MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, August 17, 2016, 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	Tracy Corr, Maja Harris, Chris Hove, Jeanelle Lust, Dennis Scheer, and Lynn Sunderman (Michael Cornelius and Ken Weber absent). David Cary, Steve Henrichsen, Tom Cajka, Rachel Jones, Andrew Thierolf, George Wesselhoft, Geri Rorabaugh and Amy Huffman of the Planning Department; media and other interested citizens.
STATED PURPOSE OF MEETING:	Regular Planning Commission meeting

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

Hove requested a motion approving minutes for the regular meeting held August 3, 2016. Motion for approval made by Lust; seconded by Corr and carried 5-0: Corr, Lust, Scheer, Sunderman, and Hove voting 'yes'; Harris abstaining; Cornelius and Weber absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: **August 17, 2016**

Members present: Corr, Harris, Lust, Scheer, Sunderman, and Hove present; Cornelius and Weber absent.

The Consent Agenda consisted of the following items: **SPECIAL PERMIT NO. 16031, SPECIAL PERMIT NO. 16035 AND COUNTY SPECIAL PERMIT NO. 16036**.

Special Permit No. 16031 and County Special Permit No. 16036 were removed from the Consent Agenda and had separate public hearing.

There were no ex parte communications disclosed.

Lust moved approval of the remaining Consent Agenda, seconded by Harris and carried 6-0: Corr, Harris, Lust, Scheer, Sunderman, and Hove voting 'yes'; Cornelius and Weber absent.

Note: This is final action on **Special Permit No. 16035**, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days.

SPECIAL PERMIT NO. 16031
TO INSTALL AN 18,000-GALLON PROPANE STORAGE TANK AND PUMP GENERALLY LOCATED AT 5925 CORNHUSKER HIGHWAY.
PUBLIC HEARING BEFORE PLANNING COMMISSION: **August 17, 2016**

Members present: Corr, Harris, Lust, Scheer, Sunderman, and Hove present; Cornelius and Weber absent.

Staff recommendation: Approval.

There were not ex parte communications disclosed on this item.

Staff Presentation: **Andrew Thierolf of the Planning Department** stated the storage tank will be located somewhere within the site envelope shown on the site plan. The tank itself holds 18,000 gallons and is 52 feet long, 8 feet wide, and 12 feet tall. Trucks fill up and deliver propane for sale around town. The area is located within and surrounded by the I-1 Industrial zoning district.

There was a letter in opposition from a call center located directly north of this site. They have safety concerns for their 200 employees. In response, the Health and Fire Prevention Departments looked at a few additional conditions to be added. Those amendments have been distributed today. The tank must meet all National Fire Protection Association (NFPA) standards. There must be a fence for security and lighting for night operations. Finally, there must be protections against vehicular impacts, such as guardrails. Some of these guidelines are already required per federal regulation, but they have been added to the special permit in order to make enforcement easier; if the applicant does not meet these standards, the special permit can be rescinded.

Harris asked the reason for removing the additional requirement for the tank to be oriented away from the highway and railroad tracks.

Scott Holmes of the Health Department came forward to state that with the letter of opposition, it seemed wise to incorporate the provisions. That way, the requirements to be followed by the applicant will be transparent. A risk analysis will be conducted and that will determine several factors, including the direction of the tank. There is no need for that to be listed specifically in the conditions for approval.

Lust asked if the Health Department automatically reviews applications like this. Holmes said yes. Lust asked if they determined there needed to be more clarification, in this case. Holmes said the conditions were added so they can be defined. If you look at NFPA 58 codes and regulations, there are requirements for these tanks that are not specifically within local, city code. Listing those requirements in the special permit creates clarity so the City can take action against this special permit.

Corr asked what could potentially happen if a vehicle ran into the tank. Holmes said there could be two hazards: fire and explosion. It takes a single, long-term fire to heat up the vapor to the point that it would expand beyond capacity and explode. That is extremely unlikely and there are actions that can be taken to reverse that.

Corr asked if there is an odor if the tank is leaking. Holmes said yes.

Proponents:

1. Terry Sapp, Sapp Bros. Inc., 5900 Cornhusker Highway, assured the Commissioners that Sapp Bros. is dedicated to safety and they are not only required to follow fire regulations carefully, it is also a requirement from their insurance providers that these regulations are met. For a tank to explode, it would have to sit in a fire a long time to get hot enough, and even then, there are release valves on the tank to release fire and whistle loudly. He has never seen one explode. Sapp Bros. has large tanks in other communities, and there are other tanks of this size in Lincoln. Even in a home-setting, a 500-gallon tank is allowed to be 10 feet away from a home because fire goes up and does not spread outwards. It is a relatively safe gas, compared to others. We want to relieve concern that there could be a large explosion that would damage a large area.

Corr asked if there are offices on the site. Mr. Sapp stated his office is on the site, along with about 15 other employees. Part of the building is also rented out to a fertilizer company and they have no problems with this application. We feel safe.

2. Don Gross, Fire Prevention Inspector, stated that they have jurisdiction over the installation of the tank and NFPA 58 is the document followed for guidelines. With the adoption of the International Fire Code, we use an even more current code. Through the examination of their lot and site plan in our assessment, we provide the applicant with options for how the tank can be installed. Regardless of how they want to do it, they must meet all fire and zoning regulations. It is mainly the visual part that concerns people. The only time tanks explode is when they are knocked over and the valves can't release. The NFPA document is revised every two years, so if there were any new findings for safety and fire prevention in that time, we know about it.

Opponents:

2. Scott Spencer, Dr. Leonard's Healthcare Corp., stated his call center is too close to the tank site. He challenges the assertion that the surrounding area is industrial because the call center is not. There are 200 employees and their office has been located there since 2000. They would like to continue in a safe environment. There is a break area next to the property line where people smoke. This is worrisome. The tanks could release propane into the atmosphere. The tank site appears to be less that 60 feet away and this can be easily observed by the ground breaking taking place there already. He is not contesting the expertise of the fire marshall who testified, but there are cases of tanks exploding, even if rare. Mr. Spencer asks that the applicant look at other locations where there are not so many people nearby, or at least delay until more research can be done.

Harris asked how far away the break area where people smoke is. Spencer said there is a picnic table just on the other side of the fence next to their location. Lust asked to be shown that location. Spencer said it is directly north. He said maybe the break area could be rezoned for the safety of the employees.

Hove asked whether the call center was located outside the I-1 Industrial zone. Spencer said it is zoned I-1, but is not an industrial use.

Staff Questions:

Harris asked if there was any risk to the people who smoke in the break area of the adjacent property. Gross said he does not think there is any risk. The regulations deal with the size of the tank and the setback. This size of tank only requires a 50-foot setback. It is a mid-range-sized tank, even for that setback.

Corr noted that the railroad tracks are somewhat close and wondered if there was any concern about a derailment. Gross said that during the risk analysis, they go out and assess risk from any outside sources and look at any hazards that could potentially effect the tank. The level or risk from certain factors is determined at that time.

Hove asked if the call center is zoned I-1. Thierolf said it is. Hove wondered if the fact that it is an office use made a difference. Thierolf said offices are a permitted use in the I-1 zone, even though we do not think of them as industrial. I-1 permits these less industrial uses, so the zoning district really isn't an issue.

Applicant Rebuttal:

Sapp stated that when he started working in this field, he went through the required delivery school to learn how the gas works and various issues related to safety. It is his understanding that a cigarette does not burn hot enough to ignite propane. He has even witnessed someone smoking in a fog of propane, though he admits that is foolish. The area that Mr. Spencer referred to as the future site of the tank is incorrect; that area is being used for storage of materials used by a lessee. He added that there are already tanks of this size located in Lincoln.

SPECIAL PERMIT NO. 16031
ACTION BY PLANNING COMMISSION: **August 17, 2016**

Harris moved approval, seconded by Sunderman.

Lust stated that she will abstain from the vote because she has a propane-related case through her law office. It is unrelated to this project.

Harris said she feels comfortable with the assurances of Fire Inspector Gross that this will not pose a security or health threat to employees in the area. Incorporating these additional conditions is a “belt and suspenders” approach to making sure guidelines are followed.

Hove said Sapp Bros. has a good track record of following rules. He would hate to impose restrictions when the area is zoned for industrial uses.

Motion carried 5-0: Corr, Harris, Scheer, Sunderman, and Hove voting ‘yes’; Lust abstaining; Cornelius and Weber absent. This is final action, unless appealed to the City Council within 14 days.

COUNTY SPECIAL PERMIT NO. 16036
TO PERMIT HOUSING FOR UP TO 40 PEOPLE AS A DWELLING FOR RELIGIOUS ORDERS, GENERALLY LOCATED AT 2260 WEST WITTSTRUCK ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: **August 17, 2016**

Members present: Corr, Harris, Lust, Scheer, Sunderman, and Hove present; Cornelius and Weber absent.

Staff recommendation: Approval.

There were not ex parte communications disclosed on this item.

Staff Presentation: **Tom Cajka of the Planning Department** stated this item was removed from the Consent Agenda because there were two emails in support and one email in opposition received. The application is to allow a dwelling for a religious order in an existing building at 2260 W. Wittstruck Road. The permit would allow for up to 40 individuals, though in the beginning it will be around five.

There is another special permit allowing a recreational facility over this property which includes a larger area. That was approved in 2012. The owner would like to retain that permit along with this new one while they are leasing the property. The religious order may purchase it in the future. Until the time of purchase, both special permits would be on the property if the one requested today is approved.

Corr asked if the property stays on the tax rolls as long as it is being leased. Cajka said he is not sure, but assumes that is correct.

Proponents:

1. Mike Eckert, Civil Design Group, stated he appears on behalf of NarrowGate, LLC. The property is primarily owned by Mark Davis who was an early investor in the facility. In 2007, a special permit was approved for a youth athletic organization called Radix which allowed up to 50 members. In 2012, that was expanded to incorporate larger, athletic events such as mud runs. There were several groups, including the State Patrol,

using the facility for training. This was quite controversial and was appealed to the County Board. The highest uses for 1,000-2,000 people were dropped, though there were other allowances for larger groups.

As time went on, the larger events were not occurring as much. The current owner took back the property prior to foreclosure. He now has interest from the Catholic Diocese. There is a women's order at 29th and Agnew. This would be for men, the monks. At this time, they are working on a lease-to-purchase agreement. The property owner would like to add this use to allow some return on his investment. Civil Design Group sent out letters prior to the Planning notifications. There was minimal contact from neighbors.

The parking and building are already built. There is a tremendous water treatment system and a full lagoon. The building itself looks like a church and includes a full commercial kitchen, spaces for worship, meeting rooms, exercise areas, and indoor bunk facilities with full bathrooms and showers. The group hoping to occupy the dwelling is the Order of the Carmelites. It is likely they only own a couple of vehicles. This would be the other end of the spectrum from the larger groups and amount of traffic generated by activities held at the facility in the past. The owner has been paying taxes on the property this entire time and will continue to do so as long as the property is leased. If the church buys the land, it will fall under the 501(c)(3) rules and would be tax exempt. A letter has already been submitted for the tax exempt status. The taxation is an area of concern for neighbors, but these are standard procedures for religious entities.

Corr asked if services will be held on the property. Eckert said there is no plan to do that at this time. The nuns do hold mass at their facility. Right now, there are only three in their order, so they will not.

Corr asked if they use vehicles. Eckert said yes. He added that one letter referred to the possibility that there could be 40 "families" living in the building. That is not the case; this will allow up to 40 individuals.

Harris asked if the camp aspect of this property would potentially still be able to operate. Eckert said the owner would like to keep that option in place in the event that this arrangement does not work out. Harris asked if the religious order would have the option of holding large events. Eckert said it would be allowed, but they will not engage in that.

Harris asked if special permit would have to be changed if the activities on the property substantially changed. Eckert said they will have the right for 40 individuals to live there and the rights for the activities currently allowed do remain. However, he anticipates that if they go through with the purchase, they would choose to rescind the other special permit because that is simply not part of their mission.

2. Doug Pfeifer, 15201 S.W. 15th Street, Roca, came forward in favor of this application. The building has been vacant for the last few years. It is a beautiful facility with a religious design and the accommodations for residency, including the proper infrastructure and fire protection. This would be a phenomenal lease and a low-impact use of the property.

Opponents:

1. Michelle Brandt, 2201 W. Wittstruck Road, stated her main concern is water. This permit allows for 40 people in an area where wells are very low. There are people within a 1-mile radius who have had trouble with their wells pumping sand. That many people living year-round will put too much stress on the water table. There is a rural water line running down S.W. 14th Street and she wonders if this facility will be hooked up to that. She did not understand the approval of the first special permit to allow so many people and she has concern about whether the property really is on the tax rolls or not. She does not have a problem with these applicants, simply with the water supply. The property owners who pay the taxes have to tolerate low water levels.

Hove noted that it was stated that as they lease, the property is not tax exempt. Corr added that if they buy the property, it will be.

2. Charlene Brown, 15605 S.W. 14th Street, stated she sent in a letter in opposition. She has lived in this area most of her life and this has always been an agricultural community with single-family homes. There is no need for a 40-person dwelling. Even though there will not be many vehicles, this group should be closer to Lincoln where there are public facilities. There is also concern because neighbors will not know who will live there. The building is being leased by the Carmelites, but they could choose to house all kinds of people like drug addicts and illegal immigrants once they get the permit. Mr. Cajka could not say who would actually be living there and said that neighbors would be responsible for reporting any complaints, as with any other neighbor. She also does not understand why they do not purchase the property instead of leasing it. Once the permit is approved, it will be easy in the future to allow more people. She wonders why this owner will be allowed several different permits to do different things on this property. She wonders how these residents will contribute to the local community and how a religious order will be defined so it does not house a cult or something similar. She also worries the new residents will complain about the usual noise and dust associated with agricultural activities.

Staff Questions:

Corr asked Cajka to explain the Right-to-Farm Act. Cajka said that often, farmers worry that someone new to their area will complain about odor, noise, and other things associated with farming. From what he understands, farmers are protected against lawsuits brought on by new people related to regular agricultural activities.

Corr asked how the number of people allowed to live there was calculated. Cajka replied that in the County, there is no calculation based on square footage or anything similar. The number is set by conditions by the Planning Commission or County Board. Hove asked whether the 40 individuals allowed has been set. Cajka said that is what this applicant asks for.

Corr asked if, with two special permits, the owner would be allowed both uses concurrently if this permit is approved. Cajka said yes.

Corr asked for more information about the water situation. Cajka said the application was sent to the Health Department and the County Engineer as part of the usual review process and neither had comments with the exception that wastewater would need to be reviewed at the appropriate time. Looking back to the approval of the recreational facility, there were no concerns about the water at that time. They did not request full-time residents, but it was still over 50 people at a time, for several days at a time.

Scheer said, for the sake of the public hearing, that there is a concern about the definition of a “religious order”. Mr. Eckert had mentioned the specifics in this case. He asked Cajka to address that definition in a more general sense and what type of restrictions would be tied to that terminology. Cajka said there is not a definition in the zoning codes so other legal standards would have to apply. It is his understanding that it could run the gamut of recognized, organized religious faiths.

Applicant Rebuttal:

Eckert said that there were two wells dropped on the site and they were designed to run in tandem so there is redundancy if one well were to fail. There is also a massive water treatment and storage unit in the basement. There is a State permit for transient water supply on the site at this time. That will have to be upgraded to non-transient since the residents will become permanent. Testing will be done to determine if the supply is adequate. Geologists will tell you that the cone of influence from one well to another is not more than 100 feet. Furthermore, Health Department did not have concerns about the long-term draw down of the water table.

The facility is currently permitted to have 50 people overnight, not to exceed five days per week. There could also be a maximum occupancy of 150 guests not to exceed 5 events in any 30-day period. They can have large groups at least twice a week.

The current tenants have expressed that they will start with only five people but want to grow to an order of about 20 individuals. They do not see themselves having more than that. In terms of their contribution, the women’s order devote themselves to a life of prayer and to live a life hidden with Christ. They stay inside most of the time.

Hove asked if it will just be the Carmelites living there. Eckert said yes. It is also his understanding that there will be no recreational events; it is counter to their entire mission and why they want to be there in solitude. The owner is the one requesting that

the older special permit remain in place as a plan to fall back on. The Carmelites have expressed a strong interest in purchasing the property and it is a lease with a heavy escalation at six and twelve months.

Corr asked if there is anything in their lease that states that they will not have the recreational events. Eckert said he does not believe so, but that is not the matter before this body today.

Hove asked if the group has a facility now. Eckert said that they do not; this is a start-up order with three members. Hove noted that there are other places like this. Eckert said the Order of the Carmelites was founded in 1927. The women at the Agnew location were previously located in Las Vegas. The owner of this property is Catholic and that is part of his motivation for this transition. If this does not materialize, it is unlikely he would attempt to get a different religious group there. He is hopeful this is the best solution to the investment.

Scheer said that it appears that the facility will meet the needs of the group. He wonders if there is any indication that they will need to build out more at any point. Eckert said no. When the building permit was pulled, everything was set up for 50 people.

Cajka noted that this is a special permit for a religious order so anyone who is not a member of that order will not be permitted to live there. The capacity at the Agnew facility was approved for 30 people in 2003. There was another approved west of Pioneers Park for up to 50 individuals.

SPECIAL PERMIT NO. 16036
ACTION BY PLANNING COMMISSION: **August 17, 2016**

Lust moved approval, seconded by Corr.

Corr said this is an opportunity to have very nice, quiet, law-abiding neighbors and is a good solution for the property. She will support this permit.

Scheer said this is a great facility that has been vacant. All buildings need people in them to truly be maintained properly. This is a good solution.

Lust said the IRS has issued guidance on what a “religious order” is, so there are defined parameters where members vow to live under a certain set of rules. This is basically a monastery. She can’t imagine a better, quieter neighbor for this beautiful facility and she will support this permit enthusiastically.

Hove said he appreciates the testimony of the neighbors. He will support this use of the building and he hopes that in time, the neighbors will find that it works out well.
Motion carried 6-0: Corr, Harris, Lust, Scheer, Sunderman, and Hove voting ‘yes’; Cornelius and Weber absent. This is final action, unless appealed to the County Board within 14 days.

PRE-EXISTING SPECIAL PERMIT NO. 28D
TO EXPAND THE BOUNDARY OF THE PRE-EXISTING SPECIAL PERMIT
FOR UNION COLLEGE AND AMEND THE SIGNAGE PLAN
ALL GENERALLY LOCATED AT SOUTH 48TH STREET AND PRESCOTT AVENUE.
PUBLIC HEARING BEFORE PLANNING COMMISSION: **August 17, 2016**

Members present: Corr, Harris, Lust, Scheer, Sunderman, and Hove present; Cornelius and Weber absent.

Staff recommendation: Conditional Approval.

Corr disclosed that as a member of the College View Neighborhood association, she has already heard about this project.

Staff Presentation: **Rachel Jones of the Planning Department** stated this amendment to the Union College Special Permit will add the area to include College View Church, south of Prescott Avenue. The main purpose is to allow for a sign for Union College at the southeast corner of 48th and Prescott. This is part of a larger project for entryway improvements. The applicant proposes two brick retaining wall signs on either corner. The sign on the southeast corner will also have the church sign incorporated. These will face out, along 48th Street. There is also a waiver requested to permit these signs to have exterior lighting. They will be uplit by spotlights incorporated into the lower retaining walls. The signs will also act as benches. The one on the northeast corner was already approved by administrative amendment. The Urban Design Committee also reviewed these to allow for construction in the right-of-way and they recommended approval.

Hove asked if the only benefit of making this change is the signage. Jones said it will allow the signs and the waiver for the lighting.

Corr asked for clarification that the main intention of the request is to expand the special permit boundaries to allow the sign. Jones said yes. This is part of a bigger project, but today we are only looking at expanding the boundary.

Corr asked why the boundary does not include Prescott Street. Jones said special permits do not include the right-of-way within their boundary.

Corr went on to note that Union College already has a sign program and this will simply allow one more. Jones agreed that it will amend the sign plan. Though we refer to this as a single sign, it is essentially two. Corr asked if the lighting will be directed right at the sign. Jones said that is a question that should be directed to the applicant.

Proponents:

1. Matthew Roque, Union College, stated the college is excited about this project. We are celebrating our 125th Anniversary and have never had a proper campus entrance. We felt it was time. Union College loves being part of this neighborhood.

Corr asked for more specifics about the sign lighting. Roque said the lighting will be directly in front and pointing up at the lettering on the walls. There will also be lighting along three sides of the pillars. Those will point upwards slightly more due to the taller height. All of the lights will be set within the landscape beds and will be well behind the seating walls on both sides.

There was no testimony in opposition to this item.

Roque requested to add one more piece of information. This permit will cover the entire property, including the church. It is possible they will add another sign for the church on the southwest side of the property.

PRE-EXISTING SPECIAL PERMIT NO. 28D
ACTION BY PLANNING COMMISSION: **August 17, 2016**

Corr moved approval, seconded by Harris.

Corr stated she often attends the College View neighborhood meetings. This is a good project for everyone involved and she enthusiastically supports it.

Hove echoed his support and believes this is a good investment.

Motion carried 6-0: Corr, Harris, Lust, Scheer, Sunderman, and Hove voting ‘yes’; Cornelius and Weber absent. This is a recommendation to the City Council.

There being no further business to come before the Commission, the meeting was adjourned at 2:19 p.m.

Note: These minutes will not be formally approved by the Planning Commission until their next regular meeting on Wednesday, August 31, 2016.