

REVISED MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, July 8, 2015, 1:00 p.m., Hearing Room 112 on the first floor of the County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Jeanelle Lust, Dennis Scheer, Lynn Sunderman, Tracy Corr, Cathy Beecham, Michael Cornelius, and Ken Weber; Chris Hove arrived at 1:57 p.m. (Maja Harris absent); David Cary, Steve Henrichsen, Brian Will, Christy Eichorn, Ed Zimmer, Geri Rorabaugh and Amy Huffman of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission meeting

Chair Jeanelle Lust called the meeting to order at 1:00 p.m. and acknowledged the posting of the Open Meetings Act in the back of the room.

Lust requested a motion approving the minutes for the regular meeting held June 24, 2015, as revised. Beecham moved approval, seconded by Scheer and carried 5-0: Lust, Scheer, Sunderman, Corr and Beecham voting 'yes'; Cornelius and Weber abstained; Harris and Hove absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

July 8, 2015

Members present: Lust, Scheer, Weber, Cornelius, Sunderman, Corr, and Beecham; Harris absent; Hove arrived at 1:57 p.m..

The Consent Agenda consisted of one item **SPECIAL PERMIT NO. 15030.**

Special Permit No. 15030 was removed from the Consent Agenda and had separate public hearing at the request of a concerned citizen.

There being no other items on the Consent Agenda, no action was necessary.

REQUESTS FOR DEFERRAL: None.

**SPECIAL PERMIT NO. 15030, FOR AN 85-FOOT TALL
PERSONAL WIRELESS FACILITY, ON PROPERTY GENERALLY
LOCATED AT 3300 NORTH 1ST STREET
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

July 8, 2015

Members present: Lust, Scheer, Weber, Cornelius, Sunderman, Corr, and Beecham; Harris absent; Hove arrived at 1:57 p.m..

Staff Recommendation: Conditional Approval.

There were no ex parte communications disclosed.

Staff Presentation: **Brian Will of Planning Staff** stated that this request is for a personal wireless facility, which is just north of new round about at North 1st and Adams Streets. There are fourth churches located along this stretch of 1st Street. The design of the facility is such that it would be able to co-locate at least one additional carrier, which is required by the ordinance. Staff has recommended that the facility be located at the church and farther away from the neighbors. Will referred to a letter from one of the neighbors that indicates they do not object to the location. The proposed location does take advantage of existing trees for natural screening along the east property line. Subject to the conditions of approval, staff recommends approval of this application.

Per a question of Corr regarding the location of Roper Park on the site map, Will identified the area. Corr also asked about the location of the Lincoln Parks' Shop and Storage Yard. Will was not sure about the location of that facility.

Proponents:

1. **Joe Coyle, 312 East 70th Street, Kansas City, Missouri, testified** representing the applicant SBA Communications, which is the tower company that would be constructing and own this tower. Verizon Wireless would be the anchor tenant on the tower. He has been working closely with the city on this tower and realizes that it is considered a sensitive location. He also realizes that the city of Lincoln is very concerned with the appearance of these towers. He referred to a statement from the RF Engineer that is included in the report packet that this site is a capacity site that is going to help off-load other neighboring sites that are toø exhaust – one of those sites is the flagpole site, which cannot hold as much equipment as the proposed site. They originally wanted the height of the facility to be 100 feet but they have brought it down to fit within the ordinance and to help with the aesthetics. Veriszon needs a 70-foot line for their antennas. They will be using a shorter 4-foot stand-off arm to hold the antennas. This will allow Veriszon to get their network functionality but will not be so obtrusive at the top of the tower. They have adhered to all the city's requirements. In terms of landscaping, there will be 27 trees planted at the base

and a 6-foot tall wood fence; six of the trees will grow to be 35-feet tall as required by the design standards.

Corr asked for clarification in terms of the circumference, where it needed to be off-loaded, and where the capacity would be? Coyle indicated that the ordinance requires that they look a mile radius around the site to see if there are any existing sites, which there are not. The engineer's statement explains that there are several sites surrounding this site and refers to the Roper Park site, which is the stealth flagpole site. He provided coverage maps to Planning that showed before and after images and included several other surrounding sites. By looking at the coverage maps, it is easy to visualize why this site is needed. It is no longer just about coverage and having sites along the interstate, it is about helping people out in their homes. People vote with their usage. The SBA is not going to build a site that is not going to have a lot of traffic on it, as it costs over \$200,000 to put up one of these facilities. The increased usage and the advance in technology with phones today is what drains the network; therefore, we are seeing more of these sites in residential areas. In terms of the impact on property values, this may actually increase the value. If there are four devices running in a home, these sites will allow the network to function even better. Version has one of the best networks and wants to continue to help serve the Lincoln community.

Beecham asked for clarification in terms of the landscaping – both existing and proposed. Referring to an aerial picture, Coyle explained various components of the picture which help with the aesthetics. Planning generally would like them to try to abut a building with the tower closer to the owner/applicant's physical structure. The reason they ended up a little further south was because there is an existing span of trees and they are going to have their access to the tower pass between two trees that are approximately 15 feet apart. There are four to five trees that are 30- to 40-feet tall that would buffer them from 1st Street. He also referenced a span of mature trees that provide a nice buffer from the backyards of eight to ten residential properties. There will be an additional 27 plantings around the fence, which will all serve to screen this site nicely. In his opinion, it will be screened better with both the existing natural screen and the city's extensive landscaping requirements, better than any other site that he has been associated with.

Beecham asked if there are plans to put landscaping closer to the houses for the site line. Coyle indicated that on east side, the design standards require that the entire compound be surrounded but there will be nothing between the fence of the tower and the existing at the property line.

Beecham asked if there were any neighborhood meetings conducted. Coyle indicated that they did not meet with the neighbors. When working with the neighboring church, the search area basically included the two church sites. The neighboring church indicated that they wanted to put feelers out to the neighborhood before they would visit with him. They conducted some outreach to the neighborhood and he was told that the objections were quite low. The other church membership decided that this wasn't right for them. Coyle

stated that this site is over 200 feet away from residences in one direction and 400 feet in another direction. He has worked with sites where there are residences on all four sides that are 90 feet away. They did not conduct any meetings with the neighbors.

Opponents:

1. **Robert Marshall, 3339 Gregory Street, Lincoln**, came forward and stated that he lives on the west side of Gregory. He is also the secretary of Roundtable Heights Homeowners Association. He stated that the organization has not been contacted by the church. He noted that one neighbor indicated that a church member came over and talked to his wife. Marshall visited with people up and down the street and no one has been contacted or surveyed in terms of this application. Marshall provided a letter addressing his concerns to the Planning Commission members. He indicated that Mr. Will's reports contains incorrect information, noting that this has been going on for 145 days. He stated that some of the neighbors received notices on July 1 and some didn't receive them until July 6, even though it was postmarked June 26. Marshall referred to the staff report dated February 4, 2015, and indicated that there are incorrect statements, including the reference that there is no residential property within 200 feet. He indicated that according to the plans, it is 71 feet 4 inches to the east lot line. The maximum distance of any lot is 130 feet. All the properties on the west side of Gregory are within 200 feet, which are identified in his letter. He noted that the Comprehensive Plan refers to the use of public space, which should be first priority. There is an ideal space at 5th and Adams Street, which is near the Parks Storage Shop or Roper Park. He asked if these were even considered. Why would they put this in a residentially-zoned area. Other issues include the mature trees to the east. He noted that there were mature trees that went to 3150 Gregory but they were suddenly taken out. A lot of these trees are dying and there are piles of wood that house rodents. There are also concerns with the ditch, which causes flooding. The addition of infrastructure, will cause more water to flow. At 3150 Gregory, which is the church property, a parking lot was installed without screening. This area is not being carefully maintained by the standards that are set forth by the Planning Department. He does not want this to be approved and he believes they should have had more time to prepare. This is not just an aesthetic value but it also impacts the quality of life in their neighborhood. He indicated that one neighbor who recently moved here from California indicated he didn't care because he believes that the government will do anything they want. He believes that this is wrong. They should have been notified earlier.

Corr asked about the location of the drainage ditch. Marshall showed the location by referring to a site plan that illustrates the distance of 71 feet from the lot line fences where there are swing sets and play houses. The ditch runs through the property into a retention area, which is maintained by volunteers. Two years ago the city put in a culvert because it was under sized but they still get water in their utility sheds. Why didn't the Planning Department consider these things and ask other people in the city about the flooding concerns in the area.

2. Clifford Lindholm, 3320 Gregory Street, stated that he just received the notification letter on July 1, and stated that this tower will be in his backyard. He asked if the first group of trees are going to be removed. He indicated that he and Mr. Marshall maintain the property behind his property. He indicated that these trees are dying and they won't be there long. He spoke to Mr. Bartels about 16 years about the flooding issues and was told that the city would eventually come in and clean out the ditch. Lindholm stated that the trees are in the ditch. If they straighten this out, the trees will be gone. The trees being proposed around the tower will be put at 8-foot tall and will eventually grow to 35 feet but he won't be around to see them mature. He and his wife are both retired and they are considering down sizing and concerned about the property value when someone sees this tower from his deck. Would you buy a house with an 85-foot tower setting in your backyard? He talked to the church and asked them why the neighbors weren't involved in the beginning and received an "oh well".

3. Tim Reisdorff, 3333 Gregory Street, came forward in opposition. He referred to a map and showed the location of the proposed site, the existing stealth tower and the maintenance shop. In a 1-mile radius, based off the proposed site, there are many other appropriately-zoned locations. He noted that these are Nebraska values and not Kansas City or New York values and we expect a little bit more; maybe we shouldn't be so trusting. The Planning Department has taken the applicant at face value but sometimes profits are a factor in these decisions. Is the church the only option because it is the cheapest option? Reisdorff asked how the applicant went about contacting anyone. They claim that they want to increase the coverage for Superior Street, I-180 and Interstate 80. If you draw a circle based on the proposed location, there are a lot of different options other than just two churches. Did they contact every owner of the land parcels available in that 1-mile radius? Is this actually a need or is it a want? He has a Verizon cell phone and he has never had a problem with it. He used to design cell tower sites as a job in the past. He knows that if you **are** underneath a tower, you will not get any better reception. You have to be farther out. You will only receive what you pay for in terms of service. He doesn't believe that they are meeting the criteria and this would set a bad precedent to allow a cell tower on church property – this is sacred ground. He showed an illustration with mature trees around the tower and stated that you can't hide a 10-foot man with 4-foot people around him. This is an 85-foot tower and you will be able to see it from any part of the city. He is also concerned about kids being able to climb over the 6-foot tall fence around the tower. Kids are curious and they will want to check it out. Reisdorff showed a picture of an existing monopole tower and stated that it doesn't matter what you do to the base of the it – it is a huge tower. The design shows one antenna but they need to have them at different heights to get different frequencies? How many antennas will be needed?

4. Elaine Samsel, 3421 Gregory Street, stated that her father is the owner of this property, which is located in the north part of the neighborhood. She shares the concerns of the neighbors in the area. Her father is out of town. She is at home for the summer and she was asked by a neighbor if they received a notification letter. Not being the homeowner, she did not. She opened her father's mail to find that this tower was going to

be put up in their neighborhood. Her father had no idea and he had no chance to be here. She indicated that it was the July 4th weekend and who was home to receive this letter. She called her father and he wanted to know everything discussed here. She stated that they will have a clear view of the tower. They have a nice yard with no one behind them; however, she noted that the trees behind them are dying and there will be nothing to shield them from the tower. Her father will be retiring and will want to sell his house. What will happen to the property value because of this pole? She is outraged by the fact that they had no idea that this was going on and she had to be told by a neighbor. If she wouldn't have been there, they would not have known and it would have likely just appeared one day. She is glad of that the public forum occurred but is disappointed that it was at such inconvenient time for those who work, and that it was hidden from them. This is very disappointing. You should have told us. There are many other better places for this site, including the church at 1st & Superior, next to Maxey Roper Park or the Parks Department at 5th and Adams, which is public land rather putting it on private land next to residences. This is not acceptable.

Staff Questions:

Beecham asked Brian Will if they ever deal with screening that is not adjacent to the tower but farther away to protect site lines. When a tree is planted close to a property, it can actually block more of a view than when it is planted farther away. Will stated that this is not part of the requirements but they do take it into consideration when they look at the appropriateness of the site. In the case of a cell tower like this, the existing trees are something that are considered. In this case, there are a fair number of existing trees, which was considered. Will believes that the majority of the existing trees are located at the southern end of the property. There is a screening requirement as part of the design standards regardless of the existing trees which require trees and plants to be planted.

Beecham referenced the comments relating to the condition of the existing trees, i.e. aging. Is this considered? Will indicated that he is not a tree expert. He indicated that they are mature trees but is not able to judge the condition of the trees.

Beecham asked if there was representation from the church here today. Brian was not sure.

Lust asked why the staff report is dated February 4, 2015. Will noted that there is a discrepancy on the date of the report. This is a date from a prior report that was carried over and that the correct date should be today's date. The dates that was referenced by one of the speakers was the date that this application was submitted. Will stated that this application did not proceed directly to the Planning Commission but was delayed. Upon staff review, there were several questions and things that they asked the applicant to address. These things were addressed prior to being scheduled on the Planning Commission's agenda.

Lust asked for clarification relating the notice. Will indicated that once an item is scheduled on the Planning Commission's agenda, notice is sent out to all property owners within 200 feet and the neighborhood and homeowner associations that are on file. The same procedure was followed in this case. The notice on this application went out the same time as all other items on this agenda.

Lust asked if the applicant resolved everything to staff's satisfaction. Will stated that the issues were resolved to the degree that they could be. One of the difficulties here is that in the future the demand is going to be such that these facilities will need to work their way near and into neighborhoods – this is going to be a challenge. How is this going to be accomplished. Will stated that they look for sites such as churches, schools, hospitals, larger sites where scale is appropriate and are large enough to provide some separation. In this case, there are neighborhoods in all directions. The Lincoln Parks Storage facility is located next to the interstate just across the from their other tower; therefore, they would not require them to site investigate this one because it is within close proximity to their existing facility. Sites such as these are likely going to go continue to be favorite sites as these facilities move closer to neighborhoods.

Lust asked who should be contacted at the city level if the neighborhood did have complaints about the lack of maintenance on the church property. Will stated that if there are drainage issues, they would need to talk to Public Works/Watershed Management. If they have concerns regarding weeds or trash, they can contact Weed Control. Will was not aware of any complaints or ongoing concerns on this property until today. If they would contact staff, staff would be directed to the appropriate agency for help.

Corr asked for further clarification in terms of the notification letters when items are put on the Planning Commission agenda. Will explained that items are placed on a working agenda when they are submitted, which is approximately four weeks out. The public notice is published in the newspaper eight days before the hearing and notification are mailed 10 days prior to the hearing date.

Corr stated that there seems to be a lot of questions about the measurements. How did staff measure the 200 feet? Will explained that he believes that some of the numbers were misinterpreted on the site plan. He measured from the tower to the nearest dwelling to the east, which is approximately 200 feet. The measurement of 74 feet is measured from the south property line back to the tower, which he showed on the site map. The nearest residence is more than 200 feet. It is a busy site plan so it could be easy to misinterpret the measurements.

Corr stated that sometimes when they are working with a church and a wireless facility, they try to co-locate it inside something that is already on the church building. Is there a large cross or something that could be worked with to help hide this a little bit. Will

indicated that they could put an addition on the church and enclose the tower, but it will be an issue of cost. This church is not a tall church and there would not be anything existing that would be tall enough that would work for this carrier or others.

Scheer asked if the distance from the tower to the residential structures to the east is 200 feet or more. Will stated that he cannot remember where he measured but he believes that it is to the lot line. In worse case scenario, it would be to the house.

Scheer stated that it seems that these kind of issues become more and more prevalent and questioned the relationship between the applicant and the landowner that the applicant is building the tower on and the responsibility of maintaining the landscape that the applicant is being asked to install. The responsibility would be on the church to maintain the landscaping and the ability of the owners, i.e. churches to be able to do this. He asked how the city makes sure that this gets maintained properly over time to maturity. Will stated that it will be the responsibility of the property owner. The special permit runs with the land. The owner will eventually sign a letter of acceptance acknowledging the conditions of approval. Scheer asked if the owner is notified through this process and there wouldn't be any misunderstanding about who is responsible to make sure the landscaping is maintained. Will stated that the owner will need to acknowledge in writing the conditions of approval.

Weber referred to the older trees back against the fence. If these were to die, who is responsible for maintaining this? Will stated that if it is on the church property, then it would be their responsibility; however, he noted that there is no requirement for those trees to be there. There are many trees on the site. The design standards relate to the plantings around the tower in terms of what is required. If these existing trees die and are removed, there is no requirement that they be replaced.

Scheer stated that there is no condition that these mature trees either remain or get replaced if they die. Will stated that this is correct. Scheer indicated that we need to be careful when referring to the mature trees actually assisting in our ability to understand how this facility is to be screened. He understands that it is not a condition but it is part of the Planning Commission's deliberation. Will stated that they are discussing current conditions. The trees could die but they could live. Anything could happen – the church could go out and plant more trees but may be not. These trees could die and not be replaced.

Beecham stated that as part of the Planning Commission's due diligence, they need to be sure to ask which landscape pieces are required and which just happen to be there. Will stated that this is a good distinction.

Will indicated that in respect to the applicant and talking to the neighbors, the Planning Department staff suggests that they do this to each applicant. This was suggested on multiple occasions in this case, as recently as last week, when Will received a call from one

of the neighbors opposing it but the applicant did not meet with them. There is no way that staff can require them to do this.

Applicant Rebuttal:

Joe Coyle came forth and stated that once the notification letters were sent out, Mr. Will informed him that he received a couple of phone calls. The notice was mailed to 52 individuals and so he thought that a couple of phone calls was very typical for this type of proposal. He has had many meetings and conferences in the past, and he has come to these meetings and heard concerns about health and things that can easily be rebutted during the public forum. This is a monopole and not a self-support tower. The height has been reduced and the tower will not be lit, etc. The applicant wanted to move forward on this. He noted that the notice requirement was adhered to. A lot of today's testimony had to do with the holiday coming into play. He assured everyone that they were not trying to put one over on anyone by showing up here today after the July 4th holiday. They have project time lines and try to move these forward as quickly as possible for their clients. Coyle referred to the introductory paragraph of the staff report indicating that the city is committed to supporting this type of technology.

In terms of the water issue, Coyle indicated that they did a phase 1 environmental study, which is a 200-page report that looks at archeology concerns, wetlands, etc., and this came back clean. Any kind of runoff or drainage issues would be addressed by their design firm. The compound that is used is crushed rock and water will typically drain through the gravel into the ground so there isn't an extensive increase in runoff to the east of the property. In terms of the quality of life issues, some people would welcome a cell tower to their neighborhood. One of the opponents indicated he never had a problem with this Verizon phone. Coyle indicated that he may someday if they don't continue to expand in this way – this is the future of wireless and data usage in our communities. They can't discount the fact that phones are used thousands of time everyday to place 9-1-1 calls. They want to continue to not have problems with their cell phones. In terms of the fence, they proposed a wood fence versus a chain link, which makes it harder for the kiddos to get over it. Coyle noted that the tower has anti-climbing devices and it is locked up – they keep these compounds as safe as possible.

As for concerns about the property values, Coyle noted that they did not conduct a property evaluation study at this site because the separate distance is such that it is in as close proximity as other sites that have been built recently. In his experience, the latest evaluation that he received in a Nebraska town for a building site in a residential area, it concluded that in today's world a cell tower is akin to a public utility pole, a water tank, and the public realizes that these are necessary and needed today.

Lust stated that she is generally supportive of the project but it is the Planning Commission's policy that they like the applicants to meet with the neighborhood before they come to them. For example, they recently deferred an application for two weeks with

someone who already met with the neighbors five times in trying to work out a project. She understands project time lines, but asked the applicant to explain why a two week delay to have a neighborhood meeting would be unreasonable. Coyle stated that if this is something that the Commission would require, he would look into it. Lust indicated that it may not be required but it may be discussed during the debate on this application.

Beecham asked if anyone from the church is present today. Coyle indicated that someone is present but is not prepared to speak.

Lust asked if the church representative could answer the question as to whether or not meetings with the neighbors have been held.

Scheer asked if the applicant contacted the two individuals who expressed concern about the project. Coyle indicated that he was not given this information and did not make any contact. He spoke to the church pastor and asked him if anyone had contacted that church after the notice went out. The pastor indicated to him that one person reached out to them when they received the notice.

Lust allowed Dale Ribble, 512 Oregon Trail, the pastor of Oak Lake Church, to come forward. He stated that the reason they didn't conduct a neighborhood meeting is because they are just renting the land and they felt it was the tower company who wanted to build it, therefore, it was their responsibility to get together the with neighborhood, as the church cannot explain the details of the project. Ribble would happily open the church for a neighborhood meeting and participate. He stated that he is present today to hear if there was any interest in the project.

Beecham stated that the discussion has indicated that the maintenance of the landscape and property will be the responsibility of the church. Ribble indicated that they have had this discussion with the tower company and they talked about requiring the tower company to be responsible for maintaining the part that they rent.

ACTION BY PLANNING COMMISSION:

July 8, 2015

Beecham moved to defer this application for two weeks with continued public hearing limited to new testimony only; seconded by Corr.

Beecham stated that a special permit is making an exception to the rule in terms of what is allowed in a neighborhood. It is helpful to hear from the applicant as well as the neighborhoods. Living, working or worshiping in an area – they know things about the area that the Planning Commission members may not know. Having heard some of the concerns and listening to the applicant, a meeting could go a long way in answering the questions of the neighborhood and possibly finding a middle ground on some of these issues. Companies such as Pyramid and Verizon have been doing this long enough, it would be to their benefit to hold neighborhood meetings in order to answer questions

before it gets to this stage. She would be much more comfortable voting on this after they have had the chance to sit down and talk.

Lust agreed with Beecham's comments. She believes that this may be a very good site for the cell tower and is generally supportive of the project; however, the neighbors are mostly upset about the lack of knowledge of this project going forward and the lack of opportunity for input. This is something that can be addressed with the 2-week deferral to allow for an opportunity to explain the project in greater detail and address the concerns that the neighbors have.

Sunderman indicated that he is likely going to vote for the project but agrees that one neighborhood meeting is a good idea.

Cornelius agreed with Sunderman's comments. He is generally supportive of the project. Most of the testimony in opposition relates to a problematic relationship between the church and the neighborhood – there was not a lot of engagement there. The pastor is here to find out what the neighbors think. Cornelius is surprised to find out the pastor isn't involved enough in the neighborhood to know this. He is hesitantly voting in favor of the deferral. He doesn't believe there are serious issues with the application. The bigger issue that seems to be valid is the problem around the holiday weekend and dealing with incoming business correspondence and homeowners who may be away and not receiving their mail in a timely manner – for these reasons, he will support the deferral.

Corr agreed with Cornelius' comments, stating that most of the opposition to the project related to the relationship with the neighborhood and the church and how they are maintaining their land. She stated that there are many avenues to report these concerns but they are done on a complaint-driven basis. She encouraged the neighbors to report these concerns before an application such as this comes forward – there is a neighborhood hotline – you can call and report it or go online to report these on the action line. Cornelius stated that if there is an issue with a neighbor, you can talk to your neighbor and not get the city involved. Corr further encouraged neighborhoods to make sure their homeowners/neighborhood contact information is provided to the city so they get these notifications appropriately.

Motion for a 2-week deferral carried 8-0, Lust, Scheer, Weber, Cornelius, Sunderman, Corr, Hove, and Beecham voting 'yes'; Harris absent.

**CHANGE OF ZONE NO. 15017, FROM H-2 HIGHWAY BUSINESS
DISTRICT TO B-3 COMMERCIAL DISTRICT, ON PROPERTY
LOCATED AT 222 NORTH 44TH STREET.**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 8, 2015

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

Staff Recommendation: Approval.

There were no ex parte communications disclosed.

Staff Presentation: Steve Henrichsen of the Planning Department filling in for Paul Barnes, provided an overview of this application, which is located on the southeast corner of 44th and "Q" Streets. The proposed B-3 zoning request is one in a series of change of zone applications submitted in the 48th & "O" Street area, which has a mix of zoning types – B-1, B-2, I-2, O-2, O-3, R-4 and R-5 in the area. This includes some apartments, highway commercial and a series of redevelopments. Most of the change of zones from H-2 to B-3 have been to take advantage of the fact that B-3 has a lower parking ratio – from 1:300 to 1:600. This site has the distinction of needing the change of zone H-2 to B-3 regardless of the use on this site. This site was originally Sports Court and this building has been split between two different owners and needs to be separated from each other. They will share one parking lot which is now divided by a lot line. This application covers both parts of the building and both lots. The parking ratio is determined by the former use – a recreational facility. As this site gets redeveloped into retail or the proposed kennel use, they would not meet the H-2 zoning requirements with the floor area of this building. Thus, they are requesting the change of zone, similar to what was done for the HyVee at 50th & O, as well as Walgreen's, and West Gate Bank, etc. – these were all rezoned to B-3 in order to handle the parking requirement. Henrichsen noted that the kennel use that is proposed on the south part of the building is an allowed use in both H-2 or B-3 zoning district; however, it is conditional and requires a 200 -foot separation to residential. There is more than 200 feet between the building and the residential use to the west. In addition, it requires that there be no more than three animals outside at any one time, which is typical of all kennels within the city. The main concern of the applicants is that they cannot meet the parking requirement for a kennel or for any other retail use on this site.

Staff Questions: None.

Proponents:

1. Christy Schwartzkopf Schroff, 300 North 44th Street, Suite 116, representing the applicant - Paws 4 Fun, LLC, came forward. Schroff indicated that her office is located across the street from the proposed project. The applicant is in agreement with the staff report for this change of zone. A copy of a letter from the other property owner, David Meisinger, supports the change of zone. The Planning Staff reports identifies the reasons for supporting this change of zone. Schroff indicated that this is a family-owned business and one of the owners of the Paws 4 Fun is present to discuss their plan.

2. Leon Kilmer, 1531 Kingston Road, one of the owners of Paws 4 Fun, LLC, came forward and stated that they are a family-owned and operated business. They have a long-term commitment. He indicated that his father-in-law and mother-in-law were not able to attend today's meeting but stated that they were born and raised in Lincoln, and he and his wife don't plan on leaving Lincoln. Paws 4 Fun provides a needed service to Lincoln. He has visited with all the neighbors in a 4- to 5-block radius, including the business employees and owners. They were extremely excited about the proposed use of this building, which has been empty for the past four years. He was also involved in the "I Love My Dog Show" at the Lancaster County Event Center. The neighbors across the street at Tanglewood are excited that they will have a place to go that isn't in south Lincoln. This is a central location with easy access onto 48th Street and O Street. This will help to revitalize the area and they are excited to be providing a service to the community.

Hove asked about the location of the outdoor facility. Kilmer referenced a site plan and identified the location close to where the existing pool is. He indicated that they don't plan to use this area for at least a year until they can revitalize the pool.

ACTION BY PLANNING COMMISSION:

July 8, 2015

Hove moved to recommend approval of this application; seconded by Scheer.

Corr indicated that she is excited about this project, as she has a hyper dog and would love to take him to a doggy daycare but there is currently nothing on her way to work.

Beecham stated that she appreciates that the applicant talked to the neighbors, and she believes that this is a really good use for this property. She supports that motion.

The motion to recommend approval carried 8-0; Lust, Scheer, Weber, Cornelius, Sunderman, Corr, Hove, and Beecham voting 'yes'; Harris absent.

SPECIAL PERMIT NO. 15037, TO INCREASE THE HEIGHT ABOVE THE 75-FOOT HEIGHT LIMIT OF THE B-4 ZONING DISTRICT, ON PROPERTY LOCATED AT THE NORTHWEST CORNER OF CANOPY STREET AND 'P' STREET INTERSECTION. PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 8, 2015

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

Staff Recommendation: Conditional Approval.

Final action by the Planning Commission.

There were no ex parte communications disclosed.

Staff Presentation: **Ed Zimmer of the Planning Department**, stated that this application went to a combined meeting of the Urban Design Committee and Historic Preservation Committee, because it impacts both areas of expertise, particularly in West Haymarket. Twelve of the 14 members were represented at that meeting. Both bodies voted in favor of recommending the Planning's Commission's approval of this item. An excerpt of the meeting discussion was provided to the Planning Commission. The applicant is requesting an increase from the 75 feet height limit. B-4 is one of eight commercial districts in the city in which an applicant can request a special permit for additional height up to 110 feet. A building schematic was provided, and he noted that this would involve a redevelopment project, which will include the architecture of the structure in the agreement and city sign-off on the building permit that the building is as it was intended.

Corr referenced the report and stated that currently the building site requirement is 75 feet but they have an additional 20 feet for air conditioners, elevator housings, etc. If this is increased to 110 feet, does the applicant still have another 20 feet on top of that for mechanical components? Zimmer stated that this is a normal provision of the B-4 and most of the commercial districts. The way the 7th floor has been designed shows how it has to be set back from both street fronts. It could conceivably use that additional height for screened mechanical components but suggested that the applicant could better address this question. Corr asked if they would be allowed to go up to 130 feet but only the mechanical components in the extra 20 feet. Zimmer stated that he believes this to be correct.

Beecham referenced the meeting minutes and a statement of Historic Preservation Committee member Berwyn Jones who asked a theoretical question "Why have the limits, if we make exceptions to them". She asked Zimmer for his opinion on this and why it makes sense to make an exception in this case. Zimmer stated that having the 75-foot limit here brings it into the public process. He noted that the other half of this block has a 100-

foot height limit and they could build anything there without bringing it forward to review the architectural design and the impact on the area. The special permit process allows for a public process at three levels– the Urban Design Committee, Historic Preservation Committee, and Planning Commission. For a redevelopment agreement, it would also go to the City Council. This process in essence is used because this area has enough sensitivity that they want to provide some extra attention.

Proponents:

1. Tom Huston, 1900 US Bank Building, 233 South 13th Street, came forth representing the applicant - TDP Phase 3, which is a limited liability company established and formed WRK, LLC, B&J Partnership, Nelnet and Chief Industries, which are the primary developers of this property for the development of an office building for the use of Hudl and Nelnet. This will be a 7-story building consisting of approximately 150,000 sq. ft. This represents continued investment in the West Haymarket and is a job creator for this area. He referenced the existing figure from the zoning ordinance that reflects the B-4 district height limits. The site in question is the south half of Block 2 on the northwest corner of P Street and Canopy Street, which is subject to the 75-foot height limitation. The north half of the block is submit to a 100-foot height limitation. He noted that when this height limitation was imposed in 2012, it was before any development had occurred along the area. It was a vision of what could occur along Canopy Street, graduating up to the arena. This request is not for a waiver or an exception but rather a recognition that they can achieve the graduated height progression up to the arena while accommodating the needs and desire for this new office use and additional investment in West Haymarket. They are in full agreement with the conditions of approval. The special permit is conditioned upon the approval of the redevelopment agreement, which they hope to take to the City Council in four to five weeks.

2. Liz Kuhlman, architecture for Sinclair Hille, 700 Q Street, came forward to present building's design. She stated that the arena is located to the north of the proposed structure, which will be constructed on the south half of Block 2. Hudl will use about 140,00 sq. ft. of the 150,000 sq. ft. of the building and will be located on levels 3 thru 7. They currently have over 200 employees and have some exciting growth planned and need more space. They will immediately occupy floors 4 thru 7, with future expansion on floor 3. Nelnet will be located on the second level of the building. Through the middle of the property, the height changes from 100 feet to 75 feet on the south half. Kuhlman referred to several images in her presentation. The first floor of the building would consist of retail and access through the main lobby for the Hudl tenant. The second floor will house Nelnet. Each floor plate is about 25,000 sq. ft. The remaining floors will be used by Hudl with their main level on level 4. There is a link across to the green parking garage. The wall of Level 7 has been pulled back for the interior space to create a green roof area with a couple of patio areas. The culture at Hudl is a young, energetic group and they don't have a typical office culture. They will have some arcade space and some meeting space for the whole

group to get together. By pulling this back on the 7th floor, it makes the building seem not quite so large. They will also have some mechanical space on this level as well. She is not sure they would take the full 20 feet but they may extend into that space some. Next, images of the exterior of the building were reviewed, which show the height variances of the existing and proposed structures.

Hove asked how tall the garage is to the west. Kuhlman stated that the image is accurate, as the Hudl structure is a little taller than the stair tower of the garage.

Corr asked if the Hiatt Building is also 100 feet tall. Kuhlman indicated that it is 100 feet.

Lust questioned how tall the Olsson building is? Kuhlman stated that it is four stories and is between 60 to 65 feet high.

In response to a question of Scheer in terms of the height of the District Energy Corporation (DCE) Building, Kuhlman showed a panoramic view of the West Haymarket and the heights of the structures, parking garage, Harris Overpass, etc. with the proposed building at 105 feet, and they are asking for 110 feet to allow for some flexibility, which provides for a gradual "stepping down" to the south.

Kuhlman stated that they are trying to be a good neighbor and fit in in terms of the building materials as well as with the height. Kuhlman showed some site line visuals of the view of the new structure from the top of train station. Pulling back the 7th floor interior walls, helps to control the visibility of that level.

ACTION BY PLANNING COMMISSION:

July 8, 2015

Hove moved to adopt this application with conditional approval; seconded by Corr.

Corr stated that she likes how the 7th floor is setback and it makes a big difference in terms of the height so that the building doesn't look out of proportion with the neighboring structures, while providing for additional space.

Sheer agreed with Corr's statement and believes that this is a great design feature. He likes the idea of the space on the 7th floor with the green roof. He supports this application. Density is important as the built-up areas of the city are developed. As office space is designed, it is important to get the right floor plate for the use that the occupant needs. He believes that the additional height is warranted.

Lust is happy that they will be screening the DCE building for Scheer.

Cornelius is excited to see this kind of growth, especially in this kind of company in Lincoln, and moving into the West Haymarket is also exciting.

Beecham indicated that she works with a lot of start-up companies and she loves to see buildings starting to reflect the kind of work places that the younger generation are desiring. This will be a good addition.

The motion for approval carried 8-0; Lust, Scheer, Weber, Cornelius, Sunderman, Corr, Hove, and Beecham voting 'yes'; Harris absent.

CHANGE OF ZONE NO. 15015, AG AGRICULTURE TO R-3 RESIDENTIAL DISTRICT ON PROPERTY GENERALLY LOCATED AT 5000 SOUTH 84TH STREET,

Staff Recommendation: Approval.

AND

**SPECIAL PERMIT NO. 15028, A REQUEST FOR A COMMUNITY UNIT PLAN FOR A 34-LOT SUBDIVISION, WITH WAIVERS TO SETBACKS, LOT WIDTH, LOT AREA, AND PRIVATE ROADWAY DESIGN STANDARDS ON PROPERTY GENERALLY LOCATED AT 5000 SOUTH 84TH STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

July 8, 2015

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

Staff Recommendation: Conditional Approval.

Final action by the Planning Commission on Special No. 15028.

There were no ex parte communications disclosed.

Staff Presentation: Brian Will of the Planning Department provided an overview of these two applications. These were delayed two weeks ago at the request of the applicant to allow them to make revisions to the site plan after meeting with the neighbors. He believes that the applicant will be providing a revised site plan but reviewed the plan that was included in the Planning Commission's packet. Will referred to the site plan which is the Birkett tract, which is located between Pinehill Lane and Augusta Drive. He referenced the adjacent developments – HiMark which is zoned R-3 consists of single-family detached dwellings and patio homes to the northeast and an older acreage development – Villa Del Rey, which is zoned AG. Pinehill Lane is part of the Latimer's Addition, which is a community unit plan approved several years ago, which is zoned R-3. The original site

plan of this proposed development shows 34 lots for patio homes, attached single-family and detached single-family dwellings. In terms of the roadway network, Will stated that Pinehill Lane to the north in the Latimer's Addition is a private roadway. They are proposing to continue this internal street network and making a connection to South 85th Street. He noted that there is an internal street that runs east/west that is a private roadway. Rentfro Drive has subconnections to the north and south of this development and is a public street, which exists in both HiMark and Villa Del Rey. The staff is supportive of the roadway proposal.

Will noted that there are three primary issues. One relates to closing the connection of Pinehill Lane at South 84th Street; another is the pipeline planning area and the placement of lots in that area along South 84th Street, and the final issue relates to drainage along the eastern edge of this development to both Villa Del Rey and HiMark.

In terms of the connection of Pinehill Lane, Will stated that with the approval of Latimer's Addition, a condition was added at the end that states that at such time as Pinehill Lane is connected to Rentfro Drive, the connection to South 84th Street will be removed at the City's expense. Will indicated that some of the neighbors in Latimer's Addition asked if that now means that Pinehill Lane is actually making a connection to Rentfro Drive. The answer is no. It does not meet the strict language of the resolution, which talks specifically about Pinehill Lane being extended to Rentfro Drive. This will not happen until the lots adjacent to the east are redeveloped and Pinehill Lane is extended to the east to Rentfro Drive. Will identified the location of 85th Street on the site map per the request of Beecham and explained that it extends into Erickson Addition. It will currently not go any farther south.

Next, Will stated that one of the conditions of the staff report is to delineate the pipeline planning area on South 84th Street on the site plan and remove any developable lots and dwellings from it. If it were delineated on the plan, it would be in line with the east line of 85th Street. The special permit conditions indicate that staff is supportive of the change of zone and the community unit plan, subject to this line being delineated and the dwellings being removed in the pipeline planning area, identifying the five dwelling units that would be eliminated. He clarified that the area east of 85th Street are still developable lots. The pipeline planning area is 175 feet from the pipeline to South 84th Street, which extends on both sides of South 84th Street.

The third issue relates to drainage and existing conditions for the most part, which is most problematic to the neighbors. Will indicated that the drainage study was not submitted as part of the special permit. The conditional approval included the submittal of this report with it being subject to the review and approval by Public Works. This condition still stands.

Will indicated that the applicant likely has additional information to share about a revised site plan and a motion to amend the conditions of approval.

Questions of Staff:

Lust asked if there are dwelling units along Pinehill Lane that are located in the pipeline protection area. Will stated that there are. Within the community unit plan to the north, there are four lots that are within the pipeline area, three of which have houses on them. In HiMark, there are also single-family dwellings on lots that are located within the pipeline planning area.

Beecham asked if Pinehill Lane is one of access points into the new development and asked if there is anything that they need to consider when reviewing a project with a private lane to access a neighborhood. Will stated that if this development would have been approved today, it wouldn't be a private roadway because it is going to wind up connecting to a larger internal street network which will be used by other developments. However, it is a private roadway and, at the time, the applicant argued for it to be private and it was approved that way. It will remain private.

Hove asked if the neighbors could ask that it be changed to a public roadway. Will stated that they can ask but he would not speak for Public Works. He noted that there would be some concern for doing this. First, private roadways are generally not built to the same standard as public streets. We would likely be assuming maintenance responsibility for a street that is substandard. There was likely no inspection conducted by city staff, so it would be difficult to verify what standard it was built to.

Lust referenced the condition of approval in the staff report that suggests that everything in the pipeline protection area be removed. Will indicated that the original site plan was acceptable if they made the changes in the recommendations of approval to delineate the pipeline planning area and remove any dwellings from within it.

Beecham asked for clarification on the roadway automatically becoming a public street once Pinehill Lane is extended to Rentfro. Will stated that even then, it will still be a private roadway. Pinehill Lane is a private roadway today and will remain private even if properties to the east subdivide and if it is extended to Rentfro Drive; the portion that exists today is private and it will remain private most likely. At such time access to 84th Street is made, the condition is that this will go away. Will further stated that these are the conditions of approval of the community unit plan, which were adopted by the city council, noting that they could be modified by city council.

Proponents:

1. Mark Palmer and Matt Langston, Olsson Associates, 601 P Street, appeared as the applicant and distributed a copy of a motion to amend. Palmer indicated that Darren Erickson is the developer/builder of this project. The motion to amend includes a reduction

in units, reduction in the density, and a reduction in the number of units within the pipeline planning area but not a full elimination of all the units within that zone. They have invited representatives from Black Hills Energy to attend the meeting to describe this pipeline in more detail.

Palmer stated that they started with a town home development and made the mistake of not meeting with the neighbors. They recently met with them and they heard their concerns. This revised site plan reflects the dialogue of the meeting held on Monday. He believes that the majority of the neighbors seemed to be happy with the revised plan. This is an infill project and they have to connect with the existing roads. The basic connection of the roadway system has not been revised. They want to respect the drainage concerns of the neighbors. Some things that occurred in HiMark to the south are concerning in terms of the amount of water that is coming down and this has been communicated by the neighbors. The elimination of the lots on the east side of Rentfro and the expansion of a detention cell to hold more water than what is required to protect the neighbors down stream. Matt Langston has conducted a drainage analysis, which has been recently submitted to the city. This development will consist of patio homes with detached town homes with similar architect. Erickson will be building the houses and will be using common colors and materials, which will be complimentary to the HiMark area. They have reduced the density and have kept a couple units in the pipeline planning area. There has not been a formal city vetting process for the pipeline planning area; it is a preference. He believes that it is density based. There are approximately 30,000 vehicles that drive over this line everyday. They are asking for two homes that are encroaching into this area. He believes that this is adequate for this area. The neighbors to the north and south are at least two lots deep into the area.

Scheer asked how many lots have been cut from the original proposal. Palmer stated that they started at 34 and are down to 21 lots.

Beecham asked for clarification on the drainage and how it has been changed in their proposal. Langston referred to a site map, stating that there is an area that drains through the Birkett property. The neighbors have indicated that this area gets inundated frequently. The site to the south in HiMark was designed to be extended to pick up the water; however, there is a low spot in there and every time it rains, water pools there. The original design included a detention cell that make the larger storm events go down the street per design standards. He noted that the new design includes the elimination of some lots to make a larger detention cell than what is required by city design standards. They will be containing twice the amount of water that they are required to in order to help the neighbors to the south. Palmer reported that the drainage criteria manual was not an ordinance when HiMark was developed. The pipe for drainage in this area was only sized for a 10-year storm. This is a restraint for them. If this was developed today, they would have to pipe for a 100-year storm and not detain anything. Any connection to the existing pipe would put the water into the road. They are looking to hold as much as they can. Based on their calculations, there is approximately 145,000 cfs in a 100-year storm and they will be

discharging about 110 cfs. The new runoff as a result of this developed property is only about 5 cfs.

The Planning Commission adjourned at 3:12 p.m. for a short break and reconvened at 3:18 p.m.

General Information:

1. Brandy Johnson, Community Affairs Manager, and Randy Kreifels, Construction Coordinator, with Black Hills Energy, 1600 Windhoek, appeared to provide additional information. They are neither in support or opposed to this proposed development. Johnson indicated that the pressure of the pipeline along 84th Street is 200 psi and is classified as a distribution line. The pipeline along Yankee Hill Road is 600 psi and is classified as a transmission line.

Lust asked about the difference in the blow area of a 200 psi line compared to a 600 psi line. Johnson stated that pipelines are regulated by the Department of Transportation. A distribution line has different requirements than a transmission line. The area around a distribution line is not classified as a high consequence area. The 84th Street line has operated without incident since it was installed in 1973.

Lust ~~stated~~ **asked then whether** ~~than that~~ it is not as critical to keep residents ~~see~~ out of this area since it is not a high capacity line such as the one along Yankee Hill. Johnson stated that it is not in any federal regulations that regulate the pipeline industry. Even with the line along Yankee Hill, there is a portion that is classified as a high consequence area but this doesn't mean that you cannot have dwellings within that area. However, Johnson noted that they do have to follow additional requirements for maintenance, notifications, and overall pipeline integrity process. They own easements to protect the pipeline and allow them to manage to the maintenance of them.

Beecham asked about the public notification process, i.e. if she moved into a house and there is a pipeline nearby or under her property, would she be informed of this. Johnson reported that they follow a pipeline notification process including a variety of things. If you live in a high consequence area, then pipeline markers are placed and are visible. In addition, they also send out mailings – targeted to individuals who live within that area and some general information that is provided in their bills. Beecham asked if there are differences in terms of the notification in high consequence areas versus low consequence areas. Johnson indicated that they do a notification but she was not sure about the specifics.

Corr asked if the bill insert specifically indicates that an individual is located in a high consequence area or is it just part of a newsletter. Johnson stated that the insert generally provides information that you need to know to be safe around the pipe lines; however, if you live in a high consequence area, you would specific insertion. They are in full

compliance of all the Department of Transportation rules and they do have to report all of this.

2. Chris Schroeder, Lincoln-Lancaster County Health Department, came forward to address questions of the Planning Commission.

Lust stated that she understands that the Health Department is recommending that there be no dwelling units around this pipeline and that the Planning Commission not approve the site plan as submitted. She asked if it makes a difference if this pipeline is 200 psi versus the 600 psi on Yankee Hill Road. Schroeder indicated that it doesn't matter. They use a federal equation that calculates the pipeline planning area relating to the diameter of the pipeline and the maximum allowable operating pressure. The number between these two references pipelines is just less for South 84th Street.

Cornelius stated that the formula provides different results and those are reflected in the designated pipeline planning area. Schroeder indicated that this is correct.

Lust asked if the pipeline planning area is larger along Yankee Hill Road than it is on 84th Street; Schroeder indicated that this it is – Yankee Hill is 221 feet and South 84th Street is 175 feet.

Lust asked why the Health Department believes this is important. Schroeder stated that when you consider the federal definition for the potential impact radius, if there is a potential failure of the pipeline, there is a significant impact to people and property within the projected pipeline planning area. They recommend not locating residential structures, schools, daycares or retirement facilities as well.

Lust stated that there are already residential structures along the pipeline. Schroeder indicated that he is aware of this. He stated that in 2006 they started to be consistent in making this recommendation. A lot of the existing structures were built prior to this recommendation of not locating within these pipeline planning areas.

Hove asked if there is any data available in terms of accidents that have occurred in regard to gas pipelines. Schroeder indicated that he doesn't believe there have been any major incidences in Lancaster County. However, across the country there have been occurrences, including San Bruno, California and even in Fremont, Nebraska.

Corr asked what happens if a pipeline has an occurrence. Is there a fire or an explosion? Schroeder indicated that he is not a hazmat specialist but if there is a third party damage to the line and residents can hear or smell the natural gas, they should call 9-1-1. It really depends on the situation; they may be told to house in place or evacuate based on the situation.

Beecham asked **Rick Peo of the City Law Department** regarding the difference in terms of a recommendation versus an ordinance that is in place and the Planning Commission's responsibility. Peo stated that because this is a special permit, they need to consider the adverse impact that this development imposes on public health, safety and welfare. They have looked at these as being a legitimate condition of approval and whether or not the risk is sufficient enough that they should not permit development within the pipeline area. This is a discretionary function on the part the Planning Commission or the city to impose this or not; although they believe it is the appropriate thing to do. Property owners feel differently because they are losing some value of their property and the ability to utilize it to the extent of other property. Peo further stated that better knowledge and more awareness of a problem doesn't mean you continue to exasperate it. These are not by-right developments, they are discretionary and the Planning Commission has the ability to impose reasonable conditions.

Beecham asked if the city is looking into creating an ordinance. He indicated that is has been looked at and they had a meeting about a year ago with the development community to discuss it but it hasn't moved forward.

Opponents:

- 1. Austin Mackrill, 5000 Rentfro Drive**, came forth and noted that his property borders the northeast corner of this property. He indicated that he was initially in opposition but he believes that the developer has made some big contingencies with the revised plan in terms of density and the drainage plan. Mackrill showed a couple of short video clips that illustrate the level of drainage in this area, particularly on the east side of Rentfro Drive. Mackrill stated that the initial concern was that there would be drainage coming from the north and east with quite on bit of water, as shown on June 11 during the 3-inch rain event. He wanted to get this on record that there is a significant amount of water here that is not on the map. He also showed a picture showing the Rentfro Drive connection basically showing the Ridgeway property on HiMark. He believes that the applicant has done a good job of mitigating by abandoning the townhomes on the east side. He believes that they have a good plan at this point with the reduction in density. Mackrill asked about the connection up to the Rentfro Drive up to the property, as there is a 100-foot piece on Rentfro Drive which is just grass and he asked who is responsible for paving this. Lust asked Mr. Mackrill to talk to staff regarding this question.
- 2. Judy Shultz, 5001 Rentfro Drive**, came forward and stated that they own property west across the top of the development. She thanked the developers and Olsson Associates for revamping the plan, as it is helped. They were not privy to the Watershed report but she noted that there are a lot of trees down there and they absorb a lot of water. She would like them to keep these trees for this purpose. There is a lot of extra water coming off there. They have lived adjacent to this property and all the property to the north drains into this area. She asked about the setback requirements for the units on this street. Lust indicated that staff can address this when they are called back up. She noted that

there is a house in HiMark that is setback 25 feet, which is a requirement for that development. She would not want to see the new units setting forward of that setback. Their property would be impacted by the paving. The paving has to be connected to the road in front of their property, which is a dead end. Who's cost would be this be?

3. Janet Wollsoncroft, 8730 Augusta Circle, stated that their property joins the corner of the proposed development. She expressed concern about the back of her property and the drainage, which comes from the HiMark town homes and the property to the east of them. She doesn't want anything that would dam the water, which would backup the water onto her property. They haven't seen how much area this water comes from but they have heard that it could be anywhere from 19 to 25 acres. She showed a picture which showed water from a typical rain that was taken on September 30, 2014, indicating that it doesn't take a once in every 10-year event for the water to backup.

Staff Questions:

Scheer asked staff if he had a chance to review the recently submitted amended conditions of approval. Will stated that he has. Scheer asked him to comment on the strikes in the introductory sentence. Will stated that staff is supportive of modifying this plan so that the waivers are not needed. Staff still has an issue with 1.1.3 based on the findings of the Health Department.

Lust stated that the revised plan would not be acceptable due to the dwellings in the pipeline planning area. Will stated that this is correct.

In terms of the neighbors' questions, Will explained that Ben Higgins with Watershed Management is present to address the water questions. As for the setback, Will stated that the front setback for the HiMark community unit plan is 25 feet. The typical setback for the R-3 district is 20 foot front, 5 foot side, and 20 feet in the rear. This is what is being proposed for this development. The front yard setback is 5 feet less than the lots that are adjacent in HiMark. HiMark imposed a higher setback than was it is required. As for the cost of paving the strip of road, Will indicated that Public Works will review the Executive Order for the improvements and make sure that this connection is being made. It will be the developer's responsibility to make these connections so that the street works.

Ben Higgins, Public Works/Watershed Management, stated that he has not seen the detailed analysis yet, as he just received it late this morning. He is not sure if the trees are being removed but if they are, it won't make a huge difference for a major rain event. As for the drainage analysis, he has not read the report yet.

Lust stated that one of the conditions of approval is the approved the drainage plan. Higgins stated that this is part of the eminent conditions.

Corr asked who will pay for the paving of the road. Will stated that it would be the developer's responsibility.

Applicant Rebuttal:

Mark Palmer indicated he recognizes that there are flooding issue. He noted that there are a number of trees that need to be removed, as they are constricting flow and blocking the flow into the pipe. They will leave the large cottonwood. They will be excavating the cell to create as much storage as possible. The existing storage today is about 43,875 cubic feet and the proposed storage is 71,469 cubic feet, which is doubling the storage that they can have there. He noted that there are some houses that are elevation of the right-of-way and there is some concern about that. They will provide Ben Higgins the necessary draining computations. Palmer noted that there is also an electrical line easement that runs along the north side of the property and they are dealing with the PPA on the west side. The gas line is in the city right-of-way. Someone purchasing property in this area would not know it is there. They will disclose the fact that it is there. There has been other development to the north and south that has occurred within this zone. They believe that they are doing the right thing. They are doing low density. As for commercial development being permitted in the pipeline planning area, he questioned the reasoning for that. If there would be a gas line leak, which would likely be due to construction, it would normally occur during the day when residents aren't home and commercial areas would be occupied. Lower density areas get lower maintenance and higher density get higher density maintenance and he believes that this is a good compromise.

Matt Langston stated that he has been certified as a hazmat technician. He noted that if there was a pipeline leak or a failure, at least half of the development would be evacuated. The pipeline planning area really has nothing to do with this.

Beecham noted the drop in density of this proposal and asked if it was the result of the drainage concerns or design, or the pipeline. Palmer stated that they listened to the concerns of the homeowners in terms of what they wanted in this area. They tried to be responsive to these concerns. Beecham indicated that she appreciates the applicant taking the time to meet with the neighbors.

Beecham asked if it the lots were slightly smaller if they could move the two dwellings out of the pipeline. Palmer stated that they have provided a setback. They can put in a berm or some kind of buffer in a portion of that area. They plan to berm and screen because they are next to 84th Street so it makes sense. This is about the best they can do in terms of making the project work economically.

Corr asked about the drainage and coming over Augusta Drive. Palmer indicated that Rentfro drains to Augusta Drive. Corr noted that in the original plan there were issues with driveway locations at 85th & Birkett and asked if this has been resolved. Palmer stated that these were eliminated with the new design.

ACTION BY PLANNING COMMISSION:

July 8, 2015

**CHANGE OF ZONE NO. 15015, AG AGRICULTURE TO
R-3 RESIDENTIAL DISTRICT ON PROPERTY GENERALLY
LOCATED AT 5000 SOUTH 84TH STREET.**

Staff Recommendation: Approval.

Beecham moved to recommend approval as proposed by the applicant's amendment for this application; seconded by Hove.

Beecham stated that the gas line issue has come up before and the safety of citizens is important. She is frustrated by the lack of rules and ordinances in place and feels caught in terms of having to make a decision about safety that she is not qualified to make, especially when there is conflicting information. She is on the fence because of this. She likes the revised plan and appreciates the developer's effort in terms of drainage and design.

Lust is generally supportive of the planning pipeline area; however, the goal is to limit the density in those areas. They have gone down from five units to two units in an area, which isn't quite as critical as along Yankee Hill Road. She is persuaded a little bit as she is not sure what the policy is accomplishing when they would allow a commercial district but not two dwelling units, which would have the potential for having a lot fewer people present at critical hours for the pipeline area. In this particular case and getting this down to two dwelling units, may be a good compromise for this development, especially with the significant drainage problems by the developers and the outreach they did with the neighbors in this area. In addition, they have reduced the number of dwelling units from 34 to 21 units, which limits the density in this area as well.

Cornelius agreed with Lust's comments. It is not clear on the intent of the recommendations with regard to what is allowed and what is not in the pipeline planning area. In addition, he believes that the developer has made a good faith effort to try to mitigate the problems that are created within the pipeline planning area. They have a situation that appears to be low risk but relatively high consequence in the case of a worse case scenario and 84th Street. He is not compelled by the fact that there is already development in the pipeline planning area because they shouldn't keep making the same mistake over and over again. He is inclined to support this because of the reasons outlined.

Scheer stated that he appreciates every time that the pipeline planning area comes into play with a project. All of the proposals that they have recently approved and have reviewed, they have seen an attempt by the developer to mitigate as much as possible this condition. He agreed with comments of Lust and Cornelius and is inclined to support this.

Weber stated that he appreciates the work that the applicant has went through to try to make this good project with the hand he was dealt.

Sunderman stated that in terms of the pipeline planning area, they need to have some regulations. There needs to be something on paper so everybody is on the same page and they are not piecemealing this and trying to guess what is best. The applicant did a wonderful job in trying to address issues, which is appreciated. This puts people in a bad position by not having clear regulations on the pipeline planning area.

Corr appreciates all the challenges presented in developing this property – drainage and the pipeline – it is really limiting. They need to clarify and codify these pipeline regulations so that they can uniformly apply them across the board. She understands that commercial buildings were okay because it is harder to get people out when they are sleeping. She supports the change of zone to R-3 but she is not comfortable with putting homes in the pipeline area. She will vote no on that part of the application.

Cornelius stated that he is comfortable knowing that homeowners are going to be informed – it is a big help. He likes the low density and that the units will be bought by individuals who have been told they are in a pipeline planning area. Corr stated that this still causes her concern because the fliers that are received in the mail seem like it is going out to everyone and may not apply to them specifically. Cornelius indicated that the developer is required to disclose this information. Corr had concerns about the subsequent sale of the property and whether or not it would be disclosed. Cornelius indicated that he would like to see some sort of motion toward a requirement for realtors to disclose this as well.

Motion for recommending approval of the change of zone carried 8-0; Corr, Scheer, Cornelius, Hove, Lust, Weber, Sunderman and Beecham; Harris absent.

**SPECIAL PERMIT NO. 15028, A REQUEST FOR A
COMMUNITY UNIT PLAN FOR A 34-LOT SUBDIVISION,
WITH WAIVERS TO SETBACKS, LOT WIDTH, LOT AREA,
AND PRIVATE ROADWAY DESIGN STANDARDS ON
PROPERTY GENERALLY LOCATED AT
5000 SOUTH 84TH STREET.**

Staff Recommendation: Approval.

ACTION BY PLANNING COMMISSION:

July 8, 2015

Cornelius moved for approval as amended by the applicant's amendment; seconded by Scheer.

Motion for conditional approval of the special permit as amended by the applicant carried 7-1; Scheer, Cornelius, Hove, Lust, Weber, Sunderman and Beecham; Corr dissenting; Harris absent. This is final action, unless appealed to the City Council within 14 days.

**CHANGE OF ZONE 15014, FROM R-1 RESIDENTIAL TO
R-2 RESIDENTIAL, ON PROPERTY LOCATED SOUTHWEST OF THE
INTERSECTION OF OLD CHENEY ROAD
AND NORMAN ROAD.**

PLANNING COMMISSION CONTINUED PUBLIC HEARING

July 8, 2015

Staff Recommendation: Conditional Approval.

AND

**SPECIAL PERMIT NO. 15035, TO ALLOW THE CONSTRUCTION OF A
RESIDENTIAL HEALTHCARE FACILITY FOR UP TO 285 RESIDENTS
AND TO ALLOW WAIVERS TO THE ZONING ORDINANCE AND ADJUST
HEIGHT REQUIREMENTS, ON PROPERTY GENERALLY LOCATED ON
THE WEST PORTION OF THE KNOLLS COUNTRY CLUB, NORMAN ROAD
AND OLD CHENEY ROAD.**

July 8, 2015

Staff Recommendation: Conditional Approval.

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

Note: At the June 24, 2015, meeting, the Planning Commission delayed action of these two applications for two weeks with continued public hearing limited to new testimony only.

There were no additional ex parte communications disclosed.

Staff Presentation:

Christy Eichorn of the Planning Department deferred to the applicant to allow them to discuss the results of the two meetings that they have had with the neighbors over the past two weeks and then she will address questions about the proposed revision.

Applicant:

1. Kent Seacrest, representing Dial Real Estate Consultants, LLC, and Patrick Day of Dial Real Estate Consultants, 1427 South 184th Circle, Omaha, came forward. Day made reference to the site plan and the proposed units. This is a two-phased

development and they will likely do 50 units in phase 1 with the balance in phase 2. They conducted a review of the general landscaping plan as well as a rendering of the exterior look of the building. Seacrest stated that the landscaping shows the boundaries with the requirement that at 6-feet above, they have 50 percent screen and it shows that the existing trees meet this standard. When they are done, they will be 50 percent more than what is required under the standards. Day indicated that they are working with Lanoha Nurseries, who put together a landscaping plan that includes the required screening along the streets and the entry area and around the building. Seacrest stated that the trees are for illustrative purposes only. The plan shows them protecting the tree line up against the neighborhood and the next tree line and the massing of the trees, which will be addressed in the motion to amend.

2. Mark Palmer with Olsson Associates, came forward and reviewed various cross sections across the property and how the view would be to the neighbors, including the view of the 3-story building, approximate heights of the trees etc. Cross section looks at the 2-story portion and they are about even in terms of elevation. There will be a local drainage area to get the water from the back area south of the building out. Cross section D is from the southern property looking north, which is slightly lower. Seacrest noted that the measurements are distorted by 50 percent in order to get it on the sheet.

Day indicated that the neighbors wanted to look at the skin of the building. The architectural firm of Alley Poyner developed some rendering of what the this project would generally look like, consisting of brick/stone, rough lumber and wood siding, which would be a similar look all the way around the building.

Seacrest indicated that they recently held the 6th and 7th neighborhood meeting. They will bringing in sample materials at the 8th meeting showing their recommendations to the group to see. He believes that the neighbors are in agreement with the style. A 9th meeting will be held to work on motions to amend at the City Council level and will likely have the colors selected and have the final landscape plan with the drainage included. He believes that they made great progress, stating that ehe has never worked with a developer who was so patientee in addressing the neighborhood's concerns so thoroughly.

Next, Seacrest handed out a new motion to amend with the yellow highlights identifying the new changes. He reviewed the motion to amend, noting that there is a change to address additional parking as noted on Exhibit A. In addition, in terms of the tree massing, they have agreed to replace existing fairway trees if they die for one year after it is completed so the massing can continue to refurbish itself. There is a new condition 2.8A, indicating that they don't want to brick the wall that will be temporary prior to phase 2 beginning. They will put in windows and some brick knowing that it will be ripped out for phase 2 construction. Condition 2.10 has been added to limit the occupancy to 80 percent of the units being occupied by persons who are 55 years or older, which is taken from the federal housing act so this will prohibit this facility from ever being an apartment complex.

Seacrest addressed density which showed a list of similar type facilities. In terms of units per acre, he noted that The Landing is the least dense at 12.81 units per acre. This facility would become the second lowest density in the city. In terms of zoning, they are proposing R-2, noting that there is not a single senior housing type facility that is located in R-1 zoning. They would be the second in R-2, and all others are in R-3 to R-6 and B-2 PUDs. In addition, they are asking for a height waiver. They don't need it if they spread it out, but then they are too close to the neighborhood. By going up to three stories, they are 135 to 160 feet away from the neighbors. Other similar projects have asked for waivers as well -- some as high as 75 feet. Seacrest noted that since being classified into use groups, the last three projects that have been approved have included independent living with assisted or memory care, including Gable Pines, Eastmont, and this project.

Seacrest thanked Christy and Steve from the Planning Department for attending the neighborhood meetings, as this was very helpful in terms of the process. He also thanked Mark Hunzeker and his committee and they appreciate their patience. The Planning Department is recommending approval of the change of zone to R-2 and they are supporting the special permit for the healthcare facility with conditions, as well as the waivers that they have asked for. This is in conformance with the comprehensive plan in getting infill to work by increasing density to that there isn't as much in infrastructure costs out at the edge of the city. The issue is what is the alternative land use. Would the neighbors prefer this project or would they rather see 40 to 45 townhomes up against their property, 30 feet away and possibly 30 feet high. It has not been easy, but they likely realize that this is probably the lowest intensity of impact to them.

Corr stated that the layout changed a little bit but they are still staying three stories towards Old Cheney. Day indicated that the highest building is three stories.

Opponents:

1. Mark Hunzeker, attorney representing a group of neighbors in the Knoll area, came forward and stated that there has been progress and the delay was justified. He appreciates that efforts that Kent and Dial have gone to to address the concerns of the neighbors. This package of amendments defines a project that is considerably better than what they had two weeks ago. The Planning Commission has a much better idea of what it is going to look, landscaping, etc. As they move forward to the City Council, there are still some issues that need to be resolved but he believes that these can be resolved and incorporated in additional motions to amend at that level. Hunzeker indicated that in the zoning ordinance, there is a definition of elderly housing, which includes individuals who are 60 years old rather than 55 years old. The use of the ADA standard is interesting reference point but it is not in the city's zoning ordinance. It used to be but it was changed from 55 to 60. He suggested that this number be amended from 55 to 60 years of age to be in alignment with the zoning ordinance. This would then meet the standard that exempts this project from any alleged discrimination based on familial status. He appreciates Planning Commission's indulgence to allow them these two weeks to work on

this project. He believes that they will likely end up with a project that everyone can live with.

Hove asked Hunzeker if the neighborhood is generally in support of this. Hunzeker indicated that they are at a point where they are in agreement that this is a much better project than it started out to be. They are generally willing to move forward on the basis that is in front of the Commission.

Questions of Staff:

Sunderman asked about the reference to age 60 in the ordinance for elderly housing. Eichorn explained that when they went to use groups several years ago and started using the terms “residential healthcare facility”, this was done for several purposes. First, so that they could bring their definitions in line with state definitions to avoid confusion, which encompassed all residential type uses. With this text change, they didn’t eliminate the elderly housing special permit, which is likely the cause of Mr. Hunzeker’s reference. One of the reasons they included the residential healthcare facility was because they also had the term domiciliary care facility, which had age limitations as well. Most domiciliary care facilities are memory care facilities and they treat people of all ages with memory issues. During this phase, they discussed having residential healthcare facility so that they weren’t limiting the living options for folks who might also need additional help. It is pertinent to focus on the idea that they are talking about independent living and not necessarily elderly living. There are individuals who have disabilities that sometimes want to be independent of their families but might need to have a little assistance. This is something that could be provided at a facility such as this. This amendment to age 55 makes some sense. It is generally intended for people who are a little older. It is part of a special permit that encompasses group activities, group eating areas, etc. For these reasons, it is residential healthcare facility and not an elderly housing special permit.

ACTION BY PLANNING COMMISSION:

July 8, 2015

CHANGE OF ZONE 15014, FROM R-1 RESIDENTIAL TO R-2 RESIDENTIAL, ON PROPERTY LOCATED SOUTHWEST OF THE INTERSECTION OF OLD CHENEY ROAD AND NORMAN ROAD.

Staff Recommendation: Conditional Approval.

Beecham moved to recommend approval of this change of zone; seconded by Sunderman.

Scheer believes that the change of zone is acceptable and plans to support it. We all need to realize this is no longer the edge of town and is now closer to the center of town. Properties get sold and the properties change. This is a good alternative approach to this property.

Hove agreed with Scheer's comments. He believes that there is a higher and better use for this land. You have to look at the alternate use, and this fits with what is currently there. Hopefully the neighbors will see this.

Lust thanked the developer for all the work that has been done to get this to the point that the neighbors can be comfortable with moving forward. The applicant may be annoyed with the 2-week deferral but being able to visualize these things is important with the comfort level – not just for the neighborhood but also the Planning Commission. She does have sympathy for the neighbors, as it is difficult when you have a house along a golf course and it is gone. We need to be careful in terms of the development of the area. She believes this is a very good development for this spot, and she plans to support it.

Beecham stated that the site lines were very helpful. Sometimes 3-story buildings can go into an area and less impact because of the natural topography.

Weber gives a lot of consideration to the neighbors. It is hard when you are there first and then things change. He is glad to see that their tone is changing.

Motion to recommend conditional approval of this change of zone carried 8-0; Lust, Hove, Scheer, Weber, Cornelius, Sunderman, Corr, and Beecham; Harris absent.

SPECIAL PERMIT NO. 15035, TO ALLOW THE CONSTRUCTION OF A RESIDENTIAL HEALTHCARE FACILITY FOR UP TO 285 RESIDENTS AND TO ALLOW WAIVERS TO THE ZONING ORDINANCE AND ADJUST HEIGHT REQUIREMENTS, ON PROPERTY GENERALLY LOCATED ON THE WEST PORTION OF THE KNOLLS COUNTRY CLUB, NORMAN ROAD AND OLD CHENEY ROAD.

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

Staff Recommendation: Conditional Approval.

Beecham moved to recommend approval of this special permit as amended by the applicant; seconded by Scheer.

Corr thanked the developer for going above and beyond and working with the neighbors.

Scheer thanked the developer and Kent and the designers, as well as Mark and the neighbors. This 2-week delay was a great thing. One of the reasons he voted for the delay is because this is prototypical and they are plowing new ground. What everyone did, including the Planning Department staff, this has allowed our community to get their arms around the kind of changes that are going to happen in our community. He also believes that the Planning Department was unfairly criticized in his opinion at the last meeting. He believes that the staff have monitored and refereed but did not mandate – this is exactly the right touch and he thanked the staff.

Lust stated that on the revised motion to amend, she appreciates the applicant's willingness to add that 80 percent have to be 55 years and older, because of the neighbors's concerns, but she would have approved this without that particular addition. It is important to recognize that there is a segment of our population that is facing some disability issues that would like to utilize these types of areas. To put an age restriction on it is unnecessary. She does not support changing this to 60.

Sunderman stated that the developers did a wonderful job – five meetings and then another two and two more scheduled. They went way beyond what should be expected on developers. The 2-week delay may have helped in feeling better about their decisions, it didn't bring much more to the plate for him. He would have approved this with what was shown the first time through. He is a little hesitant in going down this path and relying on what kind of representation every neighborhood has. This is a wonderful neighborhood – with great connections, great talent, great resources; however, they also deal with a lot of neighborhoods that don't have this. Are they going to be treated differently because this is being allowing to happen here. He is concerned. It is a great project and he appreciates the neighborhood approach to it.

Beecham agreed with Sunderman's comments. She appreciates the above and beyond good faith efforts. She hopes that they are good neighbors in response. She believes that it is important for them not to treat neighbors differently than those who have the means to hire an experienced attorney such as Mr. Hunzeker. She believes the 2-week deferral was helpful in this case. The more the opportunity there is for public dialogue, the better. A lot of time, for individuals who don't deal with this every day, it can be very hard to understand. The extra two weeks can make a difference to make a better project or get a better sense of acceptance. She intends to support this application. She appreciates all the work put into this.

Motion to recommend conditional approval of this special permit as amended by the applicant carried 8-0; Lust, Hove, Scheer, Weber, Cornelius, Sunderman, Corr, and Beecham; Harris absent.

DISCUSSION REGARDING ITEMS NOT ON THE AGENDA

Steve Henrichsen with the Planning Department announced that this is Christy Eichorn's last meeting as a member of the Planning Department. He thanked her for her years of service and indicated that she will be missed. She has accepted a new role with the Building and Safety Department as a Zoning Administrator. There may be times she will back in front of the Planning Commission in her new role. This is her last project and it is nice to see that it went so well. Christy was congratulated by the staff as well as the Planning Commission members.

The meeting adjourned at 4:45 p.m.

C:\Users\ncsahh\AppData\Local\Microsoft\Windows\Temporary Internet
Files\Content.Outlook\HQYVFOFT\pcm070815pc-2.wpd