

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, January 3, 2007, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Jon Carlson, Gene Carroll, Michael Cornelius, Dick Esseks, Gerry Krieser, Roger Larson, Mary Strand and Tommy Taylor (Lynn Sunderman absent). Marvin Krout, Ray Hill, Mike DeKalb, Brian Will, Tom Cajka, Christy Eichorn, Brandon Garrett, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Chair Jon Carlson called the meeting to order and requested a motion approving the minutes for the regular meeting held December 20, 2006. Motion for approval made by Carroll, seconded by Krieser and carried 7-0: Carlson, Carroll, Cornelius, Esseks, Krieser, Larson and Taylor voting 'yes' (Strand and Sunderman absent).

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

January 3, 2007

Members present: Carlson, Carroll, Cornelius, Esseks, Krieser, Larson, Strand and Taylor; Sunderman absent.

The Consent Agenda consisted of the following items: **SPECIAL PERMIT NO. 06070, APPLE HILL COMMUNITY UNIT PLAN; ANNEXATION NO. 03007; WAIVER NO. 06010; ANNEXATION NO. 06022; CHANGE OF ZONE NO. 06082; and PRELIMINARY PLAT NO. 06011, WOODLAND VIEW 1ST ADDITION.**

Ex Parte Communications: None.

Item No. 1.2, Annexation No. 03007; Item No. 1.4a, Annexation No. 06022; Item No. 1.4b, Change of Zone No. 06082 and Item No. 1.4c, Preliminary Plat No. 06011, were removed from the Consent Agenda and scheduled for separate public hearing.

Carroll moved to approve the remaining Consent Agenda, seconded by Krieser and carried 8-0: Carlson, Carroll, Cornelius, Esseks, Krieser, Larson, Strand and Taylor voting 'yes'; Sunderman absent.

Note: This is final action on Special Permit No. 06070, Apple Hill Community Unit Plan, and Waiver No. 06010, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by Planning Commission.

ANNEXATION NO. 06022,
CHANGE OF ZONE NO. 06082
FROM AGR AGRICULTURAL RESIDENTIAL TO
R-3 RESIDENTIAL,
and
PRELIMINARY PLAT NO. 06011,
WOODLAND VIEW 1ST ADDITION.
REQUEST FOR DEFERRAL:

January 3, 2007

Members present: Cornelius, Taylor, Esseks, Carroll, Strand, Larson, Krieser and Carlson; Sunderman absent.

Staff recommendation: Approval of the annexation, subject to an annexation agreement; approval of the change of zone; and conditional approval of the preliminary plat.

Ex Parte Communications: None.

These applications were removed from the Consent Agenda.

The Clerk announced that Lyle Loth, on behalf of the applicant, has submitted a written request for a four-week deferral.

Taylor moved deferral, with continued public hearing and action scheduled for January 31, 2007, seconded by Esseks and carried 8-0: Cornelius, Taylor, Esseks, Carroll, Strand, Larson, Krieser and Carlson voting 'yes'; Sunderman absent.

There was no public testimony.

ANNEXATION NO. 03007
TO ANNEX APPROXIMATELY 400 ACRES
GENERALLY LOCATED AT
NORTH 56TH STREET AND INTERSTATE 80.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

January 3, 2007

Members present: Cornelius, Taylor, Esseks, Carroll, Strand, Larson, Krieser and Carlson; Sunderman absent.

Staff recommendation: Approval.

Ex Parte Communications: None.

This application was removed from the Consent Agenda at the request of Teresa Tambke.

Staff presentation: **Brandon Garrett of Planning staff** presented the proposal to annex approximately 400 acres generally located at N. 56th and I-80. The area being annexed is within the future service limit and within Tier I, Priority A. The Comprehensive Plan shows the majority of this area as commercial and industrial. This is a stand-alone application with no accompanying change of zone requests at this time. Several of the parcels are already zoned. This application was found to be in conformance with the Comprehensive Plan because it is consistent with the city's annexation policy as stated in the staff report.

The blight study for N. 56th Street was adopted by the City Council on October 24, 2005. A Redevelopment Plan will encompass this entire area that is proposed to be annexed. There will be a redevelopment agreement rather than the typical annexation agreement.

Garrett pointed out that some city departments have expressed concern about right-of-way acquisition in this area, future street connectivity throughout this area and a general lack of good platting in this area just because of its piecemeal development over time. This annexation will result in several parcels within the city limits being zoned AG, and there will be several parcels that will only be partially annexed into the city. The area being annexed will surround some properties to the south that have not been annexed, which would be inconsistent with the city's annexation policy.

Garrett reported that he received one phone call in opposition from the owner at 6001 Arbor Road. The staff did request the applicant to provide a list of property owners within this annexation who are in agreement or disagreement. The applicant indicated that he has communicated with several of the property owners, but a formal list of property owners has not been provided to the Planning Department.

Esseks asked for clarification of the city's policy and/or state statute policy regarding annexation when the property owners do not approve. Ray Hill of Planning staff indicated that, to the best of his knowledge, there is nothing that requires the owner to agree. The

city has the power to annex any property that meets the annexation policy. Esseks confirmed then, that the state statute provides for annexation as long as there is contiguity. Hill agreed. The City Law Department has indicated that when the city does annex property, there needs to be some assurance of providing them with all the services. Lots of times we enter into the annexation agreement and if the city does not have the financial ability to pay for the improvements, then the annexation agreement does set forth the costs and how they will be paid.

Carlson asked for a description of the area that becomes surrounded – is it public or private? Garrett advised that it is private land and entirely within the 100-year floodplain. There are some old creek meanders and underlying areas that would not be developable without a great deal of fill.

Proponents

1. Peter Katt and Mike Eckert appeared on behalf of the applicant. Katt gave some background on the history of this area. His office has been involved in this area for nearly a decade now, trying to find a way to allow it to develop and be incorporated into the city. The first several years, it was included in various Comprehensive Plan updates. About six years ago, a serious push was made to try to make things happen by a group of 20+ property owners that was called the Star City Combine. They worked for nearly three years with the city and were unsuccessful in making it happen. Two of those clients, Hartland Homes and Roger Schwisow, went forward with the Northbank Junction component on the west side of N. 56th Street north of the creek, which is already approved and annexed. What has happened since then and why this is here is because of the Angelou economics study and the interest by the city in making large industrial tracts available with adequate highway frontage and utilities. That has driven this over the top with the location of the large tract north of the Interstate, west of Hwy 77, and that has been identified as a key area to provide the necessary economic development opportunities.

The question becomes: How do we extend city infrastructure to provide for that? This area has been a part of the redevelopment area. This is now the next step in that entire process, which is to have that area that is going to have city infrastructure be annexed and become a part of the city because the redevelopment law requires that expenditures be made only within the city. This is the area that has been identified for the public improvements necessary for it to become a part of the city.

Katt stated that some properties were included north of the Interstate and he acknowledged that there is one objection. That property would be surrounded by other property owners who want to be annexed. A meeting was held in December and, in general, everyone in the area continues to clearly want to be a part of the city and have city

infrastructure. There is an interest in finding ways for city infrastructure to be extended and made available at the lowest possible cost. This applicant has committed to try to do that as a part of the redevelopment agreements that will be coming forward.

Esseks asked Katt to discuss any benefits that are to be realized through this annexation by a property owner who is opposed. Katt suggested that the property will eventually have city infrastructure available, including sewer and water. The advantage is that the property value increases, and the disadvantage would be that the taxes will go up. In this particular instance, the ability to grow into this area, taking advantage of the state and federal investment in the highway infrastructure, outweighs any individual property owner's desire to be left alone.

Esseks inquired whether the city sewer and water lines would go through the property of the owner objecting. Katt believes it is necessary to include their property because it is adjacent to Arbor Road and there will be a need to expand right-of-way. The Comprehensive Plan shows this particular property as being out of place. It is a residential acreage and the Comprehensive Plan does not contemplate residential uses in this area. It is time for this property to be considered because it does not fit the city's plans for this area in its current use.

Eckert pointed out two operating businesses that attended the meeting who that did not think they would need to be annexed. He stated that they will try to add some language in the redevelopment agreement to use TIF dollars to extend hookups to those operating businesses in the area. The entire annexation area is in the TIF area.

Opposition

1. Teresa and Tom Tambke, 6001 Arbor Road, testified in opposition. They received notice of this public hearing on December 23rd. Most offices have been closed or people they needed to speak with were not available. They are concerned that they have not been notified about the necessary right-of-way acquisition for Arbor Road. Their house is probably 50 feet from the road. Public Works was not sure which way the sewer will go, whether on the north or south side of Arbor Road, thus they do not know who will be affected. Ms. Tambke was told by Public Works that the sewer trunk would follow Salt Creek from 70th Street at the wastewater plant down Salt Creek to the west side of 56th Street, and then carry it up the west side of 56th past I-80. They were concentrating on the west side of 56th Street because that is where the money is for the sewer. The Tambke property on the east side of 56th Street is not even on the Comprehensive Plan to receive any sewer unless a developer or property owner wanted to access the trunk on the west side of 56th and carry it up the hill. At whose cost? The sewer map shows one of the trunks going right up through the middle of their five acres.

Ms. Tambke also advised that some of the property owners were told that they would receive sewer within a year at a nominal fee if they agreed with the annexation. The

Tambke's have not been contacted by anyone about this annexation proposal for over three years. It is her understanding that this annexation will only benefit the new developments on the west side, and none of the existing business owners on the east side of 56th Street.

The Tambke's are concerned about paying higher property taxes, yet they will not have any of the perks of the city. They also have quite a few dogs and they raise quail and pheasant. Financially, they cannot afford to pay additional expenses to bring water and sewer to their property.

Ms. Tambke also pointed out that LES is building a substation at 56th Street and I-80 somewhere between 2007-2009. With the 120-130 of right-of-way needed for sewer, water and a future wider road, what kind of protection will the Tambke's have from the city or developers after living there for 27 years? Is there any kind of concession? The Tambke's understand that they cannot stop the annexation forever, but they cannot afford the increase in taxes, etc.

Esseks inquired whether the Tambke's have been able to talk with city staff or the developer. Ms. Tambke indicated that she was not aware that the annexation had gone this far. December 23rd was the first she knew about it. She did not get invited to the meeting held in December. The holiday caused problems in making contacts. They need to have more of their questions answered. What is the cost going to be to them? When is it coming? Where are they taking the right-of-way? Have they already decided that the Tambke home is not worth anything and it is up as the sacrificial lamb?

****Commissioner Taylor left at this point in the meeting****

Staff response

Cornelius confirmed that this application was properly advertised. Garrett stated that it was advertised and noticed in the normal process just like every other application. The first that Ms. Tambke had heard of this was when she received the notice from the City. She had not had any communication from the applicant.

Wynn Hjermstad of Urban Development reiterated that this is an area that has been declared blighted and substandard. The Redevelopment Plan was approved near the end of last year. This is the next step in implementing that Redevelopment Plan. One of the key elements is extending the sewer and water, which was one of the primary reasons the area was found to be blighted – lack of city utilities. TIF dollars are being used to build the sewer and water all the way up through the area.

Esseks inquired whether the city has a policy for dealing with property owners who are in opposition whose quality of life is threatened. Hopefully, we can work out some approach that can deal with their needs so that this doesn't look like government ignoring their needs. Hjermstad stating that there is nothing specifically in place other than to try and be as

accommodating as possible. This is really the first time that this problem has been encountered because this is kind of a new frontier in using TIF in an area that is not exactly in the core of the city. Urban Development can work with Planning and Public Works to see if there is anything that can be done. Esseks suggested the possibility of eminent domain and compensate the property owner fairly. Hjermsstad agreed that to be a possibility, depending on where the sewer and water lines would go. However, she advised that anytime the city would need to take their property, the owner would be paid for relocation and the fair market value of the property.

Response by the Applicant

Katt did not know why the Tambke's did not receive notice of the neighborhood meeting because they were on the mailing list, but they have been involved in past meetings. Their position has consistently been to "leave us alone - we don't want to pay anything".

If there are any direct impacts on the Tambke's, they will need to be fairly compensated, unless they voluntarily agree to participate. If the city needs additional right-of-way, the city will have to either negotiate with them and pay by agreement or condemn it. The city does not get anything for free as a part of this annexation. The details of extending water and sewer lines have not been worked out. It has not been the primary focus. You cannot worry about the feeder lines until you get the main trunks, which has been the objective. The discussions that the applicant just started having with the property owners is how to design and extend the feeder line systems for sewer and water. In that regard, there needs to be some cooperation with the property owners, but they are not yet at that level. The Tambke's are welcome to continue to participate in those discussions. Generally, when you participate, there is some expectation that you share in the costs of the improvements, and most of the property owners in this area are willing to do that.

Eckert explained how the utilities are going to get to this area. A major trunk line will be extended over to 56th Street, which is scheduled to be out to bid by March and constructed in the course of 2007. TIF funds will be used to extend a major trunk line to the north. The water line is already out to bid, extending from Fletcher up to Arbor, and in that same CIP package, there is money to take it from 56th to 40th if there are users. Then in next year's CIP, the water main extends from 56th to 70th.

Eckert also advised that the sewer sub-basin analysis done for the city anticipates that there will be a series of redevelopment agreements that will provide for extending the sewer and water mains. Outside of the normal process of the CIP, there will be the ability to do some of these sewer and water lines with TIF. Some of the sewer lines will be dependent on when the users want them. The Tambke property will be totally surrounded by industrial users that will be annexed.

ACTION BY PLANNING COMMISSION:

January 3, 2007

Carroll moved approval, seconded by Strand.

Carroll commented that the applicant has been working on this area for a number of years and he believes it is important to help the north end of the city and reach out to the Interstate for the economic development opportunities. It has been needed for a long time and helps improve the area.

Carlson observed that there is going to be opportunity for the details to be worked out in the redevelopment agreement. From the broader perspective, it is contiguous, the utilities can be extended and it is programmed to occur.

Motion for approval carried 7-0: Cornelius, Esseks, Carroll, Strand, Larson, Krieser and Carlson voting 'yes'; Taylor and Sunderman absent. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 1989A,
AN AMENDMENT TO THE LIGHTING PLAN FOR
SID DILLON AUTO AT
SOUTH 27TH STREET AND KENDRA LANE.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: January 3, 2007

Members present: Cornelius, Esseks, Carroll, Strand, Larson, Krieser and Carlson; Taylor and Sunderman absent.

Staff recommendation: Conditional Approval.

Ex Parte Communications: None.

Staff presentation: **Tom Cajka of Planning staff** submitted additional information, including a survey of the Sid Dillon display area conducted by Ken Fairchild of Olsson Associates, the consultant who conducted the lighting study for the city. This survey was conducted during business hours when the lights were on and showed that the existing average foot candle of the display area today is 16.06. Each light pole in the display area has four luminaires. Nowhere on the display area do they have more than two luminaires lit on any one pole. The applicant's proposal using the same defined area showed an average foot candle of 18.1.

The applicant and Planning staff have met. The staff suggested that the applicant consider turning off one of the luminaires on some of the poles where they have two lit at the current time. Another option suggested is to add shields to the side of the existing poles to make them full cut-off fixtures. In that event, Planning would compromise on the 10 foot candles and would consider an average of 12.

Carroll inquired about the varying business hours. Cajka indicated that staff does not want to permit the different hour scenarios because they would be hard to enforce. The staff is attempting to keep it simple with an average foot candle for the display area, and then a light level for the remainder of the premises. After business hours the lighting level on the display area would be reduced from 10 to 4.

Esseks would like to see the staff's compromised recommendation in writing. Cajka believes that the applicant will be proposing some amendments to the conditions of approval.

Strand commented that driving home last night, she noticed that half the lights were off on each of the posts. Cajka confirmed that the survey was conducted on December 17th. The other two car dealerships in the vicinity have an average of 10 foot candles (versus the 16 at Sid Dillon) for the display area. They also reduce after business hours.

Proponents

1. Peter Katt appeared on behalf of the applicant, **Sid Dillon Auto**. The original approval of this lighting plan had a requirement that appears to indicate that all outdoor lighting would need to meet the parking lot design standards. Katt does not believe that was anyone's intent because that would require a 4 foot candle standard. The question becomes: What is the lighting standard that should apply? Katt suggested that the staff used the DuTeau lighting measurement as the defacto standard and strong-armed Williamson into adopting that standard. The staff then approached Sid Dillon in May of 2005 and demanded that they amend their permit for the same standard.

Sid Dillon submitted their own administrative amendment in January of 2006, when the city had just started the lighting task force. At that time, Katt suggested that Sid Dillon wait and see what community standard might be developed by the task force. Subsequently, the task force did it's work and dissolved without a final recommendation. Sid Dillon then gets a "nasty-gram" from the Planning Department denying the administrative amendment, at which point Sid Dillon submitted this amendment to the special permit proposing a different standard. The real question is: What is an appropriate lighting standard for the Sid Dillon Auto facility on South 27th Street?

Katt then submitted a listing of the display lot lighting levels for other auto dealerships in Lincoln. The policy question is: What do we mean by "lighting level"? Does it apply to a display lot? Or are we taking an average foot candle over the entire site? Katt disagreed with staff and believes that the current standard foot candle for DuTeau and Williamson is not for the display areas but an average for the entire lot. In terms of other standards for display lighting, staff measured Sid Dillon at 16.06. The new design standard proposed

by Sid Dillon would get to 18.01, which Katt believes corresponds with the national standard of 20 foot candles at a low level for display lot lighting of car lots. Katt also noted that the consultant for the task force recommended in his draft report that display lot lighting levels come in at 30 foot candles. Sid Dillon is proposing less than that.

Katt acknowledged that the existing lighting levels are too much, and that it was a mistake. Sid Dillon has attempted to accommodate that mistake by switching some breakers. The real solution, however, will require a complete rewiring and reworking of the lighting system. Sid Dillon does not want to invest that money until they know what will be agreeable as a standard.

Katt then submitted proposed amendments to the conditions of approval. He suggested two options, the first of which attempts to keep it simple and provides that the maximum during business hours after sunset would be 20 foot candles, and then reduced after business hours, and all other areas outside the display area would be 4 or less. The second option provides for the display lot lighting at a maximum of 20 foot candles during business hours, reducing to 4 foot candles from the close of business until 10:00 p.m., and then after 10:00 p.m. down to 2 foot candles. The primary concerns and impacts on the neighbors in the community is at night and they can go even lower after 10:00 p.m., but it becomes more complicated.

Katt pointed out that the proposed amendments include a provision, to the extent available and practical, that the existing luminaires be modified and have a full cut-off included on the fixtures. Full cut-off is not something that the task force recommended because it would triple the number of fixtures to focus it straight down so intensely. It will work, however, in this situation and he believes it will improve the perception of the lighting from the neighbors.

Strand asked for a definition of "to the extent available and practical". Katt explained that the lighting fixture is no longer manufactured and the full cut-off component was discontinued because it overheated the bulbs and burned them out. He believes they should be able to craft a slight shield that will work effectively the same as a full cut-off shield, but this is not yet known because they have not yet designed it. Sid Dillon is willing to try to get that done.

Since this is a special permit, Carroll asked why they should not be required to match DuTeau and Williamson. Katt suggested that lighting levels are a choice. People can make choices about what color they paint their buildings, what brick they use, etc., so why should this standard be assumed to be sacrosanct? Sid Dillon is willing to be at a level that should have general acceptance within the community. But, Carroll pointed out that the city restricted DuTeau and Williamson to a certain level, so shouldn't we treat them equally? Katt suggested that DuTeau and Williamson made a choice to agree to certain lighting levels. Sid Dillon is unwilling to agree to those lighting levels. There is no policy as to the appropriate lighting level. Sid Dillon has made significant investment in fixtures. To

completely scrap it and start over is fundamentally unfair. This is an attempt to make the best out of the circumstances. The real question is: What is a fair lighting standard? If DuTeau or Williamson want this same standard, let them apply for it. There is no problem with this proposed standard. It is not bad. It does not have a negative impact. Sid Dillon should not be bound to lighting levels agreed upon by other property owners. That is not an appropriate standard to which Sid Dillon should be held.

Esseks commented that one of the policy challenges is to recommend to the City Council a lighting standard with which the neighbors can live. Apparently, the lighting that is characteristic of this lot for some time generated a lot of complaints. How is the 20 foot candles which Sid Dillon is requesting different from the foot candle levels that prevailed during the period when these complaints were generated? Katt responded that the city does not log complaint dates nor the complainants. He acknowledged that clearly, Sid Dillon had problems. They have done what they could to reduce it. Their measurement of what they have done has reduced it to 16.06. Katt is not aware of whether the 16.06 is creating problems. There are other factors that impact people's perception of the brightness, such as glare, trespass and other issues. He does not know that they can tailor it to each individual person's perception. We need a community standard.

Esseks noted that the lighting task force report shows Sid Dillon's display area really standing out much brighter than those across the street. Katt urged that those pictures and lighting levels do not correspond to each other. The pictures are only a general indication.

With regard to the proposed amendment to Condition #2.1.1.2, Esseks would like to make the condition more specific because in actuality, parts of the lot are so terribly bright that they constitute a nuisance. Katt agreed to take another look at this. Williamson and DuTeau also have very bright hot spots and that's how they get to their averages. There are a whole lot of other factors other than simply the foot candle measurement.

Carroll inquired whether it is the intent of the applicant to use existing lighting or to purchase new? Katt stated that, initially, the intent is to modify and rewire the existing fixtures and poles. As those fixtures age and need to be replaced, the intent would be to bring them down further. This proposal tries to accomplish a blend of utilizing what exists and getting the level down and trying not to incur a huge capital cost.

Carroll suggested allowing Sid Dillon to stay with existing lighting at 18, but put a time limit on it, and then require them to go down to a lower number when the equipment needs to be replaced. Katt does not know that the applicant would like to do that. He believes it might be reasonable, but he does not know the life expectancy of the fixtures. He does not believe that this lot should be penalized and come to a lower standard than the standard to which other display lots will be held.

Opposition

1. Michael Rierden appeared on behalf of **Grainger O'Shea Homeowners Association** (east side of South 27th Street extending to about 38th Street, consisting of over 300 homeowners). There have been 24 complaints about the Sid Dillon lighting to the association, either in writing or some other form of communication. Rierden became involved in this issue last fall. He wrote a letter on behalf of the association to the Planning Department because they had not heard anything in response to their complaints. The position of the association is quite simple – they support the staff recommendation that the lighting illuminate shall not exceed 10 foot candles and that there be full cut-offs. That is the standard that Williamson and DuTeau have complied with, whether they were strong-armed or not. He suspects that the bulk of the homeowners complaining are along 27th Street on the western edge of their boundaries. Rierden strongly urged the Commission to support the staff recommendation.

Cornelius inquired whether there have been any complaints from the homeowners about Williamson or DuTeau. Rierden was not aware of any.

Staff response

Cajka reiterated that the lighting study is a “draft” study. It is not near completion. The staff has had one meeting with the consultant to review the draft and several changes have been recommended. Nothing has been determined as to what the display area for auto dealers should be. Full cut-off fixtures has been recommended for auto display areas, but it has not been recommended for parking lots. DuTeau and Williamson currently have full cut-off fixtures. The notes on the administrative amendment for Williamson specifically state that display lighting illuminates shall not exceed an average of 10 foot candles and that the luminaires shall be full cut-off.

The staff agrees that the Sid Dillon display area would include the driving aisles between where the cars for sale are parked. That would bring that foot candle lower because it would be a larger area. Cajka then explained how the averages are calculated.

Esseks inquired whether the calculations are derived from a single image. Cajka did not know. The consultant did the measurements on one single evening.

With regard to replacing the lighting in the future, Cajka advised that the staff had discussed that with the applicant and the consultant. One of the problems is that it is not simply changing the lenses, but there may be other parts such as the ballast that would need to be replaced and you could end up having to replace the entire fixture. We did not believe that would be an option. We do think the shields on the side would work and help alleviate the concerns of the neighbors. We would want to make sure that they are willing to do that or that it could be done before we compromise on a foot candle level. Staff does not agree to the 20 foot candles as proposed by the applicant.

Strand inquired whether staff would accept 16 foot candles, with a limitation of 4 foot candles after business hours, and then add language that the existing luminaires shall be modified to add cut-off shielding, and then follow Lincoln lighting standards at that time. Cajka stated that the staff is not willing to allow 16 foot candles. The other car dealers have managed to work with 10. The staff did suggest that Sid Dillon turn off one of the luminaires on the poles that have two.

Cajka clarified the staff recommendation, i.e. 10 foot candles. Staff would be willing to compromise to 12 or 13 if they can put the shields on the side. The other two dealerships are surviving at 10. Williamson and DuTeau could have brought an amendment forward if they did not agree with 10 foot candles.

Marvin Krout, Director of Planning, concurred with Strand that Sid Dillon has shut off a number of their lights, but there are still several poles in the middle of the lot that have two lights instead of one. If there was a good faith effort at shutting off some or all of those lights in the middle, it would have brought the overall average down between 16 and 10. If the number came out to 12 or 13 and they agreed to do the cut-off lighting, he believes that might be a comparable compromise.

Strand suggested a four or six week delay to do the calculations with some of those lights shut off, rather than the Planning Commission taking "a stab in the dark". None of us are lighting engineers. Krout suggested that the computer does most of the work. All we really need to do is have Ken Fairchild or someone run that same model assuming a few more lights off to see where it ends up. Sid Dillon would then have to evaluate whether that would be adequate for them, but he thinks it would be.

Carroll wondered about permitting 10 foot candles or more, with the approval of the Planning Department. Krout thought that to be a little open-ended and he is not sure it would be acceptable to the applicant; however, he believes he could work with that.

Esseks expressed his concern to also balance the needs of the applicant to display the product appropriately. If we ask for 10 or 12, is that going to make a real difference to the homeowners? Do we have any evidence about that? He thinks that is critical. Krout believes the picture probably magnifies the problem somewhat more than it is today because it was taken before they shut off some of their lights. However, even with some shut off, there is still a very noticeable difference today between Sid Dillon and the other dealerships. They need to go below 16 but there may be some room for compromise.

Esseks asked for a specific recommendation from the staff. Krout suggested 12 foot candles. If they apply the shields and the measurement came in at 13, he would agree to approve an administrative amendment.

Krout pointed out that the staff report is the staff's initial recommendation. As we discussed the issue further with the consultant and the applicant, the staff had a better understanding

of the dilemma for the applicant. The applicant is not, however, entirely blameless for the situation but it did appear that there could be some compromise that was close to 10 that would be acceptable.

Carlson understands from the staff report that there is no approved display parking area permit for Sid Dillon at this time. Cajka concurred. What Building & Safety approved was parking lot lighting.

Response by the Applicant

Katt clarified that there is no city standard for display lot lighting today. Therefore, there was no need to get display lot lighting approved by anyone. Parking lot lighting standards do exist, so what staff is saying is that parking lot lighting standards apply to display lot standards. Katt believes the staff would have a hard time prevailing upon that enforcement action, i.e. Sid Dillon being in violation of the current special permit. The challenge is this: We recognize that the current lighting level is more than it needs and Sid Dillon is willing to reduce to a reasonable standard based upon its current investment in its lighting and its desire to have its lighting make a statement about its business. Katt submitted that there is no legal requirement to meet the standards of the other businesses in the area.

The reason we are here is because Sid Dillon is unwilling to live with the standard which has been imposed upon their business. This is not an appropriate forum to renegotiate standards. This is the whole reason we need to have standards that apply uniformly. Absent what has happened to DuTeau and Williamson, Katt suggested that reasonable national standards exist that suggest the proposed 20 foot candle standard is quite appropriate for auto display lots, and it goes up from there. What Sid Dillon is asking to be approved is reasonable for the city and for the community. It is a little difficult to respond to the neighbors concerns. It is hard to gauge their concerns. After the first hearing he suggested that they could meet with Rierden's clients and there was no contact. In addition, Katt is not interested in a delay. He doesn't think it would accomplish much. There is no consensus as to what the standard might be. Someone else needs to set the community standard. This sets a precedent only for the Sid Dillon property.

ACTION BY PLANNING COMMISSION:

January 3, 2007

Strand moved approval, with amendment to Condition #2.1.1.2 proposed by the applicant, however, changing the foot candle maximum to 14 as opposed to 12, and that the light fixtures be modified to add full cut-off shielding but that they shall not be grandfathered when the poles need to be replaced but to follow the Lincoln lighting designs standards at that given time, seconded by Esseks.

Carroll stated that he is opposed to the 14 foot candles. 14 is too high. He would like to allow the Planning Director some ability to discuss with the applicant and administratively approve something more than 10, but he does not want to start at 14. He would rather start

at 10 and let the Planning Director make that decision. He does not want to get into a bidding process with anyone.

Carlson agreed. Is there an applicable standard? We look at the special permit and there is a standard to which to refer, and that is the existing enterprises. If it functions well, we have created a standard that is workable.

Esseks is perplexed. He wishes we had some evidence that 10 foot candles will meet the needs of the homeowners association, and whether the negotiations up to 12 or 14 will meet the needs of Sid Dillon. Williamson got almost to 14 and Anderson was up to 12, so it does not look at though 10 is the implemented standard.

Krout advised that DuTeau and Williamson are meeting the 10 foot candle standard. The numbers on the handout by Mr. Katt came from the photographs. Those numbers should not be used as a comparison.

Cajka stated that the staff agrees with the applicant's proposed amendments to Condition #2.1.1.1, 2.1.1.3 and 2.1.1.4. He suggested that staff would agree to the following amendments to the conditions of approval:

- 2.1.1.1 Revise Note #3 under Special Permit-Planned Service Commercial to read, "Parking lot lighting shall meet City of Lincoln Design Standards for parking lots. ~~At least two-thirds of all~~ All outside lights lighting in Lot 4, Block 1 shall be turned off 30 minutes after business hours shall meet City of Lincoln Design Standards relative to light measurements at the zoned property line."
- 2.1.1.2 Add a new note under Special Permit-Planned Service Commercial for display lot lighting levels in to read, "For Lot 4, Block 1, to read, "After sunset and during business hours, display lot lighting illuminance levels shall not exceed an average foot candle measurement greater than 12, and after business hours display lot lighting levels shall not exceed an average foot candle measurement greater than 4. The light fixtures for display lot lighting shall be modified to add full cut-off shielding. Any future replacement of the existing fixtures shall be a full cut-off design of 10 foot candles. The luminaires shall be full cut-off. City of Lincoln Design Standards relative to light measurements at the zoned property line shall be met."

2.1.1.3 Identify on the site plan the existing display lot area for Lot 4, Block 1.

2.1.1.4 Outside lighting levels beyond the display lot area for Lot 4, Block 1, shall not exceed an average foot candle measurement greater than 4.

Strand withdrew her original motion and revised it as set forth above. Esseks, who had seconded the original motion, agreed.

Carroll stated that he would support the motion if it is in agreement with the staff.

Motion for approval, with conditions, as amended, carried 7-0: Cornelius, Esseks, Carroll, Strand, Larson, Krieser and Carlson voting 'yes'; Taylor absent; Sunderman absent and declaring a conflict of interest. This is final action unless appealed to the City Council.

COUNTY SPECIAL PERMIT NO. 06058
FOR A WIRELESS FACILITY ON PROPERTY
GENERALLY LOCATED AT
N.W. 126TH STREET AND ALVO ROAD.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: January 3, 2007

Members present: Cornelius, Esseks, Carroll, Strand, Larson, Krieser and Carlson; Taylor and Sunderman absent.

Staff recommendation: Conditional Approval.

Ex Parte Communications: None.

Staff presentation: **Brian Will of Planning staff** again presented the proposal, which was first on the Planning Commission agenda back in October, 2006. It has been delayed to allow the applicant the opportunity to provide additional information to staff and the Planning Commission. This is an application for a 199' monopole for wireless facilities located southwest of the intersection of W. Alvo Road and N.W. 126th Street.

Staff had originally recommended conditional approval, but then it came to the staff's attention that there were additional facilities in the general vicinity, albeit beyond the ½ mile radius required for evaluation. Staff then agreed that the applicant should be required to at least explore collocating on those facilities in the general vicinity. In the interim, the applicant did explore those possibilities and has provided additional information to staff, resulting in a return to staff's original recommendation of conditional approval in response to the additional analysis provided by the applicant. The other facilities explored were the Valcom tower and water tower in Malcolm, the tower outside the Village of Garland or the potential for an additional tower in Garland. The analysis and the coverage maps provided

by the applicant conclude that none of these other facilities would provide adequate coverage based upon the coverage needs of the carrier.

Proponents

1. Michele Roth, US Cellular, 10343 Military Avenue, Omaha, NE, presented the proposal for a 199' communications facility located near N.W. 126th Street and Alvo Road. US Cellular did have the opportunity to supplement this application with additional materials explaining the highly unusual situation faced in integrating two systems. At the last meeting, one of the issues raised was the number of US Cellular collocations versus the new builds. Roth advised that out of the 35 sites in Lancaster County, 31 are collocations. This particular new build is necessary for the integration of these two systems and the proposed site is the best location.

2. Jeremy Schroeder, Frequency Engineer for US Cellular, explained the special circumstance that US Cellular is in. They purchased the Cellular One network. This created a unique situation, i.e. merging the two networks in such a way that the customers would not realize they are on two networks. In order for that to happen, they need to expand the PCS network in Lincoln and Omaha out to the borders where the Cellular One network is located. He showed maps of the coverage areas before and after the implementation of this proposed site. Since it is a transition from PCS to an 800 network, it does present some special situations technically. Without the coverage it will ultimately hurt the customers, which is a situation that is not acceptable.

3. Patrick Armstrong, RF engineer with US Cellular, explained and discussed the maps that were presented after the last hearing, including existing coverage, existing coverage plus this proposed site, the Valcom site coverage, existing Alltel site two miles north of Malcolm, and Malcolm water tank site coverage. They did research adding a 60' extension to the Malcolm water tank – which has never been done. None of the additional sites researched and analyzed will provide what is needed by US Cellular to serve their customers and transition smoothly between Lancaster County and Seward County.

Cornelius inquired whether the maps provided take into account the transition between networks or simply propagation of the system. Armstrong advised that the maps are frequency or channel independent. They are only showing the strongest signal that the phone would see. It does not take into account the overlapping area that they must have in order to make the hand-off from one channel to the next channel.

Opposition

1. Denise Saathoff, attorney for Village of Malcolm, 6909 N.W. 105th, Malcolm, testified in opposition and reminded the Commission of the documentation she previously presented. She also submitted additional information provided by a RF engineer employed by the Village of Malcolm to review the reports from US Cellular. She expressed concern

about the meetings that were held and the notice given, one being on election night (November 7th) and the other being on November 30th. There was an additional propagation study submitted at the meeting on November 30th. She suggested that US Cellular's own propagation study supports a collocation on either the water tank or the Valcom site in Malcolm, along with a collocation at the Garland site owned by Capital Tower. This would not only meet the objectives of US Cellular to connect their two networks and provide coverage on Highway 34, but there would also be coverage for the Village of Malcolm and Village of Garland. What is being proposed by the applicant does not provide any coverage for either community (Malcolm or Garland) and there is no benefit for these communities with this monstrosity right in their agricultural area.

Saathoff then reviewed the requirements for collocation and suggested that the studies provided by the applicant do not contain the required documentation to support their position that there are no other places appropriate for collocation. Additionally, Saathoff believes that the applicant must comply with CFR regulations, which require collocation if they are trying to access an antenna and require someone with a facility to allow collocation. Saathoff submitted that the letter from Capital Tower indicating that they will not allow collocation is in direct violation of the CFR regulations, and that tower was built by the predecessor of Cellular One. At that time they purchased that company and purchased the existing problems. The Village of Malcolm has 411 residents. There was a resolution submitted that was passed in October in opposition. It is a situation where this applicant has not exhausted the requirements. Now the onus has been put on the Village of Malcolm to expend funds, time and effort fighting the fact that there have been no good faith efforts done on the part of US Cellular. There is zero benefit to Malcolm with this tower site.

Staff response

Will did not disagree with Ms. Saathoff's comments; however, the delay was an attempt to accomplish the intent of the ordinance to facilitate collocation. Whenever staff meets with the applicant, it is pointed out that the regulations require elimination of any other facilities within ½ mile, but as a practical matter, if there is anything within sight, it needs to be considered and eliminated.

Carlson asked whether the staff believes the applicant has performed properly. Will acknowledged that there were other facilities in the area; however, by the analysis that the applicant has provided, equivalent coverage cannot be provided by locating on these other facilities. There is a letter in the record from the President of Capital Tower that says they will not allow collocation on their tower because it is a training facility. Based on what has been provided, the staff is recommending conditional approval.

Response by the Applicant

Harvey Cooper, attorney for US Cellular, did rebuttal on behalf of the applicant. He believes there is some confusion on the duty of collocation, and he clarified that there is no federal requirement in the Telecommunications Act. It is a local requirement, and only if collocation is feasible. The effort has been made. Ms. Saathoff is citing from the interconnectivity requirements of the Telecommunications Act. Capital Tower is not a telecommunications carrier and it is not a wireless provider. Therefore, those provisions regarding collocation do not apply.

Cooper also acknowledged that the applicant did look at the Garland tower, but they cannot locate another tower next to the Garland tower.

Cooper also pointed out that there is a 5-mile separation between towers in Seward County. US Cellular has, in good faith, explored every aspect of collocation that is available. It is always cheaper, easier and more feasible to collocate than to build new. In this county, US Cellular has 35 sites. 31 of those are collocations. US Cellular does not build new unless there is no other choice, and that is the situation here.

ACTION BY PLANNING COMMISSION:

January 3, 2007

Carroll moved to approve the staff recommendation of conditional approval, seconded by Cornelius and carried 7-0: Cornelius, Esseks, Carroll, Strand, Larson, Krieser and Carlson voting 'yes'; Taylor and Sunderman absent. This is a recommendation to the Lancaster County Board.

There being no further business, the meeting was adjourned at 3:10 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on January 17, 2007.