

## MEETING RECORD

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Wednesday, January 21, 2004, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

**MEMBERS IN ATTENDANCE:** Jon Carlson, Eugene Carroll, Gerry Krieser, Dan Marvin, Melinda Pearson, Mary Bills-Strand, Lynn Sunderman and Tommy Taylor (Roger Larson absent); Marvin Krout, Ray Hill, Mike DeKalb, Brian Will, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

**STATED PURPOSE OF MEETING:** Regular Planning Commission Meeting

Chair Mary Bills-Strand called the meeting to order.

Ann Harrell made a presentation on behalf of Mayor Seng to Cecil Steward and Steve Duvall in recognition of their years of service on the Planning Commission. Resolution No. PC-00843 honoring Cecil Steward for seven years of service and PC-00844 honoring Steve Duvall for six years of service were adopted by the Planning Commission unanimously.

Chair Bills-Strand requested a motion approving the minutes for the regular meeting held January 7, 2004. Motion for approval made by Marvin, seconded by Taylor and carried 8-0: Carlson, Carroll, Krieser, Marvin, Pearson, Bills-Strand, Sunderman and Taylor voting 'yes'; Larson absent.

**CONSENT AGENDA**  
**PUBLIC HEARING & ADMINISTRATIVE ACTION**  
**BEFORE PLANNING COMMISSION:**

January 21, 2004

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

The Consent Agenda consisted of the following items: **SPECIAL PERMIT NO. 1627A.** There were no ex parte communications disclosed.

Taylor moved to approve the Consent Agenda, seconded by Carlson and carried 8-0: Carlson, Carroll, Krieser, Marvin, Pearson, Bills-Strand, Sunderman and Taylor voting 'yes'; Larson absent.

Note: This is final action on Special Permit No. 1627A, unless appealed to the City Council by filing a Letter of Appeal with the City Clerk within 14 days of the action by the Planning Commission.

**COUNTY SPECIAL PERMIT NO. 205**  
**FOR A RECREATIONAL FACILITY**  
**ON PROPERTY LOCATED AT**  
**9600 KOLBROOK ROAD.**

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:** January 21, 2004

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

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

Mike DeKalb of Planning staff submitted additional information for the record, including two letters in support; two letters in opposition; and findings from the City-County Health Department regarding the sound tests, recommending the use of 50 dB(A), the most restrictive sound level stated in Lincoln's noise control ordinance, and the Planning staff agrees with this recommendation. DeKalb also submitted additional information submitted by Commissioner Pearson.

Proponents

1. **Dr. David Sumani** presented the application for an off-road riding facility near Denton. Dr. Samani provided the Commission with his educational and professional background. He is currently serving as the Chief Orthopedic Trauma physician at Bryan Hospital. He had the opportunity to teach orthopedic trauma in California, and in dealing with orthopedic trauma he also dealt with all types of trauma, especially trauma involving young people, and he became acutely aware of the most common forms of injury associated with young people involved in alcohol, gang association, substance abuse, etc. Dr. Sumani believes that parenting and education can deter this type of behavior and motocross and off-road riding is one avenue where families can participate together. Dr. Sumani has been involved in this sport for over 20 years. It is an excellent activity for developing athletes and to promote family togetherness. A well-supervised and well-maintained facility can limit the injuries.

Dr. Sumani purchased approximately 80 acres for a motocross track that previously existed in the past 10 years in the Denton area at 9600 Kolbrook. The land was sold with the existing track with full knowledge that he would continue to use it as a motocross facility. The previous club had over 100 members and there were numerous races held by the previous owner. There was never a complaint ever from anyone in the Denton community, the surrounding neighborhood or the people living next to the track. The Urbachs also had a motocross track in the area.

Dr. Sumani desires to make this an off-road riding park—not a venue for making profit. His primary business is orthopedic surgery. It will not be operated as a major motocross track for making grand profits. He wants to provide a safe area for families to practice their sport; hold a few local races; and charge a nominal fee to cover only the overhead of operating the track. Currently, there is no place in southeast Nebraska of this caliber or magnitude for these people and families to participate in this sport.

Dr. Sumani indicated that he is aware of the rumors and negatives that this application has generated. He is seeking this recreational permit to legalize the activity that has been ongoing on this property for the past 10-12 years. He wants to allow a few public races to join in with the tracks that already exist in Seward, Friend and the Ashland area.

Dr. Sumani stated that he has worked with the Health Department in doing the noise testing with 12 motorcycles, which were able to pass the most stringent decibel levels, even within the sound levels permitted for the hospital zones. Dr. Sumani has offered to operate the track on only specific days. The litter will be hauled away by participants. The road to the front gate will be maintained by Dr. Sumani and his family. He has not destroyed any pristine prairie grass. The entire acreage was covered with noxious weeds and was very poor farmland. No smoking will be allowed. He will have a 4600 gallon water truck on the premises. There will be no loss of wildlife. Medical assistance and a medical kit will always be on site. There will be no sewage facilities built at the site. Dr. Sumani purchased the property for \$3200/acre, which originally sold for \$400/acre. He will continue to make every effort to make this a safe and enjoyable experience and will continue to be sensitive to the neighbors to the best of his abilities.

Carroll inquired where the spectators will be located. Dr. Sumani is hoping to have temporary bleachers built that will be on sleds that can be pulled out to accommodate up to 100 spectators. There will be no permanent changes to the land. No concrete or steel facilities will be built.

Carroll inquired as to the purpose of the accessory building. Dr. Sumani indicated that the accessory building will house his tractor, the disk harrow and a small bulldozer to be used by himself and his family to maintain the land.

Bills-Strand inquired about sewage. Dr. Sumani indicated that he will use “porta potties”.

Bills-Strand inquired as to who would be responsible for removing the trash. Dr. Sumani stated that he will police the land on a daily basis and will make sure that the trash is picked up. He has had no problems with the trash. He added that the off-road activity will be prohibited on the county roads.

**2. Mark Hunzeker** appeared on behalf of Dr. Sumani to address some of the conditions of approval and to suggest some amendments. They met earlier this week with a number of the neighbors who have expressed a number of the concerns that Dr. Sumani addressed in his testimony. Hunzeker proposed a new Condition #1:

1. This approval permits a recreation facility being used as a restricted off-road riding club. The facility shall be limited to the following:
  - a) Operation maximum of 4 days a week. Weekday hours from 1:00 p.m. to 7:00 p.m.; Saturday 12:00 p.m. to 6:00 p.m.; Sunday 1:00 p.m. to 5:00 p.m.
    - i. Hours shall be limited to not more than 4 hours per day during the winter months of December, January and February.
  - b) If the operator receives at least one-year notice of the scheduling of Audubon Society classes at Spring Creek Prairie, operator shall not operate the track during such classes.
  - c) There shall be no more than 8 race days per calendar year. Hours of operation on race days may commence at 10:00 a.m.
  - d) No more than 15 motorcycles shall be operated on the track at one time.
  - e) The facility shall be limited to sound levels of 50 dB(a) within 300 feet of an occupied dwelling, whether such dwelling is now in existence, or built after approval of this permit. The sound level shall be measured in dB(a) maximum 10-minute Leq, as per the noise ordinance of the City of Lincoln (LMC § 8.24).
  - f) There shall be no food or beverage service offered on the property.
  - g) There shall be no public address or amplified sound system, except on race days.
  - h) There shall be a minimum of 2 portable restroom facilities provided.

- l) Permittee shall be responsible for trash pick up along Kolbrook Road abutting the property.
- j) No motorcycles shall be permitted on public roads without being properly equipped and licensed.
- k) The facility shall be non-illuminated.
- l) The facility shall follow best management practices for run-off control, as approved by the Lower Platte NRD.
- m) The facility shall enter into an agreement with the Lancaster County Engineer for road maintenance between the facility entrance and S.W. 98<sup>th</sup> Street.
- n) Signs shall be posted on the site that access shall be via S.W. 98<sup>th</sup> Street to the west, not via Kolbrook and S.W. 86<sup>th</sup> Street.
- o) Tires and similar barriers, if used, shall be managed for mosquito control.
- p) Air pollution and dust shall meet the Lancaster County Air Pollution regulations.
- r) All motorized vehicles on the site shall have mufflers.
- s) All race vehicles shall have spark arresters.

Hunzeker reiterated that this is a use that has been in existence on this property or property near it for a very long time. A motocross off-road vehicle type facility has existed either on this property or the abutting or surrounding properties over a period of time that probably exceeds most of the dwelling units that are in the area.

Hunzeker pointed out that the sound levels proposed by the Health Department are very restrictive, but the applicant is willing to accept that. Hunzeker does not believe there will be objections from the adjacent home owner or the next home owner. This type of facility should be accommodated somewhere in Lancaster County. Choosing a location which has a history of similar type activity and imposing the kinds of restrictions as proposed makes it a very compatible land use in an area such as this. The fact that people are not located in the city does not mean that everything is always going to be silent. Agricultural equipment makes noise. This facility has operated and could continue to operate as a “friends and family” type facility on the weekends and other time of the week without these kinds of restrictions, but the applicant wants to have a bit more formal structure, with the ability to operate races which would otherwise be considered to be somewhat more than

just a “friends and family” type operation. The restrictions imposed by the conditions effectively limit the operation even to a greater extent than it would be limited without the permit.

With regard to Condition 1.b), Pearson wondered about the first year for Audubon classes. Let’s assume Audubon presents the operator with a class schedule of every weekend for the following year, what would the operator do? Hunzeker’s response is that “we are all assuming everyone is operating in good faith”. He believes it very unlikely for that to be the case. If that does occur, the applicant would probably be back to modify that condition. He does not believe this facility will create such a disturbance to the current Audubon class schedule, but in the event we are faced with a new schedule that prohibits operation, the applicant will have to come back and request modification to the special permit. As far as the first year is concerned, the applicant will seek out whoever is scheduling those classes and attempt to schedule around them. Hunzeker would agree to modify Condition #1.b).

Marvin assumes it is legal to operate motorcycles on that land and to have 15 motorcycles on that property at one time. And he believes it is probably legal to operate more than 4 days a week. Will the muffler restrictions be legal? Hunzeker does not believe there would be a requirement for mufflers on vehicles that would be on that property otherwise. To the extent that a facility being operated outside the scope of the restrictions becomes a nuisance, then Hunzeker presumes there could be some sort of civil action brought to stop that operation. But in terms of a statutory requirement that you have a muffler operating on a motorcycle on a farm, there is no such requirement.

Bills-Strand clarified that there will no food or beverage service. Hunzeker concurred, adding that there will also be no alcohol allowed to be brought on the premises and the applicant would agree to this being a condition of approval.

**3. Dick Doll**, 10405 S.W. 86<sup>th</sup> Street, testified in support. His land borders the subject property running from Kolbrook down to West Rokeby and he is the closest house to the track. Doll clarified that he is not “in Dr. Sumani’s pocket”, this accusation being made by one of his neighbors. He was also excited when the Audubon Society bought the land, which is over the hill to the south with no visual contact of the subject property. Doll pointed out that Lincoln has one of the longest runways in the Midwest for commercial and military aircraft. It has been presented that the area in question is a pristine place with peace and quiet, but the aircraft goes over this property around the clock. Doll has been impressed with Dr. Sumani and his willingness to take care of the land. Within two weeks of Dr. Sumani’s purchase, he began to address the weed problem. Dr. Sumani has talked about planting trees and shrubs. Things are happening. Dr. Sumani has kept his word and has Mr. Doll’s confidence. This is an opportunity to have a recreational facility and a very positive experience for young people. People look at the track now and think that it is ugly, but it is under construction. If you were building a big house in Lincoln and you looked at it when it is under construction, you would think the same.

Marvin inquired as to the number of feet that the track is located from Mr. Doll's house. Doll did not know precisely, but suggested that it is twice the length of this room (Council Chambers). He does not expect a problem and he is not going to move.

**4. Kent Taylor**, 3453 River Circle, testified in support. He has been involved in motorcycling for 30 years and agreed that it is a family sport. He met Dr. Sumani for the first time at the previous hearing and talked with him. He has since done some internet research and knows that Dr. Sumani has been involved in this sport at the highest level. With regard to noise, from his experience, it is rare that there would be as many as 15 riders at one time. Locally, there are normally 10 riders per class. On a race day, the youth classes involve the smaller cycles. Most are not nearly as loud as a push lawnmower. As an off-road cyclist, Taylor has learned about policing himself, so he believes the cyclists will do their best as individuals to pick up trash and help make sure that the race track is a quality facility.

**5. Mark Urbach**, who lives 1/8 mile catty-corner to the property, testified in support. He agrees that this facility provides quality time for children and their parents. With regard to the noise, there are planes flying over regularly and there are dogs in the neighborhood that bark at night. In other words, there are other noises besides what would be generated by the track.

#### Opposition

**1. Gary Steer**, 10500 W. Yankee Hill Road, which is approximately two miles from the race track, testified on behalf of the "neighbors against the race track". Steer played an audio and video tape demonstrating the noise issue and the dust level. He formerly worked for Eagle Raceway for 14 years. He helped take it from its ruin to what it is today, a national facility. It is a "slippery slope" because once you open the door on a race track, you always come back for something more – expansion, liquor license, bleachers, lights, concessions.

**2. Dave Sands**, testified on behalf of the Nebraska Land Trust in opposition. The Nebraska Land Trust is an organization that works for the protection of natural and historic resources on private land, primarily through use of conservation easements. The only defense against activities on neighboring land are good land use planning and effective zoning, which can buffer protected areas from inappropriate development. The Audubon Spring Creek Prairie has unspoiled vistas and a sense of solitude where you hear only the songbirds and the wind until the motocross is operating. The popularity of Spring Creek Prairie will only increase with time. From school children to experience the natural heritage to corporate CEO's, this proposed development could have significant adverse and unintended consequences. The noise could adversely affect resident and migratory wildlife. The Denton prairies are the largest contiguous area of tall grass prairie. Deer and turkeys may do just fine; however, the rare and declining grassland species may not fair as well such as the last known flock of breeding prairie chickens in the county. The

precedent this proposal will set is a concern. A commercial motocross track for families may be a fine idea; however, wise land use planning would dictate that it would be more appropriately located next to a major highway.

**3. David Cochran**, who lives 1/4 mile from Dick Doll, testified in opposition. Without a motorcycle track, when he walks out of his house most any time of the day or night, he hears nothing and he likes it that way. He explained noise levels in terms of decibels. Noise is unwanted sound – good neighbors keep their noise to themselves. Noise is measured in decibels (dB). It is not a linear scale. It's logarithmic so any time you increase the energy by doubling it, you only increase the decibels by three. The A scale (dBA) was originally designed for human hearing in a quiet environment. Wind and distance affect the noise decibels. As we double the distance we lose 3 dBA. Cochran suggested that if the race track is emitting 90 dBA, it is equivalent to 66 dBA at his house; 100 dBA is equivalent to 86 dBA at his house. Every time we double the sources, we increase the dBA by three. With 1 source at 100 dBA, two sources will be 103 dBA, four sources will be 106 dBA, etc., up to 112. It is not unreasonable for motorcycles to emit this kind of sound. "Dirt Rider" suggests that at 50 ft. they have recorded 106 dBA from a motorcycle. Measurements performed on one motorcycle were equivalent to 96 dBA while idling up to 115 dBA. Think about adding 15 motorcycles at 115 dBA. 120-140 dBA is a threshold of pain.

Cochran suggested that noise is associated with hypertension and many other health considerations. The Federal Annual Housing Survey looked at noise and found it to be the most frequently cited neighborhood adverse condition. It is likely to be the most important aspect of the community environment and often is the reason given for people wanting to move.

Cochran provided a noise level demo, exhibiting 50, 60 and 70 decibels, suggesting that the sound will be greater than this at some of the homes in the area. The neighbors like to sit out on their porches or decks. On several occasions, the neighbors have been told that if they really don't want the track, it will be abandoned. "We don't want the track."

**4. Martha Hall**, 8301 W. Mountain Ash Drive in Denton, which is 1.5 miles from the site, testified in opposition. She was interested in what other families may have experienced living near a motocross track so she drove to Ashland and visited with the neighbors to the motorcycle track. There are houses scattered all around the area and most of the people who live out there really hated the track. She drove to the track and stopped at a house next to the track and she was invited in and heard about the owner's experience living with a track 800' from his house. He said that the original permit stipulated that the owner of the track was to consult the County Commissioner before making any changes or additions; however, this was not done. Enforcement has been difficult. There are now three tracks instead of one. When opened, it was used 7 days a week, but the neighbors got it restricted to Tuesdays, Thursdays and Saturdays. Originally the track did not have lights, but eventually it got lights, which are extremely bright. The litter is terrible. People throw their small propane tanks and other trash into his pasture. They do not water the track

enough and the dust is horrible. There are loud speakers used during the races and they play music on the speakers. The jackrabbits and birds have disappeared. His home value has dropped drastically, decreasing from \$182,000 to \$130,000. Another neighbor living 3/4 mile from the track sold his home and lost \$70,000 because of the noise.

Hall drove to an area 1-2 miles from the track and spoke to homeowners. The noise is noticed in warm weather when they have the windows open and it is hard to sleep and the bright lights are annoying.

Taylor inquired whether Ms. Hall knew of the existing race track. Hall indicated that she has lived in her home for three years. She had never heard motorcycles in the area before this proposal. She had not heard anything about the activity or the noise.

**5. Ryan Renz**, 8200 W. Mountain Ash Drive, which is southeast of the subject property .82 miles, testified in opposition. He submitted his testimony in writing and a petition signed by 138 people in opposition. He also submitted photographs and information on the decibel testing which he did. Renz testified that the track had been closed down for four years prior to this facility. Renz displayed maps showing the homes located within 1 mile radius and 1.5 mile radius. There are 26 homes in the one-mile radius and approximately 56 homes in the 1.5 mile radius. He also showed a map indicating which neighbors are opposed, those that are neutral and those that were not contacted. The petition reads:

We the undersigned are against the approval for the special recreational permit of Dr. David Sumani's off-road motorcycle riding club located at 9600 Kolbrook Road, 2 miles south of Denton, Nebraska, which would turn the property into a commercial operation, operated primarily for profit.

The distances from the track to some of the residential properties are 2150 feet, 1975 feet, 480 feet, and 425 feet.

Renz did decibel testing from the home that is 480 feet from the track. He did ½ hour of decibel testing. Two 1-minute tests resulted in 58.9 decibels and 62.0 decibels. During 18 minutes on peak decibels, 34 peaks were over 67 decibels and 18 peaks were over 73 decibels, and there were 2 peaks over 79 decibels, all within an 18 minute period.

Renz requested that the permit be denied to preserve this area of quiet country atmosphere for acreages, farms and the Audubon Spring Prairie. 25-30 people stood in the audience in opposition.

During the three years that the track was previously in operation, Taylor inquired of Mr. Renz whether there was any concern about the noise. Renz responded that at that time, the property was considered to be Larry Woods' property and he did not know there were so many people riding out there. We did not realize the property had so much track area. There are no boundary limits anywhere. He has lived there since 1990; he has heard the

Urbach track and he did not like it. You can hear the track from his home. It is not going to hurt your eardrums but it is going to bother you. They did not lodge a complaint because they believed it was just a family operation.

**6. Pam Zilly**, 8800 S.W. 81<sup>st</sup> Court, testified in opposition and discussed concerns regarding emergency responses to the site and safety issues. While a track may be good in Lancaster County, the neighbors believe it should be located near emergency response facilities and resources. The Southwest Rural Fire Dept. is a volunteer fire department, which has indicated that response time to the proposed track site very much depends on where the volunteers are located when a call comes in and that it could be 10-15 minutes. They indicated that motocross bikes are a concern for fires when the bike lays down and the muffler can ignite fires on the grasses. The last few years have been very dry so fires can spread very fast and be out of control if they cannot respond sooner than 10-15 minutes. The trails that run through the trees are difficult to see, let alone control. A fire could easily be started and not detected in time. The biggest concern of the Southwest Rural Fire Department is emergency medical response. They would respond in 10-15 minutes. The types of injuries that could occur with this type of facility could be serious trauma. They are concerned that the 10-15 minute response would be too long in case of a very serious trauma. The Fire Dept. assumes there will be an ambulance on site during races; however, during practices and open track time, the Fire Dept. assumes they would need to respond and it would be difficult to provide assistance in time. Where there is a risk of fire and serious injuries, the facility should be located in an area close to medical resources with quick access to the track and hospitals.

Another safety concern with the track itself is that barbed wire is prevalent aligning the track area, with barbed wire on the side lot lines. The track has a lot of very sharp turns that lead right up and adjacent to the barbed wire fences. In some places there is barbed wire on both sides of the trail. This could be a liability concern to the adjacent property owners since they own the property on which the barbed wire is located.

Another major concern is enforcement of the conditions. The County Sheriff indicates that they are not responsible for conditions that are put on permits. Who will be enforcing the conditions of approval? The conditions are of little comfort if there is no means to enforce them.

**7. Trent Stempek**, with Home Real Estate, testified in opposition. He recently purchased a lot on 8100 W. Eagle Lane and moved in one week ago. When he purchased the property, he had no knowledge or idea of the possibility of this track. He had heard rumors of an abandoned track. If he had known about a track with races, he might not have purchased the property. He wanted a quiet place, although he agreed that there are planes that fly over and agricultural equipment that goes by. He is concerned about the value of his home. People are not interested in purchasing property that is close to a facility such as a motocross track.

**8. Carolyn Ducey**, 10501 S.W. 70<sup>th</sup> Street, testified in opposition on behalf of the Dvorak family, owning 170 acres since it was homesteaded in the late 1900's. She discussed the air pollution and dust levels at the track. In fact, the dust is so bad that there are flares placed on the track so that the riders can see the track through the dust. As far as the 4600 gallon water truck, Ducey stated that she has learned that as much as 120,000 gallons of water are used to wet tracks before races. The applicant would need to make 10-15 runs per day to sufficiently keep the track wet.

Ducey spoke with the NRD and they indicated that this is a difficult area in which to raise well water. The NRD was also concerned that the typical home well will draw 5-10 gpm, thus wells for the track would have to be substantial. The wells that are drilled so low will begin to draw salt water, which will desecrate the area and ruin the land. If the well were drilled, there is also a concern about runoff. Her property is across the street from Dick Doll and she is downhill from the track. The bottom of the hill is the only natural spring in the area and it is vital to the wildlife. The mud and sediment from the runoff could affect this spring.

Ducey also showed a picture of a cottonwood tree that lies on the natural spring, which is one of the champion trees in Nebraska. She believes this tree would be at risk by any change to the hydrology in the area.

Ducey displayed pictures of the site taken on Monday (January 19, 2004), showing large amounts of dirt piled up over the fence line and immediately adjacent to Kolbrook Road. There is nothing being done now to prohibit the runoff. Anytime any kind of ground work is done over an acre in size, a special permit is needed, and at this time there is no permit for the work being done on the property.

**9. Ron Hall**, 8301 W. Mountain Ash Road, testified in opposition and discussed the concerns about air pollution. Off-road motorcycles are equipped with two- or four-cycle gasoline engines. Unfortunately they are notorious for air pollution. 30-50 % of the fuel can pass through the chamber unburned which is exhausted into the air and on the surrounding soil and foliage. Incomplete combustion of fuel adds carbon monoxide and nitrous oxide to our air. A single two-cycle off-road motor emits as much hydrocarbon pollution per mile as 118 automobiles. The EPA states that an off-road motorcycle emits 110,000 tons of hydrocarbons, 160,000 tons of carbon monoxide, and 1,000 tons of nitrous

oxides across the US each year. The EPA has evaluated hazardous air pollutants and the major source of non-road emissions come from two-cycle equipment. Hall has talked with Dr. Sumani about prohibiting the two-cycle motorcycles and he is unwilling to do so. The full environmental impact study will show that allowing this use will result in a degradation of our lives and lifestyles. Hall stated that his family moved to the country for the enjoyment of the country environment. These facilities should be further removed from their homes and neighborhood. He has not seen a motorcycle on this track in the last three years until Dr. Sumani purchased it.

**10. Cindy Cochran**, 9500 S.W. 84<sup>th</sup>, testified in opposition. The track is located on top of a ridge and the noise carries quite a distance. “We want it stopped.” It is very penetrating. They moved there in 1986 when Urbach had a small personal track for his boys on 30 acres. The Cochrans did not like it, but in Nebraska you don’t rat on your neighbors. We knew the kids riding the motorcycles would grow up, and then it got quiet. Then Colby Wood wanted a track and the Cochrans were under the impression that it was to be a small personal track so they chose to be good neighbors. The track was used for about 3 years. It has been shut down for four years and it has been quiet.

Cochran pointed out another concern being that once the permit is granted, any conditions can be changed at a later hearing. The permit stays with the land, not the owner. There is no protection against expansion in the future. She displayed a map of the neighbors she visited who are against the permit and complained of the noise from the motorcycles. She is very upset thinking she will have to listen to the motorcycles for the rest of her life. “The person listening does not have the same experience as the person singing in the shower.”

**11. Mary Pifer**(sp), member of the Audubon Society and financial contributor to Spring Creek Prairie, testified in opposition. Next summer she will take her granddaughter there. She has taken many professionals and experts to this Prairie. Her writers group spends time together out on the prairie and regard the birds, big sky, silence and grasses as sources of inspiration. This cannot be discussed in terms of money. The proposed track would deeply interfere with this prairie and substantially diminish its ability to give us its gifts. In our noisy machinery-filled world, there are few “magic patches” left and Spring Creek Prairie is one of them. Please preserve and protect it for all of us and our children.

**12. Marian Langan**, Director of the Spring Creek Prairie and Audubon Center, testified in opposition. During the Comprehensive Plan process, the community came to consensus about long range planning. There were three core resource imperatives, and one was tall grass prairie. There are two large remaining functioning patches of tall grass prairie: one of those areas is down in Pawnee County and the other is south of Denton. The consensus was that we are going to take tall grass prairie into account for planning decisions. The Comprehensive Plan wants public and private partnerships to come together to protect those areas, and the Audubon Society has formed many such partnerships with Game and Parks, Conservation Service, LPS, Historical Society, etc. Over 120 people volunteer at the site itself. They have come together in partnership to make this experience an opportunity and part of our community. Educational programs are done there, and there

are not chunks of time that can be set aside. Thousands of people have come through these programs; people have visited from over 40 states and 14 countries. This is an extremely important community resource. There are many places in this county where this proposed facility can be sited. It does not need to go in this spot which threatens one of our community's really important resources. We have also heard the story that this track was pre-existing, but she has worked there 4.5 years and has not heard a bike there but once or twice until this summer.

**13. Tim Knott** testified on behalf of the local chapter of the Wachiska Audubon Society in opposition. The tall grass prairie is very rare habitat in Nebraska. In Lancaster County, we have one of the few really large concentrations of native large tall grass prairie in the state. The Comprehensive Plan specified that prairie along the saline wetlands and riparian woodlands was one of the core resource imperatives and that the greatest consideration should be given to protecting these areas during the planning process. This proposed development will degrade the experience of the visitors to the prairie. This kind of development could be the first step in additional development on this site and other sites. Motocross just opens the door – the first step to a future degradation of the area. This is not an appropriate area for this facility.

**14. Laura Clement**, an adjoining property owner, testified in opposition. In June 2003, her daughter got married on their farm, which is located very close to the track. Prior to the wedding, the track was not built. She displayed pictures of the vehicles hauling the motorcycles into the track area. Dr. Sumani's signs do not blend and are very disruptive to the environment. She has lived in the area for 30 years. She wants to keep the community, the neighbors and the area as it is today. On November 30<sup>th</sup>, when she walked into her pasture, her stomach sunk to see all of the sight pollution on that horizon and hilltop where she used to see deer running. In the last four years, that track has not been running at full capacity. It was a homemade track for family and friends. Now we are talking about a track for professional people. Dr. Sumani paid to have the track constructed. She would like to see the track removed. Clement is in favor of education and she loves Spring Creek Prairie. If this is not denied, there is nothing but trouble in the future.

**15. Larry Harshman**, 4237 Ridgeview Drive, a biologist at UNL, testified in opposition. An important part of ecology is the aesthetic experience. The grassland is a precious commodity. The bird life is a precious commodity. The aesthetic component is an integral part of the experience. Harshman grew up in southern California with motocross racing. There are family members who ride motorcycles but it is not primarily a family sport. It is mostly young males. He does not understand why you would put a motocross next to a precious commodity like Spring Creek Prairie.

**16. Christine Kallum(sp)**, 1435 C Street, a graduate student at UNL, testified in opposition. The students have suffered a lot with the cutbacks in the education system. She is amazed that Spring Creek Prairie might be threatened. The idea of giving one-year

notice for scheduling classes is not reasonable. She is interested in environmental psychology – looking at the interactions between humans and their surroundings. The top environmental stress factor is undesired noise, even very low constant sounds or a noise that goes up or down in pitch. Research has shown that this stress can cause medical problems. Natural settings aid in the recovery and restoration of mental performance. She strongly believes that it behooves this county to protect the natural resources that are available. Spring Creek Prairie cannot move. This proposed facility can be placed elsewhere within the county where people can enjoy it. Nature and motor bike racing are not compatible. It is a question of values.

**17. Terry Clement**, 9600 S.W. 98<sup>th</sup> Street, testified in opposition and clarified that there has not been a motorcycle track for the last 30 years in the area. There have been small race tracks off and on. There hasn't been anything there the last 3-4 years. The neighbors have not complained because it was operated by a family that lives on the property. The difference between that and this proposal is the gate that was installed, which cost several thousand dollars. Dr. Sumani has well over \$100,000 of equipment in the building. It is like a professional track. It is not a neighborhood track. A lot of the concern is that Dr. Sumani is not going to live on the property. On November 30<sup>th</sup>, there were trucks from out of the area and out of the state unloading motorcycles. Clement has had cattle on his property for 34 years. He did some research and found out that noise does bother the livestock. The cattle are more sensitive to noise than people. Unexpected loud noises can be highly stressful to the livestock. The animals will become accustomed to noise to some extent, but the cows will try to get away from the noise. Sudden movement also scares the livestock. The PA system will very much affect the livestock.

There is a monastery in Denton and there are priests that walk up and down the highway. This sets an atmosphere for Denton as well as the Audubon. There are five sightings of elk in the area. There is an environment and atmosphere here.

\*\*\* break \*\*\*

**18. Bob Parrish**, volunteer at Spring Creek Prairie, testified in opposition. This is agricultural zoning and has the sounds and smells of agriculture. He proposed that the doctor conduct a race with 15 bikes and that the Planning Commission members attend and listen, then go to Spring Creek Prairie and listen. The only thing you cannot control is the noise.

**19. David Murphy**, 1845 E Street, testified in opposition and displayed a map showing the environmental resource areas within 5 miles, showing acoustical nuisances that have occurred within the last month. He contends that the proposed special permit will confiscate public space to the extent of 10-14 sq. miles. The context of the area is one of peace and quiet (not silence). It is populated by those who choose to live there for that quality and for those whose livelihood is produced by that quality. These nature experiences are a priority of the Comprehensive Plan (pp. F51 to F55). The peace and

quiet of this area are of paramount importance to the experience of nature. The most disturbing and annoying sounds are loud sounds, high pitched sounds, erratic sounds, hidden or moving sounds, sounds inappropriate to your activity, unexpected sounds and duration of sound. Virtually all of these characteristics apply to the acoustic space the motocross track will confiscate from the surrounding community. The staff report rationalizes the taking of public space and does not address the noise issues surrounding this application or the spatial context within which the issues are important. The staff report did not give proper consideration to the spirit and intent of the Comprehensive Plan.

**20. Mike Rosburg**, who lives one mile southeast of the track, testified in opposition. He has heard the motorcycles come and go. It is very annoying. There are planes that fly over, but the duration is 30 seconds to one minute. The motorcycles run and run and run for hours. The noise doesn't stop. You will be sentencing all of the neighbors to this noise for probably the rest of their lives. Please send this thing someplace else.

**21. Dr. Don Helmuth**, Vice-President of the National Audubon Society and State Director for the State of Nebraska, testified in opposition. The Audubon Society has been actively involved in protecting the environment and conservation in the state for more than 50 years. About 6 years ago, the Audubon reinvented itself. We noticed that none of the other environmental groups were doing a quality job on education so we started a nationwide program to develop education centers. There are two in the state of Nebraska. One is outside of Kearney, Nebraska, and Spring Creek is under development. They are also working on education centers in Omaha, Columbus and Scottsbluff. These five centers will provide an education base for over 50,000 children. Three years ago in Nebraska, the Audubon was not involved in educating any children. In three years, they have gone from zero to 8,000. This center will educate 10,000 students per year. What the Audubon does in the way of education is very different from what the children get in the public school system. Spring Creek Prairie is a critical location. It provides a unique setting and this facility is on tall grass prairie. It provides a place to get rejuvenated and reborn.

Pearson inquired as to whether the Audubon is going to be able to provide a schedule of all of the classes that Audubon provides to the applicant every year in advance. Dr. Helmuth does not believe it would be logical or rational except on a per semester basis. Many of programs are predicated upon the season of the year. We cannot control mother nature and cannot forecast that far in advance.

**22. Kent Seacrest** appeared on behalf of the bulk of the neighbors that are in opposition. From a legal point of view, what standard are we judging this application upon? The burden is not on the neighbors to show anything, but rather upon the applicant. Special permits are intended for incompatible land uses in the same zone with conditions to make them compatible. Is the public's health, safety and welfare protected? Are the abutting land uses and neighbors protected? Is the area protected? He does not believe these three burdens of proof have been met.

This is not a land use that is totally needed by society in this location, such as a health care facility, child care facility or group home. This is not a recreational facility as defined. The definition of “recreational facility” lists court games and field games. It does not list motorized race tracks. Seacrest pointed out that the Building & Safety Department raised the same question. A recreational facility is not supposed to have bleachers, and now this applicant intends to have temporary bleachers. This is not the definition of a recreational facility.

The Commission has heard testimony that there was an old facility, and the Commission has heard testimony about a new facility – they are apples and oranges. The old one was set around families, children and friends. This one is intended to be commercial, driven by a fee.

Seacrest submitted that the previous track took one minute to go around. The proposed track, as he understands it, is 2 to 2.5 minutes. It is a longer track so it is a bigger facility. This one is professionally constructed and is intended to take a higher skilled rider. It is intended for commercial uses. The neighbors that are new in the area sure didn’t waive any rights to complain.

Government always reserves the right to enforce its laws. In Seacrest’s opinion, the old use needed a special permit and didn’t have one. This one obviously has been told that they need a special permit and thus the need for this hearing. This applicant has been using the facility without a special permit so there have been violations.

Seacrest submitted proposed amendments to the conditions of approval further limiting the use of the race track. There are four standards in the Lincoln noise ordinance and staff has recommended only one. Seacrest’s proposed amendments list the other three standards. The amendments proposed by Seacrest are as follows:

GENERAL CONDITIONS:

1. This approval permits a recreation facility being used as a restricted off-road motocross riding club. The facility shall be limited to the following:
  - a) Hours of operation from noon to 6:00 PM 8-PM, 3-7 days a week, but excluding holidays and Sundays.
  - b) No more than a total of 45 participants, spectators officials and employees persons per race day. No more than a total of 10 participants, spectators officials and employees persons per practice day. No more than 15 motocross vehicles can be on the track at any one time.

- c) No more than ~~four~~ eight race days per calendar year. The other days of operation shall permit practice runs but not competitive runs or races.
- d) Access shall be limited to the south property line, abutting Kolbrook Road.
- e) The facility shall be non-illuminated, nor use public address or amplified sound or speaker system.
- f) The facility, ~~motorcycles and related noise shall comply with~~ follow the noise standards of L.M.C. 8.248 ~~(75 db)~~; as modified below for existing and future receiving noise-sensitive zone or agricultural residential uses:

**Sound Levels by Receiving Land Use\*\***

| <u>Receiving Land-Use Category</u>                       | <u>Time</u>             | <u>Sound Level Limit, in dBA Maximum Five-Ten-Minute Leq Level*</u> |
|--|-------------------------|---|
| <u>Noise-sensitive zone, or agricultural residential</u> | <u>7 a.m. to 5 p.m.</u> | <u>50</u>   |

Notes:

\* Slow meter response or use meter with Leq function.

\*\* The sound levels shall be measured from the yard setbacks of the receiving land use.

**Peak Sound Level Limits by Receiving Land Use\*\*  
for Impulsive Sound**

| <u>Receiving Land-<br/>Use Category</u> | <u>Time</u> | <u>No. of<br/>Peaks/Hr.</u> | <u>Maximum Peak<br/>Level Limit,* in<br/>dBA7 a.m. to 5<br/>p.m.<br/>18527947386716<br/>+61</u> |
|---|-------------|-----------------------------|---|
|---|-------------|-----------------------------|---|

Notes:

\* Fast-hold meter function only.

\*\* The sound levels shall be measured from the yard setbacks  
of the receiving land use.

**Motor Vehicle and Motorcycle  
Noise Emission Standards for  
Determining Adequacy of Exhaust System,  
Stationary Limits\***

| <u>Vehicle Type</u>          | <u>Maximum Level</u> |
|------------------------------|----------------------|
| <u>Motorcycles/Motocross</u> | <u>96 dBA</u>        |

Notes:

\* Measurement at twenty inches (0.5 meters) and at 45° angle  
from exhaust outlet with engine rpm at one-half indicated engine  
red line for motorcycles. Slow meter response will be used. For  
vehicles equipped with dual exhausts, compliance will be  
determined from the highest side measurement. For exhaust  
outlets located beneath the vehicle, measurements will be taken  
eight inches (0.2 meters) from the side of the vehicle. These limits  
apply only to those vehicles licensed to operate on public right-of-  
way.

**Recreational Motorized Vehicle  
Sound Limits**

| <u>Vehicle Type</u>          | <u>Maximum Level</u> |
|------------------------------|----------------------|
| <u>Motorcycles/Motocross</u> | <u>78 dBA</u>        |

Notes:

No person shall operate or cause to be operated any motorcycle/motocross off a public right-of-way in such a manner that the sound level emitted therefrom exceeds the limits set forth above at a distance at or across the real property boundary of the special permitted property.

- g) All motorized vehicles on the site shall have factory equipped mufflers or mufflers that meet the factory equipped noise and exhaust specifications.
- h) All race vehicles shall have spark arresters.
- l) The facility shall follow best management practices for runoff control, as approved by the Lower Platte South NRD and the Nebraska Department of Environmental Quality.
- j) The facility shall enter into an agreement with the Lancaster County Engineer for road maintenance between the facility entrance and SW 98<sup>th</sup> Street.
- k) Signs shall be posted on the site that access shall be via SW 98th Street to the west, not east via Kolbrook and SW 86<sup>th</sup>.
- l) Tires and similar barriers, if used, shall be managed for mosquito control.
- m) Air pollution and dust shall meet the Lancaster County Air Pollution Regulations.
- n) All parking shall be on the site and meet the County parking lot standards.

- o) The facility shall not permit food or beverage services nor food vendor.
- p) The facility shall have proper trash disposal facilities and a minimum of two (2) restroom facilities that meet codes.
- q) No motor cross shall be permitted to travel over public roads without said vehicle being properly equipped and licensed for public roads.
- r) No residential dwelling shall be permitted to be constructed or occupied on the special permitted property.
- s) The motors of the motocross vehicle shall be 4 stroke cycle and not 2 stroke cycle.
- t) The facility's track will be properly water down before and between races and practice runs to prevent excessive dust. The water source shall be a stormwater detention pond(s) acceptable to the City-County Health Department rather than water well(s).
- u) The facility public spaces shall meet the standards stated in the Americans with Disability Act (ADA).
- v) The facility shall not have any building used for accessory uses other than storage.
- w) The owner of the subject property will record a written covenant of record on the subject property stating that when the property owners conveys title to the special permitted property, then the use of the property for a motocross track and related activities shall be prohibited, the track and related facilities shall be removed, and the property shall be restored back to a natural topography and condition.

2. Prior to the issuance of building permits:

- 2.1 Provide a revised site plan clearly showing the boundary of the site and envelopes for the buildings, track and other activities. The site plan must be found acceptable by the Planning Department and will be the approved site plan for this permit.

- 2.2 All buildings and restroom facilities shall meet building code and have permits.
- 2.3 All applicable Health codes shall be complied with.
- 2.4 All applicable State and Local health codes shall be complied with.
- 2.5 The construction plans shall comply with the approved plans.

STANDARD CONDITIONS:

- 3. The following conditions are applicable to all requests:
  - 3.1 Before occupying/operating this recreation facility, all development and construction shall have been completed in compliance with the approved plans.
  - 3.2 Before occupying/operating this recreation facility, (i) the City-County Health Department shall have approved the water and waste water systems for this use and (ii) the Lancaster County Sheriff's Office and Southwest Rural Fire Department shall approve the facilities' water source to fight fires and operational training procedures to provide first aid and emergency response to help insure proper level of fire protection and public safety. All applicable State and Local health codes shall be complied with.
  - 3.3 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.
  - 3.4 The County Clerk shall file a copy of the resolution approving the permit and the letter of acceptance with the Register of Deeds. The Permittee shall pay the recording fee in advance.

Seacrest believes that the applicant's proposed amendments left out some of the restrictions that staff had recommended. If the Commission is inclined to deny the special permit, that would be Seacrest's preference. But, if there is any inclination to approve, then he would request that an explanation be given as to why the other three standards of the sound ordinance are applicable, then go out and measure based on those standards.

Marvin asked Seacrest: "What do you say to the argument that if you grant the special permit, with conditions of approval, you have provided greater protections than no permit at all, letting someone ride their bikes around there seven days a week?" Seacrest responded, referring to the public zoning laws and the private nuisance laws. The nuisance law is always going to be there. Nuisance is a trespass – pollution, noise, dirt. On the

public side, he is sure the City Attorney (Editorial note: This is a County application) could give an opinion as to whether or not a family can ride motorcycles on their land. He is sure they can and their friends can. But when they involve the stranger factor, then it becomes commercial. It is not a permissible stated use in the AGR zone. There are protections today. The special permit does not give us more protection. He thinks it takes away protections, going beyond the AG zone, listing a use that is normally incompatible.

Staff questions

Carroll noted that the County definition of “club” provides that it be “not for profit”. The applicant has stated that it is for profit so it does not fall in the definition of a “club”. Mike DeKalb of Planning staff agreed. DeKalb further pointed out that “stadia” also does not include the normal bleachers such as those used by the YMCA, Optimists, etc.

Carroll confirmed with DeKalb that no other club in the county has motorized vehicles other than golf carts at golf courses.

Bills-Strand inquired about enforcement of the conditions. DeKalb stated that it would be a blend. It’s a zoning provision with special permit conditions so the primary enforcing agency is Building & Safety. On a complaint basis, Building & Safety would be the primary enforcement agency and would cooperate with the Health Department on the noise issues. Normal procedure would be based on complaints and based on findings of violations. If violations are found they can ask the County Board to close the facility.

Bills-Strand asked staff whether keeping the track wet and water runoff is a concern. Rick Thorson of the Health Department understands that Dr. Sumani will truck the water out there. He is not going to install a well or remove water from the property. As far as runoff, Thorson indicated that he would need to do an intense study on the topography of the area. There is some buffer between this property and other sensitive areas and he would need to study that situation as far as water runoff is concerned. With regard to the dust issue, the City-County regulations do prohibit dust from being transported from one property to another—visible emissions. There are regulations in place that would prohibit that. If dust is created and travels beyond the property line, that would be a violation of the regulations.

Bills-Strand inquired about the additional noise standards that Seacrest proposed. Thorson stated that the Health Department would have some concerns over the idea of the impulsive noise provision. Dr. Gary Walsh, Senior Environmental Engineer for the City-County Health Department, stated that all of these provisions were guidelines started by the EPA when the EPA was in the noise business, which they have not been for a very long time. The EPA helped us develop these standards in the 1970's and early 1980's. Impulsive noise limits were not to be applied to motor vehicle noises. It was not ever intended to be used for this kind of noise. He would agree with the remainder of the standards. Dr. Walsh explained that there really is no noise program in the Health Department. The Health Department does this because there is a noise ordinance on the

books. The funding was dumped a long time ago so the Health Department only responds on a complaint basis. In the County, there is nothing of this nature. The Health Department would probably be called upon by Building & Safety to deal with the noise issues and complaints. The Health Department would not be particularly interested in having to go out and take 15 or 20 motor bikes and run noise tests on each and every one of them.

Bills-Strand noted that some cities such as Omaha put up big sound barriers. Is there anything that would help at this location, whether it be berms or extra trees? Dr. Walsh suggested that if there are enough trees, they certainly can be a barrier to noise. If you have 100' depth of trees, you could probably get about a 5 decibel reduction. But we are not dealing with a flat plane at this location. A row of trees does not accomplish very much. You have to have quite a depth of trees before they do much good.

Pearson wondered what it would take to sink a well if the applicant got tired of trucking in the water. DeKalb believes that 50 gallon or more requires a permit from the NRD.

Response by the Applicant

Mark Hunzeker requested the Commission to back off away from this and put it into the larger context that the Commission deals with on a regular basis – think about the perimeter of our city – it is a fairly tight, compact area. If you think about the boundaries of our city and where our city might expand, think about a location anywhere that these kinds of objections could not be made. Where could this facility be placed without the same kinds of objections? Where could you have a 2.5 mile radius without any objections – no birds, no critters, no people, no animals to be disturbed? He does not think it exists. As we think about the expansion of our city, the Health Department indicates that the sound level of a busy street is probably around 70 decibels. So, as the city expands, the Commission is bringing that kind of noise level to the country every other week.

Hunzeker pointed out that Spring Creek Prairie is one mile from this facility. The nearest homeowner who is objecting lives ½ mile away. If you read the Health Department report, you will see that they are proposing a 50 decibel standard, and the applicant is proposing a 50 decibel standard within 300' of any occupied dwelling. 50 decibels is the lowest standard that exists in the city's noise ordinance, and this applicant is agreeing to comply with that standard.

Hunzeker then asked the Commission to recall the tape that was played earlier at 50 decibels – that really wasn't very much noise. You had to be in the 60 decibel range before it became audible. Ordinary conversation is about 60 decibels.

The conditions that the applicant has offered limit this operation to two week days plus weekends. During the week those hours of operation would be 1-7 p.m. Most of us are working during those hours. On weekends the hours would be 1-6 p.m. on Saturday and

1-5 p.m. on Sunday. On race days, Hunzeker believes they would typically have six races, each of which would last 15 minutes. So we're not talking about a lot of time when there is going to be a lot of activity or noise coming off this site. If there is noise, it would be limited by the standard being proposed. Whether you have each motorcycle measured, the issue is the noise coming off the site rather than the muffler on the bike. The standard agreed upon is the lowest one that the Health Department has in the noise ordinance.

As far as the Prairie and the educational classes, Hunzeker reiterated that the applicant is willing to do what is reasonable. If the Audubon gives the applicant 6 months notice, the track activity will be scheduled around them. If they would prefer, the applicant can limit operation to specific days of the week so that the Audubon can schedule around him. It seems that any reasonable effort to cooperate would be workable, given the limited amount of time that this operation will be functioning.

Hunzeker believes the legal issue as far as recreational facility has been decided and is no longer an issue. Yet, when the question is asked about operating it as "friends and family", then the opposition believes there should be a special permit. "Either we need one or we don't." Certainly, for this level of activity, Hunzeker believes they need the special permit. However, he does not believe they need a special permit for the way it has been operated for years. Mrs. Clements said that the track has been there. Hunzeker agreed that Dr. Sumani used this track for two years as a friend of the Woods who owned it prior to his purchase in July of 2003. The photographs that were shown of the tracks running through the trees would indicate that his land has been used for this purpose recently. Those tracks don't just appear overnight.

Hunzeker referred to the testimony about the "Honda" trailer, and explained that there is a team sponsored by a Honda dealer in Storm Lake, Iowa. That team lives in Lincoln. The members of that team are friends of Dr. Sumani. They were out there that day with his permission for the purpose of teaching their kids to ride.

Hunzeker also indicated that the applicant is planting 500 Austrian pine trees. The dirt piles are berms that are being built around the perimeter of the property in an effort to further attenuate the noise. Dr. Sumani has been criticized for spending a lot of money to make this a much better facility than it was. He doesn't have any hope of getting back the investment that he has made in this facility. His only reason for asking for this permit is to be able to ask people to contribute enough in dues to be able to maintain it. If that can't be done, then he will simply go back to using it as a "friends and family" type facility—the same motorcycles that have been out there for years and years will be there. Hunzeker believes this is a good location. It is one of the few locations that really makes some sense.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

January 21, 2004

Carlson moved to deny, seconded by Pearson.

Taylor really likes Dr. Sumani's project; however, he questions if there was enough research from the beginning because it appeared on the surface that it was something that had been done before without any objection. It appears that the neighbors had suggested that it is something they just put up with because they were neighbors. All of the other considerations are duly noted; however, he remembers looking at the Greenprint and the Comprehensive Plan in terms of green space and the environmental issues. He believes it is a worthwhile enterprise. He definitely likes the activity and he appreciates the commitment of the applicant, but he will vote to deny, all things being considered.

Carlson commented that clearly, within the limits of the law, you can ride a motor bike on your own land. But what we are talking about is another level. We have a Comprehensive Plan and zoning to provide guidance and to mitigate land use conflict. Unfortunately here, we are creating conflict and he is not sure why we would choose to do that. To the extent that we are getting 4-5-6 pages of conditions to try to make this use fit, he believes it is more of a signal that we've got perhaps a reasonable use in the wrong place. Particularly, the Comprehensive Plan Committee did great work and that represents the voice of the community saying that these core environmental resources need to be important and we need to listen to that and we need to get very serious about protecting those sensitive, rare environmental areas.

Pearson pointed out that this is only her second Planning Commission meeting. This was an exceptional show of democracy. She was very impressed with all the testimony on all sides. She is thankful we have a community that cares and hopes that government is listening.

Bills-Strand commented that she grew up on an acreage and on a lake home. What she loved the most was the peace and quiet. If you live on an arterial your house is worth less than if you live one block away. It does impact resale value. She does not know where to put this facility. There probably is a need for this use. She does not know how you handle it. One of her big concerns is that the applicant does have the right to ride on his property and invite friends out. If this is turned down here, it will go before the County Board and maybe something can be worked out between now and then so that there could be something the neighbors could live with.

Marvin stated that he is not as sensitive to some of the noise concerns because he lives in town. He believes there is a point to be made that we are going to have to accept a rising decibel level in the city. Pursuant to the applicant's proposed conditions, 300' would have 50 decibels, and every time you double the distance you drop 3 decibels. At a mile at Spring Creek Prairie, you drop the decibels. However, he thinks that Spring Creek Prairie is important enough to give consideration. That is the tipping scale to him. He believes that the Audubon people need to be protected. It's just one of two educational areas and he knows people who have put a considerable amount of money into that Prairie. He does not want to diminish that by taking something that was not zoned for this purpose.

Motion to deny carried 8-0: Marvin, Krieser, Carlson, Carroll, Pearson, Taylor, Sunderman and Bills-Strand voting 'yes'; Larson absent. This is a recommendation to the Lancaster County Board of Commissioners.

**USE PERMIT NO. 106A,  
TO INCREASE THE BOUNDARY AREA,  
RELOCATE ACCESS, ADD A SIGN  
AND REDUCE THE PARKING REQUIREMENT,  
ON PROPERTY GENERALLY LOCATED  
AT S. 65<sup>TH</sup> STREET AND PIONEERS BLVD.**

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:** January 21, 2004

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

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

Ray Hill of Planning staff submitted a copy of the email from Mark Hunzeker, on behalf of the applicant, indicating withdrawal of the request for the private roadway, which eliminates all of the waiver requests, except for the reduction of parking. The staff recommends approval of the reduction of parking and the recommendation is now conditional approval.

Carroll inquired whether the design will show additional parking, even though this action reduces the parking. Hill answered in the affirmative. The site plan does show a shaded area where they will actually be constructing the parking. The outlined area is the area reserved for future parking. At time of change of occupancy, that additional parking would be required to be constructed. We did the same thing for another company out on 14<sup>th</sup> & Old Cheney who asked for reduction of parking. During our analysis of this request, we did go out and visit the site and found they were not using the parking spaces after there was a reduction. Because of this particular occupant, the staff believes it appropriate to reduce the parking and save the trees on the site.

Carroll inquired whether there is a trigger mechanism for the need for additional parking. Hill suggested that if there is a problem and they are starting to park in the right-of-way, the city would have the opportunity to then ask them to construct the additional parking.

Proponents

**1. Mark Hunzeker** appeared on behalf of Talent Plus. This is request to reduce the required parking. The request is to build the parking shown in the shaded area on the site plan, and to reserve area for additional parking in all the dashed area shown on the site plan. The reason is that the site has a lot of trees on it and the previous owner did a great job of planting trees, which is one of the attractive features that brought Talent Plus to this site. Hunzeker showed a photograph of the building under construction today, depicting the trees. The applicant has done a lot to maintain some screening along the east property line and there will be additional screening installed under written agreement with the abutting property owner. To build all of the parking would eliminate a lot of trees. That is what the applicant is trying to avoid. There will be a landscape screen along the east property line along the east boundary of the parking lot as well as along the east side of the building. It makes a lot more sense to go in and construct the parking and plant the screening now so that in the event that we end up having to sell the building or expand the parking lot in the future, we will then be taking out trees interior to the site as opposed to alongside the property line. To the extent we ever have to build the additional parking, the impact of that additional parking being built and the trees that have to come out will be interior to the site and not along the edge of the property.

Talent Plus has a business which is nationwide in scope with clients all over the country. They very rarely have a client in Lincoln and very rarely have more than about half of their people on the site at any given time. They employ 63 people today. This is a large building for the number of people they have on site. It is a waste of resources to build parking that is not needed.

**2. Greg Newport**, architect with Clark Enersen who has been working with Talent Plus on this project, read a statement into the record from Dennis Scheer, the landscape architect for this project. Clark Enersen has gone through a process of meeting with the property owners to better enhance what is required for parking design. A meeting was held the week of January 5<sup>th</sup> with Larry Harshman to discuss how to design and implement the landscape between Mr. Harshman's home and Talent Plus. It was agreed that the landscape will be developed to meet and exceed the city standards. There was complete agreement between the architects and the property owners.

**3. Doug Rath**, chairman of **Talent Plus**, stated that Talent Plus has worked on this project over time to develop what they believe to be an excellent plan. He displayed a photograph of the site which they are now building upon. They removed as small amount of trees as possible and have transplanted some to abut the residential neighborhood. He met with six potential buyers of the Peterson property and they have agreed to a landscape plan with the adjacent property owners. By the reduction in parking, there are sixty 50-year old trees that will not have to be removed. Maintaining more trees puts less lighting on the parking lot.

Opposition

**1. Larry Harshman** stated that he did meet with Talent Plus. He favors the reduction of parking but he would prefer that the parking lot be built interior. He talked with a botanist at the University and the trees on the property are Australian pine, mulberry and some pin oaks. Given the resourcefulness of a company like Talent Plus, he is sure they could figure out how to put in a parking lot without destroying the trees. He has mixed feelings about testifying in opposition, but he believes Talent Plus could lessen the impact by putting the parking lot on the interior rather than along the fence line.

**2. Nadine Hain**, 4151 Ridgeview Drive, the second house away from the property, testified in opposition. Her concern, along with the other neighbors, is the reduction of parking. It would be okay but they do not want the parking located next to the residential property line. It leaves them no privacy. If Talent Plus could put the parking in the center and keep it away from the residential property, she would support it. This is a three-story building that we're looking at and it is not very far from the property line. She does not believe the trees are going to hide the building.

Response by the Applicant

Hunzeker explained that a couple of modifications to the storm sewer have been made. They met with staff about the possibility of reducing this parking quite a long time ago. There have been some delays because of the driveway issue that was a misadventure, but there has never been a disagreement with staff about the issue of reducing the parking. The staff did not raise any objections. The applicant modified the storm sewer plan in order to build the parking as modified. If they had to modify this plan to build the parking the way it is being suggested by the opposition, it would require them to build all of the parking because there would not be a drainage system in place that would work. Hunzeker does not believe anyone would benefit by modifying the parking as suggested. We would lose the trees and put more concrete on the site.

Pearson confirmed that the parking is not going into any setback. Hunzeker confirmed that to be true. The parking that is going to be built is in accordance with the approved site plan. The only issue is where we don't build the parking. The neighbors do not want it next to them, but the applicant would rather not lose the 60 trees and not have the issue of removing the trees.

Bills-Strand assumes that the applicant would have the right to build the additional parking at any time. Hunzeker concurred. He is not sure what Talent Plus would do, but there are some parking stalls back on the north side of the building that could be added, but those are next to the golf course and those are the ones that would probably be added last. The scenario would probably be one where the company had grown to the point where they needed to expand the building on the campus and they would put parking on the west side of the driveway.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

January 21, 2004

Carroll moved to approve the staff recommendation of conditional approval, seconded by Taylor and carried 8-0: Marvin, Krieser, Carlson, Carroll, Pearson, Taylor, Sunderman and Bills-Strand voting 'yes'; Larson absent. This is a recommendation to the City Council.

There being no further business, the meeting was adjourned at 4:35 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on February 4, 2004.

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