City Council Introduction: **Monday**, November 7, 2005
Public Hearing: **Monday**, November 14, 2005, at **1:30** p.m. Bill No. 05R-271

FACTSHEET

TITLE: **MISCELLANEOUS NO. 05017,** a request for "Reasonable Accommodation" under Title 1 of the Lincoln Municipal Code, requested by Developmental Services of Nebraska, Inc., to allow a group home in the R-4 Residential District to locate within the required 1200 ft. separation from another group home, on property located at 424 North Coddington Avenue.

STAFF RECOMMENDATION: Conditional approval.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 09/14/05, 09/28/05, 10/12/05 and 10/26/05
Administrative Action: 10/26/05

RECOMMENDATION: **Denial** (7-1: Pearson, Carroll, Krieser, Sunderman, Esseks, Larson and Carlson voting 'yes'; Taylor voting 'no'; Strand absent).

FINDINGS OF FACT:

1. This request for "reasonable accommodation" under Title 1 of the Lincoln Municipal Code would allow four unrelated individuals with developmental disabilities to reside at 424 North Coddington Avenue, changing the status from "family" to "group home".

2. Approval of this request would waive the zoning requirement that group homes in the R-4 Residential District be separated by 1,200 feet.

3. The staff recommendation of conditional approval is based upon the "Staff Findings" as set forth on p.2-4, concluding that this request is premature since there is not an existing group home in the area that would prevent the applicant from obtaining a conditional use permit for this address. The applicant is requesting the same accommodation on a neighboring address (416 N. Coddington Avenue, Miscellaneous No. 05020). Action on one of these applications should depend on the other being withdrawn and established as a group home.

4. At the public hearing before the Planning Commission, the applicant withdrew the request for reasonable accommodation at 416 North Coddington Avenue (Miscellaneous No. 05020) and stated that they would be making either 416 or 418 North Coddington Avenue a group home. Thus, the applicant will need this reasonable accommodation at 424 N. Coddington Avenue. (See Minutes, p.5).

5. Based upon the applicant's withdrawal of the request for reasonable accommodation at 416 N. Coddington Avenue, the staff finds that the request for reasonable accommodation at 424 N. Coddington Avenue would not create an undue burden on the City or fundamentally obstruct the intent of the zoning code.

6. The applicant's testimony and responses to questions from the Commission are found on p.5-9. The record also consists of additional justification information provided by the applicant dated October 24, 2005 (p.19-23).

7. Testimony in opposition is found on p.10-12, and the record consists of five written communications in opposition (p.32-36).

8. Additional information submitted by Commissioner Esseks concerning group home regulations and police reports at the various locations is found on p.24-31.

9. On October 26, 2005, the majority of the Planning Commission found that the applicant had not sufficiently demonstrated the financial and therapeutic necessity and voted 7-1 to recommend **denial** (Taylor dissenting and Strand absent).

FACTSHEET PREPARED BY: Jean L. Walker **DATE**: November 1, 2005
REVIEWED BY:_____ **DATE**: November 1, 2005
REFERENCE NUMBER: FS\CC\2005\MISC.05017

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

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for September 14, 2004 PLANNING COMMISSION MEETING

PROJECT #: Miscellaneous #05017
Reasonable Accommodation

PROPOSAL: Request for a modification of the zoning requirement that group homes in the R-4 zoning district be separated by 1,200 feet.

ADDRESS: 424 North Coddington Avenue

CONCLUSION: This request for a reasonable accommodation is premature since there is not an existing group home in the area that would prevent Applicant from obtaining a conditional use permit for this address. Applicant is requesting the same accommodation on a neighboring address; action on one of these items should depend on the other being withdrawn and established as a group home. The Planning Commission must forward a recommendation to the City Council within 45 days of the date of referral.

RECOMMENDATION:	Conditional Approval

GENERAL INFORMATION:

LEGAL DESCRIPTION: Lot 7 and the east 10 feet of vacated North Coddington Avenue adjacent thereto, Capitol Beach Village, located in the SW1/4 Sec 21 T10N R6E, Lancaster County, NE.

EXISTING LAND USE AND ZONING: Single-Family R-4 Residential

STAFF FINDINGS:

1. Applicant's facility at 424 North Coddington currently serves 3 residents with developmental disabilities. Since there are no more than 3 residents, this facility meets the definition of "family" and may be located in any dwelling.

2. LMC §27.03.300 defines a group home as "a facility in which more than three but less than sixteen disabled persons who are unrelated by blood, marriage, or adoption reside while receiving therapy or counseling, but not nursing care."

3. The addition of another developmentally disabled resident to this facility would make this a group home under the Zoning Ordinance.

4. LMC §27.17.030 requires group homes in the R-4 district to obtain a conditional use permit, which requires that "the distance between the proposed use and any existing group home measured from lot line to lot line is not less than 1,200 feet."

5. There is not an existing group home within 1,200 feet of this facility. However, there are several nearby residences used by developmental disability service providers to house up to 3 clients, including Applicant's own facility located at 416 North Coddington Avenue..

6. LMC Chapter 1.28.50 identifies the findings required to approve this request:

(1) Whether the housing which is the subject of the request will be used by an individual or a group of individuals considered disabled or handicapped under the Acts, and that the accommodation requested is necessary to make specific housing available to the individual or group of individuals with a disability or handicap under the Acts.

Applicant asserts they have a client who meets the definition of disabled who will reside at this location, but requires this accommodation to do so.

Applicant serves persons with developmental disabilities, and the existence of a group home within 1,200 feet of this facility would preclude this from becoming a group home under the zoning ordinance. A reasonable accommodation would be required to house an additional person here.

(2) Whether there are alternative reasonable accommodations available that would provide an equivalent level of benefit, or if alternative accommodations would be suitable based on the circumstances of this particular case.

Applicant asserts the only alternative to housing an additional resident in this location is to purchase or rent another dwelling somewhere within the city, and the cost to do so outweighs the benefit to their client.

There are two potential reasonable accommodations that would allow Applicant to house an additional person in a facility located within 1,200 feet of another. One is a request to allow another resident. The other is to request that the spacing standard be modified for a specific address.

(3) Whether the requested reasonable accommodation would impose an undue financial or administrative burden on the City.

Applicant has not asserted that granting this request will not impose an undue financial or administrative burden on the City.

The spacing standard minimizes the concentration of group home facilities within an area. Even so, facilities with 3 residents may be located in any number of dwellings within the same area. Allowing one of those 3-resident facilities to have one additional person would not create an undue financial or administrative burden on the City. By contrast, modifying spacing standards on a case-by-case basis would impose an administrative burden on the City.

(4) If applicable, whether the requested reasonable accommodation would be consistent with the Comprehensive Plan land use designation of the property which is the subject of the reasonable accommodation request, and with the general purpose and intent of the zoning district in which the use is located.

Applicant has not asserted that their request is consistent with either the Comprehensive Plan or Zoning Ordinance.

In a given group home radius, there can only be one group home with up to 15 residents, and any number of facilities with 3 or fewer residents. Allowing one 3-resident facility within that area to have 4 residents would still comply with the Comprehensive Plan land use designation and with the general purpose and intent of the zoning ordinance.

7. Recent changes to LMC Chapter 1.28 requiring additional supporting information be provided with the application were not in effect at the time this application was filed. This additional information has been requested, but had not been received at the time of this report.

8. Planning Staff suggest this request is premature and approval of this request should depend upon the other request in this area being withdrawn and established as a group home.

9. This application was referred to the Planning Department on August 10, 2005. A recommendation to the City Council is due on or before September 24, 2005.

10. Applicant's written request for reasonable accommodation is attached.

CONDITIONS:

1. Prior to approval of this request, Applicant must obtain a conditional use permit from the Building and Safety Department for 416 North Coddington Avenue establishing that address as a group home, and withdraw MISC #05020.

Prepared by

Greg Czaplewski
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Planner

Date: September 1, 2005

Applicant and Contact: Scott LeFevre
Developmental Services of Nebraska, Inc.
2610 West "M" Court
Lincoln, NE 68522
435.2800

MISCELLANEOUS NO. 05017

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: October 26, 2005

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

Staff recommendation: Conditional approval

Ex Parte Communications: None.

Additional information submitted for the record: Greg Czaplewski of Planning staff submitted an e-mail from Dick Esseks to the Planning Commission concerning police calls at the specific addresses requesting "reasonable accommodation".

Proponents

1. Scott LeFevre, CEO of **Developmental Services of Nebraska** (hereinafter DSN) appeared on behalf of the applicant and withdrew Miscellaneous No. 05020, a request for "Reasonable Accommodation" at 416 N. Coddington Avenue, because there is not a group home currently in existence within 1200 feet of that location. They will be making 416 N. Coddington a group home, which would then require this request for "reasonable accommodation" at 424 N. Coddington Avenue.

LeFevre went on to state that DSN is a charitable, nonprofit organization providing services to children and adults with developmental disabilities. The services are basically funded by Nebraska Health & Human Services, providing a range of services. The state purchases the services from DSN on "kind of an ala carte basis". Each person has an individual service program. DSN is not a containment or confinement center. They simply provide rehabilitation services and specialize in those individuals with difficult or hard to manage behavior. DSN serves some of the most challenging behaviors in the state of Nebraska, with service locations in Omaha, Lincoln and Kearney.

This is a request for reasonable accommodation from the separation requirement at 424 N. Coddington Avenue. By right, DSN is going through the process of establishing a group home at either 416 North Coddington or 418 N. Coddington. This is a request to allow for another location with four individuals as opposed to three individuals as 424 N. Coddington Avenue. There are currently three people living at this location and they want to add one person.

Esseks commented that he respects the services being provided and he has great sympathy for the reasonable accommodation provisions, but he has some practical questions because he believes we may be setting a precedence:

> Q: How many dwelling units for disabled citizens does DSN manage in the 400 block of N. Coddington?
>
> A: Four locations.
>
> Q: In the four units on N. Coddington, how many residents does DSN currently have?

A: 12 residents.

Q: What is the minimum number of DSN staff in each dwelling unit when any client is there during the morning hours?

A: One in the morning; one in the afternoon and evening; and one overnight.

Q: Currently, do any convicted felons reside in any of the four dwelling units?

A: Could not answer this question.

Q: Are any of the current residents on the Nebraska Sex Offender registry?

A: No.

Q: The table that Esseks submitted with information from the Lincoln Police Department indicates more violent behaviors at the dwelling units managed by DSN than at other homes in the same block. What training or other steps has DSN taken to prepare staff to deal with a possible violent behavior?

A: DSN has a comprehensive training program, with a dedicated training center on West O Street, which was just built about two years ago. They have a training staff. The training used for aggressive behavior is called therapeutic aggression control techniques. It is 18 hours of training and involves 12 hours of de-escalation technique, recognition of antecedents to behavior, teaching staff how to intervene prior to the escalation of a behavior; and then 6 hours teaching actual physical intervention techniques and methods.

Q: What changes in staffing levels will occur if the city allows DSN to place four clients in a dwelling unit?

A: The staffing is mandated by the state of Nebraska. None of DSN's current locations are anywhere near the mandated level of staffing because DSN's staffing is much more intense than the minimum required staffing in the manual and correspondence that the Planning Commission has received. Generally, at each location, per three residents, there are two staff on duty until overnight. DSN's staffing is very intense. Two staff to three consumers is very intense. The reason for this is because DSN serves people with challenging and aggressive behaviors. DSN serves people that other providers will not serve and who are not appropriate for placement at the Nebraska State Developmental Center or the Regional Center. These people have no other place to go. If DSN were to add an additional person, the needs of the person as evaluated by the state of Nebraska determine their level of staffing. With each person comes the determination already made by the state as to the intensity of staff. A unit of service is an hour of time. Each person is evaluated through an

objective assessment process conducted by the state, and they come to DSN with a pre-determined staff intensity level. DSN is required to follow that staffing level and it is monitored by the state.

2. Brian Kanter, Chief Operating Officer of DSN of Nebraska, offered that DSN's policy and procedures, as approved by Nebraska Health and Human Services, require 29 hours of pre-service training before an individual can work alone with any individual receiving services. DSN facilitates over 50 hours of training. They also employ an on-site psychologist, behavioral consultant, and recently added a traumatic brain injury consultant to offer additional training. The one misperception is that DSN is a hospital or incarceration facility. DSN is neither. DSN supports the individuals that it serves. They serve individuals with developmental disabilities. DSN does not serve criminals. This proposal will allow DSN to increase its staffing intensity, which is determined by the state.

Esseks asked the applicant to address outreach to the community. DSN has four units in one block. What is the history of outreach efforts to the neighbors so they know who to call, etc? Kanter stated that they met with the Coddington neighborhood about a year and a half ago in response to an incident. They have not met since then but are certainly willing to do so.

Carroll inquired as to the process for an emergency. LeFevre stated that it depends on the type of emergency. Carroll inquired when they would call the police. LeFevre's response was that generally, the individuals in services are their own legal guardians, and being such they carry all the rights and responsibilities as any other citizen. If they commit a crime, often their team (interdisciplinary team from several specialities, i.e. state, medical staff, schools, work, day service, family members) decides how DSN is to respond to an emergency. Sometimes the team directs DSN to call the police if the individual commits a crime, because if the individual understands and is able to premeditate something, then they should have the same consequences as anyone else. DSN is required to follow the recommendations of the team. DSN has a contract with the state to provide services. DSN does the work, but there is a whole group of people behind the scenes that determines how DSN interacts or responds to situations regarding individuals in services. It varies from person to person.

Kanter offered that DSN is very passionate about this population. They are proactive instead of reactive. He has worked with the Lincoln Police Department in regard to individuals that have had significant amounts of contact with the police. An "individual justice plan" is delegated to DSN by the team. Incidents have occurred and services have been terminated, but DSN wants to give it every effort that they can for an individual to reside in the community.

Carroll inquired about who the neighborhood would call with a question or complaint. Kanter indicated that DSN has 34 locations in Lincoln. For example, there is one residential coordinator for the Coddington address who has a cell phone and who is expected to build relationships with the neighborhood. Carroll inquired whether every neighborhood association has the contact information. LeFevre stated that to be generally so, but DSN serves individuals who are very high functioning and they don't necessarily want someone knowing that they are "in services". DSN serves some individuals who believe that to be very stigmatizing, so not all of DSN's locations are publicly acknowledged and they do not have to be acknowledged because DSN has to follow the HIPPA requirements and not disclose whether or not someone has a disability.

Carroll believes that DSN is legally liable for the property, so if there were a problem or concern about the property, as the lessee, it is DSN that needs to be contacted. Who would a person contact?

LeFevre suggested that there is staff at the location that can be notified. If there is a problem, a person could go knock on the door and talk to the staff. 99% of the time there is more than one staff on duty at every location except during overnight hours.

Carroll inquired whether there is another number to call if they want to move up the chain of command. LeFevre suggested that anyone could call their central office at 435-2800.

In regard to the police calls, LeFevre explained that because DSN is a service agency, they are required by law to self-report. If DSN suspects that a crime has been committed, DSN is required by law to self-report that crime. He believes that many of the police calls in the report are "self-reports". He believes the numbers on the police report are high because DSN is "self-reporting" when the neighbors wouldn't do such a thing.

Pearson inquired whether there is a written procedure where a neighbor complains and actually goes somewhere, is documented and moved on to be resolved. LeFevre stated that it would come to DSN in the form of an incident report. If the problem is resolved by the staff person, it is not reported.

Pearson noted that the request is to go from three to four residents, which changes this from a family to a group home under the Lincoln Municipal Code. Is there any sort of statistical information that shows that by adding that fourth person, the amount of incidents will go up or down? LeFevre did not have such information. Pearson suggested then that by adding a fourth person, the situation could be made worse in a neighborhood.

Kanter then discussed the financial issue. The SSI payments are approximately $560 per month for utilities, food, rent, personal needs, etc. All of those numbers were based on four individuals residing in a location. LeFevre added that the funding mechanism of the state is based on four people at a location. They will tell you that a three-person location is generally inadequate to sustain the cost.

Pearson then posed the question: By going from a home to a group home, what is the most number of individuals that can be in a group home? LeFevre stated that the largest number would be 15. There must be a minimum square footage per individual, minimum number of toilet facilities, etc. It is all spelled out in the regulations and DSN's licensing is dependent upon that. There is no latitude for adding any more than one person at any of these locations. DSN is not requesting anything beyond that.

Carlson sought clarification that DSN will not need to increase staff or services to serve four versus three individuals at this location. LeFevre responded, stating that the change in staff and services will depend on the person coming in for services. The state determines the staffing level. DSN serves very few people who have the exact same staffing level.

Carlson inquired as to how long 424 N. Coddington has had three clients. LeFevre believes it has been since 2003.

In general across the city, Carlson wanted to know how long DSN has had 3-person homes, Are you able to maintain them? LeFevre stated that it is dependent upon the individuals and the staffing that comes with those individuals. It is becoming increasingly difficult to sustain a three-person environment because the funding mechanism is based on a four-person environment. The breakdown that goes into the dollars associated with each intervention unit is based on the presumption that no one will live in a three-person environment. It is based on a four-person environment and DSN has been able to sustain the costs up to this point because they have received rate increases from the Legislature. This last year the rate increase was 1%. Health care insurance alone went up 30%. So many of the costs are rising dramatically but the reimbursement rate is not. For example, the cost of gasoline has caused an impact for transporting clients to and from appointments, etc.

Carlson inquired as to the typical rate increases. LeFevre stated that they have generally been 3%.

Carlson asked how many DSN facilities have had to close as a result of economic impact. LeFevre stated, "one". Carlson asked whether DSN was able to find housing for those individuals. LeFevre responded, stating that the City of Lincoln has one of the most restrictive familial codes across the country. In Lincoln, three people is considered a family, when it is usually five or six in other communities. DSN has been forced to rent duplexes where they sometimes rent both sides of the duplex to offset the cost associated with an environment.

Carlson inquired whether those reductions and those needs for consolidation impact DSN's ability to provide service and therapeutic benefit. LeFevre stated that the demand for services just continues to increase. DSN is 12 years old and currently employs over 500 people, who are in place to serve approximately 300 people per year. DSN has a large infrastructure to support the individuals in services because their needs are so extensive. It has been very difficult to sustain the three-person environment. The objective assessment process is being retooled and as that happens sometimes funding for an individual will drop by one-half. Then we need to determine whether services need to be terminated. DSN cannot use service dollars for an individual's room and board. It is a violation of Medicaid and Nebraska could lose their Medicaid funding if DSN were to use the dollars they are paid for services to meet personal needs, room and board.

LaFevre further observed that it is a struggle to want to continue in the business that he loves so much because it is becoming increasingly more political and more difficult. DSN is trying to do good things for people. He went into the field because he had a passion. He has worked for many service agencies and he started DSN. DSN has so many success stories, but no one is interested in the success stories. They even invite the media to cover the success stories. DSN tries continually to refine their services.

Carlson inquired as to the rent increases at 424 N. Coddington. Kanter stated that they have been zero to 5% per year. The owner of the property leases to several human service agencies across the nation.

<u>Support</u>

1. Mike Morosin testified as past president of the **Malone Neighborhood Association,** a neighborhood that has had to deal with group homes for well over 30 years. One of the biggest questions is staffing. There must be trained staff on duty 24-hours-a-day. Every person on staff needs to go through some behavioral management and anger management training. Two people on staff

allows you to watch the front door and the back door. Many of the clients have a multitude of problems. How many group homes can one neighborhood support? We need to make sure there is a mechanism in place and that all the neighbors know it is okay to come talk to staff and make sure something is going to be done. He is in support of this application. It is just important to have enough staff available to take care of the problems.

Esseks observed that maybe the Malone Neighborhood Association has worked out a neighborhood support monitoring structure that makes the group homes fit in better to the neighborhood. Morosin concurred. Early on, the Malone Neighborhood Association decided to set up the program to take care of the problems. The group homes need to go to the neighborhood association and create a partnership to help each other.

Opposition

1. Edward George, 4127 Holdrege Street, testified in opposition, relaying a situation he encountered with an individual at Matt Talbot Kitchen who stated that he was going to commit a terrible crime. The individual was in a group home. "A house is a house. A home is a home." People need to understand that. George suggested that it is not just providing a house for a person – it's providing a home to support those people to succeed in society. We have to all work together to address these issues. We need help for these people. Somehow we have to come together.

2. Joe Wilkins, partner with the Knudsen, Berkheimer law firm and resident of 1808 S.W. 36th Street, testified in opposition. He stated that his comments are generally directed to each of these applications (Miscellaneous No. 05017, 05018 and 05019), and more specifically the group homes going from three to four people. He is concerned because the accounts in the newspaper indicate that DSN is unwilling or uncomfortable about providing detailed financial information as to whether their facilities are economically viable. There is a lawsuit against the city indicating that the zoning ordinance violates the Fair Housing Act. What DSN fails to recognize is the fact that the Fair Housing Act does require reasonable accommodation; however, it requires reasonable accommodation that is "necessary". That is a step that everyone seems to be forgetting. That is where the economic viability of these three-person homes must be addressed in detail. Is it the city's responsibility to make things easy for businesses? DSN apparently has a business model that does not work. If DSN is biting off more than it can chew – and they are– they are taking on responsibility for people with high needs – these are all people who have very special needs. It is DSN's responsibility to have a business model that can fit within their income and expense guidelines. In this case, they are asking the city not to ask too many detailed questions about their finances. Who has the obligation of proving this? Wilkins contends that DSN bears the burden of proof. DSN must demonstrate that there is sufficient evidence to indicate that this is just not working.

Wilkins also expressed concern that DSN has the same players as what used to be known as "Active Community Treatment" (hereinafter ACT). ACT had a demonstrated inability to effectively and safely manage homes. It is simply not a viable, workable, realistic expectation to not be able to say "no". They cannot expect the city of Lincoln to bail them out. DSN needs to establish an effective and reasonable business plan that fits within their income and expenses just like everyone else in business.

Wilkins was also confused as to what amount of training is required. He does not believe a week of training is sufficient to "qualify" someone to supervise people who admittedly are challenging residents.

As far as “these people having the right to commit a crime just like anyone else”, Wilkins does not believe that is the point. No one has the right to commit a crime. You are expected to follow the law. In this case, DSN is taking on the responsibility of supervising the people who need that supervision. They don’t have the right to commit a crime. If DSN takes on the responsibility, it is DSN’s responsibility to make sure they are not committing crimes.

Under the Fair Housing Act and ADA, DSN is not only required to demonstrate that it is a reasonable accommodation but that it is also “necessary”. Is it in fact necessary? Is this Commission satisfied that they have demonstrated that they cannot make it work with three people? There are other businesses providing the same services. Biting off more than you can chew and asking the city to bail you out is not a viable business plan.

Taylor asked Wilkins to identify other similar companies who provide these services. Wilkins did not have a name but offered to provide a list of other providers.

Taylor asked Wilkins whether he would agree that the services that DSN provides are uniquely different than a business for profit would provide. Wilkins disagreed. Nonprofit is a bit of a misnomer. Nonprofit businesses make money. Whether you are a nonprofit organization or a charitable organization or a for-profit corporation, undeniably, each of those entities are required to administer their business in a sound and economically viable manner. It is not enough to say. “I am doing charitable work so I am not responsible to make sure the books balance.” If DSN is serving all of these high need residents, then they need to figure out a way to bring in a lower percentage of those people, to dilute it to the point where they can effectively treat those people. It does not make any sense to say, “I have a difficult time saying no”.

3. Cody Talbott, 320 N. Coddington, testified in opposition because this has had an impact on the block. It reminds him of the man who had gestured to his brother and a friend of his, who has since moved out of the neighborhood. Luckily, he and his brother had been taught to come right home. After learning about this proposal, about six houses in the neighborhood have gone up for sale.

4. Roxanne Talbott, 320 N. Coddington, testified in opposition. She has never been informed that there is a coordinator between the group homes and the neighborhood. Her neighborhood has never had any notifications from DSN. They say they can get a duplex with a shared supervisor. Will they also share the staff which then reduces the ratio of staff to clients? This is the first time she has realized that there were four units on her block with 12 residents. She believes this is enough on her block. If they start with our block, they are going to ask for this all over the city. She also fears that next year they are going to ask to increase it to five or six clients. She has experienced interactions and incidents, some that involved the police. The DSN residents want to be in the community but we don’t see very many of them. It does cause concerns for everyone on the block. She has lived there 18 years. DSN denied that they were going to be group homes for sex offenders. They do not have level three’s but they have had others.

5. Rebecca Barnes, 330 N. Coddington, testified in opposition and submitted her comments in writing. Unsupervised residents of group homes with a history of violence are becoming a threat to our neighborhoods. Since the residents are not held accountable for their actions, they continue to be problems in neighborhoods with families with children. This will have far-reaching implications in the future. Unless and until there are more stringent safety measures and training regulations in place requiring group home owners and employees to be held responsible for the actions of their disabled

clients, the city has no business allowing zoning changes for more group homes in family neighborhoods.

Barnes acknowledged that she has a relative with developmental disabilities who is allowed to live independently with a family. But the distinct difference is that she does not have a history of violence. The issues we are looking at these days are level one, two and three sex offenders. These individuals are not convicted because they are unable to withstand a trial.

6. Glenn Cekal, 1420 C Street, testified in opposition suggesting that maybe we need to learn to say "no" until we have more of an understanding of when it is proper to say "yes". He does not trust the way we are handling the welfare situation. We need to ask more questions.

Staff questions

Carroll asked staff to clarify the reason for the applicant withdrawing the "reasonable accommodation" request at 416 N. Coddington Avenue. Czaplewski advised that the issue with the two requests for Coddington Avenue is that there is not an existing group home established. The spacing requirement does not apply if he withdraws one of those. They would establish the one group home at 416 North Coddington and then the location at 424 North Coddington would need the reasonable accommodation.

Rick Peo of the City Law Department clarified further that DSN has the ability to designate a site as a group home. All they have to do is go to Health & Human Services and ask for their license to be at 416 N. Coddington. It is a matter of right that they can have one group home in this area and they are designating 416 as that group home, and then the issue at 424 is whether they can have another group home within ½ mile.

Peo also clarified that all of these applications are separation issues, all asking to be located within ½ mile of another group home. They are saying they want to waive the separation requirement to allow the second group home to be located within ½ mile of the other. This second group home will be limited to four people. They will not seek the maximum of 15 residents.

Larson does not believe the Planning Commission has jurisdiction over that number. Peo stated that they need an accommodation to allow the two homes to be within a certain distance of each other, and they are willing to put a limitation on that. 416 is not going to be an issue. If it is licensed as a group home, the Planning Commission will not see it.

Esseks wanted to know what security there is that 416 will be limited to four. Peo advised that 416 can have up to 15 if they can meet state standards. They are saying that 424 would be limited to four people.

Sunderman commented that the staff report does not say anything about limitation of four. Peo stated that the limitation to four was in their application. It is a restriction they are putting upon

themselves. Peo does not know how many they can house at 416, but they will have to comply with the standards.

Krieser inquired whether they could ask for five at 424 later if they have enough square footage. Peo stated that it would have to be a separate request and heard independently. The issue is one of necessity. Is there a need for a waiver of spacing requirements in order to allow a second group home to be here? Necessity can be financial need or therapeutic need for the benefit of the people receiving services; it might be that there are not sufficient other locations. It is the applicant's burden to show that necessity.

Response by the Applicant

LeFevre pointed out that DSN is very heavily regulated by HHS, whether the individuals are actually residing in what the City would classify as a group home or they reside in a three-person environment. DSN must comply with Medicaid requirements; they have to comply with regulations governing the administration of services for individuals with developmental disabilities through regulation and licensure; and then additionally, they have to comply with an additional set of regulations through the developmental disability system. DSN has contended and will continue to contend that there is a financial need, which is almost self-evident. LeFevre suggested that the burden falls upon the city to show that the request is unreasonable because it would create an undue administrative or financial burden for the city. DSN provided the financial information for the last request. DSN did not receive a request for additional financial information on these locations and LeFevre indicated they would be willing to provide the information.

LeFevre assured that DSN's business model is a very sound business model. They are not in financial peril. They are not going to collapse. DSN provides some people with day services only. Some people live in their own apartments and DSN helps them with budgeting, shopping, etc. The state purchases DSN's services on an ala carte basis.

LeFevre also observed that some people do not even know DSN is in some neighborhoods.

LeFevre returned to the issue of cost. DSN is looking at a specific pot of money that the individuals in services have to use to pay for their care. The other money received by DSN pays staff salaries and training. The violent behavior training is 18 hours and they must be recertified once a month. All of the training is approved by HHS. They are required to have 29 hours of pre-service training, and they provide 50 hours. Yes, there will be incidents. DSN has no more direct control over someone else's behavior than a parent does over their children. ACT had one incident that was a major incident. HHS thoroughly investigated that incident. DSN was thoroughly investigated by law enforcement and no charges were made. LeFevre submitted that this is financially necessary. The DSN locations have to meet certain standards. LeFevre offered to provide tours for the Commissioners.

Esseks expressed concern that there is enough square footage for four people. LeFevre stated that if there are four bedrooms, they would serve four people. They could not put 6 or 10 people at this location.

Taylor moved approval, with conditions. Motion failed for lack of a second.

Pearson moved to deny, seconded by Larson.

Pearson stated that she has not seen the evidence that this accommodation is financially or therapeutically necessary other than anecdote.

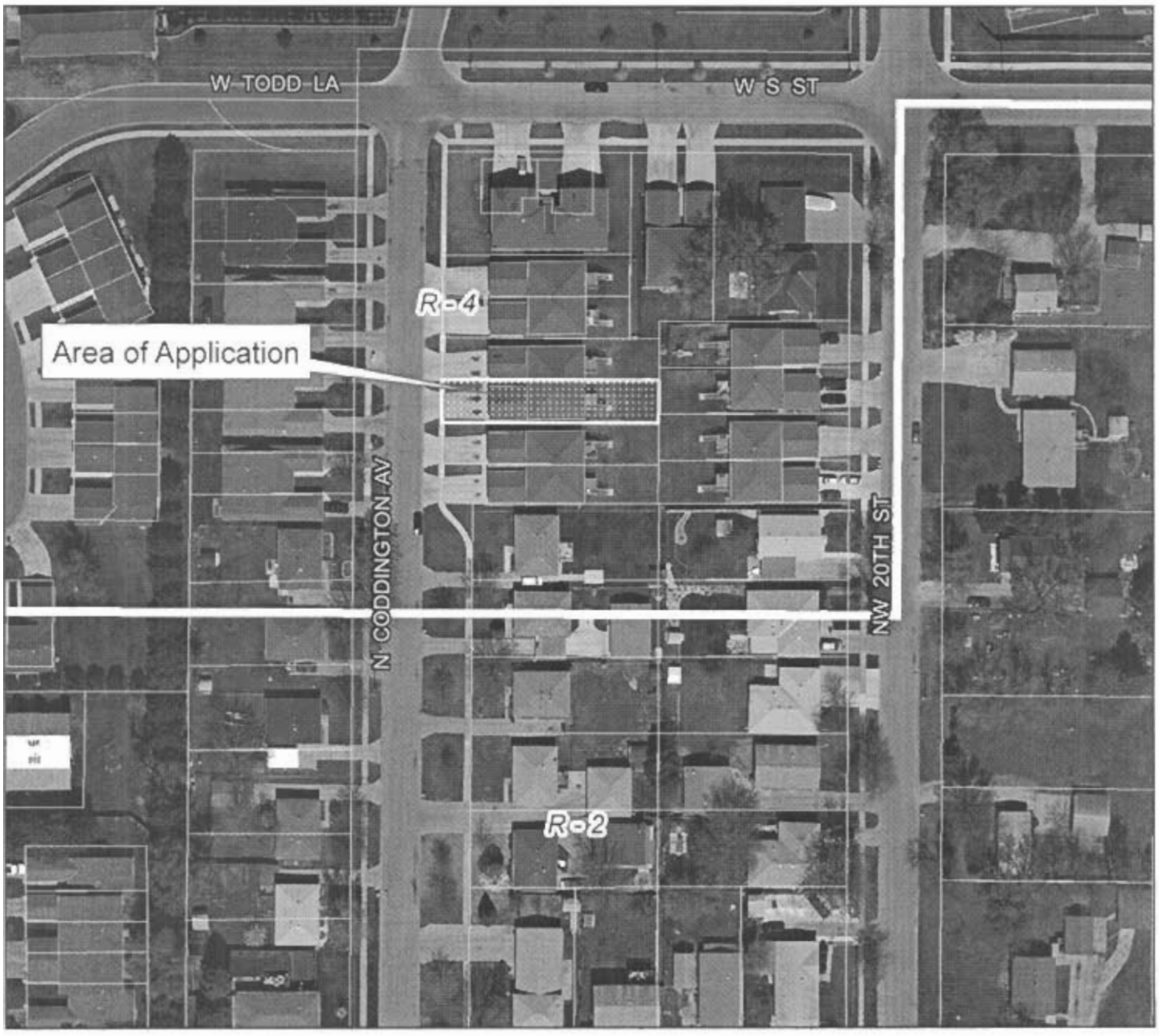
Esseks pointed out that there is a third ground to deny in addition to undue financial or administrative impact, and that is whether this action would fundamentally alter the program the city seeks to administer. We do have zoning regulations designed to promote health, safety and general welfare, and to conserve the value of property. Esseks is very sympathetic to the need to house developmentally disabled people. He just wants more information regarding the economic necessity because it would make him feel better as a Commissioner. If they submitted the financial information previously, they should do it again. He would prefer to defer action.

Carlson stated that he will support the motion in terms of the necessity and financial necessity. Despite questions specific to the subject, he does not believe it has been demonstrated that there is therapeutic necessity or financial necessity.

Taylor is disappointed in the action of his fellow Commissioners. He believes the applicant has demonstrated the need. He is concerned because of the fears that were vocalized by some other testimony, but he is not convinced they could do it more economically. He would support an action to defer this until we get more information. He is concerned that we have people in society that are falling between the cracks.

Carlson pointed out that the Commission is making a recommendation on a specific site and testimony on other sites is not germane. It is important that this determination be made on the request to waive the community zoning standard and whether or not the threshold of therapeutic and financial necessity has been demonstrated.

Motion to deny carried 7-1: Pearson, Carroll, Krieser, Sunderman, Esseks, Larson and Carlson voting 'yes'; Taylor voting 'no'; Strand absent. <u>This is a recommendation to the City Council.</u>



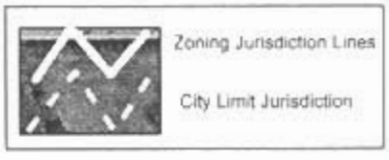
2005 aerial

Miscellaneous #05017
424 North Coddington Ave.

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. 021 T10N R6E



m:\plan\arcview\05_misc\misc05017

MISC 05017

Request for Reasonable Accommodation Pursuant to Lincoln Municipal Ordinance No. 18536

Applicant: Developmental Services of Nebraska, Inc. ("DSN")

Address: 424 North Coddington Avenue

Current Use: Community based residential home for persons with developmental disabilities

Basis: DSN is providing community based residential housing for persons with developmental disabilities. The residents of the home are persons with disabilities under the Fair Housing Act, as amended, 42 U.S.C. § 3601, *et seq.* ("FHA"), the Americans with Disabilities Act, 42 U.S.C. § 12131, *et seq.* ("ADA"), and the Rehabilitation Act of 1973, 29 U.S.C. § 794, *et seq.* ("Section 504").

Law: DSN is requesting a reasonable accommodation from Code § 27.11.030(b)(2), which prohibits DSN from operating its home because there is another "group home" as that term is defined by the Lincoln Municipal Code within one-half mile measured from lot line to lot line.

Reason: DSN seeks to increase the number of persons with developmental disabilities it is currently serving at 424 North Coddington Avenue from 3 to 4. Section 27.11.030(b)(2) of the Lincoln Municipal Code currently prohibits DSN from operating a group home for four or more persons with developmental disabilities at 424 North Coddington Avenue. The requested accommodation is financially and therapeutically necessary.

Financially, each of the residents of the home is allotted a minimal amount of funds to provide for their housing, food, and other daily expenses. Therefore, unlike many persons without disabilities, they have no choice but to live in a community residential setting like that offered by DSN. Moreover, by housing four persons in this home rather than 3, DSN is able to more effectively use these limited funds to provide a higher level of assistance to the residents and thus improve the skills the residents need to function in society and to lead a life as normalized as possible. The alternative to adding one more person to this home is locating and renting another home for the persons waiting for the community based residential treatment provided by DSN. Because the costs associated with locating, renting, furnishing, paying security deposits, utilities, etc. far outweigh permitting the addition of one more person to this home we feel that it is a reasonable request. Furthermore DSN would be unable to serve as many persons with

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AUG 10 2005
LINCOLN CITY/LANCASTER COUNTY
PLANNING DEPARTMENT

disabilities. Consequently, such persons will be unable to leave the institutional setting in which they currently reside and receive substandard treatment.

Therapeutically, community based residential treatment allows persons with developmental disabilities, mental illness and behavioral challenges to gain the skills, knowledge and experience to increasingly use and benefit from the resources and settings available to all citizens in our community. These persons are best served in a residential setting and the only way to provide this service is for such persons to live in a group home. In DSN's absence, those currently in services would be placed in institutions or detention settings which are not able to address the underlying cause of their maladaptive behavior – their disabilities. Although often the individual's behavior improves in detention, maladaptive behavior quickly resurfaces after the individual has been placed back into the community. DSN also must serve persons with similar disabilities in this home. Receiving community based residential treatment with persons with similar disabilities increases the residents chances of successfully improving the skills necessary to function in society and to lead a life as normalized as possible. With the addition of another person to this location we are able to provide more staffing which is therapeutically beneficial to everyone in the environment. This leads to better outcomes for those in services.

Finally, it is important to note that requiring DSN to show that there is no other location in the City in which it could operate its home is not a proper inquiry under the federal laws prohibiting disability discrimination. Indeed, the federal Fair Housing Act requires the City to grant DSN the requested accommodation if it "may be necessary" to live in a home of its choice. The court in *United States v. City of Chicago Heights*, 161 F.Supp.2d 819, 836 (N.D. Ill. 2001), explained:

> No court has ever placed the burden on a group home to show that its desired location is necessary or somehow unique in its ability to ameliorate the effects of its residents' disabilities. Rather, courts have interpreted the FHAA to require a showing that the requested accommodation is *one way* of ameliorating the effects of the disabilities. *See,e.g., Oconomowoc Residential Programs, Inc. v. City of Greenfield*, 23 F.Supp.2d 941, 958 E.D.Wis. 1998) ("[T]he CBRF is one mode of ameliorating [plaintiff's residents'] inability to live independently"). If the City's interpretation of the reasonable accommodation test

> [that the group home must prove there is no other area in the City in which it could operate] were the rule, it is doubtful that any group home ever could prevail on a FHAA claim, because there will always be some other parcel of property upon which a comparable residence could be established.

There is no alternative reasonable accommodation that would provide an equivalent level of benefit of which DSN is aware.

DOCS/676987.1

ITEM NO. 4.2, 4.3, 4.4 and 4.5:
MISCELLANEOUS NO. 05017
MISCELLANEOUS NO. 05018
MISCELLANEOUS NO. 05019
MISCELLANEOUS NO. 05020

BAIRD HOLM
ATTORNEYS AT LAW

Scott P. Moore

A Limited Liability Partnership
EST. 1873

(p.145 - Cont'd Public Hearing - 10/26/05)

1500 Woodmen Tower
Omaha, Nebraska 68102.2068
402.344.0500
www.bairdholm.com
Direct Dial: 402.636.8268
Direct Fax: 402.231.8552
E-Mail: spmoore@bairdholm.com

October 24, 2005

VIA ELECTRONIC AND FIRST CLASS MAIL

Rick Peo
Chief Assistant City Attorney
City of Lincoln
575 South 10th Street
Suite 4201
Lincoln, NE 68508

RECEIVED
OCT 24 2005
LINCOLN CITY/LANCASTER COUNTY
PLANNING DEPARTMENT

Re: Developmental Services of Nebraska, Inc.
Requests for Reasonable Accommodation

Dear Rick:

This letter sets forth the basis for Developmental Services of Nebraska, Inc.'s ("DSN") reasonable accommodation request.[1] DSN is requesting an accommodation from the separation requirement imposed upon "group homes" for persons with disabilities by the Lincoln Municipal Code ("Code"). The separation requirement currently limits DSN's ability to serve more than three residents with disabilities in its homes located at 424 N. Coddington Avenue, 416 N. Coddington Avenue, 1661 Timber Ridge Road, and 5516 Hunts Drive ("DSN Homes"). DSN requests a reasonable accommodation from the separation requirement by allowing it to add one resident to each of these homes for a total of four residents with disabilities in each home. DSN has already received a reasonable accommodation from the state fire marshal to operate these homes with four residents, so it needs only approval from the City to add one resident to each home.

Under the Fair Housing Amendments Act, 42 U.S.C. § 3601, *et seq.*, the Americans With Disabilities Act, 42 U.S.C. §12131, *et seq.*, and, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, *et seq.* (collectively referred to hereafter as the "FHA"), the City must grant a requested accommodation to a group home for persons with disabilities if the accommodation "may be necessary to afford such person[s] equal opportunity to use and enjoy a dwelling," unless the requested accommodation imposes an undue financial or administrative burden or fundamentally

[1] DSN requests that you forward this letter to the Lincoln Planning Commission and Planning Department.

alters the program that the City seeks to administer. *See e.g., Oconomowoc Residential Programs v. City of Milwaukee,* 300 F.3d 775, 784 (7th Cir. 2002). There is no evidence of which we are aware the requested accommodation would impose an undue burden or fundamentally alter any program that it seeks to administer. Consequently, the only remaining question is whether the accommodation "may be necessary" to afford the residents DSN serves an equal opportunity to use and enjoy the particular dwelling at issue.

Importantly, courts have universally recognized that accommodations in zoning restrictions are often necessary to provide persons with disabilities with housing opportunities that are equal to those enjoyed by persons without disabilities. The persons with disabilities whom DSN serves have conditions which interfere with their ability to care for themselves and they need assistance with daily living. These individuals "have little choice but to live in a . . . [group] home if they desire to live in a residential neighborhood." *Smith & Lee Assocs., Inc. v. City of Taylor*, 13 F.3d 920, 931 (6th Cir. 1993). Indeed, without group homes, many of these individuals have no alternative but to live in large institutions. Individuals who do not have disabilities, by contrast, can generally care for themselves and thus are less likely to need group living arrangements in order to reside in single-family neighborhoods. Zoning restrictions that limit the number of unrelated persons in a dwelling or that impose spacing requirements on group homes effectively preclude group homes from operating in single-family zones.

Courts have held that requests similar to the request made DSN in this case are reasonable. In *Dr. Gertrude A. Barber Center, Inc. v. Peters Township*, 273 F.Supp.2d 643 (W.D. Pa. 2003), the plaintiff was a "charitable, non-profit corporation, which provides residential and habilitative services to persons with mental retardation." The zoning ordinances of the municipality limited the occupancy of single-family homes to no more than 3 unrelated persons. The plaintiff sought a reasonable accommodation to operate a home in a single-family neighborhood with four persons with disabilities. The court held that the accommodation was necessary because of the therapeutic benefits of providing community based residential treatment to the persons the group home served.

> We also conclude that the Barber Center has established that the requested accommodation is necessary, through the undisputed evidence of functional gains experienced by persons with disabilities through residence in the community . . . Necessity can be demonstrated through evidence that placement in small neighborhood-based homes serves a therapeutic purpose . . .

> [T]the equal opportunity at stake in this case is the opportunity for four persons with mental retardation to live in the single-family neighborhood of their choice on the same basis as others. The accommodation requested by the Barber Center is specifically aimed at effectuating the right of the Barber Center's Fawn Valley Drive residents to maintain their community living arrangement . . .
>
> We conclude that the accommodation requested by the Barber Center was necessary to provide the residents of the Fawn Valley Drive home with an equal opportunity to enjoy the single-family dwelling of their choice.

Id. at 653 (citations omitted). Because the persons with disabilities served by DSN must live in a group home, the accommodation requested by DSN is arguably per se reasonable. However, as set forth below, DSN has additional therapeutic reasons for the requested accommodation.

One specific therapeutic need for the accommodation for the DSN Homes is the increased staffing the homes will receive by adding a resident to each home. DSN is reimbursed by the Nebraska Department of Health and Human Services for the number of intervention hours for each of the residents in the DSN Homes. Adding one resident to each home will increase the intervention hours, which allows DSN to provide a higher level of service to all residents in the homes.

Another therapeutic benefit that will result from this accommodation is that DSN may add a resident with a disability similar to the other residents of the homes. If all of the persons in the home have similar impairments, DSN may use the same prosthetic devices and the same level of environmental changes (e.g. level of safety and security) to serve all of the residents. Moreover, the staff of the homes receives training specifically tailored to understand and effectively address the needs of specific impairments. By adding a resident to each home who has an impairment similar to the other residents, the staff do not need different training and do not need to divide their skills among varying impairments. Thus, the staff may address more effectively the needs of the residents. The only option for DSN, if it is unable to add another resident to these homes, is to open another home in the City and hope that it receives sufficient referrals to have three persons with similar impairments to move into the home. Moreover, opening another home results in added costs to DSN, taking away from the resources it uses to provide heightened level of service or providing additional services to the growing number of persons who need community based residential treatment.

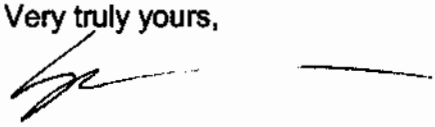
Finally, DSN is facing an increasing demand for its services. As DSN has previously informed the City, the landscape of providing community-based residential

treatment in the City of Lincoln and State of Nebraska to the population DSN serves has drastically changed with the passage of LB 1083 which requires the closing of the Hastings and Norfolk Regional Centers. DSN is facing increasing referrals form HHS to place individuals currently in these institutions into community-based residential treatment settings. We also again refer you to the study conducted by the Lewin Group on behalf of HHS highlighting Nebraska's plan to deinstitutionalize persons with mental disabilities.

Many of the concerns posed by residents through emails to the City Planning Department stem from a misunderstanding of the reasonable accommodation process of the FHA. Most of the concerns expressed in these emails are based on discriminatory views of those with disabilities and have nothing to do with concerns about the proper zoning or use of the property in question. The email from Marilyn Oborny, for example, claims that one of the two residences on the 400 block of N. Coddington "was the home of one man who stabbed a neighborhood child not long ago." Another email from Jill Shandera claims that she opposes the zoning change because of her concern for "the safety of the other residents in the neighborhood" and claims that "group homes should not be allowed to reside in townhouses as they share common walls with their neighbors." The email from Stephanie Siemsen regarding the home on Timber Ridge Road claims that "two group homes within a block of one another is of great concern because they are interacting with one another." In another email regarding the Timber Ridge Road home, Gayla Martin states "we live in a family neighborhood, not a commercial area." The email from Karen Ware concerning the home on Hunts Drive states that "the neighbors did not bargain for this when they spent their hard-earned money to build their dream homes in this neighborhood." These concerns are misdirected. "[T]he FHAA responded to a recognized prejudice against those with physical disabilities and illness and against '[p]eople with mental retardation [who] have been excluded because of stereotypes about their capacity to live safely and independently." *Groome Resources Ltd., L.L.C. v. Parish of Jefferson*, 234 F.3d 192 (5th Cir. 2000) (citations omitted).

We trust that this letter sufficiently explains the basis on which DSN seeks a reasonable accommodation from the separation requirement imposed upon "group homes" for the DSN Homes. If you have any additional questions, please do not hesitate to contact me.

Very truly yours,



Scott P. Moore
FOR THE FIRM

Enclosures

cc: Scott LeFevre

DOCS/698974.1

"J. Dixon Esseks"
<jesseks@msn.com>
10/24/2005 10:07 PM

To "Jean Walker" <JWalker@ci.lincoln.ne.us>
cc
bcc
Subject Summary of a conversation

History: This message has been forwarded.

Jean,

I had some questions about the management of group homes for developmentally disabled residents. So today, I asked the questions during a phone conversation with the professional staff person of the Nebraska Department of Health and Human Services who is responsible for licensure issues for such homes.

Attached is a summary of her answers.

A colleague of hers gave me 9 copies of the *Regulations and Standards Governing Centers for the Developmentally Disabled.* I'll take them to the meeting on Wednesday.

Dick ReasonableAccomdErickson.doc

Summary of Phone Conversation with JoAnn Erickson, Nebraska Department of Health and Human Services, October 24, 2005

1. **Licensing of facilities for the developmentally disabled:** If four developmentally disabled clients live in any one home, the facility must be licensed by her Department.

2. **Staffing of the home:** The minimal staff requirements described on p. 21 of the *Regulations and Standards Governing Centers for the Developmentally Disabled* will prevail.

"005.01D1. For units including either children under the age of 6 years, severely and profoundly retarded, severely physically handicapped; or residents who are aggressive, assaultive, or security risks, or who manifest severely hyperactive of psychotic-like behavior, or other residents who require considerable adult guidance and supervision, the staff-resident ratios shall be not less than:

Morning – 1:4
Afternoon and evening – 1:4
Overnight – 1:8

"005.01D2: For units serving residents requiring training in basic independent living skills and who do not attend vocational training programs, but may attend prevocational training programs, the staff-resident ratios shall not be less than:

Morning – 1:4
Afternoon and evening – 1:8
Overnight – 1:10

"005.01D3: For units serving residents in vocational training programs and adults who work in sheltered employment situations, the staff-resident ratios shall not be less than:

Morning – 1:4
Afternoon and evening – 1:8
Overnight – 1:10"

Ms. Erickson said that, even if the total clients are no more than four, it would still be required that one staff person be present during afternoon, evening, and overnight hours. However, at night that person may be permitted to sleep rather than be awake.

The numbers of staff during any of these time periods might be more than the minimum. The total number is determined by the needs of the clients.

3. **What neighbors may do** if they believe that there are health or safety issues concerning a group home: They should call:

1 JoAnn Erickson at the Nebraska Department of Health and Human Services = 471-3484 or
2 her colleague, Cheryl Mitchell = 471-4975

The home may be inspected, and in case of serious violations its license may be suspended.

4. **Neighbors may call also if they believe that the property of the group home is being poorly maintained,** such as if a broken window remains unfixed for some time or trash has accumulated over some time.

Submitted by Dick Esseks

"J. Dixon Esseks"
<jesseks@msn.com>
10/26/2005 12:51 AM

To "Jean Walker" <JWalker@ci.lincoln.ne.us>
cc
bcc
Subject Revised table of Lincoln Police Calls to blocks with the four "reasonable accomodation" group homes

Jean,

With the other commissioners, please share this revised table (not the one I sent earlier this evening). I revised it just now, since in the first draft I had left out some houses on the relevant blocks of Hunts Drive and Timber Ridge Rd. that had no calls at all 2002 to Sept. 2005.

Police Chief Casady gave me data on all Lincoln Police Department calls to those blocks during that 3.75-year time period. He included more detailed information on the calls that were serious enough to result in incident reports.

I tried to summarize the data in the attached table. I'm sorry this message is arriving to you Wednesday AM. I got the materials at 1:30 this afternoon.

Dick LincolnPoliceCalls.doc

Lincoln Police Department Calls to Blocks Where Subject Properties Are Located: January 2002 to September 2005								
Address	**All calls 2002**	**All calls 2003**	**All calls 2004**	**All Calls 2005 to date**	**2002 calls serious enough for an incident report**	**2003 calls serious enough for an incident report**	**2004 calls serious enough for an incident report**	**2005 calls serious enough for an incident report**
400 N. Coddington	1	3	5	6	Parent did not provide child's birth certificate. Juveniles fighting		Assault. Stranger reported.	Theft. Child custody complaint. Broken window. Suicide.
401 N Coddington	1	0	1	0	Theft from an auto.		vandalism	
409 N. Coddington	0	0	0	0				
410 N Coddington	1	1	0	0	Roommate steals from roommate.			
416 N. Coddington	**13**	**1**	**8**	**1**	**Missing adult. Attempted rape**		**Missing adult. Missing juvenile**	**Broken window**
417 N. Coddington	2	0	0	3				
418 N. Coddington	19	2	3	3	Resident assaults two other residents. Two cases of missing adults. One of vandalism	Client strikes victim	Missing adult	One adult and two juveniles reported missing.
423 N. Coddington	0	0	0	0				

Address	All calls 2002	All calls 2003	All calls 2004	All Calls 2005 to date	2002 calls serious enough for an incident report	2003 calls serious enough for an incident report	2004 calls serious enough for an incident report	2005 calls serious enough for an incident report
424 N. Coddington	**2**	**8**	**5**	**4**		**Client assaults other client and threatens staff with knife. Missing adult. Vandalism. Officer threatened with knife**	**Three cases of missing adults**	**Missing adult located at 0545 hrs., Care giver did not pick up resident**
425 N. Coddington	3	1	2	2				
426 N. Coddington	3	18	8	3	Vandalism. Ex-client grabbed female staff. Vandalism	Two missing adults. One case of vandalism	Assault with knife. 6 cases of missing adults	Vandalism
431 N. Coddington	0	0	0	1				
432 N. Coddington	0	0	0	0				
433 N. Coddington	2	0	1	0				
434 N. Coddington	0	1	0	1				Vandalism
439 N. Coddington	3	0	1	0				
441 N. Coddington	0	1	1	2				

Address	All calls 2002	All calls 2003	All calls 2004	All Calls 2005 to date	2002 calls serious enough for an incident report	2003 calls serious enough for an incident report	2004 calls serious enough for an incident report	2005 calls serious enough for an incident report
5500 Hunts Dr.	0	2	1	0				
5501 Hunts	0	0	0	0				
5506 Hunts	1	0	0	0	Vandalism			
5508 Hunts	0	0	0	0				
5509 Hunts	0	1	1	0				
5515 Hunts	0	1	0	0				
5516 Hunts	**2**	**5**	**0**	**0**		**Client bites victim. Vandalism on same day**		
5517 Hunts	0	0	0	1				
5524 Hunts	0	1	0	0				
5525 Hunts	0	0	0	0				
5532 Hunts	0	0	0	0				
5533 Hunts	0	1	1	1				
5540 Hunts	0	0	0	0				
5545 Hunts	0	0	0	0				
5550 Hunts	0	0	0	0				
5555 Hunts	0	0	0	0				
1600 Timber Ridge	2	2	0	0				
1610 Timber R	1	0	0	0				
1611 Timber R.	0	0	0	0				
1654 Timber R	1	0	0	0				
1655 Timber R	1	2	1	1				
1661 Timber Ridge	**1**	**2**	**6**	**1**			**Two cases of missing persons**	**Punched victim twice and threw table at victim**
1665 Timber	1	0	0	0				

Source: Lincoln Police Department, October 25, 2005

OPPOSITION

ITEM NO. 4.2 and 4.5: MISC.05017
MISC.05020
(p.49 & 73 - Cont'd Public Hearing - 9/28/05)

"Klaus and Gisela"
<Klaus@inebraska.com>
09/28/2005 10:45 AM

To <plan@lincoln.ne.gov>
cc
bcc
Subject zoning change for 416 and 424 N. Coddington

As the owner of 341, 345 and 349 NW 23d I vote against the proposed zoning change.
Gisela Hartmann

OPPOSITION

ITEM NO. 3.3 and 3.6: MISCELLANEOUS NO. 05017
MISCELLANEOUS NO. 05020
(p.49 and 73 - Public Hearing 9/14/05)

<jshande@alltel.net>
09/13/2005 09:46 PM

To <plan@lincoln.ne.gov>
cc
bcc
Subject Miscellaneous No. 05017 and 05020

I am writing in response to the proposed zoning change for 424 N. Coddington and 416 N. Coddington to allow them to be group homes. I oppose this zoning change for a number of reasons. The first main reason is the safety of the other residents in the neighborhood. With numerous police calls from these addresses and the unfortunate incident of a five year old boy being stabbed by one of the residents the agency has shown inadequate supervision of the members already present. It is also evident that the neighbors living around the residence also feel this way as there are six houses that are for sale on that street surrounding the above addresses. I also feel strongly that group homes should not be allowed to reside in townhouses as they share common walls with their neighbors. It is also a disservice to the group home residents to live in a townhouse for they do not have a yard so they can have daily structured outside activities. I trust that you will make the right decision based on the safety needs of everyone involved and deny the changed zoning request.

Jill Shandera
406 W. Todd Circle

OPPOSITION

ITEM NO. 3.3: MISCELLANEOUS NO. 05017
MISCELLANEOUS NO. 05018
MISCELLANEOUS NO. 05020
(p.49, 57 & 73 - Public Hearing - 9/14/05)

MLOborny@aol.com
09/13/2005 02:34 PM

To plan@lincoln.ne.gov
cc
bcc
Subject Group home zoning hearing Sept. 14

I am concerned about the rezonings being requested to allow group homes within 1/2 mile of each other. On the 400 block of N. Coddington there are two residences two doors from each other requesting such a rezoning. One of these was
the home of one man who stabbed a neighborhood child not long ago. In the last 14 months 5 homes have been sold on that 300 to 400 block. At present there are 6 more homes up for sale at the same time. It would appear that the current
status of the two homes is already having an impact on the neighborhood. I am opposed to allowing these two homes to be rezoned for group home status, especially since they are only two doors from each other. I also oppose the establishment of a group home at 1661 Timber Ridge Rd., misc. # 05018. I don't want
"For Sale" signs to be popping up there, spelling the decline of the stability of the neighborhood. Marilyn Oborny, 1500 SW 40th St. Lincoln

OPPOSITION
SUBMITTED AT PUBLIC HEARING BEFORE
PLANNING COMMISSION: 10/26/05

MISCELLANEOUS NO. 05017

October 5, 2005

To All Concerned Citizens:

Re: Misconduct by Protrudes:

I, Edward A. George, of sound mind, feel an obligation and a need to write expressing my disappointment of the community of Lincoln and those individuals responsible for protecting Lincoln residents. My concern of various sexual misconducts and exploitation of youth is a serious issue that needs to be addressed.

I am sharing a shocking experience which I experienced; of Mr. Joseph A. Siems. Mr. Siems is the man accused of misconduct in Lincoln Arnold Elementary School towards a child.

During the week of Mr. Siems accused assault of a child in that school, I happened to come in contact with Mr. Siems, sitting down across the table from him at lunch in the Matt Talbot Kitchen. A police officer (name not sure) sat down beside me and Mr. Seims.

During that time, Mr. Joseph Siems said "I'm going to commit a terrible crime". I was taken by surprise, and my instinct told me that he was serious about his remark.

I was a UNL County Extension Educator. Part of my professional training was to never ignore such statements like Mr. Siems remark. I sat at the table thinking the Police officer would do something, hopefully to help Mr. Siems with his potential problem. HE WAS ASKING FOR HELP.

That incident suggested support to protect Mr. Siems was urgently needed. Later, it appears nothing was done by the police to investigate the problem or Siems situation.

On the following Saturday, after Mr. Siems arrest of his supposed crime, I was reading the Lincoln Journal Star. On the front page was Mr. Siems picture. I was shocked after reading the story that a child had been molested, supposedly by Mr. Siems.

I was so shocked, thus I had to talk to a priest to ask for forgiveness and pray for the child and Mr. Siems safety.

Many people in Lincoln failed to help keep a problem from happening, Mr. Siems, his medical doctor, the Group Home he lived at, and Lincoln Police. The whole system is failing to protect innocent individuals' especially young children. After the problem is a very, very expensive cost to society. Much better solutions are needed.

I hope and pray and believe that Lincoln can do a much better job of protecting it's citizens. Several similar recent incidents in Lincoln demonstrate the urgency of at the least monitoring but controlling and solving such problems.

Edward A George

Edward A. George
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Lincoln, NE 68503

OPPOSITION
SUBMITTED AT PUBLIC HEARING
BEFORE PLANNING COMMISSION: 10/26/05

MISCELLANEOUS NO. 05017

October 26, 2005

TO: City Planning Commission Members

RE: Applications 05017 and 05020

Today I am here to voice my objection to these applications as both addresses are in my neighborhood. In the past there have been several unpleasant incidents on our street involving residents of group homes and their lack of trained supervision. These incidents involve anything from residents running away and having temper tantrums in our yard to physical violence. The final incident culminated in the most objectionable situation where a five-year old boy was snatched off his bicycle, dragged into his "supervised" home and stabbed with a knife by a predator with a history of sexual abuse and violence. To say the least, the history of group homes in our neighborhood has not been pleasant.

My husband and I no longer feel as comfortable and safe in our home as we used to, and we don't even have children. Our neighborhood used to be a quiet, safe place where children were able to run up and down the sidewalks unsupervised. That atmosphere, however, has changed dramatically due to the group homes that appeared in our neighborhood a few years ago.

Time and time again, and as most recently as September 22, 2005, unsupervised residents of group homes with a history of violence are becoming a major threat to our neighborhoods. Apparently laws and regulations are no longer able to contain and confine dangerous individuals where they are unable to harm themselves and others.

As long as public institutions continue to release people with developmental and other disabilities who have a history of violence to minimally-regulated group homes we will see more and more incidents with residents of these homes causing harm to others and themselves. Since these residents are not held accountable for their actions due to their disabilities they continue to be a problem in neighborhoods where families with children and other vulnerable people live.

Setting a precedent of approving these applications will have far-reaching implications in the future. Unless and until there are more stringent safety measures and training regulations in place requiring group home owners and employees to be held responsible for the actions of their disabled clients the city has no business allowing zoning changes for more group homes in family neighborhoods.

Sincerely

Becki Barnes

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