MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, August 31, 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 , and Ken Weber; (Michael Cornelius absent). David Cary, Steve Henrichsen, Tom Cajka, Rachel Jones, Andrew Thierolf, George Wesselhoft, Ed Zimmer, 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 17, 2016. Motion for approval made by Harris; seconded by Lust and carried 5-0: Corr, Harris, Lust, Scheer, Sunderman, Hove voting 'yes'; Weber abstaining; Cornelius absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: **August 31, 2016**

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

The Consent Agenda consisted of the following items: **SPECIAL PERMIT NO. 1020I, SPECIAL PERMIT NO. 16038, SPECIAL PERMIT NO. 16039, USE PERMIT NO. 70A, AND USE PERMIT NO. 126E.**

There were no ex parte communications disclosed.

Lust moved approval of the Consent Agenda, seconded by Weber and carried 7-0: Corr, Harris, Lust, Scheer, Sunderman, Weber, and Hove voting 'yes'; Cornelius absent.

Note: This is final action on **SPECIAL PERMIT NO. 1020I, SPECIAL PERMIT NO. 16038, SPECIAL PERMIT NO. 16039, USE PERMIT NO. 70A, AND USE PERMIT NO. 126E**, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days.

Hove called for Requests for Deferral.

SPECIAL PERMIT NO. 16009
FOR THE CONSTRUCTION OF A CARPORT,
ON PROPERTY GENERALLY LOCATED AT 1801 KINGS HIGHWAY.
PUBLIC HEARING BEFORE PLANNING COMMISSION: **August 31, 2016**

Lust moved for a 4-week deferral of Special Permit No. 16009 to the September 28, 2016 meeting, seconded by Corr and carried 7-0: Corr, Harris, Lust, Scheer, Sunderman, Weber, and Hove voting 'yes'; Cornelius absent.

COUNTY PRELIMINARY PLAT NO. 16003
FOR 15 SINGLE-FAMILY LOTS, ON PROPERTY GENERALLY LOCATED AT
S.W. 91ST STREET AND W. PIONEERS BOULEVARD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: **August 31, 2016**

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

Staff recommendation: Conditional Approval.

There were not ex parte communications disclosed on this item.

Staff Presentation: **Tom Cajka of the Planning Department** stated this preliminary plat is located just north of Conestoga Lake. The plat was originally approved in 2005 for 14 lots. This amendment is to add one lot at the south end of the development. The application is to subdivide the existing lot into two approximately 4-acre parcels. Three acres is the minimum lot size. Because this is a preliminary plat, it means that if all of the conditions are met, they are deemed to be approved. This application does meet all requirements for AGR zoning and of the subdivision ordinance. Each lot will have its own private water well and sanitary sewer system.

Lust said Commissioners were provided with a copy of the 2005 minutes from the County Board Hearing on the original preliminary plat. There were originally 15 lots and that was reduced to 14 lots. She asked if the lot of the applicant is same one that the County Board originally asked to be made larger. Cajka said it is not the same lot. The condition in 2005 was to redraw Lots 4-6 to show one single lot, called Lot 5. It is difficult to tell from the minutes why the decision was made to do that. Both the Planning Department and the County Attorney questioned this because in our opinions, we don't believe they should have added a condition since it was a preliminary plat; the County Board only has that type of discretion on special permits, not on preliminary plats.

Lust reiterated that this is not the same lot they combined into a larger lot. Cajka said that is correct.

Harris asked if the original recommendation of the Planning Department in 2005 was to approve 15 lots. Cajka said yes.

Harris asked why today's action will be "final action" when in 2005, the County Board also reviewed the application. Cajka said the rules have changed since then; now, all preliminary plats are final action by the Planning Commission unless appealed.

Sunderman asked about the flood plain located in the area. Cajka said it is no longer there. Corr asked what caused that change. Cajka said he did not know.

Ben Higgins, Watershed Management Division, Public Works & Utilities, came forward to say that the State remapped the Zone A maps. When that was done, many areas fell out of flood plain zones. That is standard for FEMA and it has happened in other places in Lancaster County.

Lust asked for more information about the difference between the discretion Commissioners have on special permits versus preliminary plats.

David Derbin, County Deputy Attorney, stated that Planning Commission or County Board can put conditions on special permits for a variety of reasons in order to protect public interest. In the case of preliminary plats, the language in the ordinance is clear that the Commission "shall approve" if the plat satisfies the conditions. In other words, "shall" is a requirement to approve if all of the boxes can be checked.

Lust said that the notes provided to Commissioners said that this would normally have been approved administratively but was brought forward due to the previous County Board changes. Derbin replied that Planning and Law saw it as unusual enough to have a public hearing as opposed to just going through the normal administrative process, though this extra step was not a requirement.

Proponents:

1. Michael Faustman, 2025 A Street, stated he wished to address the points of opposition. He grew up in an agricultural area and understands the potential liabilities of living in a rural area and he respects the value of safety. Adding a single lot will not change the agricultural character of this neighborhood, especially considering there are denser developments to the east and west. Originally, he and his late wife were planning to build the home closer to the far property line. The proposed second house will be more than 250 feet from the next closest neighbor. The house is for his mother who will help with his young son.

The land was originally in the flood plain, but is not anymore. His first action was to make a small rut larger and embank it to allow water from his property to exit to the south, towards the lake. There are rocks at the lower end to stop the transmission of any sediment. The accusations that he is unwilling to control issues related to water are false and he has even offered the use of his equipment to help with any drainage issues

neighbors have. Additionally, he has applied for a permit with the Army Corps of Engineers, who is the only group to have jurisdiction on this matter. All of the neighbors have ponds similar to what he is proposing. Any water that sheds onto his land will flow through the culvert that runs under Pioneers Boulevard, or over the road. The Natural Resource District (NRD) stated verbally that they have no jurisdiction or concerns over these plans. He has a degree in construction management and has been putting together plans that will need no fill. His wells should not have much impact on neighboring wells.

Faustman wished to point out for the record that other neighbors have had difficulties controlling erosion. Though that is not relevant today regarding his application, it is part of neighborhood covenants, which neighbors are concerned will lose their effectiveness if this is approved. There is a covenant that states subdivision is not allowed, however, that covenant is unfair since it only applies to his property since his is the only lot large enough to subdivide. He stated he appreciates the value of the covenants and the HOA. This application is in compliance with municipal codes and the extra home will not cause environmental or property value impacts.

2. Barb Faustman, 1919 Folkways Boulevard, stated she is the mother of the applicant and would like to give some background for why her son is requesting to build a second house. He has presented all of the legal documents necessary for this to go through. He and his wife, Jenny, purchased this property and were looking forward to marrying and starting a family. They chose this location so they could build in a secure neighborhood where they could know neighbors and kids could play together. After losing Jenny, our worlds were shattered.

It became evident that as a care giver to Michael and son Robbie, she should sell her Bellevue home and move to Lincoln. Michel went back to work and had a serious accident followed by a series of significant health problems. Besides caring for Michael and Robbie and helping with book work and his bushiness, the family struggles to find a new normal. The association reminded us of the 3-year to build rules. We appreciated their patience and understanding. Splitting the property to allow for second home for her daughter and her to live next to Michael and Robbie was the best solution for the family. We can be close and still have privacy.

Opponents:

1. Peter Reinkordt, 9700 W. Pioneers Blvd., stated he and his wife own the farm property to the west. He spoke before the County Board in 2005. The reason the development went from 15 lots to 14 at that time was to address safety, in particular, the location of a fence line. At that time, he had a 2,200 pound bull held back only by a barbed wire fence. Lots 4-6 were therefore changed to a single lot called ‘Lot 5'. That allowed the owner of that parcel to construct his home at a greater distance from the property line. There is also a waterway that runs from north to south. Our family has been on the property since the 1930s and he can remember a 5-inch rain that flooded properties up to Pioneers. He believes that if the lake had not been drained in 2014-2015, the area would have flooded again with recent large rains. The former owner was to have constructed a suitable fence

on the property along the west, north and east lines. That was never built and it should have rolled over to the new owners. He is concerned that unless he can be assured that a substantial fence is installed, he will be held liable. The ditch dug by the applicant pushed sediment onto the south side of Pioneers. He is opposed to two houses if one is so close to their property.

2. Chad Stevens, 9045 W. Burnham St., said that an article in the Journal Star said that in 2005, the County Board was concerned about safety and the strain the development would place on agriculture. His own house is on the other side of the development. He learned in 2005 that the underlying land must be built up to an appropriate elevation before a home can be built. That would require a significant amount of fill on the applicant's property. That would also block water flow. It is important that the Corps of Engineers be allowed to weigh-in first. Stevens said he serves as the president of the HOA. The neighbors are sympathetic and want Mr. Faustman in the neighborhood, but there is concern that allowing this extra structure will negate some of the neighborhood covenants.

3. Pred Paul, 9155 W. Burnham St., stated he also has concerns about the fence that was to be built. He wonders if the applicant sells to another owner, if they would take over that responsibility. He has concerns that if one resident splits their lot, everyone else will be able to do the same and it could continue to happen every few years. He does not see why the plans are changing now.

4. Jerry Sidlo, 9210 W. Burnham St., said that he is the landowner across the street from the lot. When he bought his land, he was under the impression there would only be one house, but now there are plans for two. The plans seem to keep changing. Another concern is the 2-foot culverts. If that remains, a flood zone will be created behind it. The extra house will also block views of the lake area and wildlife. The number of lots was originally reduced to appease area farmers. That has not changed and there is no benefit to anyone to add an extra lot. People worry that two houses will be built and then sold to new owners. He hopes it never becomes a rental property.

5. Jane Reinkordt, 9700 W. Pioneers Blvd., stated that there are positives to not splitting the property. The neighbors agree that it would be good to have the waterway kept as a natural area. It also serves as a buffer along the whole fence line which alleviates the dangers of people being too close to cattle. We envision this as a nice piece of prairie and can't imagine a house that close to the property line.

6. Wayne Burcham, 3677 SW 91st Street, stated these are expensive houses that people put their life savings into. The neighborhood does not want to see a reduction in value. People in the neighborhood purchased houses under certain conditions that everyone had signed off on. Burcham reiterated concerns about drainage and sediment runoff. People like the applicant as a neighbor but want to stick with the original plan.

Staff Questions:

Harris asked about the required setback for the house and the fence to keep cattle in. Cajka said the setbacks are the same as what is allowed in AGR zoning, which is 15 feet. The existing preliminary plat had no other existing conditions. On the lot to the north that was combined, the owner could have built a house farther west, closer to the neighbor. There was nothing to prevent him from doing that.

Hove asked if that means that under the current conditions, they can build the house anywhere on the lot. Cajka said yes, as long as they meet the setbacks. Hove added that the Corps of Engineers also has to approve it. Cajka agreed. In the case of this lot, there is a line that the structures must be north of. Whenever there are residences within 1,320 feet of a lake, there is a requirement that a house cannot be located closer than 600 feet to the boundary of the lake. It is in place to protect people in the state recreation area.

Lust asked if any action taken today has any impact on the HOA covenants. Cajka said it does not.

Harris noted the uncertainty about conditions that should have been in place, such as the question over the fence. She wondered if that type of condition is standard. Derbin said there was a special permit at the same time, and as stated earlier, there is some discretion regarding conditions for special permits. That is not the case with preliminary plats. Maybe the Board had unclear direction about where conditions should be included.

Harris asked if the current owner is obliged to follow the conditions, since a special permit follows the property. Cajka said the special permit was not for the granting of homes, it was specifically to allow dwellings within a certain distance of the lake. Harris asked about the responsibility for the fence. Derbin said it is unclear and he does not know how it would be enforced.

Weber wondered if the fence would go around the west, north and east sides. Cajka said that is what the condition stated. Weber asked if the owner and the HOA could share responsibility of the costs. Cajka said that condition was for the developer. He does not think it can be passed onto an individual property owner. Derbin agreed that it would be more usual that if a developer takes on obligations, those would pass to the HOA, though he can’t say for sure without looking into the specifics of this situation.

Scheer asked for more information about liability between property owners and agricultural uses, noting the concerns about trespass. Derbin said there would be a lower level of duty to warn of dangers if someone is trespassing.

Hove asked if it is a property owner’s responsibility to keep their own animals in. In other words, it is not another homeowner’s responsibility to protect themselves from the animal. Derbin agreed that is the responsibility of the owner of the animal.

Sunderman asked about how lot sizes impact this situation. Cajka said there are no other lots that are at least six acres that could be subdivided into the required 3-acre parcels; the next largest lots are in the 5-acre range.

Scheer said it looks to him like the main reason it was a larger single lot in the first place was to account for the floodplain. Cajka agreed that is likely. Scheer acknowledged that it is speculation, but he noted that the lot could have originally been shown as two lots if the flood plain weren't there. He added this is similar to the point made earlier by Commissioner Lust that this is not the same lot that was originally combined.

Sunderman asked if the County Engineer would have to sign off on this project. Cajka said only if it affects the road. Public Works and the Natural Resource District also confirmed that they have no jurisdiction in this case. It is up to the Army Corps of Engineers, which may have some authority due to close proximity to the lake. Higgins stated an email from Paul Zillig of the Lower Platte South NRD confirmed that Public Works has no authority over the drainage; they can only review and make comments.

Scheer wondered if the drainage channel impacts lake waters and is thus under the jurisdiction of the Corps of Engineers. Cajka said the NRD believes that is likely. The applicant will most likely have to acquire a 404 Permit since he will be working into that channel.

Applicant Rebuttal:

Faustman stated that all of the conditions are being met and he is meeting with the Army Corps of Engineers tomorrow; the application for the permit was filed a couple of months ago. There is no way this will diminish the value of neighboring properties unless he were to build a lower-valued home. The homes in this area are $500,000 and up, and he will stay in that range. There will be liability no matter how far away he locates the houses. He is allowed to build as long as the setbacks and conditions are met.

Corr asked if both homes will be large and of similar value. Faustman said one will be smaller, but he has been referring to both as "castles". They are both in the 6,000 square foot range and are larger than what is required by covenants. He spoke with a realtor, and the only way this would devalue surrounding properties is if he built something like a trailer park.

Hove asked for confirmation that he has met with the Army Corps of Engineers. Faustman said he will meet with them tomorrow.

Hove asked if he knows the elevation the homes must be built at. Faustman said that issue has not come up for him. He suspects that when the neighbors built in the past, the land was still in the flood plain, so different requirements were in place. The water from his land does flow to the lake. It does not have the hydrology for a wetlands. He was told that the Corps of Engineers has jurisdiction over the trench on the property. He can move soil from other parts of the property to build up soil if necessary.

Derbin approached to say that, with regard to the fence, Planning found that there was a motion to amend the preliminary plat to add the stipulation about the fence. A week later when the resolution was voted on, that was withdrawn. The final version of the resolution does not include the fence, so it is not an issue.

COUNTY PRELIMINARY PLAT NO. 16003
ACTION BY PLANNING COMMISSION: **August 31, 2016**

Lust moved approval, seconded by Weber.

Lust said that this application meets all of the requirements for approval. To that extent, this body is constrained in what it can do; the application should be approved. She urges everyone to look at the association covenants and what impact it would have on plans.

Sunderman said he drove out to the site. These are very nice homes in a nice neighborhood. He does not see how the addition of one or two homes would change the feel of that. It already feels like a rural-urban area as it is. When it comes to keeping people safe in terms of proximity to property lines, he knows that when he was a kid, it did not make a difference if neighbors were 1,000 feet or 200 feet away. He is comfortable putting houses in that area. The applicant grew up in a rural setting and understands any dangers.

Harris said she is sympathetic to the homeowners who relied on the original action of County Board, but 10 years is an appropriate time to revisit a preliminary plat, especially since the conditions for this area have changed and it is no longer in the flood plain. As long as the applicant meets the conditions, she does not see a problem.

Weber said he echoed the statements made by Harris.

Sunderman stated that he is disappointed with the notes from that County Board meeting because there was no clear record of why they made the decisions they made at that time.

Hove said he appreciates the input from the neighbors. This house meets the conditions and could be built anywhere. It may no longer be in the flood plain, but if it gets flooded, that will be the applicant's liability. He hopes the fence situation can be worked out among the neighbors.

Motion carried 7-0: Corr, Harris, Lust, Scheer, Sunderman, Weber and Hove voting 'yes'; Cornelius absent. This is final action, unless appealed to the County Board within 14 days.

There being no further business to come before the Commission, the meeting was adjourned at 2:12 p.m.

Note: These minutes will not be formally approved by the Planning Commission until their next regular meeting on Wednesday, September 14, 2016.