MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, February 1, 2006, 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, Melinda Pearson, Lynn Sunderman and Tommy Taylor (Gerry Krieser, Roger Larson and Mary Strand absent); Ray Hill, Mike DeKalb, Brian Will, Greg Czaplewski, Joe Rexwinkle, Christy Eichorn, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.
STATED PURPOSE OF MEETING:	Regular Planning Commission Meeting

Chair Jon Carlson called the meeting to order.

Ray Hill of the Planning staff introduced Christy Eichorn, new planner filling the vacancy created by Sara Hartzell, who moved to the Long Range Division. Christy will be the counter planner and the first contact person for the Planning Department.

Carlson then requested a motion approving the minutes for the regular meeting held January 18, 2006. Motion for approval made by Carroll, seconded by Sunderman and carried 5-0: Carlson, Carroll, Esseks, Sunderman and Taylor voting 'yes'; Pearson abstaining; Krieser, Larson and Strand absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: February 1, 2006

Members present: Carlson, Carroll, Esseks, Pearson, Sunderman and Taylor (Krieser, Larson and Strand absent).

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 05075, SPECIAL PERMIT NO. 1866A and COMPREHENSIVE PLAN CONFORMANCE NO. 05017.**

Ex Parte Communications: None.

Taylor moved to approve the Consent Agenda, seconded by Esseks and carried 6-0: Carlson, Carroll, Esseks, Pearson, Sunderman and Taylor voting 'yes'; Krieser, Larson and Strand absent.

Note: This is final action on Special Permit No. 1866A and Comprehensive Plan Conformance No. 05017, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

CHANGE OF ZONE NO. 06002
FROM AG AGRICULTURAL TO
H-3 HIGHWAY COMMERCIAL,
ON PROPERTY GENERALLY LOCATED
AT N.W. 48TH STREET AND HIGHWAY 34.
PUBLIC HEARING BEFORE PLANNING COMMISSION: February 1, 2006

Members present: Esseks, Pearson, Taylor, Sunderman, Carroll and Carlson (Strand, Krieser and Larson absent).

Ex Parte Communications: None

Staff recommendation: Denial.

The staff submitted a corrected zoning map.

Proponents

1. John Zakovec, the applicant, stated that he owns and operates Northwest Storage, formerly known as Grandpa John's. He still has Grandpa John's Pumpkin
Patch and holds private tours and parties. Zakovec showed maps and explained the specific location for this change of zone request and the realignment of the four-lane road which will go through his property. He also showed a map of the property taken by the State for the realignment of the highway, including two buildings and over 200' of highway frontage. Zakovec also pointed out that Larry Coffey received approval of a change to H-3 zoning across the highway.

Zakovec acknowledged that he received approval from the Planning Commission for a change of zone on a 4.3 acre portion of this property last spring; however, he has not yet proceeded with that request to the City Council. Zakovec is now requesting the additional area in this change of zone request.

Zakovec pointed out that this will no longer be a storage facility in ten years, after the water and sewer services get there. He can use extra steel and cement to develop a strip mall, but his developer needs the additional property zoned to make that work.

Zakovec showed other areas which he believes to be similar that are designated in the Comprehensive Plan. In March of 2004, Zakovec paid Mark Hunzeker to represent his interest for making this property a part of the Comprehensive Plan, but he does not know why it did not happen.

Zakovec does not know why the staff is wanting the 200' setback between the highway and the commercial zoning.

Zakovec clarified that he will use the 7.6 acres for storage units because there is no water and sewer there at this time. He will have to move his buildings that the State took, and he would anticipated moving those buildings onto this property and expand on that.

Upon further discussion, it was clarified that there is not 50' buffer on the east – just on the north side.

Esseks inquired as to how many square feet of storage the applicant will have lost because of the State's taking. Zakovec stated that one building is 50 x 120 and the other is 60 x 120. He also has outside storage for boats and campers, which is over 200 spaces. The state made him clean the storage area out as of July 1st. He received 23 cents per square foot for the property.

Esseks inquired about the property across the highway to the north. Zakovec explained that Mark Hunzeker was successful in getting approval of H-3 zoning for Larry Coffey at that location. The Gas N Shop did not lose any property to the State, but did lose access.

There was no testimony in opposition.

Staff questions

Carroll inquired as to the uses allowed under the AG zoning. Can he use it as storage? Mike DeKalb of Planning staff stated that AG zoning does not allow commercial uses. The applicant currently has a special permit for the Heritage Center. He needs the zone change to do the commercial storage.

Esseks commented that on the surface, this looks to be a very reasonable trading of land. The State takes away and he is asking to do the same business a few hundred feet to the west. It seems reasonable. What is the community interest in turning it down? DeKalb explained that the staff supported the prior application of 4.3 acres. DeKalb also suggested that the State is supposed to pay fair market value for property taken and any damage. When the applicant brought the previous change of zone forward on the 4.3 acres, the State was taking 2.3 acres and the applicant needed additional land to relocate buildings and setbacks. The staff and Planning Commission recommended approval of that change of zone because it was determined to be appropriate to change the zone on the 4.3 additional acres to allow the applicant to recoup everything that he had lost to the State.

However, the applicant asked that it not proceed to City Council pending negotiations with the State Department of Roads. That application is still being held between Planning Commission and City Council, at the request of the applicant.

With regard to the Coffey property on the north side of the highway, DeKalb advised that it was a similar kind of approach as far as replacement of a loss. The State was cutting off their access to Hwy 34 and it was a substantial longer way back around to get to the old gas station. Staff took the position that Coffey should be able to replace that facility and the zoning on the north side was large enough to accommodate the truck stop type use.

Esseks asked whether the staff would still support the change on the 4.3 acres. DeKalb answered in the affirmative and reiterated that the Planning Commission also supported it and that it is ready to be scheduled at the City Council. It was not scheduled at the applicant's request.

Esseks inquired whether this application involves that same land. DeKalb stated that it does – this application is an expansion of that application. DeKalb also pointed out that the Planning Commission is currently in the process of a five-year update of the Comprehensive Plan. When Mr. Hunzeker previously made application for a Comprehensive Plan amendment, he did talk about studying a redesignation of this area from Tier III to Tier II. The current plan for the update not only includes service in the area across the creek immediately to the south, but also includes the economic opportunity immediately across the road to the north for services. The previous change of zone application replaces what was lost to the State. The longer term scenario of providing services for other developments in that intersection will be under review. DeKalb indicated that he has suggested the applicant become part of that review action and that possibly this change will be the right thing to do at that time.

Pearson was interested in the comparative size of the Coffey proposal as she believes it looks a little bigger than this proposal. DeKalb pointed out that the Coffey change of zone was not replacement of land for land, but was configured and approved to accommodate a full truck service station and septic systems. The Coffey proposal included a site plan that said they needed a certain amount of land to support the use. It was considered as a replacement for the gas station that was forced to be closed because of access.

Response by the Applicant

Zakovec stated that the Coffey property is larger than what he is requesting. He also stated that some of the 4.3 acres is being taken by the State and the staff is wanting a 200' setback. He wants the same highway frontage that he had previously.

Esseks asked how much square footage of storage the applicant could have on the 4.3 acres. Zakovec stated that he planned to move the buildings and grow with the highway. Eventually, he could add four more buildings but he will not do that right away. He does

not want to have to make change of zone requests incrementally as he grows. He cannot go any further than the creek to the south.

In order to keep his income flowing and business alive, Esseks wondered whether the applicant could start on the 4.3 acres and wait for the Comprehensive Plan update to be completed. The problem for Zakovec is that he would have to stay 200' from the highway. He is trying to plan for the future. His developer does not want the 200' setback. Zakovec believes there will be 200' when the highway is moved, but what do you use it for?

Esseks again asked how much of the 4.3 acres that is already approved can be used for the applicant's business. Zakovec indicated that it would be full by the fall. The outside storage plus the buildings could not fit on the 4.3 acres. They would need to come back and seek more zoning to continue their business. They cannot live with the 200' with what they want to do after the water and sewer gets there.

ACTION BY PLANNING COMMISSION: February 1, 2006

Carroll moved to deny, seconded by Sunderman.

Carroll believes the staff is correct that it is premature to change the zoning on any more of the property at this time. The 4.3 acres will allow him to expand. He believes the 200' distance to Highway 34 is appropriate because this is an entryway into the city. We need to keep the 200' buffer as a good planning idea. It is premature to increase the acreage at this time.

Pearson stated that she will vote against the denial because she believes this application acknowledges the 200' setback, so she does not see the problem on that issue. The Coffey's were given a significant increase in the area of their land, apparently based on having a good attorney to speak for them. These landowners have property across the road in the same situation. They are asking for a little bit more land for future growth, which is the exact same reason the Coffey's used for the application across the road. She does not understand why that does not work for both applications. This proposal is adjacent to property owned by Zakovec anyway. She believes this is a reasonable request – asking for more land for future growth. It seems to be 50% more than what they are losing and she believes it is reasonable.

Taylor stated that he will vote to deny because it does not conform to the Comprehensive Plan. He believes the Comprehensive Plan Update will be soon enough.

Esseks stated that he will vote against the motion. It seems that when the State takes property and interrupts the business, the business has to be transferred and we have to make sure the owner is not constrained by lack of acreage. He is persuaded by Pearson's comments, although he wishes there were clearer evidence as to how many acres the applicant needs.

Carroll pointed out that the applicant is asking us to waive the 200' setback because their application goes closer to the highway. The Coffey land has accounted for that setback. Even if this is approved, he does not think it would allow the applicant to go within the 200' setback.

It is Pearson's understanding that this proposal is 50' from the current road and the road will move 150', so they wouldn't be able to move anything onto the 200' until the road is moved. Thus, they will be 200' from the future road. They are just not 200' from the road today.

Additional staff questions

In response to the Planning Commission discussion on the motion to deny, DeKalb pointed out the future alignment of the road. On the previous 4.3 acres and on the Coffey proposal, the staff tried to maintain similar setbacks on both sides of the entryway to the city. With the existing zoning in place, the applicant can use their property all the way to the property line. He assumes that Zakovec is talking about the vacated right-of-way. The difference between the area recommended for approval last time appeared to be about 200' from the alignment as best we knew. We tried to reflect that on the north side, and this proposal brings it up within 50'. There would be no setback requirement by the State other than the land that the State owns. Carroll commented that it is an unknown as to whether the State will give back the vacated right-of-way. DeKalb did not know whether they would sell it as surplus or maintain it for right-of-way. If the State keeps the land, the setback shown is 50'.

Esseks believes this to be an issue of fairness and justice. His concern is that the applicant be allowed to move his business and not lose clientele or cash flow because of something the State has done. The issue to him is whether the applicant can move this business using the 4.3 acres plus whatever is left of the original parcel, and the applicant is saying "no". DeKalb pointed out that: 1) the State has to purchase the property at fair market value plus damages; 2) as far as continuing the business, the staff had this same philosophy in recommending approval of the prior change of zone, which added 4.3 acres to replace a loss of right-of-way of 2.4 acres; and 3) the setback in the land that is not taken that goes up to the existing right-of-way stays. DeKalb suggested that the total area zoned H-3 with the previous change of zone approval would increase the area by about 2 acres.

Additional Response by the Applicant

Zakovec believes the highway will be about 100' from his property and he is staying back another 50 feet.

As far as fair market value, he received 23 cents per square foot, and the neighbor right across the fence line got $1.70 per square foot five years ago.

Esseks asked Zakovec how many usable acres he had for his business before the State taking. Zakovec stated that it was 7.5 acres. He believes he now has 3+ acres. He lost the buildings and about 200 spaces of outside parking. There is not enough land for his future plans for development after water and sewer get there. He can't go any further south because of the creek.

Carroll pointed out that it is not the Planning Commission's responsibility to determine whether the applicant has been compensated for loss by the State. The issue for the Planning Commission is the zoning. The issue of compensation has nothing to do with it.

Esseks thinks he should have the same number of acres that he can use.

Pearson does not understand why land on the north side of the highway in the middle of a field is in the Comprehensive Plan and the land on the south side, which is along the roadway and is developed, is not in the Comprehensive Plan. She believes that has everything to do with having an attorney represent you as opposed to an individual applying for their own change. It might not be the State and we might not have to worry about compensation, but it is a form of government and she thinks the Planning Commission should be fair. We can't give him back money that the State may have taken, but at least we can be fair in how we evaluate a person's use of the land. They own the land. We are saying you cannot move your business to a piece of property you already own just because the State took it away from him, and she disagrees.

Motion to deny carried 5-1: Esseks, Taylor, Sunderman, Carroll and Carlson voting 'yes'; Pearson voting 'no'; Krieser, Strand and Larson absent. This is a recommendation to the City Council.

There being no further business, the meeting was adjourned at 1:55 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on February 15, 2006.

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