MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, July 5, 2006, 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, Mary Strand and Lynn Sunderman (Michael Cornelius and Tommy Taylor absent); Marvin Krout, Ray Hill, Mike DeKalb, Tom Cajka, Greg Czaplewski, Joe Rexwinkle, Teresa McKinstry and Michele Abendroth 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 June 21, 2006. Motion for approval made by Carroll, seconded by Sunderman and carried 6-0: Carlson, Carroll, Krieser, Larson, Sunderman and Strand voting 'yes'; Esseks abstaining; Cornelius and Taylor absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: July 5, 2006

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

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 06041, USE PERMIT NO. 117B, USE PERMIT NO. 04006A, SPECIAL PERMIT NO. 06039 and STREET AND ALLEY VACATION NO. 06003.**

Ex Parte Communications: None.

Item No. 1.3, Special Permit No. 06039, was removed from the Consent Agenda and scheduled for separate public hearing.

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

Note: This is final action on Use Permit No. 117B, unless appealed to the City Council by

filing a letter of appeal with the City Clerk with 14 days of the action by the Planning Commission.

SPECIAL PERMIT NO. 06039
FOR A LIMITED LANDFILL
ON PROPERTY GENERALLY LOCATE
AT SW 20TH STREET AND WEST "O" STREET
PUBLIC HEARING BEFORE PLANNING COMMISSION: July 5, 2006

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

Staff recommendation: Conditional Approval

Ex Parte Communications: None

This application was removed from the Consent Agenda and had separate public hearing at the request of an audience member.

Staff presentation: Joe Rexwinkle of Planning staff stated that this application is for a limited landfill on the southern portion of this property. It would be located behind two existing car dealership buildings. The applicant intends to haul construction materials and rubble for fill purposes and cover with soil and seeding for grass. Operation of hours would be limited from 8:00 a.m. - 6:00 p.m. from Monday thru Saturday.

Proponents

1. **Mike Eckert of Civil Design Group** appeared on behalf of **LeGrande Excavating**. The applicant would like to do some fill on this property. The fill area will be outside the existing floodplain and wetlands area. These areas were noted on the site plan that was submitted.

Opposition

1. **Meryl Schoenrock**, 320 SW. 20th, testified on behalf of his father, Alvin Schoenrock. There is a proposed pad site for a cell tower. This site is adjacent to his property to the west. They are concerned with water runoff from the property to the north. They are also concerned with where the pad site is located now. The settling of the landfill during a wet period could possibly cause erosion. He believes the current pad site is sitting in the 100-year floodplain. The previous owner experienced some erosion from some blacktop that was installed. He is also concerned with what will be allowed after this.

Staff Questions

Rexwinkle clarified that the plan that is before the Planning Commission does not show the pad site that the previous speaker referenced.

Esseks understands that in order for there to be a pad site for a cell tower to be built, a separate application would have to be submitted. Rexwinkle replied he was correct.

Carlson questioned the post-development in terms of land disturbance. Rexwinkle stated that this property owner would be responsible for runoff. Mike DeKalb of Planning staff also stated that fill permits are required – one through the City that documents where the fill is taking place and one through the Health Dept. that insures the rubble is clean and not biodegradable with a proper cover on top. The contours after the fill should not raise the water level at all. It won't put any more water to the southwest.

Response by the Applicant

Eckert stated that the grading plan was prepared by another company. The drainage should go to the east. The potential pad site has been an issue with Building and Safety. New survey data showed no fill in the 100-year flood plain. This is an application strictly for a limited landfill.

ACTION BY PLANNING COMMISSION: July 5, 2006

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

CHANGE OF ZONE NO. 06040
FROM B-1 LOCAL BUSINESS DISTRICT,
B-3 COMMERCIAL DISTRICT AND
R-6, R-5 AND R-4 RESIDENTIAL DISTRICT
TO R-4 AND R-2 RESIDENTIAL DISTRICTS
ON PROPERTY GENERALLY LOCATED
BETWEEN 40TH AND 48TH STREETS, FROM RANDOLPH TO "A" STREET
PUBLIC HEARING BEFORE PLANNING COMMISSION: July 5, 2006

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

Staff recommendation: Approval.

Ex Parte Communications: None

Additional information submitted for the record: Greg Czaplewski of Planning staff

submitted two letters in support from the Witherbee Neighborhood Association and Howard and Marilyn Cook, and one letter in opposition from Tim Otto.

Staff Presentation: Czaplewski stated that this change of zone covers quite a few blocks. Everything shown on the map is changing to R-2 zoning. A few changes were requested from Commercial to Residential zoning. After talking with the property owners and looking at adjacent commercial uses, staff determined that changing these to commercial would have a negative effect. He has talked to the applicant and believes they would agree to the changes. There is one owner that is requesting their property remain R-4 zoning.

Esseks questioned if staff was able to meet the concerns of property owners who have expressed reservations. Czaplewski replied that he has not talked to anyone else who opposes this, with the exception of the person who submitted a letter today expressing opposition.

Esseks wondered if the accommodation that Mr. Otto seeks is similar to one that has been given before. Czaplewski replied that the lots would become nonstandard under R-4 zoning.

Carroll questioned how long ago legal notice was sent to the property owners. Czaplewski replied that letters were mailed out about two weeks ago.

Carroll wondered how many letters were mailed. Czaplewski replied about 1,100. Carroll questioned how many single family homes in this area were converted to duplex or more. Czaplewski did not have the information immediately available to answer that question.

Strand stated that when she served on the Downzoning Committee, everyone involved was informed of the pro's and con's. Czaplewski indicated that he attended a neighborhood meeting and has addressed letters and phone calls. It is not his place to address mortgage and insurance concerns, etc.

Esseks noted that R-2 allows duplexes. He questioned what would be different under R-4. Czaplewski replied that R-4 needs 5,000 square feet per lot and R-2 needs 10,000 square feet per lot.

Proponents

1. Tracy Lines appeared on behalf of the **40th & "A" Neighborhood Association**. She stated the neighborhood has had some problems with people purchasing homes and converting them to duplexes. This can lead to party houses. At a board meeting in April 2005, a speaker addressed zoning in general. In the Fall newsletter, October 2005, there was an article talking about the possibility of the neighborhood association filing this application. In January 2006, the association stated their intent to file the application and in the Spring 2006 newsletter the association stated the anticipated date of filing the

application. They mailed out letters to all property owners in the affected area. It was approximately 800-900 people. She acknowledged that Greg Czaplewski appeared at a meeting along with a former Commission member. Thus, the association believes that they have gotten the word out to the affected people. She believes the staff report expresses why this change of zone is supported. Witherbee Neighborhood Association has expressed support for this change of zone. This application attempts to match the current use with the zoning. There are a few properties where the association proposed changes, but the owners of those properties had different ideas. They agreed to go along with the owners' propositions. They are requesting the church be zoned down to residential. The current density is 6.2 units per acre and a nice level to maintain. Seven people stood in support of this application.

Strand wondered who the speaker was at their meeting. Lines does not recall.

Strand further questioned the newsletter. Lines replied there is a newsletter that is hand delivered twice a year and a monthly newsletter that is mailed. Strand believes that this would have gone to tenants and not the owners. Lines replied that owners were mailed a letter of their intentions to file this application in April 2006.

Carroll wondered how the association knows that the neighborhood is changing. Lines replied that it is just a feeling. Carroll wanted to know if the association has voted on this application. Lines replied no.

Carroll stated that there is a choice to delay this application or possibly receive a 'no' vote. He would prefer to delay this application until the Downzoning Committee is finished with their work.

2. Nye Bond, 859 S. 45th St., appeared in support due to his observation of this neighborhood and the time that he has lived there. Neighborhoods, Inc. previously wanted to declare the area around 33rd & "A" a blighted area. Some properties were not being kept up very well. The number of duplexes/apartments is increasing.

Opposition

1. Helen and Joel Sindelar, 2630 Winchester South, testified in opposition. Helen Sindelar stated that they own property just inside the border of the proposed change. It is on the southeast corner of 33rd & "B" St. They own the commercial business and the lots behind it. They would like Lots 207 & 208 left as R-4. They have possible future plans to build apartments.

Joel Sindelar does not see any blighted apartments in the area. He sees some blighted houses.

Helen Sindelar stated there are four lots next to each other and it would be detrimental to

change some of the lots and not the others.

Joel Sindelar stated that they have never received a newsletter from the neighborhood organization. Helen Sindelar stated they received notice of this application from the Planning Dept. on June 28, 2006.

Esseks wondered what letter the Sindelars received from the association. Helen Sindelar replied that they received a newsletter in April 2006 speaking of a possible application and they were out of town during the next association meeting.

2. **Rebecca Cast**, 4831 Mandarin Circle, testified in opposition. She owns property at 41st & "G" St. She and her husband bought their first house in the area 40 years ago. They had a lot that no longer met the standards of a duplex. They conform currently with what the city requires. They were advised of the April 25, 2006 meeting. They got a letter a few days before and spoke out about their protest. If this is downzoned to R-2, additional square footage is needed. They have already gone to the expense to meet the standards. When they attended the April 2006 meeting, it was stated that a woman in the area had two homes converted to duplexes. She thinks that was the reason for the application. They have had opportunities to develop their property. They would request that their two properties be left at R-4. Value would be lost if downzoned.

3. **Chad Arens,** 4300 "F" St., testified in opposition. He lives in a duplex. He bought this property in November 2005 and he has considered the possibility of seeking a triplex. He believes his property is well kept. He is not sure that his property will even be affected. He received a letter from the Planning Dept. notifying him of the changes being proposed and it only left him two weeks to respond. He thinks this is an inappropriate reaction and response to some bad renters in the area. He does not think all landlords should suffer due to some bad ones.

Esseks questioned if Mr. Arens could build what he wants under current R-4 zoning. Arens stated that he currently has two units. He does not know about other zoning classifications, but he believes R-2 would hamper his efforts.

Strand stated that if the house is burned down, the owner is not guaranteed that the property can be rebuilt.

Staff Questions

Esseks questioned what other downzoning has occurred. Czaplewski replied that there have been a few, nine since February 2002.

Esseks wondered what has happened previously when individual owners come forward and state their expectations. Czaplewski replied that the Planning Commission has taken different views. At times, some property has been taken out and some has been left in.

Carroll wondered about the ramifications of a property becoming nonstandard. Czaplewski replied there is potential for problems if the property is destroyed. If the house meets R-2 setbacks but the lot is too small, it can be rebuilt. R-4 and R-2 setbacks are the same for front yard. Side yard setbacks are the same for single family. The side yard setback for a duplex is increased from five feet to ten feet.

Carlson wondered about possible insurance changes, etc. Czaplewski acknowledged that this question comes up periodically, but he can address only planning and zoning questions.

Response by the Applicant

Lines stated that she has answered many phone calls. Most of them were in favor of this change. The few that were in disagreement were mostly from landlords. She fails to understand if you own some land for several years and have big plans but fail to follow through, how it affects you. The Sindelars currently own two lots that are R-4 and two lots that are commercial. When she spoke with Helen Sindelar, it was indicated to her that they had planned on possibly constructing a building or parking lot. From the standpoint of the Neighborhood Association, they are concerned about what could be built in the future. She feels that the association has worked with the Sindelars. They were notified of the Spring meeting. They couldn't attend because they were on vacation. She feels they have had ample time to figure out the zoning codes. As for the other two landlords, the association doesn't want more houses converted to duplexes or triplexes. They want to maintain their density.

Esseks would like the reasons the association is asking for this application. Lines replied there was an instance in the neighborhood that was starting to encroach on the neighborhood boundaries. They want to preserve the residential character, prevent parking problems and prevent party houses. They have seen other neighborhoods change from primarily owner occupied to rental and how it has negatively affected them.

ACTION BY PLANNING COMMISSION: July 5, 2006

Carroll moved to defer and continue public hearing on this application in 120 days, seconded by Strand.

Carroll believes it is premature for downzoning applications to come forward without the Planning Commission's Downzoning Committee being finished with their work.

Strand agrees. She was also on the committee. Anytime we downzone, we are also taking away affordable housing. She thinks that downzoning helps some and hurts others. She does not think the neighborhood association handled this as well as they could have in terms of working it out with property owners beforehand.

Carlson commented that he will not support the motion. The applicant has requested action. The Downzoning Committee has met but there is not an absolute consensus yet. He thinks this neighborhood has done a good job. He thinks that downzoning is important. We've made a few changes already on downzoning that have corrected the major

deficiencies, i.e. are you grandfathered in and can you rebuild? He thinks the applicant should get a recommendation and it should go forward to the City Council. He hopes that recommendation is positive. He has had properties downzoned and he's had no impact from a bank or insurance company. He will not support the issue to delay.

Carroll stated that people have come forward pointing out that errors have been made or they don't want their property rezoned. If they have only heard from a few, he wonders how many others have not been heard with a holiday weekend.

Carlson believes it would be appropriate to delay if the application is incomplete, but he is not sure it is appropriate to delay when the applicant hasn't requested a delay.

Esseks believes that downzoning is a good idea. He would like to encourage more owner occupancy. He is conflicted. He thinks waiting four months to make a decision is too long. He thinks 30 days is reasonable.

Carroll stated that there has been no proof presented that changes have happened in the area. If this application is approved, you are just pushing affordable housing out farther. Motion to defer with continued public hearing scheduled for November 8, 2006, carried 5-2: Carroll, Larson, Krieser, Strand and Sunderman voting 'yes'; Carlson and Esseks voting 'no'; Cornelius and Taylor absent.

Carlson believes that in the past when Planning Commission has placed applications on hold for extended periods, they have been asked to reconsider.

Rick Peo of the City Law Department appeared and stated that he believes a lengthy delay should not be mandated upon the applicant. They have the right to have their application decided up or down. He would have agreed that a 30-day delay was reasonable due to the type of detailed information and the number of property owners. There is no guarantee that the Downzoning Committee will have decisions made within the 120 days. This puts the applicant in an awkward situation. There is no procedure to forward this on to the City Council because a deferral cannot be appealed. He thinks 120 days is too long.

Carlson wondered if anyone wished to make a motion to reconsider. There was no response.

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Break

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Carlson clarified that the previous motion to continue public hearing on Change of Zone No. 06040 would put the item on continued public hearing for November 8, 2006. He questioned if there was anyone who wanted to discuss the motion. There was no response.

COUNTY PRELIMINARY PLAT NO. 06008
ROKEBY ACRES
AND
COUNTY SPECIAL PERMIT NO. 06038
TO ALLOW DWELLING UNITS
WITHIN 1320 FEET OF A PUBLIC LAKE,
ON PROPERTY GENERALLY LOCATED AT
SW 40TH STREET AND W. ROKEBY ROAD
PUBLIC HEARING BEFORE PLANNING COMMISSION: July 5, 2006

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

Staff recommendation: Denial.

Ex Parte Communications: None

Additional information submitted for the record: Mike DeKalb of Planning staff submitted a letter in opposition from John MacKichan and Barbara Gibson MacKichan.

Staff presentation: Mike DeKalb of Planning staff stated that the city annexed land in the area effective one week ago. That moved the city jurisdiction out to split this lot in half. The aerial photo shows the new line. On Tuesday, June 27, 2006, the Lancaster County Board approved the change of zone to AGR. This is an overlay build-through area. The applicant has requested this item be put on pending.

Strand moved to defer with continued public hearing and action scheduled for October 11, 2006, seconded by Carroll and carried 7-0: Carlson, Carroll, Esseks, Krieser, Larson, Sunderman and Strand voting 'yes'; Cornelius and Taylor absent.

Proponents

1. **Dan Rezak** appeared. He lives within one mile of the property. They are in favor of this application. Yankee Hill Lake is in the area. There is currently no water in the lake. Their land was purchased as a farm. Today the land is not farmed due to circumstances. Their anticipation has been that infrastructure will support additional housing. When he talked with one of the planners, he was told there is a presumption of denial. He questioned the specifics upon which an application is evaluated. He would like to see a finding of fact. He has lived in the area 32 years. He believes the state and federal constitution gives you

rights on your own property.

No one appeared in opposition.

COMPREHENSIVE PLAN AMENDMENT NO. 06004
TO AMEND THE "NORTH 48TH STREET/UNIVERSITY PLACE PLAN"
AND
CHANGE OF ZONE NO. 06035
FROM P PUBLIC USE DISTRICT
AND B-3 COMMERCIAL DISTRICT
TO O-2 SUBURBAN OFFICE DISTRICT
ON PROPERTY GENERALLY LOCATED
AT UNIVERSITY PLACE PARK; 49TH STREET TO 51ST STREET
PUBLIC HEARING BEFORE PLANNING COMMISSION: July 5, 2006

Members present: Carlson, Carroll, Esseks, Krieser, Larson and Sunderman; Strand declaring a conflict of interest; Cornelius and Taylor absent.

Staff recommendation: Approval.

Ex Parte Communications: None

Staff presentation: Greg Czaplewski of Planning staff stated that these two items come forward from Urban Development in connection with the Child Advocacy Center. There is the potential for some more public service facilities. If you read through the letter from Lynn Johnson, a much bigger area is reflected than is included in the staff report. After city staff talked with the applicant, they decided the change of zone should be limited to the area indicated on the map included with the staff report. The plan will show the area as potential office development. The Child Advocacy Center has some immediate needs; a portion will stay park land for the time being. An indication is given of an area where they intend to expand.

Proponents

1. JJ Yost from Parks and Recreation appeared. This property is not currently Parks land but is city-owned land. The Parks Department has been working on a master plan along with the University Place Community Organization. Dead Man's Run cuts diagonal through the park. The proposed center is on the north piece of the property. Some of the elements of the master plan are already in place. They believe they have a good plan. Some additional parking would be associated with the center immediately west of the center.

2. Sheriff Terry Wagner appeared. He wants the Commission to understand what this organization provides. It is a unique nonprofit agency. It receives both government and

private funding. It provides a child friendly place to conduct investigations of child assault. Unfortunately, the number of children seen over the years has increased. They are currently in a building at Antelope Park. Seeing 40-50 children a week, they have outgrown their current space. This is not an overnight facility. He believes they have been a good neighbor to the Auld Recreation Center and the neighborhood association.

3. **Lynn Ayers**, Executive Director of the Child Advocacy Center, testified in support. She has met with the University Place Community Organization board and Parks officials. UPCO is strongly supportive of this project. She met with University Place Business Association and they voted to support this project. She visited personally with Mr. Butler to hear his concerns. He was strongly supportive of this project. Letters to the community were sent out for an UPCO board meeting where attendees could see the plan.

Opposition

1. **Guy Farr,** 5119 Colby, lives across the street from Mr. Butler. He understands that the Advocacy Center is greatly needed. But, this is one of the few parks in town that has shelters and established trees. On 48th St. alone, there are two businesses that sit vacant. There are vacant store fronts in University Place. He sees people daily using the park. It is one of the jewels of the city. To see that destroyed, he finds that hard to believe. A good portion of the neighbors who border the park have never been contacted. He does not see the point of tearing up park land when there are other spots available.

Staff Questions

Esseks questioned if this property is now part of the park. Czaplewski stated that this property is adjacent to the park, but not part of the park itself. It is city-owned and will continue to be city-owned.

COMPREHENSIVE PLAN AMENDMENT NO. 06004
ACTION BY PLANNING COMMISSION: July 5, 2006

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

CHANGE OF ZONE NO. 06035
ACTION BY PLANNING COMMISSION: July 5, 2006

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

OTHER BUSINESS:

Carlson commented that he believes his main duty as chair is to make sure that the proper process is followed. He is concerned in regards to Change of Zone No. 06040 because the City Attorney has advised that the Commission has not properly followed the process, and that a motion to delay for that length of time, over the objections of the applicant, is improper. He thinks it is his duty and obligation to urge the Commissioners to take another minute to think about that and follow the advice of the City Attorney and offer a motion to reconsider. He wants the process to be properly followed and he is concerned that hasn't happened. A motion to reconsider the action taken would be needed before a new motion could be made. Someone from the prevailing side of the motion to delay would need to make a motion for reconsideration. No one made a motion.

There being no further business, the meeting was adjourned at 3:25 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on July 19, 2006.

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