MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, March 26, 2008, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska
MEMBERS IN ATTENDANCE:	Gene Carroll, Dick Esseks, Wendy Francis, Roger Larson, Lynn Sunderman and Tommy Taylor (Leirion Gaylor Baird and Michael Cornelius absent). Marvin Krout, Ray Hill, Mike DeKalb, Tom Cajka, Christy Eichorn, Jean Preister and Teresa McKinstry of the Planning Department; media and other interested citizens.
STATED PURPOSE OF MEETING:	Regular Planning Commission Meeting

Chair Gene Carroll called the meeting to order and requested a motion approving the minutes for the regular meeting held March 12, 2008. Motion for approval made by Taylor, seconded by Francis and carried 6-0: Carroll, Esseks, Francis, Larson, Sunderman and Taylor voting 'yes'; Gaylor Baird and Cornelius absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: March 26, 2008

Members present: Carroll, Esseks, Francis, Larson, Sunderman and Taylor; Gaylor Baird and Cornelius absent.

The Consent Agenda consisted of the following items: **USE PERMIT NO. 137A, ANNEXATION NO. 08002, CITY MISCELLANEOUS NO. 08004 and COUNTY MISCELLANEOUS NO. 08005.**

Ex Parte Communications: None

Larson moved to approve the Consent Agenda, seconded by Sunderman and carried 6-0: Carroll, Esseks, Francis, Larson, Sunderman and Taylor voting 'yes'; Gaylor Baird and Cornelius absent.

CHANGE OF ZONE NO. 08010,
HUB HALL COMMERCIAL CENTER
PLANNED UNIT DEVELOPMENT,
ON PROPERTY GENERALLY LOCATED
AT N.W. 48TH STREET AND W. HOLDREGE STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: March 26, 2008

Members present: Larson, Francis, Sunderman, Taylor, Esseks and Carroll; Cornelius and Gaylor Baird absent.

Ex Parte Communications: None.

Staff recommendation: Denial.

Additional information for the record: Tom Cajka of Planning staff submitted an e-mail from Willis Falk rescinding his previous objections to this proposal, indicating that his concerns have been addressed by the developer.

Staff presentation: **Tom Cajka of Planning staff** explained that this is a proposal for a B-2 PUD for 85,100 sq. ft. of office, retail and service type uses on approximately 11 acres at N.W. 48th Street and W. Holdrege Street.

The vacant area for this proposal was originally shown in the preliminary plat for a future church site. Directly west of this proposal is a proposed residential-transition area within the I-80 West Lincoln Business PUD, proposed for limited commercial uses such as those allowed in the R-T zoning district. The remainder of the I-80 West Lincoln Business PUD south of Holdrege is shown for 425,000 sq. ft. of highway commercial uses. Another center located in this proximity to the north is the Ashley Heights Commercial Center, an existing center approved for 93,500 sq. ft. of commercial, serving as the neighborhood center for this area. There is also a proposed convenience store with additional five lease spaces at the corner of N.W. 48th & Adams, totaling 12,600 sq. ft.

Cajka pointed out that the land use plan in the 2030 Comprehensive Plan designates the area of this proposal as residential. However, the applicant has submitted a separate application for a Comprehensive Plan amendment that will be coming before the Commission in May to show this area changed from residential to commercial use.

Cajka further explained that W. Holdrege is identified as an urban collector east of N.W. 48th Street, shown to be two lanes with a center turn lane, and the applicant's traffic study for this center projects 5,549 daily trips. In comparison, the area directly west of this project in the R-T is proposing about 1,900 daily trips. There is concern that if this development is approved, the developer on the west side of the street will also come in for a change to have similar uses, resulting in a negative impact on N.W. 48th Street that would likely require N.W. 48th to be six lanes north of Holdrege.

Therefore, with the Ashley Heights Commercial Center, the I-80 West Lincoln Business PUD and other commercial space in the area totaling about 600,000 sq. ft., the Planning staff believes that this neighborhood is adequately served with existing and future commercial space. However, if the Planning Commission votes to approve this proposed PUD, the staff has set forth recommended conditions of approval limiting the development to 60,000 sq. ft. and 1,965 daily trips, being the same as what the Planning Commission approved on the west side of the street.

Esseks referred to the Public Works comments. We have this 13 acres separated from the residential PUD, so there would have to be some type of access from either Holdrege or N.W. 48th. Cajka explained that Public Works is objecting to the right-in/right-out on N.W. 48th Street. The objection to the access on N.W. 48th is that N.W. 48th is an arterial street and we want the access points every 1/4 mile. There is already such access with Gary Gately Road and there is no access given to the property on the west.

Esseks noted the objection received from a business owner further north on N.W. 48th about excess capacity in the commercial area.

Proponents

1. Hub Hall, the applicant, explained that he is interested in this change of zone at N.W. 48th and Holdrege and he does not understand why the staff is recommending denial. He does not understand what the Planning Department does. At the southwest corner of 84th & Adams (old North 40 golf course), there is a neighborhood shopping center being built now. At the same intersection on the northeast corner, there is another shopping center being built. What he is proposing is more than a mile away from the shopping center to the north in an area of the City (northwest Lincoln) that gets left behind and where services are desperately needed for the residents.

Francis inquired as to the type of businesses the developer hopes to attract to this center. Hall indicated that he has talked to a bank about locating in this center, but he has no commitment. He does not think it will be a Walmart, but there will be other small businesses. He has also thought about some office space. There is a need for a doctor and dental offices to serve that neighborhood.

2. Mark Hunzeker appeared on behalf of **Hub Hall.** The purpose of this change to B-2 rather than a R-T situation is because this developer wants to clearly indicate from this day forward what is intended and what is needed in this area so that current and future neighbors will have advance knowledge of the intended uses. There is also the need to maintain maximum flexibility to adjust this site to the needs of buyers and tenants. The staff has indicated that they would agree to a R-T PUD type of use such as was approved on the west side of NW 48th Street. That arrangement on the other side of the street limits the range of uses. R-T is mostly an office district, with limited kinds of retail uses allowed. However, in speaking with staff, it seems clear that they would be willing to allow a

Walgreens (which is more retail than pharmacy and includes a drive-through), which would be larger than the maximum size of building allowed in a R-T district. And, a Walgreens or CVS would generate 1322 daily trips, about 2/3 of what is allowable under that PUD. Hunzeker submitted that the suggestion that the R-T will somehow limit the number of trips is an illusion and unfair to those moving into the area. A bank is needed in this area. A pharmacy such as Walgreens is a use needed in this area as well as restaurants. This developer does not want to be forced to have to come back and ask permission every time they have a user. The neighbors that the developer has contacted have indicated that they are generally supportive of the idea. The standard for the number and size of shopping centers everywhere else in town is much greater than it is out in this area.

When we start talking about the fear of forcing N.W. 48th Street to a 6-lane capacity, Hunzeker pointed out that the uses that are proposed in the area to the south are oriented toward interstate travelers – they are not going to be neighborhood oriented commercial uses. They will be hotels, truck stops, etc. Up toward the residential area is where you need neighborhood oriented commercial goods and services.

In addition, Hunzeker pointed out that the area to the west of N.W. 48th Street has to reach all the way to I-80 to get a sewer. The property in this proposal has a sewer that it can hook onto today. This site makes a great deal more sense for small neighborhood oriented commercial facilities than the other side of the street.

Larson inquired as to the distance in blocks from the north end of the interstate to Holdrege Street. Hunzeker suggested that from I-80 to Holdrege is about 3/4 mile. People are not knocking down doors to develop the property near the interstate. Hunzeker owns a piece of property right at the interchange that is zoned commercial and he is not getting a lot of phone calls about getting a lot of development done there. But the need for the neighborhood oriented uses is there today. It took a long time to get a grocery store in the Ashley Heights Center. The residents want more of those neighborhood commercial uses.

Hunzeker stated that there will be a setback of 50' with a bike path wandering through it. The right-of-way stub preliminarily platted as a street stub will be used as a bike path/pedestrian way to access the shopping center. There is only one house built against this property and the setbacks will be adjusted so that the bike path is no closer than 50' from his back yard with some landscaping and berming. There will be landscape screens all the way across the north boundary of the center.

In terms of access, Hunzeker confirmed that the developer is requesting access to N.W. 48th Street. They have an access point 600 feet north of Holdrege, with right-in, right-out access. There are a lot of access points much closer to much busier intersections than this one, e.g. 27th & Pine Lake Road for Walgreens, Famous Dave's, and Red Robin. He believes that a right-in, right-out access here is reasonable, particularly inasmuch as the developer is willing to put in a turn lane. The developer would also like to increase the amount of square footage available for development.

Hunzeker submitted the following proposed amendments to the conditions of approval:

1. This approval permits up to ~~60,000~~ 85,100 square feet of commercial floor area with a total daily trip count not to exceed ~~1,965~~ 5,549.

3. (Next to last paragraph)

   to relinquish the right of direct vehicular access ~~to NW 48th St. and~~ from Lot 1, Block 2 and Lot 1, Block 3 to W Holdrege St. and construct the access to Northwest 48th Street with a 'pork chop' island to assure right-in, right-out access only.

~~4.1.10 Remove the right-in/right-out access to NW 48th St.~~

Esseks recalled that the Planning Commission recently approved a plan directly across the street where the access to N.W. 48th was further north. Hunzeker concurred. However, he does not know that that will be the last word on access to that property. Given the location of the sewer, Hunzeker does not expect to see immediate groundbreaking over there. It is a very long way to bring a sewer for a 60,000 sq. ft. area that does not allow much flexibility in terms of uses. Under an earlier plan of that project on the west side, Hunzeker believes there was an access on the southwest corner of Holdrege and N.W. 48th at least as close as this one, but it got changed because there were two accesses; however, the staff had approved a right-in, right-out south of Holdrege on the west side that was at least as close.

Larson asked what would prevent this developer from using the stub street as a vehicular street and allowing people to exit. Hunzeker suggested that showing it in the PUD as a pedestrian access is going to keep it that way. It is not a dedicated street. The developer would be willing to dedicate a pedestrian access easement if that is desirable.

Esseks stated that he is sympathetic to turning this parcel into something besides single family. We do have the Comprehensive Plan principle of less intense office uses near residential and less intense commercial uses. There are a lot of single family lots directly adjoining this proposal, which, according to the Comprehensive Plan, suggests the need for rather low intensity non-residential uses, either commercial or office. Will this be low intensity? Or a more standard neighborhood center? Hunzeker suggested that it is going to be a mixture of office and more traditional retail uses. They are showing some buildings on the site plan for office/retail and medical office and day care. They are really talking about focusing the more high traffic uses toward the corner in terms of a bank and restaurant type uses. However, this developer is not able to represent who those tenants are likely to be at this point in time, but as this develops, the traffic pattern is going to be on the opposite side of the buildings from the residential uses. As a matter of intensity, 13 acres with only 85,000 sq. ft. of space is a pretty low intensity use. You would expect ordinarily for that size of site to generate more like 130,000 to 160,000 sq. ft.

Hunzeker again confirmed that the bike path is within the 50' required setback. The setback is required to be screened in accordance with design standards.

Esseks confirmed that only one of the lots immediately to the northeast has been built upon. Hunzeker concurred. They are single family lots.

Carroll noted that the Ashley Heights commercial center 3/4 mile to the north is approved at 93,000 sq. ft. and has not been filled. Hunzeker did not know how much space is actually finished at Ashley Heights. He did know that they are in the process of constructing a building now that will add to it. He does not believe that providing additional opportunity for businesses to look at this area and potentially generate some additional commercial activity is detrimental for others seeking to develop commercial. This is not anywhere near the intensity of the two centers being constructed at 84th & Adams.

Carroll inquired why this development needs the B-2 at 85,000 sq. ft. as opposed to a R-T PUD at 60,000 sq. ft. What uses do you need in the B-2 at 85,000 sq. ft.? Hunzeker did not want to represent that this developer has any kind of commitment from Walgreens or CVS, but they are a use that would be welcomed by the neighborhood and this developer would love to be able to attract a drug store. The standard building of a Walgreens or CVS is bigger than what is permitted under the R-T, and the R-T does not allow a drive-through. Restaurants would not be allowable under the R-T restrictions, nor a veterinary clinic or maybe a medical office and/or dental office because of the daily trips. R-T is designed and has its roots in what we used to call “transitional lots”.

3. The engineer with **Olsson Associates** explained the proposed access points. There is a right-in, right-out on N.W. 48th Street. Until improvements are made to N.W. 48th, this development would show a “pork chop” to make the right-in, right-out. There is another access shown onto W. Holdrege.

4. **Mike Hoelscher**, 1730 N.W. 46th Street, in Hub Hall Heights, testified that he is mainly in support, but looking at it on paper is one thing and living in the area is another. When he moved in 1.5 years ago, the perception was that this area was lacking progress. The existing commercial is relatively new and some of the buildings don’t even have access yet. It is nice to have a small grocery store that is used constantly and has saved him a lot of gas. This area is starving for commercial development. He has to travel to south Lincoln and to 27th Street for most services. He believes that the residential development exists to support this type of small commercial center. He strongly recommends that this development be approved.

Francis inquired as to the type of services that require Mr. Hoelscher to leave the area. Hoelscher responded that there is only a grocery store and gas station. He travels to south Lincoln for medical; to North 27th Street for insurance; to 70th & Van Dorn for other services – 20 minutes away.

There was no testimony in opposition.

Staff questions

Esseks agreed that there is a real dearth of services needed in this N.W. 48th Street area. Is the development that the Planning Commission recently approved across the street to the west likely to provide these services? Cajka pointed out that the Ashley Heights commercial center has a grocery store, day care, fast food, office – part of it has not been built. He does not know what other services might be located in the unused areas of Ashley Heights Commercial Center. On the west side, there is a R-T area designated for offices; the developer on the west got approval to add restaurants to the allowed uses; the uses to the south on the west side are more highway commercial uses.

Esseks asked for further clarification of the staff's recommendation. Cajka explained that the proposed conditions of approval in the staff report address the idea that both sides of N.W. 48th would be similar type uses. The west side was approved for R-T, with allowance to increase the pad site maximum to 12,000 sq. ft. With 60,000 sq. ft.. the traffic study showed that the proposed uses would generate under 2,000 daily trips. The staff's proposal for the east side is basically the same – similar type uses with similar traffic counts. The staff would entertain the idea of looking at other uses as long as the trip counts would not be more than around 2,000.

Esseks wanted to know how to protect the houses to the north if the only criteria is the number of trips generated. You could have some very inappropriate uses right next to those homes. The R-T would protect the single family homes to the north. Cajka suggested that the staff would agree to talk with the applicant about other uses.

Response by the Applicant

With regard to the area to the west, Hunzeker stated that it must be understood that the R-T uses that are permitted are not the kinds of uses that you see throughout every neighborhood shopping center in town. R-T is essentially office type uses, and that is what is reflected by the traffic study. The inclusion of a restaurant may or may not have been included in the 2,000 daily trips. What was allowable was a coffee shop with a drive-through. That use alone generates 600-700 cars per day, 1/3 of the total. If you get a Walgreens and a StarBucks under the R-T, you're done. Hunzeker suggested that it is unrealistic to put that kind of restriction on an area where you are hoping to generate the kinds of uses that people really want and expect in a neighborhood center. There is not another neighborhood in town with as much population as this area in N.W. Lincoln that is as under-served with commercial as this one. Where is the west side getting its sewer service? The pipe is at the interstate, 3/4 mile away. This site has sewer service and water immediately available. It has direct access from the residential area. People can walk to this center and they need it.

The engineer with Olsson Associates stated that the traffic study models 58,500 sq. ft. with the uses of retail, office and day care only. It does not include the restaurant and some of the other uses approved on the west side.

ACTION BY PLANNING COMMISSION: March 26, 2008

Larson moved to approve, with conditions as set forth in the staff report, with the amendments requested by the applicant, seconded by Taylor.

Larson is in favor because he thinks western growth of the community has been inhibited by the airport in the past. He believes this will help set up more residential and commercial areas on the west side of the airport and give us a more balanced community. It will be at the south end of most of the residential development and will be a convenient place for people to stop to do their shopping. This area of town does not have enough services available, so he is very much in favor.

Taylor agreed. This area has experienced a lot of growth in the past 10 years. There are very few services available in this area. He does not understand why it is so out of conformance with the Comprehensive Plan to be sufficient reason to deny the proposal. It is inconvenient for the homeowner to have to leave the area for services.

Esseks stated that he will vote against the motion. He respects the point about this property having access to sewer, and if this were the only commercial development in the immediate vicinity he would be persuaded by that argument. However, 3/4 mile to the north there is a developing shopping center with space available where the services can be provided, and we can wait for the development of commercial services on the west side of N.W. 48th where we have already approved R-T. R-T makes sense because of the principles for locating future commercial centers. There needs to be a transitional area of low intensity commercial and office uses with the homes right to the north, and we do not have assurance of that. We have to be consistent. If we made a decision that the property to the west cannot have right-in, right-out access, then we need to be consistent here without any strong evidence to the contrary.

Francis stated that she will vote in favor. In 1975, she managed the Sinclair station in Airpark and they have needed a lot of services since then. We need to give them more services and more options. Competition is good.

Carroll stated that he will not support the motion. He agrees that there needs to be consistency with the west side of N.W. 48th. If we thought there was more need for commercial, we would have allowed B-2 on the west side instead of R-T. We required R-T because we thought there was enough commercial with the Ashley Heights commercial center. We need to be consistent in how we plan the city and be equal across the board. It is up against residential on both sides. We need to have R-T on both sides allowing for transition between commercial and residential.

Motion for conditional approval, with amendments, failed 3-3: Larson, Francis and Taylor voting 'yes'; Sunderman, Esseks and Carroll voting 'no' (Cornelius and Gaylor Baird absent).

Esseks moved denial, seconded by Carroll and failed 3-3: Sunderman, Esseks and Carroll voting 'yes'; Larson, Francis and Taylor voting 'no' (Cornelius and Gaylor Baird absent).

Application held over for two weeks, with continued public hearing and action scheduled for April 9, 2008.

SPECIAL PERMIT NO. 08017
FOR EXTRACTION OF SOIL
ON PROPERTY GENERALLY LOCATED
AT NORTH 56TH STREET AND BLUFF ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: March 26, 2008

Members present: Larson, Francis, Sunderman, Taylor, Esseks and Carroll; Cornelius and Gaylor Baird absent.

Ex Parte Communications: None.

Staff recommendation: Conditional approval.

Staff presentation: **Mike DeKalb of Planning staff** submitted the application for special permit for a mining operation on 18.78 acres, which is a buildable lot. It is ½ mile north of the landfill on the east side of Hwy 77. The proposed grading plan shows three high points and a pond. The landowner indicated that this grading is in preparation for the construction of a house and pond. When asked whether they needed a building permit, Building & Safety advised the landowner to get a permit for excavation if they were not yet ready to submit a building permit for the house.

Proponents

1. Tim Lempka, of LeGrande Excavating, presented the proposal for extraction of the soil. As granted by the Lancaster County Board on the Greg Sanford special permit, Lempka requested that the following condition be approved and added by the Planning Commission:

> When the applicant is fulfilling a contract involving mining soil, sand and gravel to supply a government project, the mine shall also be allowed to operate during night time hours, seven nights a week. The mine shall not operate during the daylight hours of Saturday and Sunday when fulfilling such contracts.

Opposition

1. Tom Keep, 8601 Davey Road, testified in opposition. His concern with this application is the grading plan and the contention that the purpose of this is to construct a pond. The applicant is cutting a 20' hole into the top of the hill. The applicant did not show where the pond would be located. The pond would have no drainage area. The maximum pond that could be produced would be five acres in area with maximum depth of 10 feet holding 33 acre-feet of water or 11 million gallons. After construction, the pond drainage area would be limited to the area which has been excavated, approximately six acres. Since annual evaporation from pond surface area is greater than the average annual rainfall in this area by 17 inches per year, it will require 7 acre-feet of water, 2.4 million gallons, pumped into the pond to keep it full (once it is full). This would require pumping continuously at 10 gallons per minute for 166 days a year to keep that pond full. He hopes that the owner understands that he will end up with an unsightly hole with a little bit of water and mud in the bottom. He challenged LeGrande Excavating to provide a hydrology analysis showing that they have given any consideration to this site ending up as a pond holding a significant amount of water.

Keep recommended that this permit not be approved until the applicant has provided a feasible grading plan that will not result in an unsightly hole in the ground which will add to the blight of this neighborhood.

2. Martie Minchow, 8181 Davey Road, thanked the staff for including the conditions that have been discussed on several mining operations in this part of the county in the last year. The neighbors do have some concerns about safety on this project. Again, this land is on the east side of the road, which would mean if they are taking the soil to the interstate they would be crossing two lines of traffic at 65 mph in order to get to the interstate. In terms of safety, if this permit is granted, Minchow would like to have an additional condition that the contractors be responsible for supplying signs that would indicate trucks entering and/or flagmen during hours of operation. She pointed out that the supply of gravel, sand, rock, etc. for the interstate construction has just been put in place down the road to the south. There will be traffic from that site. We are going to have a very serious safety issue when all of these things begin, be they during daylight or at nighttime. We are putting a lot of truck traffic on a highly traveled road.

Just this morning, there was a presentation to the Planning Commission about the permeability of the soil in northern Lancaster County and how it is ideal for crop growth as well as how it retains the moisture. Now, we're going to put a pond there. Where is the water going to go? This is permeable soil. It will be permeated into the soil. As we desecrate all of this land to the north of town, northern Lancaster County should remain agricultural because of the soil and because of the lack of water. How are you going to farm a 20 ft. hole?

3. Marlene Tracy, 17500 N. 84th Street, testified in opposition. She is also concerned about safety along Hwy 77. There are piles and piles of sand and rock waiting for the

interstate construction. There was a mining permit recently issued for 40th & Waverly. The safety is a continual problem. A truck pulled out in front of her just this morning without stopping at the stop sign. Muhlbach on the west side of the road is doing something. Giebenrath has been given a permit on the east side of the road as well as Sanford. There is another at 120th & Alvo Road. When is enough going to be enough? Don't we have enough sites now? Is anyone checking to see if all of this dirt is really needed for the interstate? How many more mining sites do we have to approve, especially on north Hwy 77? We've got children in busses, children with their parents driving up and down the road, and commuters from Ceresco and Wahoo. We also have the garbage trucks pulling out in front of traffic from the landfill.

4. Karen Kurbis, 17500 N. 84th Street, testified in opposition. She provided an exhibit of the existing soil mining permits. The dirt for this project is to be used for the Waverly Exit. She suggested that Special Permit No. 07036 can provide dirt to that site. What is the soil availability at all of these sites and how much is needed for the interstate project? What is the community impact? She would think the I-80 project should be considered a regional issue. Don't you need to know how many cubic yards are available and how much is needed? Shouldn't you be deciding how many permits are needed? Is anyone talking with NDOR? Can't we find out what the needs are before making decisions for more soil mining sites? Safety is going to be a huge issue this summer with all of this activity. We need to make more decisions based on data. This conditional approval is a rubber stamp. The current buzz word out there is "we need it for the I-80 project". What that really means is that we don't want any hours of operation restriction. That is nonsense. The Planning Department recommends Monday through Friday, daylight hours only. Don't let them have more than that. Don't let them mine during the night. Muhlbach and Sanford already have the night operations.

Staff questions

Larson noted that the presentation made to the Planning Commission this morning talked about this being the best farmland in the county. In these dirt mining operations, are there provisions to set aside the topsoil and replace it when the excavation is done? DeKalb answered in the affirmative. They are mining out the clay subsoil. They are required to replace the original topsoil. The majority of the time it is replacement soil from the site.

Esseks confirmed that the zoning ordinance permits soil mining as a special permit. DeKalb concurred. Within a district, you have uses allowed by right, conditional uses with a preset package of conditions, and a special permit, which is unique, with its own character. The special permit provides conditions for how the operation must conduct itself with its own site specific area and character. The Planning Commission has the authority to make a finding that a requested special permit does not fit at a certain location.

Esseks inquired whether this parcel is different from the others that the Planning Commission has considered in the past year. DeKalb does not believe it is any different.

The Sanford permit had very similar issues. Muhlbach's is closer to the interstate. You have to understand that the state puts out requests for bid for soil and the excavating companies are trying to have these special permits in order to get the bids. The traffic is a real issue. The Department of Roads has said that they will control that by posting signs, keeping the dirt off the area and safe access. The Planning Department has been relatively unsuccessful in getting more information from NDOR as to what they will require. The permittee is required to get the proper permits from NDOR.

Esseks inquired whether the NDOR can trump the Planning Commission. DeKalb does not believe so. The permittee must comply with both the zoning regulations and the NDOR requirements. As far as access and maintenance to the state road, they must comply with NDOR as well. Sanford and his attorney made a case to the County Board and the County Board added the condition to allow them to excavate 24 hours a day. Muhlbach has no limitation on hours. Those are the only two that have more than daylight hours. There have been two appeals relative to Saturday operations.

Larson observed that this one appears to be a little different in that there is going to be a real pit in the center and he does not understand why that has to be. Why can't the result be more of a level area? These permits should require drainage of water into the natural drainage system in the area. DeKalb observed that this is the second site with a circumstance where there is an agreement between the owner and the excavating company to get a pond dug. Typically, if you were just digging a pond for your house, the Planning Commission would not even be involved. The only reason the Planning Commission is involved in this case is because it is being categorized as soil excavation. The application did not say what the pond elevation would be. We are not reviewing the creation of a pond but whether it is an appropriate place to excavate soil.

Sunderman noted that on a recent special permit for a pond, the City Council removed the condition to seal the pond and added Saturday daylight hours. DeKalb stated that the applicant made a case that they needed Saturdays to respond to the commitments to the contracts and based on the weather conditions.

Sunderman inquired what happens to the site if the contractor does not find a buyer for the soil. DeKalb indicated that the permit would expire in the time frame it is allowed.
Esseks suggested that this is encouraging a lot of pits around the county, and the drainage system is interrupted. DeKalb reiterated that there have only been two ponds, i.e. 40th & Waverly and this one. Other than that, it has been the typical taking off the top of a hill.

DeKalb indicated that staff would be neutral to the applicant's proposed amendment. If the County Board has found that to be appropriate he is not going to argue with them.

Response by the applicant

As to the safety issue, Lempka stated that LeGrande has been extracting the soil for Muhlbach and hauled out in excess of 70,000 truck loads since last fall, and to his knowledge, they have not had one traffic incident.

They got the mining permit at 120th & Alvo Road for future work for the rest of the I-80 project east of the Waverly interchange.

The grading permit on this property is going to be the maximum. He does not know that that much material will ever be removed. There will be some sort of water feature in that general area and he does not believe it will be very deep.

Lempka urged that they cannot get around the need to operate at night. The NDOR dictates that they run on non-peak hours on the interstate. They have no control over that. He does not anticipate that they will mine 24-hours-a-day.

ACTION BY PLANNING COMMISSION: March 26, 2008

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

Taylor indicated that he understands the permeability of the soil and the downside of this operation temporarily, but that is not enough evidence or argument against it based on the guidelines that the Planning Commission must follow in making a decision.

Larson stated that he will vote against the motion primarily on the basis of this “pit” concept. If we start this kind of a trend, we are going to end up with a bunch of “bomb craters” around the northern part of the county. We owe it to the residents to consider their concerns.

Esseks also supported Larson’s comments. He is encouraged that since this is a special permit, those of us who are supposed to represent the community can propose a condition to not have these pits. We need to find properties where this can be spread out without these indentations or 25' deep holes.

Sunderman suggested that the Commission consider that this could become a marsh which is attractive to wildlife and could become a feature itself.

Carroll will vote in favor because this is what the property owner wants. He could build a house today without this special permit. If he wants this pond on his land, he can have it. If it is not done in one year, the permit expires.

Motion for conditional approval failed 4-2: Francis, Sunderman, Taylor and Carroll voting ‘yes’; Larson and Esseks voting ‘no’ (Cornelius and Gaylor Baird absent).

Larson moved to deny, seconded by Esseks.

Larson is concerned about the "pit". He would think the permit would require evidence of adequate drainage. He does not see the wisdom of creating these pits around the county, particularly being concentrated in one particular area turning it into a battle ground.

Motion to deny failed 2-4: Larson and Esseks voting 'yes'; Francis, Sunderman, Taylor and Carroll voting 'no' (Cornelius and Gaylor Baird absent).

This application was held over for two weeks, with continued public hearing and action scheduled for April 9, 2008.

WAIVER NO. 08001
TO WAIVE THE PEDESTRIAN EASEMENT
ON PROPERTY GENERALLY LOCATED
AT N.W. 56TH STREET AND WEST ADAMS STREET.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: March 26, 2008

Members present: Larson, Francis, Sunderman, Taylor, Esseks and Carroll; Cornelius and Gaylor Baird absent.

Ex Parte Communications: None.

Staff recommendation: Approval.

Staff presentation: **Tom Cajka of Planning staff** noted that the staff had originally recommended that this waiver be denied. However, upon review of the preliminary plat and final plats for this area, the staff recommendation has been revised to approval. On the approved preliminary plat, the pedestrian easement was going to Adams Street instead of to 56th Street. The original plan submitted with the final plat still showed the pedestrian easement going up to Adams Street on Lot 10. The Planning Director letter back to the applicant suggested to move the pedestrian easement to Lot 9 because Lot 9 was larger. When the applicant resubmitted, they changed the number of lots from 11 lots to 13 lots with Lot 9 becoming Lot 9 in a different location. The lot numbers changed. Therefore, since the pedestrian easement was never intended to go to 56th Street, the staff has changed its recommendation to approval of the waiver.

Esseks is interested in connectivity. Because of administrative error or whatever, there is no pedestrian walkway. Why can't it go between Lot 9 and Lot 11 with some steps? Cajka explained that the final plat was approved with a pedestrian easement on Lot 9. The grading plan on the preliminary plat showed about a 14' drop between the front of the lot and the rear of the lot. A pedestrian easement does not need to meet ADA requirements so it could be constructed with steps or a steeper slope.

Esseks believes some sort of pedestrian walkway would make sense. Cajka stated that in most circumstances, the staff would agree about the connectivity, but in this case since it was placed there in error and never intended to go there, staff recommends supporting the waiver.

Francis noted that West Adams is still a gravel road. There are no sidewalks along any of the gravel roads so it would be a pedestrian sidewalk to nowhere or to a gravel road. Cajka confirmed that there is a proposed project to pave 56th Street and there is a proposed project to pave Adams.

Carroll is still concerned because the applicant developed a final plat showing the easement, and they did not build it. Carroll also observed that the Planning Commission specifically requested that the applicant provide the elevation differences, which they did not do.

There was no testimony on behalf of the applicant.

There was other testimony in support or opposition.

ACTION BY PLANNING COMMISSION: March 26, 2008

Taylor moved approval, seconded by Sunderman.

Esseks would like to vote against the motion because the possibility of steps is there. Denying the waiver would allow the easement to stay in place and we will get a design that will allow for a safe pedestrian access to N. 56th. Let's keep it there and maybe the technology will evolve for a pedestrian walkway.

Sunderman pointed out that Analysis #4 states that this waiver deletes the sidewalk requirement but does not remove the easement. All we are doing is saying the sidewalk is not needed. Cajka clarified that this action waives the pedestrian easement and sidewalk. In the final plat, the easement is granted to the city so only the city can release the easement. The first step is that this body has to approve the waiver of the subdivision requirement for that easement. Basically, in the past, it has been a formality. Once the waiver is granted they do not have to comply with the subdivision ordinance and the release of the pedestrian easement is prepared for the Mayor's signature.

Esseks inquired whether there are any instances where there is a pedestrian easement and sidewalk involving steps. Cajka believes there might be one at the Coddington and West A center on the east side next to the residential lots, but he is not sure.

Francis noted that the Commission did receive a letter from Duane Hartman indicating that he tried for a two year period to get an answer from the City. He references Harry Kroos, who works for the Public Works Department and is in charge of sidewalks. She is

concerned that this has been an ongoing issue for such a long period of time. It looks like Mr. Hartman did try to get some kind of guidance and the city failed to respond either one way or the other.

Taylor suggested that a sidewalk with steps would not be wheelchair friendly, and a series of slopes with declines and inclines might be slower but it would be very attractive to skateboards, etc. He does not believe there is a real good alternative.

Motion to approve the waiver failed 4-2: Francis, Sunderman, Taylor and Carroll voting 'yes'; Larson and Esseks voting 'no' (Cornelius and Gaylor Baird absent).

This application was held over for two weeks, with continued public hearing and action scheduled for April 9, 2008.

There being no further business, the meeting was adjourned at 3:05 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on April 9, 2008.

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