Mr. Nesbitt, Vice 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)

Subdivisions

| 2. | C12-12-127 (D) | REQUEST: Preliminary and Final Plat approval of R.C. PLATTS 1ST ADDITION REPLAT 1, a minor plat inside the city limits | LOCATION: 4534 Madison Street |

At the Planning Board meeting held on September 5, 2012, Mr. Neary moved for approval of the Preliminary Plat subject to: 1) The applicant waiving the right to protest the creation of a future street improvement district in the final subdivision agreement; and 2) Removal of all accessory structures (sheds, garages and barns) on proposed Lot 2 prior to forwarding the Final Plat to City Council. Approval of the Final Plat subject to compliance with the conditions of Preliminary Plat approval and submittal of an acceptable subdivision agreement prior to forwarding the Final Plat to the City Council. Ms. Nubel seconded the motion which carried 5-0.
Conditional Use Permits

5. C7-12-145 (D)
Faith Westwood United Methodist Church
REQUEST: Approval of a Major Amendment to a Conditional Use Permit (assumed) to allow Religious assembly in a R4 District
LOCATION: 4814 Oaks Lane

At the Planning Board meeting held on September 5, 2012, Mr. Neary moved for approval of the Conditional Use Permit for Religious assembly in a R4 District, subject to: 1) Addressing the encroachment of the storage building into the parking stalls along the north side of the building; 2) Compliance with revised site/landscape plans and operating statement; 3) Approval of the necessary waivers by the Zoning Board of Appeals; 4) No net increase in stormwater runoff and treat the first ½’’ of stormwater for water quality; and 5) Compliance with all applicable codes and regulations. Ms. Nubel seconded the motion which carried 5-0.

(REGULAR AGENDA)

Subdivisions

11. C12-12-164 (D)
Waitcorp Real Estate, LLC
REQUEST: Preliminary and Final Plat approval of AKSARBEN VILLAGE REPLAT 13, a minor plat inside the city limits
LOCATION: Northeast of 67th and Shirley Streets

At the Planning Board meeting held on September 5, 2012, Mr. Neary moved for approval of the Preliminary and Final Plat subject to submittal of an acceptable final subdivision agreement, if necessary, prior to forwarding to City Council. Ms. Nubel seconded the motion which carried 5-0.

13. C12-12-167 (D)
McDonald’s
REQUEST: Preliminary and Final Plat approval of MCDONALD’S 2ND ADDITION, a minor plat inside the city limits
LOCATION: 7717 Dodge Street

At the Planning Board meeting held on September 5, 2012, Mr. Neary moved for approval of the Preliminary Plat subject to: 1) The applicant providing a note on the plat that states that there shall be no direct access from Lot 1 to Dodge Street; and 2) The applicant dedicating a sufficient amount of right-of-way to accommodate sidewalks along the street frontages, per City standards. Approval of the Final Plat, as amended by the conditions of Preliminary Plat approval, subject to submittal of an acceptable final subdivision agreement before forwarding the final plat to the City Council for final action. Ms. Nubel seconded the motion which carried 5-0.

17. C10-04-060 (D)
C12-04-061
Mutual of Omaha Bank
REQUEST: Revised Preliminary Plat approval of FALLING WATERS, a subdivision outside the city limits with rezoning from AG, to DR, R3, R4, R5 and MU
LOCATION: Northwest of 192nd and Harrison Streets

At the Planning Board meeting held on September 5, 2012, Mr. Neary moved for approval of the rezoning from AG to DR, R3, R4, R5 and MU, subject to submittal of an acceptable mixed use district development agreement being submitted with the Final Plat of Phases 3 and 5; approval of the revised Preliminary Plat subject to the following items being addressed prior to forwarding the revised Preliminary Plat to the City Council for final action: 1) Providing an accurate phasing exhibit for the entire development (including the
platted and recorded first phase); 2) Providing an accurate Source and Use of Funds for each of the five phases and the sum total for the overall development; 3) Providing an accurate Subdivision Plat application form for the overall development; and 4) Providing an updated, acceptable, tree canopy loss analysis and mitigation plan; and, subject to the following items being addressed prior to or with application for final plat approval of each applicable phase of development: 1) Providing for the installation of all improvements included in the approved updated traffic study; 2) Providing traffic calming on all streets over 1,000’ in length; 3) Preparation and submittal of 1:20 drawings for all roundabouts, chicanes and any other proposed traffic calming; 4) Providing a half mile connection to the west in the vicinity of Lots 209/210; 5) Providing for the construction of temporary turnarounds at the end of all interim dead-ended streets; 6) Providing for the extension sanitary sewer; 7) Providing for the installation of sidewalks along both 192nd and Harrison Streets and both sides of all interior streets; 8) Grading the subdivision to match the future plans and profiles for both 192nd and Harrison Streets; 9) Submitting a letter from Douglas County Emergency Management confirming that acceptable emergency warning is being provided for the area; and 10) An acceptable overall debt ratio of 4% or less. Ms. Nubel seconded the motion which carried 5-0.

**Overlay Districts**

<table>
<thead>
<tr>
<th>REQUEST:</th>
<th>Approval of an MCC Overlay District</th>
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<tbody>
<tr>
<td>LOCATION:</td>
<td>5500 “L” Street</td>
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<tr>
<td>18.</td>
<td>C10-12-181 (D) Russ Larson</td>
</tr>
</tbody>
</table>

At the Planning Board meeting held on September 5, 2012, Mr. Neary moved for approval. Ms. Nubel seconded the motion which carried 5-0.

**Rezonings**

<table>
<thead>
<tr>
<th>REQUEST:</th>
<th>Rezoning from R4(35) to R5</th>
</tr>
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<tbody>
<tr>
<td>LOCATION:</td>
<td>2808 South 40&quot; Street</td>
</tr>
<tr>
<td>19.</td>
<td>C10-12-178 (D) James W. Cosgrove</td>
</tr>
</tbody>
</table>

At the Planning Board meeting held on September 5, 2012, Mr. Neary moved for approval. Ms. Nubel seconded the motion which carried 5-0.

<table>
<thead>
<tr>
<th>REQUEST:</th>
<th>Approval of a Major Amendment to a Mixed Use District Development Agreement for Whispering Ridge Replat One</th>
</tr>
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<tbody>
<tr>
<td>LOCATION:</td>
<td>Southeast of North H.W.S. Cleveland Boulevard and West Maple Road</td>
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<tr>
<td>20.</td>
<td>C10-02-092 (D) MJA, LLC</td>
</tr>
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</table>

At the Planning Board meeting held on September 5, 2012, Mr. Neary moved for approval of the Major Amendment to the Whispering Ridge Mixed Use District Development Agreement to allow Automotive repair services subject to submittal of an administrative subdivision and an acceptable mixed use district development agreement amendment that includes the following documents prior to forwarding the request to the City Council for final action: 1) The submittal of an updated Exhibit B and sign budget that is consistent with existing development at Whispering Ridge; 2) Updated Major Amendment agreements with the correct template for signatures; 3) An updated landscape plan addressing the 40’ on center tree planting along HWS Cleveland Boulevard and West Maple Road; 4) Acceptable building and trash enclosure elevations per 55-926 and 55-935(1), including adding dormers and wall material changes on the west side of Christian Brother’s Automotive; and 5) The submittal of an updated site plans reflecting the change in building orientation, 5’ sidewalks, an ingress/egress easement from Lot 2 to Lot 3 and acceptable driveway locations. Ms. Nubel seconded the motion which carried 5-0.
REQUEST: Rezoning from GI to CC
21. C10-12-168 (D)
McNeil Company
LOCATION: 11111 “M” Street

At the Planning Board meeting held on September 5, 2012, Mr. Neary moved for approval. Ms. Nubel seconded the motion which carried 5-0.

REQUEST: Rezoning from R7 to R4
22. C10-12-169 (D)
Randall Roy
LOCATION: 1130 South 30th Avenue

At the Planning Board meeting held on September 5, 2012, Mr. Neary moved for approval. Ms. Nubel seconded the motion which carried 5-0.

REQUEST: Rezoning from R5 and DR to R5
23. C10-12-171 (D)
Jacqueline A. Pueppke
LOCATION: 17255 Howard Plaza

At the Planning Board meeting held on September 5, 2012, Mr. Neary moved for approval of the rezoning from DR to R5 conditioned upon the following items being satisfied before forwarding the rezoning request to the City Council: 1) Submittal of an administrative subdivision to allow for the lot line adjustment; 2) Amending the subdivision agreement for Residences on the Greens at Pacific Springs to note the private ownership of Outlot A and the maintenance of the existing cul-de-sac will be provided by the private property owner. Providing that the cul-de-sac will be retained; and 3) Obtaining a building permit for the fence that will result in compliance with Section 55-767 OMC. Ms. Nubel seconded the motion which carried 5-0.

Special Use Permits

REQUEST: Approval of a Special Use Permit to allow Scrap and salvage services in a HI District
26. C8-12-172 (D)
Silvino Gomez
LOCATION: 902 Grace Street

At the Planning Board meeting held on September 5, 2012, Mr. Neary moved for approval of the Special Use Permit to allow Scrap and salvage services in a HI District, subject to: 1) Submittal of a revised site plan and operating statement that adequately addresses the required fencing/screening and the number of parking stalls for all use types on the property prior to forwarding this request to the City Council; 2) The applicant installing an 8 foot opaque fence around the Scrap and salvage portion of the site prior to receiving a Certificate of Occupancy; 3) The applicant receiving a Certificate of Occupancy from the Permits Division of the Planning Department; 4) Compliance with the revised site plan; 5) Compliance with the revised operating statement; 6) Compliance with Sections 30-81 through 30-110 of the Omaha Municipal Code; and 7) Compliance with all other applicable regulations. Ms. Nubel seconded the motion which carried 5-0.

Subdivisions

REQUEST: Preliminary and Final Plat approval of SALT CREEK CROSSING, a minor plat inside the city limits
12. C12-12-166 (D)
Gene Francis
LOCATION: 600 South 72nd Street

At the Planning Board meeting held on September 5, 2012, Ms. Nubel moved to layover the Preliminary and Final Plat until the applicant can provide enough accurate information to the Planning Department to discern whether or not the existing development on proposed Lot 1 will remain conforming. Mr. Neary seconded the motion which carried 5-0.
At the Planning Board meeting held on September 5, 2012, Ms. Nubel moved to layover the request to allow time for the applicant to have a pre-application meeting with the Planning Department staff and resubmit the request as recommended. Mr. Neary seconded the motion which carried 5-0.

At the Planning Board meeting held on September 5, 2012, Ms. Nubel moved to layover at the request of the applicant. Mr. Neary seconded the motion which carried 5-0.

### Special Use Permits

24. C8-12-161 (D)  
C7-12-162  
Tabernacle of Faith Church  
REQUEST: Approval of a Special Use Permit to allow Small group living (nondisabled) and a Conditional Use Permit to allow Religious assembly in a R5 District  
LOCATION: 2443 Evans Street

At the Planning Board meeting held on September 5, 2012, Ms. Nubel moved to layover the request to allow the applicant additional time to: 1) Provide a site/landscape plan and detailed operating statement in compliance with all applicable regulations; and 2) Determine the required amount of off-street parking that would be required and address how it is to be accomplished. Mr. Neary seconded the motion which carried 5-0.

25. C8-12-163 (D)  
Mark Sanford  
REQUEST: Approval of a Special Use Permit to allow Personal improvement services and Indoor entertainment in a GI District  
LOCATION: 4383 Nicholas Street

At the Planning Board meeting held on September 5, 2012, Ms. Nubel moved to layover the request to allow time for the applicant to meet with city staff and provide a full submittal in compliance with all applicable regulations of the Zoning Code. Mr. Neary seconded the motion which carried 5-0.

27. C8-12-173 (D)  
Silvino Gomez  
REQUEST: Approval of a Special Use Permit to allow Scrap and salvage services in a HI District  
LOCATION: 1613 North 11th Street

At the Planning Board meeting held on September 5, 2012, Ms. Nubel moved to layover the request to allow the applicant time to submit a revised site plan and operating statement that adequately addresses all regulations for off-street parking. Mr. Neary seconded the motion which carried 5-0.
**ADMINISTRATIVE MEETING**

<table>
<thead>
<tr>
<th></th>
<th>REQUEST: Final Plat approval of NORTH POINTE REPLAT 2, a subdivision inside the city limits, with rezoning from DR and CC to CC and approval of an MCC Overlay District</th>
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<tbody>
<tr>
<td></td>
<td>LOCATION: Northwest of 50th Street and Ames Avenue</td>
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At the Planning Board meeting held on September 5, 2012, Chad Weaver, Assistant Planning Director, Planning Department, stated that the department recommends approval of the Final Plat subject to submittal of an acceptable final subdivision agreement being submitted prior to forwarding the request to the City Council for final action.

Mr. Neary moved for approval of the Final Plat subject to submittal of an acceptable final subdivision agreement being submitted prior to forwarding the request to the City Council for final action. Ms. Nubel seconded the motion which carried 5-0.

**REGULAR AGENDA**

**Conditional Use Permits**

<table>
<thead>
<tr>
<th></th>
<th>REQUEST: Approval of a Conditional Use Permit to allow Single family attached in an R4(35) District</th>
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<tbody>
<tr>
<td></td>
<td>LOCATION: 6010 Charles Street</td>
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At the Planning Board meeting held on September 5, 2012, Debra Smith, 6007 Seward Street, appeared before the board in opposition. Ms. Smith stated that her property abuts the back of the proposed property and expressed concerns for the height of the project, decks on the side of the property, management of the property, increased traffic and a decrease in property value.

The applicant was not present.

Chad Weaver, Assistant Planning Director, Planning Department, stated that a three story building meets the height regulations of the district but recommended a layover to allow the applicant an opportunity to discuss the project with neighbors.

Ms. Nubel suggested that the applicant meet with the neighbors.

Mr. Rosenbaum moved to layover for 30-60 days to allow the applicant an opportunity to discuss the project with the neighbors. Mr. Deeb seconded the motion which carried 5-0.

**HOLD OVER CASES**

**Special Use Permits**

<table>
<thead>
<tr>
<th></th>
<th>REQUEST: Approval of a Special Use Permit to allow Broadcast tower in a GC District with a waiver of Section 55-406 Height to 150 feet</th>
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<tbody>
<tr>
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<td>LOCATION: 3509 Center Street</td>
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At the Planning Board meeting held on September 5, 2012, Sam Mandolfo, 2611 South 117 Street, appeared before the board to present the request on behalf of the applicant. Mr. Mandolfo stated that a neighborhood meeting was held but requested another layover to allow more time to revisit with the
department to discuss the requested height. He agreed to extend the “shot clock”.

In response to Ms. Nubel, Mr. Mandolfo stated that they have exhausted any type of lease agreement with the VA Hospital over the past two years. He stated the carrier that they are representing has an existing site at the Center Mall, it is not feasible to work with Field Club because the property is on a lease and the Field Club Elementary School site is small and would not be suitable for a cell tower.

In response to Ms. Nubel, Mr. Mandolfo agreed that the proposed site is smaller than Field Club Elementary School but the zoning setbacks are met with sufficient space to provide room for four carriers therefore maximizing the capability of co-location on the site as per the city’s request. He stated that there will be a significant amount of landscaping and improvements to make it serviceable for the use.

Ms. Nubel explained that the board needs reassurance that other locations have been investigated and there is some evidence that they have been contacted and have indeed said “no”.

In response to Mr. Rosenbaum, Mr. Mandolfo explained that the size of the VA Hospital causes issues and a proposed three or four story VA Hospital building would still provide a blockage to the cell tower on the Center Mall. He further explained that the population is changing and based on the demographics, approximately 30% of the population does not have a home telephone therefore the only access to emergency services is through a cell phone. The customer base is demanding more use from their cell phone service including internet, e-mail and video. He stated that AT&T has issues with providing service to the VA Hospital and the nearby neighborhood.

In response to Mr. Neary, Mr. Mandolfo stated that the area east of the interstate does not have the demand from users with the Smart phones that require adequate additional services.

Timothy A. Heller, 2110 South 35th Street appeared before the board. Mr. Heller stated that he and several others in the neighborhood support the proposed cell tower because of the need for better cell phone reception service.

Eric Heath, 1919 ½ South 35th Street appeared before the board in support of the request.

Ian Swang, 3340 Center Street, appeared before the board in opposition. Mr. Swang submitted plans for future development of the area. He stated that he collected 34 signatures out of a possible 47 neighbors that are against the request. Mr. Swang further explained that several area businesses are against the cell tower because of the aesthetics of the chain link fence. He also indicated that he has health concerns with regard to cell phone tower radiation. In conclusion, he stated that the cell phone tower would be an eyesore, lower property values and lead to less desirable businesses in the future.

Ashley Wilson, 1802 South 35th Street, appeared before the board in opposition. Ms. Wilson stated that her main concern would be the health care issue.

Mark Welsch, 5611 Howard Street, appeared before the board in opposition. Mr. Welsh addressed the issue of the Federal limits on the ability to deny a cell tower and suggested that the Omaha City Council change the Telecommunications Act of 1996, Sec. 704. He further indicated that since the adoption, Section 704 has dramatically reduced the rights of citizens to protect their health, safety and welfare.

Mike Battershell, 2325 South 32nd Avenue, President of Hanscom Park Neighborhood Association appeared before the board in opposition.

Chad Weaver, Assistant Planning Director, Planning Department, stated that the department recommends a layover as requested by the applicant.

Ms. Nubel moved for a layover at the request of the applicant for 60 days until the November 7, 2012 meeting. Mr. Deeb seconded the motion which carried 5-0.
Conditional Use Permits

4. C7-12-159 Pacific West Properties, L.P. REQUEST: Approval of a Major Amendment to a
Conditional Use Permit (assumed) to allow Multiple-family residential in a CC District
LOCATION: 14121 Pierce Plaza

At the Planning Board meeting held on September 5, 2012, Jason Thiellen, E & A Consulting Group, 330 North 117th Street, appeared before the board on behalf of the applicant. Mr. Thiellen stated that the proposed project will consist of 36 additional market rate units in an existing apartment complex. He stated that a meeting was recently held with the neighbors and the neighbors were asked to be involved with the landscape plan. Mr. Thiellen offered to answer any questions.

Chad Weaver, Assistant Planning Director, Planning Department, stated that the department recommends approval subject to the seven items listed on the recommendation report and all lighting on the east and south side of the buildings to be cutoff fixtures.

Mr. Deeb moved for approval of the Major Amendment to the Conditional Use Permit subject to: 1) Providing an amended site plan indicating handicapped accessible parking stalls and trash enclosure locations before issuance of a building permit; 2) Trash enclosures to be constructed out of masonry materials; 3) Compliance with the storm shelter protection standards set forth in Section 55-787 at the time of building permit submittal; 4) Submittal of a landscape plan in compliance with Article XIII Landscaping and Screening, Section 55-717 of the Omaha Municipal Code that provides for continuous screening along the south property line; 5) Compliance with the approved building elevations; 6) Compliance with all applicable ordinances and regulations; 7) The applicant obtaining all necessary permits; and 8) All existing or planned lighting on the east and south side of the buildings shall be full cutoff fixtures. Ms. Nubel seconded the motion which carried 5-0.

(REGULAR AGENDA)

Master Plan Referrals

6. C10-12-179 Planning Department on behalf of the City of Omaha REQUEST: Approval of an ACI-1(PL) and ACI-2(PL)-Area of Civic Importance Overlay District
LOCATION: I-480 to Saddle Creek Road and from Harney to Leavenworth Streets

At the Planning Board meeting held on September 5, 2012, Jed Moulton, Urban Design Manager, Planning Department, presented the request and offered to answer any questions.

In response to Mr. Neary, Mr. Moulton stated that there have been amendments made to Article 22 that addresses multi-family buildings with controls for significant development in the neighborhoods. He added that the request does not affect single-family residences therefore additions can still be made.

In response to Ms. Nubel, Mr. Moulton verified that everyone in the district is grandfathered in and there is no requirement until a parcel is redeveloped.

Sandra Watson, 3410 Jackson Street, appeared before the board to question if she could tear down and rebuild a garage at her multi-family property.
Chad Weaver, Assistant Planning Director, Planning Department, stated that the department recommends approval.

Mr. Deeb moved for approval. Mr. Rosenbaum seconded the motion which carried 5-0.

<table>
<thead>
<tr>
<th>7.</th>
<th>C3-12-180 Law Department on behalf of the City of Omaha</th>
<th>REQUEST: Approval of an amendment to Chapter 55 Zoning regarding an alcohol impact ordinance</th>
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<tbody>
<tr>
<td></td>
<td>LOCATION: Omaha and 3-mile extraterritorial zoning jurisdiction</td>
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At the Planning Board meeting held on September 5, 2012, Tom Mumgaard, Deputy City Attorney, City of Omaha Law Department, appeared before the board to present the request. Mr. Mumgaard stated that the ordinance in question proposes to regulate the land use of alcohol sales as a land use; and to set business operation standards for the same. Mr. Mumgaard stated that alcohol regulations are mostly a state law issue; however, the City has two areas of authority that it may exercise: the first of which is zoning and land use regulations. Mr. Mumgaard stated that the City can treat the sale of alcohol as a land use, just like commercial, residential or industrial land uses. The second area of authority that the City may regulate is business operations. The ordinance in question proposes to use both of these authorities. Mr. Mumgaard emphasized to the Board members that this ordinance does not encroach on the authority of the State of Nebraska, who has oversight over most alcohol regulations. Mr. Mumgaard stated that the aim of the ordinance is to have an effective response to the so-called “external effects” of alcohol by treating it as a land use. The sale of alcohol by a business can have adverse consequences for those who live nearby and throughout the City. Mr. Mumgaard compared the noise and loud music coming from a bar in a residential district as being somewhat similar to the noise produced by an industrial plant in the same type of area; namely, that the quality of life for those living in the vicinity of such an establishment can be affected.

Mr. Mumgaard stated that the proposed ordinance has three major areas of impact. First, it would impose operating standards for the prevention of public nuisances on all existing and future businesses. Second, failure to maintain such operating standards could result in an establishment losing their certificate of occupancy. Mr. Mumgaard commented that a business in this situation would still retain their liquor license; however, they would not be able to use the premises for public use. Third, the proposed ordinance recognizes that the sale of alcohol has a financial impact across the City. Taxpayers spend money each year to alleviate or respond to the effects of alcohol sales, such as DUI enforcement, graffiti removal, littering, and police response to noise complaints and assault situations. Mr. Mumgaard stated that the proposed ordinance would impose a fee of $75.00 per liquor license on any establishment that sells alcohol within the City of Omaha’s jurisdiction. Mr. Mumgaard reported that there are approximately 1,204 current and pending liquor licenses in the City of Omaha. Such a fee would result in total revenues of approximately $90,525.00. Mr. Mumgaard submitted a list to the Board which broke down the various types of establishments which sell alcohol in the City by category. Mr. Mumgaard emphasized that the $75.00 fee is not a penalty; rather, it is an effort to move the cost of the impact of alcohol sales from the shoulders of the taxpayers to those who are in the industry, so that the cost is more fairly spread to those using and selling alcohol, rather than to the taxpayers at large.

Mr. Mumgaard stated that the proposed ordinance would give the City Council, at the recommendation of the Planning Board, the ability to adopt an “alcohol impact overlay district” in parts of the City which contain establishments that are unable or unwilling to maintain the operating standards set forth by the proposed ordinance. Such a zoning category would be limited in size and would serve to remove and eliminate alcohol-related problems. The ordinance requires that this overlay be as small as possible so as not to interfere with competition in the area. If such an overlay were created, the City Council could also impose additional restrictions on establishments within that area, such as restrictions prohibiting the sale of single cans of beer. Mr. Mumgaard stated that this alcohol impact overlay district concept closely mirrors a similar initiative introduced by the State Liquor Control Commission to the State Legislature January 2012.
Mr. Deeb asked Mr. Mumgaard whether the estimated $90,525.00 that could be accumulated by such a fee is a net figure. Mr. Mumgaard stated that this was a gross figure; adding that the ordinance restricts how this money must be spent. Revenues from this fee would be required to be spent on measures to alleviate the alcohol-related problems that the ordinance is aimed at. Mr. Nesbitt stated that he recognized that the proposed $75.00 fee may not sound like a lot to business owners – this fee would equate to a cost of roughly $.20 per day. However, Mr. Nesbitt stated his concern at taxing such proprietors, and wondered whether this fee would be in danger of rising if the City found that it needed more revenue to alleviate alcohol-related issues. Mr. Mumgaard recognized Mr. Nesbitt’s concerns, but pointed out that any fee currently charged by the City has the potential to change at the discretion of the City Council. Mr. Mumgaard stated that the proposed fee would most likely not cover all of the costs associated with the negative effects of alcohol sales; however, it is a reasonable fee which would help to alleviate some of these effects.

Mr. Nesbitt asked Mr. Mumgaard to amplify upon his statement that the proposed ordinance would not put the Planning Department in the enforcement role as it relates to alcohol sales and would not usurp the authority of the State Liquor Control Commission. Mr. Mumgaard replied that approval of the proposed ordinance would result in the Planning Department being more involved in alcohol-related regulations than they are now, specifically in the issuance of notices of nuisance. Notification of nuisance would be handled by the Police Department, the Planning Department and various other departments within the City. Enforcement would go through the Planning Department; if the nuisance was not corrected, the matter would go before the City Council. Mr. Mumgaard stated that it is not the City’s intent to prevent businesses from obtaining a liquor license or from moving into a location. Rather, it is the City’s intent to set minimum operating standards that businesses must abide by once they begin operation within the City’s jurisdiction, or risk losing their certificate of occupancy. Mr. Mumgaard stressed that the City is not trying to change liquor laws, rather, the City wishes to use its existing authority to supplement those liquor laws.

Mr. Deeb asked Mr. Mumgaard whether he could estimate how many violators such an ordinance would have affected had it been approved two years ago. Mr. Mumgaard estimated that this ordinance may have affected somewhere in the area of a half a dozen offenders in the past two years. He added that the proposed ordinance is aimed at low-level activity that would not rise to the level of being a violation of state liquor law, but could be interpreted as a genuine annoyance/nuisance to neighbors, or is incompatible with its neighbors.

Mr. Neary asked Mr. Mumgaard whether the ordinance would be a quicker and easier way to abate issues than by going through the state’s liquor laws. Mr. Mumgaard confirmed this statement, estimating that the average liquor license repeal process can take one to two years to complete.

Ben Gray, District 2 Omaha City Council member, 5425 Fort Street, appeared before the Board in favor of the request. Councilman Gray stated that he supported the proposed ordinance for a number of reasons, commenting that the effects of alcohol sales are an issue in our community; currently taxpayers are being asked to pay for these problems. The proposed ordinance will help to place this burden on the establishments that sell alcohol. He stated that the proposed ordinance is community-driven. He added that he has had numerous discussions and meetings with not only residents in his district but all over the City who are concerned over issues relating to alcohol use. Councilman Gray commented that when he and his fellow Council members attempt to deal with issues arising from alcohol use, issues that become delayed due to the need for such matters to be dealt with at a state level. He stated that the Omaha City Council is looking for a tool that will allow them to operate in a faster manner in such cases. Councilor Gray cited a recent case an establishment that had a serious problem with serving alcohol to individuals who had already imbibed alcohol. This establishment sells alcohol in single cans; and maintained that if they stopped selling alcohol in single cans, there were three other such establishments nearby that also sell alcohol in single units. Councilman Gray stated that if the proposed ordinance were put in place, it would allow the Council to put an alcohol impact overlay district over all four establishments in the area in order to alleviate the problems being experienced by the citizens living in this area of town. He restated that the proposed ordinance is community-driven; adding that this is an opportunity for the City to take significant action against alcohol-related issues. Councilman Gray offered to answer any questions.
David Jernigan, Associate Professor, Department of Health, Behavior and Society at Johns Hopkins Bloomberg School of Public Health, resident of 2444 North Calvert Street, Baltimore, Maryland, appeared before the Board in support of the request. Mr. Jernigan stated that his comments are his own views and not that of the official views of Bloomberg School or John Hopkins University. He stated that he has worked on alcohol policy issues for 25 years; and has witnessed increasing use of planning and zoning tools in other communities around the country who wish to strengthen their control over and decrease the impact of alcohol sales and practices in their neighborhoods. Mr. Jernigan cited his involvement in the creation of a 1992 case study which established new operational standards in Oakland, California. He added that similar standards were later adopted in his own place of residence, Vallejo, California; this resulted in a 53% reduction in police calls for service. Mr. Jernigan stated that more than 250 cities in California have adopted similar ordinances. In Baltimore, the City is in the midst of their first revision of planning and zoning code in 40 years. Baltimore’s Health Commissioner has targeted as part of these revisions the amortization of 10% of the city’s alcohol outlets. He stated that Waterloo, Iowa is the most recent city to pass a land use ordinance related to alcohol. Mr. Jernigan asserted that there is a substantial research base underlying today’s proposed ordinance. He cited numerous statistics from this research, showing nationwide correlation between the presence of establishments selling alcohol and increases in assault, rape, robbery, homicide, and police calls; and decreases in such incidences with the reduction of the number of alcohol outlets in an area. Mr. Jernigan stated that a recent review summarized the findings of all this research as follows: “...Wherever alcohol sales data are available, greater densities of alcohol outlets have been found to increase alcohol use. Greater densities of establishments, such as bars and taverns that sell alcohol for consumption on premises are directly related to assaults and violence. Higher densities of bars, taverns and sometimes restaurants are directly related to drunk driving and alcohol-related crashes and the effects of greater outlet density are felt not only in the neighborhoods where it occurs but also spill over into neighboring neighborhoods as well”.

Mr. Jernigan stated that the Center for Alcohol Marketing & Youth is particularly concerned about the effects of alcohol marketing on young people. He cited that alcohol is responsible for the deaths of 4,700 young people under the age of 21 each year in this country; with at least 26 of those deaths occurring in Nebraska. He maintained that the younger a person starts drinking, the more likely they are to have alcohol-related problems and with those who start drinking before the age of 15 are five times more likely to have an alcohol problem and four times more likely to become alcohol-dependent than those who wait until the age of 21. Alcohol outlet density increases the likelihood of underage youth obtaining alcohol from family members, commercial outlets, and social networks and thus, limiting or reducing alcohol outlet density is an important step in protecting young people in the community from early initiation into alcohol use. Mr. Jernigan stated that there are two probable reasons why greater alcohol outlet density is connected to greater levels of crime, violence, and negative neighborhood effects. The first of these reasons, general availability of alcohol, is something which Mr. Jernigan maintained is supported by hundreds of studies over the past 30 years. The second of these reasons, social aggregation theory, suggests that a higher number of alcohol outlets in a single area leads to the gathering together of social drinking groups, which in turn increases the likelihood of violence. The Centers for Disease Control and Prevention has established an independent, non-federal, volunteer body of professionals to conduct reviews of the effectiveness of interventions across the entire spectrum of public health. This group has concluded that the regulation of alcohol outlet density is a useful tool for the reduction of excessive alcohol consumption and related harms. He stated that multiple studies have found that overconcentration of alcohol outlets is more likely to occur in poor and minority neighborhoods, a fact which only underscores the importance of public health action to improve health and promote economic development.

Mr. Jernigan stated that the ordinance under consideration in Omaha today benefits from the experience and legal work that has been done over the past twenty years to define and clarify the tools available to city governments to foster family-friendly business environments and to reduce/prevent potential harms due to the overconcentration of alcohol outlets in particular neighborhoods. He added that the proposed ordinance provides three effective approaches to achieve such an end; first, it identifies and creates special conditions in key areas in order to mitigate the effects of existing overconcentration. Second, it establishes clear operational standards to reduce the nuisances caused by alcohol outlets throughout the
city. Third, the proposed ordinance provides for enforcement by establishing a modest alcohol impact fee on all businesses selling alcohol within the city. Mr. Jernigan stated that this third approach is the most critical of the three approaches, citing both positive and negative examples from other cities which have chosen to adopt or not to adopt plans for the enforcement of their alcohol impact ordinances. Mr. Jernigan concluded that, based on his experience in working with communities to reduce alcohol related problems over the past 25 years and the review of research literature, he strongly endorses the effort of the City of Omaha’s planning and zoning tools to exercise greater control over alcohol sales and service practices and outlet density and thus promote a safe, successful and family friendly city for all to enjoy.

Mr. Rosenbaum asked Mr. Jernigan to share with the Board the types of fees that he has encountered in other jurisdictions which have enacted alcohol impact regulation. Mr. Jernigan replied that Oakland, California, which was the first city to enact such regulations, charged a fee of $150.00 per year to alcohol-serving establishments; this money went to a special enforcement unit within the Oakland Police Department.

Mr. Nesbitt stated that he was concerned at Mr. Jernigan’s statements dealing with additional liquor operations. Mr. Nesbitt maintained that the Planning Board will not deal with additional liquor operations; rather, these operations will fall under the purview of the City Council and the State Liquor Commission. Mr. Jernigan stated that he understood Mr. Nesbitt’s concern, and added that those statements were meant only to show the strong relationship in research between the concentration of alcohol outlets and things like violence and nuisances.

Anthony Cable Jr. appeared before the Board in favor of the request. Mr. Cable stated that, in his opinion, the proposed ordinance has come five years too late. Mr. Cable asserted that this ordinance is not about business or anti-business; rather it advocates being a good and responsible neighbor. Mr. Cable stated that he was paralyzed by an underage drunk driver five years ago and still suffers from paralysis on his right side. Mr. Cable stated that he is a very young man; and has had to go through eleven surgeries, numerous treatments and doctor visits, and has a therapist who comes to his home each day as a result of his injuries. He compared the $90,525.00 in revenues that would be collected by the proposed ordinance as being nothing compared to the $2.9 million dollars that the taxpayers pay as a result of his accident and injury. Mr. Cable stated that to ask a business to be more responsible and caring about the community it resides in is not too much to ask. He maintained that passing the proposed ordinance would be good for neighborhoods and the community at large.

Dr. Adi Pour, Director, Douglas County Health Department, resident of 9727 Spring Street, appeared before the Board in favor of the request. Dr. Pour stated that both the Douglas County Health Department and the Board of Health have a strong interest in the proposed ordinance. Dr. Pour stated that excessive alcohol use is a public health problem. She cited a recent survey in Douglas County which concluded that 16.8% of adults are binge drinkers. Dr. Pour defined “binge drinking” as equating to five or more drinks at one occasion for a male, and four or more drinks at one occasion for a female. Of additional concern were responses from 6% of those surveyed who answered that they had driven during the past month after having too much to drink. An additional 10% responded that they had driven while drunk, or had ridden with a driver who was drunk. Dr. Pour compared recent efforts to increase the health of the general public through the encouragement of healthier food choices and physical activity to the proposed ordinance; stating that no one will work or play in a neighborhood if they don’t feel safe in that neighborhood. Dr. Pour maintained that the characteristics of a neighborhood can have a major impact on public health. She stated that mixed-use neighborhoods are becoming more common in Omaha; which requires a greater degree of respect from businesses in those neighborhoods. Dr. Pour concluded by stating that the proposed ordinance provides for a higher quality of life and the promotion of health.

Molly Romero, 5101 Nicholas, appeared before the Board. Ms. Romero is co-owner of Marks Bistro, an establishment that sells alcoholic beverages in Dundee. Ms. Romero stated that she and her partners are in favor of the proposed ordinance. Ms. Romero also serves as president of the Dundee Memorial Park Association. Ms. Romero stated that this organization’s board of directors has voted to support the proposed ordinance. Ms. Romero stated that she felt the proposed ordinance and fee to be reasonable, adding that this ordinance provides local control over local activities. Ms. Romero stated that the City of
Omaha has in the past relied on the State to deal with such issues; however, in her opinion, Omaha needs to have such a tool in order to allow local government and police to deal with issues that arise from alcohol use.

Reverend Portia Cavitt, pastor of Clair Memorial United Methodist Church, 5544 Ames Avenue, appeared before the Board in support of the request. Rev. Cavitt stated that she was surprised that Omaha is just now looking to pass such an ordinance, indicating that such a measure is long overdue. During her time as a pastor in California, Rev. Cavitt worked on a committee focused on ensuring that local businesses followed the city’s alcohol ordinances, including a restriction stating that no alcohol was to be sold within thirty feet of an elementary school, church or park. Rev. Cavitt stated that as a pastor in north Omaha, she has seen first-hand the issues related to liquor-selling businesses, and the types of activities that occur around such establishments. Rev. Cavitt asserted that there are several such businesses near her church, which in her opinion add to a belief that this part of town is not safe. Rev. Cavitt cited past issues with people approaching her church members asking for money so that they could go and buy alcohol. According to Rev. Cavitt, Clair Memorial United Methodist Church is in an area of town that is inhabited by many low-income people, some of whom are returning from rehab or recovering from homelessness. Rev. Cavitt stated that community members need to feel safe at their places of worship; as a church is a place of refuge. Rev. Cavitt asked the Board to take into account the cultural violence related to alcohol that is not associated with any one area of town but with the community as a whole.

Sam Crawford, 2570 North 16th Street, appeared before the Board in favor of the request. Mr. Crawford stated that he has lived in Omaha for forty years, and this is the first time that he has heard of any attempt to deal with alcohol-related issues in the city. He expressed a hope that the Planning Board would consider carefully the ordinance before them, and not think that alcohol issues are some other entity or department’s problem. Mr. Crawford asserted that this is a community-wide problem. Mr. Crawford stated that he lives in an apartment community, and originally appeared before the Board to object to a new business proposing to enter his neighborhood; but felt moved to speak on this issue as well. Mr. Crawford invited the Planning Board members to take a drive down 16th Street; he stated that they would see first-hand the kinds of activities that occur in this neighborhood. Mr. Crawford informed the Board that there are three liquor-selling establishments within a two-and-a-half-block radius of his home. He consistently sees people walking to and from these establishments, urinating on people's property, trespassing, and having no regard for children or senior citizens who may be present in the area. Mr. Crawford concluded by stating that the City cannot rely on the State of Nebraska to address local issues.

Chris Foster, 3413 California Street, appeared before the Board in support of the request. Mr. Foster distributed handouts, including maps of his neighborhood. He stated that he has seen the impact of having too many poorly-managed alcohol establishments in an area. Mr. Foster stated that he and his wife have lived in this neighborhood for 25 years, and are active in their neighborhood association. Alcohol-related problems have consistently been an issue in this area. Mr. Foster illustrated with the submitted maps that there are four off-sale liquor establishments and two on-sale liquor establishments within a very small radius. Mr. Foster stated the neighborhood is home to numerous residences, Gifford Park, community gardens and bike shop and new businesses and restaurants, some of which have opened very recently. He asserted that having so many liquor establishments in this area is not in line with the character of the neighborhood. Mr. Foster testified to his neighborhood association spending a great deal of time, resources and money in efforts to oppose the addition of new liquor establishments in their neighborhood; adding that he feels the State Liquor Commission did not take into account the character of his neighborhood when granting new liquor licenses. Mr. Foster stated that citizens and neighborhood associations throughout the city have the same frustrations, citing city-wide efforts to provide programs for youth that are counter-acted by the presence of liquor establishments. He protested that many neighborhoods will never reach their full potential as long as liquor-selling establishments exist in such abundance. Mr. Foster encouraged the Board to give the community the opportunity to take charge of their neighborhoods.

Diane Riibe, Executive Director for Project Extra Mile, 12165 West Center Road, appeared before the Board in favor of the request. Ms. Riibe stated that her organization works to prevent underage drinking and access to alcohol. She stated that according to the Centers for Disease Control and Prevention,
Nebraska ranks second in the nation for binge-drinking. Omaha ranks 11th for the same issue out of 192 cities surveyed, with four Nebraska cities ranking in the top 15. Ms. Riibe encouraged the Board to approve the proposed ordinance, stating that this ordinance is not a solution looking for a problem; rather, the issues relating to alcohol availability are well-documented and supported through the testimony of those present today. In regards to the fee proposed, Ms. Riibe reported that in 2007, the Orchard Hill Neighborhood Association successfully fought before the State Supreme Court against a new liquor establishment opening in their area. During this time, Ms. Riibe maintained that there were approximately 2,000 calls for police service within the half-mile radius surrounding 40th and Hamilton Streets in a twelve-month period. In examining costs to the City, Ms. Riibe reported that the average Omaha Police officer makes roughly $41.00 per hour, including benefits. Domestic Violence calls typically require the presence of at least two officers with an average of 53 minutes. In the area of 40th and Hamilton Streets in 2007, there were 286 domestic violence calls. This translates to a City personnel cost of $20,000.00 in order to respond to domestic violence calls alone. In that same time frame, the area experienced five stabbings and 47 reports of shots fired. Ms. Riibe stated that since 2007, with no liquor sales occurring at 40th and Hamilton Streets, neighbors report that crime has diminished substantially and the overall quality of life has improved. She also stated that the president of the neighborhood association was proud to report that a new music store is opening in the area; something that the neighborhood association thought impossible before. Ms. Riibe asserted that approval of the proposed ordinance will bring positive and gradual change to Omaha’s landscapes. Such an ordinance not only creates a community that embraces economic progress, but also embraces the health and safety of its residents.

Bob Schmill, Executive Director of Matt’s Dream Foundation, 9606 North 30th Street, appeared before the Board in support of the request. Mr. Schmill stated that his organization came into being following his son’s death at the hands of a hit and run drunk driver. He explained that the foundation has a victim impact panel that includes a class and a questionnaire at the conclusion of the class. Mr. Schmill stated that, according to the questionnaire, 87% of those that took the class felt that if an establishment limited the number of drinks they had then they would not have been as drunk and caught on their way home.

Aron Wisneski, 1022 North 64th Street, appeared before the Board as a taxpayer and resident to discuss land use. Mr. Wisneski stated that the primary reason for zoning and land use controls is to regulate and separate uses that are thought to be incompatible. He pointed out that the first sentence of the proposal reflects the notion that some particular land uses, in this case, the sale of alcoholic beverages, legal but controlled substance, is not always compatible with the adjoining land uses. Mr. Wisneski stated that Mr. Jernigan provided an evidence and research based rationale for why this particular type of use may be controlled. He stated that there were events that demonstrate the impact that alcohol selling establishments can have on neighborhoods. Mr. Wisneski pointed out that proposed land use controls have been applied through Historic Overlay Districts and Tax Increment Financing Districts. The proposal is not about exclusion but about controlled and intelligent growth and the recognition of land use impact. He indicated that he supports the request because it offers greater local control of the community and is evidence in the flexibility spelled out in the language of the proposal. It does not set out quotas and does not dictate one building is acceptable for a bar and another unfit for the same purpose. The proposal offers residents, business owners, neighborhood groups and elected officials a way of being involved in the development of the alcohol landscape in Omaha. It takes a mature approach to dealing with the issues previously described before the community is put upon them; good design means less of a probability of problems later. He concluded that the proposed ordinance helps Omaha and is a good fit within the municipal code.

Jim Moylan, General Counsel to the Nebraska Licensing Association, Lincoln, Nebraska appeared before the Board in opposition. Mr. Moylan explained that there are approximately 1,100 liquor licenses issued in Omaha. He expressed that there is no need for another layer of laws or regulations with respect to the control of the liquor industry. He pointed out another element; people also patronize grocery stores, restaurants, taverns, pool halls and non-profit clubs that sell alcohol. Mr. Moylan stated that the proposed ordinance is too broad with respect to the impact zone. He stated that an impact zone could hinder the sale of an establishment. Mr. Moylan concluded that there are enough laws and ordinances to take care of the enforcement of the liquor industry.
Mr. Deeb asked Mr. Moylan what he would recommend to help the community with alcohol related issues. Mr. Moylan pointed out that the liquor establishments cannot afford to cater to minors and intoxicated persons and they have invested a lot of money in their businesses; blame the individual and not the retailers. Mr. Deeb responded that he believes 99% of the bar owners would be in favor of the ordinance to better the community.

Jenny Zimmer, 1103 South 9th Street, appeared before the Board on behalf of the North Downtown Neighborhood Association. Ms. Zimmer stated that her main concern is with regard to future development in the area. She expressed that one bad bar could cause other establishments to not locate in the area and would have an effect on current bar owners and their ability to maintain their business with regulations that might limit their hours or off sale ability. She concluded that there is no problem with the fee but the central business districts and designated entertainment districts would suffer from the proposed amendment.

Mr. Nesbitt stated that the overlay district proposal is not being proposed to hinder anybody but is being proposed to protect everybody. He further stated that the city’s overlay district would be able to identify one bad guy and deal with him specifically.

Joseph Young, Director of Public Policy, Greater Omaha Chamber of Commerce, 1301 Harney Street, appeared before the Board on behalf of the Greater Omaha Chamber of Commerce. Mr. Young acknowledged that Omaha does face problems with certain alcohol violations and violators but the problem we are trying to address can and should be fixed by means other than a new law that imposes harsh restrictions on many good citizens rather than targets the few who perpetually have run-ins with the law. He expressed that several of the provisions are at best unfair and at worst not even legal and probably both in some cases. The main concerns with the ordinance is: 1) it imposes a new tax which is not authorized by the legislature; 2) it is the policy of the State of Nebraska, historically, that ultimate control of liquor licenses lies with the State Liquor Control Commission; 3) unfairly punishes all liquor license holders instead of the isolated offenders; 4) certain provisions within the ordinance could hinder growth in Omaha’s most popular areas such as Midtown Crossing, NoDo, Dundee and the Old Market; and 5) the issue that the ordinance seeks to address could be solved with alternative solutions. The new ordinance poses a new tax that punishes every liquor license holder in the city of Omaha regardless of the fact that almost all of them have spotless records and are good corporate citizens. It will be called a fee in the ordinance but it is hard to see that it is not a tax because everyone who has a liquor license will pay the $75.00. The State statute says that municipalities can charge up to double the state liquor license fee through an occupation tax but cannot exceed double the state liquor license fee. It has been the policy of the State of Nebraska to decide rather or not municipalities have the kind of authorities to regulate liquor that this ordinance attempts to create. Although the legislature has said that municipalities may adopt certain zoning requirements or establishments that sell liquor, it stops or falls short of allowing cities from adopting a catch all zoning ordinance to allow the city to regulate all things alcohol. He stated that they do not believe it is good public policy to punish everyone in a certain classification because of the bad actions of a few. Finally, the ordinance would most certainly hinder growth in some of the most popular and vibrant developments in Omaha. Mr. Young stated that he was told by a proponent that part of the ordinance was written to thin out the amount of bars and restaurants in areas like the Old Market. Obviously, this would have major consequences for Omaha’s overall quality of life. Civic leaders and businesses have put a lot years of hard work into the districts and businesses. By limiting liquor license density, the liquor license would become a hard to come by commodity and more valuable over time. He stated that the Chamber and their partners would come together to rid Omaha of any bad actions that exist and who are not complying with the laws already on the books. He requested a more reasonable approach and asked that the Board recommend a “no” on the ordinance. He concluded that the selling of an existing business or changes to an existing business would be problematic if it is subjected to an impact overlay district and new restrictions. He offered to answer any questions.

Mr. Nesbitt asked Mr. Young who told him that the bars and restaurants need to be thinned out in the Old Market. Mr. Young responded that he heard that comment at a Project Extra Mile meeting and that the assumption is that there are too many liquor licenses in the Old Market and the way the ordinance is written, could apply to the Old Market. Mr. Nesbitt responded that an overlay district would be
implemented if there are areas in Omaha that are found to need an overlay district. Mr. Young stated that there are many unknowns and there is nowhere in the ordinance that spells out where and how large any given overlay district could be. In response to Mr. Nesbitt, Mr. Young stated that the Chamber of Commerce is not in favor of the ordinance because of the way it is written. Mr. Young stated that the Chamber of Commerce has offered to sit down with Councilor Gray and Project Extra Mile to deal with their issues with the proposed ordinance, and they were told that this would be acceptable. Mr. Deeb stated that he is a major supporter of the Chamber of Commerce; however, he expressed his frustration at the Chamber’s reluctance to support an ordinance which is such a positive step towards improving the City. Mr. Neary commented that in real estate, a certain portion of the sale price goes into a housing fund, which is used to pay for low-income housing. This tax results in the housing industry partially supporting low-income housing; Mr. Neary compared this policy to the proposed ordinance, which will ask the liquor industry to take a small amount of responsibility for those who use their products. Mr. Young protested that most business in Omaha are good corporate citizens, and do not over-serve patrons or serve to minors. Mr. Young stated that taxes in Omaha are high, and commented that he was not certain as to whether or not the proposed tax is constitutional.

Brian Magee, 9354 Dewey Avenue, President of Upstream Brewing Company, appeared before the Board. Mr. Magee commented that enforcement is a major issue in Omaha. He stated that when their Old Market location opened sixteen years ago, police officers routinely stopped by to check in on the premises; these days, he rarely sees law enforcement. Mr. Magee informed the Board that State ID’s are not considered to be valid when trying to purchase alcohol. Mr. Magee stated that the last time the police were called in to deal with a situation arising from an out-of-town customers who requested that the police be called when he restaurant refused to serve alcohol to those at the table with State ID cards. The police told these customers that some restaurants accept State ID cards and others do not. Mr. Magee expressed his frustration in regards to the fact that the police don’t seem to know and/or enforce the law. Mr. Magee asserted that some of the money from the City’s restaurant tax should be earmarked specifically for police enforcement. Mr. Magee added that he is opposed to the proposed ordinance, citing that it creates an obstacle in cases where a business owner wishes to sell his business. Mr. Magee concluded that the proposed ordinance will not stop those businesses currently identified as being “problems” as they must first commit further violations to begin enforcement.

Jim Partington, Executive Director of Nebraska Restaurant Association, Lincoln, Nebraska appeared before the Board. Mr. Partington stated that restaurants in Omaha are not interested in tolerating the kind of behavior which the proposed ordinance is attempting to eliminate. Mr. Partington stated that in his opinion, restaurant owners are less concerned with the proposed ordinance’s fee than they are with the ordinance’s ability to impose special conditions and/or restrictions on their property, which could be seen as being arbitrary and unfair. Mr. Partington accepted that issues pertaining to alcohol use are real; however, he added that it is his organization’s opinion that collaboration and dialogue is needed between all interested parties in order to create more effective strategies for dealing with these issues. Mr. Partington stated that it is alcohol abuse that is a problem, not necessarily those people who sell it. Mr. Partington concluded that he has experience working with the Planning Commission in Lincoln, and sympathizes with what the Planning Board is trying to accomplish.

Jim Thompson, 1001 South 35th Avenue, appeared before the Board. Mr. Thompson stated that he is opposed to the proposed ordinance because he does not feel that it goes far enough. Mr. Thompson stated that he approves of the removal of a problem business’ certificate of occupancy, but feels that fines for violation need to be significantly increased. Greater involvement and collaboration with the Omaha Police Department needs to occur so that enforcement can be effective. Mr. Thompson added that he doesn’t believe that the $75.00 fee is necessary; arguing that money for this use should be taken from the city taxes. Mr. Thompson stated that changes in state law and significant increases in fines is the key to preventing alcohol violations by businesses.

Tom Mumgaard, Deputy City Attorney, City of Omaha Law Department, reappeared before the Board. Mr. Nesbitt spoke in regards to an earlier cited example, in which a citizen walks down the street to purchase a single unit of alcohol. Mr. Nesbitt asked Mr. Mumgaard whether this type of occurrence is the main concern of the proposed ordinance. Mr. Mumgaard replied that it is a common occurrence; and one that
generates a lot of neighborhood complaint; however, it is not the driving force of the proposed ordinance. Mr. Nesbitt asked Mr. Mumgaard whether the State Liquor Commission has the capability to determine whether or not a business can serve individual units of alcohol. Mr. Mumgaard stated that the State Liquor Commission does have this right, and commented that there have been times when that organization has attempted to limit operations during the liquor license approval process. Mr. Mumgaard stressed that this limitation takes place during the license approval process; once the license is issued, it is difficult to impose restrictions on problem businesses. Mr. Nesbitt stressed that the Planning Department does not, and has no intention of, dealing with the issuance of liquor licenses. Mr. Mumgaard agreed with this statement, emphasizing that the proposed ordinance is a land use regulation and a business operation regulation. The proposed ordinance does not determine who receives a liquor license. It does not force anyone out of business; nor does it prevent any person from selling their business. Mr. Mumgaard explained that the ordinance allows for the creation of overlay districts; however, City Council will make the final determination as to whether or not such an overlay district needs to be created. Mr. Mumgaard stated that there may never be a need to create such an overlay district. Restrictions may never have to be imposed.

Mr. Rosenbaum clarified that the proposed ordinance deals not only with allowing City Council to create an overlay district in severe cases; it also allows for the creation of the $75.00 alcohol impact fee. Mr. Mumgaard commented that the state liquor laws do not allow for a business to be a nuisance to its community. Mr. Mumgaard stated that the overlay district only comes into play when the City finds that there are areas of town where a business or businesses are determined to be in violation of the standards set forth in the proposed ordinance. Mr. Rosenbaum stated that he has a problem with asking businesses to pay an impact fee versus the public paying increased taxes. Mr. Mumgaard countered that fairness is in the eye of the beholder. He added that increased enforcement of existing liquor laws equals increased expense; the proposed ordinance eases somewhat the threat of increased taxation of the general public, and places responsibility on those benefiting from the sale of alcohol; namely, those who sell it.

Ms. Nubel stated that one opponent questioned whether the proposed ordinance was constitutional. She asked Mr. Mumgaard for his thoughts regarding this statement. Mr. Mumgaard summarized city rights under the Liquor Control Act, concluding by stating that he does not believe that the proposed ordinance is unconstitutional or in violation of the Liquor Control Act.

Mr. Neary asked Mr. Mumgaard why limiting sales of single cans of alcohol is wise; postulating that buying a six pack of alcohol worse than a single can. Mr. Mumgaard pointed out that limiting single can sales can help to lessen problem behaviors. He postulated that a six pack of beer typically goes home with a person. A single can be taken in a car while driving, or easily held while walking down the street. It also requires people to spend more money to obtain alcohol, which may act as a deterrent to purchase in the first place.

Mr. Rosenbaum commented that in the pre-meeting he was the lone opponent to the proposed ordinance. He stated that he is not against the ordinance in total; rather his objection has to do with the proposed fee on business owners. The Board discussed their personal feelings about this request, with some being in opposition and others being in support of the proposed ordinance. After some additional discussion, the Board asked Councilman Gray for additional input in regards to allowing for additional
discussion within the community and with the City Council before this higher body would make their final determination. Councilman Gray stated that he is more than willing to speak with the Council, and to speak with any community member or organization who wishes to address issues with the proposed ordinance; however, he stated that his is not willing to be held hostage indefinitely. Councilman Gray stated that this ordinance was not created by him; rather, it was the result of neighborhoods that have experienced decades of problems with establishments in their areas, and from neighborhood groups who have had to fight for years with the State Liquor Commission to eliminate problem businesses in their neighborhood. Councilman Gray stated that it is time for the City to take a serious stance on the issues arising from alcohol abuse. Councilman Gray stated that if the Planning Board chose to approve the proposed ordinance, it provides pressure for concerned groups to ensure that dialogue takes places regarding their issues before the City Council meeting.

Chad Weaver, Assistant Planning Director, Planning Department, stated that there are amendments and clarifications that need to be discussed; however, the Planning Department recommended approval of the proposed ordinance as amended. These amendments include discussions as to how to classify between major and minor amendments and clarification on when conditions apply to a business. Ms. Nubel concluded that these amendments were for cleanup purposes. Mr. Weaver confirmed Ms. Nubel's assessment.

Ms. Nubel moved for approval of the amendment to the proposed ordinance as previously described. Mr. Deeb seconded the motion which carried 4-1 with Mr. Rosenbaum dissenting.

Mr. Deeb moved for approval of the proposed ordinance as amended. Ms. Nubel seconded the motion which carried 4-1 with Mr. Rosenbaum dissenting.

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<th>8.</th>
<th>C3-12-160 Planning Department on behalf of the City of Omaha</th>
<th>REQUEST: Approval of an amendment to Chapter 55 Zoning regarding revisions to Article 22 Urban Design</th>
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<td>LOCATION: Omaha and 3-mile extraterritorial zoning jurisdiction</td>
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At the Planning Board meeting held on September 5, 2012, Chad Weaver, Assistant Planning Director, Planning Department, explained that the requested amendment is to correct the miscalculation of the Build-To Set-Back from 45' to 20' for the minimum dimension for Frontage Type C and editorial clarification that a building front is to include an entrance and that drive lanes (or drive-through lanes) are considered part of the parking facility. Mr. Weaver stated that the department recommends approval of the proposed ordinance as amended.

Mr. Neary moved for approval of the proposed ordinance changes. Ms. Nubel seconded the motion which carried 5-0.

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<th>9.</th>
<th>C3-12-165 Planning Department on behalf of the City of Omaha</th>
<th>REQUEST: Approval of the 50TH &amp; AMES AVENUE WAL-MART TIF REDEVELOPMENT PROJECT PLAN</th>
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At the Planning Board meeting held on September 5, 2012, Bridget Hadley, Planning Department, presented the request. Ms. Hadley stated that the proposed project will be a 178,000 square foot new Wal-Mart Super Center located at site of the former Baker's Supermarket which has been vacant for several years. She explained that the project will involve public improvements including a mill overlay, relocation of the traffic light at 50th and Ames to the main driveway entrance of the Wal-Mart site, completion of sidewalks along 50th Street on the west side and the addition of a sidewalk connecting 50th Street to the front entrance of the building and a public plaza. Ms. Hadley further stated that the project is a fulfillment of the North Omaha Development Project's vision to bring investment into the North Omaha community along with the creation of 300 jobs to the community, enhancement of the tax base and economic development in the area. Ms. Hadley offered to answer any questions.
In response to Ms. Nubel, Ms. Hadley indicated that the design of the project has been reviewed by the Urban Design Review Board but will not be the same design as the Wal-Mart located on 72nd Street. Jed Moulton, Urban Design Manager, Planning Department, submitted a rendering of the proposed Wal-Mart store and explained the additional landscaping and parking plan.

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

Ms. Nubel moved for approval. Mr. Neary seconded the motion which carried 5-0.

| REQUEST: Approval of an amendment to a NCE-C Neighborhood Conservation and Enhancement District |
| LOCATION: South 10th Street from Downtown to I-80 |
| 10. C10-10-167 City of Omaha | |

At the Planning Board meeting held on September 5, 2012, Jed Moulton, Urban Design Manager, Planning Department, presented the request which is an amendment to the NCE plan that was adopted in 2010. Mr. Moulton stated that the original plan envisioned that the 10th Street corridor would be more residential in character and more specifically pedestrian-oriented residential with some mixed use or commercial properties. He further stated that the amendment is a review of the policy and strategies that were previously granted and subsequent work was done by a consultant of the Energy Management Plan that identified aspects of the zoning code to better facilitate mixed uses within the city therefore some of the recommendations were incorporated. Mr. Moulton offered to answer any questions.

Arnie Breslow, President of Old Market South Neighborhood Association, appeared before the board in favor of the request.

Chad Weaver, Assistant Planning Director, Planning Department, stated that the plan has parameters within the district but the department recommends approval of the amended code.

Mr. Rosenbaum moved for approval of the proposed amendment. Ms. Nubel seconded the motion which carried 5-0.

**Subdivisions**

| REQUEST: Preliminary and Final Plat approval of MILLARD AND CALDWELL’S ADDITION REPLAT 4, a minor plat inside the city limits with rezoning from GC to CC and ACI-2(PL) |
| LOCATION: 2601 North 16th Street |
| 16. C10-12-176 C12-12-177 Triple C Development |

At the Planning Board meeting held on September 5, 2012, Dan Dolezal, Ehrhart Griffin Associates, 3552 Farnam Street, appeared before the board on behalf of the applicant. Mr. Dolezal stated that the project is city-owned vacant land and is being developed for a Family Dollar. He offered to answer any questions.

R. J. Brown, 1510 Corby Street, appeared before the board in support.

Chad Weaver, Assistant Planning Director, Planning Department, stated that the department recommends approval subject to the four items listed on the recommendation report.

Ms. Nubel moved for approval of the rezoning from GC to CC-ACI-2(PL); approval of the Preliminary Plat subject to the applicant: 1) Improving 15th Avenue adjacent to the subdivision to city standards; 2) Providing the required minimum radius of 25 feet per city standards and provide for all required
improvements necessary to accommodate the radius; 3) Complying with all applicable stormwater management ordinances and policies; and 4) Providing the deeds to the remaining pieces of 16 ½, 17 and 17 ½; and approval of the Final Plat, as amended by the conditions of Preliminary Plat approval, and subject to submittal of an acceptable final subdivision agreement. Mr. Rosenbaum seconded the motion which carried 5-0.

APPROVAL OF MINUTES

Ms. Nubel moved to APPROVE the meeting minutes of August 1, 2012 as written. Mr. Neary seconded the motion which carried 5-0.

ADJOURNMENT

It was the consensus of the board to ADJOURN the meeting at 5:10 pm.

_________________________________________
Date Approved

_________________________________________
Thomas O. Kelley, Chair

_________________________________________
Debbie Hightower, Planning Board
Recording Secretary