MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, July 20, 2005, 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, Dick Esseks, Roger Larson, Melinda Pearson, Lynn Sunderman, Mary Bills-Strand and Tommy Taylor (Gerry Krieser absent). Marvin Krout, Ray Hill, Mike DeKalb, Brian Will, Tom Cajka, Duncan Ross, Greg Czaplewski, 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 July 6, 2005. Motion for approval made by Carroll, seconded by Carlson and carried 5-0: Carlson, Carroll, Esseks, Larson and Bills-Strand voting 'yes'; Pearson and Sunderman abstaining; Krieser and Taylor absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: July 02, 2005

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

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 04063; SPECIAL PERMIT NO. 692M; COUNTY FINAL PLAT NO. 05063, PRAIRIE CREEK ESTATES 1ST ADDITION; COMPREHENSIVE PLAN CONFORMANCE NO. 05005; and COMPREHENSIVE PLAN CONFORMANCE NO. 05007.**

Item No. 1.2, Special Permit No. 692M, was removed from the Consent Agenda and scheduled for separate public hearing.

Ex Parte Communications: None.

Larson moved to approve the remaining Consent Agenda, seconded by Carroll and carried 8-0: Carlson, Carroll, Esseks, Larson, Pearson, Bills-Strand, Sunderman and Taylor voting 'yes'; Krieser absent.

SPECIAL PERMIT NO. 692M,
AN AMENDMENT TO THE
TABITHA COMMUNITY 3RD ADDITION
COMMUNITY UNIT PLAN,
ON PROPERTY GENERALLY LOCATED
AT NORTH 27TH STREET AND FOLKWAYS BOULEVARD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: July 20, 2005

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

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

This application was removed from the Consent Agenda at the request of Jerry Morrison.

Proponents

1. Brian Carstens appeared on behalf of the **Tabitha New Community Homeowners Association and Jim Tomasek of Tomasek Homes.** This proposed amendment is to add 5 units off the end of a cul-de-sac. The Homeowners Association is taking a portion of the common area and converting it to the townhomes. They are selling the lots to Jim Tomasek and will use the proceeds toward a new community building. The same waivers were approved with the previous CUP amendments. The townhomes will be for individuals 55 years of age and older and will be constructed the same as the existing units.

Opposition

1. Jerry Morrison, 5651 Enterprise Drive, testified in opposition. He is a lifelong resident of Lincoln and when he decided to retire six years ago, he built a home in AutumnWood in 1990, a two bedroom, modest old people's retirement cottage. He has lived in this home for 14 years. When he built his home, there was a significant amount of undeveloped land and over the years it has been developed. However, when he talked with Ray Hill in the Planning Department, he was told that this proposal would be a continuation of the 36 units that are already built. Morrison suggested that the property being developed differs from the existing units, which were built on 21 lots. This proposal is very tight and high density development for the area. This proposal is not on property that has been expected to be developed. The property being proposed for development is a part of our "family jewel – our park". It has always been said that this 2.32 acres would be developed into park land, which it should be. The biggest need is the green space and park land as opposed to new townhomes.

Morrison advised that this proposal was brought before the Homeowners Association last year by the board of directors. In fact, it has come before the association every year for the last 15 years . It is a proposal by the board to build a community building. It has been voted down year after year after year. It has caused deep division within the community. Earlier this year, after the annual meeting, the President said that last year 5 lots had been sold and that the money was deposited in the park fund. Morrison stated that this is not true.

The Association voted against it two times last year, and the board decided to build it anyway without a vote of the Association. Morrison does not believes this can be done. The Articles of Incorporation of the Homeowners Association state that the Association can buy and sell and acquire property, but nowhere does it say that the Board of Directors can do such without agreement and support of the people. The Association (not the Board) can acquire, purchase, or otherwise dispose of property. Morrison read from the Articles of Incorporation, insisting that the property cannot be sold without the agreement of 2/3 of each class of member of the association. If property is sold, the money must come into the association as general funds and be put into a fund for that park land. That cannot be done without 2/3 vote of the association. No money can go into that fund with the support of the people. Morrison believes that this is a sham.

Response by the Applicant

Carstens advised that the land will be purchased from the Homeowners Association. The legal counsel for the association has researched the covenants and has determined that the Board of Directors has the right to transfer the property with the president signing the deed, and they have the right to use those funds for the community building. The association elects the board of directors.

Carlson inquired whether there has been a membership meeting on this issue.

Don Eisley, 5656 Enterprise Drive, approached the Commission to answer Carlson's question. He stated that this has been discussed at the last 3-4 board meetings which are open to the entire association. Most everyone at the meetings has spoken positive about this proposal. The only opposition at the meetings was some "rumblings" in the background. There was a vote taken last year to sell land up along 27th Street, but this proposal is not part of that land.

ACTION BY PLANNING COMMISSION: July 20, 2005

Larson moved to approve the staff recommendation of conditional approval, seconded Esseks.

Carlson commented that it would have been interesting to hear if they had had direct communication with most of the association. The Planning Commission's role is to have

the public hearing to determine the opposition. It is difficult to gauge the depth of support or opposition with just one person testifying.

Taylor suggested that it appears that they had discussion at the meeting but there was no resolution or vote alleged during the testimony. He does not know if the "rumblings" in the background had opportunity to participate in the voting procedure.

Bills-Strand pointed out that the Board of Directors is going to be signing the deed and they are the ones selling the land. The Board is elected by the members of the association. She does not think it is the Planning Commission's role to enforce the covenants.

Motion for conditional approval carried 8-0: Larson, Carroll, Sunderman, Esseks, Carlson, Pearson, Taylor and Bills-Strand voting 'yes'; Krieser absent. This is final action, unless appealed to the City Council within 14 days.

COUNTY CHANGE OF ZONE NO. 05048
FROM AG AGRICULTURAL TO AGR AGRICULTURAL RESIDENTIAL;
COUNTY PRELIMINARY PLAT NO. 05012,
CONESTOGA HEIGHTS; and
COUNTY SPECIAL PERMIT NO. 05033
TO ALLOW DWELLING UNITS WITHIN 1320 FEET
OF A STATE LAKE,
ON PROPERTY GENERALLY LOCATED
AT S.W. 98TH STREET AND W. PIONEERS BLVD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: July 20, 2005

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

Staff recommendation: Approval of the change of zone and conditional approval of the preliminary plat and special permit.

Ex Parte Communications: None.

Proponents

1. Lyle Loth of ESP, Inc., testified on behalf of the **Green family,** the owners and developers. Loth pointed out that the staff report indicates that the change of zone from AG to AGR is in conformance with the Comprehensive Plan. The proposed preliminary plat consists of 3+ acre lots. The total area of the subdivision would permit 20 lots under AGR zoning and this proposal is only requesting 15 lots with an average of 4+ acres per lot. The special permit is to allow dwelling units to be developed within 1320 feet of a public lake.

Loth stated that the applicant is in agreement with all of the conditions of approval, with one

exception, that being Condition #1.1.13 on the preliminary plat and the special permit, which requires that the subdivision be renamed to avoid conflicts with other subdivisions. Loth did the research and could not find any other subdivisions on the Web site that have a similar name. They will agree to change the name if his research is mistaken, but he is not sure it should be necessary.

Loth pointed out that Condition #1.3 on the preliminary plat requires that the plan show the 200 yard distance from the park ground that would prohibit residential construction within that 600' radius. Loth advised that the drawings erroneously showed the 600' line to begin at the center of the road. The park property would be to the south right-of-way line of the road. That would move that line a little further to the south to meet the requirements of Game and Parks, and the applicant agrees to make this correction.

Opposition

1. Jane Reinkordt, 9700 W. Pioneers, which is the farm to the west of the Green property, testified in opposition. They own a working farm. It has been in her family since back in the depression and they want to pass it on to their children and want to keep it as a farm. Her neighbors, who own property on the other two sides of the Green property, feel the same way about their farm. The setting of the lake is very beautiful and it is still rural. This is an asset to Lancaster County. A development that looks like a suburb would spoil this setting. The density will alter the look of the area and decrease the value that it has for recreation and for nature. She questions the amount of traffic that it would bring. She realizes that the proposal is in conformance with the Comprehensive Plan, but from her point of view, it seems property is being developed west of Lincoln haphazardly. There are big spaces not developed and then here and there you find developments. It seems the county is going to get eaten up by these developments and this is a trend she does not want to see. As the population grows, it appears that the whole county could be eaten up with these little acreages and she does not believe this is good planning or good land use. The Commission needs to think about the overall county.

2. Peter Reinkordt, 9700 W. Pioneers, testified in opposition. He does the farming. He is opposed to this development and the change from AG to AGR with 15 houses. That is a high impact that is not going to be conducive to a farming operation. That whole section bounded by 84th, Van Dorn, W. Pioneers and 98th is still rural. On 84th the property is developed as acreages of 10+ acres. The concern goes back to the 1970's when those houses were developed along 84th. He runs a cow/calf operation. All of a sudden there were packs of wild dogs that came from those houses that were developed. He had difficulties with those packs of dogs and he had the Humane Society out there a number of times because they run wild. The RV campers across the road from his property scare the cows and calves and they bellow. The campers complained about the noise from the cows and calves and he is fearful this will be a problem with the additional development. He does not want to have to fight over the fence with his neighbors.

Because of the drought, Reinkordt's operation is down to 12 cows at this time. Normally, he would have about 25. His only crop is hay because he teaches during the year. The Stewarts have 70-80 head of cattle.

3. Marcia Stewart, 8858 W. Pioneers Blvd., testified in opposition. She confirmed that they do have 70-80 cows. She advised that she wanted to sell 5 acres to her daughter off of their 80 acres last year and she was not allowed to do so. She had to sell her house on 5 acres that was subdivided back in the 1970's and she built a house on 20 acres. Now, the land next to her is getting 15 houses on 3-acre lots. She would not be opposed to three or five houses.

4. Chris Bolte, 3475 S.W. 89th, an acreage just under six acres developed in the 1970's, testified in opposition. Her property is the smallest acreage within the vicinity and she likes the fact that there are crops and cattle. The cows do break the fence and get out, but the difference is that she and her husband come from a rural setting and they understand it. She is opposed because there is land to the east on Van Dorn that is going to be developed as acreages, with street lights, paving and sewer. It is hard to get septic systems in this area. She had to develop with a lagoon. Are they going to have to have a joint lagoon?

5. Elizabeth Reinkordt, 1630 S. 25th, testified in opposition. She will continue to farm at 9700 W. Pioneers in the future. She spoke on her own behalf and on behalf of her brother who will be farming this property with her. She is concerned about how this will affect her as a future farmer in Lancaster County. She believes that the natural resources and green space activity are in serious jeopardy if this property is going to be subdivided into houses. She questions how realistic it is that the property will not be annexed if the land on Van Dorn to the east is already being developed and because of the proximity of Lincoln to this land. She is concerned about Conestoga Lake becoming an urban lake as opposed to a rural lake. She is concerned about being a good neighbor to 15 families. As a new farmer stepping in, she can foresee many problems with the adjustment the people moving into the rural area will have to make, not understanding the importance of rural areas in our county and state.

Taylor inquired whether Ms. Reinkordt would ever consider selling her property to a developer if she were in a personal crisis of some sort. "Is there any way that the area can be secured so that the other neighbors who would still choose to farm can prevent you from selling your property to be developed just as this developer is proposing?" Reinkordt responded, stating that she is 22 years old. Within the next 70 years (between herself, her brother and two other cousins), the property will remain a farm because of its importance to the family. As far as an agreement, she has no financial resources to make that sort of agreement with the neighbors but she is hopeful that the neighbors can work out some sort of agreement to remain as farming operations.

Taylor inquired whether Ms. Reinkordt would be willing to submit herself to some kind of contract that would prevent her from selling the property for development. Reinkordt answered in the affirmative.

It was clarified that the Reinkordt farming operation is 60 acres.

Staff questions

Pearson sought clarification. She just understood from the testimony that the area to the east was a farm. The staff report indicates that there is acreage development in the immediate area to the east. Mike DeKalb of Planning staff stated that there is one large parcel between this parcel and a string of acreages.

Pearson confirmed then that there are 70-80 head of cattle on the property directly to the east of this parcel, yet the staff report states that there are no farm feeding operations or other conflicting farm uses noted. DeKalb stated that he did not see the cattle when he toured the property.

Esseks stated that he is very sympathetic to the families that have testified. He spent most of his career focusing on farmland preservation; however, he notices that the Comprehensive Plan shows this area as “yellow”. DeKalb explained that the “yellow” designation on the future land use map represents areas pre-designated for low density residential development permitted by AGR zoning. That technique has been in place since 1977. This parcel has had that designation since 1977. The expected density has been one lot per three acres since 1980 or 1982.

Pearson inquired whether being outside Lincoln’s growth tiers means it is still available for AGR zoning. DeKalb explained that the Tier I, II and III are the long term growth plans. That indicates that it is kind of an overlay. The tiers are indicating the city’s growth plans into these areas. Obviously, we have acreages in the near term growth areas. In this case, it is beyond the planning area.

Pearson noted that previous reports have used a performance point system to justify approval or denial. DeKalb explained that the Planning Department is no longer using that point system at the request of the County Board. It has never been adopted into the regulations.

Bills-Strand recalled situations where it has been a requirement that the covenants disclose the existing farm operations, etc. DeKalb indicated that this has been done and it has become standard practice on AG community unit plans. In fact, that language is on p.74 of the agenda – Note 15 on the plan specifically states that the developer will advise future lot owners “....that this subdivision is in a rural area surrounded by farming activities. Normal and customary farming operations and other permitted uses shall not constitute a nuisance.” That is the typical language that the staff has been requesting.

Response by the Applicant

Loth clarified that there will be no street lights in this subdivision. The applicant has requested that the street lights be waived. Each lot will be served by individual wells and septic systems. It is possible that they may be individual lagoons.

Loth also pointed out that there is a paved road right in front of this property and thus the developer has the opportunity to use infrastructure that is already in place.

Loth also pointed out that this land has been in the Green family for 40+ years and he is sure this is a decision that has not been made lightly. Mr. Green is a farmer and he will continue to farm some of his other property. This is an economic opportunity for the Green family and the proposal is in conformance with the Comprehensive Plan.

COUNTY CHANGE OF ZONE NO. 05048
ACTION BY PLANNING COMMISSION: July 20, 2005

Taylor moved approval, seconded by Carroll.

Esseks commented that the testimony on the part of two farm families wanting to retain the right to farm in the face of rural development was very eloquent. However, he does not believe he can vote against the proposal based on the Comprehensive Plan. It seems like the Planning Commission should explore this issue as to how to have farming and residential development side by side. There is a “right to farm” ordinance at the state level.

Carlson pointed out that the Comprehensive Plan does acknowledge the “right to farm” because it designates areas to be preserved for acreages in advance. That is the tool that we have chosen to use and, unfortunately, in this case, it designates an area that has farming so we have a conflict. He remembers the testimony during the Comprehensive Plan debate – we had younger generations asking that we approve a stricter acreage policy and older persons wanting us not to approve a stricter acreage policy. We created this tool to address this issue broadly, and it is not helping in this circumstance.

Larson recalls the discussion and he thought there was a “right to farm” provision in the Comprehensive Plan. He believes it is necessary. This question is going to keep coming up as the City grows, although the practical matter is that the land values and everything will go up so much that they won’t be able to afford to farm that land far into the future. However, he believes the owners should have the right to farm as along as they desire to do so.

Taylor commented that he really empathizes with the opposition. But when you look at it, he does not think there is any practical decision to make other than the system that is already in place simply because the people today that are opposing this situation may be in the same position that the Greens are right now. He has confidence in the

Comprehensive Plan. He does not know how we can set up some sort of ruling that "works when I want it" and "works when I don't want it."

Esseks pointed out, however, that other states, i.e. New Jersey, Pennsylvania and New York, have set up procedures whereby these types of conflicts can be adjudicated fairly and farmers have a big say in how the problems are resolved. They should be allowed to farm free of neighbors who are obstructive.

Carroll believes it is important to have the Note #15 in the covenants as far as protection for farming operations. He understands about the cattle getting out, etc., Acreage owners must understand that they are in a rural area. Carroll believes that the Comprehensive Plan should be followed, but the farming operations need to be protected. Hopefully the covenants and the notes to inform buyers will make a difference.

Pearson stated that she will vote against the motion to approve. She believes that the Comprehensive Plan designates this as residential low density which allows AG at a minimum of 20 acres per lot and AGR at a minimum of 3 acres per lot. The Comprehensive Plan will allow both AG and AGR for low density residential. This property could be developed in 20 acre lots. She believes that to be what the Comprehensive Plan provides when it designates residential low density. She does not think the Comprehensive Plan is saying it should be AGR. The property is bounded by two farms which run cattle, and it is not adjacent to another acreage development. There is no grouping of acreages going on.

Mike DeKalb of Planning staff explained that in the Comprehensive Plan, residential low density in rural areas of the county has been assumed to be AGR at 3-acre, but the range we typically see is 10 acres or less, so something less than 20 down to one is the range you can expect. Low density residential is typically implemented through the AGR zoning and represented by acreage development of less than 20 acres.

Bills-Strand commented that she grew up on 64 acres right outside of Lincoln. The Planning Commission role is to determine whether it meets the intent of the Comprehensive Plan. She also pointed out that this proposal will go on to the County Board for a final decision.

Motion for approval carried 6-2: Larson, Carroll, Sunderman, Esseks, Taylor and Bills-Strand voting 'yes'; Carlson and Pearson voting 'no'; Krieser absent. <u>This is a recommendation to the Lancaster County Board.</u>

COUNTY PRELIMINARY PLAT NO. 05012
ACTION BY PLANNING COMMISSION: July 20, 2005

Taylor moved to approve the staff recommendation of conditional approval, seconded by Carroll and carried 6-2: Larson, Carroll, Sunderman, Esseks, Taylor and Bills-Strand voting 'yes'; Carlson and Pearson voting 'no'; Krieser absent. This is a recommendation to the Lancaster County Board.

COUNTY SPECIAL PERMIT NO. 05033
ACTION BY PLANNING COMMISSION: July 20, 2005

Larson moved to approve the staff recommendation of conditional approval, seconded by Carroll and carried 6-2: Larson, Carroll, Sunderman, Esseks, Taylor and Bills-Strand voting 'yes'; Carlson and Pearson voting 'no'; Krieser absent. This is a recommendation to the Lancaster County Board.

SPECIAL PERMIT NO. 05034
TO ALLOW ADDITIONAL PARKING
WITHIN THE R-2 RESIDENTIAL DISTRICT,
ON PROPERTY GENERALLY LOCATED AT
SOUTH 16TH STREET AND SOUTH STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: July 20, 2005

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

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

Proponents

1. J.D. Burt of Design Associates, 1609 N Street, testified on behalf of **Amigo's,** the contract purchaser. This special permit would allow 16 new parking stalls for Amigo's and would also allow a better circulation pattern for their drive-thru that now exists. He met with the Near South Neighborhood Association Board and received their comments. One of the comments had to do with the location of the driveway, which comes up 16th Street and enters the parking lot. The Parks Department has asked that the driveway be shifted to get it further from the existing street tree. Burt advised that the resubmitted plans will show a shift of about 5' to accommodate that request. Other comments had to do with the guard rail on the west side of the existing building. The applicant has agreed to show that guard rail shortened on the resubmittal.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION: July 20, 2005

Carroll moved to approve the staff recommendation of conditional approval, seconded by Taylor and carried 8-0: Larson, Carroll, Sunderman, Esseks, Carlson, Pearson, Taylor and Bills-Strand voting 'yes'; Krieser absent. This is final action, unless appealed to the City Council within 14 days.

CHANGE OF ZONE NO. 05040
FROM O-3 OFFICE PARK DISTRICT TO
B-2 PLANNED NEIGHBORHOOD BUSINESS DISTRICT,
and
USE PERMIT NO. 05004,
FOR 33,500 SQ. FT. OF OFFICE AND COMMERCIAL FLOOR AREA,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 14TH STREET AND YANKEE HILL ROAD.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: July 20, 2005

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

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

The Clerk announced that the applicant's representative has requested an additional four-week deferral.

Carroll moved to defer four weeks, with continued public hearing and action scheduled for August 17, 2005, seconded by Carlson and carried 8-0: Larson, Carroll, Sunderman, Esseks, Carlson, Pearson, Taylor and Bills-Strand voting 'yes'; Krieser absent.

CHANGE OF ZONE NO. 05042
FROM O-3 OFFICE PARK DISTRICT TO
B-2 PLANNED NEIGHBORHOOD BUSINESS DISTRICT,
and
USE PERMIT NO. 89C
FOR RETAIL AND OFFICE DEVELOPMENT,
ON PROPERTY GENERALLY LOCATED AT
SOUTH 14TH STREET AND PINE LAKE ROAD.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: July 20, 2005

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

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

The Clerk announced that the applicant's representative has requested an additional four-week deferral.

Taylor moved to defer four weeks, with continued public hearing and action scheduled for August 17, 2005, seconded by Carroll and carried 8-0: Larson, Carroll, Sunderman, Esseks, Carlson, Pearson, Taylor and Bills-Strand voting 'yes'; Krieser absent.

There being no further business, the meeting was adjourned at 2:05 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on August 3, 2005.

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