City Council Introduction: **Monday**, June 20, 2005
Public Hearing: **Monday**, June 27, 2005, at **5:30** p.m.

Bill No. 05R-136

FACTSHEET

TITLE: **Letter of Appeal** filed by Mark A. Hunzeker, appealing the Planning Commission action **denying USE PERMIT NO. 140B,** requested by Mark Hunzeker on behalf of Eiger Corporation, for authority to amend Use Permit No. 140A to allow 950,983 sq. ft. of commercial and office floor area, on property generally located at South 91st Street and Pine Lake Road.

STAFF RECOMMENDATION: Denial.

ASSOCIATED REQUESTS: Comprehensive Plan Amendment No. 05014 (05R-134); Change of Zone No. 05035 (05-85); Change of Zone No. 05036 (85-86); and Letter of Appeal to Special Permit No. 05023 (05R-135).

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 06/08/05
Administrative Action: 06/08/05

RECOMMENDATION: **Denial** (5-2: Larson, Taylor, Sunderman, Carroll and Carlson voting 'yes'; Pearson and Krieser voting 'no'; Bills-Strand and Esseks absent).

1. The proposed Use Permit No. 140B was heard before the Planning Commission in conjunction with Comprehensive Plan Amendment No. 05014 and Change of Zone No. 05035 relating to the Theater Policy, and Change of Zone No. 05036 from AG to B-5 and Special Permit No. 05023.

2. The purpose of this use permit amendment is to allow 950,983 sq. ft. of commercial and office floor area to accommodate a special permit to construct an 80,000 sq. ft. theater complex with 18 screens at the Prairie Lake shopping center generally located at S. 91st Street and Pine Lake Road.

3. The staff recommendation of denial is based upon the *"Analysis"* as set forth on p.13-15, concluding that a theater complex at the proposed location is not consistent with the goals of the Comprehensive Plan. In addition, the applicant's assumption about traffic generated by office and theater uses are flawed and may result in violating the spirit of the "traffic cap" in the annexation agreement, and calls into question whether the land east of South 91st Street should retain its commercial designation. The siting of the theater should be considered more carefully to buffer nearby residential areas and create a more pedestrian-oriented relationship with the future development of abutting lots.

4. The Market Feasibility and Impact Study is attached to the Factsheet for Comprehensive Plan Amendment No. 05014 (05R-134) on p.26-64, and is incorporated herein by this reference.

5. The applicant's testimony and other testimony in support is found on p.18-22 and 27-28, and the record consists of one written communication in support (p.41-42). The applicant requested that Condition #2.1.1.1 and Condition #2.1.1.6 be deleted (See Minutes, p.20-21).

6. Testimony in opposition is found on p.22-26, and the record consists of one letter from the Lincoln Haymarket Development Corporation in opposition (p.43).

7. Testimony by the Director of Planning and Keith Thompson, who conducted the Market Feasibility and Impact Study, is found on p.26-27.

8. On June 8, 2005, the majority of the Planning Commission agreed with the staff recommendation and voted 5-2 to **deny** Use Permit No. 140B (Pearson and Krieser dissenting; Bills-Strand and Esseks absent). See Minutes, p.28-30. The proposed resolution is found on p.4-9.

9. On June 8, 2005, the Planning Commission also voted 5-2 to recommend denial of the associated Comprehensive Plan Amendment No. 05014 and Change of Zone No. 05035 relating to the Theater Policy, and Change of Zone No. 05036, and took "final action" denying Special Permit No. 05023.

10. On June 10, 2005, a letter of appeal was filed by Mark Hunzeker (p.2).

FACTSHEET PREPARED BY: Jean L. Walker — **DATE**: June 14, 2005
REVIEWED BY: _____ — **DATE**: June 14, 2005
REFERENCE NUMBER: FS\CC\2005\UP.140B Appeal

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June 10, 2005

HAND DELIVERY
Joan Ross, City Clerk
City of Lincoln
555 So. 10th Street
Lincoln, NE 68508

Re: *Notice of Appeal Special Permit No. 05023 and Use Permit No. 140B*

Dear Joan:

Please take notice that we hereby appeal the action of the Lincoln/Lancaster County Planning Commission of June 8, 2005, denying Special Permit No. 05023 and Use Permit No. 140B. Please schedule these matters on the City Council agenda in conjunction with Comprehensive Plan Amendment No. 05014, Change of Zone No. 05035, and Change of Zone No. 05036.

Thank you very much.

Sincerely,

Mark A. Hunzeker
For the Firm

MAH:sb

CITY CLERK'S OFFICE
2005 JUN 10 PM 2 16
CITY OF LINCOLN
NEBRASKA

PLANNING COMMISSION FINAL ACTION
NOTIFICATION

TO : Mayor Coleen Seng
Lincoln City Council

FROM : Jean Walker, Planning

DATE : June 9, 2005

RE : **Special Permit No. 05023 and Use Permit No. 140B - DENIED**
Expansion of Appian Way (Prairie Lake) to allow 18-screen theater complex (S. 91st and Pine Lake Road)

The Lincoln City-Lancaster County Planning Commission took the following action at their regular meeting on Wednesday, June 8, 2005:

> Motion made by Taylor, seconded by Larson, to **deny Special Permit No. 05023,** requested by Eiger Corporation, for authority to construct an 80,000 sq. ft. theater complex with 18 screens in the B-5 zoning district, on property generally located at South 91st Street and Pine Lake Road. Motion to **deny** carried 5-2 (Larson, Taylor, Sunderman, Carroll and Carlson voting 'yes'; Pearson and Krieser voting 'no'; Bills-Strand and Esseks absent).
>
> Motion made by Taylor, seconded by Larson, to **deny Use Permit No. 140B,** requested by Eiger Corporation, for authority to amend Use Permit No. 140A to allow 950,983 sq. ft. of commercial and office floor area, on property generally located at South 91st Street and Pine Lake Road. Motion to **deny** carried 5-2 (Larson, Taylor, Sunderman, Carroll and Carlson voting 'yes'; Pearson and Krieser voting 'no'; Bills-Strand and Esseks absent).

The Planning Commission's action is final, unless appealed to the City Council by filing a Letter of Appeal with the City Clerk within 14 days of the date of the action by the Planning Commission.

The Planning Commission also voted 5-2 to recommend denial of the associated Comprehensive Plan Amendment No. 05014 (a recommendation to the City Council and County Board), Change of Zone No. 05035 and Change of Zone No. 05036 (recommendations to the City Council).

Attachment
cc: Building & Safety
Rick Peo, City Attorney
Public Works
Mark Hunzeker, P.O. Box 95109, 68509
Eiger Corporation, 16800 Pella Road, Adams, NE 68301
Jayme Gruber Amber Hills Estates Assn., 8101 Amber Hill Rd., 68516
Susan Kirkpatrick, Amber Hills Estates Assn., 8001 Amber Hill Road., 68516
Jane Athey, Cheney SID #5, 9400 Yankee Hill Road, 68526-9482
Gayle Hanshaw, Cheney CIP, 9420 Third Street, Cheney, NE 68526
Bevan Alvey, Pine Lake Association, 8000 Dougan Drive, 68516
Warren Gran, Vintage Heights H.O. Assn., 5930 S. 90th Street, 68526
Terri Roberts, Vintage Heights H.O. Assn., 6010 S. 91st Street, 68526

i:\shared\wp\jlu\2005 ccnotice.sp\SP.05023 and UP.140B Denied

DENIED by Planning Commission, 5-2, June 8, 2005

RESOLUTION NO. PC-___

USE PERMIT NO.140B

WHEREAS, Eiger Corporation has submitted an application in accordance with Section 27.31.100 of the Lincoln Municipal Code designated as Use Permit No. 140B to develop 874,441 square feet of commercial and office floor area on property generally located at S. 91st Street and Pine Lake Road, legally described to wit:

> A tract of land composed of Lots 1, 2, and 3, Block 1, Appian Way Addition, Outlots A, D, E, H, I, and M, Appian Way Addition, a portion of Outlot N, Appian Way Addition, a portion of Outlot O, Appian Way Addition, Lot 1, Appian Way 1st Addition, Lot 1, Appian Way 2nd Addition, Lot 1, Appian Way 3rd Addition, Lots 1, 2, and 3, Appian Way 4th Addition, Lots 1, 2, and 3, Appian Way 5th Addition, Outlot A, Appian Way 5th Addition, Lots 1 and 2, Appian Way 6th Addition, Outlot A, Appian Way 6th Addition, a portion of the remaining portion of Lot 92 I.T., and a portion of the remaining portion of Lot 56 I.T., all located in Section 23, Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska, and more particularly described on the attached legal description;

WHEREAS, the real property adjacent to the area included within the site plan for this construction of commercial and office area will not be adversely affected; and

WHEREAS, said site plan together with the terms and conditions hereinafter set forth are consistent with the intent and purpose of Title 27 of the Lincoln Municipal Code to promote the public health, safety, and general welfare.

NOW, THEREFORE, BE IT RESOLVED by the Lincoln City - Lancaster County Planning Commission of Lincoln, Nebraska:

That the application of Eiger Corporation, hereinafter referred to as "Permittee", to develop 950,983 square feet of commercial and office floor area be and the same is hereby

granted under the provisions of Section 27.27.100 of the Lincoln Municipal Code upon condition that construction and operation of said commercial and office space be in strict compliance with said application, the site plan, and the following additional express terms, conditions, and requirements:

1. This approval amends the site plan for Use Permit #140A to presently permit a total of 874,441 square feet of the approved 950,983 square feet of commercial and office floor area as shown on the approved plan.

2. Before receiving building permits:

a. The permittee shall complete the following instructions and submit the documents and plans to the Planning Department for review and approval.

b. A revised site plan showing the following revisions:

i. A revised land use table that deletes the 20% pass-by reductions for the both the office uses on Lots 4 & 5, Block 2 and Lots 10 & 11, Block 3, and for the theaters.

ii. All theater screens identified as "with matinee."

iii. The required 50' setback along South 91st Street.

iv. Note #34 revised as follows: LOT LAYOUT FOR LOT 1, BLOCK 4 SHOWN WITHIN THE BOUNDARY OF THIS SPECIAL PERMIT/USE PERMIT IS CONCEPTUAL. THE SPECIFIC SITE LAYOUT, INCLUDING GRADING AND DRAINAGE, STREET PROFILE, AND UTILITY PLANS MUST BE APPROVED BY ADMINISTRATIVE AMENDMENT PRIOR TO ISSUANCE OF BUILDING PERMITS.

v. Delete waiver request #4 under "WAIVERS" relating to waiver of the preliminary plat.

vi. Show the 12" high-pressure gas line across the site, and add General Note #35 which states: THERE IS A 12" HIGH-PRESSURE GAS LINE IN THIS AREA. IT IS RECOMMENDED THAT NO OCCUPIED STRUCTURES BE LOCATED WITHIN 220' OF IT. THE PERMITTEE MUST ADVISE THE OWNERS AND LESSEES OF THE PROJECT HAZARD AREA.

vii. Show revisions to the satisfaction of Public Works and Utilities.

c. A land use/trip generation table for the remaining approximately 82 acres of commercially-designated land that includes the 38 acres west of this

project site and the 44 acres northeast of the intersection of Highway 2 and South 91st Street.

d. The construction plans comply with the approved plans.

e. Final plat(s) are approved by the City.

3. Before occupying the buildings all development and construction is to comply with the approved plans.

4. All privately-owned improvements, including landscaping and recreational facilities, are to be permanently maintained by the owner or an appropriately established owners association approved by the City.

5. The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.

6. This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.

7. The applicant shall sign and return the letter of acceptance to the City Clerk within 30 days following the approval of the special permit, provided, however, said 30-day period may be extended up to six months by administrative amendment. The clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filling fees therefor to be paid in advance by the applicant.

8. The site plan as approved with this resolution voids and supersedes all previously approved site plans, however all resolutions approving previous permits remain in force unless specifically amended by this resolution.

ATTEST:

DENIED by Planning Commission, 5-2 (Larson, Taylor, Sunderman, Carroll and Carlson voting 'yes'; Pearson and Krieser voting 'no'; Bills-Strand and Esseks absent). June 8, 2005

Approved as to Form & Legality:

Chief Assistant City Attorney

016

APPIAN WAY REGIONAL CENTER
USE PERMIT LEGAL DESCRIPTION

A TRACT OF LAND COMPOSED OF LOTS 1, 2 AND 3, BLOCK 1, APPIAN WAY ADDITION, OUTLOTS A, D, E, H, I, AND M, APPIAN WAY ADDITION, A PORTION OF OUTLOT N, APPIAN WAY ADDITION, A PORTION OF OUTLOT O, APPIAN WAY ADDITION, LOT 1, APPIAN WAY 1ST ADDITION, LOT 1, APPIAN WAY 2ND ADDITION, LOT 1, APPIAN WAY 3RD ADDITION, LOTS 1, 2 AND 3, APPIAN WAY 4TH ADDITION, LOTS 1, 2 AND 3, APPIAN WAY 5TH ADDITION, OUTLOT A, APPIAN WAY 5TH ADDITION, LOTS 1 AND 2, APPIAN WAY 6TH ADDITION, OUTLOT A, APPIAN WAY 6TH ADDITION, A PORTION OF THE REMAINING PORTION OF LOT 92 I.T., AND A PORTION OF THE REMAINING PORTION OF LOT 56 I.T., ALL LOCATED IN SECTION 23, TOWNSHIP 9 NORTH, RANGE 7 EAST OF THE 6TH P.M., LANCASTER COUNTY, CITY OF LINCOLN, NEBRASKA.

MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 23, THENCE SOUTH 00, DEGREES 40, MINUTES 41 SECONDS EAST, ASSUMED BEARING, ALONG THE WEST LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 809.82 FEET; THENCE NORTH 89 DEGREES, 19 MINUTES, 19 SECONDS EAST, A DISTANCE OF 240.00 FEET TO THE **POINT OF BEGINNING**; THENCE CONTINUING NORTH 89 DEGREES, 19 MINUTES, 19 SECONDS EAST, A DISTANCE OF 344.59 FEET; THENCE NORTH 00 DEGREES, 22 MINUTES, 12 SECONDS WEST, A DISTANCE OF 120.00 FEET; THENCE SOUTH 89 DEGREES, 19 MINUTES, 19 SECONDS WEST, A DISTANCE OF 55.00 FEET; THENCE NORTH 44 DEGREES, 28 MINUTES, 34 SECONDS EAST, A DISTANCE OF 58.14 FEET; THENCE NORTH 00 DEGREES, 22 MINUTES, 12 SECONDS WEST, A DISTANCE OF 29.00 FEET; THENCE NORTH 89 DEGREES, 19 MINUTES, 19 SECONDS EAST, A DISTANCE OF 100.00 FEET; THENCE SOUTH 00 DEGREES, 22 MINUTES, 12 SECONDS EAST, A DISTANCE OF 54.79 FEET TO A POINT OF CURVATURE; THENCE ALONG A CURVE IN A COUNTER CLOCKWISE DIRECTION, HAVING A RADIUS OF 44.00 FEET, ARC LENGTH OF 16.56 FEET, DELTA ANGLE OF 21 DEGREES, 34 MINUTES, 01 SECONDS, A CHORD BEARING OF SOUTH 35 DEGREES, 46 MINUTES, 24 SECONDS EAST, AND CHORD LENGTH OF 16.46 FEET TO A POINT OF REVERSE CURVATURE; THENCE ALONG A CURVE IN A CLOCKWISE DIRECTION, HAVING A RADIUS OF 86.00 FEET, ARC LENGTH OF 138.91 FEET, DELTA ANGLE OF 92 DEGREES, 32 MINUTES, 40 SECONDS, A CHORD BEARING OF SOUTH 00 DEGREES, 17 MINUTES, 05 SECONDS EAST AND CHORD LENGTH OF 124.29 FEET TO A POINT OF REVERSE CURVATURE; THENCE ALONG A CURVE IN A COUNTER CLOCKWISE DIRECTION, HAVING A RADIUS OF 44.00 FEET, ARC LENGTH OF 33.93 FEET, DELTA ANGLE OF 44 DEGREES, 11 MINUTES, 18 SECONDS, A CHORD BEARING OF SOUTH 23 DEGREES, 53 MINUTES, 36 SECONDS WEST AND CHORD LENGTH OF 33.10 FEET TO A POINT OF REVERSE CURVATURE; THENCE ALONG A CURVE IN A CLOCKWISE DIRECTION, HAVING A RADIUS OF 346.00 FEET, ARC LENGTH OF 159.68 FEET, DELTA ANGLE OF 26 DEGREES, 26 MINUTES, 31 SECONDS, A CHORD BEARING OF SOUTH 15 DEGREES, 01 MINUTES, 12 SECONDS WEST, AND CHORD LENGTH OF 158.26 FEET TO A POINT OF REVERSE CURVATURE; THENCE ALONG A CURVE IN A COUNTER CLOCKWISE DIRECTION, HAVING A RADIUS OF 254.00 FEET, ARC LENGTH OF 75.43 FEET, DELTA ANGLE OF 17 DEGREES, 00 MINUTES, 50 SECONDS, A CHORD BEARING OF SOUTH 19 DEGREES, 44 MINUTES, 02 SECONDS WEST AND CHORD LENGTH OF 75.15 FEET TO A POINT OF TANGENCY; THENCE SOUTH 11 DEGREES, 13 MINUTES, 37 SECONDS WEST, A DISTANCE OF 351.92 FEET; THENCE SOUTH 85 DEGREES, 25 MINUTES, 37 SECONDS EAST, A DISTANCE OF 98.67 FEET TO A POINT OF CURVATURE; THENCE ALONG A CURVE IN A COUNTER CLOCKWISE DIRECTION, HAVING A RADIUS OF 464.00 FEET, ARC LENGTH OF 152.10 FEET, DELTA ANGLE OF 18 DEGREES, 46 MINUTES, 56 SECONDS, A CHORD BEARING OF NORTH 85 DEGREES, 10 MINUTES, 55 SECONDS EAST, AND CHORD LENGTH OF 151.42 FEET; THENCE NORTH 75 DEGREES, 47 MINUTES, 27 SECONDS EAST, A DISTANCE OF 306.86 FEET; THENCE NORTH 08 DEGREES, 00 MINUTES, 22 SECONDS WEST, A DISTANCE OF 4.18 FEET TO A POINT OF CURVATURE; THENCE ALONG A CURVE IN A CLOCKWISE DIRECTION, HAVING A RADIUS OF 536.00 FEET,

ARC LENGTH OF 74.90 FEET, DELTA ANGLE OF 08 DEGREES, 00 MINUTES, 23 SECONDS, A CHORD BEARING OF NORTH 04 DEGREES, 00 MINUTES, 12 SECONDS WEST, AND CHORD LENGTH OF 74.84 FEET TO A POINT OF TANGENCY; THENCE NORTH 00 DEGREES, 00 MINUTES, 00 SECONDS EAST, A DISTANCE OF 259.02 FEET TO A POINT OF CURVATURE; THENCE ALONG A CURVE IN A CLOCKWISE DIRECTION, HAVING A RADIUS OF 136.00 FEET, ARC LENGTH OF 213.63 FEET, DELTA ANGLE OF 90 DEGREES, 00 MINUTES, 00 SECONDS, A CHORD BEARING OF NORTH 45 DEGREES, 00 MINUTES, 00 SECONDS EAST, AND CHORD LENGTH OF 192.33 FEET TO A POINT OF TANGENCY; THENCE SOUTH 90 DEGREES, 00 MINUTES, 00 SECONDS EAST, A DISTANCE OF 799.82 FEET; THENCE NORTH 00 DEGREES, 10 MINUTES, 20 SECONDS EAST, A DISTANCE OF 587.53 FEET; THENCE SOUTH 89 DEGREES, 47 MINUTES, 55 SECONDS EAST, A DISTANCE OF 594.74 FEET TO A POINT OF CURVATURE; THENCE ALONG A CURVE IN A CLOCKWISE DIRECTION, HAVING A RADIUS OF 386.00 FEET, ARC LENGTH OF 174.69 FEET, DELTA ANGLE OF 25 DEGREES, 55 MINUTES, 51 SECONDS, A CHORD BEARING OF SOUTH 76 DEGREES, 50 MINUTES, 00 SECONDS EAST, AND CHORD LENGTH OF 173.21 FEET TO A POINT OF TANGENCY; THENCE SOUTH 63 DEGREES, 52 MINUTES, 05 SECONDS EAST, A DISTANCE OF 200.82 FEET TO A POINT OF CURVATURE; THENCE ALONG A CURVE IN A COUNTER CLOCKWISE DIRECTION, HAVING A RADIUS OF 1,065.00 FEET, ARC LENGTH OF 963.45 FEET, DELTA ANGLE OF 51 DEGREES, 49 MINUTES, 57 SECONDS, A CHORD BEARING OF SOUTH 10 DEGREES, 16 MINUTES, 37 SECONDS WEST, AND CHORD LENGTH OF 930.93 FEET; THENCE SOUTH 27 DEGREES, 23 MINUTES, 00 SECONDS WEST, A DISTANCE OF 36.15 FEET; THENCE SOUTH 71 DEGREES, 04 MINUTES, 43 SECONDS WEST, A DISTANCE OF 57.97 FEET TO A POINT OF CURVATURE; THENCE ALONG A CURVE IN A CLOCKWISE DIRECTION, HAVING A RADIUS OF 264.00 FEET, ARC LENGTH OF 102.07 FEET, DELTA ANGLE OF 22 DEGREES, 09 MINUTES, 07 SECONDS, A CHORD BEARING OF SOUTH 82 DEGREES, 09 MINUTES, 17 SECONDS WEST, AND CHORD LENGTH OF 101.43 FEET; THENCE SOUTH 03 DEGREES, 13 MINUTES, 50 SECONDS WEST, A DISTANCE OF 72.00 FEET TO A POINT OF CURVATURE; THENCE ALONG A CURVE IN A COUNTER CLOCKWISE DIRECTION, HAVING A RADIUS OF 336.00 FEET, ARC LENGTH OF 129.91 FEET, DELTA ANGLE OF 22 DEGREES, 09 MINUTES, 07 SECONDS, A CHORD BEARING OF NORTH 82 DEGREES, 09 MINUTES, 17 SECONDS EAST, AND CHORD LENGTH OF 129.10 FEET TO A POINT OF TANGENCY; THENCE NORTH 71 DEGREES, 04 MINUTES, 43 SECONDS EAST, A DISTANCE OF 57.97 FEET; THENCE SOUTH 65 DEGREES, 13 MINUTES, 34 SECONDS EAST, A DISTANCE OF 36.15 FEET TO A POINT OF CURVATURE; THENCE ALONG A CURVE IN A COUNTER CLOCKWISE DIRECTION, HAVING A RADIUS OF 1,065.00 FEET, ARC LENGTH OF 101.48 FEET, DELTA ANGLE OF 05 DEGREES, 27 MINUTES, 34 SECONDS, A CHORD BEARING OF SOUTH 24 DEGREES, 56 MINUTES, 00 SECONDS EAST, AND A CHORD LENGTH OF 101.44 FEET TO A POINT OF TANGENCY; THENCE SOUTH 27 DEGREES, 39 MINUTES, 47 SECONDS EAST, A DISTANCE OF 937.76 FEET TO A POINT OF CURVATURE; THENCE ALONG A CURVE IN A CLOCKWISE DIRECTION, HAVING A RADIUS OF 935.00 FEET, ARC LENGTH OF 362.39 FEET, DELTA ANGLE OF 22 DEGREES, 12 MINUTES, 25 SECONDS, A CHORD BEARING OF SOUTH 16 DEGREES, 33 MINUTES, 34 SECONDS EAST, AND CHORD LENGTH OF 360.13 FEET; THENCE SOUTH 42 DEGREES, 06 MINUTES, 10 SECONDS WEST, A DISTANCE OF 34.23 FEET; THENCE SOUTH 88 DEGREES, 53 MINUTES, 45 SECONDS WEST, A DISTANCE OF 173.60 FEET; THENCE SOUTH 01 DEGREES, 06 MINUTES, 15 SECONDS EAST, A DISTANCE OF 96.00 FEET; THENCE NORTH 88 DEGREES, 53 MINUTES, 45 SECONDS EAST, A DISTANCE OF 173.39 FEET; THENCE SOUTH 44 DEGREES, 11 MINUTES, 18 SECONDS EAST, A DISTANCE OF 34.15 FEET TO A POINT OF CURVATURE; THENCE ALONG A CURVE IN A CLOCKWISE DIRECTION, HAVING A RADIUS OF 935.00 FEET, ARC LENGTH OF 666.56 FEET, DELTA ANGLE OF 40 DEGREES, 50 MINUTES, 46 SECONDS, A CHORD BEARING OF SOUTH 23 DEGREES, 54 MINUTES, 59 SECONDS WEST, AND CHORD LENGTH OF 652.54 FEET TO A POINT OF TANGENCY; THENCE SOUTH 44 DEGREES, 20 MINUTES, 22 SECONDS WEST, A DISTANCE OF 400.02 FEET; THENCE SOUTH 85 DEGREES, 41 MINUTES, 38 SECONDS WEST, A DISTANCE OF 37.53 FEET; THENCE NORTH 52 DEGREES, 57 MINUTES, 07 SECONDS WEST, A DISTANCE OF 206.15 FEET TO A POINT OF INTERSECTION WITH THE WEST LINE OF THE SOUTHEAST

APPIAN WAY REGIONAL CENTER
USE PERMIT LEGAL DESCRIPTION

QUARTER OF SAID SECTION 23; THENCE NORTH 56 DEGREES, 19 MINUTES, 51 SECONDS WEST, A DISTANCE OF 780.25 FEET; THENCE NORTH 52 DEGREES, 26 MINUTES, 01 SECONDS WEST, A DISTANCE OF 758.61 FEET; THENCE NORTH 14 DEGREES, 44 MINUTES, 12 SECONDS WEST, A DISTANCE OF 39.56 FEET TO A POINT OF CURVATURE; THENCE ALONG A CURVE IN A COUNTER CLOCKWISE DIRECTION, HAVING A RADIUS OF 350.00 FEET, ARC LENGTH OF 102.82 FEET, DELTA ANGLE OF 16 DEGREES, 49 MINUTES, 58 SECONDS, A CHORD BEARING OF NORTH 12 DEGREES, 29 MINUTES, 33 SECONDS EAST, AND CHORD LENGTH OF 102.46 FEET; THENCE NORTH 85 DEGREES, 55 MINUTES, 26 SECONDS WEST, A DISTANCE OF 114.50 FEET TO A POINT OF CURVATURE; THENCE ALONG A CURVE IN A CLOCKWISE DIRECTION, HAVING A RADIUS OF 235.50 FEET, ARC LENGTH OF 40.00 FEET, DELTA ANGLE OF 09 DEGREES, 43 MINUTES, 54 SECONDS, A CHORD BEARING OF SOUTH 08 DEGREES, 56 MINUTES, 31 SECONDS WEST, AND CHORD LENGTH OF 39.95 FEET; THENCE SOUTH 70 DEGREES, 21 MINUTES, 51 SECONDS WEST, A DISTANCE OF 30.30 FEET; THENCE NORTH 57 DEGREES, 09 MINUTES, 02 SECONDS WEST, A DISTANCE OF 556.12 FEET; THENCE NORTH 45 DEGREES, 55 MINUTES, 04 SECONDS WEST, A DISTANCE OF 202.24 FEET; THENCE NORTH 53 DEGREES, 03 MINUTES, 46 SECONDS WEST, A DISTANCE OF 200.03 FEET; THENCE NORTH 58 DEGREES, 00 MINUTES, 35 SECONDS WEST, A DISTANCE OF 400.90 FEET; THENCE NORTH 43 DEGREES, 05 MINUTES, 38 SECONDS WEST, A DISTANCE OF 117.22 FEET; THENCE NORTH 10 DEGREES, 49 MINUTES, 43 SECONDS WEST, A DISTANCE OF 18.79 FEET; THENCE NORTH 29 DEGREES, 00 MINUTES, 57 SECONDS EAST, A DISTANCE OF 22.22 FEET TO A POINT OF CURVATURE; THENCE ALONG A CURVE IN A COUNTER CLOCKWISE DIRECTION, HAVING A RADIUS OF 1,020.00 FEET, ARC LENGTH OF 528.62 FEET, DELTA ANGLE OF 29 DEGREES, 41 MINUTES, 38 SECONDS, A CHORD BEARING OF NORTH 14 DEGREES, 10 MINUTES, 08 SECONDS EAST, AND A CHORD LENGTH OF 522.72 FEET TO A POINT OF TANGENCY; THENCE NORTH 00 DEGREES, 40 MINUTES, 41 SECONDS WEST, A DISTANCE OF 155.34 FEET TO A POINT OF CURVATURE; THENCE ALONG A CURVE IN A CLOCKWISE DIRECTION, HAVING A RADIUS OF 280.00 FEET, ARC LENGTH OF 7.40 FEET, DELTA ANGLE OF 01 DEGREES, 30 MINUTES, 51 SECONDS, A CHORD BEARING OF NORTH 10 DEGREES, 23 MINUTES, 48 SECONDS EAST, AND CHORD LENGTH OF 7.40 FEET TO A POINT OF REVERSE CURVATURE; THENCE ALONG A CURVE IN A COUNTER CLOCKWISE DIRECTION, HAVING A RADIUS OF 320.00 FEET, ARC LENGTH OF 64.11 FEET, DELTA ANGLE OF 11 DEGREES, 28 MINUTES, 42 SECONDS, A CHORD BEARING OF NORTH 05 DEGREES, 24 MINUTES, 51 SECONDS EAST, AND CHORD LENGTH OF 64.00 FEET TO A POINT OF TANGENCY; THENCE NORTH 00 DEGREES, 19 MINUTES, 30 SECONDS WEST, A DISTANCE OF 151.61 FEET; THENCE NORTH 44 DEGREES, 19 MINUTES, 19 SECONDS EAST, A DISTANCE OF 22.42 FEET TO THE POINT OF BEGINNING. CONTAINING AN AREA OF 6,124,715.20 SQUARE FEET, 140.60 ACRES.

April 26, 2005

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for June 8, 2005 PLANNING COMMISSION MEETING

This is a combined staff report for related items. This report contains a single background and analysis section for all items. However, there are separate conditions provided for each individual application.

PROJECT #: Special Permit #05023
Use Permit #140B

PROPOSAL: To expand the Appian Way use permit and allow an 18-screen theater.

LOCATION: South 91st Street and Pine Lake Road

LAND AREA: SP#05023 - Approximately 24.52 acres.
UP#140B - Approximately 140.6 acres.

CONCLUSION: These requests are associated with three other applications: a comprehensive plan amendment and a zoning text change to modify the current Theater Policy to allow theaters with more than six screens when they are more than 6.5 miles from downtown; and a change of zone from AG to B-5. Staff is recommending denial of all three associated applications based upon the finding that such a theater complex is not consistent with the goals of the Comprehensive Plan. In addition, the applicant's assumption about traffic generated by office and theater uses are flawed, and may result in violating the spirit of the "traffic cap" in the annexation agreement, and calls into question whether the land east of South 91st Street should retain its commercial designation. In addition, the siting of the theater should be considered more carefully to buffer nearby residential areas and create a more pedestrian-oriented relationship with future development of abutting lots.

RECOMMENDATION:

Special Permit #05023	Denial
Use Permit #140B	***Denial***

GENERAL INFORMATION:

LEGAL DESCRIPTION: See attached legal description.

EXISTING ZONING: AG Agriculture

PROPOSED ZONING: B-5 Planned Regional Business

EXISTING LAND USE: Undeveloped

SURROUNDING LAND USE AND ZONING:

North:	Undeveloped	AG
South:	Commercial	B-5
East:	Undeveloped, Nebraska Heart Hospital	R-3
West:	Undeveloped	B-5

ASSOCIATED APPLICATIONS:

CPA#05014 - A request to amend the Comprehensive Plan by deleting several statements that refer to the Theater Policy and entertainment in the downtown, and by deleting one statement requiring market studies for proposed new theaters outside the downtown.

CZ#05035 - A request to amend Section 27.63.630©) of the Zoning Ordinance for theaters in the B-5 district to allow theater complexes consisting of more than six screens provided it is located outside a 6.5 mile radius measured from the center of the intersection of 13th and O Streets.

CZ#05036 - From AG Agriculture to B-5 Planned Regional Business for 14.11 acres.

AA#05051 - An administrative amendment to revise the land use table for UP#140A to allow 15% internal and 20% pass-by reductions to be used in the trip generation calculations.

HISTORY:

July 14, 2002 - CPA#03018 was approved changing the land use designation from residential to commercial for approximately 44 acres of land located at South 91st Street and Highway 2.

November 5, 2001 - ANN#01006 annexing 245 acres into the City of Lincoln, CZ#3320 changing the zoning on 98.8 acres east of relocated South 91st Street from AG to R-3, CZ#3285 changing the zoning on 146.3 acres between South 84th and relocated South 91st Street north of Highway 2 from AG to B-5, and UP#140 for 825,400 square feet of commercial space, with the option to expand to 940,000 square feet provided that the total p.m. peak hour trips does not exceed 2,925 for Appian Way regional center were all approved.

September 28, 2001 - PP#01006 for Appian Way Regional Center for 28 commercial lots and 8 outlots.

COMPREHENSIVE PLAN SPECIFICATIONS:

Page V2 - Vision - Downtown Lincoln belongs to all residents of Nebraska because "downtown" is synonymous with the University of Nebraska, State government, and the State Capitol building. This state-wide ownership has strong economic implications, and for that reason, as well as the desire to maintain downtown as the "heartbeat" of the community, the Comprehensive Plan will ensure that downtown remains a special place. The plan will seek to preserve vistas and institutions of cultural importance, to reinforce the district as a center of entertainment, and to promote a rich diversity of activities and uses, including housing, education, government, offices and commerce.

Page F16 - Community Form - Downtown Lincoln continues to serve its role as the central location for commerce, government, entertainment, and the arts. Views to the State Capitol have been preserved, as they have in the past, as part of our community form.

Page F44 - A key element to this role has been the longstanding and successful "theater policy." This policy has allowed downtown to retain an appreciable share of the area's movie theaters. It is intended that this policy would continue as part of the present Plan."

Page F44 - Market impact studies will still be required for movie theaters.

Page F48 - The City should preserve and enhance Downtown's role as

- the major office and service employment center of the City
- the focus of all levels of government
- the City's principal cultural and entertainment center
- the hotel and convention center for the City
- the City's financial center
- a hub of higher education
- specialty retail geared toward employees, area residents, convention visitors and University population

- Lincoln's successful Theater Policy must be maintained and reinforced. New entertainment attractions should be encouraged to locate in the downtown.

Appendix A - Southeast Lincoln/Highway 2 Subarea Plan:

Page 6 - Vision for the Southeast Lincoln/ Highway 2 Subarea - Provide Effective land use transitions; provide appropriate transitions from commercial to residential land uses. Within commercial areas, office and lower intensity commercial uses along with appropriate buffer areas should be developed as a transition to adjacent residential areas. In some areas, special residential" uses should be provided to adjacent lower density residential uses. Special residential uses could include churches, domiciliary care facilities, retirement apartments, child care facilities or townhomes. In more urban settings, which are further from existing single family residences, apartments may also be appropriate as a special residential uses.

Page 7 - Figure 2 - The subarea plan designates commercial land uses for this site.

Page 9 - Clarify the appropriate size and type of uses in the Center at 84th & Highway 2: this subarea plan designates the area from approximately 91st to 98th for predominately residential use, while including a 44 acre tract for a mix of commercial uses at the northeast corner of 91st and Highway 2. The overall site includes a regional center with approximately 1.9 million SF of commercial space -- larger than the present Westfield shopping center. The plan encourages the planned center at 84th and Highway 2 to develop with a mix of uses, including residential and appropriate transitions to existing residential areas.

UTILITIES: All utilities are available to serve this area.

TRAFFIC ANALYSIS: Access to the theater site is provided by driveway connections to proposed South 88th Street, proposed Heritage Lakes Drive, and South 91st Street. Both South 88th Street and Heritage Lakes Drive will be private roadways when built, and the driveways onto them are internal to the shopping center. One driveway to South 91st Street is shown. South 91st Street is a major arterial, and Public Works has not approved a driveway at that location.

REGIONAL ISSUES: The impact upon the downtown of an 18-screen theater at this location.

ALTERNATIVE USES: Office or lower intensity commercial uses placed adjacent to both South 91st Street and Pine Lake Road to provide a more appropriate transition to the residentially-zoned properties across both streets.

ANALYSIS:

1. This request is associated with CPA#05014, CZ#05035, and CZ#05036 which all relate to developing an 18-screen theater at Prairie Lakes Shopping Center. In addition to rezoning, a special permit per Lincoln Municipal Code Section 27.63.630 for theaters is required, and the use permit for Appian Way must also be amended for the theater site to be included in it.

2. Staff is recommending denial of the three associated applications. The recommendation is based on a finding that siting an 18-screen theater at Prairie Lakes is not going to be a profitable venture, but if it is built, it would significantly reduce attendance at downtown theaters threatening their vitality, which in turn would have detrimental impacts on other existing downtown businesses and damage the City's efforts to revitalize the downtown and maintain its position as the heart of the community. All these impacts are contrary to longstanding goals in the Comprehensive Plan. However, should the Planning Commission choose to approve the applications, a set of conditions is provided that staff recommends be part of the approval. Other areas of concern which serve as the basis for the conditions of approval are discussed in the following paragraphs.

3. AA#05051 proposes to revise the trip generation calculations in the land use table for UP#140A. The table includes land uses, floor areas, trip generation rates for all lots within the development, and is being revised to show the net p.m. trips after taking into account the allowable 15% internal and 20% pass-by trip reductions as allowed in the annexation agreement. A trip cap was established for this shopping center in the annexation agreement, and reinforced in the adoption of the Southeast Lincoln/Highway 2 Subarea Plan. The purpose of the 'trip cap' is to preserve the capacity of Highway 2 through this part of the city. If approved, these requests would provide an additional 342 p.m. peak hour trips for use within the development. One exception to the allowed trip reductions in the approved traffic study was for office uses which were not allowed a 20% pass-by reduction. While a pass-by reduction may be appropriate for retail and restaurant uses, it would not be appropriate to use that assumption for office uses.

4. The land use table as part of this request must be revised using the correct net p.m. trips from AA#05051. Also, the 20% pass-by reduction for office uses included in UP140B's land use table must also be deleted consistent with #3 above.

5. Public Works notes that the theaters should also not be allowed the 20% pass-by reduction and that the reduction must also be removed from the calculation. Public Works notes that the 20% pass-by reduction is not applicable to office or theater uses as both are considered destinations. That is, the people using office and theater are there for that use specifically and not making stops at other stores.

6. The trip rates for the proposed theaters assumes nine of the 18 screens will show matinees, and nine of them will not. The theater consultant who prepared the market analysis attached to the staff report on the proposed changes to the theater policy was asked if this was a reasonable assumption. He reported that it was not and that no theater operator would agree to this type of limitation. The revised net p.m. trips for the theaters must use trip rates for theaters with matinees, as there is no enforcement mechanism to guarantee half the screens will not show matinees in the future and continue to qualify for the lower trip rate. The effect of eliminating the pass-by and matinee assumptions for the theater traffic is an

increase of 172 p.m. peak hour trips, 199 when the office pass-by reduction is also eliminated.

7. There are an additional 82 acres designated as commercial in the land use plan of the Comprehensive Plan. 38 acres north of the shopping center and west of the proposed theater site, and 44 acres northeast of the intersection of South 91st Street and Highway 2. The annexation agreement covering this area allowed a total of 5,283 net p.m. peak commercial vehicle trips, with 4,044 of the trips allocated for the area north of Highway 2, and 1,239 south of the highway for the commercial center known as Appian Way Phase II. It is important as these areas continue to develop that traffic generators be closely monitored to ensure that proposed development does not exceed the cap. Staff is concerned that after the trip table is revised, only 1,411 trips remain to be allocated over the remaining 82 acres. Staff would consider initiating a comprehensive plan amendment to change the designation of the 44 acres east of South 91st Street back from commercial to urban residential as it was prior to 2002 it the cap were to be exceeded. This would preserve the spirit of the traffic cap in the annexation agreement.

8. The Comprehensive Plan's Land Use Plan designates this area for commercial development. However, the Plan also calls for uses to be located to ensure compatibility with surrounding residential areas. The site plan should be revised to show the theater moved west and more internal to the shopping center to allow for office or other lower intensity uses to be sited along South 91st Street and Pine Lake Road, similar to an earlier concept plan provided to staff (copy attached). Unless approved by Public Works, the driveway to South 91st Street must also be deleted. This would also allow the street currently shown bisecting the theater site to be removed thereby eliminating the potential for pedestrian/vehicle conflict created by people walking from their cars to the theater. As drawn, the site plan does not reflect the Comprehensive Plan's goal of a pedestrian-oriented design. If these requests are approved, the specific site layout should be subject to site plan review by administrative amendment.

9. Under the current theater policy, an application for a special permit and use permit for a six-screen theater in a B-5 district is presumed to be approvable. A smaller-scale proposal would raise fewer questions about impacts on the downtown and about the traffic cap Staff encourages the applicant to withdraw and resubmit plans for a theater that is consistent with the current policy.

10. Staff is also concerned about the undesignated remaining area north of the proposed theater site between he parking lot and Pine Lake Road. It is too deep to be a buffer and too shallow to be a reasonable lot dimension.

11. Approved grading and drainage, street profile, and utility plans must also be approved. The details of these plans can be deferred, but must be included as part of the administrative amendment process and be approved prior to issuance of building permits.

12. The site plan must be revised to show the required 50' setback along South 91st Street.

13. It is noted that a waiver to the preliminary plat process has been requested, however, with the recent amendment to Title 26 Land Subdivision Ordinance this request is not necessary. Final plats can be approved based upon the approved use permit.

14. The Health Department notes that there is a 12" high-pressure gas line extending across this site west of the proposed theater. It is recommended that no occupied structures be located within 220' of the pipeline, and that owners and lessees be advised of the projected hazard area.

As noted previously, staff recommends denial of these applications. However, should the Planning Commission choose to approve them, staff recommends that approval be subject to the following conditions.

CONDITIONS:

Use Permit #140B

Site Specific:

1. This approval amends the site plan for Use Permit #140A to permit a total of 874,441 square feet (950,983 originally approved) of commercial and office floor area as shown on the approved plan.

General:

2. Before receiving building permits:

2.1 The permittee shall complete the following instructions and submit the documents and plans to the Planning Department for review and approval.

2.1.1 A revised site plan showing the following revisions:

2.1.1.1 A revised land use table that deletes the 20% pass-by reductions for the both the office uses on Lots 4 & 5, Block 2 and Lots 10 & 11, Block 3, and for the theaters.

2.1.1.2 All theater screens identified as “with matinee.”

2.1.1.3 The required 50' setback along South 91st Street.

2.1.1.4 Note #34 revised as follows: LOT LAYOUT FOR LOT 1, BLOCK 4 SHOWN WITHIN THE BOUNDARY OF THIS SPECIAL PERMIT/USE PERMIT IS CONCEPTUAL. THE SPECIFIC SITE LAYOUT, INCLUDING GRADING AND DRAINAGE, STREET PROFILE, AND UTILITY PLANS MUST BE APPROVED BY ADMINISTRATIVE AMENDMENT PRIOR TO ISSUANCE OF BUILDING PERMITS.

2.1.1.5 Delete waiver request #4 under “WAIVERS” relating to waiver of the preliminary plat.

2.1.1.6 Show the 12" high-pressure gas line across the site, and add General Note #35 which states: THERE IS A 12" HIGH-PRESSURE GAS LINE IN THIS AREA. IT IS RECOMMENDED THAT NO OCCUPIED STRUCTURES BE LOCATED WITHIN 220' OF IT. THE PERMITTEE MUST ADVISE THE OWNERS AND LESSEES OF THE PROJECT HAZARD AREA.

2.1.1.7 Show revisions to the satisfaction of Public Works and Utilities.

2.1.2 A land use/trip generation table for the remaining approximately 82 acres of commercially-designated land that includes the 38 acres west of this project site and the 44 acres northeast of the intersection of Highway 2 and South 91st Street.

2.2 The construction plans comply with the approved plans.

2.3 Final plat(s) are approved by the City.

Standard:

3. The following conditions are applicable to all requests:

3.1 Before occupying the buildings all development and construction is to comply with the approved plans.

3.2 All privately-owned improvements, including landscaping and recreational facilities, are to be permanently maintained by the owner or an appropriately established owners association approved by the City.

3.3 The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.

3.4 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.

3.5 The applicant shall sign and return the letter of acceptance to the City Clerk within 30 days following the approval of the special permit, provided, however, said 30-day period may be extended up to six months by administrative amendment. The clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filling fees therefor to be paid in advance by the applicant.

4. The site plan as approved with this resolution voids and supersedes all previously approved site plans, however all resolutions approving previous permits remain in force unless specifically amended by this resolution.

Prepared by:

Brian Will
Planner
May 18, 2005

APPLICANT/ CONTACT: Mark Hunzeker
PO Box 95109
Lincoln, NE 68509
402-476-7621

OWNER: Eiger Corporation
16800 Pella Road
Adams, NE 68301
402-788-2572

COMPREHENSIVE PLAN AMENDMENT NO. 05014,
CHANGE OF ZONE NO. 05035,
CHANGE OF ZONE NO. 05036,
SPECIAL PERMIT NO. 05023,
and
USE PERMIT NO. 140B

PUBLIC HEARING BEFORE PLANNING COMMISSION: June 8, 2005

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

Staff recommendation: Denial of all five applications.

Ex Parte Communications: Carroll, Taylor, Larson, Pearson and Sunderman disclosed that they had conversations with Mark Hunzeker; Larson also had a conversation with Don Wesely. There was no additional information to be disclosed as a result of these contacts.

Brian Will submitted one letter in support and one letter in opposition.

Proponents

1. Mark Hunzeker presented the applications and gave a brief history on the Lincoln theater policy. At the time that the theater policy was adopted, there were only two theaters outside the downtown, both of which were single screen and both of which are now defunct. The result of that policy is that all theaters in Lincoln that run first run commercial movies are owned and operated by a single company. The initial policy allowed three theaters in the B-5 districts; Edgewood had proposed six screens; the City Council at that time cut that to three and the only operator willing to build and operate three screens was one of the incumbent downtown operators. Edgewood is now owned by the current operator, Douglas Theater Company. When SouthPointe was developed, an outside operator proposed twelve screens. The city insisted that there only be six screens and threatened to hold up or deny the shopping center if they were going to insist on twelve screens. Again, the only company willing to build six screens was the incumbent operator, Douglas Theater Co. At that point, when six screens became the norm, Edgewood and East Park were expanded from three to six screens. Hunzeker submitted that currently, no exhibitors, including the Douglas Theater Company, build six screen complexes anywhere except Lincoln. Virtually all of them are sixteen screens or greater, including the three different complexes built by Douglas Theater Company in Omaha.

Hunzeker then discussed the proposal to amend the Comprehensive Plan to delete references to the theater policy to make it neutral as to the number of screens in shopping centers; to amend the zoning ordinance to allow for more than six screens in the B-5 districts if located more than 6.5 miles outside the radius of 13th & O Streets; to rezone additional land to B-5 at the Prairie Lake shopping center in accordance with the Comprehensive Plan; a use permit and special permit to develop an 18-screen theater complex along with other uses at Prairie Lake.

Hunzeker explained that the reason for this request is that the developer of this site desires to have a state-of-the-art theater complex and entertainment center at Prairie Lake shopping center. This developer has been very meticulous about reviewing the architecture, materials and landscaping that go into that center. Likewise, with an entertainment complex, they are interested in having first-rate architecture, premium grade materials, expanded food offerings and first quality, state-of-the-art theater venues. The developer wants to be able to negotiate for a first class facility with more than one theater operator. In order to do that, there is a need for more screens to attract any interest whatsoever in the project from operators other than Douglas Theater.

Hunzeker then addressed the staff report and theater study done by the city. Hunzeker submitted that the study commissioned by the city staff was designed from the outset to justify the existing policy and to justify denial of these applications. The study starts on a fallacious assumption that there are 43 theater screens in Lincoln. That number includes the Star Ship 9 and the media arts center of the University, neither of which exhibit first run commercial movies. So, instead of one screen per 6,082 people, the number is really more like one screen for 873 people, which is almost exactly on the US average that is so frequently report in the staff report.

Hunzeker also suggested that it is interesting to note that even the report acknowledges that 70% of the current box office revenues are generated at East Park, Edgewood and SouthPointe. Thus, the current downtown theater policy is not creating a dominate theater market in the downtown.

Hunzeker then distributed information on other markets closer to Lincoln than the national average that he has investigated, including Des Moines; Omaha; Madison, Wisconsin; Wichita, Kansas; and Lincoln. Des Moines has one movie screen for every 5541 people within a 20 mile radius; Omaha has one per 6279; Madison, Wisconsin, has one per 7390; Wichita has one per 7068; and if you include a 20-mile radius population, the screen ratio in Lincoln is one per 8795. We are not over-screened in Lincoln. Therefore, the basic premise of the city's study is false. Moreover, none of the other cities that he reviewed had only one theater operator.

Hunzeker noted that the study concludes that the proposed theater complex will lose money and "finding a theater chain willing to move forward on the site will prove challenging, if not impossible". It is Hunzeker's opinion that that conclusion is reached using a highly inflated cost of construction of the new site (20 million dollars) versus the budgeted 13.5 million that was used for the Grand Theater complex downtown, including site acquisition, demolition, site prep and streetscape improvements. The city has subsidized the Grand Theater to the tune of 3.4 million dollars. In addition to that, it entered into an agreement which says, in part,

> ...that so long as any of the bonds issued with respect to the project area remain outstanding and unpaid, the city agrees a) to use its best efforts to maintain and duly enforce the current B-5 zoning restrictions that prohibit theater complexes of seven or more screens, and b) that if the city takes any affirmative action resulting in a theater complex of seven or more screens actually opening for business within the City of Lincoln, the city agrees that the valuation of the redeveloper improvements are subject to reduction for the actual loss of rental income and the city acknowledges that the valuation of the redeveloper improvements upon completion assumes the theater policy is in place and will remain so until the final maturity date. ...

In addition, the city has provided free parking to the Grand. Hunzeker does not believe it is a bad thing to subsidize projects in the downtown area to keep it vital, but we have spent millions doing that and if the tax revenues to support the city services have to come from somewhere, and all of the tax revenue from new projects in the downtown are sequestered to pay off TIF bonds downtown, then there has to be some private projects permitted to go forward to put taxes into the city coffers as opposed to pay off TIF bonds.

Hunzeker further pointed out that the staff recommendation of denial is based upon protection of the Grand. Lincoln's ordinances don't protect any other land use in this manner – banks, hotels, office buildings, retail shops, restaurants – every other kind of use you find downtown that is permissible anywhere else in the city is not restricted in the same manner as theaters. The City is directly involved in the enterprise of operating a theater complex in downtown in the form of the Grand.

It is Hunzeker's opinion that the ordinance, in its current form, does not advance any of the purposes of zoning set forth in the state enabling legislation, a copy of which was submitted for the record. Those permissible purposes of zoning are to,

> ...be designed to secure safety from fire, flood, and other dangers and to promote the public health, safety, and general welfare and shall be made with consideration having been given to the character of the various parts of the area zoned and their peculiar suitability for particular uses and types of development and with a view to conserving property values and encouraging the most appropriate use of land throughout the area zoned, in accordance with a comprehensive plan. ....

This area is clearly specifically designated in the Comprehensive Plan for a shopping center. Virtually every shopping center in the country is developing theater screens as a complementary use. Nothing has been said about this project which in any way implies that it is detrimental to any property surrounding it. Extensive traffic studies and expensive road improvements have been made in anticipation of development of a major shopping center at this location. All the applicant wants is the opportunity to build a use which is commonly included in shopping centers everywhere else in the country. Lincoln may very well be the only city in the country with a policy as restrictive and anti-competitive. Hunzeker urged that it is time to allow for some competition in this market.

Hunzeker then referred to the conditions of approval on Special Permit No. 05023 and requested that Condition #2.1.1.1 be deleted, which calls for a revised land use table that deletes the 20% pass-by reductions for both the office uses on Lots 4 and 5, Block 2; Lots 10 and 11, Block 3; and for the theaters. There is a very specific annexation agreement which calls for the manner in which trip caps are to be computed. The calculations have been done in accordance with that agreement and the developer does not agree to make any change in the way that agreement reads today.

Hunzeker also requested that Condition #2.1.1.6 be deleted, which refers to a 12-inch high pressure gas line across the site. This gas line does not exist. The nearest gas line is 1500 feet away at about 95th Street and there is one on the west side of 84th Street, but it does not go through this site.

Pearson asked for an explanation of the “pass-by reductions”. Hunzeker gave a brief explanation and stated that this was thoroughly negotiated at the time of the first use permit and annexation, and the calculations have been done in accordance with that annexation agreement.

Carroll noted that the economics of the existing theaters (East Park, Edgewood and SouthPointe) do not show a substantial increase saying that there is a need for more theaters in the City of Lincoln. How do you address that we need an 18-plex theater? Hunzeker pointed out that we do not go through the retail sales data every time someone wants to put in a new retail use at this shopping center; we do not do that when someone wants to put up a new office building; nobody talks about the number of restaurants or how many people are eating at restaurants; nobody talks about the same thing for banks or hotel rooms. Hunzeker believes that it is inappropriate for a decision of this kind to be made based upon whether or not the Planning Commission or the Planning Department think we need additional theaters. This community is growing and over the next ten years we are probably going to add population here equivalent to a medium size city. Based on the other cities we have looked at, this community cannot only support it but wants it. Having been to SouthPointe and to Edgewood in the winter time, those places are crowded. We need more theaters where people can get to them without have to drive 10 miles to get there.

Carroll believes that the documentation provided by Hunzeker states that the other cities are showing that Lincoln is not under-served or over-served, yet the economics show us that we are not in a large need of more theaters per capita. On one hand you say we need more theaters because we should be the same as other cities, but the economics tell us that we’re right on pace and we’re growing but we’re not in need of more theaters. Again, Hunzeker does not think that is the question you have to ask to make a decision. We have a site clearly designated and approved as a major shopping center site. There will be two million square feet of retail and service uses in this immediate vicinity as this property develops. Every shopping center of that magnitude that you can find anywhere in the country has theaters associated with it. It is a common use. This proposal is in a growing portion of our community and it seems that the land use issue, which is whether there should be theaters at this site, is one which is obvious–there should be, and all the developer is requesting is an opportunity to negotiate with more than one operator for the construction of those theaters.

Carroll pondered whether it would be better to have a scaled increase in theaters as population increases instead of asking for eighteen today. Hunzeker’s response was, “according to what?” Nobody builds 6-screen complexes except in Lincoln. And the only operator who builds six screens in Lincoln is the operator that owns all of the screens. There is not a single place you can find where people are building six-screen theaters. The Douglas Theaters in Omaha are 16, 18 and 20 screens, and it is because they are competing with other operators that are doing the same. It is impossible to get another operator interested if all you can offer them is six screens. Hunzeker agreed that phasing might be a possibility, but no one is going to start with less than twelve screens.

2. Larry Douglas testified in support. Lincoln will continue to experience its greatest growth and infrastructure improvements in its southeast quadrant. Such catalysts as the defacto south interstate of Highway 2, recent annexation of Cheney, residential developments in Bennet, plans for construction of a new high voltage corridor for Nebraska City and a pre-south beltway verify this trend. If you want to strengthen downtown Lincoln and increase the spending resident population, don’t inhibit suburbia for the sake of the Downtown Lincoln Association political maneuvers.

Forcing an antiquated, hypocritic ordinance on Eiger Corporation and the growing community of citizens that the Prairie Lake shopping center serves can be seen only as a protection for the Douglas Theater monopoly and a socialist pro-downtown prohibition to free competition and market forces. It is competition we need to discuss, not cannibalization.

3. Jerry Soucie, who reside south of SouthPointe, testified in support. He totally disagrees with the feasibility study. It is "stuff" like this that gives Lincoln such a bad reputation for economic development. This study is to protect the Douglas Theater Corporation. It costs $8.00 to go to a movie. The increase in revenues is from increased prices. The impact of this study is not to help the taxpayers and citizens of Lincoln – it is to protect Douglas Theater. Why do you care? Why do you care what happens to the Edgewood Theater? If someone comes in with an economic development plan that improves the viewing options and causes a less efficient business to go under, so what? That is the nature of capitalism in America today. Soucie believes that the Commission needs to recognize that by having a monopoly we are not getting the movies that people get in other towns. Why can't I have the option of going to an 18-plex at Hwy 2 and 84th Street? It is about time that this city stops thinking it can protect certain businesses at the expense of others. We need to have competition. Perhaps if there was competition we wouldn't be paying $8.00. He believes that we need to be generating more competition with Douglas Theater rather than less. Here you have a private developer willing to pay 15 million dollars for construction that goes into this city. If the developer can't make a go with the 18-plex, so be it.

4. Ted Glaser testified in support. He believes there is a need for a paradigm shift of the economic development attitude within this city. Glaser owns several apartment buildings in the Near South neighborhood and no one talks about cannibalizing his apartment buildings when others come to build new apartment complexes. When John Q. Hammons talks about building a hotel, we don't talk about cannibalizing existing hotels. Why is it that we suddenly have a protected monopoly saying we can't let anyone else but Douglas operate downtown? We're too afraid to grow. Nebraska City residents go to Bellevue to go to a movie. Here is your chance to compete with Omaha. The original plan calls for no more than six screens within 6.5 miles. The proposed location is 7.5 miles. There is a need to revisit our attitude towards economic growth within this city. Highway 2 is an opportunity to use a pipeline to bring economic activity to counter the "sucking sound" going down Interstate 80 towards Omaha.

<u>Opposition</u>

1. Carol Brown, 2201 Elba Circle, testified he opposition. North Lincoln has waited so very long for a movie theater. She is opposed because she is fearful of the impact of this proposed megaplex on the opportunity for a theater in North Lincoln.

2. George Crandall, Crandall-Arambula, Portland, Oregon, a consulting firm which specializes in revitalizing cities, testified in opposition. Theaters are a fundamental building block in bringing back downtowns. When his firm visited Lincoln, they found that Lincoln has already taken the first step in revitalization. Crandall-Arambula has been retained by the city to prepare a Downtown Master Plan; to prepare an implementation strategy for that master plan; and to prepare the design guidelines that will allow implementation to proceed. Many cities are looking for theaters in the downtown because they attract people into the downtown and attract the after-hours restaurants and shops. In Racine, Wisconsin, they do not have a cinema downtown and they are looking for one. Knoxville, Tennessee, is trying to attract a major cinema into the downtown. They know that without the cinema they cannot revitalize their retail. Oak Park, Illinois, is trying to expand a

downtown cinema so that they can attract more people into the downtown. In developing the proposed revitalization strategy for Lincoln, Crandall-Arambula built it around the new cinema which is located in the right place on P Street in what he would call an anchor location at the end of the retail string. It is situated right; the front door is on the right street; and it has the potential to be a major factor in revitalizing retail over a period of time. The attendance in that theater is not what it should be. We like to see about one million plus visitors a year and he understands that Lincoln is around 600,000. There is a lot of potential that has not yet been realized. Lincoln will not realize the potential unless you see the full potential in that cinema. The timing is wrong to introduce competition into the area which will suck investment out of the downtown. You don't want to be like every other place in the country with theaters in every shopping center. This is all about economic development and the Commission needs to vote "no" on changing the policy.

Pearson noted that during a briefing on the Downtown Master Plan, she asked whether one portion of the entertainment project could sustain a downtown, and Mr. Crandall had said no – that there have to be many facets to support the downtown. She suggested that to say that the downtown relies on one theater would be stretching it a bit. She does not see that the Grand is the center of the downtown. Knowing Nebraska winters, do we really expect people to drive over seven miles to come to downtown to go to a movie in the winter? Crandall stated that a theater is a fundamental piece. They need to be healthy and they need to thrive if the downtown retail is to come back, and part of Crandall-Arambula's strategy is a downtown retail revitalization strategy which attaches itself to the cinema. Without the cinema, the downtown retail revitalization will not stand a chance. It is fundamental and Lincoln is way ahead of the curve by making a substantial investment in that facility. You do not want to put that in jeopardy. The timing is just wrong. You are starting to create momentum in bringing the downtown back. There are other theaters in the region. People do have other options. You need to take care of the heart first. The heart of your community is the downtown. If your heart is weak, the extremities will be weak. You are starting the recovery process and the cinema is your first step. "Do not drive a stake through the heart before you get rolling. The timing is wrong. Do not let the policy go." Lincoln is unique because of this policy and you don't want to be like every other place. Every other place is trying to be like Lincoln.

3. Russ Bayer, 633 S. 112th Street, testified in opposition. He serves on the Downtown Lincoln Association board, but they did not ask him to represent them. He also serves on the LIBA board and they did not ask him to appear. These are thoughts for himself and his family. He owns property in downtown Lincoln in the Haymarket and outside the Haymarket area, but he also owns property in northwest, northeast and southeast Lincoln, and 60 acres 6.7 miles from 13th and O Street.

With that said, Bayer believes that the Downtown is the most important. We want the downtown to be the center for entertainment. It has taken courage of the citizens to invest their time, effort, talents and money in the downtown. It has taken courage of the elected and appointed officials who have recognized the importance of a downtown so that our community can grow in all directions and still have the downtown remain viable. It has taken the dedication of associations like DLA, Updowntowners and Downtown Lincoln Neighborhood Association, along with strong partnerships of UNL and local and state government. All of that has made the downtown what it is today. Bayer suggested that downtown is really in its infancy as far as its new role in our community. The balance that exists today appears to be a good balance. It is fragile. We are losing the wrestling tournament to Omaha. We need to protect that area if we believe so heartily in what it should be in

the future. We have to convince people that there is parking. We have to convince the community that there is a lot to do downtown. If there is any deviation in the vision or in the policy, it would be very devastating to what we have going on in Lincoln.

Another issue is "trust". We have a theater company that has lived and worked under a policy that is in place. What business person in town would not support a policy that strengthened your business? Other businesses can create theaters in this community under that policy. Recently, Douglas Theater put money into Downtown Lincoln, and they did so trusting in a 20-year policy. What message does it send if we now change the policy? The message we want to send is that we can trust Lincoln.

Bayer also suggested that this is a self-serving policy – there is one potential B-5 that could have this megaplex. If you are going to change the policy, then get rid of it completely and make it available to everyone.

Bayer suggested that six theater screens in an "urban village" is the right answer. Be courageous and support our existing policy and send the message of trust.

5. Cecil Steward, 125 N. 11th Street, testified in opposition. He and his wife have been major downtown supporters and advocates for at least eleven years. The Comprehensive Plan is the first document in Lincoln that calls for "urban villages". An urban village is where there is mixed used, where people can walk, bike, recreate, be entertained and they can do their shopping in a village-like atmosphere. The heart of Lincoln has had many of those components for many years and the heart of Lincoln is Lincoln's urban village. This policy was created to help protect that characteristic. If we were promoting other urban villages instead of regional shopping centers, this topic would not be before the Commission because the six screens would adequately serve outlying urban villages.

Steward suggested that the point that has been made about no other use getting this kind of protection is incorrect. The Comprehensive Plan and zoning ordinance is all about protecting other uses. While there may not be the same kind of financial attachment to the other uses, the principle is and has been with us. It may be a violation of the health, safety and welfare uses of zoning. This is a welfare issue. It is the welfare of the community. Theaters in shopping centers are vital to the shopping center just as theaters in the downtown are vital to its well being and economic development, but we are looking at 50-year plans. The Downtown Master Plan is based upon a 50-year set of principles and we need to be creative about what those principles may be in the future. Theaters in shopping centers are auto oriented only. The choices that people will have of living, working and recreating in an urban village are very different and auto dependency is going to continue. Now is not the time. It is reasonable to expect that a regulatory principle like the theater policy should be investigated and there will be a day when it should be changed, but now is not the time. Steward implored the Commission to stick with what we have until the downtown can become more of an urban village.

6. Mary Jane Steward, 125 N. 11th, appeared on behalf of the Downtown Neighborhood Association, in support of maintaining the entertainment district in the downtown area. Allowing megaplexes outside will not encourage entertainment growth in the downtown area. The Downtown Neighborhood Association believes this proposal will discourage the viability of downtown living and entertainment. Even if she lived in the suburbs, she would still support the Comprehensive Plan.

7. Ryan Osentowski testified in opposition on behalf of the National Federation of The Blind of Nebraska, Lincoln Chapter, with two main concerns about the proposal involving accessibility. The proposed theater location is not accessible by public transportation, bus or otherwise. The area being proposed has no bus routes. It is a common misconception that the blind and visually impaired are not interested in participating in movies, but in order to participate you have to get there. Downtown is very accessible. The blind have been enjoying movies for years and years and will continue to do so, and Douglas Theaters has helped by adding a new dimension called Mopix – a system by which the blind and the deaf can view a movie using close caption and descriptive video service. One of the theaters in the Grand is equipped with a Mopix. The Grand is in an accessible, safe walking environment. He is not sure that is the case in the proposed area.

8. Travis Green, 4445 Hillside Street, chef/owner of The Dish restaurant located at 11th and O Streets, testified in opposition. He respects and supports businesses investing in our city, but the Grand Theater has had a very positive impact on his restaurant. His sales have been up since the theater opened in November. Ultimately, as a citizen of Lincoln, he believes that it is important to have a strong downtown with government, hotels and a major entertainment district. As a community, we need to have the integrity to preserve our downtown. His investment was made with the knowledge of the theater policy, and he believes other business people downtown have made similar decisions.

9. Maurice Baker, 3259 Starr Street, testified on behalf of the Clinton Neighborhood Organization in opposition. If the Grand no longer existed, the closest first run movie house would be East Park, which is not particularly accessible by public transit. A change in this policy would be inconsistent with the Antelope Valley project, which was undertaken to maintain the viability of the downtown area. It is possible that if we lose even one of these entertainment sites, the attractiveness of living downtown becomes less attractive in the future. There are secondary impacts as we make investments. There are also secondary impacts as we make disinvestments. If Hwy 2 takes place at the cost of existing investments, there will be secondary impacts on other businesses. The Planning Commission needs to consider the well-being of the city as a whole and not necessarily one particular area.

10. Polly McMullen testified in opposition on behalf of the **Downtown Lincoln Association,** which has been the leadership and advocacy organization for downtown since 1967. Downtown is a center for employment, tourism, government, education, residential living and entertainment. Designation of downtown as Lincoln's destination entertainment district has been a centerpiece of city planning, investment and public policy since the late 70's. As downtown has gotten stronger in recent years, some in our community may believe that it is "fixed" and that it is time to abandon some of the policies and commitments. But the reality is that downtown is not "fixed". Downtown is still fragile and it is just beginning to stabilize after a long difficult period. Great cities generally share one common denominator – a vibrant and successful downtown. The theater policy, along with the location of business and finance, local, federal and state government and the University, is a key building block to our past success and our continued progress. She urged the Commission to continue the long tradition of support for this key entertainment building block.

11. Don Wesely testified on behalf of The Douglas Theater Company. Wesely suggested that the theater policy has evolved over time into a neighborhood theater policy. By limiting to six screens, the result has been theaters easily accessible in different neighborhoods. This won't continue to happen if you break apart the policy. The 18-plex will hurt the downtown as well as all of the other theaters. Mayor Seng has taken a strong position, as well as the Planning Department, the DLA,

and the Lincoln Journal Star, in support of the current theater policy. The city worked very hard to get a downtown theater. A national developer was brought in to look at the project and it was found that the chains are not interested in being downtown. Our locally owned Douglas Theater stepped up and made the investment of 11 million dollars. Part of the agreement included a recognition that the theater policy was a central piece of the decision that made this possible. This is absolutely the wrong time to make a change in the policy. We need to honor the investment and commitment that has been made.

Wesely believes that Douglas Theater has been a good corporate citizen in this city. They have complied with the policy; it has lead to neighborhood theaters throughout the city and we need to maintain the policy.

Sunderman inquired why the national theaters were not interested in being downtown. Wesely stated that the number of screens was not an issue. It was just that they don't feel downtown theaters have been successful – they are a high risk. Even with the policy, the national theaters believed it to be too great of a risk to come in and make the investment. The city leaders came to the conclusion that the only way to get a downtown theater was to maintain the policy and work with our local company, Douglas Theaters.

12. Deb Johnson, Executive Director of Updowntowners and resident at 84th and Hwy 2, testified in opposition. The existing policy has worked to strengthen downtown and the community of Lincoln as a whole. The Updowntowners strive to improve the quality of the downtown through events that enlighten our community around the clock. Entertainment is a key component of a vital downtown. Downtown is everybody's neighborhood. A change in the theater policy will harm the entertainment focus for downtown. The existing policy has been successful in helping downtown in its transformation to a mixed use center.

13. Marvin Krout, Director of Planning, indicated that the city's consultant from Knoxville, Tennessee, would like to comment on some of the of the testimony. Krout also stated that he is proud to live in Lincoln because it has been fortunate enough to live with economic development and retain its values. It is wrong to pick one over the other. He wanted to comment about the testimony suggesting some kind of "movement of wind" from Lincoln to Omaha. This needs to be considered more carefully. When you compare employment growth in the last five years, Lincoln-Lancaster County (being 40% the size of Douglas and Sarpy County) has created just about as many new jobs as Douglas and Sarpy County. He does not hear that "sucking sound." The Planning Department is pro-development. What makes this community unique is that it lives on its values and not just on economic development, and downtown is one of those values.

Krout suggested that there are new theater complexes being built with less than 12 screens. There are limiting factors that make the site at 84th and Hwy 2 a less than ideal site for the location of any size number of screens.

14. Keith Thompson, Knoxville, Tennessee, stated that he has fed his children for the past 15 years by participating in the motion picture exhibition industry. Until recently, he was the head of real estate for what became the largest movie chain in the world. He then started a consulting business which lead to his ownership of a movie chain which he has sold and is now head of real estate for a large movie chain; he continues his consulting business, which specifically looks at theater uses in shopping centers and mixed use developments nation-wide. He first came to Lincoln about three years ago to research putting the Grand downtown. If you look at the status of

the movie theaters in Lincoln today versus three years ago, the six screen theaters that exist are nice, well-maintained movie theaters. You do not have a monopoly, but a theater chain. Now you have a beautiful facility downtown as a result of the theater policy.

Thompson was asked to assess the proposed site. His assessment has nothing to do with the theater policy. The overriding factor to justify building new movie theaters is rooftops. There is no one that lives southeast of the site. 4,000 people will not even support one movie screen. The next criteria is whether there are other movie theaters nearby. In this case, there is Edgewood Six. They won't be able to show the same films that are being shown at Edgewood. Regardless of the policy, there are no rooftops to the southeast so the market has to come from where there are other theaters. You cannot build a megaplex in a competitive film zone and expect it to be economically successful. The economic viability has nothing to do with the theater policy.

Thompson also suggested that when you build any theater in the market, you transfer business. When the Grand opened, it transferred business from Edgewood, East Park, and SouthPointe. If the policy is changed, Thompson predicts that there will soon be a plan amendment for SouthPointe to expand. It is a better location than the Prairie Lake site. It takes over a million dollars per screen today. This market is not big enough to sustain a top line revenue base in an 18-screen theater at this location to make it economically justifiable.

Pearson previously heard that the city relies on the health of the core; the core is relying on the health of the Grand theater; no one wanted to invest except for Douglas Theater; yet Thompson is saying that he would not recommend that someone build a theater downtown. If we only had one theater company willing to build in downtown, why are we resting the health of our downtown on a theater that probably is not going to sustain the downtown? Thompson explained that he was summarizing in general that movie theater chains do not look to make investments in downtown.

Carlson asked the consultant to speak to the theory that opening this competing facility will drop the attendance downtown. Thompson clarified that he has no relationship to the Douglas Theater chain. When he first looked at Lincoln's market four or five years ago, he thought it was a vital market without any megaplexes. He came to the conclusion that, while it is a strange policy, it is a policy that works. There are a lot of developers all across the United States that have this "irrational exuberance" when it comes to movie theaters. The real sad fact is that back in the late 1990's, the development community grasped this concept and an incredible number of theaters were built, and 15 movie theater chains went bankrupt in the process by overbuilding and over-expanding. Irregardless of the theater policy, there are about 6,012 movie theaters in the US today. Of those, only 523 are megaplexes, about 9%. 2,337 of those 6,012 theaters are theaters that range from two to seven screens. It is false that there are no six-plexes being built. The reason most large chains are not pursuing six screens is because they are pursuing development opportunity in larger markets. It has more to do with the size of the market you are trying to serve.

<u>Response by The Applicant</u>

As far as now not being the time to change the policy, Hunzeker pointed out that this policy has been in place for 21 years. The two theaters that were outside the downtown at the time the policy was instituted are gone. All of the screens in Lincoln have been consolidated under one ownership. It took 20 of those 21 years for us to get a megaplex downtown. Everybody understands that this policy is running against the market. There is no standard suggested by anybody as to the market place standard by which we can measure the "right time." The right time is when someone is willing

to put their "real" money of their own on the line in a location to build something outside the downtown. Mr. Thompson may be right – maybe he has correctly analyzed this site, but there ought to be a level playing field for a developer of a shopping center in this community to be able to negotiate with more than one player. If his client is guilty of "irrational exuberance", that is his problem, not the Commission's. He is not going to waste money if he doesn't think it is feasible. All this developer is requesting is an opportunity to do business in Lincoln in a way that enables this developer to be able to survey the market and to invite proposals from more than one operator.

Hunzeker believes it is a great location. It has the potential to be a great shopping center. It would be in much closer proximity to much more population as time goes on as we develop the Stevens Creek Watershed and other parts of southeast Lincoln that are about to get additional sewer through the Beal Slough sewer system. Hunzeker believes that now is the time.

Pearson wondered whether there would be potential to limit this to a 12-screen theater. Hunzeker believes it is possible that someone might be willing to phase it in, but it would not be likely that they would phase it in starting with less than 12.

COMPREHENSIVE PLAN AMENDMENT NO. 05014
ACTION BY PLANNING COMMISSION: June 8, 2005

Taylor moved denial, seconded by Larson.

Taylor believes the basic concern is the viability of our downtown community. He believes that Douglas Theater has done a very good job in making a commitment to our city. You don't want to back out of an agreement. It is important to do everything possible to continue along with the process and progress that we have done so far. He wants to stay the course and not change in the middle of the stream.

Larson commented that he has been around downtown for many years and he observed the negotiations that went on on that block to build a megaplex. We were unsuccessful in attracting any national developer or national chain. He acknowledged that Douglas was subsidized, but there was a high element of risk on the part of Douglas to invest that kind of money and it was done out of the sense of community improvement as much as it was potential profit. He believes we should stick to the agreement.

Pearson stated that she lives very close and works very close to downtown and goes to movies downtown. But, she does not think that you can rest the security of the downtown on one theater. That is false hope. You have to rest it on the Grand, the Lied, the Haymarket, the bars, the restaurants, etc. It can't rest on one thing. She believes it is an overstatement to say that the Grand will fail, and it is an overstatement to say downtown will fail if the Grand fails. Does she want to see a megaplex on 90th and Hwy 2 today? No. So she is trying to think of a reasonable compromise and she thinks a 12-plex outside the 6.5 mile radius is a reasonable compromise that she would propose.

Carroll commented that there are other cities trying to do what Lincoln is doing downtown and he does not think we need to stop now. The core is very important. It needs to grow and expand and get better for everybody. Putting a megaplex on the fringes just does not help. It is important to stay with your core. We need to protect that.

Carlson commented that he is encouraged that people will come out and get engaged in a discussion like this and encouraged that the proponents and champions for downtown will show up. With due respect to Pearson, he does not hear people saying the downtown will fail if the Grand fails. We're talking in terms of dynamic. The current policy is guiding us in the right direction. We need to stay on the path that is taking us in the positive direction. There are multiple opportunities downtown. It is a tool in the tool box. We have heard a lot of talk about a lot of different concepts. The question is, what is going to take precedence here? People talk about investment. Investment is good. Competition is good. Economic development is important. One of our duties is to protect what's valuable in the community. Carlson also takes seriously his duty as a Planning Commissioner and it is his job to protect what the community says is valuable. And the Comprehensive Plan indicates that downtown is what is important to this community. It is the heart of our community. We own downtown. We own the investments. Making this change threatens that future; it threatens downtown; it harms downtown; and threatens the downtown neighborhoods. It is our job to protect what is valuable. In this situation, it is the downtown and a policy that encourages and strengthens downtown.

Motion to deny carried 5-2: Larson, Taylor, Sunderman, Carroll and Carlson voting 'yes'; Pearson and Krieser voting 'no'; Bills-Strand and Esseks absent. This is a recommendation to the City Council and Lancaster County Board.

CHANGE OF ZONE NO. 05035
ACTION BY PLANNING COMMISSION: June 8, 2005

Taylor moved denial, seconded by Larson and carried 5-2: Larson, Taylor, Sunderman, Carroll and Carlson voting 'yes'; Pearson and Krieser voting 'no'; Bills-Strand and Esseks absent. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 05036
ACTION BY PLANNING COMMISSION: June 8, 2005

Taylor moved denial, seconded by Larson and carried 5-2: Larson, Taylor, Sunderman, Carroll and Carlson voting 'yes'; Pearson and Krieser voting 'no'; Bills-Strand and Esseks absent. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 05023
ACTION BY PLANNING COMMISSION: June 8, 2005

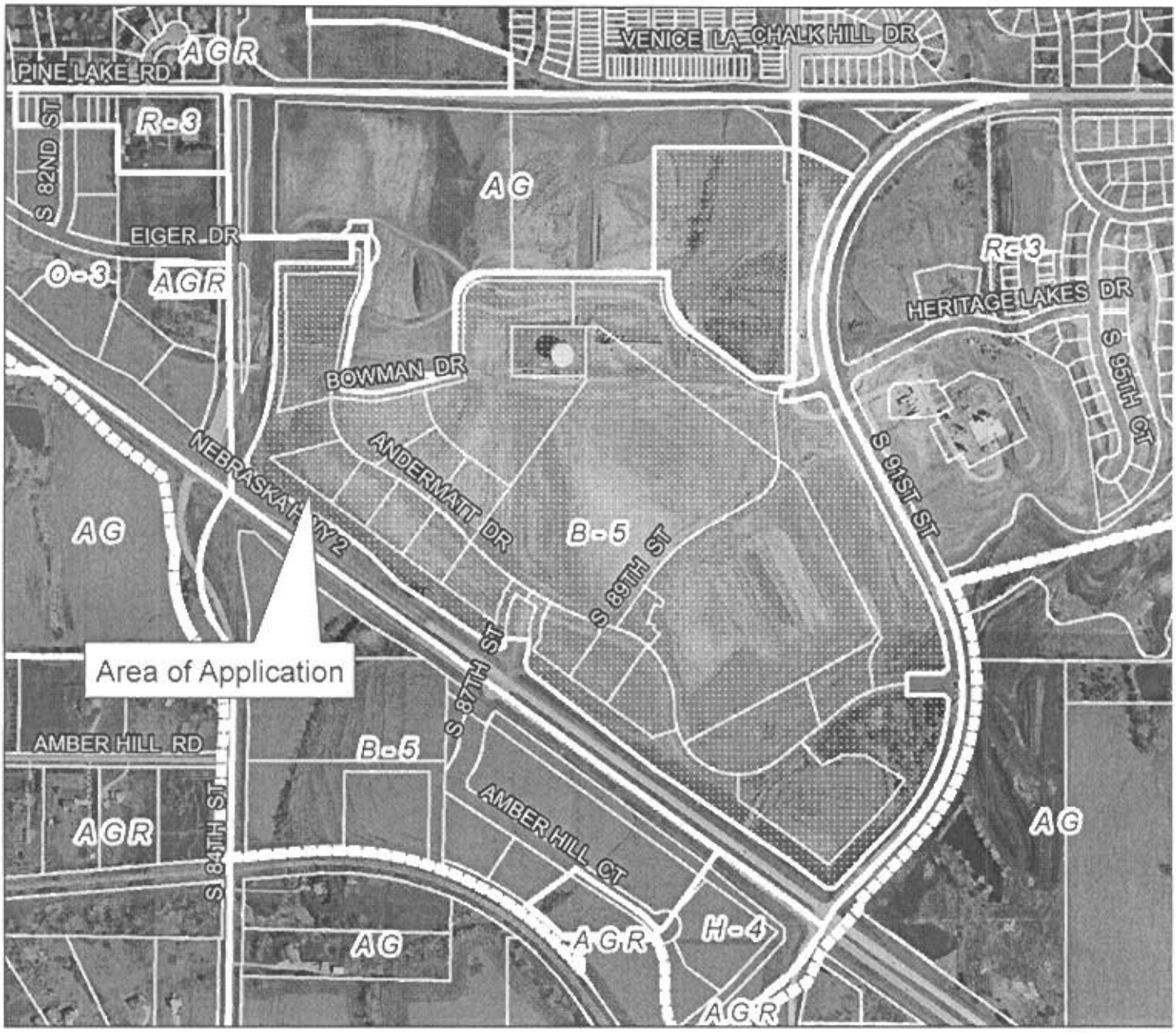
Taylor moved denial, seconded by Larson and carried 5-2: Larson, Taylor, Sunderman, Carroll and Carlson voting 'yes'; Pearson and Krieser voting 'no'; Bills-Strand and Esseks absent. This is final action, unless appealed to the City Council within 14 days.

USE PERMIT NO. 140B
ACTION BY PLANNING COMMISSION: June 8, 2005

Taylor moved denial, seconded by Larson and carried 5-2.

Taylor stated that he is definitely not opposed to competition. He thinks it is extremely important, but he believes the way we started this ball rolling with the commitment that was made by Douglas Theater was a decision that was very well made at that time and he believes it makes good sense to stay on the same course until it comes to conclusion. He does not want to do anything to jeopardize the viability of our downtown area at this time.

Motion to deny carried 5-2: Larson, Taylor, Sunderman, Carroll and Carlson voting 'yes'; Pearson and Krieser voting 'no'; Bills-Strand and Esseks absent. This is final action, unless appealed to the City Council within 14 days.



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Use Permit #140B
S. 91st & Pine Lake Rd.

Zoning:

R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Convervation District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

One Square Mile
Sec. 23 T9N R7E

N

Zoning Jurisdiction Lines

City Limit Jurisdiction

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APPIAN WAY REGIONAL CENTER
USE PERMIT LEGAL DESCRIPTION

A TRACT OF LAND COMPOSED OF LOTS 1, 2 AND 3, BLOCK 1, APPIAN WAY ADDITION, OUTLOTS A, D, E, H, I, AND M, APPIAN WAY ADDITION, A PORTION OF OUTLOT N, APPIAN WAY ADDITION, A PORTION OF OUTLOT O, APPIAN WAY ADDITION, LOT 1, APPIAN WAY 1ST ADDITION, LOT 1, APPIAN WAY 2ND ADDITION, LOT 1, APPIAN WAY 3RD ADDITION, LOTS 1, 2 AND 3, APPIAN WAY 4TH ADDITION, LOTS 1, 2 AND 3, APPIAN WAY 5TH ADDITION, OUTLOT A, APPIAN WAY 5TH ADDITION, LOTS 1 AND 2, APPIAN WAY 6TH ADDITION, OUTLOT A, APPIAN WAY 6TH ADDITION, A PORTION OF THE REMAINING PORTION OF LOT 92 I.T., AND A PORTION OF THE REMAINING PORTION OF LOT 56 I.T., ALL LOCATED IN SECTION 23, TOWNSHIP 9 NORTH, RANGE 7 EAST OF THE 6TH P.M., LANCASTER COUNTY, CITY OF LINCOLN, NEBRASKA.

MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 23, THENCE SOUTH 00, DEGREES 40, MINUTES 41 SECONDS EAST, ASSUMED BEARING, ALONG THE WEST LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 809.82 FEET; THENCE NORTH 89 DEGREES, 19 MINUTES, 19 SECONDS EAST, A DISTANCE OF 240.00 FEET TO THE **POINT OF BEGINNING**; THENCE CONTINUING NORTH 89 DEGREES, 19 MINUTES, 19 SECONDS EAST, A DISTANCE OF 344.59 FEET; THENCE NORTH 00 DEGREES, 22 MINUTES, 12 SECONDS WEST, A DISTANCE OF 120.00 FEET; THENCE SOUTH 89 DEGREES, 19 MINUTES, 19 SECONDS WEST, A DISTANCE OF 55.00 FEET; THENCE NORTH 44 DEGREES, 28 MINUTES, 34 SECONDS EAST, A DISTANCE OF 58.14 FEET; THENCE NORTH 00 DEGREES, 22 MINUTES, 12 SECONDS WEST, A DISTANCE OF 29.00 FEET; THENCE NORTH 89 DEGREES, 19 MINUTES, 19 SECONDS EAST, A DISTANCE OF 100.00 FEET; THENCE SOUTH 00 DEGREES, 22 MINUTES, 12 SECONDS EAST, A DISTANCE OF 54.79 FEET TO A POINT OF CURVATURE; THENCE ALONG A CURVE IN A COUNTER CLOCKWISE DIRECTION, HAVING A RADIUS OF 44.00 FEET, ARC LENGTH OF 16.56 FEET, DELTA ANGLE OF 21 DEGREES, 34 MINUTES, 01 SECONDS, A CHORD BEARING OF SOUTH 35 DEGREES, 46 MINUTES, 24 SECONDS EAST, AND CHORD LENGTH OF 16.46 FEET TO A POINT OF REVERSE CURVATURE; THENCE ALONG A CURVE IN A CLOCKWISE DIRECTION, HAVING A RADIUS OF 86.00 FEET, ARC LENGTH OF 138.91 FEET, DELTA ANGLE OF 92 DEGREES, 32 MINUTES, 40 SECONDS, A CHORD BEARING OF SOUTH 00 DEGREES, 17 MINUTES, 05 SECONDS EAST AND CHORD LENGTH OF 124.29 FEET TO A POINT OF REVERSE CURVATURE; THENCE ALONG A CURVE IN A COUNTER CLOCKWISE DIRECTION, HAVING A RADIUS OF 44.00 FEET, ARC LENGTH OF 33.93 FEET, DELTA ANGLE OF 44 DEGREES, 11 MINUTES, 18 SECONDS, A CHORD BEARING OF SOUTH 23 DEGREES, 53 MINUTES, 36 SECONDS WEST AND CHORD LENGTH OF 33.10 FEET TO A POINT OF REVERSE CURVATURE; THENCE ALONG A CURVE IN A CLOCKWISE DIRECTION, HAVING A RADIUS OF 346.00 FEET, ARC LENGTH OF 159.68 FEET, DELTA ANGLE OF 26 DEGREES, 26 MINUTES, 31 SECONDS, A CHORD BEARING OF SOUTH 15 DEGREES, 01 MINUTES, 12 SECONDS WEST, AND CHORD LENGTH OF 158.26 FEET TO A POINT OF REVERSE CURVATURE; THENCE ALONG A CURVE IN A COUNTER CLOCKWISE DIRECTION, HAVING A RADIUS OF 254.00 FEET, ARC LENGTH OF 75.43 FEET, DELTA ANGLE OF 17 DEGREES, 00 MINUTES, 50 SECONDS, A CHORD BEARING OF SOUTH 19 DEGREES, 44 MINUTES, 02 SECONDS WEST AND CHORD LENGTH OF 75.15 FEET TO A POINT OF TANGENCY; THENCE SOUTH 11 DEGREES, 13 MINUTES, 37 SECONDS WEST, A DISTANCE OF 351.92 FEET; THENCE SOUTH 85 DEGREES, 25 MINUTES, 37 SECONDS EAST, A DISTANCE OF 98.67 FEET TO A POINT OF CURVATURE; THENCE ALONG A CURVE IN A COUNTER CLOCKWISE DIRECTION, HAVING A RADIUS OF 464.00 FEET, ARC LENGTH OF 152.10 FEET, DELTA ANGLE OF 18 DEGREES, 46 MINUTES, 56 SECONDS, A CHORD BEARING OF NORTH 85 DEGREES, 10 MINUTES, 55 SECONDS EAST, AND CHORD LENGTH OF 151.42 FEET; THENCE NORTH 75 DEGREES, 47 MINUTES, 27 SECONDS EAST, A DISTANCE OF 306.86 FEET; THENCE NORTH 08 DEGREES, 00 MINUTES, 22 SECONDS WEST, A DISTANCE OF 4.18 FEET TO A POINT OF CURVATURE; THENCE ALONG A CURVE IN A CLOCKWISE DIRECTION, HAVING A RADIUS OF 536.00 FEET,

ARC LENGTH OF 74.90 FEET, DELTA ANGLE OF 08 DEGREES, 00 MINUTES, 23 SECONDS, A CHORD BEARING OF NORTH 04 DEGREES, 00 MINUTES, 12 SECONDS WEST, AND CHORD LENGTH OF 74.84 FEET TO A POINT OF TANGENCY; THENCE NORTH 00 DEGREES, 00 MINUTES, 00 SECONDS EAST, A DISTANCE OF 259.02 FEET TO A POINT OF CURVATURE; THENCE ALONG A CURVE IN A CLOCKWISE DIRECTION, HAVING A RADIUS OF 136.00 FEET, ARC LENGTH OF 213.63 FEET, DELTA ANGLE OF 90 DEGREES, 00 MINUTES, 00 SECONDS, A CHORD BEARING OF NORTH 45 DEGREES, 00 MINUTES, 00 SECONDS EAST, AND CHORD LENGTH OF 192.33 FEET TO A POINT OF TANGENCY; THENCE SOUTH 90 DEGREES, 00 MINUTES, 00 SECONDS EAST, A DISTANCE OF 799.82 FEET; THENCE NORTH 00 DEGREES, 10 MINUTES, 20 SECONDS EAST, A DISTANCE OF 587.53 FEET; THENCE SOUTH 89 DEGREES, 47 MINUTES, 55 SECONDS EAST, A DISTANCE OF 594.74 FEET TO A POINT OF CURVATURE; THENCE ALONG A CURVE IN A CLOCKWISE DIRECTION, HAVING A RADIUS OF 386.00 FEET, ARC LENGTH OF 174.69 FEET, DELTA ANGLE OF 25 DEGREES, 55 MINUTES, 51 SECONDS, A CHORD BEARING OF SOUTH 76 DEGREES, 50 MINUTES, 00 SECONDS EAST, AND CHORD LENGTH OF 173.21 FEET TO A POINT OF TANGENCY; THENCE SOUTH 63 DEGREES, 52 MINUTES, 05 SECONDS EAST, A DISTANCE OF 200.82 FEET TO A POINT OF CURVATURE; THENCE ALONG A CURVE IN A COUNTER CLOCKWISE DIRECTION, HAVING A RADIUS OF 1,065.00 FEET, ARC LENGTH OF 963.45 FEET, DELTA ANGLE OF 51 DEGREES, 49 MINUTES, 57 SECONDS, A CHORD BEARING OF SOUTH 10 DEGREES, 16 MINUTES, 37 SECONDS WEST, AND CHORD LENGTH OF 930.93 FEET; THENCE SOUTH 27 DEGREES, 23 MINUTES, 00 SECONDS WEST, A DISTANCE OF 36.15 FEET; THENCE SOUTH 71 DEGREES, 04 MINUTES, 43 SECONDS WEST, A DISTANCE OF 57.97 FEET TO A POINT OF CURVATURE; THENCE ALONG A CURVE IN A CLOCKWISE DIRECTION, HAVING A RADIUS OF 264.00 FEET, ARC LENGTH OF 102.07 FEET, DELTA ANGLE OF 22 DEGREES, 09 MINUTES, 07 SECONDS, A CHORD BEARING OF SOUTH 82 DEGREES, 09 MINUTES, 17 SECONDS WEST, AND CHORD LENGTH OF 101.43 FEET; THENCE SOUTH 03 DEGREES, 13 MINUTES, 50 SECONDS WEST, A DISTANCE OF 72.00 FEET TO A POINT OF CURVATURE; THENCE ALONG A CURVE IN A COUNTER CLOCKWISE DIRECTION, HAVING A RADIUS OF 336.00 FEET, ARC LENGTH OF 129.91 FEET, DELTA ANGLE OF 22 DEGREES, 09 MINUTES, 07 SECONDS, A CHORD BEARING OF NORTH 82 DEGREES, 09 MINUTES, 17 SECONDS EAST, AND CHORD LENGTH OF 129.10 FEET TO A POINT OF TANGENCY; THENCE NORTH 71 DEGREES, 04 MINUTES, 43 SECONDS EAST, A DISTANCE OF 57.97 FEET; THENCE SOUTH 65 DEGREES, 13 MINUTES, 34 SECONDS EAST, A DISTANCE OF 36.15 FEET TO A POINT OF CURVATURE; THENCE ALONG A CURVE IN A COUNTER CLOCKWISE DIRECTION, HAVING A RADIUS OF 1,065.00 FEET, ARC LENGTH OF 101.48 FEET, DELTA ANGLE OF 05 DEGREES, 27 MINUTES, 34 SECONDS, A CHORD BEARING OF SOUTH 24 DEGREES, 56 MINUTES, 00 SECONDS EAST, AND A CHORD LENGTH OF 101.44 FEET TO A POINT OF TANGENCY; THENCE SOUTH 27 DEGREES, 39 MINUTES, 47 SECONDS EAST, A DISTANCE OF 937.76 FEET TO A POINT OF CURVATURE; THENCE ALONG A CURVE IN A CLOCKWISE DIRECTION, HAVING A RADIUS OF 935.00 FEET, ARC LENGTH OF 362.39 FEET, DELTA ANGLE OF 22 DEGREES, 12 MINUTES, 25 SECONDS, A CHORD BEARING OF SOUTH 16 DEGREES, 33 MINUTES, 34 SECONDS EAST, AND CHORD LENGTH OF 360.13 FEET; THENCE SOUTH 42 DEGREES, 06 MINUTES, 10 SECONDS WEST, A DISTANCE OF 34.23 FEET; THENCE SOUTH 88 DEGREES, 53 MINUTES, 45 SECONDS WEST, A DISTANCE OF 173.60 FEET; THENCE SOUTH 01 DEGREES, 06 MINUTES, 15 SECONDS EAST, A DISTANCE OF 96.00 FEET; THENCE NORTH 88 DEGREES, 53 MINUTES, 45 SECONDS EAST, A DISTANCE OF 173.39 FEET; THENCE SOUTH 44 DEGREES, 11 MINUTES, 18 SECONDS EAST, A DISTANCE OF 34.15 FEET TO A POINT OF CURVATURE; THENCE ALONG A CURVE IN A CLOCKWISE DIRECTION, HAVING A RADIUS OF 935.00 FEET, ARC LENGTH OF 666.56 FEET, DELTA ANGLE OF 40 DEGREES, 50 MINUTES, 46 SECONDS, A CHORD BEARING OF SOUTH 23 DEGREES, 54 MINUTES, 59 SECONDS WEST, AND CHORD LENGTH OF 652.54 FEET TO A POINT OF TANGENCY; THENCE SOUTH 44 DEGREES, 20 MINUTES, 22 SECONDS WEST, A DISTANCE OF 400.02 FEET; THENCE SOUTH 85 DEGREES, 41 MINUTES, 38 SECONDS WEST, A DISTANCE OF 37.53 FEET; THENCE NORTH 52 DEGREES, 57 MINUTES, 07 SECONDS WEST, A DISTANCE OF 206.15 FEET TO A POINT OF INTERSECTION WITH THE WEST LINE OF THE SOUTHEAST

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APPIAN WAY REGIONAL CENTER
USE PERMIT LEGAL DESCRIPTION

QUARTER OF SAID SECTION 23; THENCE NORTH 56 DEGREES, 19 MINUTES, 51 SECONDS WEST, A DISTANCE OF 780.25 FEET; THENCE NORTH 52 DEGREES, 26 MINUTES, 01 SECONDS WEST, A DISTANCE OF 758.61 FEET; THENCE NORTH 14 DEGREES, 44 MINUTES, 12 SECONDS WEST, A DISTANCE OF 39.56 FEET TO A POINT OF CURVATURE; THENCE ALONG A CURVE IN A COUNTER CLOCKWISE DIRECTION, HAVING A RADIUS OF 350.00 FEET, ARC LENGTH OF 102.82 FEET, DELTA ANGLE OF 16 DEGREES, 49 MINUTES, 58 SECONDS, A CHORD BEARING OF NORTH 12 DEGREES, 29 MINUTES, 33 SECONDS EAST, AND CHORD LENGTH OF 102.46 FEET; THENCE NORTH 85 DEGREES, 55 MINUTES, 26 SECONDS WEST, A DISTANCE OF 114.50 FEET TO A POINT OF CURVATURE; THENCE ALONG A CURVE IN A CLOCKWISE DIRECTION, HAVING A RADIUS OF 235.50 FEET, ARC LENGTH OF 40.00 FEET, DELTA ANGLE OF 09 DEGREES, 43 MINUTES, 54 SECONDS, A CHORD BEARING OF SOUTH 08 DEGREES, 56 MINUTES, 31 SECONDS WEST, AND CHORD LENGTH OF 39.95 FEET; THENCE SOUTH 70 DEGREES, 21 MINUTES, 51 SECONDS WEST, A DISTANCE OF 30.30 FEET; THENCE NORTH 57 DEGREES, 09 MINUTES, 02 SECONDS WEST, A DISTANCE OF 556.12 FEET; THENCE NORTH 45 DEGREES, 55 MINUTES, 04 SECONDS WEST, A DISTANCE OF 202.24 FEET; THENCE NORTH 53 DEGREES, 03 MINUTES, 46 SECONDS WEST, A DISTANCE OF 200.03 FEET; THENCE NORTH 58 DEGREES, 00 MINUTES, 35 SECONDS WEST, A DISTANCE OF 400.90 FEET; THENCE NORTH 43 DEGREES, 05 MINUTES, 38 SECONDS WEST, A DISTANCE OF 117.22 FEET; THENCE NORTH 10 DEGREES, 49 MINUTES, 43 SECONDS WEST, A DISTANCE OF 18.79 FEET; THENCE NORTH 29 DEGREES, 00 MINUTES, 57 SECONDS EAST, A DISTANCE OF 22.22 FEET TO A POINT OF CURVATURE; THENCE ALONG A CURVE IN A COUNTER CLOCKWISE DIRECTION, HAVING A RADIUS OF 1,020.00 FEET, ARC LENGTH OF 528.62 FEET, DELTA ANGLE OF 29 DEGREES, 41 MINUTES, 38 SECONDS, A CHORD BEARING OF NORTH 14 DEGREES, 10 MINUTES, 08 SECONDS EAST, AND A CHORD LENGTH OF 522.72 FEET TO A POINT OF TANGENCY; THENCE NORTH 00 DEGREES, 40 MINUTES, 41 SECONDS WEST, A DISTANCE OF 155.34 FEET TO A POINT OF CURVATURE; THENCE ALONG A CURVE IN A CLOCKWISE DIRECTION, HAVING A RADIUS OF 280.00 FEET, ARC LENGTH OF 7.40 FEET, DELTA ANGLE OF 01 DEGREES, 30 MINUTES, 51 SECONDS, A CHORD BEARING OF NORTH 10 DEGREES, 23 MINUTES, 48 SECONDS EAST, AND CHORD LENGTH OF 7.40 FEET TO A POINT OF REVERSE CURVATURE; THENCE ALONG A CURVE IN A COUNTER CLOCKWISE DIRECTION, HAVING A RADIUS OF 320.00 FEET, ARC LENGTH OF 64.11 FEET, DELTA ANGLE OF 11 DEGREES, 28 MINUTES, 42 SECONDS, A CHORD BEARING OF NORTH 05 DEGREES, 24 MINUTES, 51 SECONDS EAST, AND CHORD LENGTH OF 64.00 FEET TO A POINT OF TANGENCY; THENCE NORTH 00 DEGREES, 19 MINUTES, 30 SECONDS WEST, A DISTANCE OF 151.61 FEET; THENCE NORTH 44 DEGREES, 19 MINUTES, 19 SECONDS EAST, A DISTANCE OF 22.42 FEET TO THE **POINT OF BEGINNING**. CONTAINING AN AREA OF 6,124,715.20 SQUARE FEET, 140.60 ACRES.

April 26, 2005

034

APPIAN WAY REGIONAL CENTER

PRELIMINARY PLAT & USE PERMIT
SITE PLAN

ENGINEER & PREPARER

OWNER & DEVELOPER

ENGINEER'S CERTIFICATE

SURVEYOR'S CERTIFICATE

PLANNING DIRECTOR APPROVAL

ENGINEER'S CERTIFICATE

PRELIMINARY PLAT BOUNDARY CURVE DATA

VICINITY MAP

LAND USE

REQUIRED PARKING RATIOS

HEIGHT

DEVELOPMENT AREA

GENERAL NOTES

WAIVERS

REFERENCE SHEET 1A OF 12
FOR LEGAL DESCRIPTIONS FOR
PRELIMINARY PLAT, USE PERMIT, AND
SPECIAL USE PERMIT.

OLSSON ASSOCIATES

CONSULTING ENGINEERS

APPIAN WAY
REGIONAL
CENTER

SITE
PLAN

LINCOLN
NEBRASKA
2003

SHEET
1 OF 12

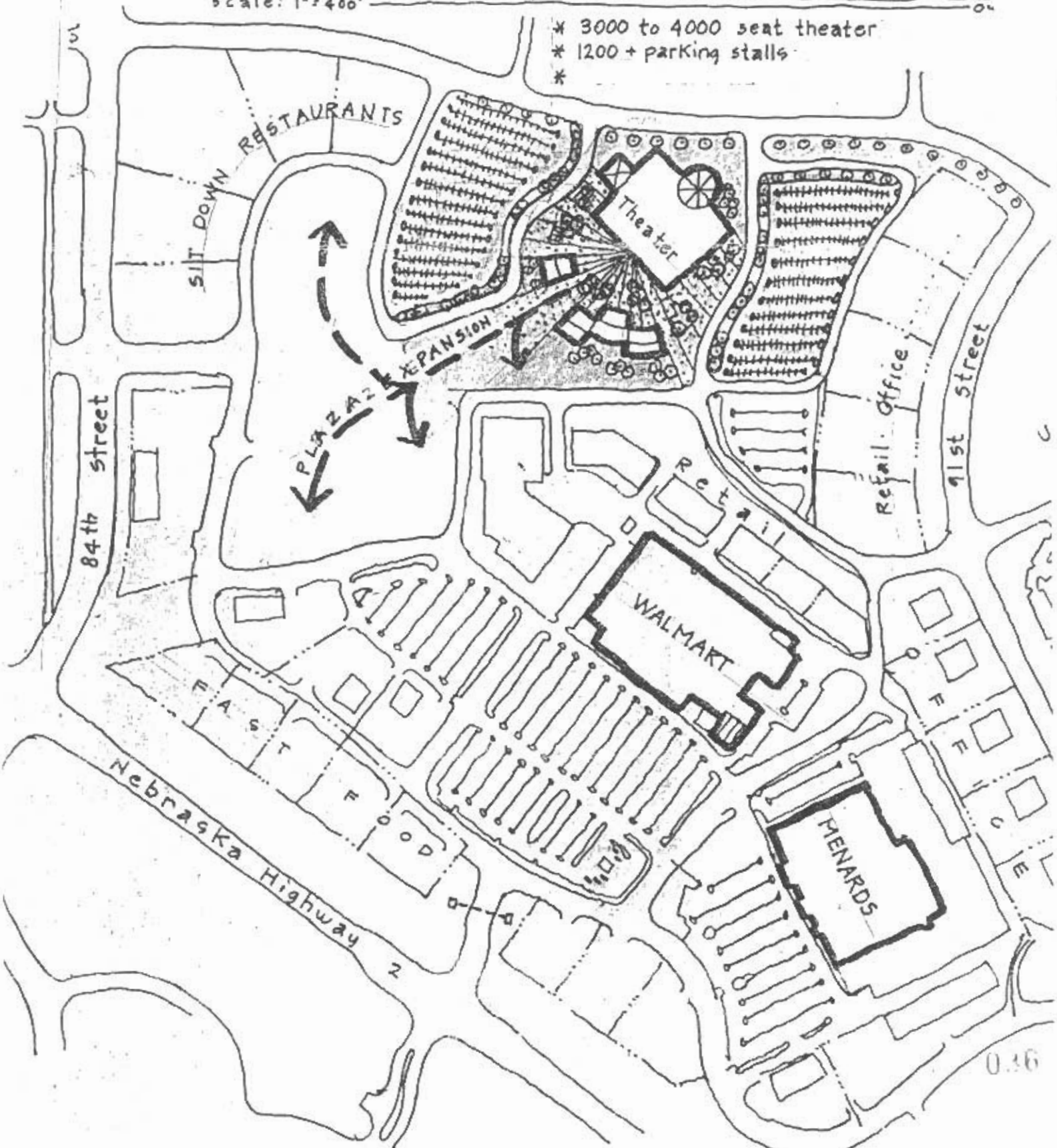
MAR 2 3 2005

-CONCEPT PLAN-

Prairie Lake Theater Proposal

scale: 1" = 400'

* 3000 to 4000 seat theater
* 1200 + parking stalls
*



M e m o r a n d u m

To: Brian Will, Planning Department

From: Chad Blahak, Public Works and Utilities
Dennis Bartels Public Works and Utilities

Subject: Appian Way Regional Center Special Permit #05023 Use Permit #140B

Date: May 23, 2005

cc: Randy Hoskins

Engineering Services has reviewed the submitted plans for the Appian Way Regional Center Special Use Permit, located north of Highway2 between South 91st Street and South 84th Street, and has the following Comments:

1) Public Works approves the conceptual layout for this use permit. However, site specific detailed plans will need to be approved through the administrative amendment process rather than at the time of building permits. Site specific details that will need to be approved through an administrative amendment include but are not limited to the following:

- A grading and drainage plan need to be provided showing proper storm sewer pipe locations and sizing calculations. Also, all required information regarding the required detention at the north end of this lot will need to be provided.

- Street profiles will need to be provided for any public or private streets that are shown in this plan that were not part of the original approved use permit.

- Water main and sanitary sewer locations and sizes will need to be shown on the site plan.

2) The following changes need to be made to these plans:

- Although this is a conceptual layout, the driveway access from Lot 1 Block 4 to 91st Street needs to be removed from these plans. This connection to 91st Street is not approved by Public Works.

- Although the approved annexation agreement allows a 20% reduction for pass-by trips in the trip cap for this project, Public Works does not agree that movie theater or office uses qualify for this reduction. Pass-by trips are described as intermittent stops along a travel path. Movie theaters and office uses do not generally produce intermittent stops, rather they are more accurately described as primary destinations. Public Works recommends that the land use table be revised to show the movie theater and office uses not utilizing the 20% pass-by reduction.

- General Note #34 needs to be revised to say that detailed plans will be approved through the administrative amendment process prior to the building permit process.

LINCOLN-LANCASTER COUNTY HEALTH DEPARTMENT
INTER-OFFICE COMMUNICATION

TO:	Brian Will	**DATE:**	May 10, 2005
DEPARTMENT:	Planning	**FROM:**	Chris Schroeder
ATTENTION:		**DEPARTMENT:**	Health
CARBONS TO:	EH File	**SUBJECT:**	Appian Way Regional
	EH Administration		Center SP #05023 CZ #05035 & #05036 UP #140B

The Lincoln-Lancaster County Health Department (LLCHD) has reviewed the proposed development with the following noted:

- According to the LLCHD's Geographic Information System (GIS) records, a twelve inch high pressure underground natural gas pipeline is located to the west of this proposed development. The LLCHD calculated a hazard area of approximately 220 feet on each side for this pipeline using the hazard area equation from report entitled, "A Model for Sizing High Consequence Areas Associated with Natural Gas Pipelines" prepared by Mark J. Stephens from C-FER Technologies. A hazard area or high consequence area is defined as the area within which the extent of property damage and the chance of serious or fatal injury would be expected to be significant in the event of a worst case scenario rupture failure.

- While there are no current regulations that prohibit locating occupied structures within hazard areas, the LLCHD recommends that occupied structures not be located within hazard areas. At the very least, LLCHD recommends that future owners or lessees of buildings located within the projected hazard area be advised of the natural gas pipeline location and its associated hazard area.

- All wind and water erosion must be controlled during construction. The Lower Platte South Natural Resources District should be contacted for guidance in this matter.

- During the construction process, the land owner(s) will be responsible for controlling off-site dust emissions in accordance with Lincoln-Lancaster County Air Pollution Regulations and Standards Article 2 Section 32. Dust control measures shall include, but not limited to application of water to roads, driveways, parking lots on site, site frontage and any adjacent business or residential frontage. Planting and maintenance of ground cover will also be incorporated as necessary.

Richard J Furasek/Notes
05/11/2005 02:33 PM

To Brian J Will/Notes@Notes
cc
bcc
Subject Appian Way Regional Center

Upon review of Special Permit (CUP) # SP 05023, Change of Zone (PUD) # CZ05035 and CZ05036, and Use Permit # UP 140B, we have no objections from the perspective of our department. The only issue is the emergency response time to the area. With existing facilities, we are not able to provide the type of emergency response that our citizens have grown accustomed to expect.

Richard J. Furasek
Assistant Chief Operations
Lincoln Fire & Rescue
1801 Q Street
Lincoln Ne. 68508
Office 402-441-8354
Fax 402-441-8292

CITY OF LINCOLN
NEBRASKA
MAYOR COLEEN J. SENG
www.ci.lincoln.ne.us

PUBLIC WORKS AND UTILITIES DEPARTMENT

Memorandum

Date: *5/16/2005*

To: *Brian Will*

From: *Devin Biesecker*

Subject: *Appian Way Regional Center*

cc: *Ben Higgins, Chad Blahak*

Watershed Management has reviewed the Appian Way Regional Center Special Permit and has the following comments.

1. All drainage requirements related to stormwater detention will need to be approved with amendments to this plan. The area needed for stormwater detention may require the adjusting of lot sizes and locations shown on this plan.

2. Note 34 on the Sheet 1 of 12 needs to be revised to state that detailed plans will be submitted for review by administrative amendments to this plat.

IN SUPPORT

ITEM NO. 3.4a,b,c,d,e: COMP PLAN AMEND 05014
CHANGE OF ZONE 05035
CHANGE OF ZONE 05036
USE PERMIT 140B
SPECIAL PERMIT 05023

Michael Roselius
<mike_roselius@mac.com>
06/06/2005 04:31 PM

To plan@lincoln.ne.gov (p.177 - Public Hearing - 06/08/05)
cc
bcc
Subject Public Hearing on 18 screen theater

Unfortunately, I am unable to attend the public hearing on the 8th in person, but appreciate the opportunity to voice my feelings about the proposal.

First - as a resident of 6133 South 81st - a community very close to the proposed site, I have no concerns about traffic etc. for that area. That is an identified business district with significant development in place or planned, and these issues are expected and to-date appear to be well controlled.

My biggest concern has to do with the study which the committee and Mayor Seng are citing as basis for their denial.

According to an article in the Lincoln Journal Star on 05/27/05 - the study suggests that 79 percent of forecasted attendance to this theater would come from existing theaters.

I have 2 responses to that:

1. That would indicate to me that 4 in 5 current movie-goers are seeing movies at theaters they would prefer not to be at. This should support the idea of expansion.

2. This figure of 79% should not be a shock to any of us, and would apply to nearly any business that might build out there. Let me explain: On a basic level, there are 3 groups of people in the population that are affected by this proposal:

1. Those that would never see a movie regardless of the location of the theater.
2. Those that don't attend movies but would if the theater were closer or more convenient
3. Those that attend movies regardless of where they are shown.

Of those 3 groups - the largest segment are those in group #3 - and those are the 79% that this study identifies.

Let's apply the logic to a different business. Assume you are voting on the zoning for a Mexican restaurant at that location. It would not be surprising to discover that 4 in 5 diners at that restaurant were previously regularly dining at other Mexican restaurants.

In short, building a new theater, regardless of the location or number of screens, should not, in and of itself, create a new population of customers where one did not previously exist. Yet, this study and supporters of it, appear to suggest that unless that occurs, theater expansion should not occur. I don't agree.

If you have an identified developer, willing to risk significant dollars, to support the business expansion in an area of our city that is growing fast, I would request that we support and encourage their endeavor. While it is nice to envision a downtown Lincoln, bustling with activity and the center for movies and other entertainment, if the market is looking at another location

(and it appears to be) we should not stand in it's way.

I appreciate the opportunity to be heard in support of this waiver.

Respectfully,

Michael Roselius
6133 South 81st
Lincoln, NE 68516
402-304-1535

OPPOSITION

ITEM NO. 3.4a,b,c,d,e: COMP PLAN AMEND 05014
CHANGE OF ZONE 05035
CHANGE OF ZONE 05036
SPECIAL PERMIT 05023
USE PERMIT 140B

LINCOLN HAYMARKET DEVELOPMENT CORPORATION.

June 7, 2005

LHDC is a non-profit organization, committed to the economic revitalization of Lincoln's Historic Haymarket District. Through a continuing comprehensive process LHDC protects, enhances and promotes the District's architectural and cultural heritage.

The Lincoln Haymarket Development Corporation has decided to take a position ***against*** the proposed amendment to the Downtown Lincoln Theater Policy. LHDC has a significant interest in maintaining our current Theater Policy because of the negative effect such a change would have on our Downtown business core

Some of the issues we considered in our discussion were:

1) The current policy was developed at a time when there was competition in the Lincoln theater business and was done with the cooperation of the theater operators at that time.

2) The City currently doesn't have a competitive market for the theater business, however, according to the Douglas Theater operators their charges for admission and concessions for the Lincoln operation are consistent with the Omaha market that does have competition.

3) The Grand Theater (14 screens) opened by Douglas Theaters in downtown Lincoln was selected as the site because of the theater policy in place.

4) The Planning Department has conducted a study and it indicates that the City of Lincoln has an above average number of screens for a City of our size. That the introduction of a large multi screen (18 screens) at Prairie Lake site at 84th and Highway 2 will result in the dilution of the market and potentially the financial failure of some of our current theaters. (ie: The Grand and Edgewood)

5) The Douglas Theaters has never objected to a competitor coming to the Lincoln market.

The LHDC Executive Board believes that good business practices would require that the current policy of 6 screens in outlying areas be kept in tact and that it be open to all theater companies to develop.

Sincerely

Douglas E. Lienemann
President

RECEIVED
JUN - 8 2005
LINCOLN CITY/LANCASTER COUNTY
PLANNING DEPARTMENT