MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, September 12, 2007, 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; Marvin Krout, Ray Hill, Steve Henrichsen, Mike DeKalb, Brian Will, Christy Eichorn, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.
STATED PURPOSE OF MEETING:	Regular Planning Commission Meeting

Chair Gene Carroll called the meeting to order. There was a special presentation by Denise Pearce on behalf of Mayor Beutler to Gerry Krieser for his nine years of service. Krieser expressed his gratitude for the opportunity to serve and his appreciation for the attitude and cooperation between the Commissioners. He also expressed appreciation to the previous Mayors, Bernie Heier and staff members.

Carroll requested a motion approving the minutes for the regular meeting held August 29, 2007. Motion for approval made by Strand, seconded by Cornelius and carried 9-0: Carlson, Carroll, Cornelius, Esseks, Krieser, Larson, Strand, Sunderman and Taylor voting 'yes'.

A resolution of appreciation to Mary Strand for six years of service was read into the record. Taylor moved approval, seconded by Esseks. Carroll expressed his appreciation to Mary Strand for her dedication and support of the community. Motion approving Resolution No. 01072 carried 8-0: Carlson, Carroll, Cornelius, Esseks, Krieser, Larson, Sunderman and Taylor voting 'yes'; Strand abstaining.

A resolution of appreciation to Jon Carlson for seven+ years of service was read into the record. Taylor moved approval, seconded by Larson. Carroll expressed appreciation to Jon Carlson for his excellent attendance and dedication. Motion approving Resolution No. 01073 carried 8-0: Carroll, Cornelius, Esseks, Krieser, Larson, Strand, Sunderman and Taylor voting 'yes'; Carlson abstaining.

A resolution of appreciation to Gerry Krieser for nine years of service was read into the record. Taylor moved approval, seconded by Esseks. Carroll expressed appreciation to Gerry Krieser for his views from the aspect of residents in the County, and pointed out that

Krieser will continue to serve on the Board of Zoning Appeals. Motion approving Resolution No. 01074 carried 8-0: Carlson, Carroll, Cornelius, Esseks, Larson, Strand, Sunderman and Taylor voting 'yes'; Krieser abstaining.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: August 29, 2007

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

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 07042, SPECIAL PERMIT NO. 07031, SPECIAL PERMIT NO. 07004 and SPECIAL PERMIT NO. 07036.**

Ex Parte Communications: None.

Item No. 1.2, Special Permit No. 07004, and Item No. 1.3, Special Permit No. 07036, were removed from the Consent Agenda and scheduled for separate public hearing.

Taylor moved to approve 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. 07031, 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.

SPECIAL PERMIT NO. 07004
FOR A 158' TALL PERSONAL WIRELESS FACILITY
ON PROPERTY GENERALLY LOCATED AT
NORTH 140TH STREET AND "O" STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: September 12, 2007

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

Ex Parte Communications: None.

Staff recommendation: Conditional Approval

This application was removed from the Consent Agenda and had separate public hearing.

Staff presentation: **Brian Will of Planning staff** explained that this is a request by Verizon Wireless for a 150' tall personal wireless facility located at approximately 140th & O Streets. The future land use plan shows this area for industrial land uses. As noted in the staff report, this is one of the few industrially zoned tracts of land located outside of the city limits. The staff finds that this proposal meets the requirements of the zoning ordinance, including the fall zone, except that the landscape plan does not fully meet the requirement of the design standards and there is a condition of approval requiring that the landscape plan be revised and resubmitted.

Proponents

1. Katrina Robertson, attorney with **Selective Site Consultants,** appeared on behalf of the applicant. This is a successor application. It was originally submitted in a different location at Campbell's Nursery; however, that location was not a recommended preferred location, thus this request to locate it in an industrial area. The applicant believes that this is a compatible use for the area. The applicant has submitted documentation to the Planning Department which addresses all of the ordinance requirements. Verizon is aware that they need to make the changes to the landscape plan and has agreed to do so. The applicant agreed with all conditions of approval. Robertson clarified that this is a 150' monopole tower with an 8' lightning rod. It is buffered from the surrounding buildings as well as from the residential area, which is really about 1,000' away from the site.

Opposition

1. Kitra Deger, 14302 O Street, who owns property which adjoins the Skoda Development property to the east, testified in opposition. She appreciates progress and knows that Mr. Skoda has done a lot of development in this area. She currently has a business on her property. She suggested that location of the tower would be more appropriately located to the west of the Skoda property where there is another industrial area, rather than being located next to residential. In addition, Deger advised that she and her husband are currently in the process of resolving a fence line/property line issue with Mr. Skoda. A fence was taken down by Mr. Skoda to do some dirt work and this issue has not yet been resolved. Deger requested that the Commission consider moving the tower site next to the other industrial use rather than the residential.

Deger indicated that she has not talked with the applicant nor the property owner about placing this tower in a different location.

2. Danny Walker, 427 E Street, testified in a neutral position. He pointed out that, generally speaking, when these towers go up, the funds drawn by the City from the cell tower owner go into a general fund. The funds do not go back into the neighborhood or the park where the tower is located. He believes this is wrong. The rent is very substantial. This needs to be monitored.

Staff response

Will believes that it is probably within the purview of the Planning Commission to have a discussion with the applicant about moving the tower site. It is a special permit so it is discretionary. However, the proposed tower meets all of the requirements, including the fall zone, which is a setback of one-half the height of the tower in proximity to the adjacent neighboring property.

Will also pointed out that it often comes down to a trade-off between height of the tower and where it is sited. Moving it further to the west may result in the tower being taller.

Strand wondered whether the topography of the land is compatible to the west. Will observed that the proposed site is pretty much at the top of the hill and this may have been a consideration in siting the facility at this location.

Response by the Applicant

Robertson confirmed that the RF engineer goes out in a particular area and scours it to determine the best location for the tower. On this particular site, the industrial property sits low and as you move back toward the shed and the house on the property, the topography is elevated. The applicant has proposed a minimum height of 150' based upon that elevation. Moving that location may require that the tower be extended higher to meet the coverage objections. Verizon did a lot of work on this application, including the Campbell's Nursery site. They were told by staff that the Campbell's site would not be viable given the future interchange there. The applicant also looked at another industrial site close to the Skoda Development and then this location was selected. Verizon has always been a good neighbor. If landscaping is an issue, it will be addressed. She offered to visit with Ms. Deger to see if there is anything Verizon can do. She requested that this location be approved. The compound around the tower will be completely fenced and there will be landscaping around the entirety of the compound.

ACTION BY PLANNING COMMISSION: September 12, 2007

Taylor moved to approve the staff recommendation of conditional approval as set forth in the staff report, seconded by Larson and carried 8-1: Esseks, Carlson, Cornelius, Sunderman, Strand, Larson, Taylor and Carroll voting 'yes'; Krieser voting 'no'. This is final action, unless appealed to the City Council within 14 days.

SPECIAL PERMIT NO. 07036
FOR THE EXTRACTION OF SAND, GRAVEL AND SOIL,
ON PROPERTY GENERALLY LOCATED AT THE
NORTHEAST CORNER OF N. 120TH STREET AND ALVO ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: September 12, 2007

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

Ex Parte Communications: None.

Staff recommendation: Conditional Approval

This application was removed from the Consent Agenda and had separate public hearing at the request of Commissioner Esseks.

Staff presentation: **Mike DeKalb** of **Planning staff** explained that this is a request for a special permit for soil mining and extraction on a 160-acre parcel currently used as farming at 120th & Alvo Road. The property is located just south of the Waverly interchange, and is currently shown as industrial in the Comprehensive Plan.

Esseks expressed concern about the contrast between the conditions in this special permit and the conditions that this Commission voted on in a similar project on US Hwy 77 and Branched Oak Road just two weeks ago. He supported the conditions at US Hwy 77 and Branched Oak Road and they were more restrictive. He would hate to have the legitimacy of the conditions voted upon two weeks ago compromised by the more lenient conditions recommended on this special permit. He was looking for the justification for the difference in the conditions of approval.

DeKalb explained that the basic package of conditions on this permit did attempt to be the same as what the staff originally recommended on the special permit on 56th & Hwy 77. The more restrictive conditions were made by the Planning Commission and came about after the staff report was written on this special permit. The more restrictive conditions at 56th & Hwy 77 substantially went to the traffic on Hwy 77, the visibility circumstance on Hwy 77, posting of notice, timing of closure and access. The hours of operation went to the concerns of the neighbors relative to the school trips and work trips on Hwy 77. That is not an issue in this more rural setting on a county gravel road with no access onto paved roads and no immediate close neighbors. This operation will be removing from the top of the hill and using that dirt in a reconstruction project right across the property line to the northwest on contiguous land. The hours of operation did not seem to be a similar circumstance. He believes the more restrictive conditions also related to the concerns of the neighbors for monitoring the special permit. Bottom line, DeKalb suggested that the main difference is the location on a highway versus a more rural location. The County road abutting on the east is a dead-end road.

Larson sought confirmation that this operation is in preparation for the north terminus of the East Bypass. DeKalb believes that the State went out for bids to contractors to provide dirt. This is the winning applicant for that bid and it is in conjunction with interstate reconstruction of the Waverly interchange.

The applicant was not present.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION: September 12, 2007

Strand moved to approve the staff recommendation of conditional approval, seconded by Sunderman and carried 9-0: Esseks, Carlson, Cornelius, Sunderman, Strand, Larson, Krieser, Taylor and Carroll voting 'yes'. This is final action, unless appealed to the City Council within 14 days.

CHANGE OF ZONE NO. 07047
FROM R-6 RESIDENTIAL DISTRICT TO
R-4 RESIDENTIAL DISTRICT,
ON PROPERTY GENERALLY LOCATED
FROM S. 8TH TO S. 9TH STREETS AND
'A' TO 'F' STREETS.
PUBLIC HEARING BEFORE PLANNING COMMISSION: September 12, 2007

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

Ex Parte Communications: None.

Staff recommendation: Approval.

Staff presentation: **Christy Eichorn of Planning staff** presented this application for a downzone from R-6 to R-4, which is consistent with the Comprehensive Plan in preserving the existing character of the area. She submitted three letters in support, including the Everett Neighborhood Association, the South Salt Creek Community Organization, and a petition signed by 18 members of the community. The Preservation Association of Lincoln had previously submitted a letter in support.

Eichorn noted that the Comprehensive Plan states that one of Lincoln's most valuable community assets is supply of single family homes available at very affordable costs. Preservation of these homes will protect residential neighborhoods. Although this downzone is intended to preserve single family homes, Eichorn pointed out that the multi-family uses existing in the neighborhood would be classified as nonstandard by this action, and if destroyed, they could be rebuilt with the same number of licensed units existing

today if they can meet the new setback of 25'. This downzone will not decrease the amount of rental housing in the area. Existing duplexes and apartments can remain even after the downzoning.

This downzone includes 10 duplexes dwelling units, 24 multi-family units in five buildings and three churches. Overall, 67 (80%) of all buildings in the downzone are single family uses.

A community meeting was held on August 15, 2007, where approximately 15 neighbors were in attendance and many supported the downzone.

The record consists of a letter in opposition from the property owner at the southwest corner of 9th & D Streets. The staff recommends that this property not be removed from the downzone in order to keep the cohesive pattern of R-4 zoning in the area. Eichorn showed the property requesting to be removed from the downzone on the map. There is a small notch of commercial not included in the downzone. Strand wondered about extending the notch to include the single family home that is in opposition.

Esseks referred to Analysis #2 on page 6 of the staff report, where it states that:

> ...There are a few lots with very small homes on them that could also be removed to permit redevelopment for duplex use. Therefore, the primary opportunity for additional two-family and multi-family residences appears to be converting existing single family dwellings, which would be permitted on most of these lots after downzoning.

Esseks inquired whether the staff anticipates new multi-family residences in this area. Eichorn responded that most are single family and most lot sizes are conducive to single family and duplex, but there is an opportunity because some of the smaller single family residences could be brought down and multi-family put up. This downzone action seeks to avoid that scenario.

Proponents

1. William J. Wood, 808 D Street, appeared as the applicant who has lived in this area for the last 50 years. He advised the Commission that several neighbors were also a part of this application. Why did we make this application? Because we are a neighborhood constructed mostly between 1880 and 1927, mostly single family homes which are well preserved and they range from small cottages to large two-story homes. People seem to stay in the neighborhood for decades. It is a very walkable community. They want to preserve this neighborhood as it is today.

They want to avoid the establishment of apartment buildings in the neighborhood, which they have pretty much avoided. A lot of apartment buildings have been developed to the

east of this neighborhood and the result has been more crime in the 11th to 13th and E area. He believes that other problems come with the larger multi-family dwelling units. Some are poorly built and not well-maintained. The infrastructure in this neighborhood is not conducive to the multi-family development. There are already water pressure problems and they do not want to exacerbate those types of problems. Wood advised that he has talked to people that live next to some of the multi-family buildings who have had to construct fences to keep debris out of their yard and they have had problems with noise during the night.

Wood advised that this neighborhood is within the South Salt Creek Community Organization, which has submitted a letter in support. The Everett Neighborhood Association has also submitted a letter in support. In fact, he believes that the Everett Neighborhood Association has an application on file that would downzone much of the area east of 9th Street, which has not yet been heard. The Preservation Association of Lincoln has also submitted a letter in support.

Strand inquired about the Zion Church property and whether the Church would be rebuilding there. Wood stated that the Zion Church property is at the northwest corner of 9th and D Street and is included in this request. He has talked to the church about this downzone and they have indicated that they plan to either reconstruct the church at this location or a possibly a "daughter" church at this site.

Four individuals stood in the audience in support.

2. Danny Walker, 427 E Street, testified in support. He noted that there have been drop-ins occurring in various neighborhoods which have not turned out very good. We do not want that to happen in this area. There are historical buildings and structures in the area which we desire to maintain and not allow drop-ins to occur. He also believes that some of the structures are on less than full lots, which leads to drop-ins.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION: September 12, 2007

Cornelius moved approval as recommended in the staff report, seconded by Carlson.

Cornelius believes this is another example, yet relatively small, of an area to have a zoning correction made. The area is already at relatively high density for Lincoln and the residents are asking to keep the density at that level – urban residential density. He believes it seems reasonable.

Looking to the west, which is R-4 zoning, Carlson suggested that it makes sense to move that boundary over to 9th Street making that a natural barrier.

Strand stated that she does not normally support downzoning. However, this is an unusual situation when you potentially have land being freed up by the Zion Church and this provides opportunity for some single family lots if Zion chooses not to rebuild.

Taylor expressed appreciation for the comments made by staff and the staff being more open toward the possibilities and the importance of using downzoning as a tool to better our community.

Carroll noted that 80% of the units are single family, which is very important. Secondly, the Planning Commission changed the standards for nonstandard uses, which now allows some flexibility.

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

CHANGE OF ZONE NO. 07051
TEXT AMENDMENT TO TITLE 27
TO ADD PROVISIONS ALLOWING A
NONCONFORMING OFF-PREMISES SIGN
TO BE REPLACED WITHOUT BEING BROUGHT
INTO COMPLIANCE WITH THE ZONING CODE SIGN
REGULATIONS, UNDER LIMITED CIRCUMSTANCES.
PUBLIC HEARING BEFORE PLANNING COMMISSION: September 12, 2007

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

Ex Parte Communications: None.

Staff recommendation: Approval.

Staff presentation: **Mike DeKalb of Planning staff** submitted a letter in support from the Witherbee Neighborhood Association.

DeKalb explained that this proposal is requested by Lamar Outdoor Advertising, who worked with staff to come up with language that is mutually acceptable and beneficial. This will result in the ability and incentive to remove old obsolete signs and replace them with new, more attractive and longer lasting signs.

Proponents

1. Martha Lee Heyne of Lamar Outdoor Advertising, 5906 Rolling Hills Blvd., agreed that the applicant has worked hard with the Planning Department over the last several months to anticipate any concerns or questions about this legislation, and she believes all

concerns have been addressed with this amendment. This legislation affects a little over 40 signs in the community. Lamar believes that this change is not only supportive of their business and business in general, but also the city's aesthetic future. She confirmed that Lamar no longer builds I-beams or stacked units. They only build monopole back-to-backs.

There was no testimony in opposition.

Esseks expressed some concern about the new sign not being in full compliance with the sign code. We must be giving something up while gaining a smaller, lower monopole. What are we giving up? DeKalb suggested that the current code allows a sign to stay in place as long as it can. The reality is that there is no incentive to remove them, which results in a scenario like 33rd & O, where the steel posts are standing without the faces. If they pull the structure, they lose the site. He suggested that "what we are giving up" is that the sign will eventually go away. We are gaining an aesthetically more pleasing sign. There are close to 12 provisions that can make a sign nonconforming. The benefit to the community is that it gets rid of the stacked old sign that will attempt to be salvaged and maintained in perpetuity. Esseks confirmed that the new sign would be smaller, lower and have a single support. DeKalb agreed, and the new sign would also have to have down-lights.

Taylor inquired about light pollution. How does the smaller sign address that concern? DeKalb explained that there are three categories of signs: non-illuminated, external light sources on the sign, and LED signs like TV screens. The LED signs have a light level. For those that have external lights, many of the older signs had lights at the base shooting up with a lot of light pollution to the sky. The new sign code requires down-lighting.

ACTION BY PLANNING COMMISSION: September 12, 2007

Larson moved approval, seconded by Strand.

Larson believes this will be a gain for the community because without it there is no incentive to change those locations. They won't give them up and we will continue to have some of these ugly side-by-side and stacked locations, whereas this will present a much more attractive sign.

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

SPECIAL PERMIT NO. 07035
FOR THE EXPANSION OF A NONSTANDARD USE
ON PROPERTY LOCATED AT 1649 SOUTH 25TH STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: September 12, 2007

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

Ex Parte Communications: Carlson disclosed that he attended the Near South Neighborhood meeting Monday night and their discussion related to the information contained in the staff report.

Staff recommendation: Conditional Approval

Staff presentation: **Christy Eichorn of Planning staff** presented the proposal and submitted a letter in opposition from a neighbor and a letter in support from the Near South Neighborhood Association.

This is an application to reconstruct a nonstandard building into the required front yard. The property is zoned B-1 with the required 20' yard. The building is being constructed to be the same exact size and in the same exact location as the previous garage. A nonstandard use is a lot or use that existed prior to the zoning ordinance or due to a change in the ordinance or district boundaries and no longer complies with the minimum lot requirements. The building was built in 1915 before the zoning district and setbacks were established. The building is currently being used with office on the first floor and residential on the second floor. It is located in Historic Landmark district. The subject building, the abutting building to the north and the building east across S. 25th Street were built on the front lot lines along S. 25th Street. The building across S. 25th Street is built on the front lot line of Sumner Street. Buildings with zero front yard setback are characteristic of this commercial area.

The Historic Preservation Commission has recommended approval of this special permit. The B-1 zoning requires one parking space per 300' of commercial area and one space per dwelling unit. There is only room for 3 parking stalls. The reconstruction of the garage will still provide for 3 parking stalls.

Proponents

1. Barbara Burr, the applicant, testified in support. She is hoping to make the garage structurally sound and to improve the neighborhood by the look and feel of the garage. It will have a wrought iron fence.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION: September 12, 2007

Strand moved to approve the staff recommendation of conditional approval, seconded by Taylor and carried 9-0: Esseks, Carlson, Cornelius, Sunderman, Strand, Larson, Krieser, Taylor and Carroll voting 'yes'. This is final action, unless appealed to the City Council within 14 days.

There being no further business, the meeting was adjourned at 2:15 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on September 26, 2007.

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