

FACTSHEET

TITLE: **CHANGE OF ZONE NO. 05026C**, an amendment to the **APPLE'S WAY PLANNED UNIT DEVELOPMENT**, requested by Dickey's Barbeque, on property generally located east of the intersection of South 40th Street and Lake Street.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 10/02/13
Administrative Action: 10/02/13

STAFF RECOMMENDATION: Conditional approval

RECOMMENDATION: Conditional approval, with amendment to Note #33 as opposed to deletion (8-0: Corr, Beecham, Weber, Scheer, Hove, Sunderman, Cornelius and Lust voting 'yes').

FINDINGS OF FACT:

1. This proposed amendment to the *Apple's Way Planned Unit Development* seeks to eliminate Note #33 on the PUD which reads:

NO FAST FOOD RESTAURANTS WITH DRIVE-THROUGH ACCESS (EXCLUDING A COFFEE SHOP RETAILER) OR 24-HOUR OPERATION USES SHALL BE PERMITTED IN THE B-2 ZONING DISTRICT OF THIS PLANNED UNIT DEVELOPMENT.

in order to allow a drive-through for a fast food restaurant, i.e. Dickey's Barbeque, in the same location as the previous coffee shop referred to in Note #33,

2. The staff recommendation of conditional approval is based upon the "Analysis" as set forth on p.3-4, concluding that the proposed amendment is consistent with the intent of the requirements for a planned unit development and the Zoning Ordinance, subject to the recommended conditions of approval. The staff presentation is found on p.7-8.
3. The applicant's testimony is found on p.8-9, wherein it is stated that the applicant is only interested in having the drive-through allowed on Lot 3, Block 3, Apples Way Addition, and it is not a 24-hour operation.
4. Other testimony in support on behalf of the owner of the property is found on p.9-10, suggesting that there is not a good definition of a "fast food restaurant" and perhaps the applicant is not a fast food restaurant. The record consists of a letter in support from a property owner in Artisan Meadows (p.19).
5. Testimony in opposition is found on p.10-11, requesting that the Planning Commission uphold the agreement reached between the developer and the homeowners association and the previous action by the City Council which added Note #33. The record consists of one letter and six email messages in opposition (p.20-24).
6. During rebuttal, the applicant stated that there never was any negotiated settlement between Apple's Way and Country Meadows Home Owners Association. The note was added at the request of a City Council member.
7. On October 2, 2013, the Planning Commission voted 8-0 to recommended conditional approval, with amendment to retain Note #33, revised as follows:

WITHIN THE B-2 ZONING DISTRICT OF THIS PLANNED UNIT DEVELOPMENT, NO 24-HOUR OPERATION USES SHALL BE PERMITTED, AND NO FAST FOOD RESTAURANTS WITH DRIVE-THROUGH ACCESS (EXCLUDING A COFFEE SHOP RETAILER) ARE ALLOWED EXCEPT FOR LOT 3, BLOCK 3.

FACTSHEET PREPARED BY: Jean L. Preister
REVIEW ED BY: Marvin Krout, Director of Planning
REFERENCE NUMBER: FS\CC\2013\CZ05026C

DATE: October 7, 2013
DATE: October 7, 2013

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for September 18, 2013 PLANNING COMMISSION MEETING

****As amended and recommended for Conditional Approval****

By Planning Commission: 10/02/13

- P.A.S.:** Change of Zone #05026C - Apple's Way PUD
- PROPOSAL:** To amend the Apple's Way PUD development plan notes by deleting the note which prohibits fast food restaurants with drive through facilities and business which operate 24-hours a day.
- LOCATION:** South 66thth Street and Highway 2
- CONCLUSION:** This amendment is consistent with the intent of the requirements for a planned unit development and the Zoning Ordinance subject to the recommended conditions of approval.

<u>RECOMMENDATION:</u>	Conditional Approval
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GENERAL INFORMATION:

LEGAL DESCRIPTION: Lots 1 and 2, Block 1, Lots 1-5, Block 3, and Outlot B, all in Apples Way Addition, and Lots 1 and 2, Apples Way 1st Addition, located in the NW 1/4 of Section 16-9-7, Lancaster County, Nebraska.

SURROUNDING LAND USE AND ZONING:

North:	Bank, Residential	AGR, O-3
South:	Vacant	AGR
East:	Residential	R-1
West:	Commercial	H-4

HISTORY:

May 8, 1979 - The zoning was changed from AA Rural and Public Use to AGR Agriculture Residential with the 1979 Zoning Update.

May 2, 1994 - CZ#2085 was denied by City Council to change the zoning of this property from AGR to R-3 and B-5.

Mar 26, 2001 - A request to include a change in the land use designation from urban residential to commercial for this site was considered but not adopted as part of the Southeast Lincoln/Highway 2 Subarea Plan.

Jul 14, 2003 - CPA#03012 to change the land use designation on this site from urban residential to open space and commercial was withdrawn. It had received a 6-0 vote for denial from the Planning Commission.

Jun 13, 2005 - CPA#04010 was approved to change the land use designation from residential to commercial for the west 39 acres of this site.

Jan 11, 2006 - CZ#05026A to adjust the setbacks in the commercial portion of the Apple's Way PUD was approved.

Feb 2009 - CZ#08069 was approved adjusting the Building Line District from 125' to 105' adjacent to the residential portion of the Apple's Way PUD.

Feb 2009 - CZ#05026B was approved amending the PUD to include adjustments to setbacks and to expand the boundary to include an outlot for a subdivision identification sign.

ANALYSIS:

1. This request proposes to modify the Apples Way PUD by amending the development plan, which is in the form of notes on the site plan. Specifically, the request is to delete Note #33.
2. In its entirety, Note #33 states: NO FAST FOOD RESTAURANTS WITH DRIVE-THROUGH ACCESS (EXCLUDING A COFFEE SHOP RETAILER) OR 24-HOUR OPERATION USES SHALL BE PERMITTED IN THE B-2 ZONING DISTRICT OF THIS PLANNED UNIT DEVELOPMENT.
3. The limitation was added due to concern voiced by neighboring residents in the Country Meadows acreage development to the east of the Apples Way PUD. It is noted that the Apples Way residential area is located between the Country Meadows development and Apples Way commercial area. A 50' landscape buffer also exists between the B-2 commercial and the R-1 residential portions of the PUD.
4. This request is being brought by a restaurant seeking to locate in the existing building located on Lot 3, Block 3 of the commercial area, which is the lot containing the first building on the right as you enter the center on Apples Way. The building has multiple commercial tenants, and originally included a coffee shop in the east-most bay of the building. The building was constructed with a drive-through facility on the east side of the building for the coffee shop. The coffee shop has since left, and a restaurant plans to move in and is seeking to use the drive-through facility as well.
5. As written, Note #33 allows the drive-through facility to be used in conjunction with a coffee shop, but not a fast food restaurant. The proposed amendment would delete the note entirely and allow the restaurant to use it. While the applicant's intent is to modify the note For Lot 3, Block 3, deleting the note as requested entirely would actually apply to the entire B-2 zoned center.
6. While the applicant is not a 24-hour operation, the prohibition on 24-hour operation is a part of Note #33 and would also be deleted.

7. Public Works and Utilities notes that the drive-through stacking requirements are different for a coffee shop and a restaurant. While it appears that adequate stacking exists for the restaurant, the applicant will need demonstrate it to the satisfaction of Public Works and Utilities prior to authorization of the use of the drive-through facility.
8. The commercial portion of the Apples Way PUD is zoned B-2, and the uses prohibited by Note #33 would otherwise be permitted in that zoning district. As the center has developed, it is typical when compared to other B-2 shopping centers in Lincoln relative to layout and surrounding land uses, and the prohibition on drive-through facilities and 24-hour operation does not appear to be warranted. Additionally, staff is not aware of any other B-2 center in Lincoln which has a similar prohibition.
9. This application was first submitted to the Planning Department as an administrative amendment. However, it was determined that the request should be treated as a major amendment given that Note #33 was added when the original PUD was being considered by the City Council. During the review of the administrative amendment, staff notified the adjacent residential lot owners in the neighboring Artisan Meadows residential development of the request, and to date no objections have been received.
10. Removing the note allows the range of uses expected in such a center, and is consistent with the Zoning Ordinance and the Comprehensive Plan.

CONDITIONS:

The amendment approves the deletion of Note #33 from the Apples Way development Plan.

Site Specific:

1. The developer shall cause to be prepared and submitted to the Planning Department a revised and reproducible final plot plan including 5 copies with all required revisions and documents as listed below upon approval of the planned unit development by the City Council before receiving building permits:
 - 1.1 Revise the plans as follows:
 - 1.1.1 ~~Delete Note #33.~~ Revise Note #33 to read as follows:

WITHIN THE B-2 ZONING DISTRICT OF THIS PLANNED UNIT DEVELOPMENT, NO 24-HOUR OPERATION USES SHALL BE PERMITTED. NO FAST FOOD RESTAURANTS WITH DRIVE-THROUGH ACCESS (EXCLUDING A COFFEE SHOP RETAILER) ARE ALLOWED EXCEPT FOR LOT 3, BLOCK 3. (**Per Planning Commission: 10/02/13**)
 - 1.1.2 Demonstrate to the satisfaction of Public Works and Utilities that adequate stacking exists for a drive-through facility for a restaurant.

General:

2. Before receiving building permits:

- 2.1 The permittee shall have submitted a revised and reproducible final plan and the plans are acceptable.
- 2.2 The construction plans shall substantially comply with the approved plans.

Standard:

3. The following conditions are applicable to all requests:

- 3.1 Before occupying the dwelling units and commercial buildings all development and construction shall have been completed in substantial compliance with the approved plans.
- 3.2 All privately-owned improvements shall be permanently maintained by the owner or an appropriately established owners association approved by the City Attorney.
- 3.3 The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.
- 3.4 This ordinance's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.
- 3.5 The applicant shall sign and return the letter of acceptance to the City Clerk. This step should be completed within 60 days following the approval of the special permit. The City Clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filling fees therefore to be paid in advance by the applicant. Building permits will not be issued unless the letter of acceptance has been filed.

4. The site plan as approved with this resolution voids and supersedes all previously approved site plans, however all resolutions approving previous permits remain in force unless specifically amended by this resolution.

Prepared by:

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Planner
September 5, 2013

Owner: Apple's Way, L.L.C.
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(402)435-0011

**Applicant/
Contact:** Will Carter
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**CHANGE OF ZONE NO. 05026C,
AN AMENDMENT TO THE
APPLE'S WAY PLANNED UNIT DEVELOPMENT,**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

October 2, 2013

Members present: Corr, Beecham, Weber, Scheer, Hove, Sunderman, Cornelius and Lust.

Staff recommendation: Conditional approval.

There were no ex parte communications disclosed.

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

Staff presentation: **Brian Will of Planning staff** presented this proposed amendment to the Apple's Way PUD which was approved in 2005. At that time, there was discussion at the City Council about the PUD and it was at that time that the note in question was added to the PUD, i.e.:

**NOTE #33: NO FAST FOOD RESTAURANTS WITH DRIVE-THROUGH ACCESS
(EXCLUDING A COFFEE SHOP RETAILER) OR 24-HOUR OPERATION USES SHALL
BE PERMITTED IN THE B-2 ZONING DISTRICT OF THIS PLANNED UNIT
DEVELOPMENT.**

The existing boundary is a larger area with two components: B-2 Commercial and R-1 Residential. Neither are fully built out today. The majority of the commercial is built out, but there is still some vacant property, and the R-1 is underway. The lot we are talking about today is within the commercial center (Lot 3, Block 3, Apples Way Addition). This building was originally constructed as a multi-tenant commercial bay with several commercial tenants. The eastern side was built with a drive-through, consistent with the note as approved to accommodate a drive-through window for a coffee shop.

Today's request is for a restaurant seeking to become a tenant of the commercial center and would like to use that drive-through facility; however by the nature of their use and operating characteristics of the restaurant (Dickey's Barbeque), they are considered fast food, so they would be in violation of the note as it exists. Therefore, the request is to strike that note from the PUD to allow them to be able to go into this space.

There are comments in opposition from the Country Meadows Home Owners Association. There is a neighborhood under development as part of Apple's Way and we do not have opposition from that neighborhood. There is a letter in support from a property owner in Apple's Way, provided that such provisions do not apply to the lots on the west side of Apple's Way.

Staff found that the way the commercial center is developed is consistent with the other B-2 centers across the city, functioning and operating so that there is no need for the restriction to exist. However, that was an accommodation made between the developers and the City

Council pertaining to this particular PUD. The staff is recommending approval of this proposed amendment to delete Note #33.

Lust inquired whether the neighbors who initially negotiated the restriction are the same neighborhood in opposition to removing the note. Will answered that the neighbors in opposition are in Country Meadows.

Hove inquired if this amendment is for the entire PUD. Will explained that the amendment as proposed would affect the entire PUD. He suggested that there are other alternatives perhaps, but the applicant does not have a preference so long as they would be able to occupy that space. One option would be to limit the restriction such that it does not apply to certain lots, such as allowing the restriction, except for the lot in question.

Beecham assumed deleting the note entirely would also delete the prohibition of 24-hour operations.

Corr sought to clarify that the Artisan Meadows residential is the other part of Apple's Way. Will explained that the B-2 and R-1 are both part of the Apple's Way PUD. Artisan Meadows is part of the original PUD.

Lust inquired about the difference in the number of cars that one would expect from a coffee shop versus a restaurant. Will advised that when the building permit was originally approved, that drive-through facility was reviewed based on the design standards for a drive-through associated with a coffee shop. The stacking requirement is slightly different for a restaurant. If this were to be approved, they would still need to verify that there is adequate stacking. In discussions with Public Works and the applicant, Will believes there is, but they need to demonstrate such by means of an exhibit. The menu board has been removed but will be relocated on the site, and that is where we start counting the stacking. Will did not know how long the space has been vacant.

Beecham inquired whether there was a speaker system as part of the menu board, and whether there will be a speaker system with this user. Will believes that the coffee shop did have a speaker system.

Proponents

1. Will Carter with Dickey's Barbeque Pit, 7200 Hickman Road, Hickman, NE 68372, testified as the applicant requesting that the drive-through be allowed at 6125 Apple's Way. It is a pre-existing drive-through that was used for a coffee shop. In other Dickey's locations, customers can come through the store, go through the line and take the food out with them. With the drive-through, they would not have to get out of the car. He does not believe it is much different than parking the car and going into the restaurant – it would be a convenience factor. For Dickey's restaurants as a whole, the drive-through is about 12 to 15 percent of their sales, so it is a small portion of the sales. One of the concerns of the residents was the amount of traffic, but he does not see that as a concern because the drive-through is not going to increase the volume of traffic – there might be a slight increase but not a significant amount.

Quoting from the letter in opposition from the County Meadows Home Owners Association:

Our concerns remain with traffic in general in this area, traffic seeking shortcuts through our neighborhood, lights, noise and additional trash blowing about the area.

Carter clarified that Dickey's is not putting up a three-story sign like McDonalds. The menu board for the coffee shop did have speakers. Dickey's will have speakers as well, but Dickey's is not adding any more noise. As far as more trash, Carter pointed out that the drive-through is more of a pick-up window. He does not believe people will try to eat ribs driving down the road. Dickey's has two other locations in Lincoln.

Lust asked whether Dickey's is considered traditional fast food. Carter suggested that it is classified as "fast-casual". They make the food in front of you. He confirmed that there are no drive-through windows at the other locations in Lincoln. The hours of operation are 11:00 a.m. to 9:00 p.m.

Hove assumed this applicant doesn't care about other locations in this neighborhood having a drive-through – just the drive-through for this business. Carter agreed. Carter also stated that Dickey's does not care about the restriction on 24-hour operations.

Support

1. Mark Hunzeker appeared on behalf of **Apple's Way, LLC**, the owner of the property, in support of their tenant's application. This building is an existing building with a drive-through window that served a coffee shop. Part of the issue is that there really is not a definition of "fast food". From his personal perspective, he would suggest that a working definition would be something where the items on the menu can be consumed while driving, and he does not believe that fits a barbeque establishment.

With respect to traffic, Hunzeker does not believe take-out is an issue. There will be the same number of cars coming and leaving the site whether they have to park in the parking lot or drive through the existing drive-through area. But it seems that logic would tell you that it takes a lot more latte sales than rib sales to make a business run. The number of cars that have historically been through that drive-through is probably greater than the number of cars that will pick up food at Dickey's.

Hunzeker noted that one of the comments talked about changes in signage. He stated that this applicant is not interested in changing the signage package. They would have no problem with the suggestion by the homeowner who lives the closest to this site, that this apply only to the west side of Apple's Way. There are a lot of commercial areas in the city like this that have much, much tighter interface between the commercial use and the residential.

Hunzeker also submitted that Country Meadows is now part of the city; there is a subdivision of 31 lots which has 20-plus homes now, which have all developed in that area between Country Meadows and this commercial area since 2005. Therefore, Hunzeker believes there is quite a bit of buffer already in place.

Lust observed that the note as it currently reads that is requested to be eliminated says "no fast-food restaurants with drive-through access...". It does allow opportunity for another fast food

restaurant if Dickey's is not successful. Hunzeker agreed, but it is not what you would typically envision for a regional or national franchise because it sits so far off the highway with no real visibility for a true fast food restaurant. The building also does not set itself up for that. The space is smaller in general than what you see for the freestanding fast food restaurants. He does not believe it likely to get something like that in the event Dickey's leaves this location. It is very hard to specify a particular tenant for these kinds of things. But when you look at the site plan, this site is several hundred feet to the nearest residential dwelling, and that is the person who wrote in support. It is not a site that is likely to cause a real problem.

Beecham asked Hunzeker to show the row of businesses between this area and the residential area. Hunzeker pointed out Cornhusker Bank, another commercial building, and Graham Tire, so there are businesses between Apple's Way and the abutting residential. The vacant residential on the aerial photo is now 2/3 to 3/4 developed.

Lust asked how long the site has been vacant. Hunzeker did not know for sure but he believes it may have been 1.5 to 2 years.

Hove asked whether the owner is amenable to any other restrictions, such as the 24-hours. Hunzeker stated that if the tenant is okay with 9:00 p.m., the owner is okay. The owner also does not have a problem with limiting it to this building.

Opposition

1. Alan Christensen, 6617 Almira Lane, testified in opposition. He believes that deleting the note opens the door to a lot of things other than what this applicant wants. There was a restaurant in that location after the coffee shop which did not use the drive-through, and it has not been 1.5 or 2 years since it became vacant.

Christensen is a resident of Country Meadows, just east of Apple's Way. He did not live in the neighborhood when the Home Depot was constructed, but he believes the city promised no more big boxes. Then a few years ago, a developer constructed Lowes on the other side. The homeowners association was quite concerned about the impact on property values, quality of life and traffic being surrounded by big box stores. The attorney retained by Apple's Way to oppose the homeowners association was Tom Huston, who is a resident of Artisan Meadows and in support of this change. In return for the developer agreeing to these restrictions, Country Meadows dropped their opposition.

Because of the history of the zoning agreement, Christensen is firmly opposed to this change. Do promises made by the city mean anything, or are they just a method to get homeowners to give in on an issue? This Planning Commission has a chance to send a powerful message. You can send the message that negotiated settlements settle the matter and the city can be trusted. Or you can send the message that the promises of the City made yesterday are not honored today. Do you really want to damage the credibility of the City?

Cornelius was curious about how the distinction was drawn between the coffee shop with a drive-through and a fast food establishment. Christensen stated that it was negotiated between the homeowners association's lawyer, Mr. Hunzeker and Mr. Huston. Christensen was not sure about the definitions.

Hove wondered how this affects Christensen personally. Christensen's response was, "we walk there". If Dickey's opens and does not use the drive-through, he is sure he will walk there for dinner. Striking this note opens the door to a Burger King, etc., etc., and the nature of this discussion is about trust. Can we trust anything the City of Lincoln does, or is this going to be quietly changed later on by some powerful developer?

Christensen did not remember the hours of operation of the coffee shop.

Staff questions

Cornelius asked for an explanation of the difference between a fast food restaurant and a restaurant. Will suggested that in state statute, there is a definition of restaurant that talks about going into an establishment, sitting down, ordering, and eating off a plate. Beyond that, we have to look at how the food is prepared and how people are served. Dickey's food is prepared and can be made available rather quickly as opposed to sitting down and ordering. By definition, this would be considered fast food. They use a drive-through menu which is often typical of a fast food restaurant.

Lust suggested rather than eliminating the note, that some changes be made to the note. Is there a way to add a clause to the exception that any restaurant whose gross revenues from a drive-through are less than 10% would be allowed to have a drive-through? Will believes there are a number of options but that is not one of them. Those sorts of things are very difficult to enforce. Staff would be more supportive of something that is cleaner, more enforceable, like perhaps excepting this one lot from the restrictions. Will suggested that the restrictions could apply to the remainder of the development, with the exception of this lot (Lot 3). Therefore, Lot 3 could have fast food, provided that the hours of operation were something other than 24-hours a day. Lust wondered whether there is any argument to be made that Dickey's is not a fast food restaurant and therefore we do not need to eliminate this note. Will stated that staff did have that discussion and could not get there.

Beecham wondered whether a traffic count was performed in terms of how many cars pass through a drive-through. Will has not done this calculation, stating that to be extremely problematic with regard to enforcement. Beecham wondered whether the restriction on the one lot would go away if Dickey's does not survive at this location. Will answered, "no". This is a PUD, which is ultimately the most flexible zoning instrument we have. You can also restrict uses in a PUD. There is no separate special permit here with a PUD. We cannot just restrict or allow one specific user by zoning.

Sunderman noted that Hunzeker stated that he thought it unlikely that a fast food restaurant would go in there. If one did, does Planning staff feel there is enough buffering and street capacity to handle a fast food restaurant? Will reiterated that it is in a B-2 center on Highway 2, and it's not intensely developed. There is no issue in that regard because it looks, feels and functions like most any other B-2 center around the city that would allow this as a use by right in the B-2 district. The staff did not find any characteristics associated with this one that warranted this prohibition.

Beecham wondered what the thinking was when this agreement was put in place. Will believes that the language was agreed upon between the developer and the neighborhood and was

added at the public hearing before the City Council. Will did not know any more specifics, but there was obviously a concern at the time.

Will suggested that this lot would be defined and legally described as Lot 3, Block 3, Apple's Way Addition. That is the lot for the location of this restaurant. The building, parking, and entrance driveway are all located on Lot 3, Block 3.

Beecham wondered whether it could have multiple drive-throughs if the tenant were to change. Will suggested that it would be difficult to do a drive-through facility somewhere else here. You have to accommodate stacking for the vehicles and it would take some sort of reworking of the site.

It was clarified who represents Apple's Way. Will stated that Mr. Hunzeker is representing Apple's Way on this application.

Scheer asked for the square footage of the building and the amount to be occupied by Dickey's. Will did not know the specific square footage but he suggested it would be approximately 1/4 to 1/3 of the building.

Response by the Applicant

Carter clarified that there was never any negotiated settlement between Apple's Way and Country Meadows Home Owners Association. The note was added at the request of a City Council member. The space for Dickey's is about 2200 sq. ft.; the total building is about 7,000 sq. ft.

ACTION BY PLANNING COMMISSION:

October 2, 2013

Corr made a motion to take out the coffee shop and put in the legal description of the specific lot upon which Dickey's is going to locate. Note #33 would read, "No fast food restaurant with drive-through access (excluding Lot 3, Block 3) or 24 hour operation uses....", seconded by Cornelius.

Beecham wanted it clarified that the 24-hour limitation would remain in place.

Cornelius indicated that he went back and forth on this decision. The application itself turns one of the precepts of the PUD on its head, and turns it into exactly what it didn't say. With regard to the language of the note, he believes it is confusing. What is a fast food restaurant? We never got a clear answer. The answer is not food you eat in the car. His answer is a fast food does not have table service. He resents the opposition telling him what he has to do here, i.e. support decisions that have been made in the past by the City. That is not entirely true. We have to take into account those decisions, but this decision today is a decision made by the city and the city mechanism was used to put that into power. For the reasons as stated and for the reasons, 1) that this is fairly distant from the neighborhood presenting the opposition with a fair amount of buffering between; 2) that it will not be audible to the residents; and 3) that the coffee shop represents a greater number of trips and greater opportunity for trash than a fast food would represent, he will support the motion.

Corr believes it is very important that the city help businesses and neighborhoods work together and a compromise was found when this went to the City Council. She believes it is important to honor that. It is difficult for a neighborhood to have a voice when these kinds of things happen. But they were heard in this situation initially and we need to hold that. She is okay with excepting this particular lot from the restriction on a drive-through, and that appears to be the best way we can work around it at this point.

Lust agreed. The general restriction is still going to be there, and there had already been a drive-through use which probably generated more trips than this request. She believes this is a good compromise that supports the initial thought of why that note was there, and she respects the use of the existing drive-through by Dickey's.

Motion carried 8-0: Corr, Beecham, Weber, Scheer, Hove, Sunderman, Cornelius and Lust voting 'yes'. This is a recommendation to the City Council.



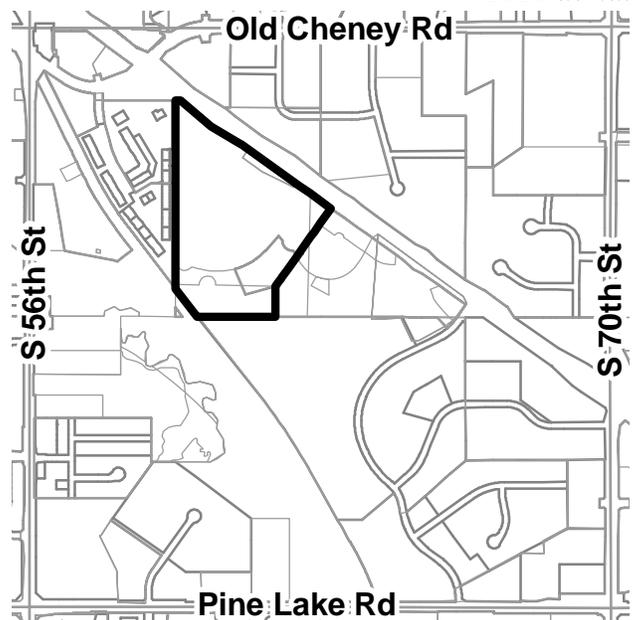
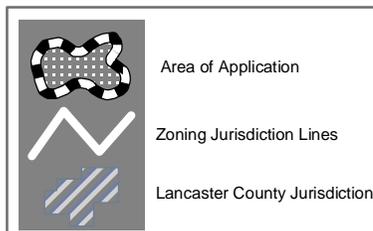
2010 aerial

Change of Zone #: CZ05026C
Apples Way & Hwy 2
Apples Way PUD

Zoning:

- R-1 to R-8 Residential District
- AG Agricultural District
- AGR Agricultural Residential District
- O-1 Office District
- O-2 Suburban Office District
- O-3 Office Park District
- R-T Residential Transition District
- B-1 Local Business District
- B-2 Planned Neighborhood Business District
- B-3 Commercial District
- B-4 Lincoln Center Business District
- B-5 Planned Regional Business District
- H-1 Interstate Commercial District
- H-2 Highway Business District
- H-3 Highway Commercial District
- H-4 General Commercial District
- I-1 Industrial District
- I-2 Industrial Park District
- I-3 Employment Center District
- P Public Use District

One Square Mile:
 Sec.16 T09N R07E



APPLE'S WAY AMENDMENT TO THE P U D SITE PLAN

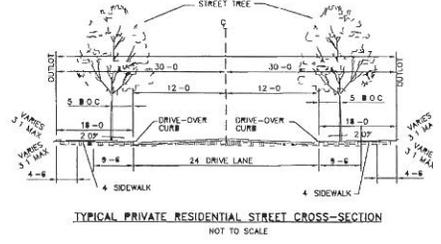
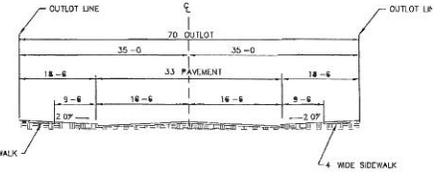
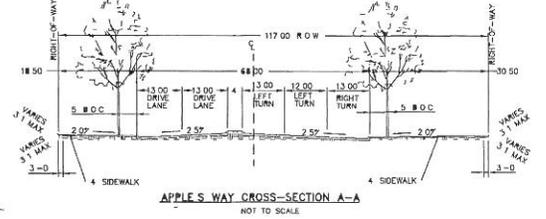
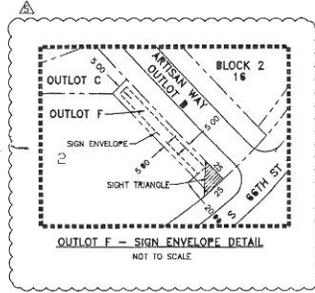
CENTERLINE CURVE DATA

(A) R=27.38 31 L=158.00 TL=86.10 LC=147.22	(B) R=75.53 33 L=420.49 TL=253.43 LC=389.70	(C) R=37.17 56 L=200.60 L=185.62 TL=101.42 LC=182.19	(D) R=115.35 58 L=725.00 L=524.84 TL=436.69 LC=483.40
(E) R=8.46 47 L=272.50 L=45.95 LC=87.64	(F) R=56.41 24 L=320.00 L=518.45 LC=498.52	(G) R=11.24 40 L=325.00 L=104.58 LC=104.35	



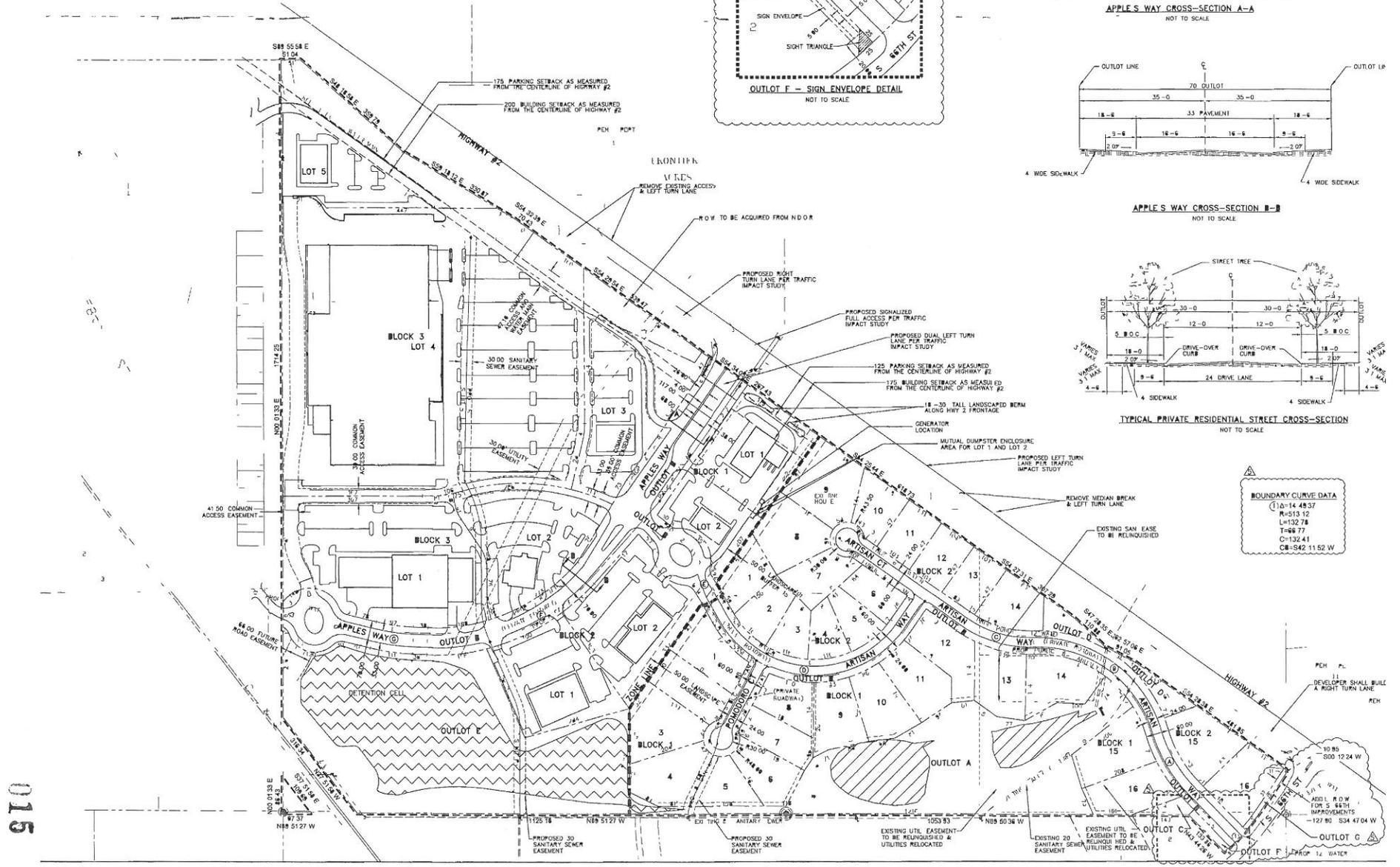
LEGEND

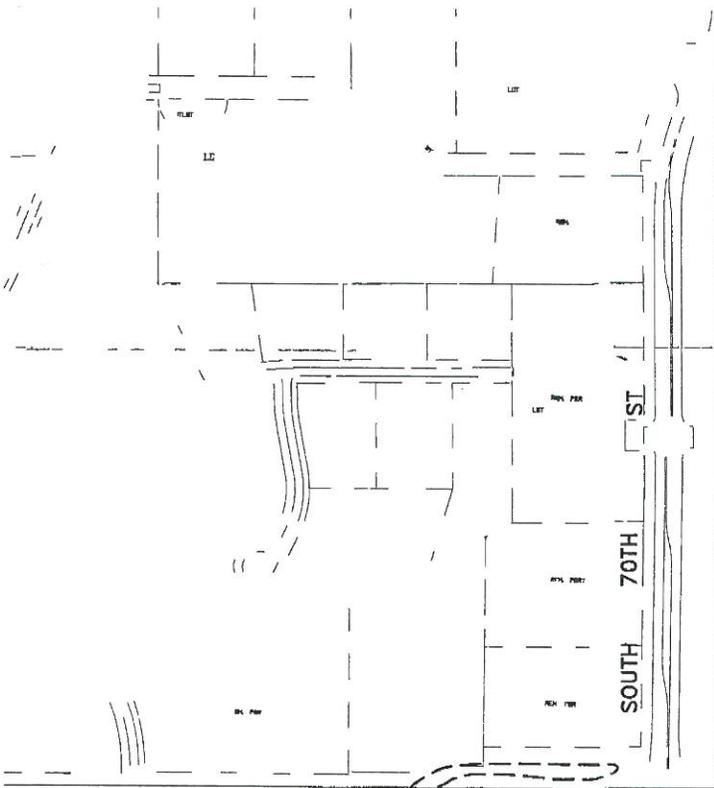
- PROPOSED BOUNDARY
- PROPOSED DRY DETENTION AREA
- PROPOSED WET DETENTION AREA
- EXISTING TREES TO REMAIN IN PLACE
- EXISTING TREES TO BE REMOVED



BOUNDARY CURVE DATA

(1) R=14.48 37 L=15.13 12 L=132.78 TL=68.77 C=132.41 CB=342.11 62 W
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- ACCESS EASEMENT
- 17 THE SEPTIC SYSTEMS WILL BE ABANDONED TO THE SATISFACTION OF THE HEALTH DEPARTMENT
 - 18 OUTLOT AND BLOCK DIMENSIONS SHOWN ARE APPROXIMATE AND MAY VARY
 - 19 THE PROPOSED PUD IS CURRENTLY ZONED AG & AGR. A CHANGE OF ZONE TO R-1/B-2 PUD HAS BEEN SUBMITTED
 - 20 ALL STREET DIMENSIONS ARE TO BACK OF CURB
 - 21 EXISTING AND PROPOSED EASEMENTS TO BE IDENTIFIED AND SHOWN AT TIME OF FINAL PLATTING
 - 22 EXACT LOCATIONS OF WATER SEWER DRAINAGE AND PAVING WILL BE SUBMITTED WITH INDIVIDUAL SITE PLANS AT TIME OF BUILDING PERMIT IN ACCORDANCE WITH CITY OF LINCOLN DESIGN STANDARDS
 - 23 THE YARD SETBACKS REGULATES STRUCTURAL WALLS ONLY AND DOES NOT RESTRICT OVERHANGS PATIOS DOOR SWINGS WINDOW SWINGS ETC FROM ENCRUCHING INTO THE SETBACKS
 - 24 ALL DISABLED PARKING STALLS SHALL BE IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT (FEDERAL REGISTER/VOL 58 NO 144/RULES AND REGULATIONS)
 - 25 A COMMON ACCESS EASEMENT WILL BE PROVIDED OVER ALL DRIVES AND PARKING STALLS AS SUCH DRIVES AND PARKING STALLS MAY EXIST IN THE COMMERCIAL AREAS
 - 26 DETAILS OF ALL SIGNS INCLUDING TYPE HEIGHT AND SIZE WILL BE SUBMITTED SEPARATELY FOR REVIEW WITH THE BUILDING PERMIT AND NEED NOT BE SHOWN ON THE PLAN THEY WILL BE DESIGNED IN ACCORDANCE WITH THE APPLE WAY AND CITY OF LINCOLN STANDARDS SIGNS ALLOWED PER THE R-1 AND B-2 ZONING DISTRICTS HOWEVER POLE SIGNS ARE PROHIBITED
 - 27 FINAL SITE LAYOUT AND INDIVIDUAL LANDSCAPE PLANS FOR COMMERCIAL BUILDINGS TO BE SUBMITTED AT TIME OF BUILDING PERMIT
 - 28 THE SALE OF ALCOHOLIC BEVERAGES FOR CONSUMPTION ON OR OFF PREMISES IS PERMITTED IN THE B-2 PUD PROVIDED IT MEETS THE REQUIREMENTS OF 27.31.040
 - 29 FENCES DUMPSTERS DECORATIVE STRUCTURES AND ACCESSORY BUILDINGS ARE NOT SHOWN ON THE PLANS IF THEY ARE 1000 SQUARE FEET OR SMALLER AND ARE OUTSIDE OF THE SIGHT TRIANGLES AND SETBACKS AND ARE IN CONFORMANCE WITH ALL APPLICABLE ORDINANCES AND CODES AS AMENDED BY THE APPLE WAY REGULATORY MODIFICATIONS
 - 30 AT TIME OF FINAL DESIGN AND FINAL PLATTING THE ROUNDABOUT WILL BE DESIGNED TO ACCOMMODATE A WB-50 VEHICLE AS PER DESIGN STANDARDS. ADDITIONAL RIGHT-OF-WAY MAY BE REQUIRED IF A LARGER RADIUS IS NEEDED FOR THESE VEHICLES
 - 31 LAND USE NODES IN THE B-2 ZONE DESIGNATING COMMERCIAL FLOOR AREA SHALL NOT EXCEED A TOTAL OF 235,000 SQUARE FEET OVERALL. THE USES TO BE DESIGNATED WITHIN THE TOTAL SQUARE FOOTAGE APPROVED SHALL NOT EXCEED THE GENERATION OF A MAXIMUM OF 1200 TRIPS DURING THE P.M. PEAK PERIODS
 - 32 INDIVIDUAL LOT LANDSCAPING FOR ALL COMMERCIAL BUILDINGS WILL BE REVIEWED AT THE TIME OF BUILDING PERMITS. STREET TREES TO BE REVIEWED AT TIME OF FINAL PLAT AND ASSIGNED BY PARKS AND RECREATION
 - 33 NO FAST FOOD RESTAURANTS WITH DRIVE-THROUGH ACCESS (EXCLUDING A COFFEE SHOP RETAILER) OR 24-HOUR OPERATION USES SHALL BE PERMITTED IN THE B-2 ZONING DISTRICT OF THIS PLANNED UNIT DEVELOPMENT
 - 34 THE BUILDING ON LOT 1, BLOCK 1 IN THE COMMERCIAL AREA SHALL HAVE SPACE RESERVED FOR A COMMUNITY CENTER OF NOT LESS THAN 1,000 SF GROSS FLOOR AREA
 - 35 OUTLOT F SHALL BE RESERVED FOR OPEN GREEN SPACE AND SUBDIVISION IDENTIFICATION SIGN FOR COUNTRY MEADOWS AND ARTISAN MEADOWS NEIGHBORHOODS
 - 36 OWNERS ARE HEREBY NOTIFIED THAT FUTURE WIDENING COMBINED WITH REDUCED SETBACKS ALONG HIGHWAY 2 MAY RESULT IN INCREASED NOISE. THE CITY OF LINCOLN WILL NOT BE HELD RESPONSIBLE FOR

SURVEY

I HEREBY CERTIFY THAT I HAVE C/ ABOVE PLANNED UNIT DEVELOPMENT PLACED OR FOUND AT A L BOUND.

March 31, 2009
DATE

ENGINE

I HEREBY CERTIFY THAT THESE PL MY DIRECT SUPERVISION AND THAT UNDER THE LAWS OF THE STATE I REQUIREMENTS OF THE CITY ENGIN

3 2 09
DATE



2662 Cornhusker Hwy. Ste. 9, Lincoln NE, 68521 | dickeyslincoln@gmail.com | Phone: 402-423-0056

I am requesting that the note in the Apples Way Addition that no drive thru is allowed be deleted from the plans. I am asking for this request to allow for a drive thru, which is currently in place and has been used for a coffee shop, at 6125 Apples Way, Ste 209 to be used to serve food from Dickey's Barbecue Pit.

Thanks,

A handwritten signature in black ink, appearing to read "Will Carter".

Will Carter

From: Thomas C. Huston [thuston@clinewilliams.com]
Sent: Tuesday, October 01, 2013 10:16 AM
To: Marvin S. Krout; Jean Preister
Subject: Change of Zone # 05026C--Apples Way PUD

Mr. Krout:

I reside at 6309 Pomodoro Court located in Artisan Meadows directly adjacent to the Apples Way commercial development. I write today to voice my support of Change of Zone 05026C which proposes to delete the PUD prohibition against drive through restaurants. I support the removal of that prohibition as it relates to any of the ground located north of Apples Way road, and specifically support the removal of that restriction as it relates to Lot 3, Block 3, Apples Way Addition. I would not delete the restriction in its entirety and would recommend that it be retained for those properties located south of the road entitled Apples Way.

Tom Huston
6309 Pomodoro Court
Lincoln, NE 68516

Country Meadows Home Owners Association
66th and Highway #2
Lincoln, NE 68516

September 17, 2013

Mr. Brian Will, Planner
Lincoln City / Lancaster County Planning Dept.
555 S. 10th Street, Ste 213
Lincoln, NE 68508

RE: Change of Zone #05026^C~~B~~ – Apples Way PUD

Mr. Will,

Thank you for your notice yesterday of the pending Proposal before the Planning Commission with Public Hearing on Wednesday, October 2, 1:00pm.

Country Meadows HOA Board of Directors vehemently requests that this amendment be **denied**.

Having just learned of this 'proposal' yesterday afternoon, we are taken back that we had not been contacted earlier and appreciate that the public hearing has been postponed until October 2. We wish to get this letter to you and the Commissioners as we are dismayed that we have to fight this amendment to a 'previously agreed to condition'.

When we came to agreement with the original developers by supporting the original Apples Way PUD, and when we supported the 'requested' property reassignments from Country Meadows to Apples Way, and from Apples Way to Country Meadows, we were assured and promised that there would be no 'Fast Food Restaurants with Drive-Through Access'. Our concerns remain with traffic in general in this area, traffic seeking shortcuts through our neighborhood, lights, noise and additional trash blowing about the area.

We continue to remain steadfast that this promise and resulting requirement be retained as originally agreed to and documented in the final approval plans.

For the Board of Directors
Country Meadows Home Owners Association



Stephen Clymer, President
scllymer@bvh.com

From: Jean Preister
Sent: Monday, September 30, 2013 9:51 AM
To: Jean Preister
Subject: Opposition: CZ05026C, Apple's Way PUD (p.1 - Consent Agenda - 10/02/13)

From: christine kiewra [<mailto:ckiewra@neb.rr.com>]
Sent: Sunday, September 29, 2013 5:19 PM
To: Steve Clymer
Subject: Re: City Council Meeting for the Roads

Thank you Steve for working on all of this and for speaking at the meeting. Neither Ken and I will be able to be at the meeting on Monday but we are against the change to allow for a drive-thru. I don't know how helpful it will be, but you could remind the Council that the Comprehensive Plan had to be changed to even allow commercial development at all on the property. We worked LONG and HARD with the developers and on the zoning to minimize impact on nearby residential. That is how we all agreed that there would be no drive-thru restaurants. They have long forgotten that I am sure so it may not be persuasive. If the opportunity arises though you could mention it! :)

Best,
Chris

From: Jean Preister
Sent: Monday, September 30, 2013 10:57 AM
Cc: Marvin S. Krout; Steve S. Henrichsen; Brian Will; Dennis D. Bartels; 'willcarter85@gmail.com'; 'bmccombs@mccrealty.com'; Dennis D. Bartels
Subject: Item No. 1.1: Change of Zone No. 05026C, Apple's Way PUD (p.1 - Consent Agenda - 10/02/13)

TO: Planning Commission members:

Below is an additional email in opposition received from Steve Clymer, President of the Country Meadows Home Owners Association, on Friday, September 30th, including comments he has received from other neighborhood residents. He referred to a neighborhood meeting being held last Saturday. Brian Will's message from a follow-up conversation with Mr. Clymer about the results of the neighborhood meeting is also below.

As a reminder, this application will be removed from the Consent Agenda on Wednesday and will have separate public hearing.

**--Jean Preister, Administrative Officer
Planning Department
402-441-6365**

From: Steve Clymer
Sent: Friday, September 27, 2013 8:49 AM
To: bwill@lincoln.ne.gov
Subject: Dickies @ Apples Way

Brian,

I talked with Will Carter, Manager of the new Dickies about a week ago. Will wondered if our neighborhood would support limited hours on a drive up window (7am to 9pm). Our by-laws require 30 days' notice for 'all-neighborhood votes' and so with not enough notice to pull that together, the Board issued the earlier letter. Since that time, via email, we have had a loose polling of the neighbors. You can see from the several responses below, that there doesn't appear to be reason for the Board to retract our earlier stance and letter.

We have an informal 'all neighborhood' meeting tomorrow morning to discuss a new 'paving district' that comes before a public hearing on Monday night. On that agenda also is to discuss the 'exception of 'Fast-food with Drive-up Windows' in Apples Way'. However, I don't anticipate a change in Country Meadow's appetite for fast food and its impact to our homes, streets and privacy. Again, during the original negotiations with Apples Way, we stretched our cooperation many fold to allow the developer to move ahead; including property swaps that only supported Apples Way's needs. We find this very disappointing to now have to go back and defend ourselves against Apples Way, their leasees and previous agreements..

To: Steve Clymer
Cc:
Subject: RE: City Council Meeting for the Roads

We absolutely oppose the change in zone to accommodate any fast food operation at our entrance

Subject: Re: City Council Meeting for the Roads

Vote against drive-through @ Dickies. Once we let one establishment do this, precedence is set.

Subject: Re: City Council Agenda for today.

Steve

Very good strong note you sent as well. I appreciated you attaching the original agreement to refresh my memory

Subject: Re: City Council Meeting for the Roads

Message image001.png (41 KB) image004.jpg (49 KB)

Can't be there on Sat.

But I am fine with the road plan, but a no on Dickies! They can say anything now, but things always change in time with these kind of deals

Thanks.

Give me a call. Would like to hear Planning's concerns. (402-475-4551

Thanks Brian,

Steve

Follow-up from Brian Will, Planning staff, on 9/30/13:

Just spoke to Steve Clymer, they did meet Saturday and the opinions of his neighbors that have spoken are uniformly in opposition. He said an amendment to specifically allow Dickies, where the drive-through would only be used for pick-up, with hours from 11:00 a.m. to 9:00 p.m. is about the only scenario they may not oppose. As I understand it, Dickies does close at 9:00, but they do plan to use the drive-through for both pick-up and ordering.

--Brian Will, Planning

OPPOSITION

From: Jean Preister
Sent: Monday, September 30, 2013 2:47 PM
To: Jean Preister
Subject: Country Meadows letter of dissent to Fast Food/Drive Up facilities in Apples Way

From: Roseann Christensen [<mailto:rretzlaff44@yahoo.com>]
Sent: Saturday, September 28, 2013 12:45 PM
To: Steve Clymer; Alan Christensen
Subject: Re: Country Meadows letter of dissent to Fast Food/Drive Up facilities in Apples Way

Hi Steve,

As we discussed this morning, please us our names in the list of neighbors opposed to allowing fast food with drive-up windows in the Apples' Way development area by Lowe's. We believe the city needs to keep its word and honor the agreement previously made with the CM HOA. Alan plans to attend and speak at the Planning Department's public hearing on Wednesday, unless he cannot get away from work for some reason. We will also both plan to be at the roads meeting Monday at 5:30 pm.

Roseann and Alan Christensen.