MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, November 9, 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, Dick Esseks, Gerry Krieser, Roger Larson, Melinda Pearson, Mary Strand and Lynn Sunderman (Tommy Taylor absent); Marvin Krout, Ray Hill, Ed Zimmer, Brian Will, Greg Czaplewski, Joe Rexwinkle, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.
STATED PURPOSE OF MEETING:	Regular Planning Commission Meeting

Chair Jon Carlson called the meeting to order and requested a motion approving the minutes for the regular meeting held October 26, 2005. Motion for approval made by Carroll, seconded by Krieser and carried 7-0: Carlson, Carroll, Esseks, Krieser, Larson, Pearson and Sunderman voting 'yes'; Strand abstaining; Taylor absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: November 9, 2005

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

The Consent Agenda consisted of the following items: **SPECIAL PERMIT NO. 05052; CHANGE OF ZONE NO. 05076HP; SPECIAL PERMIT NO. 05051; USE PERMIT NO. 33D; COUNTY FINAL PLAT NO. 05106, THE PRESERVE AT CROSS CREEK 2ND ADDITION; COUNTY FINAL PLAT NO. 05107, WENDELIN ESTATES; and STREET AND ALLEY VACATION NO. 05009.**

Ex Parte Communications: None.

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

Note: This is final action on Special Permit No. 05052, 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.

CHANGE OF ZONE NO. 05026A,
AMENDMENT TO THE APPLE'S WAY
PLANNED UNIT DEVELOPMENT,
and
PRELIMINARY PLAT NO. 05016,
APPLE'S WAY,
ON PROPERTY GENERALLY LOCATED
AT S. 66TH STREET AND HIGHWAY 2.
PUBLIC HEARING BEFORE PLANNING COMMISSION: November 9, 2005

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

Staff recommendation: Conditional approval.

Ex Parte Communications: None

Additional information submitted for the record: Brian Will of Planning staff submitted a letter from Robert Otte on behalf of the Country Meadows Neighborhood Association, stating the position of the surrounding homeowners in the area.

Proponents

1. Tom Huston appeared on behalf of **Apple's Way LLC and UNO Properties, Inc.,** the applicants for the PUD which was heard before this Commission and approved by the City Council in June of 2005. When the original PUD application was filed, it was a concept plan and they had not yet completed the engineering and did not request a waiver of the preliminary plat. The engineering has now been completed and these amendments to the PUD are for setback adjustments and height restriction and the preliminary plat has been submitted for consideration.

Huston referred to the letter from the County Meadows Homeowners Association and advised that the applicants have been working with the neighborhood association to honor the previous commitments made on the PUD. They have attempted to embody those commitments through the preliminary plat and final plat and restrictive covenants. The discussions with the neighborhood since the public hearings last spring have been very productive and they have made a lot of progress in completing the commitments to the neighbors.

Huston submitted proposed amendments to the conditions of approval on the amendment to the PUD and he believes staff is in agreement:

~~1.1.2 Show a 50' setback in the B-2 adjacent to the AGR and R-1.~~

1.1.3 Revise ~~the General Notes~~ Note 34 to ~~be consistent with the approved plan for Change of Zone No. 05026, Apple's Way PUD~~ reflect that the height of the building does not exceed 40' except the maximum allowed height is increased to 52' to accommodate architectural features.

Condition #1.1.2 needs to be deleted because it conflicts with Condition #2. The revisions to Condition #1.1.3 deal with the height issue. There is one commercial user whose building has an architectural feature that will exceed the 40' height limitation. It is a front facade architectural feature and the balance of the development will comply with the height limitations.

Huston also submitted proposed amendments to the preliminary plat:

~~1.1.3. Provide a name for the unidentified street at the southwest corner of the plat and label it as a private roadway if it is not a public street.~~

~~1.1.4 Show how the required detention capacity is maintained with the unidentified street at the southwest corner of the plat is built.~~

1.1.5 Label all the roads in the B-2 and R-1 zones as private roadways.

1.1.6 Dimension and number all lots and add a note that all lot lines are approximate.

1.1.8 Revise the landscape plan on Sheet 5 of 5 to show all the required landscape screen between the B-2 and R-1 located in the B-2 for that area located south of Empire Lane. Add a note that the landscape screen between the B-2 and R-1 located north of Empire Lane shall be located to provide the best screening effect due to the slope. All of the landscape screen shall be maintained by the owners of the B-2 zoned land or an association of such owners.

1.2 Make corrections to the reasonable satisfaction of Public Works and Utilities, which shall be limited to:

1.2.1 Extend the sanitary sewer to Highway 2 in a location that allows for the further service of upstream area north of Highway 2.

1.2.2 Revise the plan to show the right-turn lane in Highway 2 at South 66th Street as 150' long in accordance with the approved Planned Unit Development.

Huston stated that he understands that the Planning Commission does not have the authority to waive the sidewalk located north of McIntosh Road, and that will be taken up with the City Council. (***Editorial Note***: The staff is recommending denial of this waiver).

With regard to the deletion of Conditions #1.1.3 and #1.1.4, Huston pointed out that the City Council had asked the applicant to dedicate an easement for a possible road location at the southeast corner of the property during the debate on the original PUD. It was the developer's proposal 18 months ago to make a connecting road from Highway 2 to 56th Street, but multiple issues arose, i.e. potential railroad track crossing; potential problems with wetlands; floodplain development that would have required construction of a bridge; the potential connecting point to S. 56th Street was where a current house is located. That potential road connection became too problematic so they ceased discussion and the City Council voted to require at least the dedication of an easement. Consequently, the developer did dedicate the easement, but they did not try to engineer it around the detention cell, which is going to be the least of the concerns if and when this road is constructed. Therefore, Huston requested that Conditions #1.1.3 and #1.1.4 be deleted.

The proposed amendment to Condition #1.1.8 has to do with the landscape screen. All of the landscape screen south of Empire Lane (east/west road in residential area) will be located on the B-2 zoning. Huston proposed an amendment so that the landscape screen located north of Empire Lane is allowed to be relocated because there is a huge grade differential. He believes they have this worked out with staff.

With regard to the proposed Condition #1.2.2 (the right-turn lane in Highway 2 at South 66th Street being 150' long), during the approval of the original PUD, the developer had offered to construct a deceleration lane on Highway 2 to connect to S. 66th Street, which was part of their commitment to the neighborhood. Staff had wanted to increase that right-turn lane to 200'. Huston submitted that even if the design standard has changed in the meantime, a 150' deceleration lane was approved with the original PUD and the 200' length should not be made a requirement of this plat.

Esseks inquired about the enhanced screening to offset the reduction in the rear setback. Huston explained that the design standards require a 60% screen between the commercial and residential, and their commitment to the neighborhood is to make a 100% screen, to the extent possible. The landscape screen will go beyond and exceed the required design standard. It will cover the entire border. Huston did not know how high and thick it might be. Tim Gergen of Olsson Associates advised that the screen would be 100% thick and you will not be able to see through it. The trees will be 8-10 feet high and the shrubs would be 2-3 feet in height.

Pearson noted that the road connection is shown through the proposed detention area. What is the thinking? Was there no other place to put the detention? Huston stated that the issue arose just prior to the public hearing before the City Council on the original PUD and the developer agreed to dedicate the easement. The detention could be moved, but there is probably a limitation on how many places that easement could be located. The only way that road connection could be built (if the other problems are resolved) would be to rework or relocate the detention facility where it would have to be spanned with a bridge, and that would be difficult. The discussion with the City Council was that the city did not want to have to condemn the necessary right-of-way for a street connection, if the connection is ever built. At this point, the developer is willing to dedicate that easement.

It was clarified that the connection off the roundabout to the Trade Center will be made. Pearson recalled discussions about a gate going into Country Meadows. Huston stated that the resolution of that issue turned out better than they could have hoped for. It is a one-way traffic circle – the traffic going to the west will have ability to proceed to the west so that Country Meadows will have access to the circle, but it is designed and will be constructed to prevent traffic going the opposite direction. This is a much better result than a private access gate.

Carlson questioned the addition of “reasonable” satisfaction in Condition #1.2. What is “reasonable”? Huston explained that they just don’t want it to be a blank check. That is why he is asking to specify the requirements and that is why he incorporated the requirements that were in the Public Works comments into the conditions.

There was no testimony in opposition.

Staff questions

Carroll asked staff to respond to the proposed amendments. Brian Will stated that generally, the staff is in agreement with the amendments proposed by the applicant, except the removal of Condition #1.1.4 on the preliminary plat, which deletes the detention capacity relative to the street connection to the southwest corner.

Carroll inquired about the deletion of the requirement to show the 50' setback in the B-2 adjacent to the AGR and R-1 in Condition #1.1.2 on the PUD. Will advised that it is shown as 30' on the plan so this condition is no longer necessary.

Pearson inquired whether there have been other places where the height has been increased. Will pointed to one example, i.e. West Gate Bank in this immediate vicinity had a height exception, but it was in conjunction with a CUP as opposed to a PUD. It was to allow the architectural feature on that building.

With regard to the deletion of Condition #1.1.4, Ray Hill of Planning staff stated that it is the

staff's concern that if they do not design the roadway through the detention system, there may be difficulty in finding a location on the site for the detention that would be required. They are not being required to build the road at this time. All we are saying is that the plan should show how it would be constructed if the road would be required. In doing so, the community has the assurance that the detention would then be taken care of if the road was ever required. If we don't have the design to show the road constructed through the area and the impact it would have on the detention facility, we have no idea where the additional land would come from for that detention.

Dennis Bartels of Public Works also recalled that when the City Council required an easement, he interpreted that as meaning it would be a practical location for the street. The fill it would take to put the road in is probably below the bottom of the detention and it showed an area for mitigation of wetlands. If they show the grading plan to eliminate the potential fill and mitigate the wetlands elsewhere, then the easement is probably acceptable. He assumes the City Council was looking for a practical location and the practical way would be to do it with fill. If they show the fill and provide detention over and above the area that could potentially be occupied by fill and showed their wetland mitigation out from under that fill, Public Works would be satisfied. As shown, it is not practical.

Carroll inquired about the request to change the length of the right-turn lane from 200' to 150'. Bartels recalled that the 150' was also something added by the City Council without any reaction from Public Works. If Public Works was building the turn lane on a 55 mph highway such as Highway 2, they would build it at 200 to 250 feet. Public Works did not have opportunity to react at Council, but Bartels is now responding that the 150' was too short for the speed. While building it, it should be built at the right length to maximize the deceleration and protection for the right turn lane. The extra length is not for storage of the cars but extra room to reduce the travel speed to make the turn.

Response by the Applicant

Huston renewed his request to delete Conditions #1.1.3 and #1.1.4, because they have complied with the request of the City Council. He believes that there is .001 percent probability that that street connection would ever be made and he does not believe it should be necessary to engineer this site to compensate for that potential. Even to make this connection it would have to cross city-owned park land, which raises more issues to ever build a street on it. It seems silly to require redesign of this site for that .001 percent probability that that street connection would ever be made.

As far as the 150' versus 200' right turn lane, Huston stated that he was told that the design standard had changed from June, when the PUD was approved, until now to require 200' as opposed to 150'. This developer complied with the design standard back in June. If that design standard changed, that is not this developer's responsibility. He believes there are good reasons to stick with the agreement made at the City Council level.

With regard to the deletion of Condition #1.1.4, Strand noted that Public Works does not want a bridge, but the developer will need a lot more room for detention. Huston said they would have to redesign the entire site. The detention cell is sized appropriately for the commercial areas. If they have to relocate that detention, even if the road is ever built, they would have to start from scratch.

Pearson suggested that it is disingenuous to show an easement that can't be built. And they have to have detention. Huston reiterated that Jon Camp did not want to have the city in the position of foreclosing the possibility of having that road constructed. Pearson wondered whether there is no other place to put an easement that follows the request of the City Council in a more realistic way. Gergen responded that they did a thorough design investigation of this connection because they thought this would be a great advantage to the city and to the site, but after doing the investigation, they are left with very strict guidelines on how to cross the railroad. There is a sight distance that must be retained and there is a bridge on the railroad tracks that they want to avoid. They would have to build a substantial bridge structure across Beal Slough. There is an existing house on London Road that would have to match up with the existing London Road intersection, which would cause the taking of that house. Other than that, they would have to go through the Country Meadows outlot and another property to make that connection.

Huston also pointed out that there is a very nice existing tree stand in the detention cell. They created an island in the middle of the detention cell because of the crop of cottonwoods they wanted to save to help keep as much of the natural vegetation to screen Country Meadows. The developer made the commitment to Country Meadows to retain the existing tree stand as much as possible. Huston does not believe the street will ever be built. It seems ludicrous to design the entire site for the remote possibility of that road connection.

Huston also clarified that the railroad is not active. However, OPPD wants to keep it open because they use it as a bidding tool right now. That contract gets rebid in the next three years. It allows them to bid against each other. It was active three years ago. Esseks commented that the railroad line may be closed in the future and there may be opportunity to get access to the other side. Huston stated that they did go down that path in their negotiations with OPPD, but they were not enamored with the idea. They want to keep that line active. It would be next to impossible to get state approval for that railroad crossing. NDOR does not grant new railroad crossings anymore. OPPD states that the railroad line is to remain active for their bidding on coal contracts. It is possible that it could be active in the future.

Strand wondered about removing the island to increase the detention if the road were ever to go through. Huston was hesitant to remove the island because of the agreement with the neighbors.

Carlson believes that the City is only asking that they show how the street could be built. Gergen stated that he is not 100% satisfied that removing the island and the trees would meet the capacity for that roadway. He believes they would have to revise the site plan.

Huston explained that the developer did not spend any more time considering that design issue because they don't think it will ever happen.

Bartels advised that the 200' is not a design standard but more of a design practice. When a developer is designing public arterial streets, they are supposed to consult with the Public Works Department. Public Works had determined that 150' was too short on a higher speed arterial street. The 150' was not addressed by Public Works at the time of the approval by the City Council. Huston stated that the developer imposed the condition on themselves during the City Council debate. Bartels suggested that Public Works will probably ask for a longer lane if Public Works has to pay the difference between whatever Public Works wants and the 150'. However, Public Works thought this development should pay for it. Bartels took the position that Public Works will have a longer lane built, no matter who pays for the extra 50-100 feet.

CHANGE OF ZONE NO. 05026A
ACTION BY PLANNING COMMISSION: November 9, 2005

Strand moved to approve the staff recommendation of conditional approval, with the amendments requested by the applicant, seconded by Pearson and carried 7-1: Krieser, Pearson, Larson, Carroll, Strand, Sunderman and Carlson voting 'yes'; Esseks voting 'no'; Taylor absent. This is a recommendation to the City Council.

PRELIMINARY PLAT NO. 05016
ACTION BY PLANNING COMMISSION: November 9, 2005

Strand moved to approve the staff recommendation of conditional approval, with the amendments requested by the applicant, seconded by Larson.

Pearson moved to amend Condition #1.2.2 to change 150' to 200', seconded by Esseks. Pearson believes it is too early in the game to do 150'. Motion carried 8-0: Krieser, Esseks, Pearson, Larson, Carroll, Strand, Sunderman and Carlson voting 'yes'; Taylor absent.

Carroll moved to amend to retain Condition #1.1.4, seconded by Esseks. Carroll believes it is just too big of a facility for that site and that is why they are having the detention and access problems, and that is why the City Council asked for the access road to be established. They have got to design the road the way it should be, even though it might

not be built. They should have to show it because that is what the City Council wanted and that is what they agreed upon.

Strand commented that this development crosses a lot of land. Why does the detention all have to be just on this site and not the park land and the Beal Slough area? Carroll believes that means they would be sending water to someone else. The idea of the detention pond is that this site retains its own detention. They used up all of the area because of what they are building. They should retain their water and not send it somewhere else.

Pearson agreed with Carroll. Her concern is that there are a lot of trees back there and that is one of the things so great about this property. If we require them to do this, she is afraid they will remove trees. She would hate to have the unintended consequence that they take out the trees. If the community decides to spend an enormous amount of money on this bridge, with a lot of people together, i.e. parks, the railroad, Country Meadows, etc., maybe there is some sort of land sharing down the road.

Larson thinks the possibility of building that road is so remote and the complications are so high.

Esseks is concerned that the railroad will close down and access to the west will become very desirable and we won't be prepared for it.

Pearson wondered whether it is possible that these trees are in jeopardy by this decision. Larson believes that they would take out the island and maybe some of the other trees. Carlson does not believe we can say that one implies the other. Esseks believes it sets a bad precedent to waive the design standards to save the trees. Carroll pointed out that the applicant had made a promise to the homeowners to save the trees so they will lose another commercial lot versus taking out the trees. There is other land available to increase the size of the detention pond. They have land that they can use for detention. They do not have to threaten to take the trees out. We should stay with the design standards that are best for the site.

Pearson requested that the motion be amended to add language to Condition #1.1.4, "while maintaining the stand of trees which the developer had reached agreement upon with the Country Meadows Homeowners Association". Carroll agreed.

Carroll wondered whether the Planning Commission could require that the detention pond be in the setback. Ray Hill suggested that if the Commission is concerned about the trees, a motion could be made that they save the trees based upon the commitment to the neighbors. If they have agreement with the neighbors to retain the trees, then they need to address that with the neighbors. A detention pond may be located in the setback.

Strand stated that she will not support this amendment because there is a lot of land – you've got Beal Slough wetlands running right through there. For this street to go through, even if it is abandoned and we can make it a bike trail, you've got to be able to cross a bike trail and you've got to be able to get through Beal Slough and through a residential area, and she doesn't think it is going to happen. We are asking a lot for something that is very impractical to ever occur.

Motion to retain Condition #1.1.4 and to add the language to retain the trees carried 5-3: Krieser, Pearson, Larson, Carroll and Carlson voting 'yes'; Esseks, Strand and Sunderman voting 'no'; Taylor absent.

Main motion for conditional approval, as amended, carried 8-0: Krieser, Esseks, Pearson, Larson, Carroll, Strand, Sunderman and Carlson voting 'yes'; Taylor absent. The action on the preliminary plat is final action, unless appealed to the City Council. The waiver of sidewalks along the north side of McIntosh Road and McIntosh Circle will be forwarded to the City Council for public hearing and action.

SPECIAL PERMIT NO. 1583B,
TO EXPAND AN EXISTING PARKING LOT
WITHIN A RESIDENTIAL ZONING DISTRICT,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 17TH STREET AND GARFIELD STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: November 9, 2005

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

Staff recommendation: Conditional approval.

Ex Parte Communications: Larson indicated that he had a discussion with the applicant as to why they needed to expand the parking lot.

Additional information submitted for the record: Greg Czaplewski of Planning staff submitted a memorandum revising the staff recommendation to add Condition #1.1.14 to provide a bond in the amount of $2,000 to guarantee the reconstruction of the vacated alley intersection with 18th Street, including curb, gutter and a concrete flume. Czaplewski also submitted an e-mail in opposition and he stated that he had a phone call from another neighbor in opposition who is unable to attend and unable to send an e-mail, which suggests that this application be held over so that the applicant can meet with the immediate neighbors to discuss the plans more fully.

Proponents

1. Paul Peter, of the law firm of Keating, O'Gara appeared on behalf of the applicant. This application completes the Russ's Market comprehensive plan as it relates to this particular campus at 17th & Washington. Toward the northwest is the current grocery store. The subject property is In the southeast corner. Everything to the west is zoned B-3 and everything to the east is zoned residential.

Peter gave a history of the property going back to 1973-74, where a special permit was obtained for parking directly to the east of the grocery store. Then in 1983 and 1984, special permits were obtained for parking going to the south, and then further to the south in 1995, when the campus was contiguously located to Lot 8. The significance is that Lots 9 and 10 were part of their own strategic plan of developing additional parking opportunity to the south and the properties were acquired going back into the 1980's.

Russ's also acquired Lot 8 about that time, but that purchase agreement was converted to an option to purchase because the property was purchased from an elderly couple, and prior to closing the husband passed away and the widow requested to be given time to stay in the home. It was then converted to an option to purchase either when she was ready to leave or upon her death. She passed away in 2002. Consequently, the applicant made application in March of last year to complete their own comprehensive plan and convert that lot to parking. That application was ultimately denied. There are two things that have changed since that application was denied. The house was still there and there was concern by the neighbors that they did not want to see that property demolished. That property has indeed been demolished so it is no longer an issue. More significantly, there were questions by the neighbors and neighborhood association about what B&R was going to do with this particular store, so following that hearing, B&R had very comprehensive meetings with city leaders and planners as well as the neighborhood association. Those meetings resulted in improvements being made to the property and the store in excess of 1.2 million dollars in renovating the store. This has resulted in a recommendation of conditional approval by the staff. There are no objections from the neighborhood association and they have expressed their appreciation to B&R for working with them in the remodeling of the campus.

There was no testimony in opposition.

Esseks noted that the staff is recommending conditional approval of this special permit, yet the staff is recommending denial of a request for a parking lot at 56th & N, which is on today's agenda. He did not understand the difference because they both deal with a parking lot next to a residential home in a residential zoning district. Ray Hill of Planning staff advised that the zoning is entirely different. The application at 56th & N is an area next

to a R-T zoning district, which is specifically designed to provide for the transition from B zoning along O Street into the neighborhood. Adding a parking lot to the south side, taking out a house, and adding parking next to another residence is not the intent of the R-T zoning district, so the two issues are entirely different.

Czaplewski advised that the conditions of approval ask the applicant to include the boundaries of their existing special permits within this one so that there is only one site plan. There were waivers granted with some of those previous permits and there were some landscaping requirements so those would be carried forward along with this one. The conditions require increased screening adjacent to the house to the east and increased screening along Garfield Street. The previous conditions would remain in force on the previous special permits.

Pearson confirmed that the applicant has purchased the property since the previous application was denied. Peter explained that at the time the application was made in 2004, B&R owned the property but the structure was located on the property at that time. The structure has now been demolished. They did meet with the neighborhood association, and he read an e-mail in support from the Near South Neighborhood Association, which states that Russ's has a long history of working with the Near South Neighborhood Association to improve business in the neighborhood.

ACTION BY PLANNING COMMISSION: November 9, 2005

Larson moved to approve the staff recommendation of conditional approval, with the amendment submitted by staff today, seconded by Carroll.

Larson noted the improvements and investment that the applicant has made to this neighborhood over the last 30 days. There is nothing but good to say about B&R Stores and this will complete their campus plan for that store.

Pearson stated that she will oppose the motion. She agrees that it is a great neighborhood store, but she does not want to send the message that it is acceptable to tear a house down to end an issue with the neighborhood. She does not want that to become a precedent. She does not want owners to buy land and tear down the houses that neighbors want to keep. Larson believes they owned the house before the application was turned down.

Carlson appreciated Pearson's comments and thought it would be interesting for the Planning Department to explore that issue. He will vote in support, but he appreciates the principle.

Motion for conditional approval, as amended, carried 7-1: Krieser, Esseks, Larson, Carroll, Strand, Sunderman and Carlson voting 'yes'; Pearson voting 'no'; Taylor absent. This is final action, unless appealed to the City Council.

*** Break at 2:20***

Krieser left during the break.

CHANGE OF ZONE NO. 05042
FROM O-3 OFFICE PARK TO B-2 PLANNED NEIGHBORHOOD BUSINESS DISTRICT
and
USE PERMIT NO. 89C, PINE RIDGE, FOR RETAIL AND OFFICE USES, ON PROPERTY GENERALLY LOCATED AT SOUTH 14TH STREET AND PINE LAKE ROAD.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: November 9, 2005

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

Staff recommendation: Approval of the change of zone and conditional approval of the use permit, as revised.

Ex Parte Communications: None.

Proponents

1. Kent Seacrest appeared on behalf of **Ridge Development Company,** for development of this 11.6 acre tract on the south side of Pine Lake Road from 16th to 20th Streets. This is the last vacant parcel from the old 1995 Southridge Coalition which created South Pointe. This piece, originally zoned O-3, consisted of a use permit for 216 apartments in three big buildings, which the neighbors and the developer do not believe are sustainable. A year ago, the applicant submitted a mixed use plan, with the retail on the west and the office on the east, which did not mix it very well. And the staff pointed out that it was not pedestrian oriented with parking in front and that it was too much of a strip development. The applicant then had three neighborhood meetings and 4-5 staff meetings, and six delays later, they have reached consensus.

Seacrest then explained the revised plan being considered today. There is 55% of the footprint as retail and office. The buildings have been moved closer to the street to frame Pine Lake Road by buildings instead of parking lots.

There are sidewalks everywhere. It will not be necessary to walk in the parking lots to get to the stores and there are connections to the key neighbors. In fact, this plan complies with the new proposed sidewalk design standards that are not yet in place. They have also worked with Public Works for a traffic light in the future and intersection improvements at 20th and Pine Lake Road, which will really help Scott Middle School. They are also

buffering the neighborhood with 50', and in a few places where the parking gets closer, they are doubling the landscape design standard. There will be open space and a pedestrian plaza. The lighting will not trespass onto the neighbors. This proposal helps the neighborhood by improving the drainage problems and the developer is promising not to do keno bars. They do want sit-down restaurants but none of the active keno bars.

Seacrest agreed with the proposed conditions of approval.

Larson inquired whether the only access to the area is on 16th and 20th. Seacrest also pointed out the right-in, right-out access on Pine Lake Road.

There was no testimony in opposition.

CHANGE OF ZONE NO. 05042
ACTION BY PLANNING COMMISSION: November 9, 2005

Carroll moved approval, seconded by Strand.

Pearson commented that she thinks this is terrific, but she is sorry the developer had to go out of town to find an architect; however, she is personally very impressed with the site plan.

Motion for approval carried 7-0: Esseks, Pearson, Larson, Carroll, Strand, Sunderman and Carlson voting 'yes'; Krieser and Taylor absent. This is a recommendation to the City Council.

USE PERMIT NO. 89C
ACTION BY PLANNING COMMISSION: November 9, 2005

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

PRELIMINARY PLAT NO. 05014
HAMANN MEADOWS,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 76TH STREET AND PIONEERS BLVD.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: November 9, 2005

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

Staff recommendation: Conditional Approval, including an amendment to add Condition #1.1.8 to rename the cul-de-sac shown as Hamann Place with a name suitable to 911 Emergency Communications..

Ex Parte Communications: None.

Proponents

1. J.D. Burt, 1609 N Street, appeared on behalf of the applicant, and submitted proposed amendment to Condition #1.1.1 (26):

> Trail location is approximate and may vary. Actual location to be determined by and to the satisfaction of the Public Works and Parks Departments, provided the trail is located west of the existing sanitary sewer easement, except between Crystal and Diamond Courts where the trail extends east of the sanitary sewer easement by approximately ten (10) feet, dedicating a temporary trail easement east of the sanitary sewer easement adjacent to Pioneers Boulevard until such time as an under-crossing is constructed under Pioneers Boulevard.

Burt explained that Mr. Hamann has been in negotiations for some time with Parks, Real Estate and Public Works on the alignment of this trail and he is in agreement with that alignment. It has been shown on the plan. This language has been discussed with the Parks Department and is acceptable.

Burt also requested to delete Condition #1.1.7:

> ~~Show all lots outside the flowage easement granted to the U.S. Army Corps of Engineers or provide written verification from the Corps stating that the proposed layout with lots inside the easement is allowable.~~

Burt submitted a copy of the flowage easement filed by the US Government with the Register of Deeds on this property. This flowage easement restricts the construction of habitable structures below an elevation of 1266 Mean Sea Level. They have adjusted this

to the new city NAVD regulations and have shown it on the plan. The flowage easement is located across three lots on the northerly cul-de-sac and across two in the middle cul-de-sac. General Note #15 covers this change. Burt believes that the developer has documented that they are aware of the easement and there is no intention to violate that easement. Burt suggested that it would be overkill to provide additional documentation. He understands that Public Works is agreeable to removing this condition.

There was no testimony in opposition.

Brian Will of Planning staff agreed with the amendments proposed by the applicant.

ACTION BY PLANNING COMMISSION: November 9, 2005

Strand moved to approve the staff recommendation of conditional approval, with the revision submitted by staff today and with the amendments requested by the applicant, seconded by Larson and carried 7-0: Esseks, Pearson, Larson, Carroll, Strand, Sunderman and Carlson voting 'yes'; Krieser and Taylor absent. This is final action, unless appealed to the City Council.

SPECIAL PERMIT NO. 05049
TO ALLOW A PARKING LOT IN THE
R-2 RESIDENTIAL DISTRICT
ON PROPERTY GENERALLY LOCATED
AT S. 56TH STREET AND N STREET.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: November 9, 2005

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

Staff recommendation: Denial.

Ex Parte Communications: None.

Proponents

1. Bob Schoenleber appeared on behalf of the applicant/owner, **Nebraska Realtors Association.** This application is for an additional parking lot adjacent to the applicant's existing building to support the use currently in that structure. Schoenleber submitted that the City has established conditions where parking lots are allowed in residential districts if they meet certain conditions, and he believes this property meets those conditions. He disagrees that this application is different from the parking lot at Russ's on 17th and Garfield (Special Permit No. 1583B), even though this property is zoned R-T. The applicant will work hard to make this parking lot meet the needs of the neighborhood. They have met with the neighbors and asked for their input. The neighboring properties that would be

mostly affected are in support. The applicant has agreed to plant trees, put up the fencing and screen the property. No one to this point has issued any objection to this request. Schoenleber believes that most of the neighborhood would agree that there has been more damage to this neighborhood by the required traffic relocation and reallocation on 56th Street than would ever be done by this parking lot.

Schoenleber stated that the applicant can meet the conditions of approval set forth in the staff report, except Condition #1 which allows 14 stalls. By reducing the number of stalls to a mixture of 12 parallel and perpendicular stalls, the applicant can meet all of the other conditions of approval. The landscape screen that is shown is very preliminary and a professional landscaper will be involved in the design of that screen to make it a beautification of 56th Street.

The mixture of 12 stalls would meet the side yard requirements and increase the setbacks from the side yard and the property line.

Pearson noted that there is currently a house on this lot. Schoenleber concurred, stating that it is owned by the applicant. From his understanding, that house has been through a number of owners and tenants and has continually deteriorated. In addition, he does not think the traffic pattern on 56th Street has done anything to maintain that as a desirable single family residence. They have talked with the neighborhood association and have received no objections.

There was no testimony in opposition.

In comparing this application with the previous application at 17th & Garfield on today's agenda, Esseks believes this application is worthy of approval because there is an empty lot across the street, and because it is on a very, very busy street. And there is no one objecting to this application. Esseks does not see how the character of the neighborhood is going to be diminished, particularly if the screening is good. This is a very busy commercial area, more so than 17th and Garfield.

Brian Will of Planning staff urged that the two applications should not be compared. In this case, we have the R-T zoning to the north, which was established to put an end to the creep of commercial zoning down 56th Street. In cases like this, we have to rely on the language in the Comprehensive Plan that talks about preservation of neighborhoods and putting a stop to commercial expansion in areas like this. This application removes a house purely for the expansion of a parking lot. Esseks wondered whether it could be said that this might be a precedent to diminish or undermine the R-T zoning and that R-T is a plug or barrier. Will believes it was under that premise that the R-T was approved here, and that is where the commercial usage should end. Esseks suggested that R-T does have a fence like function. Will agreed and pointed out that there have been similar development proposals on "O" Street. "O" Street is problematic for a lot of reasons.

Sunderman presumes the R-T zoning was in place before 56th Street became one-way. Wouldn't the change of 56th to one-way change the whole dynamics of that corner? Will did not know whether that makes the case any stronger or weaker for residential uses. But, Sunderman believes it makes the access to the residence more difficult. Will responded that generally, the staff looks at full access in the sense of commercial development. He does not believe that is considered as the criteria to approve this type of change.

Larson pointed out that in addition to being one-way, 56th Street carries additional traffic because those going east on "O" wanting to go north pass in front of this property in order to turn left. Ray Hill of Planning staff disagreed. If you go south on 56th Street, you turn on M Street before you come to this site.

Strand pointed out that this application does not add another business. We're just supporting an existing business and all of the neighbors appear to be in agreement because they cannot park on the streets. There is no other place to park. All you are doing is moving the R-T line down a little bit to support an existing business. It does not add another commercial look. Will clarified that this does not move the R-T line. The zoning stays the same. We are relying on the statements in the Comprehensive Plan that talk about preserving existing neighborhoods and existing residences and protecting them against encroachment and expansion of existing commercial areas. Compatibility is another issue.

Strand recalled that sometime in the last year or two the Planning Commission went against the staff recommendation and changed some zoning to allow some office in a residential area. This has been done before.

Response by the Applicant

Schoenleber believes that every commercial zoning line is intended to be the end before it encroaches into residential zoning. Allowing a special permit in special situations to allow this parking lot to support those existing buildings is exactly what that zoning is for. He does not see a reason to deny this if the neighbors do not object.

ACTION BY PLANNING COMMISSION: November 9, 2005

Strand moved approval, with the conditions set forth in the staff report, with amendment to Condition #1, reducing to the number of parking stalls to twelve, seconded by Larson.
Strand pointed out that this lot sits across from an empty parking lot used for Christmas tree sales. It does not change the neighborhood. She thinks we are supporting an existing business and it will help keep them successful.

Esseks wondered how important it is to maintain the precedent of honoring the R-T zoning.

Pearson disagreed that R-T is a “fence”. She sees it as a transition. The more we grow, the more transition there has to be. She believes this application makes more sense than the 17th & Garfield application. This is on a busy one-way street. She respects that the owner did not tear the building down.

Carroll commented that the building is designed to look like it fits into the neighborhood and that is what R-T is designed to do. The parking lot will be visible from the street. If we limit it to 12 parking spaces, he would like to require that the parking spaces be closest to the building, i.e. that they redesign the parking lot to be as close to the building as possible and to increase the setback to the property owner to the south.

Carroll moved to amend to require that the 12 spaces be located as close to the building as possible, which increases the setback to the south, seconded by Pearson.

Strand believes they are already pretty close to the building.

Carlson agreed that R-T zoning is intended to be a transition district -- the massing and placement makes it transitional. The setting needs to be compatible. It raises the issue of creating an additional parking expanse – can you mass that to create compatibility? Maybe you can, but that goes back to the residential transition question.

The Commission asked the applicant to come forward to discuss the site plan for 12 parking stalls. Schoenleber advised that the layout he is showing today is for 12 stalls. If they pull the parking lot away from the side yard and do what they need to do and change to three parallel stalls adjacent to the building, it increases the side yard setback and it pushes it as far up to the north as possible and increases the access to 56th Street. There is a tree on 56th Street that they want to try to keep. He confirmed that they will try to push it north as much as possible.

Larson thinks they have already done what Carroll’s motion is requesting.

Esseks noted that this adds 12 parking stalls to 19 existing stalls. Are we making a low intensity use office building into something that could be quite different and have an impact on the neighborhood? He is worried about the precedent.

Carroll withdrew the motion to amend.

The main motion was clarified to be approval, with conditions set forth in the staff report, with amendment to Condition #1 to approve 12 parking stalls as shown on the site plan submitted today. Motion carried 5-2: Pearson, Larson, Carroll, Strand and Sunderman voting ‘yes’; Esseks and Carlson voting ‘no’; Taylor and Krieser absent. <u>This is final action, unless appealed to the City Council.</u>

ANNEXATION NO. 05017;
CHANGE OF ZONE NO. 05074
FROM AG AGRICULTURAL TO R-3 RESIDENTIAL;
and
PRELIMINARY PLAT NO. 05015,
HARRISON HEIGHTS,
ON PROPERTY GENERALLY LOCATED
AT N. 91ST STREET AND LEIGHTON AVENUE.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: November 9, 2005

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

Staff recommendation: Approval of the annexation, subject to an annexation agreement; approval of the change of zone; and conditional approval of the preliminary plat.

Ex Parte Communications: None.

Proponents

1. DaNay Kalkowski appeared on behalf of **Developments Unlimited,** which either owns or has a contract interest in approximately 90 acres located south of Leighton between 88th to 94th Streets. This is a request for annexation, change of zone to R-3 and a preliminary plat consisting of 318 single family lots, so the entire area will be shown as single family, which is in conformance with the Comprehensive Plan.

The developer held a neighborhood meeting on October 25th. They mailed to 90 addresses and had about 15 people attend. Their primary concern was when the sewer might get there. They are all primarily 5-acre lots to the south and east so they were curious about some of those issues. Another issue was their interest in a traffic light at 84th & Leighton Avenue.

Kalkowski submitted proposed motions to amend the annexation conditions and the preliminary plat conditions. She requested to delete Condition #2.3 on the preliminary plat because the developer is withdrawing the request to waive the pedestrian access easements. The pedestrian access easements will be shown where there are streets in excess of 1,000 feet.

Kalkowski requested to add Condition #3 to the annexation. In order to provide sewer service to this development, it may require a section of sewer that already exists in the Prairie Village development to the north to be upsized and reconstructed. While all of the work would occur in the City right-of-way, Public Works was concerned about giving the

neighbors some notice. The developer has met with Public Works and the potential neighbors. Subsequent to the meeting with Public Works, the developer provided additional information to see if we do need to upsize that sewer. To give Public Works extra time to review that issue, Kalkowski requested that a condition be added to the annexation which provides that if Public Works determines it is necessary to do the upsizing, this developer will show that they have met with the neighbors and talked about what that reconstruction project might mean. This would have to be done prior to scheduling the annexation on the City Council agenda. That could affect about 12 lots. All of the reconstruction would take place within the right-of-way. It would simply be a courtesy of letting the neighbors know what might happen.

Kalkowski believes that staff agrees with these amendments.

Kalkowski believes that this will be a development that will add some nice lots to northeast Lincoln.

It was confirmed that the sewer will be gravity flow.

There was no testimony in opposition.

Greg Czaplewski of Planning staff agreed with the proposed changes to the conditions. He clarified that the Public Works comment, #5.2 on page 3 of the staff report, raised the issue about notifying the neighbors prior to any public hearing. Since this condition has been added to the annexation, it would need to be satisfied as part of the annexation prior to scheduling on the City Council agenda.

ANNEXATION NO. 05017
ACTION BY PLANNING COMMISSION: November 9, 2005

Strand moved approval, with conditions, with the amendment requested by the applicant, seconded by Carroll and carried 7-0: Esseks, Pearson, Larson, Carroll, Strand, Sunderman and Carlson voting 'yes'; Krieser and Taylor absent. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 05074
ACTION BY PLANNING COMMISSION: November 9, 2005

Strand moved approval, seconded by Larson and carried 7-0: Esseks, Pearson, Larson, Carroll, Strand, Sunderman and Carlson voting 'yes'; Krieser and Taylor absent. This is a recommendation to the City Council.

PRELIMINARY PLAT NO. 05015
ACTION BY PLANNING COMMISSION: November 9, 2005

Strand moved approval, with conditions, with the amendment as requested by the applicant, seconded by Carroll.

Pearson stated that she is opposed because it looks like a classic case of a bulldozer and putting in little boxes for homes. It just doesn't appear to her to fall into the principles of pedestrian friendly and multi-use.

Motion for conditional approval, with amendment, carried 6-1: Esseks, Larson, Carroll, Strand, Sunderman and Carlson voting 'yes'; Pearson voting 'no'; Taylor and Krieser 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 November 23, 2005.

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