

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, March 15, 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, Lynn Sunderman, Gerry Krieser, Mary Strand, Roger Larson and Tommy Taylor; Marvin Krout, Ray Hill, Stephen Henrichsen, Mike DeKalb, Brian Will, Tom Cajka, Joe Rexwinkle, Michele Abendroth and Jean Walker 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 and requested a motion approving the minutes for the regular meeting held March 1, 2006. Motion for approval made by Taylor, seconded by Krieser and carried 6-0: Sunderman, Esseks, Krieser, Taylor, Carroll and Carlson voting 'yes'; Strand and Larson abstained.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

March 15, 2006

Members present: Sunderman, Strand, Esseks, Krieser, Taylor, Larson, Carroll and Carlson.

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 06013; SPECIAL PERMIT NO. 1771A; SPECIAL PERMIT NO. 06010; COUNTY SPECIAL PERMIT NO. 06007; COMPREHENSIVE PLAN CONFORMANCE NO. 06002; ANNEXATION NO. 06003; and STREET AND ALLEY VACATION NO. 06001.**

Ex Parte Communications: None.

Items No. 1.1, Change of Zone No. 06013, and 1.4, County Special Permit No. 06007, were removed from the Consent Agenda and had separate public hearing.

Larson moved approval of the remaining Consent Agenda, seconded by Strand and carried 8-0: Sunderman, Strand, Esseks, Krieser, Taylor, Larson, Carroll and Carlson voting 'yes'.

Note: This is final action on Special Permit No. 1771A and Special Permit No. 06010, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days following the action by the Planning Commission.

**CHANGE OF ZONE NO. 06013
FROM R-5 RESIDENTIAL TO B-3 COMMERCIAL,
ON PROPERTY GENERALLY LOCATED AT
15TH AND SOUTH STREETS.**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

March 15, 2006

Members present: Sunderman, Strand, Esseks, Krieser, Taylor, Larson, Carroll and Carlson.

Staff recommendation: Approval.

Ex Parte Communications: Carlson disclosed that he attended the Near South Neighborhood meeting when the applicant made a presentation. The application presented to the neighborhood was the same as set forth in the staff report.

Proponents

1. Mark Hunzeker appeared on behalf of the applicant, **B&J Partnership**. This application relates to the two lots north of the lots which actually front South Street. There are three lots which front South Street which are already zoned B-3. The proposal is to put a building on the two north lots, widening out the alley access to have a full 24' driveway and to provide the other access off of 15th Street. The old bakery building is right up to the property line on 15th and South Streets. They are attempting to provide an adequate drive-through for StarBucks, which is proposed to be the main tenant. The applicant has been working with the South Street Business Association as well as the neighborhood association in conjunction with the redevelopment of this area of South Street. Hunzeker believes that generally speaking, the proposal has been pretty well received.

Carroll noted that the staff report strongly encourages the applicant to reconsider the site design. Hunzeker concurred that the applicant has had several meetings with the staff relative to the site plan. The proposed site plan provides good access into this site from the alley. The applicant thought this site plan worked better than placing the parking lot up against the residential properties to the north and bringing all traffic back

around next to the residential uses. The major tenant is comfortable with this site plan. Going east on South Street, you get to 16th Street where there is a fairly popular bar at the corner of 16th and South Street. The alley and the narrow drives between the businesses along 16th Street become a fairly highly traveled area. Hunzeker suggested that getting a good entrance off of South Street is very important for that reason as well as the fact that it just represents a better site plan. The applicant is doing this in conjunction with other businesses that exist there in terms of providing additional parking in the area.

Hunzeker added that there is a possibility at some point in the future for additional extension of an access road across from 15th to 16th in conjunction with the redevelopment of this area. If that ever happens, this site plan is definitely a better fit.

Carroll referred to #8 in the staff analysis which suggests additional landscaping and screening on the north and east sides of the building to screen the use from the neighboring residential lots if the building is located toward the back with parking in front. Hunzeker stated that the applicant would agree to this suggestion, but that it would be on the north and "west" sides of the building (as opposed to "east" - believing this to be an error in the staff report). The applicant picks up a 25' setback along 15th Street because of the residentially zoned property to the north in the same block. That represents a much greater setback than any of the houses on 15th Street. There will be plenty of room to landscape to provide pedestrian access.

Hunzeker also agreed with the restriction of uses.

Carlson noted that typically there is not a site plan reviewed with a change of zone application. He also noted that the new South Street Business and Civic Association attends to redevelopment up and down South Street and he believes they are coming up with some theme for that streetscape. He also knows that they have discussed community parking for the businesses behind the property immediately to the west. Therefore, Carlson believes it might make some sense to leave the site plan fluid. He is wondering if it is premature to have this particular location in regards to the two other processes that are going on. Hunzeker acknowledged that there has been discussion about additional community parking along the back side of that block, and he knows that B&J is certainly amenable to that. Hunzeker has not been directly involved, but his understanding is that the discussion has been the possibility of extending the parking to the north of this site. Relative to this particular site, however, B&J does have a tenant who is anxious to locate here and maintaining a fluid site plan is pretty hard when you are trying to get under construction. This tenant wants to locate there now. Carlson assumes there are other ways to satisfy the tenant's needs in that particular location. Hunzeker pointed out that this applicant has had a lot of interaction with the staff on this site plan and some specific discussion about the potential of moving the building

around or moving it forward. The net result is what is being proposed with this change of zone.

There was no testimony in opposition.

Staff questions

Carroll inquired whether the applicant and staff have agreed on the zoning agreement conditions as far as moving the building and excluding some uses. Joe Rexwinkle of Planning staff indicated that the staff and the applicant are in agreement.

Carlson wondered about locating the building next to the street. Rexwinkle stated that he had discussed this with the applicant initially, and the response was that that would basically kill the project from the applicant's point of view. The Comprehensive Plan definitely supports that concept; however, there is no mechanism in the zoning ordinance to enforce it. All the staff can do is strongly encourage that it be done. He believes that it is important to promote that type of concept where the buildings are to the street with the parking in the rear. Carlson wondered whether the new approach to conditional zoning gives that latitude. Marvin Krout, Director of Planning, agreed that conditional zoning can allow added restrictions to what the underlying zoning otherwise permits, but it would not allow a variance or modification to the zoning standards as is done with use permits. In the B-3 district, it would be possible to build this building to the street. However, the key issue in this case is that there is a project with a tenant and a building permit, so we are left with the choice of living with the building and parking lot. We would like to see the design change but we don't have an overlay that requires it. Our choice was to sacrifice what we would most like to see in terms of design in order to encourage revitalization. This is not the only building on South Street that would be set back from the street.

Response by the Applicant

Hunzeker reiterated that they do have a tenant who needs to have a drive-through and setting the building up to the very front of this lot makes that extraordinarily difficult and still provide the parking that is required. We have to provide parking on the east side but cannot on the west side because we have a front yard on the 15th Street frontage. We have tried very hard and made extra effort to save a couple of very nice trees right along South Street. The applicant really needs to proceed with this site plan. This will be a nice improvement for South Street and for the whole area.

ACTION BY PLANNING COMMISSION:

March 15, 2006

Strand moved to approve, subject to the conditional zoning agreement as set forth in the staff report, seconded by Esseks.

Carroll explained that the reason he pulled this application from the Consent Agenda was to clarify some things. He thinks it is a good redevelopment of South Street and this tenant is a good thing for the city. He just wanted to clarify some of the conditions as far as limiting the uses from auto sales or dealerships, to which the applicant has agreed. Carroll believes it will be an improvement to the area.

Motion for approval, subject to the conditional zoning agreement as set forth in the staff report, carried 8-0: Sunderman, Strand, Esseks, Krieser, Taylor, Larson, Carroll and Carlson voting 'yes'. This is a recommendation to the City Council.

COUNTY SPECIAL PERMIT NO. 06007
TO ALLOW SOIL EXTRACTION ON
PROPERTY GENERALLY LOCATED
AT N. 56TH STREET AND RAYMOND ROAD.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

March 15, 2006

Members present: Sunderman, Strand, Esseks, Krieser, Taylor, Larson, Carroll and Carlson.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

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

Proponents

1. **Harry Muhlbach**, 14607 N. 56th, the applicant, presented the application. He is seeking this special permit because the smaller contractors in the Lincoln area do not have access to dirt like the larger contractors. He plans to maintain the pit as a more modern operation pit. One of the parties contesting the permit is worried about the roads. Muhlbach stated that he will maintain the road as best he can. There will be about 1,000 ft. of gravel before they come onto the highway, which gives the truck tires a chance to clean out and they will enter the highway at the street controlled access.

Dr. Matson, who submitted a letter in opposition, did call the applicant after he wrote the letter. Dr. Matson expressed concern about the old machinery parts and 55 gallon drums on the subject property. Muhlbach explained that he does conservation work and conservation cleanup when someone purchases a farmstead for development that has old machinery and vehicles on it. He attempts to recycle it, but sometimes it ends up back at his lot where he decides whether to take it to the landfill. When he recycles, sometimes he needs to accumulate a load big enough to make it worthwhile, thus the old machinery, etc., may sit there awhile until they get a semi-load. As far as the 55 gallon drums, Muhlbach explained that he works with DEQ and the Health Department. Some of those drums were old concrete barriers. He does not maintain any hazardous drums. He only keeps a few in case there is a spill and the drums are needed for cleanup. This is basically a recycling site and he attempts to manage it and keep it away from the public.

Muhlbach assured that no silt will go onto Dr. Matson's property. Muhlbach also has livestock on the property so he would have nothing on the property that would be hazardous to the livestock.

Esseks inquired as to how much land Muhlbach will strip in a day. Muhlbach stated that he may not even strip 5 acres over a whole year's time. He might take out 5,000 yards in four days. There will not be loaded trucks in and out continuously.

Esseks inquired as to what happens after the soil has been extracted. Muhlbach stated that the property will be bare during the stripping time, but as soon as he determines the elevation that has been stripped off, the land will be reseeded. If the land is not being farmed, it is being taxed at a higher rate so it is to his advantage to keep it under control and reseed it as soon as possible.

2. Bob Muhlbach, 14645 N. 56th, testified in support. This is a fully functional farm with livestock and crops. This will be extremely controlled. He lives right beside this area. With a smaller construction company, it is difficult to obtain dirt from the larger companies and try to compete. Muhlbach is trying to help some of the small contractors who are looking for dirt.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

March 15, 2006

Larson moved approval of the staff recommendation of conditional approval, seconded by Taylor and carried 8-0: Sunderman, Strand, Esseks, Krieser, Taylor, Larson, Carroll and Carlson voting 'yes'. This is a recommendation to the Lancaster County Board.

**COMPREHENSIVE PLAN AMENDMENT NO. 06002,
TO ADD LAND WEST OF 84TH STREET, NORTH AND
SOUTH OF ROKEBY ROAD TO THE FUTURE SERVICE
LIMIT; CHANGE THE LAND USE DESIGNATION FROM AGRICULTURAL
TO URBAN RESIDENTIAL; AND DESIGNATE IT AS PRIORITY A; AND
TO CHANGE LAND EAST OF 70TH STREET, NORTH AND SOUTH
OF ROKEBY ROAD FROM PRIORITY B TO PRIORITY A.
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

March 15, 2006

Members present: Sunderman, Strand, Esseks, Krieser, Taylor, Larson, Carroll and Carlson.

Staff recommendation: Approval of Option A, if the property owners agree to fund the sanitary sewer costs associated with adding this additional area; or only the Option B proposal, if they are the only properties willing to fund the improvements.

Ex Parte Communications: None.

Additional information submitted for the record: Steve Henrichsen of Planning staff submitted a letter from the applicant requesting a two-week delay. This will also allow this amendment to be heard at the same time as the waiver to the sanitary sewer design standard. Henrichsen noted that both the Comprehensive Plan Amendment and the waiver are an attempt to accommodate looking at expanding the future service limit. There are two sanitary sewers that are under design that the city hopes to put out to bid in May. The city is trying to look at oversizing those sewers but yet keep the design moving forward because there are several subdivisions in process that require those two new sanitary sewers. If this amendment were to be delayed longer it would impact the construction of the sanitary sewer. Henrichsen is hopeful that the details will be worked out before the March 29th meeting.

Strand moved to defer, with continued public hearing and action scheduled for March 29, 2006, seconded by Carroll and carried 8-0: Sunderman, Strand, Esseks, Krieser, Taylor, Larson, Carroll and Carlson voting 'yes'.

There was no other testimony.

CHANGE OF ZONE NO. 06002
FROM AG AGRICULTURAL DISTRICT
TO H-3 HIGHWAY COMMERCIAL DISTRICT,
ON PROPERTY GENERALLY LOCATED AT
N.W. 48TH STREET AND HIGHWAY 34.

NEW PUBLIC HEARING BEFORE PLANNING COMMISSION:

March 15, 2006

Members present: Sunderman, Strand, Esseks, Krieser, Taylor, Larson, Carroll and Carlson.

Staff recommendation: Approval.

Ex Parte Communications: None.

Proponents

1. **Mark Hunzeker** appeared on behalf of **John Zakovec**, the owner of the property in question. This application was heard by the Planning Commission previously with a recommendation of denial based in part on some misunderstanding of exactly what was about to happen to this area in the way of highway improvements.

Hunzeker displayed a map and explained that the concern about setting the area back away from the highway is fairly obviated by the fact that the highway is moving more than the distance that the staff was concerned about for setting back from the highway. The property across the highway to the north was rezoned previously based on a 50' setback from the new right-of-way. The new zoning line for this application will be considerably further away from the new highway than the property to the north.

Mr. Zakovec currently operates a storage business on this property which is being severely affected by the realignment of N.W. 48th Street. In order to move buildings because of that realignment, he needs to get this area rezoned. There is a drainageway running through the property from north to south that is right along the boundary of the proposed change of zone. The smaller area previously approved would leave a rather irregular-shaped parcel between the drainage ditch and the area available for use by the business, creating an area that is not usable to farm and not usable in conjunction with the special permit that is on the property. After explaining this to the Planning Department after the last hearing, the Director of Planning agreed that the expanded area made sense and has revised the recommendation to approval.

Carroll noted that the question the Planning Commission had last time was the 200' versus the 50' setback. We do not know what will happen to the existing Highway 34 road when it moves north and what will happen to the property being vacated for the

highway. Hunzeker stated that the vacated right-of-way will be maintained as right-of-way and owned by the state. In fact, there is an area where there is actually more right-of-way being taken because of grading that needs to be done to raise the road bed to elevate it for the crossing of the creek further to the east. The state is maintaining ownership of that right-of-way. The description for this change of zone sets back 50' from the new right-of-way line, as it did on the north side. This application will be further away from the road surface on the south side than will the property on the north side.

Carlson believes that means it will be further to the north. Hunzeker disagreed. The actual right-of-way line is staying in the same place. "We will be 50' from the new right-of-way line regardless."

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

March 15, 2006

Strand moved approval, seconded by Larson and carried 8-0: Sunderman, Strand, Esseks, Krieser, Taylor, Larson, Carroll and Carlson. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 06012
FROM R-2 RESIDENTIAL TO B-3 COMMERCIAL;
FROM R-2 RESIDENTIAL TO O-2 SUBURBAN OFFICE;
FROM O-2 SUBURBAN OFFICE TO B-3 COMMERCIAL;
AND FROM B-1 LOCAL BUSINESS TO B-3 COMMERCIAL,
ON PROPERTY GENERALLY LOCATED
AT S. 10TH STREET AND VAN DORN STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

March 15, 2006

Members present: Sunderman, Strand, Esseks, Krieser, Taylor, Larson, Carroll and Carlson.

Staff recommendation: Conditional Approval.

Ex Parte Communications: None.

Additional information submitted for the record: Joe Rexwinkle of Planning staff submitted a letter received from the applicant requesting a two-week deferral in order to advertise a revised application to zone the entire site as B-1, with restrictions to limit to office uses as a transition to the residential.

Proponents

1. **Mark Hunzeker** appeared on behalf of the applicant, **B & J Partnership**. After reviewing all of the site plans with staff, it was discovered that they had overlooked some setback difficulties that get created when you start mixing B-3 and residential in the same block as well as O-2. The applicant has submitted a revised application; however, this revision does not change the intent nor the site plan very much.

Larson moved to defer two weeks, with continued public hearing and action scheduled for March 29, 2006, seconded by Strand and carried 8-0: Sunderman, Strand, Esseks, Krieser, Taylor, Larson, Carroll and Carlson voting 'yes'.

There was no other testimony.

ANNEXATION NO. 06001;
CHANGE OF ZONE NO. 06001,
FROM AG AGRICULTURAL TO R-3 RESIDENTIAL;
AND
SPECIAL PERMIT NO. 06001,
GRAND TERRACE COMMUNITY UNIT PLAN,
ON PROPERTY GENERALLY LOCATED AT
84TH & HIGHWAY 2.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

March 15, 2006

Members present: Sunderman, Strand, Esseks, Krieser, Taylor, Larson, Carroll and Carlson.

Staff recommendation: Approval of the annexation, subject to an Annexation Agreement; approval of the change of zone; and conditional approval of the community unit plan.

Ex Parte Communications: None.

Additional information submitted for the record: Brian Will of Planning staff submitted a letter from Jim Heck at 8000 S. 80th Street, who expressed concerns about the development and the surrounding street network.

Proponents

1. **Peter Katt** appeared on behalf of the applicant/developer. This project has been underway for quite some time. There was a Comprehensive Plan Amendment in 2004 which had changed the land use designation to urban density residential. This

developer spent 6-9 months working with the neighbors at that time and has continued to work hard with the neighbors since that time. 84th Street is now open. The acreage developments that surround this site include Portsche Heights, Clarendon Hills and Amber Hills. All of the perimeter roadways are currently in place but they are all gravel. The biggest issue in moving this into an urban designation was dealing with the area road network.

The only condition in the annexation and zoning is an annexation agreement. The developer has not yet had the opportunity to review an agreement draft from the city. Katt did point out, however, that the neighbors came together and formed a Clarendon Hills (road improvement) District. The road standards are proposed to be 8" asphalt and 6" asphalt. This is what the road improvement district plans to do with the off-site roads, and the developer of Grand Terrace has agreed to contribute \$285,000 to the costs of paving all of those off-site roads. Katt requested that the following language be added to the conditions of approval on the annexation:

2. The Annexation Agreement shall provide for and recognize that the off site improvements to the existing gravel roads, i.e. Amber Hill Road, 80th Street, Revere Lane, Portsche Lane, Badger Drive, Boone Trail, 7th Street, Carson Road and Travis Drive are expected to be paved by the Clarendon Hills Road Improvement District ("District") to an asphalt county road standard together with such other improvements as allowed by Neb. Rev. Stat. §39-1610 that may be undertaken by the District. The owner has agreed to subsidize these road improvements in recognition of the benefit accruing to this project. If the District becomes obligated to construct the improvements, the owner shall be obligated to either deposit \$285,000.00 ("Cash Funds") in an account designated by and payable to the Clarendon Hills Road Improvement District or Applicant will provide, at Applicant's expense, an Irrevocable Letter of Credit in the amount of \$285,000.00 ("Letter of Credit Funds") designating Clarendon Hills Road Improvement District as Beneficiary. The terms and provisions of the Irrevocable Letter of Credit shall be commercially reasonable and otherwise acceptable to the Clarendon Hills Road Improvement District. The Cash Funds or Letter of Credit Funds shall be utilized by the Clarendon Hills Road Improvement District only to subsidize the pavement of the roads described above and as shown on Exhibit "A" which is incorporated by this reference.

This language would require that the off-site roads will be paved by the district at this standard and his client will be obligated to contribute to those costs.

Katt also requested that the following Condition #3 be added to the conditions of approval on the annexation:

3. The Annexation Agreement shall obligate the City of Lincoln to use its power of eminent domain to acquire the sanitary sewer and water main easement across private property made necessary by the grading changes to accommodate the neighborhood's requests. The cost of acquiring the easement shall be at owner's sole cost and expense and shall be acquired by the City only if the owner is unable to do so after reasonable efforts.

This language will recognize the commitment by the city, if necessary, to condemn a sewer and water line easement across the private property. During discussions with the neighbors, the original plan required some extensive grading. The original plan had been to regrade the area and build it up so that all of the water could "come back this way" to connect to the sewer. The neighborhood did not want that grading. The city indicated a willingness for an easement and if necessary, to use eminent domain. When this area further urbanizes, those easements will need to be in place. The language proposed as Condition #3 simply recognizes that if they cannot acquire that easement, the city will acquire it through eminent domain in order to have this area urbanized.

With regard to the community unit plan, Condition #2.1.1.6 requires parkland dedication to the satisfaction of the Parks & Recreation Department. Katt does not believe the developer will have any problem working with Parks; however, the developer does not necessarily agree with Parks taking four prime lots for the location of the park.

Katt requested the following amendments to the community unit plan:

1. Delete Conditions #2.1.1.7, #2.1.1.8 and #2.1.1.9.

These conditions will be met as part of the requirement to administratively amend the townhome area.

2. Delete the following language from Condition #2.1.1.12:

~~Show the 12" high-pressure gas line, and identify it on the plans with a bold-type font.~~

While there is an obligation to include the gas line easement on the plans, Katt sees no reason to put it in bold.

3. Amend Condition #2.1.1.16 by adding the following language at the end:

Show the required public street paving and grading for Lots 16-20, Block 2, which shall be a county road asphalt paving cross section if paved as a part of the Clarendon Hills Road Improvement District.

or a standard urban street cross section if the road has not been paved prior to these lots being final platted.

The question is the road standard. Those lots also drain into a different drainage basin and sanitary sewer. That road will be paved as a part of the improvement district, so the additional language would provide that the road be constructed to city standards if the road has not been paved prior to the lots being final platted.

Larson asked for a further explanation of the road improvement district. Is it a voluntary improvement district? Katt concurred. That district was formed to create a legal entity that has the authority to enter into agreements that would be binding upon everyone in the neighborhood. It has the authority to tax and levy special assessments. The district will pay all of the remaining costs except the \$285,000 being contributed by this applicant.

2. Mike Rierden appeared on behalf of **Clarendon Hills Road Improvement District**, which includes everything with the exception of Lot 56, which is the proposal before the Commission today. Rierden explained the phases of the road improvement district. The first phase, which is the "organizational phase", has been accomplished. A petition is presented to the County Board by 10% of the property owners. The County Board then sets it for special election. There were sufficient votes to create the district and three trustees were elected. The three trustees make the decisions as far as accepting bids for the road improvements, any other contracts, etc. The next phase is the "pre construction phase" which is where they are now. The trustees need to either vote on a resolution of necessity which says it is necessary to improve the roads within the district, or 60% of the property owners come forward and say they want the improvements done. Rierden believes they have the votes to get that done. Then they go into the "construction financing phase" and the trustees contract with various contractors to get the job done. At the same time, they work out financing terms, with a brokerage house issuing bond anticipation notes which provide the district with the money to pay the contractors as the project moves along. Then we go into the "assessment phase after construction". A hearing is conducted by the trustees. Most of the districts have taken the position that each lot is assessed equally because they obtain the same benefit from the improvements. Those assessments are voted on by the trustees and then they go to district court for approval of all of the actions of the trustees. The district court approves the issuance of permanent bonds which pay off the bond anticipation notes and provide the final financial paying of the debts of the district.

Rierden suggested that the staff report language might indicate that the standard has not been set yet as far as the paving of this particular district. He submitted copy of a letter from Don Thomas, County Engineer, which makes reference to Lot 59, which is the property in question, and the problems that could come up in the future if this area is

platted. Rierden also submitted Exhibit A, which sets forth where the County Engineer is proposing certain areas for 8 inch asphalt and certain areas for 6 inch asphalt. As far as cost sharing, Rierden agreed with the testimony given by Peter Katt and agreed that the proposed language be added to the annexation agreement conditions of approval. The only question he has is the language "commercially acceptable". The district would prefer the cash. The district does not want to have to go to a bank or committee. Rierden did not request that the language be changed because he believes they can work it out as the agreement goes forward to the City Council.

The term of the bonds would be nine years, with a lien on all of the properties during that time. When houses are sold it is up to the property owner and the buyer to determine whether the buyer will assume that obligation.

There was no testimony in opposition.

Staff questions

Esseks inquired as to the fiscal implications of the annexation, i.e. page 5 of the staff report on the community unit plan discusses the need for concrete pavement leading to this property and it is noted that the property has no direct access and will be dependent upon other streets leading to it. What's going to happen? If they commit only to asphalt pavement and this area is annexed, will the city be under any obligation to upgrade that pavement? Brian Will of Planning staff stated that he was attempting to indicate that staff has yet to negotiate an annexation agreement with the developer. The requirement for any off-site improvements would be included in the annexation agreement. That annexation agreement has not been negotiated and staff does not know yet whether there are going to be any off-site improvements required. That annexation agreement must be negotiated before these applications move on to the City Council. He also pointed out that there is an access point now to S. 84th Street, so there is a paved access.

Carroll inquired whether the staff is in agreement with the proposed amendments. Does the staff want to obligate the city to use the power of eminent domain? Will explained that the staff cannot obligate the city. It must be a decision by the City Council. Dennis Bartels of Public Works offered that the staff can agree to condemnation but it does no good. The City Council must approve the authority to condemn. It is not a staff decision. The easement is outside of the applicant's ownership, so they would have to negotiate an easement or the City Council has the authority to approve the city purchasing the easements and going through negotiations of condemnation.

Carroll inquired whether the staff is in favor of adding the two conditions to the annexation agreement as requested by the applicant. He thought it more beneficial for the city staff to negotiate the agreement and not let the Planning Commission insert

something that may or may not be appropriate. Will suggested that it is probably actually more for the benefit of the developer and the property owners. The staff does not object to inserting the language proposed. It would basically be a statement of an agreement made among the parties.

Carlson believes that the Planning Commission reviews annexations for contiguous nature to the city, availability of services, etc., i.e. more the planning nature. He does not recall when the Planning Commission has been involved in the terms of the agreement. Will concurred that the Planning Commission does not review the terms of the annexation agreement.

Rick Peo, City Law Department, agreed that it is probably not wise to incorporate any conditions of approval regarding the annexation agreement. Those terms need to be negotiated. What is being submitted as conditions are the concept issues to give a comfort level to the acreage owners and the developer that there will be some mechanism to get the water and sewer and the paved roads. He suggested that those concept issues should be deferred until the annexation agreement is negotiated.

Will agreed with the applicant's proposed amendments to the community unit plan.

Response by the Applicant

Katt stated that the biggest issue in getting this approved was incorporating an urban development into an area that had been developed for acreages some time in the past. These neighbors understand that they are going to be surrounded and incorporated into the City but they want to maintain as much as they can of what they have. These roads dramatically change their neighborhood and that is why they want to put in the asphalt roads and that is why this condition is an important issue. He believes that the Planning Commission should include the additional conditions on the annexation because the Planning Commission should weigh in on whether it is an appropriate land use to allow for these off-site roads to be paved to an asphalt county standard. Katt also believes that the neighborhood wants the Planning Commission to weigh in on that standard. Likewise, the sewer is a significant issue. These are important planning issues. The Planning Commission recommendation is not binding on the City Council and it is not binding on staff, but he thinks it would be helpful to the parties as they move forward and negotiate the annexation agreement.

Larson confirmed that the annexation agreement pertains to only Lot 59. Katt agreed. This is a rather unique circumstance and the developer is hopeful to include a third party in the annexation agreement (the road improvement district), but he has not had a chance to discuss this with the City Attorney. He believes it would simplify things to make the road district a third party in the annexation agreement.

Larson inquired as to what percentage of landowners signed onto the road improvement district. Katt did not know how many signed but they had to have 60%. He believes it may be 85% to 90%. This will be an improvement in the neighborhood and the road improvements will be necessary to the extent this is an urban development with more traffic. He believes this is a good model. He does not believe that the city can require one thing of his client in terms of off-street paving costs. But it was the right thing to do to find a way to minimize the impacts of this development in the surrounding neighborhood and his client is willing to contribute \$285,000 to help make this a good project. The projected cost estimate for the paving is \$700,000 or \$800,000 up to \$1.2 million. And with asphalt it kind of depends upon the cost of petroleum products at any given time. In any event, this developer's contribution is significant.

Brian Will approached the Commission and asked for the opportunity to clarify the applicant's proposed amendment to Condition #2.1.1.16. Because those lots in the southwest corner front onto Boone Trail, the Lincoln Municipal Code requires they front onto a street that has been improved. He does not believe the proposed amendment is clear to that effect. Katt explained that this language pertains only to the lots on Boone Trail. The five lots on Boone Trail are in a different drainage basin so they will not be able to be developed or final platted until some other sewer line comes up from the south. When that happens, and assuming that the Clarendon Hills Road District follows through, Boone Trail will be an asphalt road. All of the roads in that neighborhood will be asphalt. It is a neighborhood consistency issue and the language is intended to provide that if this road is paved as an asphalt road, it will be allowed to remain asphalt when these lots come in and the sewer is there. The language is intended to provide that if the road is paved as asphalt when the lots are ready to final plat, they can continue to use that asphalt road. If it is not paved at all and is gravel at time of final plat, then obviously we need to pave it to city standards at that time.

Esseks commented that there are going to be more developments like this where we have to reconcile the configuration to urban density. Once the sewer capacity is available, he thinks it a bad precedent to allow that section to stay as asphalt. How difficult is it to convert from asphalt to urban standards? Dennis Bartels of Public Works believes the proposed language is the result of comments made in his report. He explained that his concern was that there were no requests to waive the subdivision ordinance requirement that any lot when final platted must have curb and gutter street. This is one that the district has talked about paving as 8 inch asphalt, and it would take some review as to whether storm sewer is needed. The City and County believe the standard lends itself to curb and gutter. It is feasible to have a concrete curb and gutter with asphalt surface. The way the annexation is proposed, this piece is going to be a city street as soon as this annexation is passed because the annexation boundary touches this 300-400 feet of street, so that is a glitch in the paving district because it will be a city street unless the annexation is pulled back away from it. We had asked that the grading and their plat plans be shown to be graded and assumed to be curb and

gutter because when fully developed it is not desirable to have six or seven driveways. We like curb and gutter with urban size lots. We don't necessarily object to paving it but we are pointing out that when the sewer is available and it comes time to final plat, the rural section street will be substandard. We object to substandard streets next to urban size lots.

Carroll suggested that the lots on Boone Trail be made an outlot for now and remove that problem. Will suggested that these lots could be excluded from the annexation. That would allow them to come back and ask for that property to be annexed in the future. The Planning Commission could vote to delete Lots 16-20, Block 2, from the annexation.

ANNEXATION NO. 06001

ACTION BY PLANNING COMMISSION:

March 15, 2006

Carroll moved approval, subject to an annexation agreement, excluding Lots 16-20, Block 2, seconded by Esseks.

Carroll noted that the applicant requested that the Planning Commission add some conditions for the annexation agreement. He understands that the neighbors want to get involved with the paving but it is not the Planning Commission's responsibility to make that part of the annexation agreement. He does not want to get in the middle of the annexation negotiations. He will leave that up to the staff and the city. This is a great development and should move forward.

Strand disagreed, believing that the annexation should involve the recognition of the agreement for the road improvements. It is important and she would like to include it as a condition, especially since it has already been agreed upon.

As a compromise to adding the conditions, Esseks suggested that Mr. Rierden and the property owners be commended for developing this road district. It seems to be an important component of the urbanization of these acreage areas, but he wants to follow the advice of the staff that the conditions for the annexation agreement are beyond the responsibility of the Planning Commission. We can individually recommend that this type of road district be encouraged.

Carlson believes it is clear from the testimony that it needs to happen. If there were a problem, the Planning Commission would not recommend annexation. He believes it is clear in the record.

Strand moved to amend to add Condition #2 to the annexation conditions, as requested by the applicant. Motion failed due to lack of a second.

Motion for approval, subject to an annexation agreement, excluding Lots 16-20, Block 2, carried 8-0: Sunderman, Strand, Esseks, Krieser, Taylor, Larson, Carroll and Carlson voting 'yes'. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 06001

ACTION BY PLANNING COMMISSION:

March 15, 2006

Carroll moved approval, seconded by Larson and carried 8-0: Sunderman, Strand, Esseks, Krieser, Taylor, Larson, Carroll and Carlson voting 'yes'. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 06001

ACTION BY PLANNING COMMISSION:

March 15, 2006

Carroll moved to approve the staff recommendation of conditional approval, with the amendments #1 and #2 requested by the applicant, seconded by Strand and carried 8-0: Sunderman, Strand, Esseks, Krieser, Taylor, Larson, Carroll and Carlson voting 'yes'. This is final action, unless appealed to the City Council.

ANNEXATION NO. 06004;

CHANGE OF ZONE NO. 06016,

FROM AG AGRICULTURAL TO

R-3 RESIDENTIAL AND O-3 OFFICE PARK;

SPECIAL PERMIT NO. 06014,

SOUTHLAKE COMMUNITY UNIT PLAN;

and

USE PERMIT NO. 06003,

ON PROPERTY GENERALLY LOCATED

AT S. 91ST STREET AND HIGHWAY 2.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

March 15, 2006

Members present: Sunderman, Strand, Esseks, Krieser, Taylor, Larson, Carroll and Carlson.

Staff recommendation: Approval of the annexation, subject to an Annexation Agreement; approval of the change of zone; and conditional approval of the community unit plan and use permit.

Ex Parte Communications: None.

The Clerk announced that the applicant has submitted a request for a two-week deferral to advertise an additional waiver on the use permit.

Taylor made a motion to defer two weeks, with continued public hearing and action scheduled for March 29, 2006, seconded by Strand and carried 8-0: Sunderman, Strand, Esseks, Krieser, Taylor, Larson, Carroll and Carlson voting 'yes'.

There was no public testimony.

*** break ***

COUNTY SPECIAL PERMIT NO. 06009,
CHAMBERS ESTATES COMMUNITY UNIT PLAN,
ON PROPERTY GENERALLY LOCATED
AT S. 54TH STREET AND WITTSTRUCK ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

March 15, 2006

Members present: Sunderman, Strand, Esseks, Krieser, Taylor, Larson, Carroll and Carlson.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

Proponents

1. **Brandon Garrett** of Engineering Design Consultants appeared on behalf of the applicants, **Jim and Phyllis Chambers**. This is a 256 acre site with 16 lots proposed. The land will remain zoned AG, with the exception of 6 acres in the southwest portion which is in the Roca jurisdiction. The CUP minimizes grading by following the natural landscape and drainageways and enables the owner to continue to use the family airfield and to continue to farm the remainder of the land. There will be minimal impact to existing tree masses and the development will be served by rural water. The owner agrees to the conditions of approval, with the following exceptions:

Condition #1.1 requires corrections requested by the County Engineer in his letter dated February 27, 2006. Referring to #5 of the County Engineer's letter to relinquish all access to Bennet Road and Wittstruck Road except for Brush Creek Place, Garrett stated that he has had correspondence with the County Engineer and the County Engineer has agreed to allow access to Lot 1 from Wittstruck Road. The developer will relinquish access to Wittstruck Road and Bennet Road, except for Rush Creek Place, one private drive for Lot 1 and the two existing farm accesses on Bennet Road and Wittstruck Road.

Condition #1.17 would no longer be necessary.

Esseks inquired whether there is any 100 year floodplain on this parcel. Garrett confirmed that there is floodplain in the northern area where there is a creek area, but it does not affect most of the lots in the southwest portion where most of the CUP is located.

Esseks noted a swale along the eastern boundary of the outlot. Garrett explained that to be a treed swale that will remain as AG land. Lot 16 is a large lot of about 180 acres and there is the possibility of one dwelling unit on that lot.

There was no testimony in opposition.

Staff questions

Carroll asked staff to respond to the proposed amendments. Mike DeKalb of Planning staff acknowledged and understands that the applicant and the County Engineer have agreed to the farm access points and the access to Lot 1, and Planning staff would concur. DeKalb suggested that Condition #1.1 be amended to read: "Make the corrections requested by the County Engineer in his letter of February 27, 2006, as revised.", and that Condition #1.17 be deleted.

ACTION BY PLANNING COMMISSION:

March 15, 2006

Larson moved to approve the staff recommendation of conditional approval, with the amendment to Condition #1.1 to add the words, "as revised", and to delete Condition #1.17, seconded by Taylor and carried 8-0: Sunderman, Strand, Esseks, Krieser, Taylor, Larson, Carroll and Carlson voting 'yes'. This is a recommendation to the Lancaster County Board.

**PRELIMINARY PLAT NO. 06002,
SCHWORER ADDITION,
ON PROPERTY GENERALLY LOCATED
AT 33RD AND SUPERIOR STREETS.
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

March 15, 2006

Members present: Sunderman, Strand, Esseks, Krieser, Taylor, Larson, Carroll and Carlson.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

Additional information submitted for the record: Greg Czaplewski of Planning staff submitted an e-mail from Bob Rokeby, the adjacent landowner to the east, asking to delay for two weeks because he will be meeting with the applicant and hopes to work out some road issues. Czaplewski also submitted the following amendments to the condition of approval:

2. The City Council approves associated requests waiving the two-year time frame and surety requirements for improvements. The waivers to subdivision regulations requiring that street improvements be completed or guaranteed by surety prior to a final plat and installed within a specified time after approval of a final plat are hereby approved, provided:
 - 2.1 The street right-of-way shall be dedicated, as required by the subdivision ordinance, with each final plat.
 - 2.2 It is expected Lot 1, Block 1, will be final platted first, with the remainder of the property platted as an outlot. If so, improvements in the east/west street must be installed to a point east of the frontage road, which is satisfactory to Public Works, in order to provide access to the lot. The remainder of the street shall be improved prior to approval of a subsequent final plat.

The applicant has requested to waive the requirement that streets be improved in two years or bonds posted. Their intention at this point would be to final plat just one lot. Typically, the city would require that the portion of the street abutting that lot be dedicated and improved with that plat. The developer has asked to put in a short section of the street and then come in with subsequent plats and would finish installing the road. The entire length of the street would be dedicated with the first final plat. This has also been agreed upon in the annexation agreement.

Esseks inquired how the request from Bob Rokeby should be dealt with. Czaplewski indicated that the staff would certainly be willing to work with the two property owners, but at this point the plat meets the requirements of the subdivision ordinance, i.e. to show streets that connect to neighboring properties. Staff is not in a position to require that this be delayed.

Proponents

1. **Mark Hunzeker** appeared on behalf of **Schworer Motor**, the applicant. The property that is the subject of this plat was the subject of a change of zone application to H-3 that was approved by the Planning Commission back in May of last year. The annexation agreement has been discussed for quite some time, and the staff ultimately took the position that the applicant should go through the process of a preliminary plat in order to define the location of the roadways, sewer, etc. Mr. Schworer preferred a straight change of zone because he has no need or desire to create four lots on this parcel, but because the city requested it, he agreed to go through this process.

Hunzeker also advised that at least as far back as May of last year, the applicant has been working with people who have represented themselves to have an interest in the Rokeby property to the east and the alignment has never changed. The applicant received a letter from Tom Huston, who represented the people who had a purchase agreement to purchase the Rokeby property to the east back in June of last year, saying that his client had elected not to proceed with the project so they were no longer interested in participating in the cost of extending a road to that property at this time. The applicant agreed to go through the plat process, and the agreement was that this applicant would go ahead with a plat and extend the road only far enough to provide this applicant with access. The location of the access to N. 33rd Street is locked in. The Rokeby property is to the east and there is a need to curve the road around this site for the new Volkswagen dealership. That is an alignment that has not changed in any significant way at least for the last 7 or 8 months. The applicant's agreement with the city is to extend this road far enough to get access to Schworer Drive to access the new Volkswagen dealership. This applicant has no intention of creating buildable lots on these parcels at this time. It is going to be one big outlot until such time as there is a need to resubdivide. The city has agreed, and the applicant is willing to discuss the needs of Mr. Rokeby as far as access, but up until half-way through last year at least, people who were planning a project on that property knew this alignment. The applicant is willing to discuss how it might be changed but they really need to move forward because the Volkswagen people really want to get the building built because they are operating in a building that is not up to their standard.

Schworer is not anxious to move forward with paving a road he does not need. The intent is to go forward at least far enough to get one buildable lot. They do have to extend the sewer, but they do not need to build that road and don't expect to build it at

least in the immediate future. Hunzeker requested that the Planning Commission approve this plat and allow the applicant to move forward with the annexation agreement and zoning. The annexation agreement has been signed.

Carroll confirmed that the applicant is agreeing to pave the street prior to final plat of the rest of the lots. Hunzeker agreed. In the worst case scenario, it would require us to go ahead and pave "up to here" (pointing to the map), which, in this circumstance, is not only unnecessary, but it might be putting it in the wrong place.

Esseks expressed concern about development in the floodplain. Don Day of Olsson Associates indicated that they have asked for a waiver of stormwater detention and do have a floodplain development permit with the City and the proper permits through NRD and DEQ. At one time there were wetlands, but they have been mitigated from this location. Hunzeker explained that a lot of those issues were addressed at the time that 33rd Street was built.

2. JD Burt of Design Associates appeared on behalf of **Bob Rokeby**, who is in a neutral position at this point. Rokeby was not aware of this application until last week and he does have some questions and is scheduled to meet with the applicant on March 27th, to discuss issues with the plat, one of which is access. Burt showed a conceptual street alignment that was discussed between Mr. Schworer and Mr. Rokeby some years ago to find some way that both property owners could use that median opening. The Schworer property was made into two pieces some time ago, north and south. The south piece is 14 acres, so it was not required to go through the subdivision process before the Planning Commission. The concern is that without the completion of "this road" (35th Street) either from Superior Street or on Schworer Drive from the west, the Rokeby property is limited to a residential type access down off the east side of that right-of-way stub just off of Superior Street. There is no other way to access this property due to the creek and wetlands. Thus, we have a landlocked piece of real estate. Burt was not suggesting that the plat is not acceptable. Mr. Rokeby would just like an opportunity to discuss the options with Schworer.

There was no testimony in opposition.

Esseks asked staff to summarize why the city is allowing development in the floodplain. Czaplewski could not address specifically this site because he has not been familiar with it over the years. He does know that the applicant did get a floodplain fill permit which has been issued by the city. Esseks noted that there has been a lot of public discussion of "no net rise" and he believes there needs to be some justification for allowing development in the floodplain in the record. Was this a special area? Maybe there is some compensatory storage downstream?

Marvin Krout, Director of Planning, did not know how the applicant obtained a fill permit

while being outside the city limits. He understood that the fill had already occurred on this site. Even when in the city limits, if we are looking at zoning property or a use permit, we do try to look for opportunities to compensate – it is sort of an informal interim policy while we wait for a permanent policy to be developed. The normal policy is that if in the city limits, then it is subject to a different policy and you can obtain a fill permit and it can be filled.

Dennis Bartels of Public Works believes the application for the fill permit was made prior to the study. It has been filled periodically over time. Basically it is grandfathered in.

Ray Hill of Planning staff noted that the Landmark subdivision to the north along 33rd Street dedicated a conservation easement on the remaining wetlands and the floodplain in that area, so there has been some compensation for the fill that has occurred in that area. It is not like they are filling everything because the development to the north did provide for some conservation easements to protect the wetlands and floodplain.

Response by the Applicant

Hunzeker referred to the exhibit submitted by Mr. Burt, which shows the existing zoning district line and the area within the dash line is the area subject to the plat and change of zone. When the applicant went back to talk to the City about the annexation agreement, it was the city staff that requested that this plat be done. Mr. Schworer was not interested in dividing up his parcel but did agree to come in with a plat on the portion that they are requesting for change of zone. There is about a 150' deep piece of right-of-way that gives access to Superior Street at a median break to both the Rokeby property and the Schworer property. So whether there is a "road that goes through here" is something to be determined in the future. There is a right-of-way stub to which the Rokeby property has access today, and to which Schworer takes access by way of a frontage road constructed in conjunction with their Saturn dealership. In terms of what we are doing today with this plat, the Rokeby issue has nothing to do with it. The applicant is trying to comply with his agreement with the city to bring a plat to show the streets to serve the area from 33rd Street to the east. If the Rokeby's have a concern about where we meet up with them on the east, that can be discussed, but it is not something that requires a deferral of this plat.

ACTION BY PLANNING COMMISSION:

March 15, 2006

Carroll moved to approve the staff recommendation of conditional approval, as revised by staff today, seconded by Strand and carried 8-0: Sunderman, Strand, Esseks, Krieser, Taylor, Larson, Carroll and Carlson voting 'yes'. This is final action, unless appealed to the City Council.

CHANGE OF ZONE NO. 06011
FROM R-2 RESIDENTIAL TO
B-2 PLANNED NEIGHBORHOOD BUSINESS
and
USE PERMIT NO. 84B,
ON PROPERTY GENERALLY LOCATED
AT S. 70TH STREET AND PIONEERS BLVD.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: March 15, 2006

Members present: Sunderman, Strand, Esseks, Krieser, Taylor, Larson, Carroll and Carlson.

Staff recommendation: Approval of the change of zone and conditional approval of the use permit amendment.

Ex Parte Communications: None.

Proponents

1. **Mike Rierden** appeared on behalf of the applicant. The purpose of this request for the change of zone from R-2 to B-2 is to provide for some additional parking on the west side of the development. On the other side of the development is the neighborhood known as Pinehurst and the applicant's retail and office complex is on the east side of 70th & Pioneers. Rierden submitted Exhibit A, showing the strip of ground along the west side of the applicant's property. Originally when this development came about, the strip was to be a 50' buffer between the commercial on the east and the residential on the west. This change of zone and amendment to the use permit would allow the applicant to encroach approximately eight feet into that 50' buffer with concrete to allow a little more parking, bringing it down to 42' buffer. The applicant is willing to board both sides of the fence so that it will be 100% opaque and the applicant has hired Campbells Nursery to do a 100% landscape screen all along that buffer zone.

Rierden submitted a letter from Pinehurst, Inc., indicating approval and agreeing with this proposal. Rierden did receive some phone calls from property owners with concerns, so he requested the two week deferral in order to meet with the neighborhood, which they did last week. They heard many of the concerns of the property owners. One of them was security because there has been some speeding along 69th Street and some loitering. Rierden then submitted a letter dated March 10, 2006, which covers the matters which have been agreed upon with the neighborhood. The applicant has even agreed to do additional landscaping on the east side of the fence for any abutting property owners, should they request it. The applicant has also agreed to make every attempt possible to mitigate any light trespass. They have also

agreed to file a declaration of covenant restriction that there will be no further encroachment into the 42' buffer zone either by his client or the successors in title.

Rierden also submitted another letter from Pinehurst, Inc., dated March 15, 2006, in agreement with the plans that have been presented and the agreements reached.

Opposition

1. Marilyn Baker, 4316 Waterbury Lane, testified in opposition. This would increase the traffic, noise and pollution. When the retail office complex was established, they were required to have the 50' buffer zone and she does not believe that should be changed. They have attempted to change is twice previously. She acknowledged that the Pinehurst Board did give their approval, however, none of the board members live along that fence line nor did they ask for her thoughts or inform her that this was happening. She acknowledged that she did meet with the Board and raised her concerns, and she continues to have concerns even though some of the issues are being addressed.

Staff questions

Esseks observed that it looks as though we are treating the loss of 10' for a denser vegetative buffer. Do we have any evidence that the increased vegetation and the fence will provide the necessary noise and odor buffer? Is this a fair exchange? Joe Rexwinkle of Planning staff agreed that the applicant is going to provide more vegetation – it is difficult to say what the tradeoff might be. This is the applicant's property and it is his opinion that up to a 10' reduction in that buffer zone is a reasonable trade-off as long as they are compensating with some extra vegetation. The 50' buffer was part of the previous approval of the use permit. It was not a condition of approval that required the buffer, but it was shown on the site plan.

Ray Hill of Planning staff pointed out that the reason for the change of zone is the fact that the zoning line was drawn 50' from the west line of this project to provide that 50' buffer, and that was somewhat of a compromise that was agreed upon when the change of zone was submitted. There was some concern originally and it was sort of a compromise to leave that 50' buffer between the two. The owner does have the right to request the change of zone.

Don Linscott testified that over time, the developer has tried to get additional parking on this property. In working with Olsson Associates, they have been able to figure out a way to only encroach on the 50' setback by 8' and still come up with the parking that is necessary to provide for future parking of the current tenant in the building that is going to expand. As far as the 100% screening, the applicant has been working with Campbells Nursery. They even attended the neighborhood meeting and it was explained how the screening would be accomplished to cut down on the noise and improve the situation that currently exists. The applicant has also authorized Campbells to go from house to house and offer to plant a tree on the neighbors' property. They will do 100% screening on the fence and will provide screening on the west side of the fence as well. The tree line will also help to cut down the noise. Right now there is only 30% screening.

Carlson noted that the new parking will be on the east side of S. 69th Street, where they have previously been parking on the west side.

CHANGE OF ZONE NO. 06011

ACTION BY PLANNING COMMISSION:

March 15, 2006

Carroll moved approval, seconded by Strand and carried 8-0: Sunderman, Strand, Esseks, Krieser, Taylor, Larson, Carroll and Carlson voting 'yes'. This is a recommendation to the City Council.

USE PERMIT NO. 84B

ACTION BY PLANNING COMMISSION:

March 15, 2006

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

Carlson appreciates the neighbor's concern, but he believes the applicant has taken quite a few steps and the private covenant goes above and beyond and creates a much higher standard for enforcement.

Motion for conditional approval carried 8-0: Sunderman, Strand, Esseks, Krieser, Taylor, Larson, Carroll and Carlson voting 'yes'. This is a recommendation to the City Council.

There being no other business, the meeting was adjourned at 3:50 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on March 29, 2006.

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