

**DRAFT  
PAPILLION PLANNING COMMISSION MEETING  
JULY 28, 2010**

The Papillion Planning Commission met in open session at the Papillion City Hall Council Chambers on Wednesday, July 28, 2010 at 7:00 PM. Acting Chairwoman Rebecca Hoch called the meeting to order. Planning Assistant Michelle Wehenkel called the roll. Planning Commission members present David Barker, Howard Carson, Raymond Keller, Jr., Ken Melhus, Michele Roth, and Jim Smith. Judy Sunde joined the Commission at 7:09 PM. Michael Mallory was absent. City Attorney Michael Schirber, Manager of Engineering Services Jeff Thompson, Planning Director Mark Stursma, and City Planner Brian Craig were also present.

Notice of the meeting was given in advance by publication in the Papillion Times on July 15, 2010. A copy of proof of publication is on file at the office of the City Clerk.

Acting Chairwoman Hoch led those present in the Pledge of Allegiance.

Acting Chairwoman Hoch announced that a copy of the Open Meetings Act is posted in the City Council Chambers.

**Approval of Agenda**

**Motion** was made by Mr. Smith, seconded by Mr. Carson, to approve the agenda as presented. Roll call: seven yeas, no nays. Motion carried.

**Approval of the Planning Commission Minutes**

**Motion** was made by Mr. Carson, seconded by Mr. Barker, to approve the 6/30/10 minutes. Roll Call: six yeas, no nays, one abstention by Hoch. Motion carried.

**PUBLIC HEARINGS**

**Agreement Amendment** – To consider a 2<sup>nd</sup> Amendment to the Portal Plaza South Mixed Use Agreement to amend the permitted uses list for the property legally described as Portal Plaza South and Portal Plaza South Replat 1, subdivisions as platted and recorded in Sarpy County, NE, generally located at 108th St. & Portal Rd. The applicant is Venteicher LLC. **MISC-10-0002**

Acting Chairwoman Hoch opened the public hearing.

Larry Jobeun (11440 W. Center Rd.), stepped forward to represent the applicant. Mr. Jobeun advised that he met with Mr. Stursma to discuss the proposed amendment. He noted that both he and Mr. Stursma prepared memos regarding the meeting. Mr. Jobeun indicated that Items 1, 2, 4A, and 4B in Mr. Stursma's memo were acceptable. He expressed concerns about Items 3, and 4B. Mr. Jobeun advised that the applicant's goal is to expand the permitted uses in his Limited Industrial Mixed Use District to attract a different tenant mix. The proposal is to add civic uses, which are not in the typical Limited Industrial District. He indicated that Portal Plaza South has a nicer form than most Limited Industrial District. The applicant has received requests for a preschool and a karate school while receiving fewer requests from light industrial uses. Mr. Jobeun explained that the applicant is also proposing to add Commercial Recreation (Limited Impact). He advised that allowing Custom Manufacturing with no buffer is acceptable. He stated that the applicant wants to allow Light Industry and Warehousing but feels that the

150 foot buffer is too much. Mr. Jobeun proposed that the buffer requirement be like the new state liquor law that allows a church to consent to a lesser buffer distance. The proposed buffer requirement is 150 feet unless that civic user agrees to an 80 foot buffer. He also proposed that the buffer be measured from main entrance to main entrance rather than wall to wall. He stated that Items 3 and 4 are the most troublesome because they require the 150 foot buffer. He agreed that the 150 buffer is acceptable for Cocktail Lounges and Liquor Sales. He stated that the buffer requirement for Light Industry and Warehousing should be reduced. He understands that concern about the hazardous materials that could be associated with Light Industry and Warehousing. He proposed to add a hazardous material use prohibition to the development agreement. The restriction would also be filed with the Register of Deeds and be placed in a covenant and the lease agreements. He noted that it is in the landlord's and the tenants' interest to make sure that civic uses and hazardous materials are not within 150 feet of each other. He noted that the tenant would not want to violate the covenant and the lease because they would lose their investment.

Acting Chairwoman Hoch called for proponents and opponents. Seeing or hearing no public input she closed the public hearing and called for discussion amongst the Commission.

Mr. Keller asked Mr. Stursma for his opinion on Mr. Jobeun's proposed changes to the buffer requirement. Mr. Stursma advised that staff has been working with the applicant and is closer to an agreement on the buffer requirement. He noted that it would be easier to determine what is best for civic user if there was a civic user as part of the application. He explained that staff is advocating on behalf of future civic tenants. Mr. Stursma advised that the 150 foot buffer is based off of the liquor license requirements. The requirement was expanded to be measured from the wall versus the front door because of the potential for odor and noise nuisances. He explained that it will be difficult for the City to enforce covenants and restriction because the City lacks the mechanism for such action. If the covenants are a private agreement, then a lawsuit between the parties would be used to address violations. The City is not typically a party to covenants so it is not a normal mode of enforcement. Mr. Stursma stated that he would like the Commission's input on the 150 foot buffer requirement and if private enforcement is appropriate. He observed that is easy to say no to a preschool in a Limited Industrial District but Portal Plaza South is a different type of development. It is intended to be industrial but with a higher standard. The concern is how the uses will coexist and how to protect civic uses from hazards.

Mr. Barker requested clarification on the new buffer distances for liquor licenses. Mr. Jobeun advised that the distance is 150 feet unless the church consents to a lesser distance.

Mr. Baker asked what would happen if a tenant agrees to a waiver and then the user changes. Mr. Stursma explained that a Warehousing user is a good example. The user could begin by storing stuffed animals and then change over to storing bleach. He noted that this is a concern the warehouse shares a wall with a daycare. He explained that the Planning Department does not oversee a switch in materials. It is not a normal part of enforcement.

Mr. Baker requested confirmation that is would be up to the parties to enforce the covenants with the civic user being responsible. Mr. Stursma advised that the applicant proposes to have a covenant and restrictions on the lease. He explained that the hesitation in agreeing to that proposal is that the Planning Department does not have that enforcement mechanism. Mr. Jobeun stated that the Mixed Use Agreement, the covenant for the lots, and lease agreement would restrict hazardous materials. He explained that a violation would be handled as a public

and private cause of action. He noted that most landlords and tenants would not want to violate the covenants, lease, and Mixed Use Agreement.

Ms. Hoch observed that an inadvertent violation of the covenant might not be discovered until something went wrong. Any action would be retroactive to the harm that was caused. She noted that regular inspections could be required but that would be invasive. Ms. Hoch gave an example of 30 children at a daycare being made sick from dangerous and noxious chemicals. She stated that the public would ask the City why the situation was not addressed before the children were harmed.

Mr. Jobeun proposed that the tenant be able to agree to reduce the buffer from 150 feet to 80 feet. He stated that a measurement based on common walls is too restrictive. He expressed appreciation for the work that Mr. Stursma has done on the request. He stated that his proposal with a reduced buffer requirement is the best way to allow development.

Mr. Melhus observed that 150 feet means nothing using the example of a feedlot because the wind carries the odors. He stated that he has a hard time allowing a daycare in a Limited Industrial area no matter what buffer requirement is in place. He expressed concern about who would be held liable if there is a problem that impacts the daycare. Mr. Jobeun stated that a number of civic uses are being proposed. He explained that a daycare provider is interested in locating in Portal Plaza South. Karate schools and clubs are also interested. He noted that he recently did a special use permit to allow gymnastics in an industrial district in La Vista. He observed that industrial areas work well for that type of use. He indicated that a golf school in an industrial area was approved by Omaha. He stated that those types of civic uses are compatible with limited industrial areas. He indicated his belief that Mr. Stursma also agrees that the uses are compatible but the question is the buffer distance.

Mr. Melhus observed that even non-noxious fumes could scare the daycare children because of the imagined danger. He indicated that he would be more comfortable with Light Industrial if it was garage openers or a similar operation. He proposed prohibiting the use of chemicals and noise. He stated that he understands the applicant's desire to add more clients but the Commission has the duty to bring civic reasoning to the request. Mr. Jobeun stated that a restrictive covenant will be recorded. It will state that "the Warehousing use shall not store any substance or material that, by reason of its toxic, caustic, corrosive, flammable, explosive, or otherwise injurious property, is reasonably determined to be detrimental to the health and safety of the occupants of any Childcare Center or Preschool." He noted that setting performance standards was discussed but it was determined to be too difficult to draft. It was also too difficult to define subcategories. He noted that if subcategories were used and a use was not on the list then the Mixed Use Agreement would need to be changed. He reiterated that the applicant wants to expand the uses since the development is different than the typical Limited Industrial District.

Ms. Sunde stated that Portal Plaza South appears to be a good place for civic uses. She noted that it is an odd Limited Industrial development. She understands why a karate or daycare would want to locate there. Her question is how that would work since it is already a Limited Industrial development. Mr. Jobeun explained that Custom Manufacturing already has performance standards as part of its definition so it is compatible. The question is when the other users become compatible. He reiterated that gymnastic and karate schools are appropriate uses so a distance requirement is not needed. Mr. Jobeun stated that Light Industrial does not lend itself to heavy industrial uses.

Ms. Hoch observed that the Commission is in a difficult position. She stated that the uses should not be over restricted but safety must be provided. Ms. Hoch noted that in a perfect world a daycare owner would not choose to be next door to a t-shirt screen printing facility or a warehouse that has noise related to forklifts. She expressed concern that there is no deterrent to prevent warehousing or screen printing from locating next to a daycare. She noted that the industrial use will do what is in its best interest. She proposed replacing the buffer requirement with a restriction that civic uses and industrial uses cannot occupy adjacent bays. Mr. Jobeun stated that Ms. Hoch's proposal could work.

Ms. Hoch questioned if the typical building could be split into two or three bays. Mr. Stursma explained that they are flex spaces so the number of bays could vary.

Ms. Hoch asked if one building could be split into six or seven bays. Mr. Jobeun confirmed that it would be possible.

Ms. Hoch asked how the bays would be separated. Mr. Jobeun advised that the bays would have a solid partition.

Ms. Hoch asked if the bays would have separate ventilation and air conditioning. Mr. Jobeun confirmed that they would have separate air conditioning and heating units.

Ms. Hoch questioned if there different building materials that could be used for the partitions to provide better protection. Mr. Jobeun stated that he could research that with his client. He observed that there could be some building materials that are better. He proposed that the research could be done before City Council.

Ms. Sunde questioned why better building materials would be needed if the bays are not adjacent. Ms. Hoch stated that it may be possible that flammable materials are present. If a fire starts two bays over, the use will be better protected.

Ms. Sunde questioned if the protection would always be desired. Ms. Hoch stated that it would not be needed in a scenario like a warehouse locating next to a warehouse.

Ms. Sunde questioned why extra protection would be needed in a scenario like a karate club that is not adjacent to a t-shirt printing company. Ms. Hoch noted that odors travel even if the uses are two bays over.

Mr. Jobeun stated his support for changing the buffer requirement to be not in adjacent bays. He noted that the bays will have different HVAC systems. He explained that it is the landlord's best interest not to have a problem. He noted that the Child Care provider can put in the lease that the bays will be completely separate with separate HVAC and ventilation systems.

Mr. Melhus questioned what the cost per square foot is to lease a bay. Mr. Jobeun indicated that he did not know the answer to the question and the applicant was not present to answer it.

Mr. Melhus questioned if a daycare would bring in more money than a limited industrial users. Mr. Jobeun stated that the applicant would need to answer that question.

Mr. Melhus observed that the landlord would be less likely to a contentious user if a Child Care Center brings in more money. Mr. Melhus stated that he does not support allowing the uses in every other bay due to concern about noise and odors. Mr. Jobeun proposed limiting the number of civic uses per building. It could be limited to one civic user per building. He noted that some additional work is needed but the applicant wants to move forward with the request.

Ms. Hoch stated that she disagreed with the proposal to restrict the number of uses because that would spread out the civic users. She observed that it would be preferable to have six civic users occupy a single building. Consolidating the civic users would solve the issue of locating civic users and industrial users in the same building. She questioned the rationale of limiting the number of civic users per building. Mr. Jobeun stated that it would be a way to address Mr. Melhus's concern. He indicated that a bay separation or a distance requirement that is less than 150 feet such as 100 feet would be appropriate.

Mr. Keller observed that the civic user could leave if the noise was too great. He noted that it would be on the owner to choose wisely. Mr. Keller stated his support for the adjacent bay buffer requirement. He indicated that people are smart. If a daycare is next to a fertilizer company, then it is the parent's fault for selecting that daycare. Mr. Jobeun stated that a fertilizer company would not be in Portal Plaza South.

Mr. Carson asked where the daycare would be located. Mr. Jobeun advised that the location is still being negotiated.

Mr. Carson observed that existing Building D (with Direct Buy) and the building to the west would be mostly civic uses if the restriction is 150 foot. Mr. Jobeun confirmed that 150 feet does not work well. He explained that Custom Manufacturing or Commercial Recreation could be in the same building. He reiterated that a 150 foot buffer is restrictive and he supports the bay separation requirement.

Mr. Carson observed that there is a large list of options. He indicated that he is more comfortable knowing that a daycare wants to locate in the development. Mr. Carson stated that the uses should have at least an 80 foot buffer. He noted that gases and chemicals that come out of one rooftop until could be taken in by another unit.

Ms. Hoch asked for the minimum bay width. Mr. Jobeun explained that there is not minimum width.

Ms. Hoch expressed concern that the adjacent bay restrict may not be enough distance depending on the bay width. Mr. Jobeun stated that there is no set parameter as the bay width is set by the end user. He would support an 80 foot buffer.

Mr. Melhus questioned what the industrial uses would be if there a no chemicals, odors, and noises allowed. He observed that the landlord would push to make the development more profitable. Mr. Jobeun stated that his memo proposed to limit the buffer requirement to daycares and preschools. It would not apply to all civic users. He noted that Postal Services could be next to Light Industry or Warehousing.

Mr. Melhus questioned if there was a way to limit Light Industrial to business that do not have chemicals, odors, and noises as a standard operating feature. Mr. Jobeun stated that Mr.

Melhus's proposal would be acceptable. He stated that the property owner does not want a tenant mix that does not work so he will be careful with leasing.

Ms. Hoch observed that a limitation on chemicals and noise could impact commercial operations such as an oil change business or pet services. Mr. Melhus clarified that he was making a general statement. He proposed limiting the permitted uses to those that have no chemicals, odors, or noises.

Ms. Sunde observed that auto services and restaurants can already locate in adjacent bays. She questioned why the presence of children should change how uses located. Ms. Hoch stated that a parent would be present with a child at the restaurant so they would be aware of the risks. Ms. Sunde stated that a parent picks the daycare and the market will drive the selection. She noted that people tend not to make bad decisions. She reiterated that she sees no difference between food preparation and children.

Ms. Hoch stated that warehouses are the biggest concern because people will not know what is in them. Ms. Sunde noted that restaurants are allowed and the expectation that they be clean, odor free, and not loud are similar.

Mr. Jobeun stated that not allowing Light Industrial but having Warehousing with a buffer was discussed. He reiterated his concern about the buffer distance being 150 feet. He noted that allowing Custom Manufacturing without a buffer was helpful. Mr. Jobeun explained that his client also feels that having Light Industry without a buffer would also help. He indicated that he understands the concern regarding Warehousing because the materials being stored may not be compatible with a civic use.

Mr. Smith proposed prohibiting a civic use from being adjacent to an industrial use with the distance between them being no less than 60 to 80 feet. He stated that the market should be allowed to decide the tenants. He noted that a daycare will lose business if parents do not like the operations. Mr. Smith observed that two different approaches could be taken. The first approach is to eliminate daycares as a permitted use. The second is to prohibit them from locating in an adjacent bay with no distance requirement.

Mr. Stursma asked Mr. Smith if adjacent applied only to shared walls or if it would apply from end bay to end bay. Mr. Smith confirmed that it would apply from building to building.

Mr. Barker questioned if a special use permit would be required if Light Industry and Warehousing were restricted from locating in an adjacent bay. Mr. Stursma advised that the proposal is to amend the Mixed Use Agreement. It would specify that Light Industry and Warehousing cannot locate in an adjacent bay to a civic use (except Postal Services). The agreement would define adjacent to include a shared wall or adjacent end bays. He noted that the end bay restriction was discussed by staff because of outdoor play areas.

Mr. Barker observed that the market will deal with noise. He expressed concern about Warehousing because people will not know what is being stored. He indicated that he supports the idea of limiting Light Industry and Warehousing from locating in adjacent bays. Mr. Barker noted that his other concern is the chemical issue because people will be in harm's way if the uses are 150 feet or 150 yards apart. He questioned how the requirements would be enforced given that the tenant could say they are storing furniture but be storing something else.

Mr. Carson requested confirmation that the proposed amendment applies only to Portal Plaza South. Mr. Stursma confirmed.

Ms. Hoch stated that Item B under the Planning Department's recommendation contains the buffer requirements. She noted that the consensus is a 150 foot buffer for Cocktail Lounges and Liquor Stores. She questioned why Kennels and Custom Manufacturing are required to have a 150 buffer. Mr. Stursma explained that Custom Manufacturing is not required to have a buffer. Kennels are required to be buffered from Child Care Centers and Preschools because of the outdoor play areas. Mr. Jobeun stated that the applicant agrees with the Kennel buffer requirement. Mr. Stursma explained that having dogs and children sharing a fence line is a safety concerns.

Chairwoman Hoch stated that she would entertain a motion.

With no further discussion, a **motion** was made by Mr. Sunde, seconded by Mr. Smith, to recommend approval of the proposed amendment contingent upon resolution to staff comments with change to not limit Light Industry and Warehousing to be 150 feet away from a civic use but to include the change that Light Industry and Warehousing to be adjacent to civic uses. Roll Call: Seven yeas, one nay by Melhus. Motion carried.

**Ordinance Amendment** – To consider amendments to Zoning Regulations § 205-17G. Residential Use Types (Downtown Residential), Table 205-38. Permitted Uses by Zoning District, Article XX. (Reserved), and Article XXI. Special and Overlay Districts to create a Downtown Overlay District that is bound on the north by Sixth St., on the east by the parcels fronting on the east side of Jefferson St., on the west by the parcels fronting on the west side of Adams St., and on the south by Lincoln St. The applicant is the City of Papillion. **TC-10-0005**

Acting Chairwoman Hoch opened the public hearing.

Mr. Stursma advised that the City of Papillion is the applicant for the amendment. He explained that the intent is for the City to have more input on development within the overlay district. The goal is to protect the historic pattern of development. It is not to protect historic structures. Mr. Stursma advised that the draft was revised to reduce the focus on residential properties and increase it on commercial properties. He read the list of revisions from the staff report Item 6(C). He advised that a letter was received from Father Damien, the pastor of St. Columbkille Church, which supports the revisions.

Mr. Smith questioned if any issues remain as it appears that the concerns from the last public hearing were addressed. Mr. Stursma advised that the intent of the revisions was to address the concerns. He read the first paragraph of the St. Columbkille letter, which stated: "On behalf of the parish of St. Columbkille we want to extend out thanks to you and Mark Stursma for the changes made to the proposed Downtown Overlay District. While we are still not excited about having to go through added processes created by the Downtown Overlay District, we can live with what has been proposed with the changes. We like the idea of a mixed use village center and hope that the city continues to move in this direction for the older part of Papillion." Mr. Stursma noted that he wanted to clarify the church's level of support.

Mr. Carson questioned if the special use permit process could be sped up to address the concerns that were raised about the sale of a property. Mr. Stursma advised that the transfer of ownership does not require a special use permit. The focus of the overlay district is

construction. He explained that a change of use or ownership does not require a special use permit. He noted that a special use permit is required if the property is being bought with the intent to do a major renovation or demolition. Mr. Stursma reiterated that the intent is to maintain the historic pattern of development to avoid a suburban pattern of development. He explained that the special use permit process is defined. A number of different types of applications are handled through the special use process so it is hard to change. He indicated that the special use permit process requires one public hearing at Planning Commission and one public hearing at City Council. It is not as intense of a process as a change of zone, which requires three readings at City Council. Mr. Stursma advised that it would be difficult to have a different deadline due to the public hearing notification requirements.

Acting Chairwoman Hoch called for proponents.

Shawn Brink, 319 N. Jefferson, questioned if requirements for residential properties have been taken completely out of the ordinance. Mr. Stursma confirmed that they have been substantially removed. He advised that a special use permit would still be required to remove trees from the right-of-way. This requirement clarifies the regulations that are already in place for trees within the right-of-way. He explained that it is important to protect some of the trees in the overlay district. He also advised that demolition of a primary structure would require a building permit and a special use permit. He noted that demolition of a building typically precedes new construction. The intent of requiring a special use permit for demolition is to know the intention for the new construction. He explained that the City is trying to avoid a scenario where a building is torn down before the special use permit process is complete. If the special use permit is denied for the new construction and the demolition has already occurred, then the property owner will be left with a vacant lot. He observed that the goal is to protect the property owner.

Mr. Brink expressed concern that the special use permit requirement will delay demolition of dangerous buildings. He recommended that a provision be added like the tree language that allows the City to order the demolition of a dangerous building. Mr. Stursma stated that his understanding is that a special use permit is not required to demolish a building that has been condemned. He noted that this might need to be clarified within the ordinance. He indicated that the property owner may want to save the building and the special use permit requirement may be used to delay demolition.

Mr. Brink reiterated that he does not want the demolition of a dangerous house delayed because a special use permit is required. He stated that the demolition of dangerous houses should be treated like the removal of diseased or dead right-of-way trees. He recommended that the ordinance be clarified.

Mr. Smith asked what the cost is for a special use permit. Mr. Stursma confirmed that it is \$300.

Mr. Smith recommended that the cost of the special use permit for a diseased tree be waived because of the low cost of processing the application. Mr. Stursma explained that a diseased tree can be removed at the order of the Public Works Director without a special use permit. A special use permit would be required for a project that requires the cutting of a tree such as a new driveway. He explained that the intent is to protect trees. He stated that he is not opposed to reducing the cost of the special use permit. Mr. Stursma indicated that he is not sure how often a permit will be needed only for the removal of a tree.

Mr. Smith observed that the tree issue was raised at the last meeting. He indicated that he can see special use permits being required because people have different opinions on the health and location of trees.

Acting Chairwoman Hoch called for opponents.

Pat Morrissey, 446 N. Adams St., stated that he has been a resident for 39 years. His complaint about the ordinance is the requirement for a special use permit to remove trees. He stated that it is unfair to charge \$300 to remove a tree. He stated that he has two trees on Adams St. and two trees on 5<sup>th</sup> St. He stated that most residents know the rules regarding tree removal. He does not support charging \$300. He indicated that the notification letter should have stated that the cost of a special use permit is \$300. Mr. Stursma stated that the amount is listed in the Master Fee Schedule rather than the Downtown Overlay District ordinance.

Mr. Morrissey asked Mr. Stursma if he felt it was fair to charge \$300 to remove a tree. Mr. Schirber advised that the special use permit requirement would depend on the location of the tree. It would only be required if the tree is in the right-of-way.

Mr. Morrissey confirmed that his trees are in the right-of-way. He questioned if it was fair to charge \$300 to remove them especially if the property owner planted them. Mr. Stursma explained that some of the trees are immensely valuable and their removal would be detrimental. He stated that it would be acceptable to reduce the fee for trees.

Mr. Morrissey explained that he had to remove three diseased trees. He stated that it is unfair to charge a property owner to remove a tree that the property owner planted.

Dean Gosch, 546 N Adams St., advised that he lives on the corner of Cornhusker Rd. and Adams St. He was an educator for 33 years and recently retired to Kearney. He is concerned about the deterioration of the properties. He noted that this is the sixth public hearing that he has attended regarding a downtown overlay. Mr. Gosch is concerned that the overlay district ends at 6<sup>th</sup> St. He noted that Marty Shukert was responsible for the Old Towne Character District. He talked to Tom Mumgaard about that proposal and the Home Depot. Mr. Gosch stated that the Home Depots in Kansas City and Des Moines are not orange boxes like the one by his home. He explained that Home Depot representatives told him that they use the orange box design because Papillion did not require a different one. They also put the garden center on Washington St. because the City let them. Mr. Gosch's concerns about Home Depot include: the semi trucks that idle through the night, trash companies emptying the containers between 3:00 AM and 4:00 AM, and materials being loaded onto trucks at 3:00 AM. Mr. Gosch expressed concern that the house built by Mr. Stork was rezoned to commercial, his proximity to an industrial area, the snow plows block his driveway with snow, beer cans are thrown on his property, cars speed on 6<sup>th</sup> St., three kids have been injured trying to cross the street to get to Target, and plastic bags blow onto his property from Home Depot and Target. He advised that his neighbors did not come to the meeting because they believe that the City will not help them. He asked that the City not make it more complicated to sell his property. Mr. Gosch reported that he met with three brokers and all of them told him that his property needs to be converted to commercial so he can get his investment back. He was also told that the whole area needs to be sold together. Mr. Gosch stated that his neighborhood needs to be protected. He explained that the neighbors stopped spending time outside because the Home Depot operated 24 hours a day. He reiterated that traffic needs to be slowed down. Mr. Gosch stated that the

berm that was supposed to be between Home Depot and Adams St. is tiny. He stated that the City is not following the rules that are already in place and he wants them followed.

Terry Weiss, 15777 S. 87<sup>th</sup> St., advised that she owns Papillion Hardware, 115 N. Washington St, 121-123 N. Washington St., and a parking lot. She stated that this is the sixth meeting that she has attended about an overlay district. Ms. Weiss stated that the overlay district is a loss of freedom and an additional layer of bureaucracy. She stated that the overlay district is a nice idea that is not realistic. She indicated that she only knows one person on the Commission. She explained that the downtown area is not like the Old Market. She noted that Shadow Lake Towne Center has a nice layout and was well planned. She observed that the downtown area is impacted by limited parking and old buildings. She noted that rents cheap in the area because it is not an area that people want to be in and where they can be successful. Ms. Weiss stated that she has been in business in the downtown for 30 years. She is concerned that the overlay will impede sale of businesses, sale of structures, and improvement projects. She proposed allowing business to drive business. Ms. Weiss observed that concept of a downtown area with service-oriented business has been maintained for 30 years without City regulations. Ms. Weiss stated that there is no need for a downtown overlay. She observed that business will drive the uses and development. She noted that some of the buildings were established 150 years ago. She explained that a picture from 1887 shows the porch rotting off the building she now owns but the owner fixed it. A hardware store has been in operation for 90 years. She noted that some businesses do not work with the small buildings and limited parking areas. Ms. Weiss expressed concern that the rules will not allow for improvements. She indicated that the overlay district asks property owners not to have additional parking and green spaces. She noted that the district is trying to create something that does not fit in the two square block downtown area. She asked that the Commission be realistic about the request because a downtown overlay is not needed. Ms. Weiss stated that citizens will decide whether or not to shop in the downtown. If they choose not to shop downtown, then a better needs to be determined.

Seeing or hearing no further input, Acting Chairwoman Hoch closed the public hearing and called for discussion amongst the Commission.

Mr. Melhus asked Ms. Weiss what she did not specifically like about the ordinance. Ms. Weiss stated that she disagrees with the concept of the ordinance. She noted that she owns three lots that are 20 feet in width each. A special use permit could allow her to build a more functional building. She stated that she is concerned about her loss of freedom to choose. Ms. Weiss indicated that the revised ordinance is more palatable. She expressed concern about the ordinance given her investment in the property.

Mr. Smith expressed that a great effort has been made to address the concerns raised by the public. He noted that there are additional concerns such as the cost of removing trees. He noted concern that the process of developing the ordinance is reactive and not forward thinking. He suggested that the City take a step back and not be reactive.

Ms. Hoch stated that the HWY 370 Overlay District process was similar and the City liked the results. The mandatory building materials improved the look. She observed that the HWY 370 Overlay may have been more palatable because the area was large and mostly unconstructed. She noted that a number of forums were held for the HWY 370 Overlay District. She questioned if similar forums were held for the Downtown Overlay District. Mr. Stursma advised that the idea for an overlay district has been around for some time. It was addressed in the last

Comprehensive Plan update. He explained that it was determined that the public hearing process would be used as a forum for this overlay proposal. He advised that all property owners in the overlay were notified. Mr. Stursma indicated that this method was chosen because of the success of updating the Zoning Regulations using a similar method.

Mr. Keller questioned if Papillion Hardware would build a new store if the overlay district was not adopted. He questioned what the difference would be in the process if the current regulations were used rather than the overlay district regulations. Mr. Stursma advised that all that is needed under the current regulations is a building permit. If the overlay district is adopted, then a special use permit would be required for the demolition and construction. The special use permit process requires one public hearing at Planning Commission and one public hearing at City Council. Mr. Stursma explained that the discussion would focus on whether or not the proposed construction is consistent with the existing pattern of development.

Ms. Weiss stated that she was on the City Council for nine years so she understands that it is a hard decision. She advised that she cannot build a new store due to the footprint of her building. The lot is only 120 feet in length so she cannot meet the parking requirement. She observed that the Papillion Flower Patch bought an extra lot so they could have parking. Ms. Weiss stated that she has three employees with five off-street parking spaces and three on-street parking spaces. Ms. Weiss stated that the City should consider long-term planning for the downtown area. She noted that the current design worked well in 1854 and 1874. She noted that her buildings were built in 1874, 1905, and 1948. She explained that the design worked because there was diagonal parking, two lanes of traffic on 84<sup>th</sup> St., and the people who worked downtown lived close enough to walk. She explained that she uses three of her five stalls for employees. She stated that her customers spend an average of 10 minutes in her store, which helps with only having two stalls available for parking. Ms. Weiss observed that Brownie's owns no parking so they could not rebuild because they cannot provide parking. She stated that none of the buildings on Washington St. could be rebuilt because they cannot provide parking.

Mr. Keller requested confirmation that Ms. Weiss's concern is that the overlay district is an added regulation as it is unlikely that she would ever need a special use permit. Ms. Weiss stated that the overlay district adds more bureaucracy. She questioned the desire to keep the historic look of the area since the buildings range in age from five years to 100 years. She stated that restrictions will keep her from making money. She indicated that she is planning to retire at some point and is concerned about what options the next owners will have. Ms. Weiss reiterated that she is opposed to the overlay because it is added bureaucracy and business will drive business.

Mr. Stursma stated that he wanted to clarify the parking regulations for the downtown area. He explained that it is difficult to add parking to the area. Mr. Stursma advised that there is no off-street parking requirement for businesses in the Central Business District. He noted that it would be difficult to build a 20 space parking lot.

Mr. Barker provided an example of how the Old Market was rejuvenated. He observed that parking was an issue in the Old Market. He noted that over time solutions have been provided to add parking. Mr. Barker indicated that he understands the intent of the overlay district but he is concerned that the area could die because owners will not be able to do anything with their business. He noted that turnover is a concern, especially if there are no buyers. Mr. Barker questioned if there have been discussion regarding maintaining the integrity of the area and making a center point for citizen given the difficulty of drawing people to the area due to the lack

of parking. He explained that he sometimes parks in Runza's lot because of the lack of parking. Mr. Stursma indicated that he understands that a change of use or ownership does not require a special use permit while demolition, construction, or an addition that is over 20% of the existing footprint would require one. He noted that development criteria were added. Mr. Stursma explained that he does not see a scenario where City Council, Planning Commission, or staff would say that adding parking to a property is not permitted. He noted that the intent is to keep the building to the front of the lot with the parking in the area, which is consistent with the pattern of development. He indicated that developing specific design standards would be rigid and not allow for flexibility in the process. Mr. Stursma advised that the overlay district allows for the application of neighborhood input, basic judgment, and basic principles.

Mr. Barker stated that the concern is the lack of parking and who will take over the business if parking is not allowed. He noted that the lack of parking is a bigger issue that is not related to the overlay district. Another issue is how to attract buyers when there appear to be none. He proposed that a larger discussion needs to occur on downtown revitalization.

Mr. Stursma advised that the downtown plan is in place and was used to guide the improvement to the streetscape. He noted that there are more phases that will be done. He explained that one possible project is an assistance program to help property owners maintain their property. Mr. Stursma indicated that the Mayor and city staff recognize that more attention to the downtown area is needed. He acknowledged that a second downtown plan that deals with economic development might be needed. Mr. Stursma advised that staff looked at the overlay is phased so it can be broken into different districts to address separate needs. He explained that the area to the west is more industrial in nature so different requirements may need to be considered. The area to the south has a different development pattern. The focus needs to be on the existing characteristics of each area.

Mr. Barker expressed support for the special use permit but he is concerned about the fee. He suggested that the fee be waived until all phases of the overlay district are approved.

Ms. Sunde questioned why the tax incentives in the downtown plan are not in place. She proposed that the overlay district and the incentive program be packaged together. She noted that an investment from the City might make the overlay district more marketable. Ms. Sunde stated that she does not see the value of having a downtown overlay. She questioned if Mr. Barker meant that fees should not be charged just for trees or for all items. Mr. Barker stated that fees should not be charged at all. He indicated that he agrees with Ms. Sunde that this issue is larger than creating an overlay district. He stated that the issue is what to do with the downtown area in general

Mr. Stursma advised that the overlay district helps to enforce the downtown plan. The downtown plan can show that a project that involves demolishing a building and constructing new one is consistent so the special use permit can be approved. If it is not consistent, the proposal will need to change. He noted that downtown plan cannot be enforced without establishing the overlay district. He explained that all that is required for construction is a permit if a property has commercial zoning, which means that city staff has no ability to say that the project is not consistent with the downtown development pattern.

Ms. Sunde questioned if all the phases of the downtown plan have be planned. Mr. Stursma advised that the 2<sup>nd</sup> phase, which was streetscaping, is complete. The project was completed with city funds. He explained that some phases like forming a downtown business association

have not been done yet. He noted that the plan might need to be revisited. Mr. Stursma observed that a public/private partnership is needed.

Ms. Sunde observed that an association would be a good group to develop an overlay. She stated that it would allow the owners to control their destiny so they would not be opposed to the concept. She explained that she is not opposed to the overlay district concept but she wants it to create value. Ms. Sunde expressed that she wants business owners to be glad to be downtown and feel positive about the overlay district because it adds to the property value. She proposed redeveloping the downtown area so that it is vibrant. Mr. Stursma acknowledged that one of the criticisms of the overlay district is that it relies on a special use permit process. Another criticism is that the process is subjective because it relies on the Planning Commission and Council. He explained that criteria have been added, which makes the process more flexible because there are no defined rules. He noted that the process will allow for input from the neighborhood. If design standards were used in place of the special use permit, then the public would have no input. Mr. Stursma stated that the special use permit process is more flexible and will take into account the neighbors and the downtown plan. He expressed confidence in the Planning Commission's and the City Council's ability to make an appropriate decision. Mr. Stursma reiterated that the biggest concern is not existing buildings but rather residential buildings that are zone commercial. He explained that concepts to tear down residential buildings and replace them with a commercial building have been presented. The concepts do not fit the pattern of development in the area but the City has no ability to say that they are not consistent or that they detract from the area. He stated that the overlay will make such changes a public process. The special use permit process is a flexible mechanism that can be used to make decisions for a special environment.

Ms. Sunde questioned if there was an urgency to adopt the overlay district before the downtown plan is implemented. She questioned if this is a normal process. Mr. Stursma indicated that the City may be hesitant to invest in the downtown area knowing that a private project might detract from the area.

Ms. Sunde questioned if the remainder of the downtown plan would happen without the overlay district. Her proposal is for the downtown plan to move forward. Mr. Stursma advised that the overlay district allows a process that will prevent projects that detract from the downtown plan. Projects must be consistent or they will be denied.

Mr. Barker requested confirmation that Mr. Stursma's concerns lead to the urgency of adopting the overlay district. Mr. Stursma confirmed that the urgency is the number of structures that have a single-family residential appears but are zoned commercial. He explained that a building permit could be obtained to construct a commercial building.

Mr. Barker summarized that Mr. Stursma's concern is the first issue and the second issue is that people within the overlay district have to go through an additional step and pay a fee. He noted that the special use permit will provide a safety net that allows for everyone to agree on a project.

Mr. Keller questioned how the budget would be impacted if a fee is not charge since the process has its own cost. He indicated his support for being business friendly but not allowing terrible buildings. He recommended that the special use permit fees be waived.

Mr. Smith observed that the desire is to maintain the look and feel of the downtown town as well as the investment. He noted that property owners want to be able to sell and not have their investment decrease. He indicated that it is possible for the downtown area to flourish but it is not a guarantee. Mr. Smith stated that the City owes it to the business owners to provide them the ability to provide more input. He advised that the proposed overlay could become a divisive issue. He recommended taking a step back to get more input from business owners. Mr. Smith advised that city staff should research the impact of the overlay district on the new legislation on incentives. He noted that La Vista's 84<sup>th</sup> Street project is an example of a project that may use those incentives. Mr. Smith expressed concern that the overlay district may prohibit development in the downtown area. He advised that the focus needs to be on economic development. He noted that there will be a different dynamic with the new ball field.

Mr. Carson stated his support for improving the downtown area to make the buildings more valuable. He expressed concern that the value of the buildings will not increase if the City forces people to build similar buildings. He explained that as a business owner he may choose to locate in La Vista if Papillion requires a building that is close to the road with a two-story exterior. Mr. Carson noted that the commercial building that could be built on the property north of the auto parts store would be different if it was built before adoption of the overlay district. He questioned if that would add value to the investment. Mr. Carson questioned if the new owner should be required to follow the overlay district standard.

Ms. Roth stated her support for Mr. Smith's comments. She explained that her perspective has changed since the first public hearing. She recommended that the City take a step back from the overlay district.

Ms. Hoch stated that the overlay district will add value. She noted that there was debate when the HWY 370 Overlay District was being proposed that development in the HWY 370 corridor would not occur if regulations were added. She observed that result was better development that is worth more. Ms. Hoch explained that overlay districts maintain consistency which will attract businesses as well as standards which will increase value. She indicated there is a conflict between property owner rights and government regulation. Ms. Hoch expressed concern about letting property owners build without regulation. She cited the vacant Wal-Mart in La Vista as an example.

Mr. Smith observed that the market may fix the situation in La Vista.

Mr. Carson stated that he joined the Commission to raise the City's building standards. He explained that his church built across from the La Vista Police Station. When they considered the location, they compared Papillion and La Vista. He advised that the church spent \$1,000,000 more to build in La Vista because the building had to have brick and a concrete parking lot. Mr. Carson stated that he wants stricter building standards to require brick on buildings, concrete parking lots, and berms. He indicated that he does not want a Home Depot next to a house but rather a transition from a Home Depot to an apartment complex to a house. He noted that the Home Depot should be brick like in Denver, Kansas City, or Overland Park. Mr. Carson explained that it is not about cost but about desirability. He stated his preference for a different building style than two-story on a busy street. He expressed his support for Mr. Smith's proposal to take a step back. Mr. Carson requested conceptual, architectural drawings for what is envisioned. He noted that an applicant is required to provide drawings. He indicated that he has a hard time agreeing with the overlay district.

Mr. Melhus noted that Mr. Stursma advised that some protection is needed to prevent commercially zoned properties from being but in a manner that is not consistent with the downtown area. He further noted that it appears that there is desire to have more time for input to be received. He questioned if there is a way to provide protection while taking a closer look at the plan for downtown district. Mr. Melhus indicated that it is nice to see the quaint buildings but their viability needs to be determined. He observed that addressing business viability while protecting the downtown would be preferable. He noted that research may be needed into areas like downtown to determine how to make the businesses viable.

Mr. Smith explained to the public that the Planning Commission makes their motions in the affirmative. If a motion to recommend approval fails, then the recommendation is to deny.

With no further discussion, a **motion** was made by Mr. Smith, seconded by Ms. Sunde, to recommend that approval of the ordinance amendment.

Mr. Barker asked what action would be needed to bring the ordinance amendment back to Commission. Acting Chairwoman Hoch advised that the ordinance amendment would be forwarded to City Council with the Planning Commission's recommendation. If the ordinance amendment fails at City Council then it could be returned to the Planning Commission.

Mr. Stursma confirmed that the ordinance amendment will be forwarded to City Council. Council can deny it, approve it, or make another motion such as a recommendation on changes to it.

Ms. Sunde asked if recommendations to City Council on the ordinance amendment could be made after the vote. Mr. Stursma confirmed that recommendations can be made.

Mr. Melhus observed that some great suggestions have been made at the meeting. He asked how those suggestions would be captured if the ordinance amendment passed as presented. Mr. Stursma advised that City Council would receive a copy of the minutes. He noted that the Councilmembers would read and consider the minutes in their decision making.

With no further discussion, a vote was taken on **motion** that was made by Mr. Smith, seconded by Ms. Sunde, to recommend that approval of the ordinance amendment. Roll Call: Two yeas, Six nays by Barker, Carson, Hoch, Roth, Smith and Sunde. Motion fails. The recommendation is denial.

Acting Chairwoman Hoch called for recommendations.

Ms. Sunde recommended that the overlay district be considered in more public forums so businesses can provide feedback and feel more positive about the amendment.

Mr. Smith agreed with Ms. Sunde's recommendation. He recommended that City Council look at how the new statewide legislation is impacted by the overlay district and if the overlay district is the appropriate mechanism.

### **ELECTION- CHAIRPERSON**

**Motion** to open nominations for Chairperson was made by Mr. Barker, seconded by Mr. Keller. Roll Call: Eight yeas, no nays. Motion carried.

Mr. Barker nominated Michael Mallory.

**Motion** to close nominations for Chairperson was made by Mr. Smith, seconded by Mr. Melhus. Roll Call: Eight yeas, no nays. Motion carried.

Ms. Wehenkel announced that Michael Mallory received the majority vote.

**Motion** by Ms. Sunde, seconded by Mr. Melhus to approve election of Mr. Mallory as Chairman. Roll call: Eight yeas, no nays. Motion carried.

### **ELECTION- VICE CHAIRPERSON**

**Motion** to open nominations for Vice Chairperson was made by Ms. Sunde, seconded by Mr. Carson. Roll Call: Eight yeas, no nays. Motion carried.

Ms. Sunde nominated Ms. Hoch. Mr. Melhus nominated Mr. Smith.

**Motion** to close nominations for Vice Chairperson was made by Mr. Smith, seconded by Mr. Carson. Roll Call: Eight yeas, no nays. Motion carried.

Ms. Wehenkel announced that the first vote resulted in a tie.

Ms. Wehenkel announced that the second vote resulted in a tie.

Motion to reopen nominations for Vice Chairperson by Mr. Smith, seconded by Mr. Barker. Roll call six yeas, two nays by Keller and Melhus. Motion carried.

Mr. Smith requested that his nomination be withdrawn. He thanked that Commission for their consideration.

Ms. Wehenkel announced that Rebecca Hoch received the majority vote.

**Motion** by Mr. Barker, seconded by Ms. Sunde to approve election of Ms. Hoch as Vice Chairwoman. Roll call: Eight yeas, no nays. Motion carried.

### **OTHER BUSINESS**

Ms. Sunde questioned if the City had discussed the charging stations that are needed for the new Nissan Leaf. Mr. Craig advised that he has a call into OPPD regarding the public infrastructure. He noted that the Chief Building Official determined that a garage hook up that consists of a standard high voltage box would require an electrical permit and one inspection. He explained that the difficulty will be in installing public infrastructure, which is a partnership between OPPD and the municipalities. Mr. Craig noted that OPPD is working diligently on the issue. He advised that most of the cars will be rolling out from the coasts starting in December 2010 so they will not be on the market in the Midwest until mid to late 2011. He indicated that OPPD may have a strategy in place by that time.

Mr. Barker questioned if a strategy is needed because of the amount of energy. Mr. Craig explained that quick charge stations are needed in public places. He noted that some large cities such as Los Angeles and San Francisco are already installing quick charge stations in downtown public parking areas. He explained that the discussion is about whether to meter the electricity and charge it back to the owner or provide it as a free service.

Mr. Barker questioned if the decision to charge or provide as a free service would come to Planning Commission or City Council. Mr. Stursma explained that a proposal from the City to install charging station would be planning related so it would come to Planning Commission.

With no further business to come before the Commission, a **motion** was made by Mr. Barker, seconded by Mr. Carson to adjourn. The meeting adjourned by unanimous consent at 8:40 PM.

CITY OF PAPILLION

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Michael Mallory, Chairman