seconded the motion which carried 6-0.

(HOLD OVER CASES)

Subdivisions

5. C12-11-128 (D)
   Irvington Warehouse, LLC
   (Laid Over from 8/3/11)
   REQUEST: Preliminary and Final Plat approval of
   IRVINGTON WAREHOUSE CENTER, a
   subdivision outside the city limits
   LOCATION: South of 92nd and Fremont Streets

Ms. Nubel moved to APPROVE. Approval of the Preliminary Plat and approval of the Final Plat, subject to submittal of an acceptable subdivision agreement, if necessary, prior to forwarding the request to the City Council. Mr. Nesbitt seconded the motion which carried 5-0 with Mr. Neary abstaining.
Conditional Use Permits

7. C7-11-134 (D)  
   Fustafa Aden  
   (Laid Over from 8/3/11)  
   REQUEST: Approval of a Conditional Use Permit to allow General retail sales and Food sales (limited) in a GO-ACI-2(50) District  
   LOCATION: 3610 Dodge Street  

Ms. Nubel moved to APPROVE. Approval subject to: 1) Compliance with the approved site plan; 2) Compliance with the proposed operating statement; and 3) The applicant obtaining a Certificate of Occupancy. Mr. Nesbitt seconded the motion which carried 6-0.

(REGULAR AGENDA)

Subdivisions

13. C10-11-164a (D)  
    C12-11-164  
    C8-11-180  
    Christ Community Church of the Christian & Missionary Alliance  
    REQUEST: Preliminary and Final Plat approval of CHRIST COMMUNITY CHURCH, a subdivision inside the city limits, with rezoning from DR and GO to DR and GO (portions of which property lie within the flood fringe and floodway) and approval of a Large Project Special Use Permit  
    LOCATION: 404 South 108th Court  

Ms. Nubel moved to APPROVE. Approval of the rezoning from DR and GO to DR and GO; approval of the Large Project Special Use Permit in GO subject to compliance with the site plans; approval of the Preliminary Plat subject to providing a maintenance easement for the trail in Outlot A; and approval of the Final Plat as amended by the condition of Preliminary Plat approval. Mr. Nesbitt seconded the motion which carried 6-0.

15. C12-11-169 (D)  
    3703 Davenport, LLC  
    c/o Thomas H. McLeay  
    REQUEST: Preliminary and Final Plat approval of THE AUSTIN AT MIDTOWN, a subdivision inside the city limits  
    LOCATION: Southeast of 38th and Davenport Streets  

Ms. Nubel moved to APPROVE. Approval of the Preliminary Plat and approval of the Final Plat subject to submittal of an acceptable final subdivision agreement, if necessary. Mr. Nesbitt seconded the motion which carried 6-0.

16. C12-11-170 (D)  
    Batchelder Family Trust  
    REQUEST: Preliminary and Final Plat approval of BATCHELDER HILLS, a subdivision outside the city limits  
    LOCATION: Southwest of 66th and State Streets  

Ms. Nubel moved to APPROVE. Approval of the Preliminary Plat subject to: 1) Obtaining NDEQ approval of on-site wastewater treatment systems for the proposed lot; and 2) Placement of a note on the Final Plat indicating that any future activities on the site will comply with the North Hills Environmental Overlay District regulations of the Omaha Municipal Code. Approval of the Final Plat subject to compliance with the conditions of Preliminary Plat approval and submittal of an acceptable final subdivision agreement, if necessary, prior to forwarding the plat to the City Council. Mr. Nesbitt seconded the motion which carried 6-0.
17. C12-11-179 (D) Kimley-Horn and Associates
REQUEST: Preliminary and Final Plat approval of VINTAGE OAKS REPLAT 42, a subdivision outside the city limits
LOCATION: Northeast of 168th and Harrison Streets

Ms. Nubel moved to APPROVE. Approval of the Preliminary Plat subject to the following: 1) An acceptable subdivision agreement; 2) An updated Traffic Impact Analysis; 3) A grading plan that does not disturb the permanent wetland and is acceptable to the Corps of Engineers; and 4) Sidewalks along 167th Street, 168th Street and Harrison Street. Approval of the Final Plat subject to compliance with the conditions of Preliminary Plat approval and submittal of an acceptable final subdivision agreement prior to forwarding the plat to the City Council. Mr. Nesbitt seconded the motion which carried 6-0.

Rezonings

19. C10-08-135 (D) Jason Lanoha
REQUEST: Approval of a Major Amendment to a Mixed Use District Development Agreement for Ridgeview
LOCATION: Southwest of 185th Street and West Center Road

Ms. Nubel moved to APPROVE. Approval subject to submittal of an acceptable mixed use development agreement prior to City Council and includes the following text changes: 1) The bufferyard along the western property line is reduced from the required 30 feet to 20 feet and possibly as little as 15 feet if the applicant can meet Planning Department regulations; 2) The setback along Wright Street is reduced from the required 35 feet to 20 feet; 3) The setback along West Center Road is reduced from the required 35 feet to 15 feet; and 4) An updated site plan that includes landscaping along the north, west and south property lines that matches the landscaping along the south side of Wright Street. Mr. Nesbitt seconded the motion which carried 6-0.

20. C10-11-171 (D) Habitat for Humanity
REQUEST: Rezoning from GI to R4
LOCATION: 3725 1/2 Ohio Street

Ms. Nubel moved to APPROVE. Mr. Nesbitt seconded the motion which carried 6-0.

21. C10-11-172 (D) David E. Abboud
REQUEST: Rezoning from R3 to R4
LOCATION: North of Ohio Street and East of 137th Street

Ms. Nubel moved to APPROVE. Mr. Nesbitt seconded the motion which carried 6-0.

Special Use Permits

23. C8-11-174 (D) AT&T Wireless
REQUEST: Approval of a Special Use Permit to allow a Broadcast tower in a CC District, with a waiver of Section 55-366 Height to 100’
LOCATION: 710 1/2 North 102nd Street

Ms. Nubel moved to APPROVE. Approval subject to: 1) The tower being structurally sufficient to allow for co-location; 2) Compliance with the site plan, elevation and operating statement; and 3) Submission of an annual report due January of each year disclosing the location of each tower within the City of Omaha zoning jurisdiction. Mr. Nesbitt seconded the motion which carried 6-0.

25. C8-11-178 (D) Edward Okosi
REQUEST: Approval of a Special Use Permit to allow Day care (general) in a R3 District
LOCATION: 5622 North 69th Street
Ms. Nubel moved to APPROVE. Approval subject to: 1) The applicant obtaining a waiver from the Zoning Board of Appeals to allow for the care of more than 12 individuals in a Day care services (general) facility in the R3 District prior to forwarding the request to the City Council; 2) Submittal of a revised site and landscaping plan that is acceptable to Planning Department staff prior to forwarding the request to the City Council; 3) Stripe parking stalls that comply with City regulations; 4) The applicant receiving a Certificate of Occupancy from the Permits and Inspections Division of the Planning Department prior to operation of the facility; 5) Compliance with storm shelter regulations; 6) Compliance with the revised site and landscaping plan; 7) Compliance with the proposed operating statement; and 8) Compliance with all applicable development regulations. Mr. Nesbitt seconded the motion which carried 6-0.

**Conditional Use Permits**

28. C7-11-176 (D)
Rich Craig
REQUEST: Approval of a Conditional Use Permit to allow Indoor sports and recreation in a CC District
LOCATION: 10765 “M” Street

Ms. Nubel moved to APPROVE. Approval subject to: 1) Compliance with the site plan; 2) Compliance with the operating statement; 3) Compliance with all applicable regulations; 4) Compliance with all applicable sign regulations; and 5) No pole signs. Mr. Nesbitt seconded the motion which carried 6-0.

29. C7-11-177 (D)
Steve Jamrozy
REQUEST: Approval of a Conditional Use Permit to allow Single family residential (detached) in a GC District
LOCATION: 3524 Leavenworth Street

Ms. Nubel moved to APPROVE. Mr. Nesbitt seconded the motion which carried 6-0.

27. C7-11-162 - Withdrawn
Grace Lutheran Church
REQUEST: Approval of a Major Amendment to a Conditional Use Permit to allow Religious assembly in a R7 District
LOCATION: 1326 South 26th Street

This case was withdrawn at the request of the applicant.

**ADMINISTRATIVE MEETING ONLY**

**Subdivisions**

1. C12-11-095
Keith B. Edquist
(Laid Over from 9/7/11)
REQUEST: Final Plat approval of NORTHERN HILLS BUSINESS PARK (formerly NORTHERN HILLS AIRPARK), a subdivision outside the city limits
LOCATION: Northeast of 72nd Street and Bennington Road

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

Mr. Neary moved to APPROVE. Approval of the Final Plat subject to the applicant submitting the following prior to forwarding the final plat to the City Council: 1) Submittal of final plat mylars that provide a right-of-way dedication of 17 feet along 72nd Street (a total of 50 feet from the centerline of 72nd Street); 2) Submittal of a letter of approval of the subdivision from the NDEQ; and 3) An acceptable final subdivision agreement. Mr. Kelley seconded the motion which carried 6-0.
REQUEST: Final Plat approval of ANDRESEN MEADOWS, a subdivision outside the city limits, with rezoning from AG to DR and R4 (portions of which property lie within the flood fringe)

LOCATION: Northeast of 180th and Blondo Streets

Chad Weaver, Assistant Planning Director, Planning Department, stated the department recommends approval subject to the submittal of an acceptable final subdivision agreement.

Mr. Kelley moved to APPROVE. Approval of the rezoning from AG to DR and R4 (portions of which property lie within the flood fringe) and approval of the Final Plat subject to submittal of an acceptable final subdivision agreement. Mr. Neary seconded the motion which carried 6-0.

(HOLD OVER CASES)

Subdivisions

REQUEST: Preliminary and Final Plat approval of GARDEN RIDGE ADDITION, a subdivision inside the city limits, with approval of an MCC-Major Commercial Corridor Overlay District

LOCATION: Northwest of 129th Avenue and West Center Road

Robert Mooney, 2120 South 72nd Street, appeared before the board on behalf of the applicant. Mr. Mooney requested that the case be withdrawn at the request of the applicant. Mr. Mooney stated his applicant would continue to negotiate to resolve the issue.

(REGULAR AGENDA)

Master Plan Referrals

REQUEST: Approval of a Chapter 55 amendment regarding noise regulations (Section 55-803)

LOCATION: Omaha and 3-mile extraterritorial zoning jurisdiction

Mr. Hoich reminded everyone that the vote would be for the amendment of the noise regulation only.

Chad Weaver, Assistant Planning Director, Planning Department, stated the department has discussed the ordinance at length and the request is an effort to replace a previous burden of the ordinance with a better and more clearly understandable set of regulations governing the sound within the city’s jurisdiction.

Franklin Thompson, City Council Representative for District 6, 1819 Farnam Street, appeared before the board as a proponent of the proposed amendment. Mr. Thompson stated that the amendment would be beneficial citywide because currently there is no law because the judge ruled that the noise ordinance control law is too vague. He stated that he is in favor of the amendment that looks at expanding the definition and also the amendments that will follow that look at where the sound should or should not be measured. The sound should be measured at the point of wherever the person feels the infractions are happening. In addition, Mr. Thompson reminded everyone to keep the conversation narrowed to the case itself. He stated that he believes that part of what will be heard today is that certain people would like to
be grandfathered so that they do not need to come under the new ordinance. He stated the law should be uniform and it would be an administrative “nightmare” to have some people be grandfathered and others not be grandfathered. Mr. Thompson offered to answer any specific questions.

Jean Stothert, City Council Representative for District 5, 1819 Farnam Street, appeared before the board as a proponent in support of the current proposed amendments to Chapter 55, the noise ordinance. Ms. Stothert stated that the new ordinance would clarify the noise performance standards that have been deemed as rather vague in the past and would serve more to protect the property owners to the detrimental affects of sounds that exceed what they should be in the residential areas. She stated she is always encouraged and grateful for new business but has great respect for personal property owners.

Paula Kohrt, 12723 C Street, appeared before the board on behalf of the residents of the Westwood Heights neighborhood in support of the proposed amendment. Ms. Kohrt stated she gets emotional every time she has to shut her windows on a beautiful day because of the noise or when she has to turn her television up to try to drown out the thunder of metal hitting metal. The facts are that on or about the spring of 2009, Omaha Track Materials moved into the property adjacent to the Westwood subdivision. Initially, it was assumed it was a temporary leasing of the property and attempted to adjust to the noise. However, it was soon learned that not only OTM was not leasing, but was engaging in activities that resulted in noise levels reaching 70-100 decibels in our backyard. Surely, the city was not aware of this and would not allow a company to move adjacent to a neighborhood that produces levels that high. At that point, City Inspector, Joe Adriano and additional inspectors from the Planning Department came out to the neighborhood and were also surprised at the level of noise produced by the work being done by OTM. Affidavits were written, e-mails sent, neighborhood meetings held, letters written again, conferences were held and today, three years later, the homeowners of Westwood Heights are still seeking help on addressing this issue. Mr. Peterson and his attorney have repeatedly stated that the homeowners of Westwood Heights subdivision moved into the neighborhood knowing a train was located behind the property and because of this we have no right to complain about the noise of his business. However, the comparison between his business and a train are ludicrous. A train builds up to a peak noise level and then diminishes with high levels reaching 85 decibels with a gradual 75 and a train then passes. The trains in the area do not blow their horns in the neighborhood because there are no crossings. Unfortunately, OTM does not build up, the clash and crash of instant noise levels of 85-100 decibels of OTM are repeated from 7:30 a.m. to 5:00 p.m. 5 days a week. She stated she could sit in her home and hold a conversation while a train passes but not so from the loud noises and crashes of OTM. She stated she can sleep as a train passes but have been startled awake multiple times by the noise of OTM. She stated she has done research and there are facts from EPA, the Children’s Hearing Institute and National Institute of Health with regards to noise induced hearing loss which can cause permanent and nonreversible hearing loss of consistent noise levels of 85 decibels or above. There is also multiple research about startle responses which is caused by loud sudden noises of 85 decibels or higher that can impair sleep in children, hearing in children, speech and learning disabilities. On “C” Street alone, immediately adjacent to OTM, there are three home daycares, which are a portion of the home daycares in the neighborhood. She indicated that she contacted Boys Town National Research Hospital, an international leader in communication disorders in children and verified the information. She asked, on behalf of the Westwood Heights neighborhood, to pass the revised noise ordinance and decline Mr. Peterson’s appeal to be grandfathered an extension so that he can continue to engage in business that disrupts and can potentially cause harm. If the exemption is allowed for OTM, it will open doors across the city to appeal the noise ordinance as well as providing OTM permission to make as much noise as they want with little or no constraints. She asked that during consideration for approval, please picture in your own home one of Omaha’s famous thunderstorms, but the thunderstorm will pass but the residents of Westwood Heights has had a thunderstorm for three years.

Mr. Hoich asked for a show of hands of the individuals that showed up for this case.

Mr. Tom Everson, 12418 “C” Street, appeared before the board as a proponent in support of the revised noise amendment. Mr. Everson indicated that he is the Chair of the Westwood Heights Neighborhood Association. He stated he is against the grandfather rights based on the fact that the area is zoned as a General Industrial District therefore no one in the business park should be exceeding 85 decibels. The
grandfather rights are a moot point unless the area is rezoned to a Heavy Industrial District.

Chuck Wilhem, 14505 California Street, appeared before the board in support of the proposed noise amendment. Mr. Wilhem indicated he is an Associate Broker whom previously lived in the Westwood Heights neighborhood for 15 years. He stated he has sold numerous properties in the Westwood Heights neighborhood. The noise in Westwood is an assault on the senses and not only on hearing. The overall property values in Westwood will drop and have been dropping due to the noise issue. In Westwood in 2010, 62% of the homes sold on FHA or VA financing with 61% so far in 2011. FHA/HUD guidelines indicate that any noise factor above 65 decibels is unacceptable. If the main source of financing is removed, the pool of buyers is reduced which will then bring the values down. The buyers that are interested in the area will then adjust their offers accordingly and appraisers will lower the values of the homes because the excessive noise is an adverse external factor or environmental condition that affects the value of the property. Therefore the appraisals of the property will be lower compared to the same house in another neighborhood that does not have the noise factor. The value of properties could be affected by as much as a 30% decrease in value because of the noise factor. However, when property values go down so do the assessments and also the tax dollars collected.

Ann (?), 12729 C Street, appeared before the board in support of the proposed noise amendment. She stated, "When someone smells bad, you can take a few steps away to get fresh air or if you see something you don’t like, you can look away. However, when your sense of hearing is assaulted in your own home, there is little recourse other than the elimination of the noise." She asked that the change be adopted and to not allow OTM to be grandfathered into the revised ordinance.

Jerry Slusky, 8712 West Dodge Road, attorney for Omaha Track Materials (OTM), appeared before the board. Mr. Slusky requested that the e-mail in the attached letter be entered into the official record of the hearing. He stated that this is a tough one but back in the 1940’s when Western Electric plotted the land and opened up a 1,000,000 square foot operation to build wire and put it on spools there was a very active general industrial business operation through the late 1940’s, 50’s and 60’s and then declined over time. Most of the people here today were not part of that subdivision because it was not platted until the 1960’s. The point is simply that when owners built those homes, bought those homes and moved into the neighborhood, they moved in with a very active Western Electric operation on the very same concrete that sits out there today with all sorts of moving vehicles lifting big, big wire spools and all sorts of other equipment and there was noise emanating from it. Then the neighborhood got built, people moved in and the neighbors were used to having the industrial use to the south. As the industrial use waned and Western Electric’s business changed and went through Avaya and others and then that waned down to nothing. Surely it got quiet back there and many people who own homes today bought thinking that it was going to stay exactly that way. As stated in the letter, Mr. Peterson in very good faith, the owner of The Tie Yard and Omaha Track Materials was looking around for industrial land where there is a shortage of in Omaha. Council Bluffs would have loved to have kept him but he lives in Omaha and has a business, his tie yard at 84th and “F” and wants to stay here. He met with Rick Russell of Millard Lumber and they put a deal together for the land behind Millard Lumber. He opened the operation in 2009 and he had no complaints and maybe the neighbors thought it was going to go away, but it didn’t. He has a very viable business there and is a very significant and connective link to the Union Pacific Railroad and provides a very valuable service to them in taking and disposing of rail. He goes to the Planning Department and Public Works and spreads out all the plans, including colored pictures of the operation and everything was presented to the Zoning Board and the Douglas County District Court of steel coming out of railcars and being loaded on the concrete, being picked up by a crane and being moved around on the lot. Unfortunately, at no time did anybody in the City department say, “Hey we better know what your measurements are on sound.” He went through the process, a very difficult application process because he had to satisfy FFA requirements because of the Millard airport and other things. A significant sewer was required to be constructed under 132nd Street, another $25,000. So here he is, 2011, $5,000,000 investment and 120 employees, operating an active business and yes, he has neighbors that hear the metal on metal and metal from the boxcars and unloading. When this came to light in the spring of 2010, we went out and met with the entire city group at the site and asked for and got a meeting with the neighbors. Mr. Slusky stated he always try to find a balance between the neighbors and the business or development. He indicated that they were always seeking a balance. The biggest issue that they had
was that the operation had a breaking machine that actually took a long piece of rail and would score it and chop it in half. That particular one was a really vicious sound. Recognizing that, Terry took that whole operation and moved it to another one of his locations. He has taken five or six more steps, all presented to the Zoning Board of Appeals, including the back up of his trucks is now a light sound. You don’t hear the beep, beep, beep of the truck backing up. I think the neighbors appreciated that. When the fork goes down into the car to pick up steel, they pick it up and now instead of dropping it into a pile, his people are ordered and required to set it down which limits the sound. When it goes back into the rail car, his people are required, not to take the magnetic thing and drop it, but rather push it down or let it go down into the bottom of the car then release the magnet so that it stacks up in the car. Again, always trying to diminish the sounds coming from this place. Lastly, we were required to go to court because this man and this business, if the ordinance would have been enforced against him, would have essentially been out of business. He cannot operate at 60 decibels. He can operate at 80 decibels which is what the general industrial number is, but because the code says you cannot take decibels higher, it used to be the adjoining zoning district, which is residential and 60, then how do you ever have an industrial district sitting next to a residential district because you can never satisfy the 60 in the residential area next door. He cannot satisfy that, he is going to have spikes to 70 and 75. He wants to satisfy the neighbors, he wants to be a good citizen, he wants to work with the City of Omaha and figure out something. He has come up with an idea to build two buildings, an additional $2,000,000, to incorporate two of the noisier operations he has, inside a sound proof building. So now, those sounds would go away. He cannot do that because every time he turns around he faces this. He is facing the prospect of going out of business, he has already invested $5,000,000 and he will not invest $2,000,000 more to soften or reduce the sound substantially because he does not know if he will be out of business the next day. Lastly, there is a grandfather issue here; our city’s code, 1987, the exact section you are dealing with today, the prelude to it, 55-801 has the purpose. 802(c) says, “Existing uses: Uses existing and lawfully complying will all other provisions of this code, on the effective date of this Chapter (1987), shall not be required to change their operations to comply with more restrictive performance standards.” What you have is an ordinance that was on the books, a sound ordinance that has now been invalidated by our Douglas County District Court, so we have no sound ordinance. At this moment in time, Omaha Track Materials is in compliance because there is no sound ordinance. The effort today is to pass a new ordinance, makes all the sense in the world because we need to have a sound ordinance in the community but how can you tax somebody, how can you come back and apply this to somebody who is operating right now legally and yet you are going to put a new law on that is going to apply to Omaha Track Materials. Once it is passed by the City Council, you are going to go out there and send Permits and Inspections and site them and we will be back in again and try to put him out of business. In essence, we support a new ordinance but how can the ordinance be applied to someone who is operating legally with a new law. The new ordinance is supported but what the District Court says is that this new ordinance will not apply to Omaha Track Materials. We are anxious to sit down with the neighbors, the Planning Department, city staff and show them the two buildings and show them how they can reduce the decibel number coming off the site and work with them to make it a better situation or otherwise inject balance into the equation.

Chad Weaver, Assistant Planning Director, Planning Department, stated the department would work with the law department with any enforcement activities that will result from the new ordinance. The department recommends approval of the code.

Mr. Nesbitt stated he is in favor of passing the ordinance at this point and any issues regarding grandfathering any individual or company should be dealt with at the City Council level. Let the Council deal with the politics of the grandfather.

In response to Mr. Neary, Mr. Weaver confirmed that the standards are not changing and the decibel levels would remain the same.

Mr. Neary questioned if the two new buildings would lower the decibels. Mr. Slusky answered that two qualified sound engineers who testified at the Zoning Board of Appeals hearing stated that they could come in and take the current operation and measure the sound decibels and take out the two operations that are going to be incorporated in the building and measure that again so that you can see the difference. This has not been done but can be done as part of the process.
Mr. Neary questioned Mr. Slusky if he was optimistic that there is a solution by putting up the buildings. Mr. Slusky stated he is optimistic but it would not be perfect because it is steel on steel and a concrete lot. It would be a lot better and it might hit 70-75 sometimes but you would get some balance between the neighbor’s interest and the owner’s interest.

Todd Koozer, 12729 “C” Street, appeared before the board in support of the request. Mr. Koozer stated he has heard a lot of talk about promises for two years. This has been going on since the last Zoning Board of Appeals meeting. He stated he has heard nothing but lies over the last two years and empty promises. He stated that honestly he has a hard time listening to more promises to make it lower but it is not possible. He came in as a heavy industrial, he got forced out of Council Bluffs and moved into my backyard into a general industrial area and under false pretenses he started working there. The city has cited him and he has continuously appealed, gone to a judge that got him to say “vague.” I have a hard time thinking he is going to change, what about the four other times. The last two days has been quiet as a mouse because the media is watching. Mr. Koozer pleaded to not recommend that OTM be grandfathered because it is destroying lives.

Mr. Thompson stated that in the business of governance, there is always room for negotiation and always room to make things better. He stated he has worked with Mr. Slusky who is a man of his word, however he is not sure about the man that he represents. Mr. Thompson stated that this is the most egregious neighborhood situation that he has ever seen. He stated that Mr. Koozer’s statements are accurate. Mr. Thompson stated that he is wondering how sincere Mr. Slusky’s client is.

Ms. Nubel moved to APPROVE. Mr. Nesbitt seconded the motion which carried 6-0.

9. C3-11-182  
   Planning Department on behalf of the City of Omaha  
   REQUEST: Approval of a Chapter 55 Amendment regarding use regulations (Section 55-68)  
   LOCATION: Omaha and 3-mile extraterritorial zoning jurisdiction

Chad Weaver, Assistant Planning Director, Planning Department, stated the amendment is an update to accurately chart the uses and what is allowed in each zoning district. The department recommends approval.

Mr. Nesbitt moved to APPROVE. Mr. Neary seconded the motion which carried 6-0.

10. C3-11-163  
    Planning Department on behalf of the City of Omaha  
    REQUEST: Approval of the GTMC, LLC TIF REDEVELOPMENT PROJECT PLAN  
    LOCATION: 2020 Avenue “J” East

Bridget Hadley, Planning Department, presented the request. Ms. Hadley stated the proposed plan represents the Garland Thompson Men’s Center at the Open Door Mission Campus. The project will assist the city to achieve and provide affordable, decent, safe and sanitary supportive housing at the site with 96 single residency occupancy units. The applicant has obtained a special use permit to be used in all zoning and code requirements and regulations. Ms. Hadley offered to answer any questions.

Kari Jeune, 6732 North 104th Street, appeared before the board to represent J Development. The TIF funds are needed to complete the special needs project. The ultimate goal is to serve the homeless population. Ms. Jeune offered to answer any questions.

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

Mr. Kelley moved to APPROVE. Mr. Deeb seconded the motion which carried 6-0.

11. C3-11-165  
    REQUEST: Approval of the 2012 ACTION PLAN
Jim Anderson, City Planning Department, appeared before the board to present the request. Mr. Anderson stated the 2012 Action Plan is a required document that also serves as application to the Department of Housing and Urban Development and provides housing and community development funds to the City of Omaha. The funds are received for Community Development Block Grant (CDBG), Emergency Shelter Grant and HOME Investment Partnerships program. The Action Plan describes the activities that the city is willing to undertake with the funds that address community needs using approaches identified within the Five-Year Strategy of the Consolidated Plan. The results of the proposed 2012 Action Plan include the rehabilitation of 42 owner-occupied houses, the creation of 150 affordable housing opportunities for renters and owners, 800 home improvements and emergency repairs for elderly, disabled and very low income households, rehabilitation and homeowner counseling for 300 low income households and support for operations of area emergency shelters for the homeless. Mr. Anderson offered to answer any questions.

Mr. Neary questioned where the funds would come from and if there are any restrictions. Mr. Anderson answered that the funds are received from the federal government, the Department of Housing and Urban Development. There are restrictions depending on the source. The CDBG funds have a requirement for income eligibility as well as a location requirement. The home funds are more concerned with the income eligibility more the location of the perspective projects. The home funds can be used anywhere in the city as long as they are serving low-income households which is determined by the tenant and not the neighborhood. There is some funding for inspectors associated with the program. The single-family homes are shared with private funds but the ratio depends on the program. In one program, the city will provide an entire grant and in another program, the city will match 50%. Other programs are smaller in scope, like the Handyman program, and works on a sliding scale. There are rental rehab programs which are matching funds.

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

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

12. C3-11-166
Planning Department on behalf of
the City of Omaha
REQUEST: Approval of a Surplus Declaration and
Disposal of city-owned property
LOCATION: 3434 South 84th Street

Chad Weaver, Assistant Planning Director, Planning Department, stated the property is identified as a facility that is no longer necessary. The surplus declaration is the first step to make the property available for sale. Mr. Weaver stated that the department recommends approval.

Mr. Nesbitt moved to APPROVE subject to the property being properly subdivided and rezoned prior to transfer of ownership. Ms. Nubel seconded the motion which carried 6-0.

Rezonings

22. C10-11-173
Paul Ambrose
REQUEST: Rezoning from R3 to R6
LOCATION: 324 North 35th Avenue

Paul Ambrose, appeared before the board to present the request. Mr. Ambrose stated that six years ago he purchased the property consisting of two buildings, a duplex and a mother-in-law’s home that has been there a long time. He stated he is requesting a rezoning to R6 but he stated that a unit would have to be removed to conform to R5 zoning.
David Levy, 1700 Farnam Street, appeared before the board on behalf of four adjacent property owners in opposition to the request. Mr. Levy stated his clients would like the zoning to remain at R3. He stated that it is unclear whether the duplex on the property is a legal duplex. Mr. Levy stated that the duplex could have been converted illegally therefore he requested that the board hold off until all of the facts are known and the outstanding code violations have been resolved. Also, the property does not have adequate or legal parking. Mr. Levy indicated with a GIS rendering, that the vast majority of the neighboring property is zoned R3.

Chad Weaver, Assistant Planning Director, Planning Department, stated that all code compliance issues should be cleared up by the applicant before any rezoning can be issued. Mr. Weaver stated the applicant has options and may have to tear down the second home and make the duplex legal. Mr. Weaver stated that the department recommends denial of the rezoning from R3 to R6 and approval of the rezoning from R3 to R5 subject to the applicant adequately addressing all Code Enforcement issues prior to forwarding this request to the City Council.

Mr. Kelley moved to DENY the rezoning from R3 to R6 and APPROVE the rezoning from R3 to R5 subject to the applicant adequately addressing all Code Enforcement issues prior to forwarding this request to the City Council. Mr. Deeb seconded the motion which carried 4-2 with Mr. Neary and Mr. Hoich dissenting.

**Special Use Permits**

24. C8-11-175 Westside Early Childhood

REQUEST: Approval of a Special Use Permit to allow Day care (general) in a R2 District

LOCATION: 9030 Western Avenue

Mike Coyle, 500 Energy Plaza, appeared before the board on behalf of the applicant. Mr. Coyle asked to address several items on the recommendation report and requested that Item #5 (providing a sidewalk along the entire street frontage) be removed as part of the process. The existing sidewalk runs continuously from 90th Street to the front of the school which is identical to four other local elementary schools. The property has been an elementary school since 1961 and the proposed use will be for early childhood care. The children attending the school will be dropped off in front of the building. If the sidewalk was replaced then anyone walking down the street would have to cross three driveways. There is a fire hydrant and a number of mature trees that would need to be removed along with grading that would need to be done for the required sidewalk. In conclusion, Mr. Coyle proposed to add and maintain a crosswalk area.

Dr. Robert Bruckner, Executive Director, Underwood Hills School, 90th and Western, appeared before the board in support of the request. Dr. Bruckner indicated that safety is critically important; the building is secure and staff will be on site from 8:00 a.m. to 6:00 p.m. He stated that having the sidewalk 20’ closer would not deter a stranger if they are bent on mayhem or ill will.

Chad Weaver, Assistant Planning Director, Planning Department, addressed several issues. Unfortunately, in the past, the City was not diligent by requiring sidewalks but in recent years the City has tried to rectify that and has the ability to clean up the site as much as possible to meet the code requirements of Chapter 53 (Subdivision Ordinance). The City is more concerned with people that walk in the neighborhood than traffic going to the school. The public is not generally comfortable walking next to a school and will avoid it and walk in the grass or the street. He stated that the department recommends approval of the day care use subject to the six items on the recommendation report.

Mr. Hoich stated he cannot understand having the sidewalk if the applicant is willing to do other things including the addition of a crosswalk. Mr. Weaver stated that the point of requiring sidewalks is not whether the property owner would use the sidewalk but is more for the general public.

Mr. Neary questioned Mr. Coyle what the specific objection is to adding the sidewalk. Mr. Coyle
answered that the sidewalk is a lot of expense but he offered to address the sidewalk to the west and up to 96th Street.

Stephanie Vavruska, Operations Director, Westside Early Childhood, indicated that there are not many residential homes in the area therefore there are not many people walking. The children will not all be dropped off at the same time.

Ms. Nubel moved to APPROVE subject to: 1) Approval of a ZBA waiver to allow over 12 children; 2) Compliance with the site plan; 3) Compliance with the proposed operating statement; 4) Compliance with Section 55-787 storm shelter regulations; 5) Providing a sidewalk along the entire street frontage; and 6) Obtaining an updated Certificate of Occupancy. Mr. Nesbitt seconded the motion which carried 3-3 with Mr. Deeb, Mr. Kelley and Mr. Hoich dissenting.

Motion died because of a tie.

Mr. Kelley moved to APPROVE subject to: 1) Approval of a ZBA waiver to allow over 12 children; 2) Compliance with the site plan; 3) Compliance with the proposed operating statement; 4) Compliance with Section 55-787 storm shelter regulations; 5) Making the existing sidewalk contiguous with the sidewalk that stretches from 90th Street to 96th Street and adding and maintaining a crosswalk; and 6) Obtaining an updated Certificate of Occupancy. Mr. Deeb seconded the motion which carried 4-2 with Mr. Nesbitt and Ms. Nubel dissenting.

### Conditional Use Permits

<table>
<thead>
<tr>
<th>REQUEST: Approval of a Major Amendment to a Conditional Use Permit to allow Medical office in a LO District</th>
</tr>
</thead>
<tbody>
<tr>
<td>LOCATION: 535 North 87th Street</td>
</tr>
</tbody>
</table>

Douglas Dreessen, 10836 Old Mill Road, appeared before the board on behalf of the applicant. Mr. Dreessen requested approval and offered to answer any questions.

Ed Reitan, 530 North 86th Street, appeared before the board in opposition. Mr. Reitan stated he owns two lots on one acre near the subject property. He stated Dr. Conway has not shown any plans to the neighboring residents, he does not understand why there is a need for additional storage space and is concerned about the exterior finishes (siding and window treatments, etc.) on the addition to the main building. He stated his primary objection is the size of the existing garage storage building on the property where the back of the property faces his property. In 1986, an attractive residence was converted into a dental office and was accomplished with good architectural taste. However, Mr. Reitan stated that Dr. Conway surprised the neighbors by building an imposing, two-story, 36’ wide, three car garage at the rear of the property, directly facing his property as indicated in a submitted photo. He stated that three of the sides (approximately 20’ high) are vertically flat, unattractive and face the neighboring private residences. There are no architectural details of any kind at this time to improve the flat sides. He concluded that he is opposed to the proposed length from 36’ to 46’ and also takes exception to the recommendation report as follows: 1) The garage storage addition does not have a minimal impact with the surrounding neighbors, and 2) the architectural design of the rear of the garage storage is not compatible with the surrounding areas and wide open landscaping. Mr. Reitan stated that the addition should not be approved by the Planning Board and he requested that fake windows be installed in the existing garage building to soften and improve the appearance of the neighborhood.

Mr. Dreessen revealed a site plan indicating the property line and the setbacks required by zoning. The addition is well within the property line and there is no impervious coverage. He indicated that he does not have any architectural information with regard to the building.
Ms. Nubel questioned if the building is a dental office. Mr. Dreessen answered that the proposed addition to the existing building will be used for storage.

Chad Weaver, Assistant Planning Director, Planning Department, clarified that the proposal is to add an addition to the existing office and to the existing garage.

Ms. Nubel moved to LAY OVER. Laid over for 30-60 days to allow the applicant time to meet with the neighbors. Mr. Nesbitt seconded the motion which carried 6-0.

APPROVAL OF MINUTES

Mr. Nesbitt moved to APPROVE the meeting minutes of September 7, 2011 as written. Mr. Neary seconded the motion which carried 6-0.

ADJOURNMENT

Mr. Neary moved to ADJOURN the meeting at 3:15 pm. Ms. Nubel seconded the motion which carried 6-0.

Date Approved

___________________________________________
John Hoich, Chair

Debbie Hightower, Planning Board
Recording Secretary