

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, June 8, 2005, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Jon Carlson, Gene Carroll, Roger Larson, Gerry Krieser, Melinda Pearson, Lynn Sunderman and Tommy Taylor (Esseks and Bills-Strand absent). Marvin Krout, Ray Hill, Steve Henrichsen, Mike DeKalb, Brian Will, Becky Horner, Tom Cajka, Greg Czaplewski, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Vice-Chair Jon Carlson called the meeting to order and requested a motion approving the minutes for the special meeting on the 2005 Comprehensive Plan Annual Review, Capital Improvements Program and Transportation Improvement Program held May 18, 2005. Motion for approval made by Carroll, seconded by Larson and carried 6-0: Carlson, Carroll, Krieser, Larson, Sunderman and Taylor voting 'yes'; Pearson abstaining; Esseks and Bills-Strand absent.

Carlson then requested a motion approving the minutes for the regular meeting held May 25, 2005. Motion for approval made by Taylor, seconded by Carroll and carried 7-0: Carlson, Carroll, Krieser, Larson, Pearson, Sunderman and Taylor voting 'yes'; Esseks and Bills-Strand absent.

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

June 8, 2005

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

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 05038; CHANGE OF ZONE NO. 05040; USE PERMIT NO. 05004; CHANGE OF ZONE NO. 05041; USE PERMIT NO. 130A; USE PERMIT NO. 123D; COUNTY SPECIAL PERMIT NO. 05026; COUNTY FINAL PLAT NO. 05053, ADAMS STREET ACREAGES; and WAIVER NO. 05005.**

Ex Parte Communications: None.

Item No. 1.2a, Change of Zone No. 05040; Item No. 1.2b, Use Permit No. 05004 and Item No. 1.6, County Final Plat No. 05053, were removed from the Consent Agenda and scheduled for separate public hearing.

Larson moved to approve the remaining Consent Agenda, seconded by Taylor and carried 7-0: Carlson, Carroll, Krieser, Larson, Pearson, Sunderman and Taylor voting 'yes'; Esseks and Bills-Strand absent.

Note: This is final action on Waiver No. 05005, unless appealed to the City Council within 14 days.

CHANGE OF ZONE NO. 05040
FROM O-3 OFFICE PARK
TO B-2 PLANNED NEIGHBORHOOD BUSINESS
and
USE PERMIT NO. 05004,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 14TH STREET AND YANKEE HILL ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 8, 2005

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

Staff recommendation: Approval of the change of zone and conditional approval of the use permit

Ex Parte Communications: None.

These applications were removed from the Consent Agenda and had separate public hearing.

Brian Will of Planning staff submitted a letter from DaNay Kalkowski on behalf of the applicant requesting a four-week delay to July 6, 2005.

Larson moved to defer, with continued public hearing and action on July 6, 2005, seconded by Carroll and carried 7-0: Larson, Taylor, Pearson, Sunderman, Carroll, Krieser and Carlson voting 'yes'; Bills-Strand and Esseks absent.

There was no other testimony.

COUNTY FINAL PLAT NO. 05053
ADAMS STREET ACREAGES
ON PROPERTY GENERALLY LOCATED
AT NORTH 155TH STREET AND ADAMS STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 8, 2005

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

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

This application was removed from the Consent Agenda and had separate public hearing.

Mike DeKalb of Planning staff submitted an e-mail from Dennis Schroeder asking questions relative to improvements and pre-sale of the land.

Proponents

1. Jeff Buel appeared on behalf of his brother, who is platting the property. He explained that the process in the County requires that the improvements be in place before final platting. They have installed hay bales and a silt fence for erosion control and he has contacted the County Engineer to inspect. They cannot sell any of the property until the final plat is approved.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

June 8, 2005

Larson moved to approve the staff recommendation of conditional approval, seconded by Krieser and carried 7-0: Larson, Taylor, Pearson, Sunderman, Carroll, Krieser and Carlson voting 'yes'; Bills-Strand and Esseks absent. This is a recommendation to the Lancaster County Board.

**CHANGE OF ZONE NO. 05039
FROM B-2 PLANNED NEIGHBORHOOD BUSINESS
TO H-3 HIGHWAY COMMERCIAL**

and

**PRELIMINARY PLAT NO. 05011,
CROSSBRIDGE 1ST ADDITION,
ON PROPERTY GENERALLY LOCATED
AT NO. 27TH STREET AND FLETCHER AVENUE.**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 8, 2005

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

Staff recommendation: Approval of the change of zone and conditional approval of the preliminary plat.

Ex Parte Communications: None.

Proponents

1. **Mark Hunzeker** appeared on behalf of the applicant and requested a two-week deferral in order to set up some meetings with Public Works to discuss access to the property.

Larson moved to defer for two weeks, with continued public hearing and action on June 22, 2005, seconded by Krieser and carried 7-0: Larson, Taylor, Pearson, Sunderman, Carroll, Krieser and Carlson voting 'yes'; Bills-Strand and Esseks absent.

There was no other public testimony.

**CHANGE OF ZONE NO. 05042
FROM O-3 OFFICE PARK TO
B-2 PLANNED NEIGHBORHOOD BUSINESS**

and

**USE PERMIT NO. 89C
FOR RETAIL AND OFFICE DEVELOPMENT,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 14TH STREET AND PINE LAKE ROAD.**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 8, 2005

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

Staff recommendation: Denial.

Ex Parte Communications: None.

Brian Will of Planning staff submitted a letter from Kent Seacrest, the applicant's representative, requesting a two-week delay. Will also submitted a graphic representation of the approved commercial developments within a square mile of this proposal.

Larson moved to defer, with continued public hearing and action on June 22, 2005, seconded by Carroll and carried 7-0: Larson, Taylor, Pearson, Sunderman, Carroll, Krieser and Carlson voting 'yes'; Bills-Strand and Esseks absent.

PRELIMINARY PLAT NO. 05009,
WEST HOBELMAN ADDITION,
ON PROPERTY GENERALLY LOCATED
AT S.W. 14TH STREET AND WEST "O" STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 8, 2005

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

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

Greg Czaplewski of Planning staff submitted a request from the applicant for a two-week delay to request an additional waiver.

Taylor moved to defer two weeks, with continued public hearing and action scheduled for June 22, 2005, seconded by Carroll and carried 7-0: Larson, Taylor, Pearson, Sunderman, Carroll, Krieser and Carlson voting 'yes'; Bills-Strand and Esseks absent.

**COMPREHENSIVE PLAN AMENDMENT NO. 05014
(Theater Policy); CHANGE OF ZONE NO. 05035 (text amendment
to Title 27); CHANGE OF ZONE NO. 05036,
FROM AG AGRICULTURAL DISTRICT TO B-5 PLANNED
REGIONAL BUSINESS DISTRICT;
SPECIAL PERMIT NO. 05023 FOR AN 18 SCREEN THEATER
AND ENTERTAINMENT COMPLEX; and
USE PERMIT NO. 140B, ON PROPERTY GENERALLY
LOCATED AT SOUTH 91ST STREET AND PINE LAKE ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

June 8, 2005

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

Staff recommendation: Denial of all five applications.

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

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

Proponents

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

Hunzeker then discussed the proposal to amend the Comprehensive Plan to delete references to the theater policy to make it neutral as to the number of screens in shopping

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

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

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

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

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

Hunzeker noted that the study concludes that the proposed theater complex will lose money and "finding a theater chain willing to move forward on the site will prove challenging, if not impossible". It is Hunzeker's opinion that that conclusion is reached using a highly inflated cost of construction of the new site (20 million dollars) versus the budgeted 13.5 million that was used for the Grand Theater complex downtown, including

site acquisition, demolition, site prep and streetscape improvements. The city has subsidized the Grand Theater to the tune of 3.4 million dollars. In addition to that, it entered into an agreement which says, in part,

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

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

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

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

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

This area is clearly specifically designated in the Comprehensive Plan for a shopping center. Virtually every shopping center in the country is developing theater screens as a complementary use. Nothing has been said about this project which in any way implies that it is detrimental to any property surrounding it. Extensive traffic studies and expensive

road improvements have been made in anticipation of development of a major shopping center at this location. All the applicant wants is the opportunity to build a use which is commonly included in shopping centers everywhere else in the country. Lincoln may very well be the only city in the country with a policy as restrictive and anti-competitive. Hunzeker urged that it is time to allow for some competition in this market.

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

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

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

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

Carroll believes that the documentation provided by Hunzeker states that the other cities are showing that Lincoln is not under-served or over-served, yet the economics show us that we are not in a large need of more theaters per capita. On one hand you say we need more theaters because we should be the same as other cities, but the economics tell us that we’re right on pace and we’re growing but we’re not in need of more theaters. Again,

Hunzeker does not think that is the question you have to ask to make a decision. We have a site clearly designated and approved as a major shopping center site. There will be two million square feet of retail and service uses in this immediate vicinity as this property develops. Every shopping center of that magnitude that you can find anywhere in the country has theaters associated with it. It is a common use. This proposal is in a growing portion of our community and it seems that the land use issue, which is whether there should be theaters at this site, is one which is obvious—there should be, and all the developer is requesting is an opportunity to negotiate with more than one operator for the construction of those theaters.

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

2. Larry Douglas testified in support. Lincoln will continue to experience its greatest growth and infrastructure improvements in its southeast quadrant. Such catalysts as the defacto south interstate of Highway 2, recent annexation of Cheney, residential developments in Bennet, plans for construction of a new high voltage corridor for Nebraska City and a pre-south beltway verify this trend. If you want to strengthen downtown Lincoln and increase the spending resident population, don't inhibit suburbia for the sake of the Downtown Lincoln Association political maneuvers. Forcing an antiquated, hypocritical ordinance on Eiger Corporation and the growing community of citizens that the Prairie Lake shopping center serves can be seen only as a protection for the Douglas Theater monopoly and a socialist pro-downtown prohibition to free competition and market forces. It is competition we need to discuss, not cannibalization.

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

expense of others. We need to have competition. Perhaps if there was competition we wouldn't be paying \$8.00. He believes that we need to be generating more competition with Douglas Theater rather than less. Here you have a private developer willing to pay 15 million dollars for construction that goes into this city. If the developer can't make a go with the 18-plex, so be it.

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

Opposition

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

2. George Crandall, Crandall-Arambula, Portland, Oregon, a consulting firm which specializes in revitalizing cities, testified in opposition. Theaters are a fundamental building block in bringing back downtowns. When his firm visited Lincoln, they found that Lincoln has already taken the first step in revitalization. Crandall-Arambula has been retained by the city to prepare a Downtown Master Plan; to prepare an implementation strategy for that master plan; and to prepare the design guidelines that will allow implementation to proceed. Many cities are looking for theaters in the downtown because they attract people into the downtown and attract the after-hours restaurants and shops. In Racine, Wisconsin, they do not have a cinema downtown and they are looking for one. Knoxville, Tennessee, is trying to attract a major cinema into the downtown. They know that without the cinema they cannot revitalize their retail. Oak Park, Illinois, is trying to expand a downtown cinema so that they can attract more people into the downtown. In developing the proposed revitalization strategy for Lincoln, Crandall-Arambula built it around the new cinema which is located in the right place on P Street in what he would call an anchor location at the end of the retail string. It is situated right; the front door is on the right street; and it has the potential to be a major factor in revitalizing retail over a period of time. The attendance in that theater is not what it should be. We like to see about one million plus visitors a year and he understands that Lincoln is around 600,000. There is a lot of potential that has not yet been realized. Lincoln will not realize the potential unless you see the full potential in

that cinema. The timing is wrong to introduce competition into the area which will suck investment out of the downtown. You don't want to be like every other place in the country with theaters in every shopping center. This is all about economic development and the Commission needs to vote "no" on changing the policy.

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

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

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

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

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

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

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

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

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

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

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

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

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

9. Polly McMullen testified in opposition on behalf of the **Downtown Lincoln Association**, which has been the leadership and advocacy organization for downtown since 1967. Downtown is a center for employment, tourism, government, education, residential living and entertainment. Designation of downtown as Lincoln's destination

entertainment district has been a centerpiece of city planning, investment and public policy since the late 70's. As downtown has gotten stronger in recent years, some in our community may believe that it is "fixed" and that it is time to abandon some of the policies and commitments. But the reality is that downtown is not "fixed". Downtown is still fragile and it is just beginning to stabilize after a long difficult period. Great cities generally share one common denominator – a vibrant and successful downtown. The theater policy, along with the location of business and finance, local, federal and state government and the University, is a key building block to our past success and our continued progress. She urged the Commission to continue the long tradition of support for this key entertainment building block.

10. Don Wesely testified on behalf of The Douglas Theater Company. Wesely suggested that the theater policy has evolved over time into a neighborhood theater policy. By limiting to six screens, the result has been theaters easily accessible in different neighborhoods. This won't continue to happen if you break apart the policy. The 18-plex will hurt the downtown as well as all of the other theaters. Mayor Seng has taken a strong position, as well as the Planning Department, the DLA, and the Lincoln Journal Star, in support of the current theater policy. The city worked very hard to get a downtown theater. A national developer was brought in to look at the project and it was found that the chains are not interested in being downtown. Our locally owned Douglas Theater stepped up and made the investment of 11 million dollars. Part of the agreement included a recognition that the theater policy was a central piece of the decision that made this possible. This is absolutely the wrong time to make a change in the policy. We need to honor the investment and commitment that has been made.

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

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

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

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

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

13. Keith Thompson, Knoxville, Tennessee, stated that he has fed his children for the past 15 years by participating in the motion picture exhibition industry. Until recently, he was the head of real estate for what became the largest movie chain in the world. He then started a consulting business which led to his ownership of a movie chain which he has sold and is now head of real estate for a large movie chain; he continues his consulting business, which specifically looks at theater uses in shopping centers and mixed use developments nation-wide. He first came to Lincoln about three years ago to research putting the Grand downtown. If you look at the status of the movie theaters in Lincoln today versus three years ago, the six screen theaters that exist are nice, well-maintained movie theaters. You do not have a monopoly, but a theater chain. Now you have a beautiful facility downtown as a result of the theater policy.

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

Thompson also suggested that when you build any theater in the market, you transfer business. When the Grand opened, it transferred business from Edgewood, East Park, and SouthPointe. If the policy is changed, Thompson predicts that there will soon be a plan amendment for SouthPointe to expand. It is a better location than the Prairie Lake

site. It takes over a million dollars per screen today. This market is not big enough to sustain a top line revenue base in an 18-screen theater at this location to make it economically justifiable.

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

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

Response by The Applicant

As far as now not being the time to change the policy, Hunzeker pointed out that this policy has been in place for 21 years. The two theaters that were outside the downtown at the time the policy was instituted are gone. All of the screens in Lincoln have been consolidated under one ownership. It took 20 of those 21 years for us to get a megaplex downtown. Everybody understands that this policy is running against the market. There is no standard suggested by anybody as to the market place standard by which we can measure the "right time." The right time is when someone is willing to put their "real" money of their own on the line in a location to build something outside the downtown. Mr. Thompson may be right – maybe he has correctly analyzed this site, but there ought to be a level playing field for a developer of a shopping center in this community to be able to negotiate with more than one player. If his client is guilty of "irrational exuberance", that is his problem, not the Commission's. He is not going to waste money if he doesn't think it is feasible. All this developer is requesting is an opportunity to do business in Lincoln in a way that enables this developer to be able to survey the market and to invite proposals from more than one operator.

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

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

COMPREHENSIVE PLAN AMENDMENT NO. 05014

ACTION BY PLANNING COMMISSION:

June 8, 2005

Taylor moved denial, seconded by Larson.

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

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

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

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

Carlson commented that he is encouraged that people will come out and get engaged in a discussion like this and encouraged that the proponents and champions for downtown

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

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

CHANGE OF ZONE NO. 05035

ACTION BY PLANNING COMMISSION:

June 8, 2005

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

CHANGE OF ZONE NO. 05036

ACTION BY PLANNING COMMISSION:

June 8, 2005

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

SPECIAL PERMIT NO. 05023

ACTION BY PLANNING COMMISSION:

June 8, 2005

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

USE PERMIT NO. 140B

ACTION BY PLANNING COMMISSION:

June 8, 2005

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

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

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

*** break ***

Commissioner Larson left at this point in the meeting.

CHANGE OF ZONE NO. 3413
FROM R-4 RESIDENTIAL TO R-2 RESIDENTIAL
ON PROPERTY GENERALLY LOCATED
AT NORTH 24TH STREET AND SUPERIOR STREET.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 8, 2005

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

Staff recommendation: Denial.

Ex Parte Communications: None.

Proponents

1. **Carol Brown**, 2201 Elba Circle, appeared on behalf of the applicant, **Landons Neighborhood Association**, and requested another six-month deferral. The neighborhood association has not been in touch with the developer/owner for over a year and they are anxious to see the planning in that area because now there is a day care center, which was supposed to be part of the developer/owner's plan.

Carroll moved to defer six months, with continued public hearing and action on December 7, 2005, seconded by Pearson and carried 6-0: Taylor, Pearson, Krieser, Sunderman, Carroll and Carlson voting 'yes'; Larson, Bills-Strand and Esseks absent.

**COMPREHENSIVE PLAN AMENDMENT NO. 05013;
ANNEXATION NO. 05009; CHANGE OF ZONE NO. 04081,
FROM I-3 EMPLOYMENT CENTER TO R-3 RESIDENTIAL
AND FROM AG AGRICULTURAL TO I-3 EMPLOYMENT CENTER;
SPECIAL PERMIT NO. 04067, STONE BRIDGE CREEK VILLAS
COMMUNITY UNIT PLAN; and USE PERMIT NO. 139A,
ON PROPERTY GENERALLY LOCATED
AT HUMPHREY AVENUE AND REDSTONE ROAD.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:**

June 8, 2005

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

Staff recommendation: Approval of the Comprehensive Plan Amendment; approval of the annexation, subject to an annexation agreement; approval of the change of zone; and conditional approval of the community unit plan and amendment to the use permit.

Ex Parte Communications: None.

Becky Horner of Planning staff submitted a letter citing concerns about the smaller lot sizes.

Proponents

1. Jason Thiellen appeared on behalf of **Stone Bridge Creek, LLC**. Stone Bridge Creek Villas is a continuation of the Stone Bridge Creek development. This will be a great addition to the development. The applicant withdrew the request to waive the sidewalk on one side of the private roadway and will install sidewalks on both sides. Thiellen agreed with all conditions of approval.

Pearson asked Thiellen to show her where the environmentally sensitive area is located on the map. Thiellen pointed it out in the northeast portion of the site, and advised that it is outside of the use permit; however, it runs all the way up to Alvo Road. It is a fresh water, three pond system upon which the applicant worked with the Corps of Engineers in terms of enhancing the area.

2. Bob Lewis of **Stone Bridge Creek, LLC**, explained that it is a saline wetland area that abuts 27th and is located south of Arbor Road. He concurred that they have been working with the Corps, Game and Parks, and Fish and Wildlife. The saline wetlands had been farmed for quite some time and they are enhancing, rehabbing and enlarging that area and taking some smaller wetlands throughout the site and bringing them to the one location. It is approximately 30 acres. The area abuts 27th, just west of 27th and just south of Arbor Road.

There was no testimony in opposition.

COMPREHENSIVE PLAN AMENDMENT NO. 05013

ACTION BY PLANNING COMMISSION:

June 8, 2005

Carroll moved to approve, seconded by Krieser and carried 6-0: Taylor, Pearson, Krieser, Sunderman, Carroll and Carlson voting 'yes'; Larson, Bills-Strand and Esseks absent. This is a recommendation to the City Council and the Lancaster County Board.

ANNEXATION NO. 05009.

ACTION BY PLANNING COMMISSION:

June 8, 2005

Carroll moved approval, subject to an annexation agreement, seconded by Krieser and carried 6-0: Taylor, Pearson, Krieser, Sunderman, Carroll and Carlson voting 'yes'; Larson, Bills-Strand and Esseks absent. This is a recommendation to the City Council.

CHANGE OF NO. 04081

ACTION BY PLANNING COMMISSION:

June 8, 2005

Carroll moved approval, seconded by Krieser and carried 6-0: Taylor, Pearson, Krieser, Sunderman, Carroll and Carlson voting 'yes'; Larson, Bills-Strand and Esseks absent. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 04067

ACTION BY PLANNING COMMISSION:

June 8, 2005

Carroll moved to approve the staff recommendation of conditional approval, seconded by Pearson and carried 6-0: Taylor, Pearson, Krieser, Sunderman, Carroll and Carlson voting 'yes'; Larson, Bills-Strand and Esseks absent. This is final action unless appealed to the City Council.

USE PERMIT NO. 139A

ACTION BY PLANNING COMMISSION:

June 8, 2005

Carroll moved to approve the staff recommendation of conditional approval, seconded by Krieser.

Carlson commented that this approves 124 dwelling units and 500,000 sq. ft. of employment center. We are looking for smart growth and this is the direction it needs to go.

Motion carried 6-0: Taylor, Pearson, Krieser, Sunderman, Carroll and Carlson voting 'yes'; Larson, Bills-Strand and Esseks absent. This is final action unless appealed to the City Council.

There being no further business, the meeting was adjourned at 3:20 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on June 22, 2005.

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