

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, June 13, 2012, 1:00 p.m., Hearing Room 112 on the first floor of the County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Leirion Gaylor Baird, Greg Butcher, Michael Cornelius, Wendy Francis, Chris Hove, Lynn Sunderman and Ken Weber (Dick Esseks and Jeanelle Lust absent); Marvin Krout, Steve Henrichsen, Tom Cajka, Christy Eichorn, Sara Hartzell, Jean Preister and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Chair Michael Cornelius called the meeting to order and acknowledged the posting of the Open Meetings Act in the back of the room.

Cornelius then requested a motion approving the minutes for the regular meeting held May 30, 2012. Motion for approval, as amended, made by Francis, seconded by Hove and carried 7-0: Gaylor Baird, Butcher, Cornelius, Francis, Hove, Sunderman and Weber voting 'yes'; Esseks and Lust absent.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION

BEFORE PLANNING COMMISSION:

June 13, 2012

Members present: Gaylor Baird, Butcher, Cornelius, Francis, Hove, Sunderman and Weber; Esseks and Lust absent.

The Consent Agenda consisted of the following items: **SPECIAL PERMIT NO. 12024 and WAIVER NO. 12006.**

Ex Parte Communications: None

Francis moved approval of the Consent Agenda, seconded by Weber and carried 7-0: Gaylor Baird, Butcher, Cornelius, Francis, Hove, Sunderman and Weber voting 'yes'; Esseks and Lust absent.

Note: This is final action on Special Permit No. 12024 and Waiver No. 12006 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.

**COMPREHENSIVE PLAN AMENDMENT NO. 12002,
TO ADD THE ANTELOPE CREEK WATERSHED
BASIN MANAGEMENT PLAN TO THE LIST OF
SUBAREA PLANS.**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 13, 2012

Members present: Gaylor Baird, Sunderman, Hove, Francis, Butcher, Weber and Cornelius; Lust and Esseks absent.

Staff recommendation: Approval.

There were no ex parte communications disclosed.

Staff presentation: **Ben Higgins of Public Works & Utilities, Division of Watershed Management**, stated that this is a request to add the Antelope Creek Watershed Basin Management Plan as an approved subarea plan in the 2040 Comprehensive Plan. It is a joint project between the City and the Lower Platte South NRD. Other approved master plans include Stevens Creek, Deadman's Run, Little Salt Creek, Beal Slough, Southwest Upper Salt Creek and Cardwell Branch. The area of this basin is below Holmes Lake. All previous plans have been about floodplain and fold control. This is mostly about water quality.

Higgins advised that there has been a large public process with open houses, a citizen advisory committee, postings on the Web site, newsletters, and stakeholder meetings. The reason for this plan is that Antelope Creek has been designated as impaired by the state for E. Coli bacteria and ammonia. Because this is a stream which has the chance of full body contact, it requires consideration of the pollutants in terms of the health standards. The goal is to come up with projects and programs to reduce pollutants in the stream, to increase awareness and to provide education to the public. Sampling of the watershed found that the average amount of E. Coli needs to be reduced by 90%. The E. Coli was

sparse, and the likely sources are from urban wildlife and domestic pets, and other sources naturally occurring from groundwater influence. The level of pollutants is similar to other streams throughout the nation.

In addition, Higgins advised that the flow coming out of Holmes Lake was found to be relatively clean with not a lot of pollutants, but as you get further downstream there is more and more drainage area, but they do not see any spikes. There is really no easy way to do one thing to clean it up. The total estimated cost to reduce the pollutants to the preferred health levels is \$57 million for the whole creek. Part of the reason the study was done and the report formatted in a certain way was to get grant funding to assist with the cost. The \$57 million estimate is over a 40-year period. We need to break that down into manageable chunks so it is split into eight phases, as set forth in the study. Phase I includes \$1.7 million. Some of the programs would be bridge retrofits to discourage bird roosting; continued monitoring; rain garden and rain barrel programs, etc. The initial five-year period would be Phase I. This will be re-evaluated after 5 years to determine the effectiveness.

In summary, the study was done to come up with projects and programs to reduce pollutants in Antelope Creek.

Gaylor Baird asked whether Public Works has had discussions about potential public notification in areas where there might be greater numbers of public, specifically in Union Plaza where there are steps leading down to the water. Higgins stated that the potential for body contact is pretty common in all urban streams. He stated that he has not had any real serious discussions such as posting of signs, etc. He suggested that everyone needs to take a common sense approach. Gaylor Baird thinks it is important for Union Plaza because the design actually has stairs leading to the water, almost encouraging people or children to get in the water. Higgins agreed to bring this up with Parks and the NRD.

Since these are fairly common numbers in pollutant levels, Weber wondered whether it is worth spending the money to try to alleviate a little bit of that, or are we just not going to accomplish a whole lot? Higgins' response was that our storm drainage system is a passive system – we do not treat any of the stormwater, but we actually have a permit from the federal and state that says we have to reduce pollutants. If you can make a green area more inviting, you are able to better serve the public in the long term. It is well worth the money. We need to at least start the process and look at the steps we can do to help reduce pollutants in the city. It is the responsible thing to do.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

June 13, 2012

Francis moved approval, seconded by Sunderman.

Francis agrees that it is the right thing to do to try to get some of the pollutants out of the water, especially in an area where so much public activity is occurring.

Cornelius noted that the Planning Commission received a detailed briefing on this two weeks ago, which also informs the decision they are making today.

Motion for approval carried 7-0: Gaylor Baird, Sunderman, Hove, Francis, Butcher, Weber and Cornelius voting 'yes'; Lust and Esseks absent. This is a recommendation to the City Council.

ANNEXATION NO. 10004
TO ANNEX 37 ACRES GENERALLY
LOCATED AT N. 108TH STREET AND HOLDREGE STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 13, 2012

Members present: Gaylor Baird, Sunderman, Hove, Francis, Butcher, Weber and Cornelius; Lust and Esseks absent.

Staff recommendation: Approval, subject to an annexation agreement.

There were no ex parte communications disclosed.

Staff presentation: **Tom Cajka of Planning staff** submitted copies of comments received from other departments on this application that were not included with the staff report but were referenced in the analysis.

Cajka explained that this is an application to annex the Sky Ranch Acres subdivision which is immediately east of Waterford Estates. It is basically a little bit east of 98th Street on the south side of Holdrege. It includes approximately 36.11 acres and 30 single family houses. It does not include the small grass airstrip. The reason for this annexation request is that the private sewage treatment plant is failing and the cost to fix or replace is quite expensive. With the City's new Stevens Creek trunk sewer line being built, the sewer line

will come down into Waterford Estates. Once the trunk sewer line is built towards the latter part of September, 2012, the lift station will be de-commissioned in Waterford Estates. Sky Ranch Acres will be able to hook onto the new trunk sewer line.

Sky Ranch Acres is contiguous to the city limits on the west side and is within the future service limits, Tier I. Water mains are not available for this area. The water line currently stops at 98th Street on Holdrege. The subdivision association is aware and they are agreeable to proceed with annexation knowing that city water will not be available in the near future. The subdivision is currently served by two wells which they can continue to operate. They will be required to get permits through the Health Department with a yearly inspection after annexation.

The roads are currently county public streets. They would become city public streets. In the annexation agreement, the association is agreeing to maintain the open ditches and culverts, and if it becomes necessary to re-pave those streets in the future, they would not be opposed to a re-paving district.

Fire protection for the area is currently provided by the SE Rural Fire District. Upon annexation, it would become the City's responsibility. The nearest fire stations are at S. 84th and South Street and N. Cotner Blvd. and Vine Street. The response time is approximately 4 minutes to this area. The association is aware that it is beyond the normal response time the Fire Department prefers, but again, in the annexation agreement, the association acknowledges that the fire protection service is different than within the more urban built area of the city.

Butcher inquired about the hydrant issue – are they going to use the water system that currently exists? Cajka acknowledged that they have no fire hydrants. The City has agreements with the Rural Fire District whereby the Rural Fire District could help or they would have to have tankers. The closest fire hydrant is at 98th on Holdrege.

Francis inquired as to how many tankers are owned by the City, and are there a couple of tankers located at the two closest fire stations? Cajka did not know.

Butcher believes the rural fire department is located on Holdrege just past 84th. Cajka agreed.

Francis inquired whether the rural fire district would automatically respond. Cajka believes the Lincoln Fire Department would notify the SE Rural Fire District for mutual aid. Cajka

did not know how much time it would take the rural fire volunteers to get out there, but he assumes it would be well more than 4-5 minutes.

Hove inquired whether the Airport Authority is required to approve this annexation, even though the airstrip is not included. Cajka stated that there is no approval required from Airport Authority and the airstrip has been there for years.

Proponents: The applicant was not present.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

June 13, 2012

Hove moved approval, subject to annexation agreement, seconded by Sunderman.

Francis is concerned about the response time for fire; however, it is important to approve this because of the failing sewer system.

Gaylor Baird observed that it sounds like there have been extensive discussions with the association about the requirements they will face as they are annexed, including paving and volunteer fire response. If anything, they are getting a lot more information than they might otherwise as a result of this annexation process.

Motion for approval, subject to an annexation agreement, carried 7-0: Gaylor Baird, Sunderman, Hove, Francis, Butcher, Weber and Cornelius voting 'yes'; Lust and Esseks absent. This is a recommendation to the City Council.

**COMBINED SPECIAL PERMIT/USE PERMIT 10B,
TO REDUCE THE MINIMUM REQUIRED PARKING,
ON PROPERTY GENERALLY LOCATED AT
NORTH 66TH STREET AND O STREET (EAST PARK PLAZA).
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

June 13, 2012

Members present: Gaylor Baird, Sunderman, Hove, Francis, Butcher, Weber and Cornelius; Lust and Esseks absent.

Staff recommendation: Conditional Approval

There were no ex parte communications disclosed.

Staff presentation: **Tom Cajka of Planning staff** explained that this is a request to reduce the required parking at East Park Plaza on the north side of "O" Street just east of 66th Street, from 4.5 stalls per 1,000 sq. ft. to 1 stall per 300 sq. ft. regardless of the use. The property is zoned B-5, currently requiring 4.5 stalls per 1,000 sq. ft. for commercial/retail type uses; however, restaurants require 1 stall per 100 sq. ft. anywhere in the city and movie theaters are required to have 1 stall per 50 sq. ft. of seating area, and then the remaining area is 4.5 stalls per 1,000 sq. ft. Today, East Park Plaza is required to have 1,192 parking stalls. They currently have 1,203 parking stalls, which is only 11 extra stalls. This lack of surplus stalls and limited space to provide any additional parking limits the potential for changes in uses, such as changing retail to restaurants or other type of assembly areas or office space. Also, additional outdoor seasonal sales would be prohibited because the area of seasonable sales cannot occupy required parking. Today, the only way they can have outdoor seasonal sales is because of an agreement with the developer of the shopping center that they will not lease out a certain amount of square feet within the old mall where it is vacant.

The movie theater requires the largest amount of stalls in the center, which currently required to have 274 stalls. The peak time for movie theaters is normally in the evening, especially on the weekend, and this results in a large number of parking stalls being vacant during the day time hours. Cajka did a site visit recently on a Friday just before noon and over half of the parking lot was empty.

Research of some other cities, e.g. Des Moines and Iowa City, has found that they have reduced parking requirement for uses when located within a shopping center with non-concurrent demands. The interesting thing about this shopping center when compared to other centers in B-5 zoning is that it is somewhat self-contained being bordered by two major arterials, storm drainage on one side and commercial on the other side. The only residential use has no direct access to the center. Any threat of parking spillover with a reduction on the residential streets is pretty much non-existent.

Cajka suggested that in some schools of thought, there is an argument that in shopping centers such as this, with no threat of spillover to residential, there should be no parking requirement and that the market should dictate the amount of parking. It is in the developer's interest to provide adequate parking stalls for their tenants.

This proposal would reduce the required parking stalls from 1,192 to 723, which is a substantial reduction (469 stalls); however, most shopping center developers actually provide more than required in most cities because they have an interest in keeping their tenants happy by providing the necessary parking.

Cajka also pointed out that another large center, South Pointe, did have a reduction of 234 parking stalls when it was approved based upon the non-concurrent demands.

Butcher inquired whether the facility located just to the east is still interconnected with the mall. Cajka stated that he has been told that it is no longer connected to the center.

Proponents

1. Jeremy Williams, Design Associates, appeared on behalf of the owners. He suggested that the staff report and the staff presentation were thorough in explaining this proposal. This is a large commercial development just shy of 220,000 sq. ft. total. It consists of a large mixed-use variety of commercial spaces. The movie theater, being one of the larger tenants, drives that non-concurrent use. This will allow the owners to have a little more flexibility.

Francis inquired whether losing the 469 parking stalls frees up space for another pad site. Williams advised that the owner is looking at a more permanent solution to the seasonal outdoor sales. The only other interest they have had recently is some possible restaurant space.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

June 13, 2012

Francis moved to approve the staff recommendation of conditional approval, seconded by Hove.

Francis commented that she is in this parking lot a lot and her experience is that it is pretty empty most of the time so she does not believe this will cause much of an issue.

Cornelius pointed out that this is a unique development surrounded by arterials and other commercial development. The probability of spillover into residential is effectively nil.

Motion for conditional approval carried 7-0: Gaylor Baird, Sunderman, Hove, Francis, Butcher, Weber and Cornelius voting 'yes'; Lust and Esseks absent. This is a recommendation to the City Council.

**CHANGE OF ZONE NO. 12013,
FROM H-2 HIGHWAY BUSINESS DISTRICT
TO R-2 RESIDENTIAL DISTRICT**

and

**SPECIAL PERMIT NO. 435F
TO EXPAND THE BOUNDARIES,
ON PROPERTY GENERALLY LOCATED
AT NORTH 52ND STREET AND "O" STREET.**

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION

June 13, 2012

Members present: Gaylor Baird, Sunderman, Hove, Francis, Butcher, Weber and Cornelius; Lust and Esseks absent.

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

There were no ex parte communications disclosed.

Staff presentation: **Tom Cajka of Planning staff** explained that this is a request for a change of zone from H-2 to R-2 for elderly and assisted living, which is not allowed in the commercial districts. Cajka pointed out that the Health Department originally had a concern about the rezoning to residential next to industrial. There is some I-2 on the west side of 52nd Street, which is within a PUD, that was approved mainly for office space and was originally intended to be a research area. Based on that, and knowing that if they wanted any change they would have to come back to amend the PUD, the Health Department has no further objection to the change of zone.

The special permit is for 316 dwelling units of elderly housing and assisted living. The project is proposed to have 80 skilled nursing beds, 46 assisted living units, 20 memory care beds, 160 independent living units and one duplex. The total of 316 dwelling units is the same as what is approved today. The project is proposed to be in three phases.

The special permit application is also requesting a waiver to height from 35' to 75' for the new area. The existing special permit on the remaining portion has already been approved

for an 82' height limit. Based on the previous approved height waiver and the area surrounding being all commercial property, staff supports this waiver.

With regard to the I-2 zoned property next door, Gaylor Baird understands the staff is comfortable because it does not function as an industrial use, but is there a reason it is still zoned industrial? Cajka indicated that it could be rezoned but no one has ever made that request. Gaylor Baird then asked if there is a chance it would go back to industrial use given that the zoning is industrial. Cajka believes that the staff response to an industrial use would be a recommendation of denial based on the existing PUD and its intent. At that time, it would make sense to rezone to some other commercial district. Gaylor Baird wondered whether it might make sense to change that zoning now to avoid that situation. Cajka explained that typically the Planning Department does not initiate changes of zone on private property.

Weber referred to Analysis #3 in the staff report for the change of zone, noting that it states that the PUD is approved for commercial and office use, and that any future industrial use would have to come back through the Planning Department.

Butcher inquired about the height of the existing building which will be expanded. Cajka stated that it is 80'. Butcher inquired whether there was a height restriction on phase 3 abutting 52nd Street. Cajka explained that the existing parcel already has the height waiver, and the new area is proposed to be a 75' height limit.

Hove inquired about elevation differences. Cajka further explained that the height is taken from the ground elevation.

Gaylor Baird noted the location of the nearest fire station, acknowledging that this is a very centrally located property. Do you know the response time to this location for emergency services? We have heard from the Fire Department that senior living facilities are some of the most high demand properties in terms of needing emergency services. Cajka stated that he did not contact the Fire Department about the response time. The application was sent to the Fire Inspector in Building & Safety and there was no comment or objection. Gaylor Baird assumes they have a good response time due to the central location.

Proponents

1. Nate Buss, Olsson Associates, testified on behalf of the applicant, **Gateway Senior Living**, and agreed with the staff presentation and conditions of approval. He indicated

that the applicant did hold a neighborhood meeting where there were some concerns about drainage, which the staff report condition addresses by requiring a grading and drainage plan approved by Public Works. The applicant has explained to the neighbors what they can do to improve that drainage and not make it any worse than it is today.

Buss further explained that the existing parking lot will remain in place for Phase I. The first bank of parking will be associated with the Phase I building. There is some good elevation relief. The east side of the buildings are set higher and the backs are such that the basement is an exposed level. The height is taken from the east elevation.

The applicant is requesting two access points on 52nd Street. The south one will be for maintenance and emergency services, with the north for more of a resident entrance. 52nd Street is less traveled and more easily maneuvered.

There is a garage in the rear primarily used by a minimal amount of residents and the staff for equipment and maintenance.

Butcher inquired whether all of the property including the future phases is owned by the applicant. Buss answered in the affirmative.

Butcher inquired as to the location of those neighbors that were concerned about drainage. Buss stated that they were all residential neighbors – no commercial.

Opposition

1. Earl Johnson, 309 Orcutt Avenue West, adjacent to Gateway Manor, testified in opposition based on the drainage issue. He stated that he is testifying for himself and his wife only. They have lived there 41 years, and there are two drainage ways that come through the area. One is the residential area which is in back of the residences and travels north onto 54th and R Streets. The second drainage is the drainage that takes care of Gateway Manor, the duplexes that are built and the US Bank parking lot. All of that water is channeled down through the major parking lot, which is between his house and Gateway Manor. All of that water goes down into a drainage easement and then on north to 54th and R Streets.

Johnson's desire would be to keep those two drainages separate. The original Gateway Manor was built with its drainage separated from the residential drainage. The residential drainage is maxed out at this time. It cannot accept more water. All of the water needs to

stay in the drainage easement that was originally designed for Gateway Manor. When the asphalt overlay was placed on the Gateway Manor entrance road, they did not raise the curbs and the water can now go over the curb and into the residential drainage and is causing problems. In 1984, it washed about an 18” deep ditch through his back yard. That was later corrected. This proves that water cannot go into that drainage without considerable work or some different idea or engineering than there is there now.

The second problem is that there is a perched water table in that area, confirmed many years ago by a registered engineer, and it is not something that develops every day or every year but there is a layer somewhere down underneath that if you charge enough water into it, it is going to fill up and will fill basements. It does happen, but not regularly. Nate Buss had mentioned that some of this water could be corrected by a wetland or a retention pond of some sort. Johnson does not believe this is the place for either one of those solutions because that will recharge the underlying aquifer and eventually cause more problems in that area. His recommendation is that the two drainages be kept completely separate. Some of the costs will come back on the city or the applicant, but the original concept was to keep those two drainages separated.

Hove asked how the drainage is affecting Mr. Johnson’s home. Johnson stated that he has occasional flooding in his basement – twice in 41 years. It happens when water gets from one drainage ditch to the other, flooding the back yards – his two neighbors to the north. They are getting more than the residential drainage water. The commercial drainage gets into that watershed and floods their back yards.

Sunderman confirmed that this is not drainage from concrete. Johnson stated that it is all open. The original parking lot was made with two drainages down the center.

Francis asked staff whether there is something that can be done to address this concern about drainage or additional drainage coming from the added buildings and concrete work. Cajka advised that one of the conditions of approval requires that a grading and drainage plan be approved by Public Works before issuing building permits. **Dennis Bartels of Public Works** stated that there was no drainage information provided with this application. Everything was conceptual. He assured Mr. Johnson that Public Works would take an extra hard look at it before any building permits are approved. They will make sure it meets city design standards.

Francis inquired about the wetlands or retention pond suggested by the applicant. Bartels stated again that he did not have any grading/drainage information to review so he would

hesitate to say it cannot be done. If they were to do that, Public Works would need to check how it relates to the elevation of the houses. A lot of this water drains toward 52nd Street. He recalled some drainage concerns and problems at about 54th and R Streets on another commercial development straight north of here. Public Works will be needing to review the drainage information prior to any building permit being approved.

Weber inquired whether this development will add more water drainage through the back yards. Bartels reiterated that he has not seen any grading or drainage plan so he has no idea. He does not know whether they have done any drainage studies. There is no indication of any cutting or filling or which part of the paved areas are going to be draining where. That is the kind of information Public Works would expect on the drainage study that will have to be approved before any building permit. There is a big drainage system in 52nd Street which we do not want to overload. We could divert the drainage and put the detention on the low side. There is potential to balance the drainage through detention and/or some storm sewer piping.

Cornelius confirmed that part of this process will include drainage information that will be reviewed by Public Works before issuing any building permit. Bartels confirmed. He will make sure Public Works gets the information in this case.

Response by the Applicant

Buss addressed the drainage issue at the map by showing the existing US Bank parking lot which does drain onto this site. It does take a drainage path down this development's driveway and gets into the existing parking lot on the site. There is some washout in the curb line where it jumps and gets into the back yards. He showed the anticipated drainage pattern, which is not any different than the existing drainage pattern. There would be additional flow but this site was originally approved for 316 units, which is basically what is being shown now. The developer had met with the city before and they brought up drainage concerns at 54th and R Streets and this applicant agreed to alleviate their site to help not overload the system in 52nd Street. Grading and drainage plans were not submitted because the applicant did not think they were needed; however, the drainage information will be provided which will show that this development can contain the water on this site, hold it and not create any additional surface runoff.

In regard to the "perched" water table, Buss stated that he did not know if there is one, but two times over 41 years does not seem that often. Perched water tables historically have other outlying factors rather than what is on the surrounding property. The developer is

planning for detention cells to slow the water down. Buss takes the position that the drainage would be improved, and it will not be any worse than what exists today.

Francis inquired about the detention. Buss stated that it will be a detention pond that will hold water for a 24-hour period on the surface. Some of that can be taken care of with underground pipes but it depends on the cost/benefit ratio.

CHANGE OF ZONE NO. 12013

ACTION BY PLANNING COMMISSION:

June 13, 2012

Francis moved approval, seconded by Hove.

Cornelius believes it is worth noting that the special permit already exists and this just expands the boundaries, not necessarily increasing the intensity. He believes the drainage issues will be addressed in good faith by Public Works and the applicant.

Motion for approval carried 7-0: Gaylor Baird, Sunderman, Hove, Francis, Butcher, Weber and Cornelius voting 'yes'; Lust and Esseks absent. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 435F

ACTION BY PLANNING COMMISSION:

June 13, 2012

Hove moved to approve the staff recommendation of conditional approval, seconded by Francis and carried 7-0: Gaylor Baird, Sunderman, Hove, Francis, Butcher, Weber and Cornelius voting 'yes'; Lust and Esseks absent. This is final action, unless appealed to the City Council within 14 days.

*** 5 minute break ***

COUNTY SPECIAL PERMIT NO. 12015

and

CITY SPECIAL PERMIT NO. 12016,

FOR A RECREATIONAL FACILITY

ON PROPERTY GENERALLY LOCATED AT

S.W. 29TH STREET AND W. WITTSTRUCK ROAD.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 13, 2012

Members present: Gaylor Baird, Sunderman, Francis, Butcher, Weber and Cornelius; Lust and Esseks absent; Hove declared a conflict of interest.

Staff recommendation: Conditional Approval.

There were no ex parte communications disclosed.

Staff presentation: Sara Hartzell of Planning staff presented the proposal which includes two applications for special permit in split jurisdiction – one county and one city – for a recreational facility on property described as a portion of Outlot A and all of Lot 1 of Bentzinger Pleasant Acres near SW 29th & W. Wittstruck Road.

The current zoning is AG with a special permit for a youth athletic club on Lot 1 and Outlot A is part of the Bentzinger Pleasant Acres CUP. The surrounding zoning is AG with farming to the north, west and south with one dwelling to the west and one to the north. There are 7 dwelling units on the Bentzinger Pleasant Acres CUP acreage lots to the east. The Club special permit was granted in September 2007 to allow a 20,000 square foot structure on Lot 1 with a maximum of 50 persons. Activities are allowed up to 5 consecutive days per week. The Club was limited to activities as a youth athletic club. Typically, Club special permits in the City and County are held by national organizations like the VFW, Boy Scouts, Girls Scouts, American Legion, etc. These clubs generally have memberships and regular meetings as well as other events including fund raisers such as pancake feeds and swap meets and accessory uses such as weddings and graduation parties. In the case of fund raisers and accessory events, although members of the club may be present, others may also be allowed to attend. The key is that these events are accessory to the main use which continues to be the club.

Events at Camp Gargano are focused on physical activity as well as spiritual growth. Although the majority of activities involve youth, there have also been groups of adults that have attended events. There is no membership requirement and these events are for a

limited time, rather than regular meetings throughout the year. Camp Gargano functions as a camp that some may attend only once and others may attend multiple events over the year. Similar camps that have a focus on physical activity and events of a limited duration, such as Camp Sonshine, which was recently before the Planning Commission, are permitted as recreational facilities.

The Planning Department recommends that, regardless of any increase in numbers, this Club special permit be changed to a recreational facility special permit which more accurately reflects the existing uses.

Recreational facilities are defined as facilities primarily for participation by the public in athletic activities such as tennis, handball, racquetball, basketball and other court games; jogging, track and field, baseball, football, soccer, and other field games; skating, swimming or golf. Recreational facilities shall include country clubs and athletic clubs; recreational facilities shall not include facilities accessory to a private residence used only by the owner and guests, nor shall the recreational facility include arenas or stadia used primarily for spectators to watch athletic events.

Thus, the primary purpose of a recreational facility is for active recreation. There are recreational facilities that also hold fund raisers on a limited basis and allow accessory uses such as meetings or training events and receptions. These uses can be allowed as long as they are accessory and not primary uses of the facility. The primary use must remain recreational.

The boundary of the current special permit is limited to Lot 1. Although buildings, lagoons, and the majority of challenge course equipment and structures are located on Lot 1, there are a few structures that may be in the Outlot and the majority of the running course is in the Outlot. Other camps may have activities that occur off-site – such as nature hikes, bike rides, and field trips. This does not mean that the area of those special permits needs to include all of these infrequently used areas – they are accessory to the main use. However, in the case of Camp Gargano, the running trail is a regular feature of recreational activities and should be included in the area of the special permit. The applicant has requested that a portion roughly from the riparian area of Wittstruck Creek to the west, which would include the running trail, be included in the area of the special permit. The Planning Department agrees that this is an appropriate change and recommends its approval.

The applicant is also requesting an expansion of the uses at Camp Gargano. As stated earlier, the current special permit limits the attendance to 50 youth. The applicant would like to allow all ages to attend and to expand the number in a three-tiered approach:

- A. A maximum occupancy of 50 persons per day that shall not exceed 5 consecutive days in a given calendar week (Sunday through Saturday). This is what it currently permitted in the Club special permit.
- B. A maximum occupancy of 150 persons that shall not exceed 5 events in a 30 day period and no more than 2 events in a calendar week.
- C. One day occupancy of up to 500 persons that shall be permitted 6 times in a calendar year, if a separate amusement license is granted by the County Board.

After the original application and input from the neighbors, events as described in C were modified from 12 events of up to 1000 participants in a calendar year. In addition, the original application included a note that stated if Wittstruck Road were paved from SW 29th to the entrance of the facility in the future, events in B could increase to 400 persons and events in C could increase to 2500. This note has been stricken/deleted.

Amusement Licenses are a separate process that is required by state statute. They are required for places of public amusement. The County Clerk takes the application, with County staff review and comment. The applicant is required to notify property owners within 500 feet of the amusement site. There is no limit to the number of amusement licenses that can be granted on a property. The 6 times per year limit is a self-imposed limit by the permittee to help address traffic concerns as well as the concerns of the neighbors. This application can be renewed annually with review by staff.

The permit requests a facility of 20,000 square feet, which is identical to the current permit. The building that exists today shows a total of 14,612 square feet on the main floor and 5,390 in the basement, for a total of 20,000 square feet. In some cases, the basement area is not counted as part of the floor area if it is used as storage. Spaces for utilities may also be removed from the total floor area. In this case, however, it is apparent that the basement does provide recreational space. So, although some reductions for utilities and storage could be made, the facility currently nearly meets that maximum 20,000 square feet. Any additions to the building would require further amendment of the special permit.

Note 11 of the original application which referred to alcohol has also been stricken/deleted. This note stated: "On premise alcohol sales shall be permitted with this special permit within the boundaries of Lot 1." In the County zoning regulations, alcohol is not addressed. Alcohol sales are permitted through the state licensing process, applications for which are reviewed by the County Board. Alcohol may be served by a licensed caterer when an approved Specially Designated License (SDL) is held for the venue. These are approved by the County Board. This note would not have served any purpose since the entire area of Lot 1 exists in the County jurisdiction. Alcohol is not considered a land use issue in the county.

The area of the special permit has also been reduced from the original application which included all of Outlot A. The revised boundary removes the area of Outlot A east of the creek and adjacent to the acreage dwellings. This provides a separation of at least 600 feet between any dwelling unit and the boundary of the special permit. In addition, the applicant proposes a 250 foot setback from any current or future dwelling unit. These adjustments to setbacks were in response to neighbor concerns. A 50 foot setback is shown on the west side lot line, and a 50 foot front yard would also be required. According to the zoning code, accessory uses may be located within the rear yard to within 2 feet of the lot line.

West Wittstruck Road had about 20 cars per day during the most recent traffic count. The portion of W. Wittstruck east of the entrance to Camp Gargano is unimproved and to the west is gravel. SW 29th is paved from Hwy 33 to about ½ mile north of Wittstruck. A note should be added committing the permittee to promote the route to the facility as Hwy 33 to SW 29th to W. Wittstruck Road in order to reduce traffic on the unimproved portion of W. Wittstruck.

The applicant has also added a note that no firearms and motor vehicle activities or events will be allowed. This was also in response to neighbor concerns over the possibilities not only for the current permittee but also for possible future permittees. The intent is to ban trap shooting and motocross type activities.

Note 4 references the County lighting standards which do not currently exist. Staff recommends the note be altered to reference the City lighting standards for parking lots and to clarify that the running course will not be lighted.

There are some updates required to the floodplain information.

There has been quite a bit of public interest in this application. 81 letters were sent to property owners within one mile of the application area. 44 letters in opposition were received. 21 of the notified addresses responded with an opposition letter, and five other opposition letters were received (several of the addresses generated more than one letter). 34 letters of support were also received, 3 from notified addresses and others from all over the country.

Cornelius asked Hartzell to discuss the original CUP and how this proposal squares with the idea of this outlot as AG preservation. Hartzell stated that the applicant will need to do some revisions to the original CUP by administrative amendment. It appears that most of the very active areas will be within Lot 1, but the trail does travel through the outlot – five to six feet wide with crops on either side. It is her understanding that the agricultural use is to continue. It is still worth going back to the CUP to show that by administrative amendment.

Weber stated that he is concerned about the opposition from the neighbors. Has that lessened with the new language? Hartzell advised that some letters said they were still opposed after the revisions. There have been neighborhood meetings of just the neighbors, and the applicant has met with the neighbors. Staff has met with both the applicant and neighbors several times but they were not quite able to reach a consensus.

Gaylor Baird recalled that the opposition mentioned the building that is already taking place. The letters seem to indicate that there are new buildings being built. Hartzell did not know of any construction going on at this time. Some materials have shown a future possible gym, but the size of that would require the applicant to come back before they started to acquire any building permits.

Weber was interested in who would be monitoring compliance with the special permit conditions. Hartzell explained that it would be the Building & Safety Department on a complaint basis. Hartzell is not aware of any record of any complaints on Camp Gargano since it has been in operation for 5 years on this site.

Francis pointed to the residential properties shown from S.W. 14th to S.W. 15th. It appears that there is some agricultural land behind those residences. Is that farm land? Hartzell stated that it is farm land. There had been a lot in the original CUP which was given up in

order to reduce the size of the CUP and create Lot 1 for the original camp building. Francis inquired whether the owner of the camp site owns that agricultural strip at the L shape. Hartzell advised that Lot 1 and Outlot A are both in the ownership of Radix, the applicant.

Proponents

1. **Peter Katt**, appeared on behalf of the applicant, **Radix**. Katt believes staff has done a very thorough job explaining the land use issues and the impacts on the neighborhood and compliance with the Comprehensive Plan and zoning ordinance. The applicant accepts all staff recommendations and conditions of approval.

2. **Doug Barry, Director and founder of Camp Gargano**, stated that Camp Gargano is part of a larger ministry of Radix, founded in 1992. His job for the last 21 years has been to travel as a public speaker in primarily faith-based situations, and primarily working with youth as the main focus. As years went by, he realized he needed to get to adults as well. “Radix” means “root” – the idea of going to the root or heart of something as the basis of the mission in working with young people, especially young men, through physical activity. Barry’s residence is in the cluster of homes just to the east of the subject site. He is directly affected. He has five children and they have lived there for 10 years. It has always been his hope that it is a safe, very family friendly, wholesome environment.

Camp Gargano came about as an effort to help young people and families – building character and leadership – raise the bar, so to speak. They try to encourage anyone who takes part to find their potential – to really reach out and find what they are good at, their talents, and recognize their value.

Camp Gargano was not built to help troubled or rehabilitated kids, but they are trying to reach anybody and everybody. This is a nonprofit and Camp Gargano is funded by donations. Only one time in 2.5 years has anyone been able to pay the suggested stipend or donation to operate, but they do not turn anyone away. The goal is to try to reach many more people and broaden it.

Barry believes that some of the negative comments are unfounded. They are not doing warrior dashes, nor does he want to do warrior dashes. He wants to keep it very reasonable, very safe and very, very family friendly. That is why revisions have been made to the plan. Barry believes this facility can be done safely and with reasonable control.

Barry stated that he is more than willing to have the facility reviewed annually. He wants to help people reach their full potential and recognize their value as human beings, young and old alike.

Butcher referred to the warrior dash which took place in Nebraska recently involving anywhere from 10,000 to 16,000 participants. Barry assured that he does not want to do something like that. It is beautiful building. We do not want to tear it down. That kind of activity would be very hard on the grounds and the building. He would rather limit it to several hundred to maybe a thousand in the future to be more personable.

Butcher referred to the recent Camp Sonshine application where they had a design for transportation with bussing and meeting places off-site to reduce traffic flow. Barry acknowledged that this was considered in the beginning, but as the numbers got reduced he didn't think it would be necessary because the events are more "wave-oriented" – not where everyone comes and leaves at the same time. He agreed, however, that the transportation issue could be a consideration.

Katt informed the Commission that the applicant did meet with the County Engineering department and that is one of the triggers that led to removing the bigger events from the permitted use to the amusement license. That will make sure that we have adequate controls in place. We need to prove ourselves first. There is no need for the off-site transportation. However, if the traffic becomes a problem, Katt suggested that could be a condition imposed by the County for the amusement license for the larger events.

Francis asked to see the boundaries of the entire land owned by Radix, assuming that the L shape is a buffer between the residents and the proposed use. Katt stated that everything east of the tree line would be completely exempt from anything they want to do. Outlot A is the part outside of the facility. The original application had the boundaries on all of it with no buffer. That has been revised and pulled back so that the boundary line of the special permit does not go all the way to the property line. Francis wanted to know the distance between the boundary and the residential homes. Katt believes that the closest house would be 691', which is the applicant's residence. The next neighbor is 886'. The distance from the boundary of the special permit to the property line is approximately 500 feet.

Barry responded to the concern about structures already being built. He believes that may be in reference to some climbing walls with A-frame type supports. They are out there on Outlot A in various places. They are there for the challenge course and are removable –

nothing permanent or planned to be built. Barry also clarified that the gym is not something they could afford. It was just a thought and is not part of this plan.

Butcher asked Barry whether he is familiar with his neighbors and aware of any of them that will be in support or opposition. Barry knew that three are in support; two are in opposition and one is neutral.

Butcher inquired whether there is active residential to the south. Barry stated, “no”, it is a metal barn – there is no residence there.

Commissioner Francis left the meeting.

Support

1. Tony Ojeda, 14440 S.W. 15th Street, testified in support. He stated that he would much rather have stayed neutral because a property owner should be able to do with their land as they see fit. However, after viewing the opposition letters and the flyer distributed by the Methodist Church in Martell, he became alarmed by the information being spread in opposition. Radix has already made concessions to the request. There is much misinformation – the flyer from the church claims the facility was open in 2007 and it was padlocked and would not allow anyone in the area to view it. Ojeda clarified that the facility has been open since late 2009. It has never been padlocked and has let anyone use the facility. It is not a reform facility for troubled boys. Barry has not built anything bigger than he said he would. He clearly showed what he was planning to build at the meeting. Radix was not required to block off W. Wittstruck Road. Dust has not been an issue. Ojeda could not hear any noise at his property when there was an event of 200 people. He is troubled that the opponents have put up such a fight against this change. In a lot of years of knowing the applicant, he has never been misled, he is honest and a man of high character and integrity. This special permit will help him with his efforts and allow more events. His own children have benefitted greatly through these camps. This permit is only for one year. He requested that the Planning Commission give the applicant the opportunity to prove the opponents wrong.

Butcher asked whether Ojeda brought a copy of the flyer from the church, and whether the church is located near or around this facility. Ojeda did not have the flyer with him but stated that the church is in Martell which would be two miles to the south of this facility.

2. Jim Craig testified in support. He does event management planning across the state and has done a number of events working with communities from Omaha to Chadron. Victory Quest had contacted him to get their name out. He did some background checking and checked the facility and was really impressed. They had an event on Memorial Day that he helped organize and he was very pleased with how it was run. It was very family-oriented. The Norris School District will be using this facility for a back to school type of event and the County Sheriff has used the facility as a training site. Craig is very supportive and impressed with the facility.

3. Jacob Otte, 7951 Cheney Ridge Road, testified in support. He would not be what he is today if it were not for Camp Gargano and Doug Barry. It is not something that is harmful to our community; it is something that is helping to take harm away. If you have something good in a community, then you have to promote those good and healthy messages. Camp Gargano can do this. It can continue if we help it and support it and allow it to move on with its right pace – not hinder it.

Butcher inquired whether Otte participated in the outdoor events, and, if so, whether he found it to be noisy or any yelling, etc. Otte did participate in outdoor events and it was not at all noisy. He participated in different obstacle courses outside and there was not a lot of noise.

4. Jenay Barry, 14401 S.W. 15th Street, Roca, testified in support. Doug Barry is her father. She has been working as a full-time volunteer at the camp since 2009. She has been involved in the camp while growing up, interacting more closely and personally with the attendees. She has had the opportunity to listen to her peers and other young men and women who have participated. She has seen and experienced the positive impact of Camp Gargano. She has seen the participants positively impacted in terms of self-confidence and self-esteem; confirmation that it is okay for them to be confident in themselves and be strong in character, virtue, integrity and moral support. She has seen how it has reached out and helped people.

5. Jordan Barry, 14401 S.W. 15th Street, Roca, testified in support. He is the son of Doug Barry. He has helped with the camps at Camp Gargano. There are a lot of challenges for young people today. The camp has helped him and other young men in being part of something much greater than themselves.

Opposition

1. Michael Rierden, Attorney, 645 M Street, appeared in opposition on behalf of a number of the abutting property owners. He clarified that his clients are not in opposition to Camp Gargano as it exists today. The opposition is based upon the fact that the request significantly increases not only the size geographically but the numbers of the participants.

Rierden complimented Sara Hartzell and Steve Henrichsen of the Planning Department for their efforts in trying to resolve the issues between the parties. Back in 2000, a portion of this large piece of property owned by the Bentzinger family was approved as a community unit plan special permit which allowed 8 lots, along with Outlot A, which was a large outlot abutting the 8 lots. After that, the developer started marketing the properties. People were buying based upon what they saw in their lots and the abutting property. Outlot A at that time had a designation on it that it was going to be reserved for agricultural purposes. He acknowledged that that may not be a legally binding statement, but nevertheless, the people looked at these lots and saw the plat and relied upon that statement.

In approximately 2007, Rierden understands that Mr. Barry and Radix approached some of his clients and asked if it would be all right to operate a club for up to 50 members of a Christian youth athletic organization. After discussing among themselves, the neighbors were in favor. He does not believe there was any significant opposition at that time. The club was to be operated on a nonprofit basis and had a religious theme. Staff may indicate that back then they should have chosen a different category for operation, but his clients understood it would be a nonprofit, low participant type of operation.

Then comes this proposal today, which again is believed by the opposition to be a significant increase in the numbers. Mr. Katt has indicated that the numbers have been reduced during negotiation with the neighbors, but it is still a significant increase and the his clients would rather have the camp stay as it is today.

Rierden observed that one of the issues is the number of participants in the three-tiered situation. Rierden pointed out that these events draw a significant amount of spectators. We've not even talked about the number of spectators. 50 participants might mean three times that as far as spectators. This must be taken into consideration. It is a tremendous concern to his clients.

Rierden then discussed the traffic concern. He has not had conversations with the County Engineer like the applicant, but the staff report acknowledges that there are concerns about

traffic, and the applicant acknowledges concerns about traffic. If this application is approved, Rierden proposed that now would be the time to ask the developer to pay their fair share of the impact of their development – that something be done in the way of bringing Wittstruck Road to standards from S.W. 29th Street to the entryway – i.e. paving impact fee. This proposal significantly impacts the property and the roadways.

Rierden suggested that lighting is also an issue. We don't know what that issue is because we have not seen anything. He suggested that this proposal should at least be tabled until such time as there is some sort of lighting plan submitted. Staff merely asks for that prior to operation of the new club.

Rierden reiterated that this is not an opposition to the existing Camp Gargano – it is in opposition to the expansion, not only geographically but in the number of participants.

Cornelius inquired whether Rierden's clients have any response to the changes that have already been made to the proposal. e.g. the guarantees that the running course will not be lit; that the lighting will be shielded and shut off at 10:00 p.m., etc. Rierden believes that to be a good start but his clients would like to see the entire lighting plan. There have been some good faith efforts on behalf of both parties to try to rectify the situation but it has not worked out at this point in time.

2. Amanda Wilcox, 14200 S.W. 15th Street, Roca, testified in opposition. She acknowledged that the current activities are an asset to the community, teaching youth about leadership, team work and self-esteem, but she is opposed to the special permit resulting in the expansion of the facilities. She moved out of city to enjoy quiet life, to get away from the traffic, people noise and for more space. Her ideal atmosphere will be taken away if this permit is approved. It is concerning to think of hundreds of people attending and traveling to this area. The proposal represents potentially hundreds of events annually with large and small banquet type events. Cornhusker State Games would be a concern. The idea of this activity so close to housing with early start and all day events is a concern. How would you feel if this were in your back yard? This is a rural community and not a business development area. Wilcox lives across the street from Mr. Barry.

Butcher inquired whether Ms. Wilcox has had any issues in regard to noise complaints so far. Wilcox stated that she was not home on Memorial weekend. They just moved there last February.

3. Bill Adams, 13939 S.W. 14th Street, testified in opposition. He owns property on the north border of the Radix property. He suggested that trust and fairness issues have been mishandled with respect to the neighborhood and property owners. The application form dated April 3rd showed the box being checked that neighbors had been notified. He received notice by way of an article in the newspaper on April 8th. He did not receive actual notice until April 21st.

He pointed out that the Victory Quest Web site shows that several events have already been scheduled with sign-ups for later this summer. This is the cart before the horse. Adams showed photographs of the views from the back of his property. Adams had hoped to be able to sell the 20-acre portion on the back of his land which is directly across the fence to the north of the obstacle course for a building site or to have his daughter build on it. Radix has offered a 250' buffer only if a residence is built. With the large climbing walls and tire obstacles, not to mention the hundreds of participants and possibly over 1,000 people, the loud noises of that many people, dust blowing onto their property, and bright lights, Adams believes that his property becomes unfit for anyone to want to build upon. He believes that his property values will drop significantly with these activities on the adjacent property. He purchased in 1999 and never imagined what would be proposed across the fence 13 years later.

Adams stated that he is not opposed to Camp Gargano as it is today – it serves a noble cause in helping youth. His opposition is to the expansion on the AG land outside the 23 acres and the expansion of the activities to be held on that land.

Adams requested that the Planning Commission give primary consideration to the neighbors and neighboring landowners who have expressed their near unanimous opposition.

4. Mary Jo Virts, 1301 W. Wittstruck Road, testified in opposition. She is not against Camp Gargano and their mission to help children. Unfortunately, their initial decision to build a multi-million dollar facility was irresponsible in regard to that mission and their mission is at risk because of that decision. Today this property will probably be sold if not enough money can be generated. They have already been approached by a buyer. Approving additional recreational activities and expanding the use area is probably not going to provide enough income to save the property. Building on the site today or in the future is just going to add to the financial situation that is already burdening this property. She is concerned about what is next for this property.

5. Michelle Brandt, who owns property directly across from the entrance to the proposed facility, 2260 W. Wittstruck Road, testified in opposition. She and her husband purchased the property because it was on a low use road, no traffic and the area was quiet. This is a small acreage in an agricultural area. They have moved there by choice. They have chosen to own property in this type of setting. This proposal takes that privilege away. It will cause dust and deteriorating road conditions, creating a dangerous situation. This location cannot support the type of traffic the facility will draw. While the applicant will be required to apply for permits for the larger scale events, one cannot overlook the smaller events every week and weekend. There are advertisements on their Web site already. There will be constant battle with the road conditions. This is not what owning property out of town is about. What's the point of moving to the country if you have this facility as your neighbor? While our taxes are going up, we will potentially get less enjoyment. How does one convince others to purchase your property with such a facility? It could potentially affect our quality of life. The current application is so far removed from the original intent of this structure, there is no way they should be allowed to proceed with this proposal. What happened to the small, faith-based camps for kids idea? How would you feel having this as your neighbor?

Butcher inquired whether the Brandt's currently have a residence on their property. Brandt responded that they purchased in 2005 and there was a run-down house on the property. They have done a lot of cleanup and have put in an outbuilding, well and lagoon and have planted trees. They do farm around there. The idea was to put a house in there. Now, she questions whether it is worth constructing a house if this special permit is approved. The small faith-based camp is not what we're screaming about. It is what they are wanting to do next. She believes the neighbors have been slightly misled as to what it was going to be. She is not opposed to the religious-based camp, but if they want a facility like this, it needs to be in an area that has the infrastructure to support it.

6. Don Foxhoven, 15700 S.W. 29th, agreed with all of the previous opposition. He is not against the small group youth faith-based facility. When the neighbors were invited to the facility, they were told that Barry needs to generate some income to support this facility. It was indicated that he would have small gatherings which could be catered, but this special permit indicates he would not sell alcohol. You can't keep a caterer from serving alcohol if you are going to have a convention or small group. Alcohol is a problem. If alcohol is served there, even with a caterer, who will be monitoring it? Does the Sheriff have resources to be out there? We're also putting 250 cars on the road. If it is an event such as a dinner or banquet or whatever, there will be cars backed up for ½ mile on S.W. 29th Street. Those vehicles will try to merge onto Hwy 33 from S.W. 29th, with vehicles on

Hwy 33 at 60+ mph. This is a facility that you would expect to see in Lincoln where you have traffic control. There are no traffic controls out there. If the Planning Commission is going to approve this, then there should be a restriction on alcohol. Alcohol does affect all of us.

7. Jonathan Little, 13200 S.W. 14th, testified in opposition. He had no intent to testify until recently. He used to live in an abutting property to the camp. He is concerned with the impact on the local community, both residential and agricultural. The neighbors have been told by the applicant that their opposition could result in Barry's organization closing. And that if it is closed, something like a sex offender facility could locate there.

Little pointed out that these are minimum maintenance roads. The community didn't mind the quiet small 50-person nonprofit faith-based endeavor. If anyone wants to start a business of this size and nature, Little suggested that there are plenty of facilities in and around Lincoln that they could rent. He wanted to buy and sell cars from his home but he was told by the County that would not be allowed in the AG zoning in order to protect those in agricultural areas from unnecessarily increasing traffic and noise. They told me to find a location that already offered the proper zoning.

Little agreed with the previous testimony about the negative impacts, which include increased traffic and noise, safety concerns, and a precedence being set. He believes this will set a precedent if granted. If it is not difficult to go from 50 to 500 participants, then the neighbors have reason to be suspect that it is possible to request a 5- or 10-fold increase again, with 2500 people participating and 10,000 people attending an event.

Little referred to a recent article in the newspaper where the ownership says they are modeling their new venture after a \$60 million per year company doing the same thing. Little assumes they did the market research, budget estimates and revenue projections to put themselves in this position; however, they have said that their business model is failing. They are asking neighbors for support. He urged the Planning Commission to vote against this special permit for the people of the rural community.

8. John Virts, 1301 W. Wittstruck Road, southeast corner of S.W. 14th and Wittstruck Road, testified in opposition. The lack of infrastructure is an issue. Regardless of the preferred route, Google maps will take you to Hwy 77 across Wittstruck to the facility. As you travel off Hwy 77 at S.W. 2nd you come to a blind stop sign; Wittstruck Road between S.W. 2nd and S.W. 14th contains several blind hills; Wittstruck from Hwy 77 to S.W. 56th Street is used by farm equipment. During harvest and planting season, there is farm

equipment on this road from 6:30 a.m. to midnight. A combine is 20' wide without a corn head. There are semi's going back and forth once an hour, with 55,000 lbs. of grain; and grain carts going back and forth, hauling 1200 bushels or 66,000 lbs. of grain plus tractor and grain cart. There is also a deer problem. On Saturdays, this road between S.W. 2nd and S.W. 14th is used for hill-climbing by numerous bicycles. This is a challenge to those that live there now, let alone someone going to a facility for the first time.

With regard to the dirt road between S.W. 14th and the entrance to the camp, Virts is concerned because fire and police officials can only get there one way. Highway 33 going to S.W. 29th will back up with impatient drivers. S.W. 29th has no shoulders. In fact, if you get close within about a block of Hwy 33 and need to pull off, your car would probably tip over. Getting onto Hwy 33 is difficult with the traffic coming west. You also need to think about when a lot of people are coming to the facility, the traffic will be slowing down, stopping and turning onto S.W. 29th with traffic coming behind at 60 mph.

Hwy 33 is a dangerous highway. It is the only highway that he has been on that has rundle strips on either side and down the middle. The reason is that the state has recognized it is a very dangerous road and there have been many accidents.

In summary, Virts reiterated that there is a lack of infrastructure; we know that the County does not have the money to do anything about it. He urged that the Planning Commission not saddle the neighbors with the problems without the infrastructure available to help alleviate the problems.

9. Don Urbanovsky, adjacent landowner, 14301 S.W. 15th Street, testified in opposition. He was the first to move into the neighborhood. He is opposed to the permit as currently written. He is not interested in closing Camp Gargano. In fact, his wife testified in 2007 in favor. He believes in the mission of the camp and its work with youth. He has not found any opposition that wants to close the camp. What he is opposed to is the increase in numbers. The current permits allows 50 youth each week a year. In reality, the maximum usage has probably been no more than ¼ of this number. This application adds two additional levels of participants. Family, friends and spectators do not count toward these amounts. And the accessory uses such as seminars, conferences, banquets, etc., do not count towards these numbers.

Urbanovsky stated that there has been a lack of communication with the neighbors. This has been disheartening. Events are being set before the this special permit is approved makes the neighbors believe it is a done deal and that our voice means nothing. Janice

Wittstruck lives ½ southeast. Her ancestors settled in this area in 1865 and generations have lived there since. Both the road and creek are named after the family. This is not Lincoln's playground, but an actual rural community. Mrs. Wittstruck's comment to Urbanovsky was, "You go ahead and try to voice your opposition, but in my experience it is already a done deal and the rural community has no voice."

Urbanovsky requested that there needs to be a delay on this proposal to allow time for more discussion with the neighbors and to get the conversation going again.

10. Heath Wilcox, 14200 S.W. 15th, testified in opposition. His property is east of the property in question. He submitted a petition in opposition signed by all of the neighbors (26). Everyone has their own reasons why they oppose. There is overwhelming opposition from the surrounding area. Wilcox pointed out that most of the opposition are property owners, while a lot of the support are participants that take advantage of the activities at this location but do not live there. There is a difference between landowners and participants.

Wilcox also pointed out that the people that can attend these events have a choice to attend, not attend, when they come and when they go. Those of us that live around the area in opposition do not have a choice. He lives in a rural area and he wants to keep it rural. He asked the Planning Commission to please consider the property owners who live in the surrounding area who have signed this petition in opposition.

Butcher asked staff to discuss the alcohol issue. **Brittany Behrens, Deputy County Attorney**, indicated that there had been some discussion of a proposal with some limiting language conditioning the approval of any special designated license (SDL) or limiting alcohol use on the property. She has talked to the other county attorneys in her office with regard to the Planning Commission's authority when dealing with special permits and the other side with regard to the County handling the liquor licensing and SDL. This does not appear to be a land use issue in the County's jurisdiction. There is nothing in the County zoning regulations that discusses liquor use or liquor licensing. Liquor licensing is handled through the State statute process by the Nebraska Liquor Control Commission. The state requires that if an organization is going to have the sale or consumption of alcohol at a designated location, then a SDL would be required by State statute. The State statute then requires the County as the governing jurisdiction to either approve or deny that SDL application and forward their recommendation for approval or denial on to the Liquor Control Commission. There is no language in the zoning regulations in the County to deal with liquor as a land use issue. Therefore, this does not appear to be an issue upon which

the Planning Commission should be placing conditions. It would be something that could continue to follow the normal County process in that the applicant would make application through the Liquor Control Commission for a SDL. The statute requirements allow for only six SDL's per year; and there is some conjunction between the amusement license application and the SDL. The amusement license guidelines require that if an applicant is also going to apply for a SDL for the same event, both of those applications must be submitted to the County Clerk at the same time. Then they follow two different processes, one which requires a public hearing and the SDL does not require public hearing. The SDL is only placed on the County Board agenda for action.

Weber suggested that there is some confusion between the term occupancy and spectators and participants. Does 500 include a total count or just participants? Hartzell responded that there are other special permits that put a number on the participants. She would consider it as 500 participants, plus camp counselors, staff people, family attending an award ceremony, etc. It relates to the number of participants.

Sunderman assumed then that with 50 participants, there could be 100 people there at one time. Hartzell agreed.

Sunderman inquired how the City lighting standards would apply here. Hartzell explained that the condition of approval is that the applicant would follow the City parking lot lighting standards, i.e. shielded; outdoor lights except for security lighting would be shut off by 10:00 p.m.; and that the trail would not be lighted.

Behrens re-approached to clarify that when an application for SDL is made in the County Clerk's office, it is then forwarded to the Health Department, the County Engineer and the County Sheriff for their recommendation and any additional information that those departments provide to the County Board are taken into consideration. With regard to the amusement license application, notices are sent to additional County departments, the County Attorney, the Planning Department and the Building & Safety Department to receive additional comments.

Cornelius was unclear whether or not the amusement license is issued on a per event basis. Behrens advised that the application is a standardized form which contains space for marking whether there will be multiple events and they must notify the County of the dates of those events on the form. Because the license is actually good for a year, it covers multiple events. The statute does not limit the number of events. The Clerk's office has worked with the applicant to insure that they are complying with the time request in

notifying the County. The application and license itself is approved one time as an annual license.

From a planning and zoning perspective, Butcher asked staff to address the possibility of a home for sex offenders or something like that being allowed at this location. Hartzell assumes that a home for sex offenders would be something run by a public entity, and in that case there is no zoning requirement. The state does not fall under our jurisdiction. Group homes can be run privately. They are a conditional use in the County. A conditional use only has to meet the conditions listed in the zoning code, and through the occupancy permit, Building & Safety assures they are meeting those conditions.

Gaylor Baird asked staff to speak about Outlot A. It seems to be the source of a lot of controversy in terms of its use and intensity of its use. Is anything going on there today that should not be? What amendment will be required to show the continued agricultural uses? Hartzell explained that Outlot A is designated as agricultural use through the CUP. It is currently planted crops. There are, however, sections for the trail to run through that are about 6' wide cutting through the crops. There is the question of accessory use versus primary use. That area is not necessarily required to be part of the special permitted area if it is a field trip, i.e. part of the function of the permit. But when that trail becomes a focal point and major use, then that really should be within the area of the special permit and that is why we are recommending that the area be included in the special permit. As far as the uses on the perimeter, i.e. structures, large round bales used for climbing, etc., Hartzell suggested that large round bales are a typical agricultural use. The wall structures are not permanent structures – that gets into a little bit of a greyer area. A large number of those structures shown in the photographs are actually existing on Lot 1. There are only a couple of walls on the outlot at this time.

Gaylor Baird clarified then that the administrative amendment to the CUP would have to show the area of continued agricultural use and areas for open space which may be used for overflow parking. Hartzell stated that the purpose of the outlot was to preserve land for open space, natural areas, environmental resources, and agriculture. If you are running a trail through there, are you really diminishing the agricultural use of that property? The trail takes up a very minimal part of that property. You could have that open space planted to some other kind of grass, etc. We would like to designate how much of this land is going to stay in agricultural use. It needs to remain a significant portion of the land.

Gaylor Baird asked whether it is staff's opinion that the proposed buffer between the homes and the special permit expansion is reasonable. Hartzell confirmed that the proposal is

a 250' radial buffer. The requirements for recreational facility say that the Planning Commission can require an increased setback for recreational uses in order to protect adjoining properties, so the Planning Commission does have the ability to increase the normal setback, which is 100' in the AG district, but accessory uses can be within that setback. You would have to specifically say that within this area there are no accessory uses allowed. Gaylor Baird inquired whether that was ever discussed with the parties. Hartzell stated that the opposition has requested increased buffers and that is where the 250' radial stepped in. Staff believes that with the major movement of the line on the east side and the 250' for any future use, it is reasonable.

Weber asked about the status of the permit if the property sells. Hartzell explained that all special permits in the county and the city run with the land, not with the owner.

Gaylor Baird sought clarification that approval of this special permit does not approve any special events. The special permit provides zoning basis for the amusement licenses. Hartzell stated that the special permit provides the foundation for the applicant to go to the County Board and request the amusement license every year. Initially, in discussions before the application came in, there was some concern about the traffic on the road, and the idea of having large events several times a year was a concern to the County Engineer. We discussed the annual review by staff versus the perpetual special permit running with the land. The permit could be reviewed by staff annually, and then make a judgment. This solution of making those larger events conditioned on whether or not they have received an amusement license meant that every year the County Engineer could make comments and determine any problems on the roads, etc.

Butcher inquired about the designation for pumpkin patches, Roca Berry Farm, etc. Hartzell explained that they are considered agricultural attractions, and they also do receive amusement licenses separately requiring annual review.

Gaylor Baird asked whether the concerns about traffic are suitably mitigated in the opinion of the Planning Department and County Engineer. Hartzell suggested that there are several different pieces in this application that helped address the traffic concerns, i.e. dust control when necessary during the larger events; replace any gravel after those large events, if required; and barricading the dirt portion of the road during those large events.

Sunderman inquired whether they would be allowed to have weddings, reunions, etc. Hartzell stated that those functions would need to be named as accessory to the use. It is really a matter of scope, and those accessory uses are allowed.

Cornelius heard the assertion that this property is operating as a recreational facility already and the club designation is not appropriate for its current use. Does this mean that in order to maintain the current operation, it probably should have a special permit for a recreational facility? Sara concurred. It should be changed to a recreational facility rather than club, which requires a special permit.

Marvin Krout, Director of Planning, offered that a group home in the County, similar to the City, is a conditional use and the definition would probably allow various uses. The only conditions are that it be a licensed facility limited to 16 individuals maximum and you can't have one within ½ mile of another. On the City side, we do have a provision for health care facilities that allow group homes larger than 16 people, which can be obtained in residential districts by special permit. There is no special permit provision that would allow more than 16 individuals to reside on a property in the AG district in the County's jurisdiction.

Sunderman assumes that a group home could go into one of those houses along S.W. 14th. Krout concurred, as long as it is licensed and not within ½ mile of another.

Response by the Applicant

Katt pointed out that the neighbors support Camp Gargano as it currently exists, and staff recommends that because of what happened in the past, the more appropriate zoning designation is to fix what we have to reflect how it has been used. Mr. Barry wants to be able to operate his camp within the law.

Tier A is what is permitted today, other than the change from club to recreational facility. The primary concern of the neighbors is the ability of the infrastructure to handle this expansion in numbers on existing Lot 1, and then a slight expansion in terms of adding the area. When initially submitted, the applicant met with staff and the County Engineer. The original submittal was based upon the numbers and capacities that was recommended to the applicant by the County Engineer as being appropriate numbers that the existing conditions could handle. The current road standards are designed to handle 12,000 trips per month.

Katt acknowledged that the applicant made a mistake and did not engage the neighbors soon enough and often enough. "We took our lumps, backed off and provided additional time for the meetings to occur. We did work with the neighbors." As a result, the permit was significantly reduced from the original proposal in terms of numbers. And the reason for that is that the numbers are what is projected. Barry is willing to continue to work with

the neighbors and continue to build trust with the neighbors that this facility will not be a negative impact to the neighborhood. He has run a good camp and does want to be a good neighbor.

Katt clarified that there is no change in the current lighting with the current special permit. The impacts of the lighting are less than a standard farm light.

With regard to questions about breaking the rules, Katt stated that the applicant is here to make sure that he is in full compliance. He advised his client to bring this forward and make sure it is understood if he intends to expand the camp. The structures in the outlot are temporary and clearly within any of the accessory uses that can happen. This special permit will clean it up as being a part of the main use.

Even though it is a conditional use in the County, Cornelius observed that the neighbors seemed to feel that they were threatened by what might locate on this property if they continue to oppose this special permit. Where does the threat of a sex offender home come from? Doug Barry provided the explanation, which goes back to an individual who originally helped support the camp financially. He lives out of state and his own business was failing financially. Barry met with an individual who was contacted by the financial backer who said they work with different groups and private entities to find places that can house Alzheimer's patients to group homes to sex offenders. In some of his conversation with the neighbors, Barry did bring this up because he was concerned about it. We have had many people step forward in recent months to keep the doors open. This was brought up at the neighborhood meeting by an individual in the crowd, when Barry stated that he was not going to allow that to happen. Barry believes he was up-front and honest to let everyone know that someone had come to the camp to look at it. It was not a fear tactic. These last several years have been very hard with the economy. It has been difficult to get enough donations to keep the camp going. They are trying to make efforts to keep the camp alive. He cannot guarantee that it will stay open. No one can guarantee that with any business. However, the movements that have happened recently are very optimistic.

Butcher wondered about Cornhusker State Games or other activities. Barry explained that they thought their public hearing was going to be on May 2nd. Way back in the spring, he talked with the Nebraska Sports Council who liked the facility and we thought it might fit as an accessory use. It is rare, so we went ahead and put it on our Web site. Honestly, he believed this whole process would be sorted out by then. We put it out there because we thought we would be through this process and it would fall under the accessory use.

COUNTY SPECIAL PERMIT NO. 12015

ACTION BY PLANNING COMMISSION:

June 13, 2012

Sunderman moved to approve the staff recommendation of conditional approval, seconded by Gaylor Baird.

Sunderman commented that “this is a tough one.” This use of the property is good. The direction they are headed is good. What they have been doing has not been a problem. The 150 limit is very doable. He believes that spectators on top of that will work as well. As far as 500 persons on the amusement side, he believes that there are controls in place to handle that in case it doesn’t work out. The County Engineer needs to review the road capacity once they get to the higher numbers. The lower numbers are covered. The dirt road to the east will be closed off for the larger events. Perhaps there needs to be some better signage when the road is wet. As far as the impact on the neighbors, Sunderman acknowledged that there will be more people around but it is not on their property. He does not believe noise or light is going to be a factor. There will be a small increase in traffic most of the time; a larger increase in traffic a few times. He does not believe it is too onerous.

Weber agreed with Sunderman that this is really a difficult decision. Being a current rural resident, he is sensitive to the impact to rural residents. There is a reason why we live in the country. There is no question that there are a lot of positives with this camp – even the opposition agrees with that. He does not agree with Mr. Ojeda’s opinion that the landowner can do with his land what he wants because you do have to consider the impact to your neighbors. It is one thing to move into an area with something already situated, but it is another thing to be living there and have something change. It seems like several of the issues brought up by the opposition have been addressed. His biggest concern is the 500 occupancy. He was assuming that meant the maximum number of people that could be on the site. But, if there is a large impact with an event of that size, the neighbors would have to make sure that they are heard. This is a really difficult decision. He will support it but he is concerned about the 500 occupancy.

Gaylor Baird stated that it is rare that we get an application that makes us feel quite so responsible in such a magnified way for the outcome. Clearly, people feel strongly about this on both sides. It seems that neighbors have valid concerns about what uncertain change is headed their way. It never feels good not knowing what to expect next door or in your back yard. However, we have seen that the applicant has worked with the departments to make sure there are a number of self-imposed limitations on the types of

uses; that there are provisions for review and oversight of those uses such that should an amusement license be granted for some of these higher intense uses, that every single one of the neighbors will have a chance to weigh in again in terms of how they are being affected by any of the special events that are allowed six times a year. The traffic concerns are going to be alleviated in part by the applicant's own efforts to promote specific routes that we believe will have the least significant impact on the surrounding neighbors. The AG preservation issue is to be confirmed by administrative amendment so there are checks in place for that as well to make sure that the preservation of agricultural land continues. This special permitting, once again, it is sort of "righting" the real use of the property today and that is something that ought to be done regardless of the expansion of the special permit. We are not deciding today whether or not what types of big events would be held on the property. That is for a future discussion with the amusement license process. So, given all these factors and given the real attempts at trying to meet the concerns of the neighbors, she will support the application.

Butcher agreed that this is a very, very tough decision. Unfortunately for him, there is just nothing that is a smoking gun that sticks out that says we have to stop this immediately. Fortunately, there are measures that have been put together with the help of staff and the applicant. While not the best efforts to contact the community, they did make the effort. The applicant did try to be reactionary towards the concerns of the community. With everything that is built in and the ability for the neighbors to take part in the application process for the large scale events, he is going to support it.

Cornelius pointed out that no one who came forward today expressed any objection to the mission or activities of the camp. Further, as reiterated, as Camp Gargano is operated today, it probably better fits under the special permit for a recreational facility than under the designation of a club. So it is difficult to reconcile support for the activities as they stand with opposition to the designation as a recreational facility. He appreciates all the testimony. We heard, for example, that for our purposes here the question of alcohol is more or less a non-issue; we heard that the lighting standards will conform with those of the City's parking lot standards, and, in fact, the applicant has no plans to change the current lighting. Most of this special permit seems to be oriented toward self-imposed restriction to keep this property operating as it has operated and as the neighbors say they have no objection to. "I found myself thinking, if this land were all in full agricultural use, what would the noise impact and what would the dust impact and the smell impact of that be? The level of nuisance to the adjacent properties would likely be similar or greater.

Issues like traffic are going to be mitigated or at least controlled. The matter of very large events, 500+, is going to be governed by the amusement license process in the County and he encouraged the neighbors to use their voices there as well as they did here.

Motion for conditional approval carried 5-0: Gaylor Baird, Sunderman, Butcher, Weber and Cornelius voting 'yes'; Lust, Esseks and Francis absent; Hove declared a conflict of interest. This is final action unless appealed to the County Board by filing a letter of appeal with the County Clerk within 14 days.

CITY SPECIAL PERMIT NO. 12016

ACTION BY PLANNING COMMISSION:

June 13, 2012

Sunderman moved to approve the staff recommendation of conditional approval, seconded by Gaylor Baird and carried 5-0: Gaylor Baird, Sunderman, Butcher, Weber and Cornelius voting 'yes'; Lust, Esseks and Francis absent; Hove declared a conflict of interest. This is final action unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days.

Meeting adjourned at 4:30 p.m.