MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, October 25, 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, Michael Cornelius, Dick Esseks, Gerry Krieser, Roger Larson, Mary Strand, Lynn Sunderman and Tommy Taylor; Kent Morgan, Ray Hill, Steve Henrichsen, Mike DeKalb, Brian Will, Tom Cajka, Sara Hartzell, 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 and requested a motion approving the minutes for the regular meeting held October 11, 2006. Motion for approval made by Krieser, seconded by Carroll and carried 9-0: Carlson, Carroll, Cornelius, Esseks, Krieser, Larson, Strand, Sunderman and Taylor voting 'yes'.

Carroll then moved to rearrange today's agenda, moving Item **No. 1.1., Change of Zone No. 06067**, from the Consent Agenda to Item No. 6.2, and to move **Item No. 5.3, Change of Zone No. 06063**, North 40 Plaza PUD, to Item No. 6.3, both after action on the 2030 Comprehensive Plan, seconded by Cornelius and carried 9-0: Carlson, Carroll, Cornelius, Esseks, Krieser, Larson, Strand, Sunderman and Taylor voting 'yes'.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: October 25, 2006

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

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 06067, CHANGE OF ZONE NO. 06068, COUNTY SPECIAL PERMIT NO. 06054, SPECIAL PERMIT NO. 06055, COUNTY SPECIAL PERMIT NO. 06057, COUNTY SPECIAL PERMIT NO. 06058, COUNTY SPECIAL PERMIT NO. 06059, SPECIAL PERMIT NO. 06063 AND WAIVER NO. 06008.**

Ex Parte Communications: None.

Item No. 1.1, Change of Zone No. 06067, was previously moved to Item No. 6.2. **Item No. 1.3, County Special Permit No. 06054, and Item No. 1.5, County Special Permit No. 06057,** were removed from the Consent Agenda and scheduled for separate public hearing.

Item No. 1.6, County Special Permit No. 06058, and Item No. 1.7, County Special Permit No. 06059, were removed from the Consent Agenda and moved to requests for deferral.

Carroll moved approval of the remaining Consent Agenda, seconded by Strand and carried 9-0: Carlson, Carroll, Cornelius, Esseks, Krieser, Larson, Strand, Sunderman and Taylor voting 'yes'.

Note: This is final action on Special Permit No. 06055, Special Permit No. 06063 and Waiver No. 06008, 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.

COUNTY SPECIAL PERMIT NO. 06060
FOR A WIRELESS FACILITY
ON PROPERTY GENERALLY LOCATED AT
S.W. 72ND STREET AND ROCA ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: October 25, 2006

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

Staff recommendation: Deferral for two weeks.

Ex Parte Communications: None.

The Clerk announced that the applicant has requested a two-week deferral.

There was no public testimony.

Strand moved to defer, with continued public hearing and action scheduled for November 8, 2006, seconded by Carroll and carried 9-0: Krieser, Taylor, Cornelius, Sunderman, Strand, Larson, Esseks, Carroll and Carlson voting 'yes'.

[Editorial Note: This application was withdrawn by the applicant on October 26, 2006.]

COUNTY SPECIAL PERMIT NO. 06058
FOR A WIRELESS FACILITY
ON PROPERTY GENERALLY LOCATED
AT N.W. 126TH STREET AND ALVO ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: October 25, 2006

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

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

The Clerk announced that the applicant has requested a two-week deferral.

There was no public testimony.

Strand moved to defer, with continued public hearing and action scheduled for November 8, 2006, seconded by Carroll and carried 9-0: Krieser, Taylor, Cornelius, Sunderman, Strand, Larson, Esseks, Carroll and Carlson voting 'yes'.

COUNTY SPECIAL PERMIT NO. 06059
FOR A WIRELESS FACILITY
ON PROPERTY GENERALLY LOCATED
AT N. 176TH STREET AND O STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: October 25, 2006

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

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

The Clerk announced that the applicant has requested a two-week deferral.

There was no public testimony.

Strand moved to defer, with continued public hearing and action scheduled for November 8, 2006, seconded by Carroll and carried 9-0: Krieser, Taylor, Cornelius, Sunderman, Strand, Larson, Esseks, Carroll and Carlson voting 'yes'.

CHANGE OF ZONE NO. 06060
FROM AG AGRICULTURAL TO AGR AGRICULTURAL RESIDENTIAL
and
SPECIAL PERMIT NO. 06052,
WEST VAN DORN HEIGHTS COMMUNITY UNIT PLAN,
ON PROPERTY GENERALLY LOCATED
AT THE NORTHEAST CORNER OF S.W. 70TH STREET AND WEST VAN DORN.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: October 25, 2006

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

Staff recommendation: Denial.

Ex Parte Communications: None.

The Clerk announced that the applicant has requested an additional two-week deferral.

There was no public testimony.

Carroll moved to defer, with continued public hearing and action scheduled for November 8, 2006, seconded by Cornelius and carried 9-0: Krieser, Taylor, Cornelius, Sunderman, Strand, Larson, Esseks, Carroll and Carlson voting 'yes'.

COUNTY SPECIAL PERMIT NO. 06054
FOR A CAMPGROUND
ON PROPERTY GENERALLY LOCATED
AT S.W. 128TH STREET AND WEST SALTILLO ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: October 25, 2006

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

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

This application was removed from the Consent Agenda due to a letter received in opposition.

Staff presentation: **Mike DeKalb of Planning staff** submitted five additional letters in support. This is an application for a special permit for a campground on 80 acres at S.W. 128th and West Saltillo Road. The proposed campground is 40 lots located around a dam site.

Proponents

1. John Vosta, who lives on a farm near Milford, 435 224th Road, explained that he is requesting this special permit because he believes there is a lot of interest in this type of campground. Each prospective tenant will be go through an application process similar to renting a house or apartment. They will sign a contract which sets forth the rules of the campground and surrounding area. His family will have a camper on the lake and his son will be building a house near the campground entrance. Permanent residency will not be allowed. Anyone not following contract rules will be evicted. ATV's will not be allowed. He will need to remove some Chinese elm and cedar trees but he will be planting oak, ash and pine trees. Vosta believes that this project is in accordance with sound zoning practices because it will not be seen or heard by the neighbors. He will keep the area secluded by planting trees. Three adjoining property owners are in support. He has lived on a farm all his life and knows how important it is to be a good neighbor. He believes this will be an asset to Lancaster County.

Opposition

1. Jeff Lewis, 155 140th Road, Denton, approximately ½ mile to the west of the proposed site, testified in opposition. There has already been some work started at the site. He is concerned about regulation of campsites. This is about a 2-acre lake and 40 campsites seems like a lot. He also has concerns about noise and the enforcement of the regulations. He purchased and built on 30 acres in the County for the quiet, serene skyline. He does not see anything in the report about an Army Corps of Engineers permit. He had to get such a permit to build his home. He does not see a site plan showing the layout of the campsites. Where will the well be drilled? He believes that water is poor in this area.

2. Ed Mlinek, 5501 Grouse Place, Lincoln, who owns a 20-acre parcel immediately adjacent to the proposed site, testified in opposition. He moved west of Denton because it is an area that is being developed into larger acreages. Directly to the north there are a lot of 20-acre developments, and further south demonstrates larger acreage developments. The area directly to the north actually has a total of 17 20-acre parcels being developed. There are strict covenants where you cannot keep your RV's outdoors, etc. He has constructed a road to get to his land and has put in a well. Having 40 campsites immediately adjacent to his 20 acres is not consistent with his dream of moving to the country. There could be 40 campfires burning adjacent to his property. There will not be 40 neighbors – they will be 40 renters. There are three visitors per campsite pad, which means potentially 120 nonowners that would be visiting this property. The renters will not have a vested interest in the future of the property. His concerns include debris and trash, lights from 40 campsites, noise, and trespass. An 8-acre cannot support 40-120 fishermen, so he questions the recreational value of a 2-acre lake. He does not know how the applicant will be able to prevent someone from staying year-round. By default, it is going to become a storage site for recreational vehicles. He is also concerned about law enforcement. He does not want 40 strangers living next door to his family. He believes his

property values will be negatively affected and he will have to sell it.

Esseks inquired whether there is any buffer between Mr. Mlinek's property and the proposed site. Mlinek responded that there are some trees, but he believes he will see and smell the smoke from the campfires.

3. Bruce Condello, 1469 West Rokeby Road, in Seward County, testified in opposition. He has fished in the local lakes and spent a lot of time in the evenings in local areas that allow camping. He has observed a lot of the underage drinking and general alcohol consumption at these campsites. There is law enforcement available in public areas, but he is concerned about a private area. There are environmental impacts from campsites, i.e. the cost of law enforcement, litter cleanup, high number of people and high densities on the site, direct physical impact from campfires, refuse regulation violations, illegal drugs, firearm use, fireworks, noise, human waste, large parties and structures. There are water quality concerns due to human waste. This watershed will not support a pond of that size unless it is supplemented with well water. He wants assurance that there will be no human fecal material on the site. There should be an evaluation of the effect on local wells by the pumping of the water and the waste. The developer should guarantee that there will be law enforcement present to monitor alcohol consumption and drug use. The Sheriffs should be informed that people exiting this campground will be going across a shared jurisdiction road.

4. Rick Bjorn, 2479 County Road A, one mile due west of the proposed campsite, testified in opposition. He is concerned about the road maintenance on Saltillo and County Road A. As it stands now, the Saline County portion of Road A has very little gravel on it. Anytime it rains that road is very, very slick. He is concerned about pulling big rigs down that road damaging the road and the safety of the campers themselves. Another question, what is put into place to stop people from creating a permanent residence there? He is also concerned about response to fire calls. He assumes it would be Crete which is an all volunteer staff. The general enforcement of campsite rules are a concern. It would be quite a drive for law enforcement officers. What process is in place to make sure it is maintained as a campsite and not something of a different nature such as a mobile home court?

Staff response

DeKalb clarified that the Lancaster County Sheriff would be the responding agency for emergency services relative to noise or disorderly conduct. Traffic on the roads is the responsibility of the Lancaster County Engineer, and his only concern was the access point. He did not raise concern about the road. The closest paved road on the Lancaster County side is the paved road south of Denton going past Spring Creek Prairie.

With regard to water and wastewater, there is a condition of approval which requires

approval by the Health Department. The Health Department has indicated that it may need a commercial water permit from NDEQ.

Esseks observed that 40 units seems to be a lot. DeKalb agreed, but there is no benchmark in the regulations to set a number. It would be a private community, managed and operated on a rented or leased basis. The applicant did not provide a drawing of the layout.

Esseks expressed concern for the property owners knowing that this kind of use might be located next to them. DeKalb pointed out that campgrounds are listed as a special permitted use in the AG zoning district in the county zoning resolution.

Esseks suggested that the adjective “temporary” would suggest that more permanent storage would be inappropriate. DeKalb believes that Condition #5 of the special permit addresses that issue. The intent is to be clear that these will not become year-round residences. Enforcement will be by the Building & Safety Department, based on a complaint basis.

Strand assumes the Health Department did not object to all of the wastewater going into the lagoon from the shower house and restrooms. Does the Corps of Engineers need to sign off on anything? Each site will have 40' of lake frontage, so if they are gong to have to supplement the lake. Will it come from the 4 wells around the lake? What impact does that have on the neighbors, and what happens if there is a heavy rain? DeKalb stated that the applicant did not submit a groundwater report or information on the specific wells or whether he would be recharging the existing pond. There has obviously been a lot of earth moving work that has occurred so he is obviously modifying the area.

Carroll pointed out that because it is a special permit, there is an opportunity to revoke it if the conditions are not followed. DeKalb concurred. The County Board can revoke it or it can be turned over to the County Attorney for judicial relief, if need be. In addition, the Planning Commission has the authority to adjust, add or modify the conditions of approval as well.

Larson does not see how each lot can have 40' of lake frontage.

Response by the Applicant

Vosta clarified that the lake will be approximately 2.5 acres. There may be some sites that will not have lake frontage. A lot of campers do not care if they don’t have water. Most people want to be able to take their camper to the site and leave it.

Vosta stated that he will monitor the trash. It becomes a small community and everyone looks out for each other.

With regard to the well water, Vosta has a house well there now and he plans to drill one more well for the bath house and will be using those two wells to fill the dam. After that, he might need one of the wells to maintain the water if there is not enough rainfall. The NRD said that he could use the existing lake that was in disrepair, so he has taken dirt out and made the dam wider.

The closest campsite will be 1300' from the north fence line. He does not believe there will be any noise pollution.

Vosta assured that people will not be dumping their waste into the dam. There will be a dumping station. The campers will not want to pollute the dam because they will be fishing in it.

Cornelius inquired how the applicant will control the duration of stay. Vosta stated that he will shut the water off on November 1st, so it will be physically impossible to live there during the winter. They can leave their camper, but it will not be seen because of the trees and hills. It will not become a junk yard because he will not allow that to happen.

Strand, too, could not picture this small of a lake with 40 sites. She inquired whether the applicant would consider reducing it to 20 campsites. Vosta's response was that not all of the campsites have to be right on the lake. A lot of people are not worried about using the water. They just want a place to go to relax and get away from the city.
Esseks likes the proposal to reduce the number of campsites. It seems like we're dealing with a lot of unknowns here. We need to protect the public welfare, including the lifestyle of those living nearby. There is a lot of potential for nuisances and a lot of human waste. He cannot approve something with so many unknowns, and the primary problem is the size. 40 sites with 2 or 3 people per site on a big weekend, is a lot of human beings to manage in a relatively small space. Vosta could not answer the question about reducing to 20 because there will be expenses in doing the improvements. It might not work for him with just 20 sites.

Cornelius asked whether the applicant has a layout in mind. Vosta does have a layout in mind, but he has not had it drawn out yet because he did not want to spend too much money before knowing whether the project will be allowed.

ACTION BY PLANNING COMMISSION: October 25, 2006

Carroll moved to approve the staff recommendation of conditional approval, with amendment to add a condition that the special permit be renewed on an annual basis, seconded by Taylor.

Carroll commented that "we don't know how it is going to fit and how it is going to work." He wants to take the applicant at his word that he will police the site, be a good neighbor and follow the conditions of approval. With the condition to annually renew, the applicant

will need to make sure that he is in compliance every year, and if he doesn't comply he will lose the permit. Carroll believes this will be acceptable with the staff conditions in place.

Strand stated that she will vote against the motion because of the number of campsites. She would like to see him start off with a smaller number with the ability to increase it in the future.

Larson agreed with Strand. He does not see how this will fit. He lives on 11 acres and he does not see how he could put 40 campsites on his property. There are too many unanswered questions.

Esseks does not find the conditions to be sufficiently strong and detailed to protect the public health and welfare.

Cornelius suggested that 20 campsites does fit the 40' of lake frontage.

Motion for conditional approval, with amendment to require annual renewal, failed 3-6: Taylor, Sunderman and Carroll voting 'yes'; Krieser, Cornelius, Strand, Larson, Esseks and Carlson voting 'no'.

Strand moved to deny, seconded by Larson and carried 6-3: Krieser, Cornelius, Strand, Larson, Esseks and Carlson voting 'yes'; Taylor, Sunderman and Carroll voting 'no'. This is a recommendation to the County Board.

COUNTY SPECIAL PERMIT NO. 06057
FOR A TEMPORARY MOBILE HOME
ON PROPERTY GENERALLY LOCATED
AT S. 68TH STREET AND PRINCETON ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: October 25, 2006

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

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

This application was removed form the Consent Agenda at the request of Ryan Bourek.
Staff presentation: **Mike DeKalb of Planning staff** presented this application for a mobile home to be lived in while building a permanent residence at S. 68th and Princeton Road, one-half mile north of Norris School, on pavement. It is just short of a 20-acre parcel.

Proponents

1. Tod Stertz, who resides at 6030 S. 81st, testified that he is applying for this special permit for the temporary use of a mobile home while he builds a permanent residence. This property is about 2.5 miles south of Hickman and ½ mile north of Norris. He spent his life on an acreage down by Hickman and graduated from Norris. His dream has always been to have an acreage and the opportunity presented itself last winter to purchase this land. He spent all year cleaning it up and putting a road in. His current residence is on the market and this is an attempt to prepare for the sale of that home. He is a custom homebuilder in Lincoln and the surrounding area so he would like to watch the progress and do as much of the work as he can. He plans to begin construction this next spring and would hope to be done in 12 months.

It was pointed out that the conditions of approval require removal of the mobile home in 12 months.

Opposition

1. Ryan Bourek, who owns adjacent property to the north and east (24201 S. 68th Street), testified in opposition. He has no doubt that in the future the applicants will be great neighbors because they share a common dream of owning acreages in the country and improving their properties. His request is that the permit be limited to 12 months, and that it not be allowed to be extended for up to three years.

Staff response

DeKalb pointed out that the conditions of approval require that the construction of the home be started within six months and completed within twelve months. If something happens and they slow down, Building & Safety can administratively allow one-year extensions, but not beyond three years.

Response by the Applicant

Stertz acknowledged that he does not know how things will go. He is just wanting to prepare for the sale of his existing home. It may be spring before he gets started on the new home. He has six months to get the permit and it could take 12 months from there. There are a lot of trees and it will not be unsightly.

ACTION BY PLANNING COMMISSION: October 25, 2006

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

Strand is comfortable with the conditions of approval. The Commission has approved this same type of permit before with the same conditions.

Motion for conditional approval carried 9-0: Krieser, Taylor, Cornelius, Sunderman, Strand, Larson, Esseks, Carroll and Carlson voting 'yes'. This is a recommendation to the County Board.

CHANGE OF ZONE NO. 06066
FROM R-4 RESIDENTIAL TO R-2 RESIDENTIAL;
FROM R-5 RESIDENTIAL TO R-4 RESIDENTIAL;
AND FROM R-6 RESIDENTIAL TO R-4 RESIDENTIAL,
ON PROPERTY GENERALLY LOCATED
BETWEEN 26TH AND 33RD STREETS,
FROM "O" STREET TO "A" STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: October 25, 2006

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

Staff recommendation: Approval, except for the R-5 to R-4 portion north of "N" Street.

Ex Parte Communications: None.

Additional information for the record: **Steve Henrichsen of Planning staff** submitted two letters in support from the Lincoln Neighborhood Alliance and the Witherbee Neighborhood Association.

Staff presentation: **Steve Henrichsen of Planning staff** explained the three parts to this proposal:

> 1) the area east of 27th Street, east of the alley between 27th and 28th, going from 27th to 33rd, from N Street south of O, all the way down to A Street – this area is currently zoned R-4 and the request is to change the zone to R-2. Staff recommends approval because it is consistent with other downzoning recommendations. This area has a fairly high overall density of 6.3 dwelling units per acre. 40% of the overall area in the downzone is duplexes and multi-family uses, but the area from R-4 to R-2 is closer to 70% single family.
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> 2) the area on both sides of 27th Street generally south of N Street down toward Randolph, including some property on the east side of 26th – this is a change from R-6 to R-4. Staff also supports this change. It is in the Antelope Valley Redevelopment area and is shown as a low density conservation area. There is not an alley on the west side of 27th Street. Any more additional dwelling units on 27th Street on the west side would all take direct driveway access so there would be problems in the longer term with additional units on the west side of 27th. There is an alley on the east side of 27th Street which is shared with the single family units to the east, on the west side of 28th Street. The neighborhood purportedly has a lot

of parking and traffic problems along these long alleys. That is why the staff supports the change from R-6 to R-4.

3) the area from R-5 to R-4 includes a small area that is north of N Street, south of O, south of commercial zoning along O Street. Henrichsen agreed that this is close, but the staff believes it may be appropriate to remain as R-5 in terms of a future transit corridor along O Street and the majority of uses north of N are in four-plex uses.

Henrichsen advised that the neighborhood association held two additional neighborhood meetings and has complied with all of the requests of the Planning Commission in terms of additional notification. Despite that fact that the Planning Department sent out over 1,000 letters, Henrichsen has received less than eight calls or e-mails on this application. The majority have been in support. There was one mailing from the neighborhood association and one mailing from the Planning Department.

Proponents

1. Becky Martin, 338 S. 29th Street, testified in support as the chair of the Downzone Committee for the Woods Park Neighborhood Association. The top goal is to retain the historic fabric and integrity of the neighborhood and to put a limit on density. The neighborhood consists of two historic districts, and, along with the current design standards for new construction, this change of zone will help accomplish their goal.

The Neighborhood Association requests that the Planning Commission support the entire application. The R-4 to R-2 would strengthen a stable area in the neighborhood and there has been no opposition to this portion of the application. The R-6 to R-4 would greatly enhance another wonderful area. Martin showed a map of the east side of 27th Street where the alley access is very limited. Any increase in density would make that rather difficult. She also showed photographs depicting the current flavor of the neighborhood, which is not all multiples. Most of the homes were built in the early 1900's or late 1800's, with a multiple slipped in once in awhile. The rest of the streetscape is very much the old house fabric of the rest of the neighborhood. When 27th was widened, many driveways were taken out. There are no driveways on the east side of 27th Street because of the widening. There can be dramatic use of the alleys. This could become very troubling if there was an increase in density.

The R-5 area is another great area with similar characteristics. Out of 25 structures there are only 5 that were built to be multi-family. There is nearly 70% support of the proposed R-5 area, with no opposition. (This is the area staff is recommending be denied).

Martin submitted that limiting the density in this neighborhood would only strengthen an already vital neighborhood in Lincoln.

Esseks inquired whether there is any data on the sale prices of the homes. Marvin suggested that they vary immensely, anywhere from $85,000, with an average of $100,000 to $140,000, and then there are some valued closer to $200,000 or more.

2. Sandra Johnson, 631 S. 30th Street, current President of the Woods Park Neighborhood Association, testified in support and expressed appreciation to the staff for helping them work through all of the important issues having to do with this application. The Neighborhood Association does depart with staff on the N Street corridor, which is a fairly short stretch. The City Council has recently approved the Witherbee downzoning action that is very similar, going from 33rd to 48th Street.

3. Michael James, 145 S. 28th (in the R-5 area), testified in support. He is disappointed that staff does not recommend his property for the R-4 zoning. The dwellings on his block were built as single family. His block has the established neighborhood look and is a mix of single family and conversion apartment houses. He knows there are three single family homes on the 100 block of 28th Street. These were conversion apartments at one time. There is no shortage of affordable housing in this neighborhood, counting three "for rent" signs on his street. The alley that runs behind his house between 27th and 28th from N to O is used as a primary road. It is the only access to parking for most of the residents on 28th Street. There are no curb cuts on the west side of 28th. This alley serves to access the businesses on O Street and 27th Street. It is used to avoid traffic signals at 27th and O. His neighborhood cannot support more density in this area. The infrastructure cannot accommodate it. There is not a lot of street parking available. He requested that the Planning Commission consider the high level of support from the property owners, including the owners of the multiple units. The precedent was set when Witherbee downzoned to R-2 on the south half of the 100 block from 33rd to 48th Street. The applicant is not asking that any properties zoned for office or business be rezoned.

4. Matt Spilker, 519 S. 27th Street (in the R-6 to R-4 area), testified in support. He believes this is a matter of crime and safety in the neighborhood as it relates to population density. He purchased his home six years ago and has witnessed or been the victim of seeing individuals parking in front yards, on sidewalks, drug sales, noise problems, trespassing, gang activity, destruction of property and theft. All of his neighbors have been witnesses or victims of shootings, beatings, domestic assault, drug sales, etc. Spilker indicated that he is not here to tell the Planning Commission that multi-family housing units are the cause of all crime in his neighborhood, but he is here to say that, based on his experience and the observations of his neighbors, the majority of the crime they have witnessed has been attributed directly to rental units, particularly the multi-family dwelling units. The more people you put into a neighborhood, the more problems you are going to have.

In addition, Spilker pointed out that 10 of the 16 parcels are owner-occupant single family dwellings around his block and there was no opposition on his block, including the owners of the two apartment complexes. As population density increases in this neighborhood,

some of these owner-occupants are going to leave. He believes this change of zone will help provide stability in this neighborhood.

5. Greg Sanford, 18000 N. 98th Street, Waverly, who owns property at 2827 and 2829 M Street, testified in support. This duplex was built as a duplex and is consistent with the neighborhood. This is a very good neighborhood and it is an easy rental area; however, he does not want to see more buildings or destroy the architecture in the neighborhood. He does not want to see more multi-family dwellings in this area.

6. Cheryl Widhalm, 146 S. 28th (R-5 to R-4 area), testified in support, stating that there are three key points:

> 1) there is a tremendous amount of support from the property owners. Currently, out of 25 property owners, there have been 17 in support and none opposed.
>
> 2) crime and safety is a concern in the R-5 to R-4 area. She sees local law enforcement in her neighborhood often. She hears fighting and swearing on a regular basis. There have been 27 reported crimes in the last 60 days, which is an average of one crime every two days. Out of those 27 crimes, 5 of them have happened on her block.
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> 3) the alley between 28th and 29th, between N and O, goes all the way through to O Street and can be accessed form O Street. It is used for large semi-trucks that bring supplies to businesses on the city block. This alley is also used by tenants and owners that live on 28th and traffic that turns off O Street. All properties park in the rear of their home except one, creating a high volume of traffic and congestion in the alley.

7. Heidi Uhing, 627 S. 28th Street, testified in support. This proposal is an effort to balance history and density in the neighborhood. The back of her property is the alley behind those businesses on 27th Street and the apartment complexes. She generally supports the downzoning but her focus is on the R-6 to R-4 area. The area now contains enough, if not too many, rental units to meet the demand. There are five “for-rent” signs near her home. The density creates a parking issue and safety problems. The parking in the alley presents some obstacles. It is a long paved alley used for several businesses, three rental houses and some six-plexes. She estimates that anywhere from 50-60 cars use that alley for parking.

8. Randy Smith, 705 S. 32nd Street (R-4 to R-2 area), testified in support. He has lived in the neighborhood for 10 years and urged the Planning Commission to support the entire application. He believes this will benefit the neighborhood and the city as whole. He agrees that this will aid in preserving affordable single family homes in the neighborhood. He lived in the neighborhood for six years as a renter and has owned his home for four years. This downzone will help the neighborhood preserve the historic character and will

help preserve a stock of quality, affordable single family homes near the center of the city . There are relatively few structures in the neighborhood that were constructed to be multi-family, and many of these have been converted back to single family. For example in the R-5 to R-4 area, the James house on the northwest corner of 28th and N was a duplex and is now single family. Cheryl Widhalm's house was also formerly multi-family. The house on the southwest corner was a duplex and has been converted to single family. There is a long term trend in the neighborhood to restoring many of the original single family homes back to single family use. This downzone will help protect these investments in the neighborhood.

Opposition

1. Darrel Ihde, 1331 Cottonwood Drive, who owns a property on the west side of 27th with driveways (401 S. 27th), testified in opposition. His property is now a conversion duplex zoned R-6 and he wishes to keep it zoned R-6. If the downzone is approved, he would request to be allowed to at least build a 4-plex. He would never build an 8-plex. He does have driveways, two slabs for off-street parking and a four-stall garage. He is opposed to downzoning 401 South 27th Street.

Staff questions

Esseks asked staff to reiterate the opposition to the R-5 to R-4 area along N Street between N and O Street. Henrichsen agreed that there are points for and against. In terms of the land use map for the area, he agreed that it is possible that some of the multi-family have converted back to single family. Those properties are usually a challenge to keep updated. In the area from N to O Street, it is possible that there may be more properties in single family use. However, there is support in the Comprehensive Plan for transit corridors where O Street might be a corridor for more intensive residential uses, thus it might be appropriate to retain the R-5 zoning. Certainly some of the alleys between N and O Streets are shorter in terms of distance but may have a fair amount of traffic.

Response by the Applicant

Becky Martin encouraged the Planning Commission to support the entire package.

She showed photographs of the Ihde property, depicting a parking problem. Even though the west side has more parking, the east side on M and L will see overflow with visitors or guests or high rental uses.

With regard to the R-5 area, she asked the Commission to consider the property owner support. It is kind of a transition area, but if we leave the mix as is, it is a nice transition

rather than the potential of increasing the density.

She also submitted that most of the structures in the neighborhood were built to be single family, including the streets and the infrastructure.

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Cornelius moved approval, including the R-5 to R-4 area, seconded by Esseks.

Cornelius believes this to be a very thought-out application. He recognizes the thought of staff as far as the exception, but there is a degree of support that he thinks needs to be taken into account. We're looking at a neighborhood that is transitioning from higher density, hearing over and over that dwellings are being de-converted, and he would like to support this by including the R-5 area.

Larson agreed. There may have been some de-conversions in the R-5 area along N Street, so it is not as much a multi-family street as originally thought.

Esseks indicated a desire to support the motion. The properties seem to be mostly owner-occupied. When he looks at the assessed valuations for 2006, he finds a lot of very affordable homes, and when he looks at all closed sales of existing homes in 2005, the average is $144,000. It looks as though most of these homes are below the average for the total city. It would not surprise him if this area keeps that average down. This is a marvelous asset for the community with the numerous relatively inexpensive homes that are owner-occupied. We should do everything we can to protect this asset.

Carroll stated that he will oppose the motion. Parts of the neighborhood need to have a zoning change but this is too sweeping. He cited some facts from the Urban Land Institute higher density development study: Myth #1: higher density development overburdens schools; Myth #2: higher density development lowers property values in the surrounding area; Myth #3: higher density development creates more regional traffic congestion and parking problems than lower density development; and Myth #4: higher density development leads to higher crime rates. This is from a nonprofit organization that studies urban density across the states.

Carroll does not believe this neighborhood is in jeopardy. The neighborhood is improving on its own the way it is today.

Taylor stated that he will support the motion. This is another example of neighborhoods studying their own situation and making decisions to chart their own course and sustain the type of neighborhood in which they want to live. Downzoning does work. It is very pragmatic and practical.

Carlson stated that he will support the motion. He believes that there may be some

philosophical application and some actual practical application. These people have done their leg work and have demonstrated the particular aspects of their neighborhood. The fact that they are trying to stabilize and strengthen indicates that we should take this opportunity to change the zoning. To strengthen single family ownership helps the schools and the existing condition.

Motion for approval, as requested by the applicant, carried 7-2: Krieser, Taylor, Cornelius, Sunderman, Larson, Esseks and Carlson voting 'yes'; Carroll and Strand voting 'no'. This is a recommendation to the City Council.

"*** Break ***

CHANGE OF ZONE NO. 06069
FROM AG AGRICULTURAL TO AGR AGRICULTURAL RESIDENTIAL
and
SPECIAL PERMIT NO. 06061,
HIDDEN VALLEY ESTATES COMMUNITY UNIT PLAN,
ON PROPERTY GENERALLY LOCATED
AT S. 112TH STREET AND PINE LAKE ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: October 25, 2006

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

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

Ex Parte Communications: None.

Staff presentation: Mike DeKalb of Planning staff presented this proposal which is located in the Hidden Valley Golf Course area at S. 112th and Pine Lake Road. There are actually two sizes of parcels involved. The change of zone is a smaller parcel within the area of the golf course from AG to AGR, and the CUP covers the entire golf course area. He noted that the staff recommendation on the change of zone to AGR is approval on 36.09 acres, and the primary reason for recommending approval is that this change of zone and development will facilitate the future road improvements in the County. The applicant has offered to acquire an additional 2-3 acres of right-of-way on the northeast corner of 112th and Pine Lake Road in order to shift the road around the wetland and creek, and this will alleviate some bridge problems. Public Works and the County Engineer are both in support. Accomplishment of this shift by the private land acquisition now saves future cost and meets the future need as well as the needs for a properly designed road.

The community unit plan includes 193 acres, with cluster of 26 lots basically in the area

zoned AGR.

Sunderman sought clarification as to why the change of zone acreage is different than the community unit plan. DeKalb explained that the applicant is only asking for enough change in density to get the number of units to justify acquiring additional land on the north end. Sunderman confirmed that the CUP will go off the AGR onto AG. DeKalb concurred that the CUP will be a blend of density of AG and AGR.

Carlson confirmed that the CUP will be platted with build-through. DeKalb confirmed that the CUP will need to comply with some of the build-through requirements, which relates to the staff recommendation to deny the waiver of street lighting, sidewalks and street trees.

Carlson inquired as to the staging of the access road. The road with the lots appears to come up 112th Street to the east. DeKalb demonstrated at the map. They are proposing an at-grade crossing. The conditions of approval suggest relocating it to the quarter mile line.

Strand inquired whether the applicant has purchased the additional 2-3 acres of right-of-way. DeKalb believes they have an agreement for contract but did not know whether it had been consummated.

Esseks noted that this development will have a community sewer system, yet later on today's agenda (West Van Dorn Heights), the staff is recommending denial of a project with a package wastewater system. He asked DeKalb to distinguish the difference between the two systems and why staff is recommending denial of West Van Dorn Heights. DeKalb stated that the package systems are being seen more and more. They are less expensive and are being approved by NDEQ. The recommendation to deny West Van Dorn Heights is not based strictly on there being a package system. With the type of density in Hidden Valley Estates, they have to have that package plant because of the existing condition.

Proponents

1. Kent Seacrest appeared on behalf of **Hidden Valley Estates, LLC.** He submitted that golf course lots are very popular in Lincoln and that we are virtually out of them. This group wants to make lots of improvements and build a brand new clubhouse. They explored with staff not only bringing in a lot of golf course lots, but also bringing in the neighbor to the west and annexing and doing city water. Staff was not comfortable with that big annexation package, so as a result this development went into the compromise mode.

The developer has worked with staff from 75 lots down to 26 lots, with a combination of AG and AGR. The real benefit is that this proposal dedicates right-of-way through an active golf course for 112th Street. Where 112th Street comes in, there is about 200' of creek, so

the city and county suggested shifting 112th Street over to avoid a massive public expenditure, the 404 permit process and about 230' feet of creek. In return for the 112th Street right-of-way, this developer is required to build a brand new hole, rebuild three golf course holes, and relocate three irrigation wells and many irrigation lines. This has been a major achievement by the staff to get right-of-way through an active golf course and the developer's willingness to contribute the right-of-way costs north off their site. The city will not have to pay for damages to the golf course and the developer had to give up 49 golf course lots. The developer, however, does support the compromise.

2. Mike Eckert of Civil Design Group provided a new layout and proposed amendments to the conditions of approval. They are showing a future build-out scenario across 112th Street. They have made some connection spurs from the lots to a property owner to the east, and also a connection spur from the lots back to 112th Street. They have an understanding with staff that staff will never force that connection as long as there is an existing golf course.

With regard to the confusion on the package plant, Eckert pointed out that one of the memos in the staff report was in relation to a discussion the developer had had at one point about annexing the whole area, which meant they would live off of city water but have a package plant for the entire development. That is when staff was not comfortable. They are still proposing a package plant but it will be much smaller for the 26 lots. There are no issues with odor. If they were to do lagoons, they would have to have a 7-acre lagoon. A package plant is contained underground. Rural water is acceptable. They do have a letter from the rural water district approving 26 lots.

With regard to the road alignment, Eckert noted that there are some flood prone and floodplain areas that would require a bridge. However, they were able to get the road realigned, and then as the development goes to the south, the road weaves back. They need to avoid the green at the bottom. They had to shift it a little bit to the west, but it will eventually come back into the section line.

The applicant submitted a motion to amend Condition #4.1.1.13:

> Show the gas line easement~~ and a 235 foot buffer~~.

This requirement to show a buffer was requested by the Health Department; however, this proposal does not show any lots in that area whatsoever so there is no need to provide a buffer.

The applicant submitted a motion to amend Condition #4.1.1.15:

> Note or show ~~the~~ a fire fighting reserve tank~~s~~ (with a minimum capacity of 10,000 gallons) and ~~dry-hydrants~~ pumping fixture approved by the Bennet Rural Fire Department.

Seacrest noted that whenever the Bennet Rural Fire Department sees urban style lots, they request and recommend, but cannot enforce, a storage tank on-site. Their trucks will come to the site full of water. The reserve tank is a backup. The developer agrees to provide the reserve tank. Only one tank is needed for 26 lots.

Carlson inquired whether the roadway is elevated. Do you build underpasses? How do you get the pedestrians and golf carts from one side of the street to the other side of the street? Seacrest's response was that this has not yet been engineered.

There was no testimony in opposition.

DeKalb agreed with the amendment to Condition #4.1.1.15. The staff concern is that there be a backup system.

Scott Holmes of the Health Department agreed with the proposed amendment to Condition #4.1.1.13.

CHANGE OF ZONE NO. 06069
ACTION BY PLANNING COMMISSION: October 25, 2006

Carroll moved approval, seconded by Strand and carried 9-0: Krieser, Taylor, Cornelius, Sunderman, Strand, Larson, Esseks, Carroll and Carlson voting 'yes'. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 06061
ACTION BY PLANNING COMMISSION: October 25, 2006\

Carroll moved to approve the staff recommendation of conditional approval, with amendments requested by the applicant, seconded by Strand and carried 9-0: Krieser, Taylor, Cornelius, Sunderman, Strand, Larson, Esseks, Carroll and Carlson voting 'yes'. This is final action, unless appealed to the City Council.

COUNTY CHANGE OF ZONE NO. 06065
TEXT AMENDMENT
and
COUNTY SPECIAL PERMIT NO. 06051,
FOR A DRAG STRIP,
ON PROPERTY GENERALLY LOCATED
AT HIGHWAY 77 AND BRANCHED OAK ROAD.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: October 25, 2006

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

Staff recommendation: Approval of the change of zone and denial of the special permit.

Ex Parte Communications:

Esseks reported having a brief conversation with Mr. Collins, who lives three miles away, and they discussed sound nuisance in general terms.

Larson reported having a conversation with Mr. Nielsen, who lives near the site and they talked about possible objections.

Krieser also reported visiting with Wayne Nielsen.

Sunderman had a conversation with an individual, whom he directed to Mike DeKalb.

Staff presentation: **Mike DeKalb of Planning staff** directed attention to the map which the staff developed showing the areas in the county which would comply with the criteria of the proposed text amendment, finding that there are about 232 square miles of Lancaster County that would meet the requirements.

Esseks asked for the definition of "residential area" used in the criteria. DeKalb acknowledged that it is not defined. The staff had to come up with some logical application. We used a grid system overlay that analyzed the county in 5-acre pieces. If it was developed and had six or more dwellings within the adjacent lots, that would qualify as a residential area. The reality is that it will be looked at case-by-case. They might be characterized as unincorporated and agricultural use areas, could be clustering of old lots developed years ago, and could be clusters in a large CUP of over 160 acres. It would be a mix. All of the town jurisdictions were excluded.

Scott Holmes, Manager of the Environmental Public Health Division of the Lincoln-Lancaster County Health Department, appeared to respond to questions asked about noise levels, etc. The Health Department was asked to model the potential sound from the

drag strip. Holmes advised that the Health Department does not have the technical expertise or the modeling programs for drag strips. The Health Department does not have acoustical engineers on staff and they do not have the specifications for the exact construction of this drag strip. Such specifications would be required to model the potential sound.

Holmes noted that multiple letters received by the Commission have referred to different studies. Holmes submitted all of the data that the Health Department has and which he believes to be relevant to the questions raised about noise.

Holmes advised that the Health Department has provided Mr. Sanford assistance over the years. They have done testing of some mock racing events to try to identify the sound levels. Some of the Health Department staff unofficially took testing out at the Scribner raceway. If we apply the numbers from the testing at Scribner and apply them to the property on Hwy 77, without any noise mitigation, it is very likely that the permit noise levels afforded by the proposed county regulations would be exceeded. Holmes could not say what the levels would actually be because the Health Department does not have data from the applicant that will tell them what the sound mitigation proposal is or what the modeling might show.

Holmes went on to suggest that drag racing does create significant noise. How much noise is received by the property surrounding that is highly dependent upon how it is designed and what sort of mitigation is actually applied and whether the vehicles are muffled or not muffled.

The Health Department made contact with multiple small communities where NHRA events are actually held. They contacted six communities to determine if they had a noise ordinance and how it was applied to these specific types of facilities. Five of the six communities contacted did not have any sort of noise ordinance or resolution. Topeka allows a “special event status” whereby the noise ordinance does not apply to the Topeka race park.

Without specific information from the applicant on the noise that would be generated from the raceway and without specific data on how the race track is going to be designed, the noise levels cannot be generated. The Health Department cannot provide the Commission with a “good feel” for what the noise levels would be.

Based on information received from the applicant and all the data on the highest end vehicles (which would rarely be at this facility), during those events, the Health Department would suggest that it is very likely that the noise levels, even with mitigation, would probably exceed the 65 dBA and 50 dBA levels that the Health Department would recommend for the permit. A variance for those specific events might be an option to consider.

Strand asked Holmes to respond to the applicant’s motion to amend. Holmes stated that

the increase of the 65 dBA to 75 dBA is not something that the Health Department would support. 65 dBA is a level which is fairly commonly used relative to being the high end of noise that should be in a residential area. Once you get above a 65 dBA level, it begins to interfere with things like speech, etc. A change from 65 dBA to 75 dBA is basically doubling the loudness level that would be experienced. That is a significant difference. Holmes would not object if this drag strip were located in one of the green zones identified by staff.

Esseks asked Holmes to explain how relevant the mock event is to this case. Holmes indicated that they have tried to extrapolate and estimate, but, again, he cannot relate any of the testing they have done to this case because they do not have the specific design of this racetrack. If it had great noise mitigation, we might not even be having this discussion.

Esseks noted that if the cars were not muffled, the sound was computed at 64 dBA. It looks as though the muffler makes a big difference. Holmes concurred, definitely. NHRA has a noise restriction which currently requires vehicles not to create more than 95 decibels at 50 feet; however, he assumes a lot of the racing would not be NHRA regulated events and the vehicles would likely be much louder because they do not have to meet those requirements.

Darl Naumann, Economic Development Director for the City and County, appeared to discuss the former Motor Sports Task Force, which was originally called the Motor Sports Issues Forum called by the County Board to address issues related to motor sports activities back when Dr. Sumani was looking for a motocross race track. The Task Force only met three or four times. There were three meetings which were recorded. The Task Force started working on some financial analysis and surveys of the community. Dr. Sumani did find a location around Abbott Sports Complex and the Task Force was told to discontinue their activities. Up to that point, the task force was somewhat at odds. It was very difficult to get quorums. No reports were issued. No financial analysis was completed and no sites were selected.

Strand noted that there has been testimony and letters from hotels in the area stating what the Americruise did for their business and for the economy during that time. Do you have any kind of opinion as to what something of this nature could do? Naumann agreed that from an economic development point of view and tourism point of view, this is the number one sporting event in the country right now that generates a lot of income and a lot of traffic. It could be very beneficial to the city.

Carlson inquired as to the interaction of the Task Force with Mr. Sanford. Naumann believes that Mr. Sanford attended the third meeting and made a presentation on drag racing. At some point the Task Force was trying to explore the different modes of motor sports activities. When Sanford found this site, he did ask the Task Force to meet again. They called a special session but they did not have a quorum. There are no minutes of that meeting; however, Sanford did make a presentation to some of the Task Force members.

Cornelius asked Naumann to characterize the reason why the Motor Sports Task Force was not coherent? Naumann believes that there were a couple of different goals in mind. Most of the members were motocross people just looking at motocross and some of them were just looking at drag racing. Several of the members would like to see a large track constructed, like Topeka and Hastings, with a large drag racing strip with other activities and motocross track attached, and a lot of that was different than what was being proposed with the smaller activities like Dr. Sumani's race track. There were somewhat competing goals.

Response by the Applicant

Mark Hunzeker appeared on behalf of the applicant and referred to the map created by the staff. The green areas are supposedly available for this type of use under the proposed ordinance. It was obvious to him that there are a number of areas which were either divided by roadways or which did not have a one-mile length to facilitate a drag strip. And, in addition, he noticed that the residential area was defined as a density of six or more dwelling units of 45 acres. Just for reference, the staff information indicates that within one mile of the starting line of this facility, there are 12 houses, which amounts to one house per 167 acres. If we go to houses within a mile of the boundary of the site, it is one house per 106 acres. Therefore, Hunzeker suggested that this site is really not in a residential area.

Hunzeker submitted additional maps, pointing out that the County floodplain map shows the sites crossed by streams with floodplain – that takes out a significant number of the sites on the map. And then it appears the staff overlooked that the requirement that the site shall be readily accessible from a major street or paved road, and if you just mark off those sites which are not within ½ mile of a paved road, then the areas are diminished quite a bit. Combining all of those items, there are very few available sites, and a number of those areas are also areas which are not one-mile long or adequate for a drag strip facility. Hunzeker submitted that the map provided is significantly misleading in terms of the wide open spaces available for this activity in Lancaster County under the proposed ordinance.

With respect to the noise issue, the applicant worked with the experts that Mr. Walsh referred to at the last meeting. They had a conference call with two acoustical people with the NHRA. When the applicant referenced the 50 decibel sound level at one mile, both concurred that "they [Lancaster County] just doesn't want a drag strip, period." That is a level which these professionals deem to be simply unattainable.

Hunzeker then referred to three noise ratings taken at the Bennett Martin Library, all of which averaged about 50 decibels, with peaks of 62, 66 and 64 decibels. This is within the library. You had to go upstairs to the second level to get anything below the 50 decibel average. In addition, they took readings in the Wyuka Cemetery area. At the fence along O Street, the average was 68 decibels, with peaks at 79. At 250', the average was 54 decibels, with peaks at 60, and the middle of cemetery averaged 51 to 60 and 62.

Hunzeker suggested that in the agricultural areas of the county, there are noise sources which create significant amounts of noise. A tractor is 74-112, a grain dryer is 81-102, combines are 80-105, etc.

Using the airport as an example, Hunzeker submitted that it is possible to build residential in the 60-65 decibel contours. Hunzeker suggested that the Commission really has to make a decision on the noise issue based on whether or not the community wants it to be possible to have a facility of this type.

Hunzeker then submitted new proposed amendments to the text amendment (attached hereto as Exhibit "A" and incorporated herein by this reference), deleting the 50 dBA sound level and making it 65 dBA, with the requirement that that sound level not be exceeded between 10:00 p.m. and midnight.

Hunzeker also submitted new proposed amendments to the conditions of approval on the special permit (attached hereto as Exhibit "B" and incorporated herein by this reference). He is proposing 65 dBA between 10:00 p.m. and midnight, and 75 dBA inside a mile. But, he proposes to add a new condition which would restrict racing events to Friday, Saturday and Sunday only, with no racing events conducted after midnight or before 10 a.m. No Top Fuel, Alcohol, Funny Car or Pro Stock class or any jet car or other non-internal combustion powered vehicle would be allowed to race after 10 p.m. Other uses of the track such as for tuning and testing of vehicles could be done Monday through Thursday; however, they have to end at 10:00 p.m. Hunzeker also proposed a new condition that would provide shutting down all racing activities for a period of one hour for any funeral service at the Danish Cemetery and another condition to require the permittee to employ professional acoustical engineering services to design berms, landscaping, site grading, building and spectator seating placement, guard walls, or other sound mitigation techniques to reduce sound levels leaving the property.

Hunzeker believes the proposed amendments would enable the applicant to comply with an ordinance that was intended to actually allow for a facility of this kind.

Hunzeker submitted again, that, as defined by the staff, this proposed site is not in a residential area. The residential density is as low as you will find almost anywhere in the county. But for the cemetery, he believes this site would have been green even on the staff map. The cemetery was thrown in as an additional requirement over and above what is in the existing city ordinance.

Hunzeker then referred to the amendments that were proposed Mr. Barry on behalf of the opponents. If any of those are adopted there will not be a track. There is no way for this applicant to comply with the provisions of the ordinance with the additional requirements suggested by Mr. Barry.

Hunzeker assured that the applicant would work with the church to avoid scheduling racing activities during church services, even though it is 1 1/4 miles away.

With regard to economic impact, Hunzeker commented that some would say the proponents have exaggerated the economic impact. The fact is that a race track cannot get a national NHRA event until the track has been constructed, inspected and determined to comply with NHRA standards. You can't have it both ways. Either we are this enormous intrusion causing traffic problems or we're not. It is fair to say that in the first year or so we are probably not. We expect that over time there will be bigger, more popular events at this facility, but over time there will also be some adjustments, along with the mitigation plan.

Hunzeker advised that the NHRA holds a week-long event in Gainesville, Florida, and in one week of that event, there is more sales tax collected in the city of Gainesville attributable to that event than for an entire 7-game home season of football for the University of Florida. This says that there is a real economic development package here that can be brought into this community that would benefit a lot of people. The Planning Commission deals with these issues on a regular basis when talking about things like shopping centers, traffic, noise and lights where people live. Here we have 12 people within a mile of the starting line of this track. There has to be some balance brought to bear in the kinds of benefits that can be brought to the community and the disturbance of a dozen people.

With regard to fire protection, Hunzeker stated that the applicant owns and operates a state-of-the-art fire truck which can take care of the fire protection issue on-site. In the past, the applicant has had a volunteer fire department on-site for additional protection, but he is capable of dealing with that himself. The applicant is willing to have a rapport with whatever fire district is involved. He is also willing to contract with Midwest Medical for EMS services.

As far as parking, Hunzeker pointed out that Gateway Shopping Center is located on 62 acres. South Pointe is located on 80 acres. This site is 160 acres.

The drainage issue is the subject of a condition of approval.

Hunzeker noted that there has been a lot of support for this facility. The opposition has been from people who live well over a mile from this site. Is it possible to locate a motor sports facility anywhere in this county? If so, the Planning Commission needs to adopt his amendments and at least try to give this kind of operation a chance.

With regard to noise mitigation, the applicant is willing to hire people to prepare mitigation plans, but it costs of a lot of money to do that. "When we're sitting here looking at an ordinance which we cannot comply with, there is not a lot of ability to convince the client to spend the money on noise experts to design a mitigation plan when we don't know what

the standard is going to be."

Hunzeker pointed out that at the starting line, the track is at least 25 feet below the level of Hwy 77. There is room on the east side to berm and to landscape at the starting line. The terrain moves up as you move east. There is a draw running along the east property line with hundreds and hundreds of full grown trees. At the finish line, the track is below the level of both Hwy 77 and the grade of the property to the east by 25' to the west and 27' to the high point on the east side. At the half-mile line, it gets up to a point where it is actually above the west property line but still substantially below the east property line. There is lots and lots of room for additional berming and landscaping to the west. At the end of the turnaround area, it is still above the highway but below the property to the east and there is lots of room to deal with additional mitigation to the west. After the half-mile point, the noisiest vehicles are shut down anyway. The fastest vehicles are towed back to the pit area.

"If you think it is possible to have such a facility in this county, please adopt these amendments and let us go forward and try to work with the staff to come up with the mitigation plan." The applicant is willing to pay the money to have that done.

Esseks acknowledged that the proposed amendments to the special permit appear to be a great improvement and moving in the right direction; however, why limit the noise standards to a 2-hour period? This indicates that between 10 a.m. and 10 p.m. there are no limits. He has viewed the NHRA web site and listened to the sound recordings. There is a rather significant period of time when we have some really loud noises. This will subject these people to excessive noise. Why not extend the standards to the entire day? Hunzeker believes that the Health Department suggested that they cannot meet those standards with the Top Fuel vehicles and he agrees. This will require that those loudest but fastest vehicles will have to run during the day and before 10 p.m. It is very hard to try and handcuff yourself. None of the other places where these facilities exist that Health talked to have a standard that applies at all. But if you read the memo, they also said that none of those places indicated ever having had one noise complaint, except one. These are not facilities that typically generate the kinds of complaints that you might anticipate. Those top three or four classes of vehicles are also the fastest.

Carroll referred to Hunzeker's motion to amend on the text amendment. He thought the applicant had agreed to do the noise study. Hunzeker believes that the noise study is on the list of application requirements. He has added that to the conditions of approval on the special permit – to employ an acoustic engineer and do a mitigation plan that would be reviewed by the Health Department.

Strand confirmed that Hunzeker believes this site meets all of the requirements in the text amendment except for the cemetery. Hunzeker agreed. This site has no wetlands. It meets the criteria established, except for the cemetery, which is not in the city ordinance and is unique to this site.

Carlson asked staff to comment on the revised motions to amend submitted by Hunzeker. DeKalb agreed that this site would be in the green area without the cemetery. He did not have an opportunity to review the applicant's proposed amendments prior to this meeting.

Carroll suggested that if the Planning Commission approves the staff recommendation on the text amendment, then the applicant can then come back and ask for amendments to the special permit. DeKalb concurred. The County Board can amend the conditions.

Scott Holmes of the Health Department responded relative to 75 dBA. He had not seen the map or criteria, but 75 dBA would be acceptable in non-residential areas. That is the level for industrial uses. If above 70 dBA, you are going to have people coming unglued in terms of complaint and disruption of their lives. That is why the Health Department has chosen the 65 dBA. That is a level that more people will find acceptable. It will still be noticeable and significantly louder than what they experience right now. 400 feet from Hwy 77 is 55 dBA. So it is quieter than the library, apparently, if you live out there. Holmes suggested that this is a "carte blanche" to make whatever noise you want because the only requirement is 10:00 p.m to midnight. The Health Department cannot support that in any way.

Response by the Applicant

Hunzeker believes it is true that this is not a residential area; however, he does not believe that this represents "carte blanche" noise – with the requirement of a noise mitigation plan, the noise levels will be substantially lower. The loudest area is behind these cars and it will be directed to the south into the prevailing winds. And there are thousands of trees immediately to the south between this property and the nearest residence. There is a considerable distance from the starting line to the nearest residence. He appreciates that the Health Department does not want to endorse the proposed amendments, but the proposed text amendment was filed after this applicant's application for the special permit was filed, and the proposed text amendment employs levels which this applicant is told by his experts that he cannot attain. It is incumbent upon somebody to come up with something that we might be able to attain and we have done that.

Again, the fundamental question is, is it possible anywhere in Lancaster County to have a motor sports facility? And, if it is, the Planning Commission needs to adopt something that enables this applicant to go forward. He cannot justify spending the thousands of dollars that it will require to provide definitive noise information unless there is some expectation that this applicant has a prayer of meeting them. Either Lancaster County is willing to accept some form of motor sports activity or it is not. And if it is, then we need to have an ordinance that people can realistically expect to meet. This applicant wants the opportunity to make this work.

COUNTY CHANGE OF ZONE NO. 06065

ACTION BY PLANNING COMMISSION: October 25, 2006

Strand moved approval, with amendment to Article 13.016(d) as requested by the applicant, except deleting the hours of 10:00 p.m. to midnight and leaving both dBA levels at 65; with amendment to Article 13.016(h), as requested by the applicant regarding fire protection and to add language that it shall be approved by fire protection district; and to add language to Article 13.016(f), "unless can be mitigated", such that they cannot operate racing during the time of a funeral, unless it can be mitigated. The motion was seconded by Sunderman.

With regard to the mitigation language, Carroll believes there is a provision that says the County Board can amend anything they want, so he thinks that will take care of the cemetery problem.

Strand acknowledged that she is not a motor sports person so all of this is new to her. She knows that a lot of people go to Kansas all the time to the races. She thinks we are missing the boat if we don't allow it. With our property taxes continuing to go up, if we don't bring in some increased sales tax revenue and other benefits, then we are doing a disservice to a majority of the citizens in the county.

Upon further discussion, Strand agreed to delete the amendment to add language to Article 13.016(f) about mitigation. Sunderman, who had seconded the motion, agreed.

Cornelius agrees that it is important to approve the ability to have a facility of this type, if possible. We've seen a map provided by staff showing that it is possible. We should open the door at the very least, and that's what we're doing.

Motion for approval, with amendments, carried 8-1: Krieser, Taylor, Cornelius, Sunderman, Strand, Esseks, Carroll and Carlson voting 'yes'; Larson voting 'no'. This is a recommendation to the County Board.

COUNTY SPECIAL PERMIT NO. 06051
ACTION BY PLANNING COMMISSION: October 25, 2006

Strand moved approval, with conditions, with the amendments requested by the applicant except that Condition #1(k) will reflect the 65 dBA in both situations and deleting "between the hours of 10:00 p.m. and midnight", seconded by Sunderman.

Strand understands the issue with the small cemetery, but if they can work with funerals with there only being 4-5 a year, she does not believe it will be a huge conflict. For the economic benefit of the entire county and for the cities of Waverly, Davey and Lincoln, she believes it could be a real financial boost. It is on a four-lane highway and near the Interstate, which will someday be commercial.

Sunderman noted that one of the conditions requires acoustical engineering services and that a mitigation plan shall be reviewed and approved by the Health Department. What he have difficulty with is coming up with good information that could be carried back directly to this site. So with this condition, if it is approved, that data will be there and the Health Department will have their say on it.

Carroll stated that he is opposed to the motion. Economically, race tracks are very important, but we're talking about a specific site, and the severity of the change of this site to have a race rack on it is too extreme because you are moving dirt and creating a canyon for this site. No one knows the severity of that sound until it is there and then you can't remove it. This site is not conducive to a drag strip. He is opposed.

Larson is also opposed. He has not reached a comfort level with the sound issue, in particular.

Esseks stated that he does not know what 65 dBA is going to sound like, particularly when he does not know how many of these drag races there are going to be. They are very noisy on the NHRA web site. He likes the idea of having an ordinance that invites negotiations between the developer and the county and perhaps there are ways of mitigating the sound. We need a lot more information before we approve this.

Carlson commented that obviously, there is interest for this type of facility. They are difficult to site. When you have a difficult facility to site, the purpose of the zoning code is to make sure the impact is mitigated and try to analyze the cost benefit. It becomes incumbent on the applicant who carries the burden of proof to demonstrate that the burden will not be excessive. His concern here is that we have a standard that is clearly defined but not clearly demonstrated as to what degree it will negatively impact. It puts the cart before the horse. He wants to see clearly what the impact is going to be.

Motion for conditional approval, as amended, failed 4-5: Krieser, Taylor, Sunderman and Strand voting 'yes'; Cornelius, Larson, Esseks, Carroll and Carlson voting 'no'.

Carroll moved to deny, seconded by Larson.

Taylor stated that he has empathy for the people in the audience that do not want the sound, but there is such an appeal for this type of activity and it will add such an economic benefit. He is torn. He was hopeful we could put something together that will work within Lancaster County.

Strand pointed out that a special permit can be revoked. The conditions provide that the applicant must prove that they can mitigate their sound. They have not asked for anything unusual and she thinks the Commission is being excessively hard on them.

Motion to deny carried 5-4: Cornelius, Larson, Esseks, Carroll and Carlson voting 'yes';

Krieser, Taylor, Sunderman and Strand voting 'no'. This is a recommendation to the Lancaster County Board.

**** break ***

2030 LINCOLN-LANCASTER COUNTY COMPREHENSIVE PLAN
ACTION BY PLANNING COMMISSION: October 25, 2006

Additional information for the record: **Steve Henrichsen of Planning staff** submitted two additional e-mail messages: one from Joel Ludwig of Garland, Nebraska, who believes the proposed Comprehensive Plan is high in parks and green space and low in commercial and industrial development, and one from Ron Tucker in support of not widening 27th Street.

Henrichsen then submitted the staff response to seven new proposals that were submitted during the public hearing on October 18th. Today's submittal starts on page 57 and answers some of the specific questions that had been raised at the public hearing. The staff memos dated October 17 and October 24, 2006, respectively, are attached hereto as Exhibits "C" and "D" and incorporated herein by this reference.

With regard to Proposal #9 for a change from Agricultural to Industrial at N. 84th & Cornhusker Highway, Henrichsen advised that the staff has had further conversation with Mr. Bowman and he has agreed to come back in at a later date for a change of zone to accommodate the existing refuse service as opposed to changing a larger area in the Comprehensive Plan. Staff has indicated that they would support the change of zone on a smaller area.

With regard to Proposal #13 to delete "Highway Oriented Commercial" as a designation in the Plan, staff agrees with some of the comments made by Mark Hunzeker in regard to that language being too specific for N. 56th and I-80 and S. 38th & the South Beltway. The staff believes it would make more sense to amend the language for Proposals 11 and 12 as set forth on p.66 and 68 of Exhibit "D", and keep the designation in the plan.

Proposal #14 was to delete the Public Health & Industrial Use Principles. Both Planning and the Health Department support retaining those principles. The only thing that the Planning Commission is adopting here are the broad principles that came out of that effort. The specific recommendations would be coming forward at some later date. This is just including an acknowledgment of that effort in the Plan.

Proposal #15 was to delete Population Assumptions. The staff would recommend that they be retained. These assumptions have helped guide the plan and have reflected the goals of the plan.

Main Motion: Carroll moved to approve the 2030 Draft Comprehensive Plan, seconded by Strand.

Motion to Amend #1: Esseks moved approval of Proposal #1, as set forth on page 7 of Exhibit "C" and page 57 of Exhibit "D", seconded by Strand.

Discussion: This is a change from Urban Residential to Commercial for 23 acres on the southwest corner of 84th and Adams (North 40 Plaza). Esseks does not believe the Commission should micro-manage. He believes there should be a mix of commercial and residential. If they can put good commercial enterprises south of Adams on the west side, let's give them a chance.

Carroll believes that the neighborhood center will be fine in that location.

Carlson noted that the draft plan shows the potential for two neighborhood centers in a square mile, with emphasis on the pedestrian orientation and better access. With the incentive criteria, he believes it is legitimate to look at a second neighborhood center on that corner.

Motion carried 9-0: Krieser, Taylor, Cornelius, Sunderman, Strand, Larson, Esseks, Carroll and Carlson voting 'yes'.

Motion to Amend #2: Strand moved to approve Proposal #2 amending the language as set forth on p.57 of Exhibit "D", seconded by Esseks.

Discussion: This is a change in the designation northeast of 84th & Adams from Neighborhood Center to Community Center, and on the southeast corner from Neighborhood Center to Mixed Use Office.

Strand believes that 84th Street is going to be commercial. It is going to be a large draw. She believes we can get by with leaving the streets as 2+1 and the LRTP will look at other ways to increase the roads going east and west. Northeast Lincoln is tired of being treated differently. She believes that we should let the market determine what those services are going to be and give them equal opportunity.

Carroll agreed. With the site design shown on the north side of Adams Street, changing to community center is a very good design. It changes the south side to office and improves the buffer between that and the church ground to the east.

Larson expressed concern about big boxes in a community center. Henrichsen advised that the Comprehensive Plan would allow big box retail within the community size centers. In this particular application, the applicant wrote a letter that said they would keep the 175,000 sq. ft. when they bring the PUD forward. It is a voluntary offer on their part. Larson wants to make sure that they comply. He does not want a big box retailer.

Esseks noted that Peter Katt provided a site plan with two large stores, very nicely situated, with good internal circulation of traffic. He assumes that when they come forward for their permit they will submit something very similar.

Carlson pointed out that this is a change in the Comprehensive Plan. It is not contingent upon anyone bringing in a specific plan. But it is appropriate to give direction of what kind of commercial we think may work in that kind of circumstance.

Motion approving Proposal #2 carried 9-0: Krieser, Taylor, Cornelius, Sunderman, Strand, Larson, Esseks, Carroll and Carlson voting 'yes'.

The Commission then discussed Proposal #3, which proposes to change 200 acres from Agricultural to Low Density Residential west of 82nd Street and north of Roca Road. Strand believes that Hickman is going to request that they can work with the County Board on some build-through language. Mike DeKalb of Planning staff agreed that Hickman had reflected that they were looking at revising their code to incorporate build-through.

Carlson pointed out that what is in front of the Planning Commission is a request to show low density residential. They are two abutting parcels.

Motion to Amend #3: Strand moved approval of Proposal #3, seconded by Taylor.

Discussion: Esseks urged that the Planning Commission accept the staff recommendation of denial. Their position is that there is already sufficient acreage out there for this type of development. This type of development often does not pay for itself. Hickman has a concern that its growth will be blocked by existing acreage development. Esseks wants to honor the staff's recommendation and Hickman's preference.

Carroll agreed. As staff has said, it is premature to look at these acreages right now.

Motion to approval Proposal #3 failed 1-8: Taylor voting 'yes'; Krieser, Cornelius, Sunderman, Strand, Larson, Esseks, Carroll and Carlson voting 'no'.

Motion to Amend #4: Strand moved to approve the staff recommendation for Proposal #4, as set forth on page 30 of Exhibit "C", seconded by Carroll. This is to change 400 acres from Priority B to Priority A east of N. 40th Street between Bluff Road and Interstate 80. Motion carried 9-0: Krieser, Taylor, Cornelius, Sunderman, Strand, Larson, Esseks, Carroll and Carlson voting 'yes'.

Motion to Amend #5: Carroll moved to approve the staff recommendation on Proposal #5,

as set forth on p.34 of Exhibit "C", seconded by Sunderman. This refers to property East of 54th between Saltillo Road and the South Beltway. Motion carried 9-0: Krieser, Taylor, Cornelius, Sunderman, Strand, Larson, Esseks, Carroll and Carlson voting 'yes'.
Motion to Amend #6: Carroll moved approval of the staff recommendation on Proposal #6, as set forth on p.41 of Exhibit "C", seconded by Strand. This refers to the southwest corner of SW 12th Street and W. Denton Road. Carroll pointed out that there is not enough wastewater capacity and Priority A would obligate the city. This keeps it as Priority B. Motion carried 9-0: Krieser, Taylor, Cornelius, Sunderman, Strand, Larson, Esseks, Carroll and Carlson voting 'yes'.

Motion to Amend #7: Carroll moved approval of the staff recommendation on Proposal #7 (City of Hickman), as set forth on page 48 of Exhibit "C", seconded by Strand and carried 9-0: Krieser, Taylor, Cornelius, Sunderman, Strand, Larson, Esseks, Carroll and Carlson voting 'yes'.

Motion to Amend #8: Carroll moved approval of Proposal #8, as set forth on page 54 of Exhibit "C", seconded by Strand. This refers to Sun Valley Blvd. and West Charleston Street. Motion carried 9-0: Krieser, Taylor, Cornelius, Sunderman, Strand, Larson, Esseks, Carroll and Carlson voting 'yes'.

There was no motion on Proposal #9 (page 59 of Exhibit "D") concerning east of N. 84th, north of Cornhusker Highway.

Motion to Amend #9: Strand moved approval of Proposal #10 to change 80 acres from Priority B to Priority A between S. 48th and S. 56th Streets, north of Rokeby Road, seconded by Taylor.

> Discussion: Strand noted that it is surrounded and close to being developed all around it. Why not move it into Priority A?
>
> Carroll suggested that there is a substantial amount of cost for improving just 80 acres. To put it into Priority A at this time is not financially good for the city.
>
> Carlson pointed out that this property was in Priority B in terms of a three-tiered scheme. Henrichsen explained that previously, when we showed a priority map with two tiers, this property was shown in Priority A when it was going to be 12 years. We then went to three priority areas, with A only being 6 years. They would have the opportunity to come forward during the CIP process.
>
> Motion failed 4-5: Krieser, Taylor, Strand and Larson voting 'yes'; Cornelius, Sunderman, Esseks, Carroll and Carlson voting 'no'.

Motion to Amend #10: Strand moved approval of Proposal #11, #12 and #13, as recommended by staff (pages 65, 67 and 69 of Exhibit "D"), seconded by Sunderman.

Discussion: Henrichsen explained that this would leave the Highway Oriented Designation on the map; however, the text would be revised where it generally talks about the center size depending on the market potential and land availability, but other uses would include a variety of retail and service uses, including big box, which could have a regional draw or serve a community need.

Strand pointed out that it is still just commercial areas but they may have some entryway corridor requirements that would have to be developed at some point in the future.

Strand expressed a concern that this designation was not something presented in the pre-meetings. She had not studied it. Henrichsen stated that the designation was always in the plan. It just never got any discussion.

Motion carried 9-0: 9-0: Krieser, Taylor, Cornelius, Sunderman, Strand, Larson, Esseks, Carroll and Carlson voting 'yes'

There were no motions made on Proposals #14 and #15 (p.70 and 72 of Exhibit "D").

Motion to Amend #11: Strand moved to add to the "proposed studies" under the Mobility and Transportation section (p.111), "to study east-west locations for additional 2+1 roads in northeast Lincoln", seconded by Krieser.

Discussion: Strand commented that if we are going to stick to 2+1, we need to look up in northeast Lincoln and how we can move traffic. Let them study where those locations might be. We have taken care of 84th to the east, so she is just looking at getting them over to 84th.

Larson commented that he does not believe Adams between 70th and 84th even meets 2+1 standards. Strand noted that to be a proposed project in this plan.

Strand further suggested that traffic will have to study which roads make the most sense. She just wants them to study it.

Carlson commented that this makes him think back to the half-mile arterial and the Commission's previous discussion and how he would like some language that talks about finding a way to make more use of the half-mile arterial. They are so useful in most parts of town.

Larson thinks the opportunity is there now.

Strand stated that her motion is an attempt to find a way to help northeast Lincoln get additional development.

Motion to add the study carried 9-0: Krieser, Taylor, Cornelius, Sunderman, Strand, Larson, Esseks, Carroll and Carlson voting 'yes'.

Carlson expressed an interest in adding some language about half-mile arterial in future design. He wants to establish some sort of guidelines to make better use of the half-mile arterial in new development. Strand thinks we are getting good roads to carry traffic in new development. It's the existing areas with the city growing around them that she's concerned about. How do you balance moving traffic in existing neighborhoods? Carlson noted that at one of the work sessions, the Planning Commission discussed a way to create a design that encourages a better connection. It doesn't have to be a straight 90 degree connection through. Strand believes those to be collector roads and she believes we already have those in developments, such as in front of Humann Elementary. Sunderman remembers that being a standardized way to do that. Esseks agreed that an explicit standard for half-mile arterial might be useful. Larson recalled discussing the idea that we needed connections across these developments between the one-mile line and we were not prepared to make that requirement at the exact half mile line. We need the access across the mile area.

Carlson suggested that there be a Comprehensive Plan guideline that new development should increase connectivity between the arterials within the mile.

Strand would rather study this idea a little further and have staff come up with some kind of language and maybe look at it in May or the next Annual Review.

Motion to Amend #12: Carlson moved to add a Comprehensive Plan guideline for new development that encourages better connectivity within the half-mile from arterial to arterial within the square mile, seconded by Larson. Strand wants more time to study this concept. Motion carried 7-1: Krieser, Cornelius, Sunderman, Larson, Esseks, Carroll and Carlson voting 'yes'; Strand voting 'no'; Taylor absent.

Main motion approving the 2030 Draft Comprehensive Plan, as amended, including the amendments submitted by staff by memorandum dated October 17, 2006, carried 8-0: Krieser, Cornelius, Sunderman, Larson, Esseks, Strand, Carroll and Carlson voting 'yes'; Taylor absent.

This is a recommendation to the City Council and County Board.

CHANGE OF ZONE NO. 06067
FROM H-3 HIGHWAY COMMERCIAL
TO R-3 RESIDENTIAL, ON PROPERTY
GENERALLY LOCATED AT
N. 1ST STREET AND CHARLESTON STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: October 25, 2006

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

Staff recommendation: Approval.

Ex Parte Communications: None.

Staff presentation: **Tom Cajka of Planning staff** stated this to be a request from H-3 to R-3 on 41 acres. The area to be rezoned is next to W. Charleston Street, with the area to the south fronting on Sun Valley Blvd. The intent of the zoning change is to expand the student housing apartment project to the west. The applicant is requesting this change of zone before going to the expense of doing the environmental studies and other engineering work.

Proponents

1. Mike Rierden appeared on behalf of the applicant, **GMH Properties and Ron Nestor.** This applicant has developed 95 of these communities around the country in 29 states. They also develop housing on military bases. Rierden reminded the Commission that he also represented the previous owner of the existing complex. This applicant needs the zoning before spending the money on environmental and floodplain issues. He does not have the answers to a lot of the questions at this point in time, but if this change is approved, the applicant will proceed forward with all of the necessary studies. The applicant anticipates submitting an application for a community unit plan.

Carlson recalled that there was a lot of discussion on the first phase about emergency access, etc. He assumes that this applicant will be prepared to offer that same kind of information on the expansion. Rierden concurred.

There was no testimony in opposition.

Cajka pointed out that one of the amendments to the Comprehensive Plan approved today changed the land use map in this area to residential.

ACTION BY PLANNING COMMISSION: October 25, 2006

Larson moved approval, seconded by Strand.

Strand pointed out that the Planning Commission is approving this change of zone knowing that there need to be substantial environmental studies, yet the Commission just took action telling the race track they couldn't do that.

Carlson remembers this area from the first time around and it is a very challenging area.

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

CHANGE OF ZONE NO. 06063,
NORTH 40 PLAZA PLANNED UNIT DEVELOPMENT,
ON PROPERTY GENERALLY LOCATED
AT N. 84TH STREET AND ADAMS STREET.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: October 25, 2006

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

Staff recommendation: Denial.

Ex Parte Communications: None.

Additional information for the record: **Brian Will of Planning staff** submitted a letter from Julie Kohrell, 8242 Wemsha Street.

Proponents

1. Peter Katt appeared on behalf of the applicant and submitted revised proposed amendments to the conditions of approval:

4.1.1.1 Revise Note #33 to state "Site layout is conceptual. All information for a preliminary plat may be required to be submitted, including street and lot layout, street centerline profiles, grading plan, drainage study, utility plan, and landscaping, to be approved by administrative amendment prior to final plat approval, and may result in modifications to the site layout. This includes the location ~~and number~~ of street intersections and driveway entrances onto North 84th Street and Adams Streets."

4.1.1.8 Show the existing trail along North 84th Street and provide 9' separation between ~~the~~ any relocated curb and trail including turn lanes.

4.1.1.11 No occupancy permits for commercial uses in excess of 30,000 aggregate sq. ft. or generating more than a total of 280 pm peak trips shall be issued until the following improvements to 84th Street and Adams Street west of 84th Street have been constructed:

1. Arterial Street Impact Fee Facility Improvements:

(a) A modified arterial section at 84th Street with a single left-turn lane of permanent concrete pavement with curb and gutter from 84th Street west to the public street connection to Adams, together with appropriate turn lanes and a permanent concrete transition tapering down to the three-lane section provided for below.

(b) A convertible three-lane section roadway of permanent concrete pavement with curb and gutter and associated storm sewer from approximately the public street connection to Adams west to 75th Street.

(c) Eastbound right-turn lanes at 80th Street and at the public street connection to Adams.

(d) Westbound left-turn lane at the public street connection to Adams.

2. **Site-Related Improvements**: Connections to 84th Street as shown on the site plan as well as the Windmill Road relocation and turn lane costs.

3. **Directed Arterial Street Impact Fees:** The Arterial Street Impact Fee Facility Improvements need not be constructed prior to the issuance of occupancy permits unless and until the City has entered into an agreement with the Owner to reimburse the costs of construction through the use of directed impact fees on terms and conditions substantially similar to other such agreements for the construction of these types of improvements.

Katt has submitted these proposed amendments to Planning and Public Works, but there have been no discussions. What he is trying to accomplish in the additional Condition

#4.1.1.11 is two-fold: the first section with regard to occupancy permits for commercial is similar to other situations to provide some opportunity for a limited amount of commercial space without having to incur the money to do all necessary road improvements. The other language sets out the commitment to construct the improvements both at 84th and Windmill as a site improvement type facility, which is generally not entitled to impact fee reimbursement dollars. That would be built privately at the cost of the developer and will be split with the developer to the east.

With regard to the Adams Street improvements, this language comes out of the annexation agreement that was negotiated with the Prairie Village North project in terms of the 2+1 roadway facility language from 82nd to 78th, shifting the 2+1 slightly north. This is language that Public Works at one point was willing to accept. 82nd to 84th will need to be designed and Katt expects it to be a full arterial cross-section. There is sufficient right-of-way that will be dedicated on the south side of Adams for that road cross-section. He knows Public Works has concerns about the details; however, Katt pointed out that Condition #4.1.1.10 in the staff report is the wild card for Public Works, where it states, "Other corrections/revisions to the satisfaction of Public Works and Utilities." Therefore, Katt believes there will be numerous opportunities through the administrative amendment process on this project to address the site specific issues.

Esseks asked Katt to discuss the "convertible three-lane section roadway" in Condition #4.1.1.11(1)(a). Katt submitted that when you build roadways and you look to the future, you probably don't want to make investments in roadways that don't have the opportunity to be flexible. This standard is an intent to accommodate and respect the 2+1 standard, without tearing up what the investment had been in that roadway, and accommodate additional through lanes in traffic.

Esseks recalled Katt indicating that there were 12 driveways going onto Adams at this point. Can this improvement on Adams be done in such a way as to minimize the harm to those 12 driveways? Katt advised that there will be no improvements past 75th. 2+1 exists from 75th to 70th. It is in that stretch that the existing driveways are located. Driveway improvements are only in the two-lane rural cross-section asphalt areas. There will be some design challenges on where you might make these transitions. It is those discussions that he believes the developer can have productively with city staff if they receive some direction from the Planning Commission and City Council that this is a good project.

Larson confirmed that this developer is willing to contribute the right-of-way on the north side of the development that will eventually allow a four-lane roadway. Katt concurred, i.e. all the way on the south side of the existing Adams Street right-of-way.

Larson inquired as to the street address on the west side. Katt advised that the west terminus would be about 81st Street, if there was a road. Included in this development proposal is property actually owned by Dr. Matson, and Dr. Matson understands the

changes. He has agreed to submit his property as part of the approval process. The road south of Adams abuts Dr. Matson's property. This developer is making sure that in the future, Dr. Matson's property configuration can be accommodated well and he will continue to be able to live in his home. Katt added that during their discussions about this design, one of the issues that staff raised was the possibility of moving the entrance road further west, and this developer is willing to do that. The current location was selected because it was opposite the Mahoney Golf Course maintenance shed. Katt is hopeful to have productive conversations with staff on where that line can be moved. This developer is flexible and wants to accommodate the staff's issues. That is the purpose of the proposed Condition #4.1.1.11.

Carroll inquired whether the developer is still requesting the right-in right-out along 84th Street. Katt stated, "yes". The developer believes it is a good idea and is not ready to say no. They want to continue to work with staff. Remember the discussion we had is that it accomplishes diffusing the traffic into the development. It is not a traffic hazard to have a right-in right-out at that location.

Carroll confirmed that the applicant is still considering a 70,000 sq. ft. grocery store. Katt confirmed that to be the preferred anchor for that center.

Krieser commented that he likes the plan because we need some commercial in that area.

Carlson noted that the site plan is conceptual. In light of the Comprehensive Plan that has been adopted, he is hopeful that as this site plan solidifies, that it creates good connectivity within the neighborhood and good pedestrian orientation. Katt is hopeful that both of his clients will have projects of which everyone will be proud. The protection is that it puts some authority back on the staff to implement those things. To date, the staff has been very unwilling to have any creative discussions because they oppose the project. If the project is approved, he believes the staff will work hard with them. There is a large incentive for both staff and the developer to reach agreement on those principles.

2. Michael Rierden appeared on behalf of the 18 property owners along Wemsha Street, directly south of the proposed development. They have had conversations with the developer about their concerns such as buffering, drainage, traffic, etc. He has just recently been retained, but his clients are in support of the project, conditioned upon coming to an agreement in writing as far as covenants and a development agreement concerning those issues such as traffic, drainage, buffer along the south side, etc.

Strand understands from three of the homeowners that they are in 100% agreement with the plan. Rierden concurred.

There was no testimony in opposition.

Staff response

Brian Will of Planning staff observed that one of staff's concerns has been dealt with today, and that is the change to the Comprehensive Plan for this area. The other staff concern had to do with Adams Street and the staff had suggested some sort of transportation improvement agreement between the applicant and Public Works. He believes that the proposed amendment to Condition #4.1.1.1 and the additional Condition #4.1.1.11 are an attempt to get to that agreement. Staff agrees with the amendment to Condition #4.1.1.8.

Dennis Bartels of Public Works and Utilities acknowledged that the action taken on the Comprehensive Plan today gives direction that Adams Street would stay three lanes and that is what we have to work with, and the staff will work with the applicant to figure that out. The traffic study also identified things that could be done right at 70th and Adams – right turn lanes might be needed. Public Works does not believe the three lanes will work for an extended period of time, but if that is the decision that is made, the staff will work with that and try to offset it. The Comprehensive Plan calls for the potential widening of 84th Street to six lanes someday, so the plan they worked out earlier on the Prairie Village design had shown building what we could get in there today. The only other item that the study indicated was the desirability of additional right turn lanes on various directions at the 70th and Adams intersection. The intersections are the points where you are going to have the congestion.

Strand asked Bartels to confirm that he agrees with the language submitted by Katt. Bartels agreed.

ACTION BY PLANNING COMMISSION: October 25, 2006

Strand moved approval, with conditions, with the amendments as requested by the applicant, seconded by Carroll and carried 8-0: Krieser, Cornelius, Sunderman, Strand, Larson, Esseks, Carroll and Carlson voting 'yes'; Taylor absent. This is a recommendation to the City Council.

There being no further business, the meeting was adjourned at 6:35 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on November 8, 2006.

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