

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, October 24, 2007, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Leirion Gaylor-Baird, Gene Carroll, Michael Cornelius, Dick Esseks, Wendy Francis, Roger Larson and Tommy Taylor (Robert Moline and Lynn Sunderman absent); Marvin Krout, Mike DeKalb, Brian Will, Tom Cajka, Sara Hartzell, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Chair Gene Carroll called the meeting to order and requested a motion approving the minutes for the regular meeting held October 10, 2007. Motion for approval made by Francis, seconded by Cornelius and carried 5-0: Gaylor-Baird, Cornelius, Esseks, Francis and Larson voting 'yes'; Carroll abstained; Moline and Sunderman absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

October 24, 2007

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

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 07054HP, CHANGE OF ZONE NO. 07056 AND SPECIAL PERMIT NO. 1992A.**

Ex Parte Communications: None.

Item No. 1.2a, Change of Zone No. 07056, and Item No. 1.2b, Special Permit No. 1992A, were removed from the Consent Agenda and scheduled for separate public hearing.

Cornelius moved to approve the remaining Consent Agenda, seconded by Esseks and carried 7-0: Gaylor-Baird, Carroll, Cornelius, Esseks, Francis, Larson and Taylor voting 'yes'; Moline and Sunderman absent.

REQUESTS FOR DEFERRAL: None.

CHANGE OF ZONE NO. 07056,
FROM AGR AGRICULTURAL RESIDENTIAL DISTRICT
TO R-3 RESIDENTIAL DISTRICT

and

SPECIAL PERMIT NO. 1992A,
AN AMENDMENT TO THE
EDENTON WOODS COMMUNITY UNIT PLAN,
ON PROPERTY GENERALLY LOCATED
AT ASHBROOK DRIVE AND HIGHWAY 2.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

October 24, 2007

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

Ex Parte Communications: None.

Staff recommendation: Approval of the change of zone and conditional approval of the amendment to the special permit, except for denial of the request to waive block length.

This application was removed from the Consent Agenda by the staff due to the recommendation to deny the request to waive block length.

Staff presentation: **Brian Will of Planning staff** explained that the change of zone from AGR to R-3 is required for this community unit plan to be amended as requested. The subject property is designated urban density residential in the Comprehensive Plan. The proposed use is consistent with that designation and staff is recommending approval. The community unit plan was approved two years ago. This amendment adds approximately 10 acres and 33 dwelling units.

The only issue is relative to block length. The applicant is requesting that the block length requirement be waived. They want to exceed 1,320 feet, which is the maximum allowed by the ordinance, measured from Hwy 2 to Stevens Ridge Road. Staff is recommending denial of that waiver request because staff did not find adequate justification to approve the waiver request.

Staff is recommending approval of the change of zone and conditional approval of the amendment to the community plan.

Esseks asked Will to explain the importance of dividing the block up with a road. Will stated that the maximum block length exists in the ordinance for several reasons. One of them is to provide connectivity between neighborhoods; it also lessens the dependence upon the surrounding arterial streets and allows more free movement within a section

without going onto the arterial streets. In addition, in this case, with a park nearby, it makes it easier for the neighbors to get back and forth between neighborhoods and to the neighborhood park.

Proponents

1. Mike Eckert of Civil Design Group submitted proposed amendments to the conditions of approval, as follows:

Remove General Condition #3.1.2: "Show a street breaking the block length on the west side of Ashbrook Drive."

Remove General Condition #3.1.3: "If the block length waiver is granted, locate the pedestrian way easement between Lots 26 and 27, Block 1."

Amend General Condition #3.1.5 to read: "Show 4' between the back of curb and the sidewalk along Camellia Court."

Add General Condition #3.1.14: "Show a pedestrian way easement between lots 33 and 34, Block 1."

Eckert explained that this proposal is an extension of the existing townhouse development in Edenton Woods 1st Addition. The original Edenton Woods subdivision is now developing with townhouses being constructed— there are six lots that have been previously platted. This amendment would reconfigure some of the lots that were previously platted, adding a cul-de-sac and adding more lots to the south. This land was owned by Berean Church. His client needed more than 10 acres and the acquisition of the outlot was necessary to make this 10 acres.

Eckert agreed with staff that the issue is block length. That block length runs all the way from Hwy 2 up to Stevens Ridge Road. Eckert submitted that this is a unique set of circumstances. It is anticipated that the outlot will go back to the Berean Church. The church has expanded and added more parking facilities and a maintenance shed. He agreed that the street connection for typical block length is necessary to make the linkages into neighborhoods, but there will not be a neighborhood here. There will be two cul-de-sacs. They are all very large urban style acreage lots. Ashbrook is very curved. Staff is requiring that the road be connected and the applicant believes it is unnecessary because of the cost of over \$100,000 and the loss of two lots. For pedestrian movement, the proposal provides an easement between lots to allow access to the park.

The proposed amendments to the conditions of approval remove the requirement to put the road in. The applicant would prefer that the pedestrian easement be located in the middle of the cul-de-sac, and the applicant is willing to extend the pedestrian easement to the west in the event there is another cul-de-sac or another road there.

This is an example of an area where the connectivity issue does not serve a lot of purpose because of the church to the west and existing cul-de-sacs to the north. Eckert believes that most of the traffic will come up from Hwy 2 to Camellia Court. The private road will be 630'.

Carroll inquired as to the reason for not having the sidewalk up in the top of the circle. Eckert stated that there are topography constraints, but the primary reasons are the reconfiguration and two existing irrigation wells.

Support

1. Jeff Johnson, Home Real Estate, testified in support. He will be working with the developer on marketing the lots. If you look at the desirability from a marketing standpoint, there is tremendous more marketability and desirability for cul-de-sac lots. It will cost \$100,000 to build the street and the developer would lose two lots, which is equal to another \$100,000, all of which will add to the cost of the remaining lots. The owners of the lots in the development directly to the east will become "headlight" lots and those owners had no knowledge that the street would be coming through. There are three lots that would be at the end of the street that would be affected by the car lights if the street connection is required.

There was no testimony in opposition.

Esseks noted that there are at least three cul-de-sacs in this immediate neighborhood already – what is the city's policy on cul-de-sacs? Do we encourage or discourage them and why? Will explained that there is no opposition on the part of the City to cul-de-sacs, but the problem here is that it is one-way in and one-way out and does not serve the greater purpose of providing connectivity and contributing to the efficiency of the transportation network.

Esseks wondered about the compromise of a pedestrian connection. Will stated that in this case, the staff would have asked for a pedestrian connection anyway. The further north you move the pedestrian easement the more efficient it becomes. The staff sees no technical reason why it could not be located further to the north.

As far as the street connection, Will explained that when the original Edenton Woods was approved, the staff did not require the street connection because at that time the Berean Church indicated that they would not be selling the property. Therefore, staff did not force the issue at that time. What we see now is a development pattern that should have this

street connection. The staff is not out to increase the cost of development, but that is not necessarily the number one rationale for granting variances. We expect a development to meet the requirements unless they can show some justification.

Gaylor-Baird inquired whether platting is typically done with the assumption that the design standards can be met. Will explained that the original development did not require the street connection because the church owned the property and did not indicate any intention to sell any of their property. However, there is now nothing that prevents an additional connection. The lots could easily be replatted and a street connection shown.

Carroll asked staff to respond to the applicant's request to show the sidewalk 4' from the back of curb instead of 7'. Will indicated that staff would not object to that amendment.

Carroll clarified that staff is requesting that the street be on the north end and that it will continue west and then hook into the private drive of the church. Will stated that staff is recommending that the applicant show the connection going to the west so that it could be carried further west if that property develops.

Response by the Applicant

Eckert clarified that his client could build on the previously platted lots today but he has chosen to preserve a green space. Because we are taking what was also an outlot (green space) behind those lots and incorporating it into these lots, it required amending the CUP, so it opened up the door for staff to require the connection. Eckert reiterated that the connection is not appropriate because of the cost and because those lots are final platted today.

Eckert believes that two to four of the lots would be affected by the headlights, depending on the turn movements at the end of the street. As far as mitigating the headlights, Eckert suggested that there really is nothing except for the street trees in the front yard. It is a road that is at a 7% slope and comes down to a 3% platform.

CHANGE OF ZONE NO. 07056

ACTION BY PLANNING COMMISSION:

October 24, 2007

Larson moved approval, seconded by Cornelius and carried 7-0: Taylor, Esseks, Larson, Gaylor-Baird, Cornelius, Francis and Carroll voting 'yes'; Moline and Sunderman absent. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 1992A

ACTION BY PLANNING COMMISSION:

October 24, 2007

Larson moved to approve the staff recommendation of conditional approval, with the amendments as requested by the applicant, seconded by Francis.

Esseks stated that he is not in favor of the block length waiver. He lives in a community which is relatively new with a nice grid, so having to look for a lost child or a lost dog you don't have to go so far and you can find nice connections. Roads promote community. They are very practical. He does not like to see a whole series of cul-de-sacs and is afraid we are establishing a precedent. He does not want to inhibit the marketing of the property; however, roads provide a better community with the movement in and out.

Francis believes that a cul-de-sac is a desirable location and it attracts people because they don't have a lot of drive-through traffic.

Larson suggested that if the road is required and continues to the west into the future parking lot for the church, it will be a highly traveled road.

Taylor is concerned about the headlights beaming onto the property, but there are other things that can be done, especially with the future growth of the trees. He agrees that accessibility through the neighborhood is important.

Gaylor-Baird concurred with Esseks. There has been testimony by Health on this issue, i.e. that roads not only provide connectivity, but help promote physical activity, which is an important piece of the underlying rationale for that design standard. She believes that the street connection is also important for emergency vehicles to access the different housing areas.

Cornelius agreed with Esseks and Gaylor-Baird, and further suggested that we have heard that these lots were platted in the absence of this connection; however, that plat was approved on the assumption that there would be no development to the west. Now we are seeing development to the west and we've also heard that there may not be further development to the west, but we don't know that.

Carroll suggested that the topography and other items of the land need to be considered and how it connects. He believes the connection is necessary, especially to the west, and he will support the staff recommendation.

Rick Peo cautioned that the resolution was drafted based on the staff recommendation to eliminate the driveway access and does not require a pedestrian easement. We do not want to have the street connection plus the pedestrian way easement.

Carroll clarified that the motion on the floor moves pedestrian easement to another location and removes the street.

Motion for conditional approval, with amendments requested by the applicant, failed 2-5: Larson and Francis voting 'yes'; Taylor, Esseks, Gaylor-Baird, Cornelius and Carroll voting 'no'; Moline and Sunderman absent.

Esseks moved to approve the staff recommendation of conditional approval, with the amendment to Condition #3.1.5 to show 4' between the back of curb and the sidewalk along Camellia Court, seconded by Cornelius and carried 7-0: Taylor, Esseks, Larson, Gaylor-Baird, Cornelius, Francis and Carroll voting 'yes'; Moline and Sunderman absent. This is final action unless appealed to the City Council within 14 days.

COMPREHENSIVE PLAN CONFORMANCE NO. 06001,
AMENDMENT TO THE ANTELOPE VALLEY REDEVELOPMENT PLAN;

and

COMPREHENSIVE PLAN CONFORMANCE NO. 07022,
DECLARATION OF SURPLUS PROPERTY;

and

CHANGE OF ZONE NO. 07055
FROM P PUBLIC USE DISTRICT TO R-4 RESIDENTIAL DISTRICT;

and

SPECIAL PERMIT NO. 07047,
10TH & MILITARY COMMUNITY UNIT PLAN,

ON PROPERTY GENERALLY LOCATED
AT N. 10TH STREET AND MILITARY ROAD.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

October 24, 2007

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

Ex Parte Communications: None.

Staff recommendation: A finding of conformance with the Comprehensive Plan on Comprehensive Plan Conformance No. 06001 and Comprehensive Plan Conformance No. 07022; approval of the change of zone; and conditional approval of the community unit plan.

Sara Hartzell of Planning staff submitted one additional letter in opposition to removal of the shooting range and comments about development in the floodplain from the Lower Platte South NRD.

Staff presentation:

1. Sara Hartzell of Planning staff explained that Nebraska Community Development Law requires that any new project in a redevelopment plan be reviewed by the Planning Commission for conformity with the redevelopment plan and with the Comprehensive Plan. This project is at 10th & Military and involves a parcel of land currently in city ownership. The proposal is to develop 61 apartment units, 20 of which would be for severely mentally ill and the others for individuals with low to moderate income, and 10 townhouses along the southern border. The project area in the Antelope Valley Redevelopment Plan is identified

as mixed use retail; however, the plan specifies that the maps within the plan are flexible guides and that the illustrations are not mandatory. Within the mixed use retail description, they also describe allowing residential, office and mixed use buildings.

Hartzell acknowledged that there are issues that need to be addressed as set forth in the conclusions in the staff reports. There are some questions about the building titles and ownership issues with the federal government that need to be cleared up. There are two facilities being used by city departments that will need to be relocated. Parks would like to make sure that the park to the west is left in as good or better condition than prior to development. Public Works and Watershed have comments regarding flood storage to make sure everything is done possible to preserve the flood storage, etc. This project should also be reviewed by the Urban Design Committee.

There are similar issues of concern with regard to the declaration of surplus property with regard to no loss of flood storage. The staff is also asking that the legal description be revised to move the north boundary slightly south 10' to allow for the eventual expansion of Military Road. There are also concerns of the Parks Advisory Board which need to be considered.

2. Tom Cajka of Planning staff explained the change of zone and community unit plan. To the west, the north and also to the east across 10th Street is all zoned public. To the south is R-4 Residential, single family and some duplexes. To the southwest area is an apartment complex. The R-4 would be in character with the surrounding area and staff supports the change of zone.

The community unit plan includes apartment complexes for 61 units, one being for an on-site apartment manager and 60 units for rent for low to moderate income. 20 of those 60 units are set aside for tenants classified as seriously mentally ill (SMI). There are also 10 attached single family, more like a duplex setup, which are rent-to-own, which would be rented for 15 years with option to purchase.

Cajka explained the waiver requests:

- 1) allow streets to be lower than 1' below the 50 year flood elevation – this is a subdivision requirement. A lot of the surrounding streets are already lower than that and in order to match those streets, they are seeking this waiver.
- 2) allow the elevation for building sites to be lower than 1' above the 100-year floodplain elevation – the applicant is proposing that these buildings be on raised foundations instead.
- 3) reduction in parking - the CUP has a parking requirement of two stalls per unit. The applicant is asking for 1.5 stalls per unit. In speaking with CenterPointe about the population of the SMI, it appears that the majority of those tenants would not

have vehicles, so by removing the 20 units for SMI, the parking stalls they show would meet a 2:1 ratio. There is also going to be additional parking with a new Court Street from 9th to 10th. 9th Street would be extended up to the north. These are both public streets so the right-of-way would allow parking on both sides of the streets.

4) landscaping/screening waiver - the perimeter of the CUP is required to be screened and there is another requirement for multi-family complexes. With the park to the west and open space, the waiver for those two sides is justified. The staff is requesting that in lieu of the typical screening requirement, additional evergreen trees be planted along 10th Street and along Court Street in addition to street trees.

5) reducing front yard setback from 20' to 10' on south side of Court Street. This is supported by staff. This is only for the townhomes and putting them closer to the street is in character with older neighborhoods.

6) connection of Court Street to 10th Street - City design standards state that streets should only intersect with major streets every 1/4 mile. 10th Street is considered a major street but Planning believes that Court Street intersecting at that point is justified with the street pattern of the neighborhood to the south and provides two ways in and out of the development.

7) recreational facility - Parks Department supports this waiver due to the proximity of the park as long as there is a sidewalk connection to the park and a loop trail within the park.

8) stormwater detention - Public Works has recommended approval due to the proximity to Salt Creek.

Proponents

1. David Landis, Director of Urban Development, acknowledged that the shooting facility has been there a long time. The Parks Department is looking for an alternative location. Landis acknowledged that the Naval Reserve structure has boarded over windows, asbestos in the walls, holes in the ceiling and a cost to bring down of about \$400,000. The city does not have the money to demolish this building, so if there is a chance to get rid of this eyesore, it is going to be through development of some kind. This development offers to do that at private expense. It is an area that could well use urban development.

There is a park in this vicinity, with a soccer field (not crowned), which means the rain stays on the ground and it becomes inoperable and muddy. One of the opportunities is to grade that soccer field so that the water runs rather than sits flat. There is not money to crown

the soccer field. The park will stay as it is and will be underutilized unless it is developed. This project will improve the park facility.

What about the actual development? There is a need for the 60 apartments for low and moderate income. Twenty of those apartments will be for the severely mentally ill, and the Department of Health and Human Services has found that there are at least 2,500 SMI in the low income area that needed housing. He does not know of another project designed by a private developer to meet this woefully under-served group of people.

Landis acknowledged that the interests of the city are not identical to the neighborhood or the users of the shooting gallery. This neighborhood has undergone a significant change of home owners from over 50% in 1980 to the mid to lower 20% as of the 2000 Census. It is crowded for parking, filled with students and not what it was 20-30 years ago. It is not part of that trend that would be furthered by this development. This development does something to ameliorate that problem, i.e. opportunity for 10 home ownerships for rent to own. There are 60 more units, but the parking is on-site and it fits relatively well with the ultimate interests of the city.

2. Fred Hoppe of Hoppe, Inc., 1600 Stony Hill Road, testified as the developer and applicant for the change of zone and community unit plan. He is proposing to put together "Creekside Village Apartments and Townhomes". It is 71 units - 60 units of one- and two-bedroom apartments (20 being designated for the SMI). 10 townhomes, which essentially are five duplexes in a row across the lower side of Court Street. The entire project is targeted at 60% median income and below. It is a low income tax credit project under Section 42 of the Tax Code. It allows us to leverage financing to not only develop the project, but to develop a lot of public improvements in connection with the project. We can clean up the site and create a positive entrance into the city from N. 10th. We create an additional access through Court Street from the neighborhood out to 10th Street. The neighbors indicated that they have parking problems so we were concerned about providing additional parking on our property and also an outlet to 10th Street to ameliorate what has been described by some as the "student animal house", another apartment complex further into the neighborhood.

Why are we picking this site? This site is a qualified census tract, allowing us to leverage low income tax credits to get 30% more tax credits into the project and do the public improvements and put into the project an on-site office for CenterPointe for case services for those SMI residents. That allows us to pay a salary for a staff person. That kind of leveraging is extremely important because it costs a lot when you are looking at trying to keep rents affordable for people below 50% median income. In addition, the site is on public transit, and it is close to downtown – two criteria that are extremely important for the SMI community. But it is also important to develop a green concept to infill this neighborhood so that any tenant could do without a car, which is one of the goals of this project.

Hoppe acknowledged the waiver requests. This development is a tag-along to an older neighborhood. The waivers are all an attempt to fit this proposal into the concept and design of the abutting neighborhood.

Hoppe advised that there are two predominant issues: Parking (the goal is to have residents who do not drive cars) and development in the floodplain. All of the residential units and utilized space will be 1' above the floodplain. The buildings will be put over crawl spaces so that water can flow through those buildings and not create a flood hazard. The townhome garages will come in at entry level and the living space for the houses will be up a couple of steps. They want to minimize the amount of fill and the amount of density coverage for this space. If this land weren't city-owned, 35% of that site could be covered with either fill, buildings, or whatever. In the new FEMA map which is currently in the approval process, that number would rise to 60%. This proposal is at 11.7%, so it is not perfect zero net rise, but it is minimized by the waivers being requested.

Hoppe agreed with the conditions of approval, and promised to work with the city all the way through this project.

Support

1. Becky Schenaman, a life long resident of North Bottoms, testified in support. She lived on Claremont Street and has seen all the changes in the neighborhood. She stated that she supports some development in this neighborhood; however, she was hoping for a grocery store. There does need to be some diversified things happening in the neighborhood. Her biggest concern is the floodplain, but she is willing to take a chance on this development. She lives in a house that was originally a horse farm and she does not have a basement. This neighborhood is very, very dark and they need street lighting. If this project is allowed, they should give the whole neighborhood better street lighting. The Naval Reserve is dangerous and it needs to be demolished. She is trusting the developer and the city to do something good.

2. Topher Hansen, Executive Director of Centerpointe, testified in support. He is excited about this partnership that is going to bring some needed development to an area with some permanent safe affordable housing for people with serious mental illness. CenterPointe is trying to develop housing units in the city that are safe and permanent housing for SMI. The individuals that they contemplate occupying these 20 units have been through treatment, are in recovery and living an independent lifestyle. SMI individuals need support services to maintain their health and CenterPointe intends to provide that service in the budget of the project. This is a private partnership that does not exist in Lincoln right now. The community support type functions are typically state-supported and not privately- supported, as this one would be.

CenterPointe began its services in 1973, and currently operates about 92 units of subsidized housing with another 40 units in development at the present time. The proximity

to services, transportation, ability to walk downtown and be in a neighborhood are key to consumers. CenterPointe's goal has been to develop housing that meets the needs of their consumers and in which any of us would live. SMI individuals tend to be victims more than perpetrators of crime.

Hansen confirmed that the full-time employee would be dedicated to that location 40 hours per week. The whole idea is that the on-site manager would be in contact with the 20 individuals doing things to mix with the people and provide the services that they need.

Opposition

1. Ed Caudill, President of the North Bottoms Neighborhood Association, testified in opposition to development in the floodplain. This property is up against the biggest floodplain in the City of Lincoln. The neighborhood had a meeting with Fred and John Hoppe and Topher Hansen over two years in the fall of 2005. This project keeps changing. In 2005, the neighborhood was given the understanding that this was a 100% CenterPointe project. Since that time, there has been no contact with the neighborhood. In 2005, the neighborhood association did not take a position on this project. Two years pass, and Caudill receives an e-mail from David Landis saying a meeting on this proposal sooner would be better than later. Therefore, they got a neighborhood meeting together in less than a week and met on October 2, 2007. That is the first contact the neighborhood has had with this developer since 2005. In 2005, the neighborhood representatives requested to be given the opportunity to provide input into this project. In October of 2007, we listened to the proposal, which has changed. The residents at this meeting did not look favorably upon this proposal. There has been no dialogue. It seems to be a train that is running down the tracks and no one is willing to put the brakes on. There are a lot of unanswered questions.

Caudill disagreed that this is a "private" project – the neighborhood was told that this project is an 8-9 million dollar project, with 7.5 million in public funds, and \$650,000 to \$1,000,000 in TIF. This is really a "public" project. This is being paid for by taxpayers.

In addition, Caudill stated that the neighborhood was told there would be no one on staff, and now it appears that there will be. None of the neighbors are against getting rid of the blighted condition, or a brownfield, and none of the neighbors have a problem with providing homes for low income or people with serious mental illness, but in the floodplain? It just doesn't make sense. He does not believe that this conforms with the Comprehensive Plan, based on what he read in the staff report.

Caudill then showed photographs of flooding problems in the neighborhood, 14th Street bridge and 10th Street bridge. He is concerned about putting some of our most vulnerable citizens right next to these flooded areas. Not one inch of property in the North Bottoms got removed from the floodplain in the Antelope Valley Plan.

Another issue of the neighborhood is the public park. In the 1970's there was a project that was going to do a wonderful thing to the park, but the park got moved to where it is now and it fills with water. These details have not been worked out. The neighborhood would like to work with the developer and the Parks Department. The North Bottoms residents built the shelters in that park. They planted 300 trees in that park. And now, the neighborhood does not know what they are going to do except make a soccer field sized drainage ditch. What about the baseball field?

Caudill pointed out that the Comprehensive Plan provides the retention of city and county property in the floodplain in public ownership – the city owns this property in the floodplain. If anything, bulldoze that building down and keep this a public space. Give Salt Creek a place to retain some water. All of the flood documents recognize the need for areas in the city that can absorb water, but we're talking about putting vulnerable people right in the middle of a floodplain.

Caudill requested that action be delayed until some of the issues are clarified. He has not even had an opportunity to review the response by the applicant to his questions which he received just yesterday. Please force the developer to work with the neighborhood. There are two streets shown on the city maps - extensions of Military Road and 9th Street. The North Bottoms Neighborhood is opposed to a new street connecting out onto 10th Street. They would like to see Military Road brought over to 9th Street.

Larson noted that the photographs were back in the 1940's and 1950's. Caudill concurred that they depict the 1950 and 1951 flood. Caudill is not aware of any floods that have occurred like that since then. Larson believes there has been some floodplain development in this area. Caudill's response was that it is maddening to watch development in the floodplain. When you fill a bathtub, the water goes up.

2. Annette McRoy, 1142 New Hampshire, testified in opposition because she believes this proposal conflicts with city policy. Her biggest concern is the declaration of surplus property. She agreed that the Naval Reserve center needs to go. But, she is concerned that there was not a RFP process before declaring this property as surplus. Is this the highest and best use of this land? It fronts a major street in our community. This project has been selected and is moving forward at a very rapid pace. It doesn't give any other developer a chance. We did not have a public process regarding this surplus property. We have some great projects that were done as great public-private partnerships, but they all went out for RFP. Everyone got a chance to get to the table. She is concerned about the lack of a fair and public process.

McRoy is also concerned about relocating the Public Building Commission facilities at a time when budgets are very tight. Does that make sense? What about the shooting range? It is being utilized. We have had national champions who have trained at this shooting range. It brings in income. On football Saturdays, the neighborhood parks cars for the city under contract – money that the city gets.

McRoy's third concern is the floodplain. The City Council has spent hours and hours compromising and working on our floodplain regulations. Now we see that these conditions are not being met, yet the regulations have been adopted. Despite concerns from Public Works dated October 4th, there are three pages of concerns regarding the floodplain, yet we're just going to "work these out and let them go". McRoy agreed that the project has merits and she would welcome affordable housing in the neighborhood. But there are 32 conditions of approval before a final plat can be approved. The Planning Director will make the final approval. She trusts the Planning Director, but where is her opportunity for input as a resident of this community with 32 conditions that have to be met? There needs to be more public input if we want to shoehorn in a project like this. She pointed out that the project also needs approval by the Corps of Engineers.

McRoy agreed that this project may have its merits, but it has gone down the track very fast and there is a lot of conflict with flood policies. She urged the Commission to take a step back, delay, work with the developer and work out some of these issues.

3. Anthony Coleman, resident and homeowner in North Bottoms for seven years, testified in opposition with concerns about development in the floodplain. Salt Creek and its connecting tributaries drain over 1,000 sq. mi. of area, which equates to a couple counties of land draining to this part of Lincoln. He also requested a two-week delay. The neighborhood really wants time to get their questions answered and to address their concerns. The neighborhood is not opposed to development or this type of housing, but they are opposed to having decisions crammed down their throats that could be adverse to the neighborhood.

4. Tom Jensen, resident right next door to the proposed development, testified in opposition with concerns about the setbacks. What sort of mental health issues are there? He has a 6-year-old son. He purchased his property because it was "by itself". He is very concerned about drainage and where the drainage will go. He also requested a delay.

5. Glenn Johnson, Lower Platte South NRD, stated that the NRD is not in support nor in opposition, but the District has long looked at these proposals throughout the city and has continued to raise similar issues. The property is in the 100-year floodplain of Salt Creek. It is publicly owned property. Two-thirds is within a 500' critical area setback from Salt Creek. This is new criteria post-Katrina that the Corps has put in place on all federal levees throughout the United States, i.e. within that 500' setback there is a much more detailed review. We have spent a lot of money buying public right-of-way to preserve, acquire and protect floodplains. The NRD believes it is inconsistent when publicly owned property is considered for transfer or transfer into private ownership and it is no longer preserved.

Secondly, if this proposal goes forward, the NRD certainly would encourage and hope that the "no net rise" requirement would be placed on this since it is already in public ownership – not just the 60%. This would compensate for the loss of already public-owned property.

At any point before it goes forward for any type of construction, there is a process that needs to be followed for any impact upon the levee system.

July 1993 was the last time that we had a very significant high water event. The flood control levees were built in the mid-1960's after that flood in the 1950's; however, the dams and the levees do not provide protection from a 100-year flood, so the water would be over the top of the levees operating basically as if the levees were not there. The 60% allowable fill takes into account the dams and the levees and the system that is in place today, so it is an accurate representation of the flood threat in the area.

Esseks inquired of Mr. Johnson what to do with a parcel like this, which wasn't acquired for recreational or open space or flood control purposes. It looks as though the city inherited it from the federal government. He thinks we are talking about apples and oranges. Johnson agreed, suggesting, however, that it is somewhere in between apples and oranges. It is not land that is used strictly for public recreation – it had other public purposes and served those for many years. It has not been private property. There is a dilemma. But to relinquish the fact that it is public and provides a certain level of flood storage without at least the corresponding no net fill impact would be a real shortcoming.

Larson asked how the no net rise could be achieved. Johnson suggested that if you are going to import fill and elevate on any portion of that property, there is going to have to be a corresponding removal of material to compensate for that loss of storage. It can certainly be done with reshaping of the park area and lowering it to create that additional flood storage to offset. Doing as they are doing with not fully elevating the buildings and the pads above the 100-year, but having flow-through crawl spaces, does compensate for some of that.

In the case of the 100-year flood, Cornelius wondered whether the levees hold the capacity that they normally hold. Johnson stated that in most cases, the levees will contain at least a 50-year flood event. When you get above the 50-year it starts to spill over. In less than the 50-year event there is an issue behind the levees in that the local drainage from rain events right there normally will drain out through a pipe into Salt Creek, but that pipe is going to be held shut so all that drainage generated is going to be backing up and storing in this park. Even without a 100-year event, there is still a ponding of stormwater within the park area. We saw that in 1993.

6. Carl Page, 3531 North 11th Street, testified in opposition. He is a member of the REOMA Board, member of Everett Neighborhood, Board member of North Bottoms and heavy investor. He agreed that the Naval Reserve is a bad looking building as you come into Lincoln from the north, but the federal government gave it to the city to use, and the city lacked the responsibility of taking care of it. Why would you approve housing in the Salt Creek, Oak Creek, and Antelope Creek floodplain? Why would it be okay to put SMI residents in a floodplain around college kids that party and drink all hours of the night, and while there are small kids that play in the park? Are we asking for trouble? Cedar Homes

has a place on South Street and they have had calls about every night. Why don't we let CenterPointe purchase two 20-plexes on E Street within a block of their offices on S. 13th Street? There are no sidewalks going across Salt Creek or Oak Creek for these people to use. He used the shooting range and was a competitor.

7. Rachel Carlson, 2820 Sumner Street, testified in opposition to losing the shooting range. Approximately 10 people involved in the shooting range stood in support of her testimony. She has been shooting at the range since she was 10 years old and it has been a well-kept and successful facility. The city has invested a lot in this range over the years, which has contributed to making the range a safe, year around facility. Is it worth taking down a working building and using taxpayer money to build a new one? The citizens of Lincoln have benefitted from the programs. This range provides safety classes for youth. Education classes are also provided for adults. It provides a safe place for gun owners to practice marksmanship. The old Naval Reserve building is a hazard, but the range takes up a very small area of the proposed development. Surely there is a way to work around this building. It is part of the city of Lincoln's history and it is not surplus. If the range were to go, it will be difficult to find the programs it provides. Carlson pleaded with the Commission to delay this proposal until there is a full plan in place or equivalent or better facility for shooters in this area. Carlson has heard of some plans for relocation, but they are not definite and she does not want this range done away with before there is an alternative location.

8. Shane Harters(sp), 3731 Faulkner Avenue, testified in opposition to the loss of the shooting range. He just moved to Lincoln a couple of months ago with his family of five. They are so excited about the rifle range facility. The classes and programs are so affordable for children and adults. He doubts that Parks will create a new facility or have the funds if this one is lost. If Parks tries to continue a shooting program for youth and adults in another privately owned facility, he believes that the prices will go up and it will limit the availability of these safety programs to the general public. Parks and Recreation has managed the facility for 25 years and he understands that there has not been an accident. This proposal needs to be denied or at least deferred so that there won't be a gap in the Lincoln shooting programs.

Staff Response

Marvin Krout, Director of Planning, assured that there are more steps ahead for this project. There are lots of hoops that this project has to go through and they are trying to get through this project to apply for a federal grant for assistance. It is anticipated that this area will be the subject of a redevelopment agreement. There will be opportunity for more interaction with the neighborhood. He does not believe that all of the questions raised today can be answered in two weeks, but there will be opportunities as this project moves forward.

In relation to the Comprehensive Plan, Krout acknowledged that sometimes the Commission will see conflicting objectives in the plan. Yes, the plan says that we want to try to save public land to be open space for flood storage purposes. But, on the other hand, we have the Antelope Valley Redevelopment Plan which says this land shall be developed for commercial purposes. The proposed amendment is to change it to residential because there have not been any commercial prospects.

Krout also suggested that in an area like this, it is appropriate to make some compromises to the typical design standards. 10th Street has access every 300 feet to the south. If you are trying to minimize the amount of fill, then you would grant the waivers to the street requirement and to allow for the crawl space and the elevated first floor. It is a question of balancing objectives.

Esseks observed that a lot of the opposition has to do with the design features of the community unit plan. What if we were to delay the community unit plan for two weeks and vote on the other three items? Krout believes that would need to be answered by the applicant, although he believes they need all four items at Council at the same time.

As far as the choice of this land, Esseks wondered whether it has to do with the financial liability of low and moderate income housing and housing for the SMI that we cannot otherwise provide in Lincoln. Are we really in a bind here because the land elsewhere is too expensive? Krout believes that this site meets the objectives of being close to downtown and in the transportation network.

Francis suggested that part of this site's attractiveness is the fact that it is in a targeted census tract so that there is funding available. Krout agreed.

Gaylor-Baird inquired as to the costs to the city for this project. Krout stated that the rebuilding of the range is not included in the costs previously disclosed, and relocation of the Public Building Commission facilities is not included. The Director of Parks believes that he can obtain grants to rebuild the gun range and not incur any capital fund costs. Krout believes that all demolition is a part of the cost.

Cornelius expressed concern about the Comprehensive Plan conformance finding on surplus because the Planning Commission was recently directed to vote up or down. The recommendation from staff is a finding of conformance, with certain provisions. He believes that this conflicts with the advice that has been given to him in the past. Krout clarified that the staff does recommend that the Planning Commission find that it is in conformance with the Plan. The provisions are just pointing out that there are lots of "loose ends that need to be tied." The city may not be able to sell this land. Krout explained that the state statutes call for a yes or no vote on the conformance issue.

Francis inquired as to the timeframe between finding a new shooting range and the demolition of the current shooting range. Could something be delayed so that they are not

displaced? Krout stated that the Director of Parks indicates that it would be several months before he could find out whether the grant would be available, and there would have to be a period of planning and design for that facility. It is probably going to take 12-18 months. There may be a period of time, however, before this project can be developed because of all of the other issues and the redevelopment agreement.

Carroll suggested that for the Planning Commission it is the fear of the unknown because we have never been asked to approve something with so many waivers. Once we vote, it leaves our hands forever. We don't have all of the information – we have to trust our staff – there is still a very large unknown about the city park and we have to rely upon Parks to decide what is best overall. There is a lot that the Planning Commission does not know and maybe we cannot agree because of the fear that something might change between the Planning Commission and the City Council.

Krout acknowledged that this proposal is not like West Haymarket where the Planning Commission will see any Transportation Plan amendments. Even though this has not typically been done, Krout suggested that the Urban Development Director would probably be pleased to have a workshop with the Planning Commission before this would go to sale and a redevelopment agreement to the City Council. Then the Planning Commission could indicate informally whether or not the plan as it continues to evolve meets their expectations.

Gaylor-Baird asked Krout to speak to the RFP process. Krout stated that there have been many cases where the city has not used the RFP process on surplus property declarations. Landis agreed, stating that the city does business in a number of different ways and sometimes the city initiates action by actively soliciting offers. The more common circumstance is that developers bring options to the city that they would like to do and we don't use a RFP process. We can go either way. Both of them are available. Of the two, developers are generally the moving parties. The city could be the moving party in this circumstance, but nothing would be happening.

Esseks again wondered about delaying the community unit plan. He knows there is a funding deadline but some funding is very flexible. Landis agreed that the timeline does have to do with funding. Part of this is a very clear planning issue, i.e. are we in substantial conformance with the Comprehensive Plan? He thinks it is fair to say there is a rub between parts of the Plan and the strategy about publicly owned land. If this land was in private hands today, it would be in perfect conformance of the Plan. The fact that the land is owned publicly places one element of the Plan at odds. The rub is building in a floodplain area when it is publicly owned land. The shooting gallery is an intricate political choice and political priority for spending and public services.

Cornelius wondered how Urban Development might give the North Bottoms neighborhood more opportunity for input in the negotiations on the redevelopment agreement. Landis does not believe the neighborhood liked the plan two years ago. There was a meeting with some of the neighbors in September, and there was a neighborhood meeting on October

2nd. He agreed that there are unanswered questions. Landis offered to do a workshop as the negotiations on the redevelopment agreement go forward.

Rick Peo, City Law Department, responded to the concern about the RFP process on the surplus property. He explained that the city cannot go out for a RFP until the Redevelopment Plan amendment has been approved. This project may or may not have required a RFP. Statute allows owners to develop their own property without a RFP. If the ownership of this property is transferred prior to contract, then we would not need a RFP. More frequently, the city does go out for a RFP, but usually there is a project in mind, e.g. Embassy Suites. Typically people come to the City first. We are not bypassing the RFP process. It is premature at this point.

10-minute break

JJ Yost of Parks & Recreation Department advised that the Parks Department has initiated conversation with Nebraska Game and Parks about the potential of partnering on a new facility and new location for the shooting range, and they have received some very favorable response. Game and Parks has the ability to seek some federal funding. There are some other grant sources that can also be explored. They have just started looking at alternatives, but they do have a good feeling that there are some options. The city has a site at Boosalis Park for a campus type approach for a shooting range to go along with an archery range and the gun club is immediately adjacent. There is nothing definite at this time, but they do have some ideas of where to go, and, depending upon this project, they will start to pursue those alternatives. It will take some time and there are no definites right now.

With regard to Hayward Park, the Parks Department has talked with the developer who wants to do some compensatory storage in the park area. They believe that can be done in a manner conducive to the park. The Parks Department does have experience of collocating play facilities in flood storage areas. If done right, it can be an amenity to the park. It requires grading and re-establishment of the vegetation. That can happen in this park if it needs to. Parks does advise, however, that an accessible connection be made from the development into the park to the playground itself, which does not exist today. Because of the proximity of this development to the park, Parks has suggested that rather than the developer creating their own recreation plan, that they provide some enhancements to the park, including a perimeter trail.

Response by the Applicant

Hoppe explained that this project has been a long time coming and it was targeted for the SMI. Several years ago, he began working on this project following the release of a report showing the deficiency in housing for that group of residents in the City of Lincoln. He scoured the city for sites and this is about the only site in a qualified census tract, that is on an arterial street, that has bus service and in walking distance of the downtown core.

If it's the only site that qualifies, it is pretty important, and that is one of the balances that has to be determined. Being a qualified census tract is huge in this project because it leverages the financing. We can provide low rents with a case worker on site. That is extremely important for that population and makes the whole program work.

Hoppe stated that he cannot afford a delay because all parts of this proposal need to get to the City Council and be approved by the end of November because of the funding deadline. Because of the City Council's schedule in November, a two-week delay at Planning Commission won't work. He raised this deadline issue with the city months ago and he has been working with the city from the beginning. In order to get in the cycle for low income tax credits, the project must be approved by November 30th. The city doesn't work very fast. Today is the last available Planning Commission meeting date to meet that deadline. Hoppe reiterated that they did have several neighborhood meetings – two years ago, October 2, 2007, and he has talked with Ed Caudill in between. He tried to be responsive to the neighborhood concerns that were raised two years ago in the design. The neighborhood is the moving target. Our principal change in this project was the reduction of the number of SMI individuals from 100% down to 33%. This needs to move forward. They tried to work with the neighborhood; they have worked with the city; and he agrees with all of the conditions of approval.

Francis asked Hoppe to explain the affordable housing trust fund. Hoppe explained that November 30th is the deadline to tap into the Department of Economic Development money through either home funds or affordable housing trust funds, as well as the deadline for application to the Investment Finance Authority for low income tax credit funds. If we agree to lease to low income occupants for a period of 15 years, and those low income occupants are 60% median income and below, we can get a tax credit each year for 10 years, and the amount of the tax credit is based on the amount of improvements you put on the property. This proposal will result in approximately eight million dollars of improvements that qualify for low income tax credits. Through the sale of those tax credits to corporations, insurance companies, etc., we can bring in capital that can be put into the project instead of a mortgage. This means that we can keep the rent low, but it has to be targeted to 60% median income and below. In order to qualify, we have to pledge the project for 45 years – minimum of 30 years commitment to low income occupants, or 45 years for additional point scoring. At the end of 15 years, the occupants of the 10 townhome units have first right of refusal at a programmed price to purchase those units. The nonprofit has the first right of refusal on the 60-unit apartment project at a programmed price to keep it in affordable housing. We cannot have full-time students in the low income project. The program recognizes that students don't have income, but this housing is not for students while in school. However, there are some exceptions to allow full-time students in the housing but they must be students getting government assistance, students in training programs, etc.

Hoppe indicated that he does not foresee any construction starting until the spring of 2009, so there is plenty of time to get organized for the shooting range.

COMPREHENSIVE PLAN CONFORMANCE NO. 06001

ACTION BY PLANNING COMMISSION:

October 24, 2007

Larson moved a finding of conformance, seconded by Esseks.

Cornelius would like to see the Commission direct Urban Development to include residents from the area in any negotiations in terms of the redevelopment agreement.

Motion for a finding of conformance carried 7-0: Taylor, Esseks, Larson, Gaylor-Baird, Cornelius, Francis and Carroll voting 'yes'; Moline and Sunderman absent. This is a recommendation to the City Council.

COMPREHENSIVE PLAN CONFORMANCE NO. 07022

ACTION BY PLANNING COMMISSION:

October 24, 2007

Larson moved a finding of conformance, seconded by Francis and carried 7-0: Taylor, Esseks, Larson, Gaylor-Baird, Cornelius, Francis and Carroll voting 'yes'; Moline and Sunderman absent. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 07055

ACTION BY PLANNING COMMISSION:

October 24, 2007

Larson moved approval, seconded by Francis and carried 7-0: Taylor, Esseks, Larson, Gaylor-Baird, Cornelius, Francis and Carroll voting 'yes'; Moline and Sunderman absent. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 07047

ACTION BY PLANNING COMMISSION:

October 24, 2007

Esseks made a motion to approve the staff recommendation of conditional approval, with amendments as follows:

--that there be no net loss of flood storage as a result of this development; and

--that the Urban Development Department involve the neighborhood in negotiations on the redevelopment agreement, and that the Urban Development Department convene a meeting between the developers and the North Bottoms Neighborhood Association to discuss the project in time so that the Association can provide input to the City Council before it considers these four recommendations.

The motion was seconded by Larson.

Carroll commented that there are a lot of variables that are unknown and the Commission has faith in our Planning and Urban Development staff to negotiate a good redevelopment

agreement to protect the citizens of Lincoln. If we move this forward, that is what is going to happen. We want the neighborhood to be involved as it comes forward. This development is needed in the neighborhood and in the city of Lincoln.

Motion for conditional approval, with amendments, carried 7-0: Taylor, Esseks, Larson, Gaylor-Baird, Cornelius, Francis and Carroll voting 'yes'; Moline and Sunderman absent. This is a recommendation to the City Council.

COUNTY CHANGE OF ZONE NO. 07052,
FROM AG AGRICULTURAL TO AGR AGRICULTURAL RESIDENTIAL,
and
COUNTY SPECIAL PERMIT NO. 07039,
PARKLAND ESTATES COMMUNITY UNIT PLAN,
and
COUNTY SPECIAL PERMIT NO. 07040,
TO ALLOW DWELLING UNITS WITHIN 1,320 FEET
OF A PUBLICLY OWNED LAKE,
ON PROPERTY GENERALLY LOCATED
AT N.W. 118TH STREET AND W. FLETCHER AVENUE.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: October 24, 2007

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

Ex Parte Communications: None.

Staff recommendation: Approval of the change of zone, and conditional approval of the community unit plan and special permit.

Staff presentation: **Sara Hartzell of Planning staff** presented the proposal, which is located on property directly north of Pawnee Lake in the northeastern part of the County, to change the zoning and develop 22 residential lots with dwelling units located within 1/4 mile of a public lake.

The waivers of ornamental street lighting, sidewalks, street trees, landscape screens and the preliminary plat process are standard waivers that we have been granting to all county acreage applications. The applicant is also seeking a waiver of the stormwater detention requirements, and staff is recommending approval of that waiver due to the fact that the development will probably have a better infiltration rate with grasses rather than crops. Staff also recommends approval the waiver to reduce the front yard setback from 50 feet to 25 feet because it is mostly due to the property on the south side that is next to the lake and allows a larger buildable area on those lots. The waiver of the lot width-to-depth ratio is acceptable because of restrictions resulting from the wetlands.

There are two block length waivers. The staff supports the waiver of the block length on the southernmost block because there is no need to extend a road to the lake. The other block (Block 3) does have a cul-de-sac in the center about half-way down the block and the staff is recommending that the cul-de-sac should be extended to the property to the east and that that block length waiver be denied.

The applicant is also seeking a reduction of the 600' setback from the lake to 300'. The 600' setback is standard because of a state law that requires that there be a 600' separation between the discharge of any firearm and any dwelling or animal feedlot facility. There are some homes already within that 600' setback which have caused an impact to the property to the south. The additional impact of reducing that setback to 300' would cause a substantial impact to the hunting area for that lake. Game & Parks also recommends that this waiver of the setback be denied.

Hartzell advised that the staff review finds that the water supply on this property is sufficient for housing.

Francis noted that one of the documents the Planning Commission received mentioned that there used to be a requirement for "x" number of test wells per acre, and that requirement was not met on this application. Hartzell explained that it has not been the norm to require that. It could be required, but traditionally, the staff has required the developer to show that there is reasonable belief of water on the property. They have not normally been required to drill that number of wells. They did four test wells. The well drilling industry and the applicant will be addressing this issue.

Proponents

1. Mark Hunzeker appeared on behalf of **Merle Jahde**, the applicant. This is an application for a change of zone, community unit plan and special permit for residential development within 1/4 mile of a state lake. This land has been shown in the Comprehensive Plan for acreage development for 30 years, since 1977. This raises a fairly substantial policy issue inasmuch as he cannot recall a time in that 30 year period when the Planning Commission or City Council or County Board has denied a change of zone to AGR in an area like this where the area is designated in the Plan for acreage development. The implication of denial of such a change of zone is fairly substantial inasmuch as every single time we have had an update to the Comprehensive Plan over the last 30 years, there has been a significant policy debate over whether there is sufficient area designated for acreage development and whether it is located properly to take advantage of market demand. Hunzeker submitted that ignoring that now would undermine the legitimacy of the Comprehensive Plan substantially as it applies to acreage development.

Hunzeker acknowledged the applicant's request for a number of waivers. As far as the block length issue, Hunzeker pointed out that the cul-de-sac in the middle of the subdivision

is shown because the land to the east includes some wetlands and a fairly substantial drainage area which is unlikely to be developed in a way that is conducive to having a street run through. The applicant believes that it is an appropriate place to stop that street as a cul-de-sac and not imply that any further development to the east is going to be required to connect a street through that drainageway. It may have wetland in it. The wetlands have not been delineated by this applicant because they are not on his property. There are some wetlands in the northeast corner of this property.

Hunzeker acknowledged that the waiver of setback from the state lake has been a policy issue that has come up from time to time. State statute provides that hunting not be allowed within 200 yards of a residence. There is nothing in the State statute that says you cannot build a house within 200 yards of state property where hunting is allowed. This takes 600' of land from property owners abutting state property simply by virtue of the state saying they would like to let people hunt on state property. Hunzeker believes that the reduction from 600' to 300' is reasonable. 300' is more than enough to protect a house from shotgun hunting, which is all that is really allowed on this property. If the state needs more land for hunting, then it ought to buy more property for hunting than impose upon private property owners.

Hunzeker then addressed the block length waiver. The applicant has been asked to realign Trails End, the street at the southern end, in order to allow for urban depth lots on the property to the east sometime in the future. Hunzeker pointed out that this is way outside the urban area and is not contemplated for urban development anytime in the next 50 years. It is not appropriate and not this developer's problem.

With respect to Condition #3.1 which refers to the County Engineer's comments, the applicant is agreeable, except that it is not this subdivider's responsibility to place culverts on driveways which are off of his property and serve existing homes. There are at least two homes to the west who have built driveways onto the county road without putting in a culvert. Why anyone would do that, he is not sure. It certainly doesn't comply with County design standards. Hunzeker contends that this should not be a problem that this developer needs to solve.

Hunzeker then addressed the water issue. The applicant has had three different experts examine this property, and the Planning Department, Health Department and NRD have agreed there is sufficient quantity of water to sustain residential development with properly designed wells. There was a water report done 30 years ago for the Pawnee Estates project immediately to the west. It is remarkable how similar these reports are. Both reports confirm the same information, and with 30 years of history there are 30 or 31 homes that have been built on a section of land, 26 of which have been built in the last 30 years. The information in that report is remarkably similar to today's report and shows very clearly that the construction of those 30 houses has not had any impact on the quantity or flow or quality of the water in that area.

Esseks inquired whether the authors of those reports address the question of why there has not been a change. Hunzeker does not believe that question has been addressed. He did not know about the 1977 report until recently. Mike Eckert of Civil Design Group offered that the strongest similarity is that there was extensive verbiage about the importance of construction of the well for maintaining the long term flows. There is also a similar discussion about the underlying geologic formations and that there is water there.

Esseks commented that if this area is so blessed with appropriate underlying geologic conditions so that the water is going to stay pretty good, then these folks could go home and feel much better about their futures. Hunzeker agreed that it is obviously not possible to be 100% sure; however, it is very unusual to have a follow-up study done on immediately adjacent property which shows such remarkably similar results as one that was done 30 years ago after 26 homes have been built in the area.

Support

1. Dwight Hanson, who prepared the Groundwater Report, corrected an error in the report. He had estimated that 5% of the normal annual precipitation would recharge into the aquifer. That report should have reported 2.6 million gallons per year of recharge as opposed to the 1.9 million that was in the report. Hanson reviewed a map from the State which shows that on the west edge of this area, the recharge is equivalent to 2.8 inches per year and to the east it is equivalent to 3.6 inches per year. If we use the 2.8 inches, then the actual recharge on this developed area would be an average of 5.2 million gallons per year.

Hanson stated that he did read the 1977 report and it is almost identical to his report on this proposal.

Hanson explained that he used domestic consumption of 50 gallons per person per day and he found that to be a good number. He believes this is representative of the proposed development for water use. That is 1.3 million gallons per year that this proposed development would use, so there is going to be 5.2 million gallons per year of recharge. There is actually 4 times the amount of water recharge annually in the aquifer than what would be used. There is a safety factor of 4:1. The test well was pumped for three days at 10 gpm. During that three-day period of time, that would be equal to 205 gallons per person if the entire development was built. At the end of the pump test there was no measurability in the water table.

Larson asked Hanson to respond to the letters the Commission has received stating that there is a level of salt water and not enough potable water. Hanson explained that the salt water normally occurs in the Dakota sandstone and this fine grain aquifer normally does not have salt water in it. If you drill down deeper, you will find the salt water. There is enough good water above the salt water level. There should not be a depletion on available groundwater because the rain recharges the aquifer. As the aquifer fills up, it has

to go some place and that is where you see stream flows and streams. If you use 25%, those discharges may reduce a little bit but you should not see much difference in the water table.

Larson wondered why the wells would have been built too deep and got into the salt water. Hanson stated that it is difficult to complete a well in this fine sand. A lot of contractors don't have the capability of completing a good well and they go down to the next water formation. If you do not have the expertise, you get salt water. Proper construction will keep them from pumping stand.

Esseks noted a lot of testimony from owners in the area who have wells that are not functioning correctly, and they are located fairly close to this proposed site. How can we explain the contradiction here? Hanson said he would make an educated guess that it is probably either a problem with well construction or the age of the wells. A lot of these wells are 30 years old and the average life of a well is 25. They are probably beyond their expected life expectancy and may have had very low maintenance. Maybe the pump is wearing out.

Esseks suggested that if the Planning Commission were to approve 3-acre lots, and if that well is not functioning in 25 years, is there enough space to try an alternative site? Hanson advised that you only need to drill 5 feet away from the existing well.

Taylor expressed concern about all of the letters with problems with their wells. He would think that the neighbors would be conscientious enough that they would make sure that they had good water supply if there is any way of getting it. Hanson suggested that letting the lawn go dormant is the kind of thing a prudent person does if they have a relatively low water supply. Many of them are low capacity wells. They started out at 5-10 gpm. Almost everyone had a very low capacity well and they still do 30 years later. Taylor is surprised they would not redrill and put in another well to get a higher capacity. Hanson suggested that there are probably only three or four contractors in the state that can drill a well in this area. It is a matter of expertise.

Francis referred to two letters, one from 5220 N.W. 105th, indicating that their well became salty in 5 months; they replaced and dug a new and smaller well to get potable water. How can a well go from good unsalted water to salt four months later? From the information contained in that letter, Hanson would guess that they had a higher capacity well that went salty, and then they had to drill a shallower well with less capacity. The first well probably drilled down into the Dakota sandstone, which is known to have salt in some locations, and if you pump it hard it can become salty. He would guess that the original well was drilled in Dakota sandstone, and that the well they drilled later is lower capacity and is properly in the upper sand.

Francis referred to a letter from 11405 W. Fletcher Avenue indicating that they had 11 gpm when they purchased their home and they are now producing only 8.5 gpm (1994 - 2007).

Hanson offered that in order to know what the well is doing, you have to do a pump test. Maybe the water line has filled up with rust or something.. You can't just check to see how much water you get.

Francis finds it hard to believe that 20+ people who have lived in this area for a long time and who are seeing decreased capacity had people putting in wells that didn't know what they were doing.

Larson inquired whether 10 gpm is adequate. Hanson stated that "yes, it is adequate for normal use". There are ways to deal with low yield wells. All of the test wells drilled on this property have relatively good yields (8 gpm) and there is adequate recharge in the area.

Gaylor-Baird noted that the NRD suggests that the groundwater supply is marginal; she also noted that the groundwater report assumes lawn watering won't be allowed in this development. Hanson explained that this was considered in his report because that is what he was told to assume. Because there is not an abundant water supply, it is assumed that the lawns will not be watered.

2. Jesse Korus, water resources specialist with the Lower Platte South NRD, stated that the NRD is taking no position on this proposal but he wanted to comment on the groundwater situation. He advised the Commission that the NRD has received phone calls seeking assistance with water issues and reports of wells going bad, etc., over the past few years in this same general area. The wells in this area in which the residents have experienced issues with their water supply is in the same geologic unit as the proposed development. If you construct the well properly you can extend the life, but it does take a very experienced and very knowledgeable well contractor. Generally, from the NRD's standpoint, they would be concerned about the long term water supply and the withdrawals and whether they balance with the recharge. The NRD does not know the effect of 22 wells with those assumptions, but there was an attempt to make that water balance equation. If this development is approved, potential future residents need to be made aware of these issues.

Esseks asked Korus whether he is aware of any research of how much rural land should be developed given the water capacities and given the absence of a rural water system. Has the NRD or any other agency in the state addressed this issue that maybe counties are allocating too much land for acreages in their Comprehensive Plans? Korus stated that many water managers across the country would like to know how much development a particular aquifer can sustain. There are so many factors involved. Understanding how much water is actually being withdrawn is difficult to determine. There is a lot of research going on across the country about sustainability. There are many modeling efforts going on across the state right now. In this part of the state, some studies have been initiated to begin the data collection process that would be necessary to properly model and water budget for this area. You can do site specific studies, but as far as detailed American modeling, we don't have that for this area.

Carroll inquired whether the decline in the water in the lake affects the water table. Korus did not know what the water tables have done at Pawnee Lake, but he suggested that in this area, the water table probably affects the level of the lake rather than the level of the lake affecting the water table.

Esseks asked Korus whether he could confirm that 22 additional residential wells can be sustained without adversely affecting the neighbors. In terms of the water budget the applicant presented, Korus would agree. If you want more assurance, then you would have to invest more in getting more information. They have done a water budget analysis which is nice to see. But certainly they could do more to get a better handle on that question.

3. Allen Moser, Moser Well Company, Hickman, Nebraska, stated that there are so many wrong definitions of ideas and wells and aquifers, and it is all because of the media. They don't get accurate information. For example, if you had an EKG done today, can you assure me that you would be alive tomorrow morning? The problem with wells and aquifers in this area where we have fine sands is that it takes more time to make the well in this kind of material than to the west of Lincoln. Over by Walton, there is a good sandstone aquifer that produces lots of water. When you get to the northwest part of the county, the sandstone down deep has lots of water but it is salty. There is no correlation between the deeper sand that has salt water in it and the upper sand.

Moser agreed that the 1977 and 2007 reports are very similar, showing the same type of sand underneath the earth. Water cannot transfer through this fine sand. It doesn't mean that the water table is going down, but that it can't travel through horizontally as fast as you take it out. Water isn't going to run out of the aquifer. It just can't go through there as fast. The pressure has nothing to do with the well. The pump that you put in the well is what makes the pressure. A lot of times it is maintenance.

Opposition

1. Dr. Jeff Johnson, Olsson Associates, registered professional geologist specializing in groundwater, with a focus on finding water, testified he opposition. He has reviewed the groundwater report and he suggested that the Commission "better listen to the residents". That is your real case scenario. As far as the monitoring levels, the closest well was 300 feet away. Pumping 8-10 gpm, there is no way you are going to see draw down in a well 300 feet away. You have got to simulate the buildout condition when doing an aquifer test. He urged that this aquifer be re-evaluated to the buildout scenario. This is a very complex geologic setting. You have sand and you have clay, so laterally you are going to have changes in the hydro geology.

Johnson typically uses 10 gpm as a minimum demand. The report talks about 50 gallons per day per capita, but the industry standard is 100-120 gallons per day per capita. He agrees that it is a very tight aquifer. He would guess that Pawnee Lake is not going to have any influence on this property.

Johnson suggested that the key is to test the aquifer to a buildout scenario. A 1992 study by the Corps of Engineers indicates this area is going to have tough water conditions. He has done a lot of work across the state with similar conditions and he believes this will be a tough condition.

Larson noted that the report indicates that the new wells will not have any effect on the existing wells. Johnson does not believe the report substantiates that finding, in his opinion. You need to design a test that evaluates a buildout scenario. The monitoring wells need to be closer. You need to do a buildout scenario where you will have wells possibly 50 to 100 feet away running simultaneously.

Cornelius asked for Dr. Johnson's professional opinion regarding the testimony the Commission has heard that the problems the owners are experiencing may be due to maintenance issues. Johnson concurred that could be true, but how do you have that many?

Esseks believes the Commission now has an ethical problem. The applicant has purchased land with the expectation of development because the Comprehensive Plan shows this designation. But things change. How can we judge whether these 22 lots on this bigger parcel could make the lifestyles of the adjoining owners diminish because of the amount of water? The Planning Commission's role is to judge that issue because ordinarily this person gets his rezoning. Johnson suggested that if more testing is done on something closer to the buildout scenario, that would provide the information. He believes there will be problems because they are only pumping the bottom of the aquifer to reach their 8 gpm. They will be pumping air at some point. You need to take it on a step-by-step basis. You start evaluating and if you see influences that indicate there are problems, you keep evaluating them. Johnson suggested that where there are lots adjacent to existing residences with wells, the developer should put a monitoring well in between those two and put a test well in there to see if there is going to be an impact.

2. Kelly Klenke, 9401 W. Fletcher, testified in opposition. She built her property 13 years ago. She works for the Soil Conservation Service and analyzes data to help the agency determine when conservation needs to be addressed across the state. Professionally, she believes the water resources of the area will not continue to sustain intense development as being proposed. The water problems are creating a scenario in her household where they have to use reverse osmosis to get usable water on a daily basis. The problem in using reverse osmosis is the amount of wastewater produced in order to get usable water. The average amount of water waste that is produced is three gallons of wastewater for every one gallon of usable water. She is concerned that her well that averages 7–9 gpm

may not be able to sustain that. Septic systems cannot handle the vast amount of wastewater put into systems from reverse osmosis.

Professionally, her concern for this area is sustainable water. Utilizing GIS data, she has found that there is a definite pocket under the area of the proposed development and it is reasonable to assume that future wells will be drilling into and pulling from this same pocket. Well issues will continue to occur at possibly even greater rate.

Klenke does not believe the groundwater report is adequate to reflect what could possibly happen to the development of future residences and current residences in this area. She questions rainfall being able to recharge this water because the report was based on 28" of precipitation per year. There have only been 6 years in the past 20 years where this area has been at or above 28" per year.

Klenke suggested that the spatial distribution and timeframe of these properties need to be considered. There are a lot of parcels in this area that are at 3 to 5 to 10 acres; however, the majority of these parcels were divided prior to the time when the 20-acre parcel size was put into place. This 20-acre basis needs to remain in place.

Klenke requested that this application be denied based on an inadequate water report and the impact of future wells on the same pocket of water. Allowing more than three homes may create a scenario where homes will not have water.

Klenke also pointed out that on September 26, 2007, at the hearing on Fox Trail Estates, Mike DeKalb stated that in Lancaster County, water is a continuing point of discussion on rural acreage development. The southeastern part of the county is covered by Lancaster County Rural Water District #1. The other portions of the county do not have that option. The water quality and quantity tends to get worse in the northwestern part of the county.

3. Scott Willet, 5768 N.W. 126th Street (built in 1920), purchased the property 10 years ago in 1997 with a well that pumped approximately 8 gpm. The well had mechanical problems a few years later and they had it repaired and everything was checked. They raised the well shaft a few inches, which cut back the sand but cut down the gpm. He does not water his lawn. He has worked for Natural Resources Conservation Service for 33 years. He provided the Commission previously with a report about various soil conditions. Each soil on this site is listed as highly limited for septic tanks. This means soils in this area can only absorb discharge from septic tanks at a certain rate. When the lots are this small each well field can overlap each other. The soil is the system, not the tank. If the soil does not absorb the effluent the system does not work. This is not the correct soil without modifications. He also testified about contamination. He pointed out that every one of the items in the groundwater report are an assumption. It is probably a standard report. Willet refutes the statement in the report that "The rate of recharge will increase due to increase of vegetation during spring and fall". This is absolutely not true. Any agronomist will tell you that. Prairie plants use as much water as any other plant.

4. Stephanie Dostal, 11901 Trails End, which is adjacent to the proposed development, testified in opposition. Approval or denial of this application will affect her family and property more than anyone else. Water is a concern. When they moved into their home over three years ago, they were not aware that there were water problems in this area, but they quickly understood that water was not something they could take for granted. 22 additional wells is just too many. The design of this development is also an issue. The setback from her property line to the east is just 15'. The waivers being requested will create the street just east of her property. This does not fit into her idea of rural living. She does not see the wisdom in placing additional homes and families that near to public hunting. To date, Mr. Jahde has not been a good neighbor. When drilling his test wells, he did not address the rainwater runoff from his property onto her property, and this issue remains unresolved. There are not culverts on her property, which was built in 1979. For this project to work, she gets the feeling that the culvert is going to be required on her property. Just because this land is designated AGR in the Comprehensive Plan does not mean there is an adequate or sustainable supply of water.

5. Lynnette Nelson, 11403 W. Fletcher, testified in opposition. She built her home on 20 acres 18 years ago. She is already experiencing a fragile water system and is concerned with the density of this proposal. Adding 22 more wells will bring the total to 51 wells. At what point is it enough? She and her neighbors are very concerned about approving this development being a precedent. Areas without rural water desperately need the current AG zoning to remain in effect. Water in this area should be considered marginal in terms of groundwater supply. The residents in this area should all have abundant water and they do not. She suggested that the proposed layout looks like something that belongs in town. There is nothing unique about the proposed development. "Don't create villages that have no infrastructure to support themselves". If we lose our water, our homes are worthless. You cannot assume that rural water will come running to help 50 neighbors who have no water. Nobody can guarantee water.

Nelson and her neighbors are also opposed to the waiver of the setback. Game and Parks wants to provide a safe area for hunters. Public safety should be at the forefront.

Nelson advised that Sherry Gregory tried to develop land directly across the road and they could not find adequate water for those homes.

Approximately 45 people stood in the audience in opposition.

6. Brad Frink, who owned 20 acres directly to the east, testified in opposition. Twenty-five years ago, there was a water-fed spring off this 80 acres and it used to keep the creek full of water for 10 years. The creek has been dry for the last 10 years.

7. Pat Conover, 11405 W. Fletcher, testified in opposition. He has lived on his property since 2004. When he moved in, he went straight to the hydrant outside to test his well. He let it run 15 minutes so there is no pressure tank action. It was running 10-12 gpm. He ran

the same test after two homes directly to the east were built, and his water had dropped. The wetlands are dry. He has his life savings in his home.

8. Merle Wilken, 5401 N.W. 112th Street, testified in opposition. He has lived there 37 years and is on his second well. The first well got plugged with sand. It started at about 12-13 gpm and it is now down to 8 gpm. They unsuccessfully tried to find water on his neighbor's property. He is fearful that he will have a home with no water and no value with the addition of 22 new wells.

Staff questions

Esseks was impressed with the Dr. Johnson's testimony that we could have a more rigorous test of this property. He's talking about simulating a buildout scenario. Do we have any precedent for this? Mike DeKalb of Planning staff stated no. Esseks wondered whether there is any reason the Commission can't require it. DeKalb indicated that the County subdivision regulations provide that we can ask for test wells up to 1 per 10 acres. It also provides for a groundwater report satisfactory to the Health Department, which is what the Planning staff has relied upon in making its recommendation. The most we have required to this date have been wells on the perimeter of the subdivision when the Health Department has determined there is inadequate information. The staff has not required one per lot for full buildout or one per 10 acres to this date. Based on information provided by the applicant, the Health Department does conclude that there is adequate quantity and quality of water.

Gaylor-Baird indicated that she feels incredibly sympathetic to the neighbors and is concerned about the impact, but is also concerned about the message the Commission sends to developers if we have this designation of AGR in our Comprehensive Plan, but on a case-by-case basis we flip that at the last minute. What can be done about this dilemma? Hartzell offered that in general, the land use plan is there as a guide to help make decisions about appropriate land uses. It is not a mandate. The staff does use the land use plan to support its recommendations to the Commission. It often happens that we have property that we were showing as residential and it receives a commercial zoning. The Planning Commission is not tied to the Comprehensive Plan designation. If this becomes a habit, perhaps we need to go back and look at our land use plan and decide whether we have the AGR zoning in appropriate places.

DeKalb added that the land use plan is a guide and we presume that is where we start. On occasion, staff has disagreed with the designation if there are significant issues, but our starting point is the Comprehensive Plan as a policy.

Carroll asked staff to respond to the applicant's motion to amend. Hartzell stated that as far as the culverts on other property (Condition #3.1), staff is not sure what the history of those driveways were. Perhaps the driveways were constructed without an access permit from the County. You could ask the developer to require the culverts if you felt that the adjacent property would actually increase the amount of drainage.

Condition #3.5 requires the extension of the street to the east limits of the property. Right now, the National Wetlands Inventory does not show any wetlands in the area where we are proposing that extension take place. It is a waterway but it is not unthinkable to cross waterways. Staff believes that the connectivity is important enough that they should show that connection to the property to the east.

Condition #6.2 is the waiver of the setback from the public lake. After initial conversations with the developer and the engineer, there was a sample draft of the realignment of Trails End to the south. The staff was asking that they move Trails End slightly to the north to provide buildable lots if the property developed to the north. If that is done as we requested, then the lots to either end actually have a much greater buildable depth. There are three lots where Trails End stays to the south that would still be 75' deep. Outbuildings are allowed in the 600' setback. The requirement is no dwelling unit or occupied buildings or animal feedlots, but you can have sheds and storage buildings within that area.

Esseks suggested that the Planning Commission could require seven wells - one for every 10 acres. Would it be appropriate to have them be located as close as possible to existing residential uses? Hartzell suggested that to be a decision to more appropriately be made by the groundwater geologist.

Response by the Applicant

Hunzeker urged that these residents will not use 100 gallons per day. They are not at home all day every day. They would more likely use 50 gallons per day.

Hunzeker also noted that the consultant from Olssons indicated that we can't influence a well 300 feet away. So, how can we influence a well one-fourth or one-half mile away? This developer drilled a well to be sure they were monitoring a well between the one they were pumping and the nearest neighbor, and there was no impact on that well.

As far as reverse osmosis, Hunzeker suggested that the correct ratio is that there is one gallon wasted per three gallons produced of good water. The real question here is at what point do you require a developer of a rural subdivision to guarantee there will never ever be an impact on anyone? No one has done that among the people who are here. None of them guaranteed their neighbors would not have any influence from them drilling a well. Since 1977, the testing that was done for Pawnee Estates has verified that the drilling of 30 wells in that section surrounding that area has not had any impact on those wells in Pawnee Estates.

Hunzeker also pointed out that rifle hunting is not allowed at Pawnee Lake.

As far as the photographs with respect to the drainage, Hunzeker pointed out that the tracks that show up are apparent because they go through an area of grass that was depressed when the trucks went in there. That area actually drains across the applicant's site today onto the Dostal property and the fact that they don't have a culvert contributes to the fact that it pools in their yard. By putting in the road and the ditches on either side that will be required, this developer will be improving that situation. And by putting something other than row crops on that property, this developer will also be reducing the runoff.

Hunzeker reiterated that no one can guarantee the existence of anybody's water supply in perpetuity. If that is a standard that the Planning Commission wants to apply, then we might as well go back to the drawing board and simply say we are not going to allow any more houses to be built outside the city of Lincoln. What you have to do is assess the information that you have been given. We have two professional engineers and one professional geologist who have told you they believe we have an adequate water supply to sustain this development. Your Planning staff, the Health Department and the NRD met on September 21st, and agreed that there is adequate water here to sustain this development. Hunzeker stated that his client intends to drill a well on every single lot before the lot is sold. If the Planning Commission wants to make that a requirement, he would not object because the developer will do that anyway. This developer has a high degree of confidence that there is enough water to sustain this project. His client has spent a lot of money on consultants already and he will spend more as he goes forward to guarantee there is a water supply for his buyers. This is an area that has been designated for this purpose. It would be arbitrary for the Planning Commission not to approve this change of zone.

COUNTY CHANGE OF ZONE NO. 07052
ACTION BY PLANNING COMMISSION:

October 24, 2007

Francis moved approval for purposes of discussion, seconded by Cornelius.

Francis is not comfortable with approving the change of zone and not comfortable with adding 22 homes on the property.

Esseks commented that he began learning about land use in rural Lancaster County six years ago, and he was told there is a water problem out there. The issue is now in our hands. Do we just say that maybe this is now a crisis point in public policy and institute some better testing procedures? Or that there be some effort to simulate total buildout? If this were in the eastern part of the county it would not be a problem. But this is a problem. It has come to a crisis point right here.

Cornelius observed that the Planning Commission has been confronted with the Comprehensive Plan and the fact that it suggests this is an appropriate place for AGR; however, it's also the case that we are allowed to deliberate on that with regard to the present state and conditions on the site before we make a decision to change the zone. That is why we're here. That's why the staff can't just look at the Plan and say "yes" because it is in the Plan.

Taylor is interested in the opportunity for the developers to develop that area, but he also wants to satisfy the needs of the residents, so this is very painful. He would consider reducing the number of lots. He just does not think this area can take 22 additional residences and 22 wells.

Larson agreed. He thinks there needs to be some sort of compromise. He thinks 22 lots and 22 new wells is stretching it.

Esseks pointed out that the Commission can require a total of 7 test wells. There are three adjoining properties to the west and maybe four adjoining properties on the east. Hopefully the engineers could tell us where to place the test wells and then see if they have an adverse effect on the adjoining existing residential properties. Groundwater is very complex. The interests of the adjacent property owners have to weigh heavily, but so does the interest of the developer. His preference would be to require more rigorous testing before a decision is made on the number of lots.

Carroll reiterated that the Comprehensive Plan is a guide – it is what we look to, but it is not exact. The Planning Commission is charged with making decisions like this. It is important to realize there is a burden in Lancaster County besides the water issue. At this time, it would be wrong for us to add 22 more acreages in this area, let alone just the water problem.

Gaylor-Baird suggested that if this is a trend, it might make sense for the Planning Department to work to identify certain critical areas and bring them to the public's attention so we don't go through a month of trying to make a case and come to this kind of head. It seems like it has to be frustrating for everyone in this room. Perhaps there needs to be some change to the Comprehensive Plan. If there is something that Planning can do to help us avoid causing a greater frustration for developers and residents, she thinks it should be pursued.

Motion for approval failed 0-7: No one voting 'yes'; Taylor, Esseks, Larson, Gaylor-Baird, Cornelius, Francis and Carroll voting 'no'; Moline and Sunderman absent.

Cornelius moved to deny, seconded by Francis and carried 7-0: Taylor, Esseks, Larson, Gaylor-Baird, Cornelius, Francis and Carroll voting 'yes'; Moline and Sunderman absent. This is a recommendation to the Lancaster County Board.

COUNTY SPECIAL PERMIT NO. 07039

ACTION BY PLANNING COMMISSION:

October 24, 2007

Taylor moved to deny, seconded by Francis.

Taylor does not believe that 22 homes can be properly sustained in this area. The Planning Commission has the responsibility to do what we can to protect our constituents in our community.

Motion to deny carried 7-0: Taylor, Esseks, Larson, Gaylor-Baird, Cornelius, Francis and Carroll voting 'yes'; Moline and Sunderman absent. This is a recommendation to the Lancaster County Board.

COUNTY SPECIAL PERMIT NO. 07040

ACTION BY PLANNING COMMISSION:

October 24, 2007

Cornelius moved to deny, seconded by Gaylor-Baird.

Taylor empathized with the developer, but he believes they should come up with something that is going to be more amenable to the neighbors.

Cornelius stated that he is similarly uncomfortable. Here, the Planning Commission has been put in an uncomfortable position because we are sympathetic to both parties. Reasonable doubt has been introduced as to the adequate supply of water. When there is reasonable doubt, he feels compelled to go with a more conservative approach.

Motion to deny carried 7-0: Taylor, Esseks, Larson, Gaylor-Baird, Cornelius, Francis and Carroll voting 'yes'; Moline and Sunderman absent. This is a recommendation to the Lancaster County Board.

USE PERMIT NO. 04005A

TO REDUCE THE REAR AND SIDE YARD SETBACKS

ON PROPERTY GENERALLY LOCATED AT

N.W. PEMBERLY LANE AND BARONS ROAD.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: October 24, 2007

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

Ex Parte Communications: None.

Staff recommendation: Conditional approval.

Staff presentation: **Tom Cajka of Planning staff** explained that this proposed amendment is to reduce the setbacks in the rear yard and the side yard on an approved use permit. The request on the rear yard setbacks is from 30 feet to 25 feet, and from 30 feet to 20 feet. The request on the side yard setbacks is from 7.5 feet to 5 feet. All of the lots are for single family residential. A similar request to reduce the rear yard setback was granted in July of 2006 for nearby properties; however, that request did not include the side yard. The proposed setbacks are the same as the setback requirements in the R-3 zoning district. The property is zoned O-3 Office Park. The proposed setbacks will match the setbacks on abutting property. These lots are roughly 120-122 feet in depth, so 20% would be 24'. They are asking for 25'. The reason they are asking for a lesser rear yard is because the lots back onto commercial sites and an outlot, and commercial properties have a 40' setback.

Larson observed that the homes would be pretty small. Cajka suggested that it looks like the lot area would be anywhere from 6,500 up to 10,000 sq. ft. Most of the lots are around 50 feet x 120-122 feet deep.

Proponent

1. Dan Klein, the builder and developer, explained that this will result in the same setbacks as the adjacent single family homes and these same setbacks were approved in July for the townhomes immediately to the south. He acknowledged that they should have asked for these waivers when the original use permit was proposed. He believes that this request is fully supported by the individuals for whom he has built homes in the neighborhood.

The ranch homes will be 1,361 sq. ft., and there will be two 2-story homes of 1,800 and 2,200. The two-story homes are well within the setbacks. These are really narrow lots, varying from 46 to 52 feet wide.

The record consists of one letter in support from Chad Cederberg, owner of the property at 5235 N.W. Pemberly Lane.

There was no testimony in opposition; however, the record consists of one letter in opposition from Katie Bugbee of Bugbee Homes.

ACTION BY PLANNING COMMISSION:

October 24, 2007

Larson made a motion to approve the staff recommendation of conditional approval, seconded by Cornelius and carried 6-0: Esseks, Larson, Gaylor-Baird, Cornelius, Francis and Carroll voting 'yes'; Moline, Sunderman and Taylor absent. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 07045,
FOR A WIRELESS FACILITY
ON PROPERTY GENERALLY LOCATED
NEAR S. 70TH STREET AND SALTILLO ROAD.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: October 24, 2007

Members present: Esseks, Larson, Gaylor-Baird, Cornelius, and Francis; Carroll declared a conflict of interest; Taylor, Moline and Sunderman absent.

Ex Parte Communications: None.

Staff recommendation: Conditional approval.

Staff presentation: **Brian Will of Planning staff** indicated that this item would have been on the consent agenda had it not been delayed two weeks ago. This proposal is for a 198' tall wireless facility accommodating up to four carriers.

Proponents

1. Ralph Wyngarden, Faulk & Foster, Grand Rapids, MI, presented the proposal as the site acquisition, zoning and permitting consultant for the applicant, Alltel Communications. Alltel is committed to maintaining high quality wireless service throughout Lincoln. This particular area is predominantly agricultural. Alltel's goals include extending coverage to fill in some of the gaps in the lower areas. In addition, it is Alltel's goal to share call traffic from another one of its sites to the northwest. The southeast sector currently serves some dense residential development. This site will split that neighborhood in half. The final goal is to create a dominant signal in this area to serve the south beltway. This part of Saltillo is pretty much the highest point.

Wyngarden suggested that the distance of the facility from roads and existing residences will help minimize the impact. Most of the immediate surrounding area is farm ground. Residences are fairly distant. Alltel is agreeable to screen the entire perimeter. It is a monopole design with no guy wires. By limiting the height to 190', the tower does not have to be lighted. They anticipate that this location will be a focal point for other providers.

Opposition

1. Mark Hunzeker appeared on behalf of the Cyril O'Brien family, the property owner to the east. His clients believe that this tower would be more appropriately located closer to the proposed south bypass rather than closer to the urban development which is in process of taking place just to the north and what we believe is the likely highest and best use of his clients' property, i.e. acreage development. His clients would prefer to see the facility located in an area that is more likely commercial and closer to the bypass. There is higher ground south of the bypass route, which would move this facility about 1/4 mile.

Gaylor-Baird asked staff to respond to the thought of moving the tower closer to the bypass. Will responded, stating that there are no other facilities within ½ mile, so this location meets the requirements of the ordinance. The testimony by the applicant stated that they had evaluated other locations. Relative to taking this tower and moving it ½ mile south, that may well be a suitable location; however, the staff did not investigate that option because the proposed location was suitable from the standpoint of the ordinance. In the absence of any real conflict or negative impact, the staff did not evaluate that other location. Will was not sure what commercial area Mr. Hunzeker was describing. The future land use map shows agricultural land uses everywhere beyond this site to the south. The property is in Tier II, which tells us that the city does not intend for services to be out here for 25-50 years. Based on the information we have in front of us, the staff recommends approval.

Will showed the nearest interchange on the south beltway at the map. Larson believes that if there are going to be interchanges there will probably be commercial development.

Response by the Applicant

Wynngarden suggested that it is Alltel's speculation that this area is as good as any other future commercial development because Saltillo Road is the main road running east and west. That is the closest arterial to the proposed beltway. Even if not commercial, there will at least be some commercial services. Right now everything is zoned AG. All of the parcels are on the same footing with each other. This particular location has the least impact. Any movement to the west would have a greater impact on existing residences. There are more residences along the east side of 82nd Street. We are trying to avoid the low areas. This particular location is the best balance taking into account what we need from an engineering perspective.

Alltel is not aware of any development proposed for the adjacent parcel. Alltel selected this parcel because they knew it would comply with the Comprehensive Plan and the ordinance requirements.

ACTION BY PLANNING COMMISSION:

October 24, 2007

Larson made a motion to approve the staff recommendation of conditional approval, seconded by Francis and carried 5-0: Esseks, Larson, Gaylor-Baird, Francis and Cornelius voting 'yes'; Carroll declaring a conflict of interest; Taylor, Moline and Sunderman absent. This is final action unless appealed to the City Council within 14 days.

There being no further business, the meeting was adjourned at 6:30 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on November 7, 2007.