

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, September 28, 2016, 1:00 p.m., Hearing Room 112 on the first floor of the County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE Michael Cornelius, Tracy Corr, Maja Harris, Dennis Scheer, Lynn Sunderman, and Ken Weber; (Chris Hove and Jeanelle Lust absent). David Cary, Steve Henrichsen, Tom Cajka, Brandon Garrett, Rachel Jones, George Wesselhoft, Brian Will, Geri Rorabaugh and Amy Huffman of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission meeting

Acting Chair Dennis Scheer called the meeting to order and acknowledged the posting of the Open Meetings Act in the back of the room.

Scheer requested a motion approving minutes for the regular meeting held September 14, 2016. Motion for approval made by Cornelius; seconded by Harris and carried 6-0: Cornelius, Corr, Harris, Sunderman, Weber and Scheer voting 'yes'; Hove and Lust absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

September 28, 2016

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

The Consent Agenda consisted of the following items: **COMPREHENSIVE PLAN CONFORMANCE NO. 16007, CHANGE OF ZONE NO. 16025, COUNTY CHANGE OF ZONE NO. 16026, COUNTY PRELIMINARY PLAT NO. 16004, COMBINED SPECIAL PERMIT USE PERMIT NO. 11I, SPECIAL PERMIT NO. 1013K, and COUNTY SPECIAL PERMIT NO. 16044.**

The following items were removed from the Consent Agenda and had separate public hearing: **Change of Zone No. 16025; County Change of Zone No. 16026; County Preliminary Plat No. 16004, Special Permit No. 1013K and County Special Permit No. 16004.**

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

Note: This is final action on **Comprehensive Plan Conformance No. 16007** and **Combined Special Permit Use Permit No. 11I**, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days.

Scheer called for Requests for Deferral.

COMPREHENSIVE PLAN CONFORMANCE NO. 16005
TO REVIEW AS TO CONFORMANCE WITH THE 2040 COMP PLAN THE REQUEST
TO DECLARE A CITY-OWNED PARKING LOT SURPLUS FOR ZOO EXPANSION,
ON PROPERTY GENERALLY LOCATED AT 2847 A STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: **September 28, 2016**

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

There were not ex parte communications disclosed on this item.

Corr moved for deferral of Comprehensive Plan Conformance No. 16005 to the October 26, 2016 meeting; seconded by Cornelius and carried 6-0: Cornelius, Corr, Harris, Sunderman, Weber, and Scheer voting 'yes' (Hove and Lust absent).

SPECIAL PERMIT NO. 16009
FOR CONSTRUCTION OF A CARPORT ON PROPERTY GENERALLY LOCATED AT
1801 KINGS HIGHWAY.
PUBLIC HEARING BEFORE PLANNING COMMISSION: **September 28, 2016**

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

There were not ex parte communications disclosed on this item.

Corr moved for deferral of Comprehensive Plan Conformance No. 16005 to the November 9, 2016 meeting; seconded by Cornelius and carried 6-0: Cornelius, Corr, Harris, Sunderman, Weber, and Scheer voting 'yes' (Hove and Lust absent).

There was no public testimony on either of these items.

CHANGE OF ZONE NO. 16025
FROM AG (AGRICULTURAL) TO AGR (AGRICULTURAL RESIDENTIAL)
ON 2.85 ACRES GENERALLY LOCATED AT S. 60TH ST. AND WITTSTRUCK RD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: September 28, 2016

Staff recommendation: Approval.

AND

COUNTY CHANGE OF ZONE NO. 16026
FROM AG (AGRICULTURAL) TO AGR (AGRICULTURAL RESIDENTIAL)
ON 11.48 ACRES GENERALLY LOCATED AT S. 60TH ST. AND WITTSTRUCK RD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: September 28, 2016

Staff recommendation: Approval.

AND

COUNTY PRELIMINARY PLAT NO. 16004 - SILVERHAWK ESTATES
FOR 23 LOTS ON APPROXIMATELY 80 ACRES
GENERALLY LOCATED AT S. 60TH ST. AND WITTSTRUCK RD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: September 28, 2016

Staff recommendation: Conditional Approval.

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

There were not ex parte communications disclosed on these items.

Staff Presentation: Tom Cajka of the Planning Department stated there was a letter in opposition received for these items. The primary concern was additional dust created by traffic. The plat is for 23 lots located just south of Wittstruck Road. This project is unique because the subdivision is under three different jurisdictions with 75% within Roca's 1-mile jurisdiction, a small triangular piece along the north within City of Lincoln 3-mile jurisdiction, and the rest in the County. As a result, there are two Change of Zone applications – one will go to City Council and the other to County Board. Of the 23 lots proposed, only portions of a few lots are outside of Roca's jurisdiction, so Planning Commissions authority only pertains to those areas. The area will be served by rural water. Roca approved the project on September 12, 2016.

Proponents:

1. Mike Eckert, Civil Design Group, came forward on behalf of the applicant to state the majority of this area was approved for acreages by the Planning and Village Boards of Roca. Their growth area is primarily to the north; this is a little farther out, but was still deemed appropriate as there are acreages nearby, such as The Preserve at Cross Creek done in the mid-2000s. The proposed preliminary plat includes connections to the south and it is fair to assume that the land between will be rezoned AGR at some point, and then a connection can be made to The Preserve which will provide an additional route from S. 68th Street. If acreages filled in to the west, connections could be made there, as well. For the time being, traffic will use Wittstruck. Roca did not express concerns about the increased traffic generation.

Corr asked how many more trips per day might be generated by the new 23 lots. Eckert replied that the typical expected amount is 9-per-household, so it could be 180 to 190 trips. It is around 40 now, so it is an increase, but still below the County requirements to support paving.

Cornelius asked if they had a chance to address the letter in opposition. Eckert said the letter was sent directly to Planning so they have not had a chance to reply yet.

There was no testimony in opposition.

CHANGE OF ZONE NO. 16025

ACTION BY PLANNING COMMISSION:

September 28, 2016

Cornelius moved approval; seconded by Corr.

Cornelius said his comments will address all three related items. This project looks complicated on paper due to the three jurisdictions. The jurisdiction that covers most of the area is in favor of the design, so he is inclined to agree with their assessment. He is sympathetic to the concerns in the letter, but the County Engineer says the road can support this increase.

Corr stated she feels her hands are tied since Roca made their decision. She feels the plans are acceptable if Roca approved.

Scheer stated this action is necessary to accommodate the orderly and appropriate residential growth area and the project is consistent with the goals of the Comprehensive Plan. He will support the project.

Motion carried 6-0: Cornelius, Corr, Harris, Sunderman, Weber, and Scheer voting 'yes' (Hove and Lust absent).

COUNTY CHANGE OF ZONE NO. 16026

ACTION BY PLANNING COMMISSION:

September 28, 2016

Harris moved approval; seconded by Cornelius and carried 6-0: Cornelius, Corr, Harris, Sunderman, Weber, and Scheer voting 'yes' (Hove and Lust absent).

COUNTY PRELIMINARY PLAT NO. 16004

ACTION BY PLANNING COMMISSION:

September 28, 2016

Harris moved approval; seconded by Cornelius and carried 6-0: Cornelius, Corr, Harris, Sunderman, Weber, and Scheer voting 'yes' (Hove and Lust absent).

SPECIAL PERMIT NO. 1013K

FOR OPERATION OF A KENNEL FACILITY WITH AN OUTDOOR AREA

GENERALLY LOCATED AT 5930 S. 57TH STREET.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

September 28, 2016

Staff recommendation: Conditional Approval.

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

There were not ex parte communications disclosed on these items.

Staff Presentation: Brian Will of the Planning Department stated a letter was submitted from the Trade Center West Owner's Association who would like assurances from the applicant that this business will not be a nuisance to others in the Trade Center. The area is south and west of 56th and Old Cheney. The kennels are located in the area just north and west of the Waltz Road access.

A kennel with an outdoor area is permitted in the H-4 area. There is a limitation that only three animals be allowed outside at one time, so the special permit has been requested to increase that. The kennels will be at the back of the building and will have to meet several conditions including that the outdoor area and fence must meet all setbacks, the area must be screened with an opaque fence or wall, the outdoor use is limited to certain hours, and animals will be under supervision of handlers at all times. The approval of this permit is subject to meeting all conditions. Will noted a small omission of language that was already revised in the resolution to include the kennel with the outdoor area.

Cornelius asked the location of business who wrote the opposition letter. Will said they are across the railroad tracks.

Proponents:

1. **Derek Zimmerman, Baylor Evnen Law Firm**, came forward representing the applicant. He only recently received the letter in opposition and is absolutely willing to meet with them to address concerns, though he hopes many of those concerns will be alleviated by today's testimony. This applicant is the owner of the local Camp Bow Wow, a premiere dog facility in Lincoln for over eight years. In general, these types of high-quality boarding facilities are becoming more prominent and this use has integrated well in other areas. It is important to note that dogs will be indoors the majority of the time, but obviously an outdoor area is still a necessity. The outdoor area will be located at the back of the building. Beyond that area is the railroad right-of-way and parking. The kennels will not face any businesses, only the back of the building.

Creating the outdoor kennel does involve the removal of six parking stalls, but that does not create any issue with parking requirements. There will be an opaque, high-quality fence along the outer wall of the kennel, with separation points and gates between the stalls, so this will not be a large open area, but limited spaces. There will always be a staff member, not just for the entire outdoor area, but for each smaller division. The requirement is for a 6-foot fence; this fence will be 8-feet high and attractive in appearance.

In the years they have been in operation in Lincoln, Camp Bow Wow has never received complaints about noise. Because it is also a franchise, they have their own rules and standards in place. All waste is cleaned immediately and the area is deep cleaned and disinfected four times per week. There are also live cameras so owners can check in any time during the day. When you take all that into account, this is an ideal fit. The business that expressed concerns is located closer to Old Cheney and the Raising Cane's restaurant than it will be to the kennel.

Corr asked how many dogs will be outside at once. Zimmerman said the difficulty lies in the wording "at any one time", since typically, the dogs may go out at the same time, such as first thing in the morning. The point is, the outdoor use is intermittent and not the focus of the location. The best possible screening is also in place.

Corr asked if this will be a second location. Zimmerman said the business is moving to this location.

Opponents:

1. **Diane Crawford, 135 Lakewood**, stated she is the owner of the building directly east of the proposed kennel. Cornerstone Travel is currently located there. She is glad to hear of the fence; however, most kennels around Lincoln are near the edges of town. Only Camp Bow Wow is closer to residential and business areas. This location is filled with offices. She is concerned that the value of her property could be reduced if there is a kennel right behind it.

Applicant Rebuttal:

Zimmerman stated there are a few other kennel facilities in town and some have larger outdoor areas, so adding this type of business in this type of location is not blazing a trail; it is the continuation of a successful trend.

Weber asked how many employees the kennel will have. Zimmerman said one staff member per 15 dogs. This franchise has very specific rules about staffing, construction, and operations.

SPECIAL PERMIT NO. 1013K

ACTION BY PLANNING COMMISSION:

September 28, 2016

Cornelius moved approval; seconded by Sunderman.

Sunderman said he is comfortable with this and this body has approved similar applications. The controls are appropriate for the amount of dogs. He also likes the extra buffer with the distance and the railroad tracks. The fence is high-quality and will not deteriorate over time.

Cornelius said he agreed with those thoughts.

Scheer agreed the railroad is a factor here and he appreciates the additional information about the staffing and the type of fence to be used.

Motion carried 6-0: Cornelius, Corr, Harris, Sunderman, Weber, and Scheer voting 'yes' (Hove and Lust absent).

COUNTY SPECIAL PERMIT NO. 16044

TO ALLOW A RIDING AND PRIVATE STABLE

GENERALLY LOCATED AT 6450 SOUTH 148TH STREET.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

September 28, 2016

Staff recommendation: Conditional Approval.

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

There were not ex parte communications disclosed on these items.

Staff Presentation: Tom Cajka of the Planning Department stated there was one letter of opposition received from the neighbors located directly to the north. The main concern was the amount of animal waste that could have the potential to drain into a pond located on the west side of 148th Street. They were also concerned about additional traffic and safety of vehicles.

Cornelius asked about the lot lines shown directly to the north of the site. Cajka said there are several long, narrow lots to the north.

Cajka said the site is located on 148th Street between Old Cheney and Pine Lake Roads. The stable will have an apartment with a caretaker on-site, a riding arena, and 12 barn stalls. The dwelling unit and the riding stables are both permitted uses in AG zoning. The special permit is being requested because two main uses are not permitted on a lot without the permit. In this case, the dwelling unit will be the primary use and the special permit applies to the stable. If the applicant were not requesting the apartment, they could do the stable by right. The Health Department expressed no concerns about this site but also indicated the only agency that might have oversight if there was some problem with drainage into waterways is the Nebraska Department of Environmental Quality.

Opposition:

1. James Brummond, 6401 S. 148th Street, stated there is a drainage problem with runoff of silt from the property. The water runs through a culvert under the road. He has contacted agencies to see what might be done with detention of materials on the other side of the road. The owner indicated this would be a private stable with only six horses. He has no problem with a few horses, but is not comfortable with extra horses being boarded.

Staff Questions:

Corr asked if 148th Street is paved. Cajka said yes. Corr wondered what type of volume would be needed on the street to see a turning or passing lane added. Cajka said he did not know.

Weber asked if the horses are boarded indoors at all times or if any are kept outdoors. Cajka said he cannot answer for the applicant, but the site plan shows inside boarding with the 12 barn stalls. The applicant letter said they serve around 30 riders a week, each for 30 minutes, 2-3 times per week. They work with people with disabilities offering therapeutic horseback riding on Monday evenings and Saturday mornings. That could expand with the special permit, but there are not conditions as far as hours of operation. This is a quasi-agricultural use that we feel is appropriate.

Corr asked if the applicant will be subject to the usual drainage policies. Cajka said yes, it would be the same if they came forward with a cattle operation. The only reason for this review is the apartment on the site.

Harris asked if there would be any question about the number of horses allowed if there were no apartment proposed. Cajka said that is correct.

Cornelius asked why the special permit is for the stable and not the apartment. Cajka said there is not a special permit for a dwelling. In the Codes, there is not an exemption for a caretaker.

COUNTY SPECIAL PERMIT NO. 16044
ACTION BY PLANNING COMMISSION:

September 28, 2016

Cornelius moved approval; seconded by Sunderman.

Cornelius noted that the only reason for review of this application is because there will be a caretaker and that does not address the concerns of the neighbor. If it weren't for the apartment, the stable could exist without appearing before this body. He is comfortable with the restrictions on AG zoning.

Weber said that based on what he has seen, it is possible that if the applicant puts in additional pasture, that could actually improve the runoff of silt.

Corr said she wished the applicant were present to answer questions, but she agrees with the thoughts of fellow Commissioners. Cornelius agreed he would have had questions for the applicant but there are answers within the application.

Scheer stated that the apartment is a good thing in this case and he will vote in favor.

Motion carried 6-0: Cornelius, Corr, Harris, Sunderman, Weber, and Scheer voting 'yes' (Hove and Lust absent).

SPECIAL PERMIT NO. 300C
TO ALLOW FOR RECONSTRUCTION OF A NON-CONFORMING FACILITY
GENERALLY LOCATED AT 3601 APPLE STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

September 28, 2016

Staff recommendation: Conditional Approval.

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

There were not ex parte communications disclosed on these items.

Staff Presentation: George Wesselhoft of the Planning Department stated FarmHouse owns this area south of Apple Street and southwest of Idylwild Park, including one residential property within the special permit boundary approved in 1998. The fraternity has outgrown their current building and wishes to upgrade their facility. Because the house is located within the East Campus Historic District area, the applicant submitted their ideas to the Historic Preservation Commission, who advised unanimously to approve the project with the condition that the final plans come back to them for review. Also present at that meeting was the President of the East Campus Community Organization. He indicated that the neighborhood supports the new plans, unlike an earlier proposal that generated a number of concerns. There is a request to increase parking and the staff report lists 12 conditions that must be met.

Corr asked for clarification about the discrepancy in parking numbers. Wesselhoft stated the applicant can answer the question, but the number is in the range of 80 stalls.

Corr asked if the existing building has any historical significance, adding that she assumes that would have been noted by the Historic Preservation Commission. Wesselhoft said he believes the existing building is from the 1950s.

Proponents:

1. Jeff Monzu, architect with Leo A. Daly and FarmHouse alumnus, stated the intent is to replace this fraternity facility to better suit current needs and improve technology. This also includes improvements to on-site parking and addresses more of the amenities students are looking for. The plan includes between 79-81 stalls depending on how the final plans develop. The historic district runs along the north and east. The house on the property is part of that but the current frat house is not. We plan to keep as many existing trees as possible. Creating a significant and attractive landscape buffer is a goal of both the neighborhood and the fraternity.

We ask that Condition 1.6 be stricken in order to provide a separate area along the west for delivery and garbage service. The closest apartment buildings are 50 feet away from the dumpsters and, functionally, this location works well since the kitchen is located on that side.

Cornelius asked where the dumpsters are currently located. Monzu said at the back and sometimes they have been on the east.

Harris asked about overflow parking for fraternity parties or events. Monzu said most events are for family members and there is on-street parking. People can use the lot if there are available spots since not every member will own a vehicle. Right now, some members use on-street parking so moving them to the lot will free up lots of parking for the neighborhood. We hoped to eliminate on-street parking altogether, but not even the neighborhood can control that and we will keep parking for our residents off the street and in the lot.

2. Paul Johnson, President of the ECCO Board, stated they have been working with FarmHouse for the last year and there were many working group meetings held with the building committee. We did not like that we were losing one house, but felt that the increased parking and decreasing the number of residents down to 88 both made up for that. At the neighborhood meeting, he was surprised at how few questions and concerns there were and believes that most neighbors are in favor of the project. Though they have not seen final designs, he is confident they will continue to work together to come up with a building everyone likes. His input regarding the dumpsters being located at the back is that it would increase truck traffic and possibly cause the loss of parking stalls, so the access drive is probably a good plan.

There was no testimony in opposition.

Staff Questions:

Cornelius asked how staff feels about eliminating Condition 1.6. Wesselhoft said that with the Mopac Trail 50-foot right-of-way, if the dumpsters were placed in the south part of the lot, they would be at a greater distance from the houses. If placed at the west, they will be closer to the apartments.

Sunderman and Harris both wondered if there are dumpsters used by the apartments to the west. Wesselhoft said he is not sure.

Applicant Rebuttal:

Monzu stated the purpose of requesting this permit is to make sure there is approval to go on with this scope of project. Final plans will go back to the Historic Preservation Commission for review.

Scheer asked if there will continue to be ongoing dialogue with neighbors. Monzu said they will continue to update the neighborhood and will take comments and address concerns.

Corr asked if the Planning Department is fine with striking Condition 1.6, or if it can be changed in the future.

Steve Henrichsen of the Planning Department stated it would not be removed later. The apartments to the west are 4-plexes with no rear dumpsters or service areas.

Weber asked about adding conditions to address service-truck traffic. Henrichsen said that is part of the operations and would be difficult to enforce. It would also be difficult to change later in the process. We felt the current plan with the dumpsters in a more central location and on their own property was better than moving them to the west side.

Harris asked how many parking stalls the dumpsters would take up. Monzu said he is not able to answer at this time, but it would impact the layout. It would not be anything like 10 stalls but it would be a few. Henrichsen added that the current site plan has them backing in with the same type of turning movement since there is not a turn radius for trash service. Monzu said that while it is true the trucks could back in and out, the area on the east is intended to be an entry point for residents. Plus, most of the trash generated comes from the kitchen on the west. We will follow whatever is required but, organizationally, and with the distance from the neighbors, we do not see it as a problem.

SPECIAL PERMIT NO. 300C

ACTION BY PLANNING COMMISSION:

September 28, 2016

Cornelius moved approval; seconded by Sunderman.

Corr stated she is inclined to be fine with striking Condition 1.6. Trash service can be heard in her own neighborhood and is not much of a nuisance. If the neighborhood is fine with that idea, then she would be too. She is interested to hear what other Commissioners think.

Cornelius stated he did not strike that point because he is sensitive to the people living in the apartment complex. FarmHouse should keep their services internal instead of forcing them over to the side. He is on the fence about it because it would push noise and smell over but then it is 50 feet away, and he also hears trucks in his neighborhood. He tends to be more conservative when he is on the fence about an issue.

Harris said that as someone who has lived in both urban and quieter residential areas, there is a lot more sound with a dumpster with large amounts of trash and glass bottles than a residential garbage can. She would feel more comfortable if the affected adjacent neighbor were present to comment.

Cornelius suggested they are more comfortable if they get the extra off-street parking.

Sunderman wondered how much more parking it creates. At this point, he is in agreement with Commissioner Harris that the amount of noise will be quite a bit more.

Scheer agreed and stated that because the applicant is in the early stages of design, people can come together and find a way to make this work.

Corr took the opportunity to thank the applicant for working so extensively with the neighborhood.

Weber said he understands the concerns about the noise but, when considering access for service trucks, it would be easier for them to get into an area with fewer parked cars or objects to hit.

Corr said she also considered that and suggested that perhaps the drive could go all the way to the south. She is confident there will be still be something they can do.

Motion carried 6-0: Cornelius, Corr, Harris, Sunderman, Weber, and Scheer voting 'yes' (Hove and Lust absent).

SPECIAL PERMIT NO. 16041

**FOR SALE OF ALCOHOL FOR CONSUMPTION BOTH ON AND OFF THE PREMISES,
ON PROPERTY GENERALLY LOCATED AT 252 N. 134TH STREET.**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

September 28, 2016

Staff recommendation: Conditional Approval.

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

Corr disclosed she had a conversation with Mark Jacobsen who shared his concerns and asked about testifying.

Staff Presentation: **Brian Will of the Planning Department** stated that at the last hearing questions were raised regarding conditions being placed on the application. Staff also received an additional letter in opposition from a parent with concerns about the mixing of alcohol and the discharge of firearms so near to the daycare that his son attends. **Rick Peo of the City Law Department** and **Terry Wagner, Lancaster County Sheriff** are present to answer questions.

Staff submitted a memo to Commissioners with various conditions that could be considered for approval of this special permit. The first would add a note to the site plan stating that alcohol will only be served to patrons who have finished shooting and no one will be allowed to fire for 24 hours after consuming alcohol. The second is to add a note stating that an indoor range must be approved by Administrative Amendment and must meet all regulations. Suggested Condition No. 3 would add a note stating: (A) there will be no discharge of firearms outdoors as long as there is alcohol on the property, or that (B) establishment of an outdoor range must be approved by Administrative Amendment, making sure that it is established consistent with Game & Parks regulations.

Cornelius asked if option "3B" included the prohibition of shooting on the property in the absence of an outdoor shooting range. Will said that '3A' says that there will be no shooting. "3B" says that an outdoor range will have to be done through Administrative Amendment and be in compliance with agencies. Option "3B" does not say you cannot shoot. Staff had a debate over what was going on the property; he was not previously aware of any type of range in operation.

Cornelius asked if there needs to be a shooting range in County jurisdiction for shooting to occur. Will said he is referring to the establishment of a commercial range. Choice 'A' says no shooting, or, if you are going to have outdoor shooting, you must establish a range.

Peo stated that the language for the options should read "unless" rather than "or". Cornelius said that what he was waiting to hear.

Harris referenced an email from the applicant that was written in response to a news story that ran on television. In it, he stated the area where the shooting takes place is on a different lot and does not believe it should even be discussed as part of this application. She asked what areas of the property these conditions pertain to and if they govern the area where target practice is taking place. Will stated the special permit boundary is to the south. The applicant states they shoot up to the north. That distinction may not have been made at the last meeting. The applicant owns all of the property.

Harris asked if there were any legal issues with imposing restrictions on the area outside of the liquor license. Will stated the discussion is about imposing conditions on the special permit for alcohol and not anything above and beyond that. The special permit would allow the sale of alcohol under certain conditions.

Sunderman asked what would happen if the applicant sold the north part of the lot. Will stated that today, we are only dealing with this applicant. Sunderman noted that the restriction will only apply to the special permit area.

Peo agreed with Sunderman, clarifying that the area to the north is not covered by the special permit. If the applicant were not requesting the sale of alcohol, this application would not be under review. In general, there may be a lack of good requirements as to the discharge of firearms within the area of occupied dwellings where alcohol might enhance risk. We can only impose requirements on the special permit boundary.

Weber asked if the applicant can continue shooting activities by right. Will said yes. Commercial shooting will be done by Administrative Amendment so there is some sort of verification that the business meets guidelines.

Corr asked if the lots in this vicinity are zoned I-industrial. Will said yes, including the storage facility to the east. There is one property to the north and east that is not.

Weber asked what would happen if the applicant were to only apply for the liquor license and there were no guns allowed and then a year later he decides to open an outdoor range. Will said it would be the same as today. This body is considering the sale of alcohol. There is no permit before you regarding the discharge of firearms so, if in a year he wanted to establish that, it would not come before this Commission. Weber said that the shooting taking place on the property may not even have been a factor had we not known. Will agreed that is probably true.

Corr asked if it is appropriate that this area is still zoned industrial since the company is not there anymore. Will said it is somewhat unusual since today we would not encourage this type of zoning in areas like this. There is mini-storage adjacent and this is a long-standing use.

Cornelius said the original staff report refers to intended future uses, including shooting. He asked if that means Commissioners are invited to consider that as part of the package. Will said he was referring only to indoor shooting since he was not aware of the discharge of firearms outdoors. The applicant indicated that the long-term plan included the sale of alcohol and the restaurant, and eventually looking into the retail aspect and the indoor shooting.

Cornelius asked Sheriff Wagner to comment on the discharge of firearms outdoors in the County.

Wagner said it is a common occurrence.

Cornelius said there are neighbors concerned about the alcohol coming in, which is understandable. What are options for the neighbors if they are in close proximity to shooting. Wagner said that it is important to keep in mind that "proximity" in the County is not the same as in the City. The area where the shooting has occurred is nearly 2/3 of a

mile away from the daycare. There are no laws prohibiting shooting on the property or anyone drinking and shooting though, of course, they are liable for any damage or injury caused. Hunting is not allowed within 200 feet of an occupied dwelling; this is well beyond that.

Proponents:

1. Derek Broman, 4931 Sinclair Court, came forward as applicant to state that there is no commercial shooting range on his property.

Cornelius suggested that neighbors might be more comfortable if what they were seeing was an entire concept plan. He asked if there has been any consideration about taking time to develop that and to bring it forward later. Broman said that would require selling pre-memberships to see if the area would support the business. The first step is the retail and restaurant and then seeing if there is interest in a shooting range.

Corr asked if he has sold any memberships. Broman said he has not and does not want to yet because he would like membership to have a quick turn-around. Even getting a building permit took five months. It is hard to give definitive answers since there could be any number of issues and costs that would impact decisions, just like any other business. At this point, it is not a shooting range but a property in the County where a few people are shooting. All are experienced shooters who are above and beyond what is required in terms of safety training.

Corr asked for clarification about whether it is friends, customers, or who is shooting. Broman stated he sponsors a national shooting team. They live in different areas of the state and there are 14 on the team. Less than half practice on his property. They are usually there 1-2 hours, once or twice a week, based on their schedules. This in no way resembles a shooting range that is open from 8:00 a.m. to 8:00 p.m.

Weber stated that he is not entirely comfortable with Conditions 2 and 3(A) and 3(B) suggested by Staff. As someone who lives in the County, he goes out and shoots and has a beer. He asked the applicant's thoughts on alcohol being served only after people are done shooting. Broman replied that if he were to do an indoor, commercial range, he would probably have more regulations than required. In this situation, the people practicing on his property are very experienced and are ranked 60th in the nation. Weber asked if that meant that he would not have a problem with the condition that says no firing. Broman said that condition may not be applicable and he would have to look at it.

Corr asked how shooters know where his property ends. Broman said he shows them on a map. This special permit is taking place on another part of the lot. He asked if everyone applying for a liquor license in the County would have these same conditions. The shooting being discussed is not commercial. It is private and on private land. Sunderman noted that there is potential for the indoor range. Cornelius said the shooting on the north part of the lot cannot be regulated by Commissioners.

Corr asked if shooters are told where they can and cannot shoot. Broman said yes, and it is a matter of common sense. They shoot to the north and check first for anyone in the area.

Weber asked if the structure is a concrete building. Broman said yes. If someone were drinking he would not allow shooting. Weber noted the neighbors are not concerned about shooting indoors.

Harris noted that it has been established that shooting on the north lot cannot be restricted. She asked if that makes a difference in terms of imposing restrictions in the special permit area. Broman said it does make a difference. He would not want anyone drinking and shooting.

Sunderman stated that today indoor shooting is not under review.

Cornelius said the staff proposed conditions included discussion of an outdoor range, which includes a test range for a gunsmith shop. Should that ever come to pass, it would have to go through the Administrative Amendment process. Sunderman agreed, adding that the commercial aspects may come forward in the future, but it is not the private, casual activity happening on the property today.

2. Chris Westover, 4915 S. 72nd Street, said he is one of the sponsored team members. Mr. Broman gave us permission to practice on his land, but he also gave us conditions including to be courteous to neighbors, to be aware of what is around, no drinking, and practicing all safety measures. Shooters are responsible for anything that happens at the range during the duration of practice. Many of us have years of experience and most are law enforcement or range safety officers. It is our job to make sure people and property stay safe. Accidental discharge would be very unlikely with such experienced shooters.

3. Jesse Hilger, 6121 W. Beal Circle, stated he uses the area more than anyone. He is a field instructor of over 20 years and has multiple credentials for various firearms. He trains people how to use firearms safely and has used this range to train his own children who are both competitive shooters. He would never shoot in an area where other people would be endangered. Everyone on the team is respectful and very skilled. There is a berm that we shoot into and it is safe for the daycare. We consider the 180-degree plane when shooting. If we were hunting, we are well beyond the legal distance from the house.

Corr asked for confirmation that his children have been to the location. Hilger said yes. Corr asked if that contradicted the statement that only people who are part of the team are practicing on the lot. Hilger said he included his daughter because she is hoping to become a member of the team.

Corr asked if they have ever been out shooting at night. Hilger said they practice Tuesday mornings or early in the evening, never in the dark, and absolutely never with alcohol.

Corr asked for confirmation that they are always shooting to the north. Hilger said yes, north into the berm. The hunting blind is closer to the home to the east than this area.

Opponents:

1. Mark Jacobsen, 14040 O Street, said that he appreciates that the shooters are being safe; it means a lot. It was mentioned that 95% are range officers; it is the other 5% he is worried about. At a different, established shooting range in the County, they have security cameras, a swipe card to enter the grounds, and they know who is on the property at all times. There are baffles to stop stray bullets, and the longer distance ranges are closed unless they have someone watching. Berms at other shooting ranges are around 30 feet and the rules are prominently posted. The bar area is only open for special rental occasions and when it is open, the shooting range closes. They have a caretaker on site and are NRA approved. He would love to have a facility like that nearby.

On the applicant's property, the berms are only 5 feet. There is supervision at times, but no gates and no one knows who is there at all times. This site would not be approved as safe for a range. They are shooting near a waste lagoon that should be fenced in according to State regulations, but that fence was removed. It is a violation and demonstrates a lack of concern for safety.

If there is alcohol served, that portion of the property should meet NRA shooting range standards. On average, there is shooting going on 6-8 hours a day, according to his wife who is home all day. Her daycare could also be at risk because the State requires her to have outdoor time with the children.

Harris asked how Mr. Jacobsen feels about the proposed conditions even though they will not address all of his concerns. Jacobsen said it would stop the shooting from the area close to the highway and would be a step in the right direction. Harris asked if he preferred any of the options. Jacobson said 3(b) even though it will not stop shooting in the area. Cornelius noted that Commissioners are not able to stop shooting in the area. Harris said the option would mean the area would have to meet NRA safety regulations to be an official range. Jacobsen said they just want to feel safe. He wished they would have reached out to Mr. Broman. He would be willing to talk now to at least work out some agreeable hours of use or something similar.

2. Mike Osterhoudt, 1100 Plum Ridge Road, stated he is still opposed because his daughter goes to the nearby daycare. He is a shooter and loves hunting. He understands that a stray bullet from a pistol would not fly far, but he questions the use of rifles or other high-power guns. The hunting blind has been brought up several times but according to the Game & Parks guide, it is within the guidelines.

3. **Sandra Roche, 251 Pebble Beach**, stated she questions the sincerity of the owner. He started out talking about the liquor license, and now brought in representatives to talk about safe shooting. We hope this Commission will postpone their decision until a final business plan is submitted so that the owner doesn't meander with no plans other than a liquor license. He is not being a good neighbor. The day after the last hearing, there was shooting. She is not necessarily worried about the shooting but wants to feel sure that he is a good neighbor and will provide a safe environment.

4. **Mike Gealy, 14000 O Street**, said that he wishes Mr. Broman success with his business but also agrees there should be a plan in place. He clarified that there has never been a Stevens Creek Restaurant and he has never held a liquor license. An incident occurred on June 30th that caused him to speak with Mr. Broman. Shooters were firing in all directions near the lagoon. The fence that used to be around there is a Department of Environmental Quality requirement. There has also been shooting farther back near O Street. Gealy said he has a building there and is well within the 180-degree view. He was working on his parking lot and people were out shooting. He honked a horn to call attention to himself but the shooting did not stop. This is not two lots, it is all one. He is trying to make the liquor license in one area.

Cornelius interjected that each special permit has its own boundaries. Gealy stated that is his point that the areas should not be referred to as if it is two separate lots. He would like to mend fences with his neighbor, figuratively and literally. Mr. Broman took down a fence that was on Gealy's property. It could be trespassing and is at least unneighborly. Again, he encourages the business and hopes it is successful, but would like to see a plan. He wonders what the restaurant and off-sale hours will be and worries that noise could bother his tenants since he has an established business within 200 yards. It is scary that there is no law against shooting so close.

Corr asked if the shooters firing from near O Street were still aiming north. Gealy said yes. They are only about 50 feet from the highway. There are benches set up at three distances from which shooting takes place.

5. **Kitra Deger, 14332 O Street**, stated that she is the owner of the preschool to the east of the applicant's property. She understands that there are experienced shooters, but from what was said, there are others coming to shoot who are still learning. She would like to see adequate staff available to help them. Though the properties are larger, kids go on nature hikes. Diana, the owner of the daycare, should be able to take her kids anywhere on her own property and feel safe.

Staff Questions:

Cornelius asked for more clarification about the boundaries of the special permit verses the entire lot and what exactly can be regulated. Will replied that we are only regulating the boundaries of the special permit. There are multiple lots that make up one large premises. Lot 50 is the boundary of the special permit that would authorize alcohol in the area of the restaurant, outdoor dining, and off-sale.

Corr asked if the applicant picks the boundaries of the special permit. Will said yes.

Corr asked if the boundaries can be changed. Will said no.

Harris asked who enforces rules about the fencing around the lagoons. Will said it was suggested that a State agency, possibly the Department of Environmental Quality, would regulate that. Harris said it is out of the purview of this body. Will agreed.

Sunderman wondered about the 24-hour rule in the first proposed condition. Waiting 24 hours after drinking to shoot seems like an arbitrary amount of time. If someone chose to have dinner and a drink at 8:00 p.m., would they have to wait until that time the next day? Will said yes. Sunderman wondered if 20 hour would be more appropriate. Corr wondered how that would be enforced. Will said that one argument against that condition is that it would be difficult to enforce.

Peo stated that the State has adopted shooting range regulations. If a range existed prior to 2009, it is "hands-off" and cannot be regulated. If a range is not pre-existing, there are options for regulation. The City has no options for imposing regulations. This situation probably does not meet NRA standards of safety. Regulations can only be placed on the sale of alcohol on the defined premises. Having alcohol sales and shooting as uses on the same property do not lay well together, but we do not have that type of operation here. We are speculating about what could occur. It could be that the owner never has a range, or maybe the alcohol sales won't even take off. People may feel it is unsafe, but State law allows it and we cannot prohibit that.

Corr stated that one person mentioned that there was shooting within the proposed special permit boundaries. Peo said that if we put restrictions within that boundary, we are saying that there could be no shooting there.

Harris said that an outdoor range would have to meet NRA and Game & Parks standards, so maybe that would make neighbors more comfortable. Peo said he would think so. What we are saying is, that could not occur unless it were consistent with those standards which give a high level of confidence in safety.

Weber said that Commissioner brought up a good point that the 24-hour wait time does not make sense.

Applicant Rebuttal:

Broman did not wish to offer rebuttal.

Corr asked if he has taken down any fences. Broman said when he purchased the lot, there were already areas where the fencing was down. The lagoon was designed for 200 people working three shifts; it doesn't make sense to invest in a lot of new fencing at this point. Things are being taken one step at a time.

Cornelius noted the request is for both on-sale and off-sale alcohol. That would meet the needs of the restaurant and catering, if the business expands to that. He wondered about the hours of operation. Broman replied that he applied for what the law supports but it is unlikely the restaurant will be open until 1:00 a.m. Cornelius asked if the off-sale permit was required for catering. Broman said he is not sure.

Harris asked Peo if the 24 hours indicated in Condition 1 implied that the alcohol consumed was from Broman's facility. Peo said yes, that is the only thing the applicant could be responsible for. Harris asked if there was a need to clarify the language to state that it addresses alcohol purchased from his establishment. Peo said it could read "alcohol on the licensed premises".

SPECIAL PERMIT NO. 16041**ACTION BY PLANNING COMMISSION:****September 28, 2016**

Cornelius moved approval, including Conditions 2 and 3(A) and 3(B) of the Staff Memorandum, changing 3 to read "unless" instead of "or" between A and B; seconded by Corr.

Cornelius said that this is a difficult application. The reality is that however we feel about the shooting on the property, it is out of our control. The same goes for the fence. The motion puts appropriate restrictions within the proposed and potential use of firearms in a situation where there could be an indoor shooting range. He suspects that if that happens, the regulations will be stricter than what is being suggested today. He struggled with approving this without a complete plan but with these restrictions and a 'yes' to the special permit, we are heading in the right direction.

Weber noted the conditions only pertain to the special permit area so this does not eliminate shooting happening on the rest of the property.

Sunderman asked for clarification that Condition 1 proposed in the Staff Memo is not included in the motion. Cornelius said that is correct. Sunderman said the 24-hour limit seemed excessive and arbitrary. Whatever controls there are for an indoor range are likely to be stricter and more easily enforced. We cannot enforce certain restrictions, so it would be an empty gesture to add them. The area of the special permit will have stricter limits.

Corr stated that something should be done about the fencing on the special permit boundary. Her concern is that people will be shooting and will not know where the boundary is, especially on the eastern edge. That could alleviate some concerns. Even if there was a business plan, the owner is not necessarily locked-in to it, and it could change. Harris also wondered how people would know the boundaries of the special permit area without a fence. Weber noted the motion includes the Administrative Amendment. Cornelius said neighbors can report if they see anything inappropriate in the special permit area.

Sunderman said this has been interesting because this body has not had anything under both the City and County ordinance. It makes him wonder if guns should be addressed more specifically in terms of what is allowed within the 3-mile City jurisdiction, since some of those areas are getting densely built up. This is especially true when liquor is involved. In terms of a gun club, we have clearly stated it is not part of our purview. Gun safety is everyone's concern. Our charge is strictly within the special permit area. However, the owner chooses to move forward, if guns become part of the plan, it is important to have something in place to guide that. If the business gets put together, he believes protections will be in place because Mr. Broman, as the owner, is the one who has the most liability if someone gets hurt. He will support the motion.

Weber asked for clarification that the motion included Condition 2 of the Staff Memo. Cornelius said yes.

Corr said that she understands that it is hard to have a successful restaurant without the liquor. She has no problems with the on-sale aspect, but worries about the off-sale. She wonders if people who are shooting on the other part of the property will purchase alcohol and then go shoot in the private area. She does not see the need for the off-sale in terms of the success of the restaurant.

Sunderman disagreed. Any off-sale establishment throughout the County has the same potential scenario where they could sell alcohol to people who go out and shoot. If we deny off-sale in the County where it is legal to shoot, we would have to look at denial everywhere.

Corr said other County applications for liquor sales have not had so many people coming forward with this much concern about shooting and that is what causes her concern.

Cornelius said that in this situation, there are neighbors who do not trust each other. He found the statement about "mending fences" appropriate. It would be of benefit to everyone if there were outreach and reassurance. This would be easier and the neighborhood would be happier if there were outreach.

Weber noted that Commissioners are asking for Administrative Amendments for indoor and outdoor commercial shooting operations. This does not limit the owner's ability to run that type of operation, it just has to be approved administratively. Cornelius agreed. Weber said there has to be trust that the business owner will take care of issues involving alcohol or inappropriate shooting. Harris added that it is being addressed indirectly by adding the conditions.

Scheer stated he agreed with his fellow Commissioners. The approach to this vote would likely be different if the boundary were different. He understands why it was put together this way, but he would have had a different approach if the whole property were included. He feels somewhat limited in what he would like to be able to do.

It does seem premature to be asking for a liquor license to be approved since it is normal procedure to see a concept of the whole picture rather than acting on little pieces at a time. It certainly would have been helpful in this case. He will support the motion because the conditions do start things out in the right direction. It will be important for the neighborhood and the applicant to talk. That is the best thing that could happen right now.

Motion carried 6-0, as amended: Cornelius, Corr, Harris, Sunderman, Weber and Scheer voting 'yes'; Hove and Lust absent.

There being no further business to come before the Commission, the meeting was adjourned at 3:56 p.m.

Note: These minutes will not be formally approved by the Planning Commission until their next regular meeting on Wednesday, October 12, 2016.