MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, November 10, 2004, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska
MEMBERS IN ATTENDANCE:	Jon Carlson, Gene Carroll, Gerry Krieser, Roger Larson, Dan Marvin, Melinda Pearson and Mary Bills-Strand (Lynn Sunderman and Tommy Taylor absent). Marvin Krout, Ray Hill, Mike DeKalb, Brian Will, Becky Horner, Tom Cajka, Derek Miller, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.
STATED PURPOSE OF MEETING:	Regular Planning Commission Meeting

Chair Mary Bills-Strand called the meeting to order and requested a motion approving the minutes for the regular meeting held October 27, 2004. Motion for approval made by Carlson, seconded by Carroll and carried 5-0: Carlson, Carroll, Larson, Pearson and Bills-Strand voting 'yes'; Krieser and Marvin abstaining; Sunderman and Taylor absent.

Bills-Strand then called for a motion approving the minutes for the special meeting for the on-site field demonstration on Special Permit No. 04057. Motion for approval made by Carlson, seconded by Marvin and carried 5-0: Carlson, Carroll, Krieser, Marvin and Bills-Strand voting 'yes'; Larson and Pearson abstaining; Sunderman and Taylor absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: November 10, 2004

Members present: Carlson, Carroll, Krieser, Larson, Marvin, Pearson and Bills-Strand; Sunderman and Taylor absent.

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 04071, CHANGE OF ZONE NO. 04072, CHANGE OF ZONE NO. 04073 and USE PERMIT NO. 04005.**

Item No. 1.4, Use Permit No. 04005, was removed from the Consent Agenda and scheduled for separate public hearing.

Larson moved to approve the remaining Consent Agenda, seconded by Marvin and carried 7-0: Carlson, Carroll, Krieser, Larson, Marvin, Pearson and Bills-Strand voting 'yes'; Sunderman and Taylor absent.

USE PERMIT NO. 04005
FOR 38 DWELLING UNITS AND
10,000 SQ. FT. OF OFFICE FLOOR AREA,
ON PROPERTY GENERALLY LOCATED
AT N.W. 1ST STREET AND BARONS ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: November 10, 2004

Members present: Carlson, Pearson, Carroll, Marvin, Larson, Krieser and Bills-Strand; Sunderman and Taylor absent.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

This application was removed from the Consent Agenda due to additional correspondence.

Becky Horner of Planning staff submitted three letters which all relate to traffic concerns.

Proponents

1. Brian Carstens appeared on behalf of **RLM Group**, the developer. This is a use permit for 38 attached single family units and two 5,000 sq. ft. office/medical buildings. The property is currently zoned O-3. The site immediately south is zoned O-3 and that site plan will be coming forward in the near future. The waivers include the internal side yard setbacks between the units, where they are requesting 7.5 ft. instead of 15 ft. from the side lot lines. The request to reduce the rear yard setback from 40' to 30' matches the 30' rear yard setback that exists in the R-3 zoning on the other side of this development. The side yard setbacks are 50% wider than what the R-3 zoning allows next door.

With regard to the traffic concerns by the neighbors, Carstens noted that there is an existing traffic circulation problem which is not created by this proposal. This proposal does include a left turn lane at Barons Road, at the applicant's expense, and he believes this takes care of the neighborhood's traffic concerns.

There was no testimony in opposition.

Pearson confirmed that the reduction to the rear and side yard setbacks is similar to the requirements in R-3 zoning. Horner stated that the side yard setback being requested is actually a little greater than the R-3.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: November 10, 2004

Marvin moved to approve the staff recommendation of conditional approval, seconded by Krieser and carried 7-0: Carlson, Pearson, Carroll, Marvin, Larson, Krieser and Bills-Strand voting 'yes'; Taylor and Sunderman absent. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 04067
FROM AGR AGRICULTURAL RESIDENTIAL
AND H-4 GENERAL COMMERCIAL
TO R-3 RESIDENTIAL
and
SPECIAL PERMIT NO. 04054,
HARTLAND HOMES SW 1ST ADDITION
COMMUNITY UNIT PLAN,
ON PROPERTY GENERALLY LOCATED
SOUTHWEST OF THE INTERSECTION OF
WEST 'A' STREET AND S.W. 27TH STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: November 10, 2004

Members present: Carlson, Pearson, Carroll, Marvin, Larson, Krieser and Bills-Strand; Sunderman and Taylor absent.

Staff recommendation: Approval of the change of zone and conditional approval of the community unit plan.

Ex Parte Communications: None.

Tom Cajka of Planning staff submitted proposed the following amendments to the conditions of approval on the special permit:

1.1.3 Dedicate ~~33'~~ 27' of additional right-of-way along West "A" St. **(**As revised by staff and recommended by Planning Commission: 11/10/04**)**

1.1.14 Show a 6' wide outlot along West "A" Street for a bike trail.

1.1.15 Provide a pedestrian easement from W. Peach Place to the west boundary of the development.

1.1.16 As required by Section 26.23.160, show the dedication of at least 2.14 acres for a neighborhood park in the southwest portion of the community unit plan to the satisfaction of the Director of Parks & Recreation Department.

Proponents

1. Brian Carstens appeared on behalf of **Hartland Homes,** explaining that this is a community unit plan for 384 single family residential units with a change of zone to allow the residential use. This property became available for residential development with the adoption of the new Airport Environs map. The applicant agreed with the staff's proposed amendments to the conditions of approval.

There was no testimony in opposition.

CHANGE OF ZONE NO. 04067
ADMINISTRATIVE ACTION BY PLANNING COMMISSION: November 10, 2004

Larson moved approval, seconded by Krieser and carried 7-0: Carlson, Pearson, Carroll, Marvin, Larson, Krieser and Bills-Strand voting 'yes'; Taylor and Sunderman absent. This is a recommendation to the City Council.

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SPECIAL PERMIT NO. 04054
ADMINISTRATIVE ACTION BY PLANNING COMMISSION November 10, 2004

Carlson moved to approve the staff recommendation of conditional approval, with the amendments submitted today, seconded by Carroll and carried 7-0: Carlson, Pearson, Carroll, Marvin, Larson, Krieser and Bills-Strand voting 'yes'; Taylor and Sunderman absent. This is a recommendation to the City Council.

USE PERMIT NO. 04004
FOR 94 DWELLING UNITS
AT N.W. 13TH STREET AND FLETCHER AVENUE.
PUBLIC HEARING BEFORE PLANNING COMMISSION: November 10, 2004

Members present: Carlson, Pearson, Carroll, Marvin, Larson, Krieser and Bills-Strand; Sunderman and Taylor absent.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

Becky Horner of Planning staff submitted one letter asking the Commission to allow the homeowners the opportunity to review the plan prior to taking action.

Proponents

1. Blake Collingsworth, one of the two principals of the applicant company, presented the request. Collingsworth explained how this proposal has gone from 112 dwelling units to 94 dwelling units, after working with the neighbors to reach a compromise. All units adjacent to the single family across the street are now duplex units, which reduces the density and keeps the curvature in the street that the city recommended. They now have agreement with the Neighborhood Association Board.

2. Gordon Bjorman, President of **NW Highlands Neighborhood Association,** testified in support. The plan does address most of the neighborhood concerns because it lowers the density. Not all of the neighbors are happy, but they did do some mediation. The community concerns were in some aspects mitigated, but there are some concerns that the developer cannot mitigate such as speed limit on the street on N.W. 13th Street next to the swimming pool and golf course, the crosswalk, etc. The Board voted not to oppose the plan based of the lower density and the spacing between the houses.

3. Donna Danielson, 6715 S. 89th, testified in support. She was a resident of the Highlands for 19 years and recently sold her home in hopes of moving to these townhomes. Her family is ready to change their lifestyle to remain living in this area of the city. All of the building materials chosen appear to be quality and aesthetically pleasing. The Highlands townhomes are a wonderful addition to the neighborhood and another choice for those who take pride in home ownership and yet enjoy the conveniences that come with townhome living.

Opposition

1. Stan Kuta, 5733 N.W. 12th, expressed concern about the price of the townhomes, i.e. $140,000 – is this because of the smaller number of units or is there an increase in quality? Kuta suggested that there needs to be a crosswalk over N.W. 12th or 13th for the safety of the people utilizing the pool and the golf course. It would be nice to know when the water tower will be installed so that the neighbors know when the water pressure might increase. What about a recreation plan? What about safety with no basements? There are going to be more townhouses on West Highlands Blvd. & Fletcher, so he is afraid there will be a major increase in traffic congestion, accidents and crime rate.

Staff questions

Carroll inquired whether the Parks Department is satisfied with the location of the townhomes all along the golf course and the occurrence of golf balls going into the yards. Horner advised that the Parks Department has been on board throughout this application process and they have met with the developer on the placement of fencing, etc. Horner believes that the fencing is adequate for safety purposes.

Response by the Applicant

Carstens advised that there is an internal playground area tucked between two buildings. The crosswalk would be something the applicant would be interested in seeing as well. The applicant is opposed to any high fence to keep the golf balls out of the residential yards. They have had discussions about a landscape berm and chain link fence.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: November 10, 2004

Larson moved to approve the staff recommendation of conditional approval, seconded by Krieser and carried 7-0: Carlson, Pearson, Carroll, Marvin, Larson, Krieser and Bills-Strand voting 'yes'; Taylor and Sunderman absent. This is a recommendation to the City Council.

MISCELLANEOUS NO. 04016
A PROPOSED POLICY ON
"TEMPORARY PUMP STATIONS AND
FORCE MAINS".
PUBLIC HEARING BEFORE PLANNING COMMISSION: November 10, 2004

Members present: Carlson, Pearson, Carroll, Marvin, Larson, Krieser and Bills-Strand; Sunderman and Taylor absent.

Staff recommendation: Approval.

Ex Parte Communications: Dan Marvin reported that he had a conversation with Bob Hampton regarding pump stations.

Proponents

1. Steve Henrichsen of the Planning staff submitted the following proposed amendments to the language as a minor clarification in terms of #6 and #7 of the proposed policy relating to how to calculate the capacity of a line. The revised language clarifies that the first step is to look at the area currently served and the area projected to be served in Tier I; then the second step would be to make some accommodation for reasonable buildout of the area:

6. **Receiving Sewer Line Capacity:** The receiving trunk and/or smaller line must have capacity based on current and projected flows to receive the extra flow during the temporary basis. The projected capacity should assume a full buildout of any land that is already planned to be served in the Comprehensive Plan, then ~~the~~ projected capacity should be based on a reasonable buildout of any undeveloped land.

7. **Basins with Sewer Line Capacity**: The following sanitary sewer trunk lines have capacity as of this date (assuming projected Tier I development)

Lines With Capacity	**Lines Without Capacity**
- West O	- Havelock
- Little Salt	- Dead Man's Run

- East Campus
- Antelope Creek
- Beal Slough
- Salt Creek (south)
- Middle Creek
- Oak Creek
- Lynn Creek

"Lines Without Capacity" is based on current and projected flows ~~existing and approved developments underway~~ and could not be pumped into unless there is capacity based on a reasonable buildout of the area to be served. ~~under any circumstances~~. In some situations, once major improvements to a few of these lines are made, then there may be some capacity.

The new Stevens Creek trunk line, when constructed, would have capacity. The new Salt Valley relief trunk line is designed for a specific service area and will be considered at capacity.

The Commission was briefed on this policy at a noon meeting on October 27, 2004. The policy would be on a temporary basis. Priority A areas would be served with sanitary sewer within the next 6 years. The main emphasis as the city continues to move forward is to get sanitary trunk lines in place and continue to work on funding the water, streets, schools, parks, fire stations, etc.

Opposition

1. Terry Roberts, President of **Vintage Heights Homeowners Association,** 6010 S. 91st, testified in opposition. The association currently has over 500 members and they have had discussions relating to the wording in paragraph #18 at several association meetings. Hampton representatives attended their association meeting because there was a request for temporary pump station in the Vintage Heights area. Roberts stated that the homeowners association does not want responsibility for the costs of operating the pump station. She requested that the following language in paragraph #18 be stricken: "The developer will be billed for the cost, who in turn may collect from a Property or Homeowner's Association who benefit from the facilities." She sees no point in this language. The association is not in opposition to the temporary pump service as long as the cost is borne by the developer.

2. Peter Katt testified on behalf of **Hartland Homes,** in response to Ms. Roberts' testimony**.** The Northbank Junction project north of Salt Creek is what triggered the need to develop this type of policy. That development has been put on hold pending the resolution of this policy. It is clear that this policy contemplates two different circumstances between a Northbank Junction project and a Vintage Heights project. Katt urged that the language must stay in place in order to pass the cost of operating the lift stations on to the homeowners association. This responsibility would be required to be disclosed to the lot owners in advance, and they would know the estimated cost of operating it. It would be

part of the calculation in terms of their buying into the lot. However, he does not believe there is any way for a lift station to be constructed and added into a homeowners association such as Vintage Heights after the fact. The Vintage Heights circumstances are entirely different. If a homeowners association cannot be financially responsible for the cost of running the lift station, there is no sense having this policy. The developer cannot assume indefinitely the ongoing costs of a lift station.

Katt knows that the Vintage Heights Homeowners Association, which is currently in existence, could not be forced by the developer to take on the expense. In order for the homeowners association to be liable for maintenance, it must be a common area. Vintage Heights does not contemplate a lift station.

Carlson inquired about the hypothetical situation where the homeowners association takes over the maintenance and after several years, they encounter difficulty or failure and they look to the city to come in because their expenses are so high. Katt stressed that this policy is designed and intended to be an interim and temporary solution where the permanent solution is identified in the CIP. So the likelihood that there would be a catastrophic failure of this lift station within that 6 years indicates that the city has poorly designed the system. If it did happen, the legal liability would be on the homeowners association and they would have to pay the cost. It is no different than a catastrophic failure in your home.

Response by the Applicant

Henrichsen pointed out that the key language is that the costs can be passed to the association, but *only those who benefit from the facilities.* So in the case of Vintage Heights, the existing homeowners association receives no benefit whatsoever from the pump station because they are all served by gravity system. Only the lots that benefit would form a new homeowners association and pay the cost. The reason for the amendment is because the operating costs are unknown when the lot is built. The language is drafted such that the developer is billed, but the developer may in turn collect from the association. As this policy would be applied, it would not allow a pump station in Vintage Heights at all. The proposed pump station in Vintage Heights was one that would be there 20-30-40 years in the future. This policy is for temporary facilities on a short term basis.

Henrichsen further explained that the language was changed between the October 1st and November 1st drafts after meeting with several developers. It was clear that it would not be possible to include the operating and maintenance costs in the lot price when you don't know what those costs are going to be. It seemed reasonable to allow the developer to recover some cost by building it into the lot price and that the maintenance cost could be passed along. He clarified that the city will be billing the developer.

Bills-Strand does not believe this is any different than something like sewer charges that

are built into a homeowners monthly statement. She does not believe it is any different than in Wilderness Ridge where the streets are private streets and the homeowners association is assessed a maintenance fee each month.

Carlson clarified that the language presumes, but not necessarily mandates, that the developer stays in the chain between the city and the homeowners association. At the point of failure, the homeowners association is going to look to the developer, or who are they going to look to in event of a failure? Steve Masters of Public Works believes that the policy assumes we are able to provide gravity service within 6 years. Therefore, the situation of a failure should not occur. Secondly, in the event that there is a problem, the city would want to keep the developer in the loop during that short time frame. It is unreasonable for the city to have to work with each individual homeowner, so by continuing to keep the developer a party in the project, then we have a way to work together to solve the hypothetical catastrophe. It has typically been beyond the six-year time period where we have seen problems with private lift stations. The logic of staying within the planning period of the CIP gives the city leverage to make sure those projects do get built.

Larson wondered what happens if the developer goes bankrupt. Henrichsen confirmed that the developer is required to put up a bond equal to the number of years for the operating and maintenance costs. The bond could be reduced as the sewer line gets closer and closer in the CIP.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: November 10, 2004

Larson moved approval, with the amendments submitted today, seconded by Carlson.

Marvin believes the cost per home is going to be nominal. This is something the homeowners association will know. However, he is a little nervous about putting in million dollar pieces of equipment and then throwing them away in 3-4-5 years. He had thought about extending the time period to 12-15 years (as opposed to the six-year CIP provision).

Marvin made a motion to amend that paragraph #2 be amended to be allowed in Tier I, Priority A Areas, deleting the remainder of the language, "...provided that the gravity trunk line to the service area is in the 6 Year Capital Improvement Program (CIP) with funding clearly identified." Also, the amendment includes that the term "temporary" shall mean a period to cover Tier I A Areas. The motion to amend was seconded by Pearson.

Carlson stated that he is opposed to the amendment because it starts to push the threshold of what we consider to be temporary. We are trying to create a policy whereby we can accommodate some projects with the existing sewer capacity, but the goal is to get gravity sewer where it needs to go. The proposal puts leverage on the city to get those infrastructure improvements in the ground. If you stretch it to 12-15 years, you will increase the potential for failure. He would rather leave it in the 6-year CIP. The goal needs to be to get gravity sewer in place.

Carroll stated that he would oppose the motion as well. It is unknown what is going to be funded in the next few years, and you can't push sewer out for 10-15 years as a temporary item and expect it to be picked up by the city. The unknown of going past 6 years is just too great.

Motion to amend failed 3-4: Pearson, Marvin and Bills-Strand voting 'yes'; Carlson, Carroll, Larson and Krieser voting 'no'.

Main motion for approval, as amended by staff today, carried 7-0: Carlson, Pearson, Carroll, Marvin, Larson, Krieser and Bills-Strand voting 'yes'; Taylor and Sunderman absent. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 1999A,
AMENDMENT TO THE WILDERNESS HILLS
COMMUNITY UNIT PLAN,
ON PROPERTY GENERALLY LOCATED
AT S. 28TH STREET AND WILDERNESS HILLS BLVD.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: November 10, 2004

Members present: Carlson, Pearson, Carroll, Marvin, Larson, Krieser and Bills-Strand; Sunderman and Taylor absent.

Staff recommendation: Conditional Approval, as revised.

Ex Parte Communications: None.

Proponents

1. Jason Thiellen of Engineering Design Consultants appeared on behalf of **Lincoln Federal Bancorp.** This amendment (Keystone Village) amends the Wilderness Hills CUP in an area that was previously in a lot layout that consisted of single family and some townhomes. This amendment proposes attached single family and townhomes for a total of 66 units. This area features a 1-acre pocket park with a pedestrian way through to 27th Street. There will be landscaped berms between the units.

The purpose of the request to reduce the rear yard setbacks on some of the units, particularly the townhouse units, is to accommodate the concept of the Keystone Village to have a couple of common spaces and the units situated to provide as much privacy from each unit as possible. The proposal attempts to accomplish a uniform landscaped area allowing the architect to do some landscaping to give each unit owner some privacy.

Thiellen showed photographs of the architecture and style of the townhome units as well as the entrance to the development.

Thiellen agreed with all conditions of approval.

Thiellen confirmed that the entrance way off of 27th Street will be bermed - no fencing. They are trying to mirror what Wilderness Ridge Golf Course is doing on the west side.

There was no testimony in opposition.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: November 10, 2004

Carlson moved to approve the revised staff recommendation of conditional approval, seconded by Carroll and carried 6-1: Carlson, Carroll, Marvin, Larson, Krieser and Bills-Strand voting 'yes'; Pearson voting 'no'; Taylor and Sunderman absent. This is a recommendation to the City Council.

WAIVER NO. 04013
TO WAIVE SIDEWALKS ASSOCIATED
WITH THE STERLING SUMMIT FINAL PLAT
ON PROPERTY GENERALLY LOCATED AT
S. 70TH STREET AND STERLING PLACE.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: November 10, 2004

Members present: Carlson, Pearson, Carroll, Marvin, Larson, Krieser and Bills-Strand; Sunderman and Taylor absent.

Staff recommendation: Revised from denial to approval of the waiver of the requirement for a sidewalk on the north side of Sterling Place, provided that a sidewalk is constructed along the south side of Sterling Place, including a painted pedestrian crosswalk, as soon as possible, and prior to May 1, 2005.

Ex Parte Communications: None.

Proponents

1. Allen Wachter appeared with **Mike Alesio** on behalf of **SE Development.** This development began seven years ago and through the developer's own omission, one of the sidewalks was not constructed. However, the developer believes that the traffic patterns and the habits of the tenants visiting this site warrant the waiver of this sidewalk. After meeting with staff, the developer has agreed to address their concerns about access to the retail side by constructing a sidewalk to the south side of Sterling Place in place of the sidewalk to the north. The sidewalk on the south side will feed directly to the retail building off 70th Street, providing full handicap access to all of the retail facilities. There is not much foot traffic in this area.

Carlson inquired how the developer came to the conclusion that the foot traffic doesn't

warrant any sidewalk. Wachter believes that the nature of the buildings and businesses on the site are not ones that inspire walking traffic.

2. Mike Alesio added that the sidewalk ends abruptly and does not lead anywhere. Privacy is valued in the very nature of those businesses (medical offices–oncology and psychiatry). There is also a concern about skate boarders and general after-hours kinds of intrusion into the area. The sidewalk going from east to west doesn't really follow the traffic pattern from anyone using the businesses going to Val's or the Blockbuster. We don't see that kind of foot traffic. Our compromise was to allow for a sidewalk to be put in to the south and access the strip shopping center.

There was no testimony in opposition.

Pearson wondered why there was not a sidewalk requirement for Lot 12, where the proposed sidewalk is to be constructed. Tom Cajka of Planning staff advised that Lot 12 is outside of the boundaries of the use permit and the sidewalk was not required at the time because there is no requirement for sidewalks for the retail space. There is sidewalk along 70th Street. Pearson does not understand how this waiver can have a condition of approval which is outside the area of the application. Cajka suggested that it is a compromise. We know it is outside, but if they are willing to put it there, staff is willing to support their waiver.

Marvin Krout, Director of Planning, believes the city has a lot of flexibility if the applicant is agreeable. He acknowledged that there is a deficiency in the ordinance with regard to a lot of the zoning districts where there is not a sidewalk requirement. He believes this represents a fair tradeoff in terms of the potential of there being no other way of getting sidewalk built on that retail property. He agrees that there will probably be more foot traffic on the new sidewalk than there would have been on the other one. There should not be any zoning district where sidewalk requirements are excluded. As an aside, Marvin advised that the staff has been working on ordinance amendments to get walkway requirements as part of the administrative review of site plans.

Response by the Applicant

Wachter further commented that the developer is simply asking for the waiver, and outside of that waiver has agreed to put in the sidewalk.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: November 10, 2004

Larson moved approval, with the condition recommended in the staff report, seconded by Krieser.

Carlson stated that he will support the motion in the spirit of compromise in getting some sidewalk accessibility in there. We don't want to end up with a series of unchallenged

statements that says we put in the sidewalk and no one is walking there. If sidewalks are provided, people will use them.

Pearson believes that putting the sidewalk on a different piece of property is not in the spirit of what is being requested. The sidewalk is a requirement for this piece of property for a reason, and that is pedestrian traffic. The sidewalk is on the other side of a double loaded parking lot so she does not know that there is a privacy issue. The sidewalk is over 60' from the front of the buildings. While people may not be walking on the grass, they are obviously walking on the grass on Lot 12. Since it is a wide street, she thinks not requiring the sidewalk with five commercial buildings is probably not looking down the road. Maybe people aren't walking there for a reason currently, but in the future they will be. If we don't provide a sidewalk, they won't come.

Carlson added that he has historically been a champion for sidewalks, but his reading of the staff report is that we have a situation where we have site difficulty in putting in the sidewalk. He wants some sidewalk accessibility as opposed to none.

Motion for conditional approval carried 6-1: Carlson, Carroll, Marvin, Larson, Krieser and Bills-Strand voting 'yes'; Pearson voting 'no'; Taylor and Sunderman absent. <u>This is final action, unless appealed to the City Council.</u>

*** 10-minute break***

USE PERMIT NO. 150B,
AN AMENDMENT TO EXCEED THE
MAXIMUM HEIGHT REQUIREMENT
ON PROPERTY GENERALLY LOCATED
AT S. 91ST STREET AND HIGHWAY 2.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: November 10, 2004

Members present: Carlson, Pearson, Carroll, Marvin, Larson, Krieser and Bills-Strand; Sunderman and Taylor absent.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

Brian Will of Planning staff submitted three additional letters in opposition.

Proponents

1. DaNay Kalkowski appeared on behalf of **Eiger Corp.,** the owner and developer of Phase II of the 84th & Hwy 2 regional shopping center south of Hwy 2. This is a request to increase the permitted height on Lots 1, 2 and 3 of Block 1 (the south central three lots on the area south of Hwy 2) from 40' to 60'. Lots 1 and 3 are designated for hotel use and Lot 2 is designated for specialty retail use.

Lot 3 is currently under contract for a Best Western limited use hotel of three stories with 70 rooms and a pitched roof. The main portion of the building would be close to meeting the 40' requirement of the B-2 zoning district, but the building has an added architectural feature that extends 50' high. It is this architectural feature that requires the need for the waiver with respect to Lot 3.

With regard to Lot 1(the larger lot), the developer is currently negotiating with a buyer who wants to construct a full service business hotel with restaurant, banquet facilities and meeting rooms, of four stories with 110 rooms. Kalkowski showed pictures of the prototypes. The building with the flat roof is shorter than the building with pitched roof, but the developer prefers the pitched roof because of the aesthetic characteristics. The need for the additional height on Lot 1 is aesthetics and the additional fourth story to add the provision of higher quality services.

There is no proposed use yet for Lot 2.

While this request is for a height waiver, Kalkowski believes that the impact to the surrounding neighbors is mitigated by a physical distance and separation from neighboring

areas. The three lots are separated by a 309' wide outlot to the neighbors to the west as well as 84th Street. To the south is an LES easement which is nonbuildable and a nonbuildable outlot and railroad tracks measuring over 180 ft. To the east is a nonbuildable outlot, the LES substation and 91st Street. The overall framework of the location of the building mitigates the impact. The LES lines run from 84th Street on the south side of these lots. These buildings are part of the entire regional shopping center shown in the Comprehensive Plan to be over 1.9 million sq. ft., so it's part of a large retail center. The Walmart site is 22' higher than the base elevation for the proposed hotels, and then the building on WalMart sets up 40' on top of that 22' higher base. This developer does not believe the height of these hotels is going to be totally out of scale with the other buildings in the commercial shopping center.

Kalkowski stated that the developer sent out several information letters inviting neighbors to meet, and personally talked with some and met with two of the neighborhood groups, including the Cheney CIP, who did not express opposition. The developer also met with some neighbors from Amber Hill and those members have expressed opposition to the increase above 40'. She has not been contacted by any other neighbors in the area. The staff report does not indicate an impact on the surrounding uses.

Pearson inquired whether it is just the architectural element that goes beyond the 40' height on the building on Lot 3. Kalkowski believes it is very close to meeting the 40' except for the architectural feature. It is a little tower that provides some breakup of relief along the building. They would not need a waiver if they did not have the architectural feature on top of the building.

Pearson would like to see the footprint for the two prototypes. She would guess that the hotel developer has about four or five dozen of these prototypes. As a footprint, are they wanting to go up because there is not enough land? Is there no land available to make it meet the height restriction? Kalkowski suggested that if they wanted to expand outward instead of upward it may be possible, but they probably want to build their prototypes. They have full service amenities, with banquet facilities and meeting rooms located on the lower floor, and then the next three floors are the three levels of rooms to go with their services. They do not want to buy any more land than they have to. Their prototype is the four story hotel.

Opposition

1. Tim Kirkpatrick, 8001 Amber Hill Road, testified in opposition. The Amber Hill development is located directly to the west and it is an existing neighborhood that has been there a number of years, and most of the owners are the original owners. One of the things that is nice about this neighborhood is that they are not the typical NIMBY group, but rather they have welcomed development over the years. They did meet with the developer about a year go after the Walmart and Menards came about and the attentions were turning to the south side of the street. They saw a plan that was extremely specific with regard to the

streets, buffers, restaurants, C Store, TSC Store, etc. The properties closest to the neighborhood were shown and they were told the height of the hotels would be 40'. One of the ideas the neighbors came up with was that a good transition from a heavy commercial area to a residential area would be some type of commercial development of low use, such as an office complex. When that was explored, they were told that there was no way to keep all residential on one side and all commercial on the other side. A number of the neighbors have moved earth, brought in trees and relocated trees to accommodate what they thought was going to be a 40' building. The neighbors have since learned that 40' is not 40' if it has a pitched roof. Then comes the amendment to increase the height to add one or two more stories onto the building, and then in addition to that, they want to increase it to 60' and the pitched roof would be higher than the 60'.

Kirkpatrick does not believe that the 40' buildings transitioning to Amber Hills to the west should go up to 60' and then back down. These hotels will be lit with up-lights. This is not a good transition to a neighborhood. They can live with 40'. There are no pole signs allowed so the signs will be on the 60' building.

Kirkpatrick recalled that for years, Planning has said that this is the most attractive entrance into our city. Let’s preserve it. We’ve seen a tremendous amount of development there, but what we have never seen is multiple story buildings of this height, and this is not a good time to start.

Staff questions

Pearson asked staff to explain the purpose of a height restriction in the zoning ordinance. Brian Will stated that the basic premise is attempting to maintain some sort of compatibility of scale among uses. It tries to limit the height so that there is not a really tall building next to a short building.

Pearson noted that the adjacent neighborhood is AGR zoning. Will clarified that the height restriction in AGR zoning is 35'.

Marvin referred to the bank on about 56th & Hwy 2 and inquired as to its height. Will believes the majority of the bank itself maybe exceeds the height limit by 1-2 feet and there was a waiver granted primarily for the cupola. The height limit in this O-3 district is 40'.

Pearson suggested that this application could be amended for Lot 3 to just extend the waiver for the architectural feature. Will stated that the Planning Commission can be as specific as they want. The requested waiver generally applies to these three lots to allow a height up to 60'.

Response by the Applicant

Kalkowski stated that she did review the West Gate Bank at 56th & Hwy 2 for comparison.

The building is 46' tall and the waiver for the clock tower was 95', but that included a lightning rod on top. There was also a waiver to the Heart Hospital which increased the height from 35' up to 44'.

With respect to lighting on the buildings, Kalkowski pointed out that the B-5 zoning district is subject to environmental performance standards for outdoor night time lighting. Secondly, with respect to the whole entryway corridor, this developer agreed to grant a significant amount of green space along Hwy 2 in order to preserve a nice green space corridor coming into the city. There are some consistent design developments both north and south of the highway to make the buildings nicer and their appearance better with some sort of consistency.

With respect to the transition, Kalkowski submits that there is transition. We are talking about Lot 1. There are outlots along the entire west side, which provides 309' of open green space before you even get to 84th Street. That is some transition. To the south are the huge power lines that are going to be way taller than any 60' building, and we also have the railroad tracks. So it does not go from a commercial use directly to single family residential.

Kalkowski also pointed out that there has been no opposition from any of the other neighbors, i.e. Dunrovin Acres and Cheney. Cheney took the position that it was in keeping with the scale in the area. The question is really one of higher quality amenities and services for the city. A hotel providing a full range of services is something that would be contemplated in the B-5 zone. We are trying to add aesthetics to make the buildings look better.

Kalkowski believes it is an appropriate decision to have this type of use within a B-5 regional retail center.

Carroll inquired about landscaping in the outlots. Kalkowski stated that there is some detention area in there, but she did not know what additional trees or screens would be used.

Carroll inquired about the use for Lot 1, Block 4. Kalkowski believes it is shown as a restaurant use.

Marvin inquired about the signage on the hotel and whether it will be attached to the building. Kalkowski stated that the B-5 district allows wall signage for hotels or any building. She anticipates that most of the signage will be geared toward Highway 2. She does not believe the hotels use an extreme amount of wall signage.

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Carroll moved to approve the staff recommendation of conditional approval, seconded by Krieser.

Pearson stated that she voted against the development from the start and she continues to be in awe at the direction that this is taking. She is impressed if the developer has the support of Cheney because Cheney was here denouncing this at the previous approval. She will continue her non-support of this development because it is drawing away from the Downtown.

Carroll believes there is a need for hotels in this area, and to bring in a quality, full-service hotel is exceptional for the city. Sometimes you have to provide for something a little bit larger. This will benefit the Heart Hospital patient families.

Motion for conditional approval carried 6-1: Carlson, Carroll, Marvin, Larson, Krieser and Bills-Strand voting 'yes'; Pearson voting 'no'; Taylor and Sunderman absent. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 04069
TO NOT ALLOW OFF-PREMISES SIGNS
WITHIN 660 FEET OF INTERSTATES.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: November 10, 2004

Members present: Carlson, Pearson, Carroll, Marvin, Larson, Krieser and Bills-Strand; Sunderman and Taylor absent.

Staff recommendation: Approval.

Ex Parte Communications: None.

Proponents

1. Derek Miller of Planning staff referred to the memorandum to the Planning Commission dated November 2, 2004, which attempts to answer questions raised at the last meeting.

Carlson confirmed that the local ordinance that is being proposed would be the same distance requirements as that which the state currently has, i.e. 660 feet. The intention is to create a local voice. Miller concurred.

Support

1. Danny Walker, 427 E Street, testified in support; however, he does not understand how the state can dictate where those signs are located when Omaha is being taken to the cleaners by the federal government right now. Does the state have authority over where these signs are being placed? If that is the case, why didn't Omaha use this process?

Larson understands that the state had easements on everything except for that strip in Omaha, and it was recently discovered that there was no easement so they put up 18 signs in that area. He believes the state has an easement along the rest of the interstate to the west.

Opposition

1. Jim Fram, President of the **Lincoln Chamber of Commerce and Lincoln Partnership for Economic Development,** testified in opposition. He also previously submitted a letter dated November 2, 2004, in opposition. The Chamber and LPED believe that this proposed ordinance puts an unnecessary separate layer of regulation on businesses because it is already accomplished with ordinances already in place on the local and state level. We already have the law in Lincoln that billboards cannot be constructed. Local control includes local input and there should be input from the five sign companies and input from some of the more than 7,000 businesses that depend on signage. This is an over-reaction to something that is happening 50 miles away from here. When are we going to stop letting Omaha dictate what we do in our city? There are sufficient regulations in place on signage to maintain the beauty of Lincoln's entryways. The Chamber and LPED have sanctioned and helped finance two very extensive studies, both of which gave indications throughout the report that there is inadequate signage and inadequate visual things that attract people to Lincoln when traveling on I-80. This proposal is an unnecessary layer of bureaucracy in our community. If it is redundant, we don't need it.

Staff questions

Carlson asked staff to respond to Mr. Walker's comments. Marvin Krout, Director of Planning, stated that Omaha got caught with their pants down locally and he does not want Lincoln to be in that same position. The Department of Roads thought they had easements. They still think they have easements along the interstate through Lincoln but they cannot verify the easements. There was an area found where there were no easements in place and, under a different interpretation of the statute, these 18 billboards in Omaha were permitted. He also understands that the billboard company also compensated the Department of Roads due to the fact that the state will get reduced federal funding because they are not doing as good of a job protecting the interstate highway under the Beautification Act. Krout does not believe Lincoln should rely completely on the federal or state government to write the rules for what kinds of signs you

are going to permit along the interstate into and out of Lincoln. It should be an issue of local control. He does not believe we should let the state and federal government dictate what the rules are going to be and get ourselves into the same position as Omaha.

Bills-Strand inquired whether Krout believes this adds one more layer of regulation and will result in more time to get things accomplished. Krout stated that it is not going to change the situation today. However, if the state decides to sell off their easements to allow more billboards; of if the state changed their regulations as was proposed in last year's legislative session; or if the Beautification Act is changed, then, yes, in some cases on some sites it would put an obstacle in the way of doing an off-site sign. Lincoln has gone 40 years based on this belief that we have been protected, and we've gotten through a major issue with billboards in the community with lots of public outcry. The result was no new regulations on the interstate because we thought we were protected by federal and state government. Given what happened in Omaha, and given what happened in the Legislature last year, Krout does not think we should count on being protected. No new billboards may mean that you can't construct another billboard. The ordinance today allows a new billboard in a new location if you take one down somewhere. The ones on the interstate are much more valuable than the locations in the city, and if the opportunity arises, he predicts that Lamar will be at the door of Building & Safety.

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Carlson moved approval, seconded by Carroll.

Carlson believes that it behooves the City to create a layer of local control. It does not create two processes, but it is a backup rule in case the state changes.

Larson stated that he will vote against the motion. The interstate's relationship to our community is such that it goes around the edge and we have thousands of automobiles passing our community daily. He does not believe we have adequate signage to direct these automobiles to our attractions and we're missing out on tourism and other economic benefits.

Marvin commented that he is hearing that this does not change the rules or loosen it up. This will provide the protection of the rules that are in place. Thus, he will vote in favor to make sure we have people play by the rules that we think are in place.

Motion for approval failed 4-3: Carlson, Pearson, Carroll, and Marvin voting 'yes'; Larson, Krieser and Bills-Strand voting 'no'. Motion needs five affirmative votes to carry.

There being no other motion, this application was held over for continued public hearing and action on November 24, 2004.

COUNTY SPECIAL PERMIT NO. 04056,
NATURE MEADOWS COMMUNITY UNIT PLAN,
and
COUNTY PRELIMINARY PLAT NO. 04026,
NATURE MEADOWS,
ON PROPERTY GENERALLY LOCATED
AT S. 120TH STREET AND STAGECOACH ROAD.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: November 10, 2004

Members present: Carlson, Pearson, Carroll, Marvin, Larson, Krieser and Bills-Strand; Sunderman and Taylor absent.

Staff recommendation: Conditional Approval.

Ex Parte Communications: None.

Mike DeKalb of Planning staff submitted an additional report from the Health Department. The additional report does not change the staff report. The major difference in this supplemental report is that the new report does not include reference to a pipe line. It is no longer an issue.

Proponents

1. Kent Seacrest appeared on behalf of **DGD Limited Liability Company**, along with Matt Langston of ESP. This proposal involves a 75-acre tract on the northwest corner of 120th Street and Stagecoach Road. This is an AG community unit plan cluster for four acreage lots and is in conformance with the Comprehensive Plan. Seacrest submitted proposed amendments to the conditions of approval, to which the staff has agreed. The amendments allow some access points to occur and the lots will be smaller and more of the property will be turned into open space outlots to preserve and get the lots out of the floodplain.

Seacrest advised that the developer did meet with the neighbors and he is unaware of any opposition.

Pearson referred to the note in the staff report that a large percentage of the lot is in the floodplain. She asked to see a map showing the floodplain. Langston showed the floodplain on the map. He indicated that they will be studying the floodplain. Everything in the middle is in the floodplain. There are two streams that run through the property. The lots will be reconfigured to be out of the floodplain.

The closest paved road is one mile to the west and 1.5 miles to the south.

Marvin inquired about the uses along Stagecoach Road. Seacrest advised that there is AGR zoning on the west and a lot of different acreages. This application is not requesting AGR zoning.

There was no testimony in opposition.

Mike DeKalb of Planning staff agreed with the proposed amendments to the conditions of approval.

Marvin inquired whether the roads in front of the property are in the CIP for resurfacing. DeKalb stated that they are county gravel roads and are not in the program for resurfacing. Marvin wondered whether this proposal will create a trigger event. DeKalb's response was that this is currently a rural road that is not even close to the County Engineer's trigger for resurfacing. If this is strictly an 80 to get four units, the road can easily handle it, so the cluster is making the difference. The impact on the road is not expected to be significant. The negative score reflects the roads, the floodplain, the large lot in the area, and the rural farm parcels. But we must remember that the scoring was intended and designed to review an increase in density in AGR. This is a clustering of AG zoning.

COUNTY SPECIAL PERMIT NO. 04056
ADMINISTRATIVE ACTION BY PLANNING COMMISSION: November 10, 2004

Larson moved to approve the staff recommendation of conditional approval, with the amendments proposed by the applicant, seconded by Krieser and carried 6-1: Carlson, Pearson, Carroll, Larson, Krieser and Bills-Strand voting 'yes'; Marvin voting 'no'; Taylor and Sunderman absent. This is a recommendation to the County Board.

COUNTY PRELIMINARY PLAT NO. 04026
ADMINISTRATIVE ACTION BY PLANNING COMMISSION: November 10, 2004

Krieser moved to approve the staff recommendation of conditional approval, with the amendments proposed by the applicant, seconded by Carroll and carried 6-1: Carlson, Pearson, Carroll, Larson, Krieser and Bills-Strand voting 'yes'; Marvin voting 'no'; Taylor and Sunderman absent. This is a recommendation to the County Board.

CHANGE OF ZONE NO. 04068
TEXT AMENDMENT RELATING TO
AREA REQUIREMENTS FOR RACE RACKS
FOR MOTORIZED VEHICLES
and
SPECIAL PERMIT NO. 04057
FOR A RACE TRACK FOR MOTORIZED
VEHICLES ON PROPERTY GENERALLY
LOCATED AT 201 WEST SOUTH STREET.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: November 10, 2004

Members present: Carlson, Pearson, Carroll, Marvin, Larson, Krieser and Bills-Strand; Sunderman and Taylor absent.

Staff recommendation: Approval of the text amendment and conditional approval of the special permit, with revisions submitted on November 9, 2004.

Ex Parte Communications: Marvin reported that he met with some neighbors at the testing site and there was minimal noise factor to their property. He did not have their names or where they live. He rode with Ray Stevens. He visited with Mary Roseberry-Brown and discussed her issues about the NRD perhaps purchasing this property for flood storage.

Bills-Strand reported that Dr. Sumani called her and asked for her opinion as to whether to defer and she told him he would need to discuss that with his attorney and not her.

Additional Information: Mike DeKalb of Planning staff submitted additional information, including:

- four letters in support;
- twelve letters in opposition;
- a communication from Sherrie Gregory, as one of the owners of the property, relating to their efforts to work with the neighbors;
- memo from Russ Miller suggesting an alternate site;
- neutral position submitted by the Yankee Hill Neighborhood Association;
- memo from the NRD indicating that they were approved to do a phase I environmental assessment but the board has not taken any additional action in attempting to acquire the property;

- report from the County Motor Task Force, which was formed by the Lancaster County Board to discuss all motor sport activities; and

- noise test report from the Health Department and revised conditions of approval, indicating that the sound test results did not exceed the levels for receiving land uses; however, it did not pass the "pass-by" test requirements at the limits.

Larson inquired as to the land use between the proposed track and Sherman Field. DeKalb stated it to be the midget football area. To the east is the rubble pile and wooded line with the midget football field and then Sherman Field.

Gary Walsh of the City-County Health Department discussed the results of the noise test. They did 10-minute sound equivalent measurements at seven locations. The written report shows the various scenarios for the testing events. There were no levels exceeding the 65 decibels allowed in the residential areas. The code allows 70 decibels for commercial uses and 75 decibels for industrial, and one of the measurements exceeded those levels. The levels ranged from 50 to 57 decibels. The code also requires the pass-by test. That measurement was taken on the levee, which is 70 feet west of the track, and the level for motorcycles is 78 decibels. There were 10 motorcycles that were tested and all of those exceeded the 78. We did not have an opportunity to take a 10-minute LEQ up at the top of the levee, but based upon the results of the pass-by test, we know that it would have also exceeded the 75 decibel limit. That area on the top of the levee is zoned industrial and that is a 75 limit. We would estimate that that level over a 10 minute period would have been around 80.

Marvin noted reference to "modified" or "stock" mufflers in the report. Walsh explained that he was not really involved in the data describing the type of bikes. He assumes this was based on a conversation. Marvin noted that one of the conditions of approval (1g) requires that all motorized vehicles shall have factory equipped mufflers. He assumes that "modified" would probably mean that they did not have the factory equipped mufflers. If this were approved, Marvin inquired how the city would enforce that provision. Walsh stated that there would have to be some type of site inspection to make that determination based on information from the manufacturer.

Proponents

1. Mark Hunzeker appeared on behalf of **Dr. Sumani.** The change of zone does modify the text of the zoning ordinance and will allow for motorcycle tracks on parcels of 20 acres or larger versus the larger parcels that are required for automobile racing. It would also allow the Council to waive the one mile distance requirement from hospitals, residential areas, etc. in areas outside the Airport Noise footprint.

With respect to the special permit, he believes the demonstration was helpful and demonstrated that the noise from this racing was much less than people anticipated and not excessive in any case. Hunzeker believes this is an ideal location for this use being in an industrial zone. The ambient noise is more than the racing. This application meets the city noise standards in all but one location, that being immediately adjacent to the track. One of the conditions of approval requires that they comply with all of the city noise standards. Hunzeker acknowledged that they may or may not be able to meet that criteria but it is believed that they will; however, he is not going to ask that the requirement be modified because the applicant will do his best to meet it. By modifyng the track itself and by using sound attenuation measures, it is believed that the applicant will be able to meet that criteria.

Hunzeker requested to amend Condition #1 a) relating to the hours or operation to allow 12:00 noon to 8:00 p.m., four days a week.

Hunzeker also requested to delete Condition #1 b), which requires that there be no more than a total of 45 participants on any race day. The number of participants is not a relevant factor as much as the number of vehicles on the track at any given time.

Hunzeker requested to amend Condition #1 n) to allow the total number of people on the site to be 600, as opposed to 450. The other activities in this immediate area exceed 600 by far on a given day.

Hunzeker went on to state that this is a facility that is needed. On race days, two-thirds of the participants are 12 years of age or under. This is a very fast growing youth activity. It is a family-oriented activity. This is an activity that Lincoln needs. This is the right place for this facility. The impact is minimal and likely to be less than other permitted uses in the industrial district, with less noise, less traffic and, in some respects, less potential for environmental hazard.

Krieser inquired whether there will be someone monitoring so that mufflers are not removed. Hunzeker answered in the affirmative. All of the bikes had mufflers at the demonstration. The applicant is going to be conscious of it and he knows there are noise limits required to be met. Dr. Sumani will be there and will be sure that the vehicles are not causing a problem for the track.

Support

1. Ron Talbert, 2730 S. 8th, the owner of the property, testified on behalf of 400 people who signed petitions in support. Fifty-three of the signatures are people who live in the area. Talbert has owned and maintained the property for 15 years. If he thought this permit would be detrimental to the wildlife or the neighborhood, he would not support this project. He has passed up many opportunities to sell the property. It looks like a park, but it is zoned I-1. The highest and best use for the property is this project because it leaves

the floodplain unfilled; the applicant has offered to plant more trees. Talbert pointed out that no one has ever helped him – not the city, nor the Friends of Wilderness Park, nor the NRD. No one has helped him keep it clean and nice other than David Sumani. Talbert has offered to help pay for the screening being required and he has offered to help with some of the costs for the skateboard park.

2. James Cox addressed the concern about mufflers. The bikes would not be allowed to ride without mufflers, plus it would hamper the performance without mufflers. He explained that "modified" or "stock" muffler has no bearing on the output level of the bike. A modified exhaust that is properly maintained will be quieter than a stock muffler that is not maintained. His children race and it has kept the family together. They have to maintain good grades and good sportsmanship in order to race. The motocross racing is a misunderstood sport.

3. Wayne Kubert, Vice-President of **Lincoln Midget Football,** testified in support. Lincoln Midget Football leases the property from the Parks Department with five fields in the area. The west fields are closest to the track and there is some concern about the track running during the games. If there is down time when the races are not going on, Lincoln Midget Football is generally in support.

4. Char Hamilton believes that the Planning Commission is receiving e-mails in opposition from the same people under different e-mail accounts. She enjoyed the demonstration. This property was recently annexed by the City so there is obviously a need for I-1 property. She believes this is the way to keep the property and maintain it in its closest to natural state. I-1 has more uses that would be more detrimental to the land. Even churches are adding skateboard parks to keep families together. She has learned that the NRD could use property for motocross so it is news to her that they are still interested in the property. She believes that Dr. Sumani and the NRD could work together. She does not believe it will affect property values. This is what the city needs. We need to go with what's right and not make so many rules and limitations.

5. Bruce Bohrer testified on behalf of the **Lincoln Chamber of Commerce** in support. He believes that Dr. Sumani has shown a very keen interest in working with the neighborhood and is willing to accommodate their concerns. The Chamber would concur that this is an ideal location for this use and that it is needed in the community.

*** Break ***

Opposition

1. Rusty Banks, testified on behalf of the **Friends of Wilderness Park** in opposition. The problem is no motocross. The problem is the location. A committee has been formed by the County Board to help find a suitable site and other sites have been suggested that would be far preferable to this one. The NRD has been interested in this land. The Friends

of Wilderness Park did not encourage the NRD to condemn the property through eminent domain, which has been rumored. They have alerted the NRD to its availability and the NRD has shown enough interest to do an environmental assessment for flood control. The biggest problems with this application are the violations of the Comprehensive Plan and the city ordinance. There are too many requirements and exceptions. It is close to Sherman Field, Wilderness Park, several residential areas, the trail, etc. It sets a precedent for allowing exceptions for things like this in other places. A lot of people mountain bike, road bike and hike. The quality of those activities would be severely impacted by the pitch changes in the motocross noise. There was another rumor that the property could be used for a truck terminal. The Friends of Wilderness Park have investigated this and there is no way this property could be used as a truck terminal because of the access and curb cuts, etc. It should be used for flood storage or possible expansion of the park.

2. Amy Miller submitted two letters in opposition. The **South Salt Creek Community Organization** Board is unanimously opposed with concerns about the adverse effect on the health, safety and welfare of their neighborhood. They are primarily concerned about the floodplain. This property is located in the Salt Creek floodplain and the homes in this neighborhood are at risk in case of flood. Flood insurance is an additional $600 bill beyond homeowners insurance. There is no indication about what is going to happen to the wetlands. She also submitted her own letter in opposition, living one mile away. It is a historic neighborhood and it's like living in the country. She can hear the wildlife, she sees fox, rabbits, birds. She does not want to be hearing the noise and incessant whine of the motorcycle engines. She does not want to worry about flooding and she does not want to deal with dust and traffic.

3. Stephanie Dohner, 2314 S. 10th, testified in opposition. She lives east of the area in question and on the boundary of the South Salt Creek and Irvingdale Neighborhoods. It is already difficult to walk from her house to Wilderness Park. Now we're talking about adding that many more people and traffic. She questions that the noise levels recorded are anything but a minimum of what it is going to be in actuality. She believes a site should be found which does not require a change in the ordinance and all kinds of conditions.

4. Barbara Dibernard, 1045 N. 41st, testified in opposition. She is not a neighbor but a fan of Wilderness Park. She was in Wilderness Park and walking on the Bison Trail last Wednesday during the sound check. She heard a very insistent high pitched whine of the motorcycles. To her, it was very jarring. She could not feel peaceful or let her thoughts go. Wilderness Park and the surrounding bike paths have been besieged enough already. The park represents another kind of recreation–solitude, the ability to get away from stress, etc. Although there is ambient noise from the traffic in the area, adding to that does not help the situation.

5. Duane Peterson, 1225 W. Sewell, 10 blocks due west, testified in opposition. He does not believe that dirt blowing and the incessant sound have been addressed. What is this going to bring to people that live in the area? Are there any positives? No one in his

neighborhood is going to use this track. He sees no benefit. He does not want to hear motorcycles whining in the distance at 8:00 at night. He believes it is totally inappropriate for this area.

6. Roger Carmichael, 4000 S.W. 2nd, testified in opposition. He is a lifetime resident of this area. He was born and raised within blocks of this location. He is a nationally certified motorcycle instructor and he is not against motocross. Where is Midwest Speedway today and why isn't it there? Try sitting in Belmont during the races at the State Fair. He can hear traffic from the West Bypass anytime he goes out his back door. The West Van Dorn/Hwy 2 traffic is in the area, and now we're listening to jake brakes and the grain dryer at the local elevator. There is enough noise pollution in this area. The city has recently spoken against air pollution. If this use was not suitable for Denton, why is it a suitable activity to be within eyesight of the Lincoln Capitol?

Pearson asked Mr. Carmichael to speak to the muffler situation. The Commission has heard that the muffler will attenuate some of the sound. Carmichael suggested that a muffler only works if it is in correct working condition. If it is doing it's job, then it should help with the sound. If it has been modified or not maintained or the cores have been taken out, it will not work properly. This is going to be a very big thing. It will bring in motorcycle racers on a national level. He believes it will be devastating to this community.

7. Carl McReynolds, 200 West South Street, who owns property directly across the street to the north, testified in opposition. He has had problems building on his property because of the floodplain. When he looks across South Street, everything is below the 100 year floodplain. If this permit is granted, people will not park in the parking area if it is muddy or raining. They will park on South Street. The newest race track in the state of Nebraska is Junction City Race Track at McCool Junction. They would not allow a race track in their city limits, so why would Lincoln allow a race track within its city limits?

8. Danny Walker, 423 E Street, testified in opposition. He pointed out that the test results show zero wind effect. The newspaper specifically stated that the wind was coming out of the north. He submitted that it is not going to be a true accurate reading in regard to the noise impact in his neighborhood unless the wind is coming out of the south. He would hope they would run another test when the wind is from the south. There is a vast difference in the rpm range between 2-cycle and 4-cycle motorcycles. Consequently, there is also a vast difference in the pitch of the noise of the 2-cycle and 4-cycle motorcycles. There needs to be definite clarification of the type of motorcycles that are running. He believes his neighborhood was grossly short-changed in this noise test. There are no barriers for his neighborhood – no levee, no train track, no rock pile. It is open.

9. Pat Stear, 2812 T Street, testified in opposition. We need to protect the quiet places that people can go. These cities with set green spaces seem to be very intelligent and she would hope that Lincoln would be one of those to value those green buffers around the city. We need to be sensitive to those who need quiet space as well as places for kids to enjoy

activities.

10. Jason Albers, testified in opposition. He serves on the Great Plains Trails Network, the Pedestrian and Bicycle Advisory Committee, and the Jamaica North trail fund-raising committee, but these are strictly his own views. He is empathetically opposed. He was involved in similar motor sports (water craft) racing for 12 years. Lincoln can be a very conservative and sometimes difficult city in which to promote racing events. From a motor sports race promoter standpoint, it can be difficult to find sites that welcome noise, traffic and sometimes a few bad apples in the crowd. We should do what we can to accommodate this motor sports crowd; however, he is not sure it should be in the city limits, specifically next to one of the most scenic and enjoyable hiker/biker trail systems. His specific concerns are the noise and dust along the Salt Creek levee trail immediately adjacent to the proposed track. The Jamaica North trail will extend from 25th and Saltillo to 4th and Calvert and will redirect immediately past the proposed track and continue to Haymarket Park. If the zing/zing irritation of motocross is allowed to occur immediately adjacent to this trail, it will be a much less enjoyable route. 340 people use the Salt Creek levee trail daily. This number is expected to increase with the development of the Jamaica North trail. He is aware of the sound testing but he challenges the testing. The test needs to be done at the maximum number of motorcycles allowed. There is a reason that Eagle Raceway and Nebraska Raceway near Gretna are located where they are – noise and nuisance.

11. Ted Tieman, new homeowner on S.W. 12th, testified in opposition on behalf of the property owners bounded by S. 8th Street to S. Coddington, from West South to West Van Dorn. He submitted a petition bearing 150 signatures from this area in opposition. He is not opposed to motocross but this location is not appropriate. The ordinance was written for valid reasons and he does not understand why we would consider changing it. If this is such an up and coming event and sport, why don't we search for a better location that can absorb growth, have lights, and run at night? He suggested that the Task Force be allowed to do their work.

12. Bill Wendling, 2546 S.W. 19th, 1.5 miles due west, testified in opposition on behalf of the Lee's Place Neighborhood Association. Who is going to police this? How are they going to police this? The 5 year limit is too long. This is probably going to benefit maybe 1000-2000 people, but at what cost to the adjacent property owners?

13. Terry Kubicek, 1800 S. 53rd St., testified in opposition. He is an at-large director of the NRD, but he stated that he is not in that official capacity today. He made the motion voted upon at the NRD to do a phase I appraisal of this property. He encourages economic development, be it commercial, residential, industrial, recreational or environmental mitigation. Lincoln has set a national standard with Wilderness Park and its trail. We should complement and encourage that, and not damage it potentially with a non-complementary use. He is sympathetic to the owners because he owns a 1941 Sports Scout Indian and he understands motorcycles, but if it has the upscale potential that they

propose, let's find the wonderful outstanding locating to build such a facility so that it can expand and set, if not a national standard, at least a regional standard of economic success. This proposal is trying to cram 10 pounds of potatoes into a 5 pound bag. It is not a complementary use.

Carlson asked Kubicek to discuss the potential for this area as flood storage. Kubicek stated that the city and the NRD have approached landowners to the south looking to acquire easements or fee simple title for flood storage to provide additional flood protection. This area could provide some additional flood storage for downstream, although he does not know how much. Personally, over time, he would prefer to see a process of acquiring flood storage for city commercial, residential and industrial protection, and a buy-out program like Beatrice has had for years to keep development out of harm's way.

14. Tom McCormick, 1406 B Street, referred to the citizen who spoke in favor alleging and stating as a certainty that the 12 letters that were written in opposition were written by less than 12 people who used duplicate addresses. He knows many more than 12 people who are resolutely opposed to this matter. Anyone who makes such an allegation should be very clear about it and definitely make sure they do their homework before making such an allegation, which he knows to be totally inaccurate.

15. Jeff Tangeman, President of **Everett Neighborhood Association,** testified in opposition to building a race track in the middle of a growing urban area. He took the time and went to the site in question and after watching the folks have a grand old time, his ears rang for the next couple of days. In his experience with engines and various vehicles, you can make something look like it's stock and still be very noisy. Performance engines by their very nature are noisy.

Response by the Applicant

Hunzeker addressed the issue of conflict between uses, i.e. Sherman Field, etc. The applicant has met with the Parks Department and this permit is subject to a condition that all of the events have to be coordinated with Parks and may not occur without permission in advance from Parks. The motocross will be setting up its schedules based upon the Parks baseball, softball and tournament schedules. The Parks Department personnel who were at the field test will tell you that they are not concerned about having this facility open and operating during a baseball game at Sawyer Snell park. The applicant has agreed not to operate at all during the Sundays of the midget football season. The applicant has also agreed to avoid operating during major tournaments. The hours or operation were also worked out with the Parks Department.

Hunzeker reminded the Commission that there is also a skateboard park and bmx bicycle use associated with this proposal. Again, additional opportunities for kids to be able to

engage in those activities.

As to the potential acquisition by the NRD for flood control, Hunzeker reiterated that no fill is to be placed on this site. Condition #1 k) refers to the pond and the wetlands and requires that it be preserved and protected to the satisfaction of Watershed Management.

Hunzeker suggested that the noise test was conducted under conditions that represent a worst case scenario for the noise situation. With regard to dust, Hunzeker assured that there will be a water truck on site and they will water down the track when it is dry. That is part of Condition #1 f) to meet all city codes for dust and noise.

With regard to the parking lot issue, Hunzeker pointed out that the parking lot is required to be paved.

Condition #1 p) requires that the Salt Creek levee trail shall be properly buffered or relocated to the satisfaction of the Parks Department. That is the vicinity where the noise readings exceeded the ordinance. Thus, the applicant will be required to mitigate the sound. If this cannot be done, the facility cannot operate.

Hunzeker observed that this is a type of use that is kind of a magnet for opposition before it ever gets started. In the past, there have been similar discussions relative to the YMCA soccer fields on Pioneers, YMCA soccer fields on East O Street, and a number of different uses which once established have not been nearly as difficult to deal with nor as burdensome as was feared. The noise test is not a free pass. The permit is subject to all of the noise regulations, no matter which direction the wind.

Bills-Strand expressed concern about parking. If there are going to be 600 people, she doesn't see parking for that many people. There were people parking along South Street at the demonstration. Hunzeker stated that there will be areas provided for overflow parking on-site and, if necessary, they will have to pave more parking. The main concern with the limit on participants and spectators is that it is very hard to predict how many people they will have. It is a family activity. Dr. Sumani has committed to provide more parking, if necessary.

Bills-Strand commented that she was surprised at how little sound she could hear except when she was right down by the track. There were a lot of trailers being pulled by those cars and she is trying to figure out how the traffic is going to work. If this is really that popular, are we better off to wait until after the first of the year and try to work with the Task Force to find a bigger and better location where we can do lighting and accommodate more than this small location? She is fearful we will outgrow this facility very quickly. Hunzeker noted that this is a five-year permit and the issue of growth can be reviewed at that time. It needs to have an opportunity to exist. People who engage in this activity have no where to go in Lancaster County. This is a large enough community that we should be able to accommodate this kind of activity. In an industrial area with highway immediately abutting

and industrial uses that are virtually drowning out all of the noise, this is an ideal location. This will not cause a nuisance and he believes the noise test demonstrated that.

Bills-Strand inquired as to the use of Sherman Field. Steve Hiller of Parks & Recreation stated that Sherman Field is used from the middle of March until the early part of May for high school baseball, and from that point the American Legion season begins and goes through the first part of August. After August, there is some use by adult baseball. 300-350 games a year are played at that facility.

CHANGE OF ZONE NO. 04068
ADMINISTRATIVE ACTION BY PLANNING COMMISSION: November 10, 2004

Pearson moved to deny, seconded by Carlson.

Carlson believes that locating a motorized race track in the city limits is poor planning. With all due respect to the applicant, a motorized race track is not a soccer field. We have 800 square miles in this county. It should not be inside the city limits.

Marvin commented that he attended the sound test and it was not noisy. But he is voting against because of the Task Force that is going to try to find a place for this use. He believes it has been demonstrated that there is an obligation to provide a location. It is a challenge for the community to find a place that is not inside the city limits.

Marvin also stated that he met with some developers when he joined the Planning Commission and there is some concern about flooding in downtown areas. We can't use up the land that might provide storage in the event that we have a flood. The applicant has indicated that he would not run any races after November 30th and if they don't start until April, he believes there is time for the Task Force to do its work to find a location.

Pearson disagrees that this is the perfect site. If it was the perfect site, this applicant wouldn't be here today. She will support it when it comes through with a site plan that will take care of the issues that have been such a concern.

Carroll agrees with the motion. Changing the zoning text for one specific item is wrong. It is an attempt to shoe-horn something into a small area that just doesn't belong there. It needs to go into an area where it can expand and grow.

Bills-Strand pointed out that it is I-1 zoning and other uses can go in there, but she is not sure this site is going to be big enough.

Krieser agreed that we need to give it more time to find a bigger and better site.

Motion to deny carried 7-0: Carlson, Pearson, Carroll, Marvin, Larson, Krieser and Bills-Strand voting 'yes'; Taylor and Sunderman absent. This is a recommendation to the City

Council.

SPECIAL PERMIT NO. 04057
ADMINISTRATIVE ACTION BY PLANNING COMMISSION: November 10, 2004

Pearson moved to deny, seconded by Carlson and carried 7-0: Carlson, Pearson, Carroll, Marvin, Larson, Krieser and Bills-Strand voting 'yes'; Taylor and Sunderman absent. This is a recommendation to the City Council.

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There being no further business, the meeting was adjourned at 5:00 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on November 24, 2004.

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