MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, September 13, 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, Michael Cornelius, Dick Esseks, Gerry Krieser, Roger Larson, Mary Strand, Lynn Sunderman and Tommy Taylor; Marvin Krout, Ray Hill, Mike DeKalb, Steve Henrichsen, Brian Will, Tom Cajka, Sara Hartzell, 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 August 30, 2006. Motion for approval made by Carroll, seconded by Krieser and carried 8-0: Carlson, Carroll, Cornelius, Esseks, Krieser, Larson, Sunderman and Taylor voting 'yes'; Strand abstaining.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: September 13, 2006

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

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 06056; CHANGE OF ZONE NO. 06057and PRE-EXISTING USE PERMIT NO. 8F; SPECIAL PERMIT NO. 06048; COMPREHENSIVE PLAN CONFORMANCE NO. 06010; COMPREHENSIVE PLAN CONFORMANCE NO. 06011; ANNEXATION NO. 06015, CHANGE OF ZONE NO. 06058 and USE PERMIT NO. 06005.**

Ex Parte Communications: None.

Item No. 1.4, Comprehensive Plan Conformance No. 06010, was removed from the Consent Agenda at the request of Commissioner Strand.

Taylor moved approval of the remaining Consent Agenda, seconded by Carroll and carried 9-0: Carlson, Carroll, Cornelius, Esseks, Krieser, Larson, Strand, Sunderman and Taylor voting 'yes'.

Note: This is final action on Special Permit No. 06048, Comprehensive Plan Conformance No. 06011 and Use Permit No. 06005, 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.

COMPREHENSIVE PLAN CONFORMANCE NO. 06010, PROPOSED AMENDMENT TO THE ANTELOPE VALLEY REDEVELOPMENT PLAN TO ADD THE "17TH AND O MIXED USE HOUSING PROJECT". PUBLIC HEARING BEFORE PLANNING COMMISSION: September 13, 2006

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

Ex Parte Communications: None.

This application was removed from the Consent Agenda at the request of Commissioner Strand.

Staff presentation: Sara Hartzell of Planning staff explained that this application was submitted by the Urban Development Department for the property known as the Images II building on the corner of 17th & O Streets, which is proposed to be a mixed use development with approximately 40 one- and two-bedroom "for sale" housing units on the second, third and fourth floors of the building, with the first floor being retail and office on the street side, with parking accessing O Street and off the alley. The access point on the O Street side will be a right-turn entrance only. No left turns will be allowed from the east-bound lane. The 17th Street curbcut would be abandoned and there will be entrance from the alleyway into the parking.

Strand pointed out that there is obviously going to be more than 40 cars. Forty dedicated on-site parking stalls does not seem like enough. She understands that B-4 zoning does not require the parking, but she is concerned because there is nowhere else to park around there. She wondered whether the parking garage at 17th & R is available to non-students. Hartzell thought there might be parking to the east side.

Dallas McGee of Urban Development stated that the owner does plan for parking on-site.

Carroll noted the cost of $900,000 for public improvements. Is that consistent across the whole half block? McGee explained that it would occur within the boundaries, which could include that entire block face of O Street, and including the alley on the north side of O Street. It was requested early on that we look at the overhead power lines in the alley and put those power lines underground, and that is probably the most significant cost. Other costs are related to traditional utility improvements, streetscape improvements and any other public related improvements, but it could include anything within that boundary.

Carroll inquired whether other property owners would be able to tap into those public funds for the streetscape improvements. McGee stated that the intent would be to do that entire block face on O street so that there would be a consistent approach as to how the streetscape would be developed.

Proponents

1. **Dallas McGee of Urban Development** further explained that this amendment to the Redevelopment Plan creates a project area within the Antelope Valley Redevelopment Plan that allows the use of TIF. It is a step in that process. Once the project area is created, Urban Development will then sit down with the owner and negotiate a Redevelopment Agreement, which will address some of these issues.

2. **Redge Johnson,** 8145 Hickory Lane, the owner of the property, testified in support, stating that he has been in the Images II building for 27 years and is looking to upgrade its use for the items as outlined in the proposal.

With regard to parking, Johnson acknowledged that the zoning does not require parking, but he believes that parking is important. He will be providing 40-42 parking stalls, which can actually be used with electric lift systems to get two or even three cars in those areas. He has consulted with UNL and they do allow monthly parking in the 17th and Q to R garage.

Larson inquired whether there would be an entrance off of 17th Street. Johnson explained that he is giving up a curbcut that is part way north of O Street before the alley. The alley access will be widened so there will be a corner entrance and exit back on the alley on the east edge of the alley.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION: September 13, 2006

Larson moved to find the amendment to be in conformance with the Comprehensive Plan, seconded by Carroll.

Strand suggested that condo's will be much more successful if there is adequate parking available. To help downtown residences be successful, she would strongly suggest there be more parking provided.

Motion for a finding of conformance carried 9-0: Strand, Cornelius, Sunderman, Taylor, Larson, Krieser, Carroll, Esseks and Carlson voting 'yes'. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 06054
AMENDMENT TO TITLE 27 OF THE
LINCOLN MUNICIPAL CODE RELATING
TO NONSTANDARD USES.
PUBLIC HEARING BEFORE PLANNING COMMISSION: September 13, 2006

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

Ex Parte Communications: None.

Staff presentation: Stephen Henrichsen of the Planning staff presented the proposed text amendment. The main genesis for this proposal was the discussion by the Planning Commission relating to downzoning requests. This attempts to address concerns in terms of properties being listed as nonstandard as a result of downzoning.

The first part of the amendment relates to labeling of existing single family and two-family residences, e.g:

> If an existing lot or tract lawfully occupied by a single-family or two-family dwelling on the effective date of this title or on the effective date of a change in district boundaries from another zoning district to this district has less area or width or both less area and width than herein required, such lot or tract shall not be considered nonstandard due to such condition.

This addresses some of the concerns about an existing nonstandard lot. This clarifies that it is not nonstandard. If this amendment is adopted by the City Council, the staff would then work with realtors, appraisers, and lenders to make sure they are all aware of this amendment.

The proposed amendment goes one step further, e.g.:

> If an existing lot or tract is lawfully occupied by a two-family dwelling which has a side yard setback of less than ten feet and said use becomes nonstandard through a change in district boundaries from another zoning district to this district, the two-family dwelling may be enlarged, extended or reconstructed as long as the existing side yard or a five-foot side yard, whichever is greater, is provided.

The proposed amendment addresses another issue which came out of the downzone recommendations in regard to multi-family uses in R-1 through R-4. This amendment provides that if multiple-family residential uses made nonstandard through a downzoning are destroyed, the owner may retain the licensed number of units they had at the time the use was destroyed.

The proposed amendment also clarifies when lots are considered combined and when they are not.

This proposal also deletes "boarding and lodging houses" in the statement of intent, which should have been deleted six years ago.

Strand asked Henrichsen to define the change of two lots side by side, and when you can combine them and make it one lot. Henrichsen referred to page 8 of the staff report, line 22:

> If such vacant lot or tract comes under common ownership with an abutting lot or tract, such vacant lot or tract may continue to be used for a single-family dwelling provided said abutting lot or tract was occupied by a dwelling unit on the date such vacant lot or tract and the abutting lot or tract came under common ownership.
>
> If such vacant lot or tract comes under common ownership with an abutting vacant lot or tract which has less area or width or both less area and width than herein required, such lots and tracts shall be merged together and constitute a single premise.

If the vacant lot has not been owned in common with an adjacent property at any time since 1953, it can be used for single family. If it has been under common ownership but one of those lots had a dwelling unit on it, the vacant lot could still be used for another dwelling unit. If both of the abutting lots have been vacant, then they shall be considered merged together and could be used for a single dwelling.

Strand suggested the scenario of two houses side by side on normal size lots – both in tear-down condition. If someone wants to tear them down and construct a duplex, would that still be allowed? Henrichsen stated that if those two lots together had enough lot area for a duplex, it could still be used for the duplex.

Strand noted that if a multi-unit burned down with five units, they can rebuild five licensed units. What if the zoning allows for six units? Henrichsen pointed out that R-1 through R-4 does not allow six units. If R-6 goes to R-4 and there were three units when it was zoned R-6, they could not go to a four-plex, which they might have been able to do under the R-6 zoning.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION: September 13, 2006

Carroll moved approval, seconded by Esseks.

Strand thanked staff for allowing the downzone committee to meet and work on this because there were some loops and holes that needed to be fine-tuned.

Motion for approval carried 9-0: Strand, Cornelius, Sunderman, Taylor, Larson, Krieser, Carroll, Esseks and Carlson voting 'yes'. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 06045
FROM B-1 LOCAL BUSINESS TO R-2 RESIDENTIAL,
FROM O-2 SUBURBAN OFFICE TO R-2 RESIDENTIAL,
AND FROM R-4 RESIDENTIAL TO R-2 RESIDENTIAL,
ON PROPERTY GENERALLY LOCATED
FROM 33RD STREET TO 48TH STREET,
FROM "O" STREET TO RANDOLPH STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: September 13, 2006

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

Ex Parte Communications: None.

Staff presentation: Stephen Henrichsen of the Planning staff submitted three items of additional information, including two e-mail messages in support and a staff memorandum setting forth the trend of single, two-family and multi-family dwelling units in the Witherbee Neighborhood since 1970, the main difference being that there were 33 less single-family dwelling units between 2006 and 1970. There are 66 more two-family dwelling units, which would mean 33 more buildings that may have been conversions or new construction, and an increase of 24 multi-family units during that period. The overall change has been an increase of 57 dwelling units during that time period.

Henrichsen reviewed the change of zone request, there being three parts. The largest is the 48 blocks from R-4 to R-2. Most of the area is already single family or duplex use. There are two other small portions included from O-2 to R-2 and he believes the owners are in support. There is a thin sliver of B-1 being changed to R-2 on the Tabitha Health Care Complex at 48th & Randolph, the remainder of the complex already residentially zoned, and they are in support.

Henrichsen suggested that the Witherbee Neighborhood Association has attempted to work to comply with the Planning Commission direction given on downzoning requests. Staff did attend a neighborhood meeting on July 22nd; notice had been sent to all the property owners by the neighborhood; the staff also sent a notice dated August 11th to all property owners, which was four weeks prior to this public hearing.

Henrichsen took the position that in the eleven previous downzoning requests approved, this application seems consistent. The neighborhood has submitted approximately 360 signatures in support of this application. His research finds that in general, these older neighborhoods have much higher density than we find in newer areas, with quite a significant amount of multi-family and duplex development within the older neighborhoods.

The staff is recommending approval because this application attempts to provide a greater degree of predictability in terms of what happens to single family uses in the neighborhood. R-2 would certainly provide a very comparable degree of predictability.

Henrichsen went on to state that this application is consistent with a lot of the goals of the Comprehensive Plan, particularly preserving affordable housing and preserving single family uses which are very typical for a lot of first time home buyers in our community.

Esseks inquired whether there is any data on how many of the duplexes that were built new since 1970 have been built recently. Henrichsen did not have any such data. The staff attempted to go back in terms of time but did not put it together for the last five years. Perhaps the neighborhood association could provide better information.

Proponents

1. Mike Fitzgerald, 3794 H Street, appeared on behalf of the **Witherbee Neighborhood Association.** The reason the association has made this request is because they want to help the city achieve the goals of the Comprehensive Plan to preserve the best of what Lincoln has – its neighborhoods. This area is in the very center of Lincoln, and this particular request is the western two-thirds of the area. The Witherbee Neighborhood Association is seeking to give those property owners and families the same protection as those people in the eastern area.

Mr. Fitzgerald pointed out that the Comprehensive Plan calls for preserving the character of the neighborhoods, and that is what this is all about. The Association believes the neighborhood is vulnerable under the current R-4 zoning, specifically because of the age of the homes – "many are in condition where we think that it is a fork in the road." At this age, many of the homes either continue to be maintained or they slide into a downward spiral. We think that this is a proactive approach to keep that downward spiral from happening. We are trying to avoid the mistakes that have been made in the Near South neighborhood when properties became marginal and then it became very attractive to conversions and changing the neighborhood forever.

Fitzgerald agreed with the summary of the staff report. If you read no further than the first page, it captures the heart of what this application is trying to do. Fitzgerald then referred to page 7 of the staff report where it talks about a potential conflict of argument in the Comprehensive Plan. Different parts of the Plan call for efficient use of infrastructure on one hand, and preserving existing single family homes on the other hand. Fitzgerald agrees that that can be a conflict but he does not believe that it is in this case. He illustrated the mix of housing in the neighborhood. This neighborhood has changed over the past 30 years and is built to almost capacity. Most of the vacant lots are gone. What exists today is a nice mix of single family/duplexes and a few multi-plexes. It is a great place to stop, and the R-2 can help avoid a downward spiral where those smaller marginal houses become attractive for something that would change that part of the neighborhood forever.

Fitzgerald also pointed out that there is overwhelming support in the neighborhood for this request. It is in line with all of the other requests that have been made for the very same reasons.

Esseks asked for the percentage of the total dwelling units which are currently rentals. Fitzgerald did not know, but he suspects it is about 25% rentals.

2. Fred Freytag, 530 S. 38th Street, testified in support as president of the **Witherbee Neighborhood Association.** He displayed photographs showing the character of the neighborhood which they are seeking to preserve. "We are here to be proactive, not reactive." We do not normally think about investors being the homeowner, but we need to take a good look and indeed call the homeowners the investors. A homeowner will invest more because of the quality of life that they wish to have as opposed to the dollar they get in return. This neighborhood has lawns, front yards, and back yards where families can play. When you take that away with slip-ins, more and more of the lot is taken up. It really changes the character of the neighborhood. Higher densities usually bring higher crime. The infrastructure may not support all of the cars coming and going or parked on the street creating problems for snow removal. There are some areas where there are larger lots. And people like those and purchase them. There are some areas with small lots and starter homes. The neighborhood is not against duplexes, but then sometimes when places fall into disrepair we end up with something without front doors and porches with insufficient parking. R-2 will give more protection to the people that come to invest in their own home, and this investment should be guaranteed for the long term. "We want to keep what we have."

Strand inquired about the photograph of the dwelling at 41st and N Street. Freytag explained that the lot was big enough so they added on. The house is connected to the big structure. The neighbors have complained about the traffic going down the alley. It is just a duplex and the house is part of the duplex. The garages are in the back. Freytag clarified that the neighborhood association is not against a duplex, but it would be nice if it fits with what is already there.

3. Richard Bagby, 389 S. 47th Street, testified in support. His property is located in the most densely populated portion of the neighborhood, with 14 duplexes and six multi-family buildings. A few of the multi-families are part of this rezoning. This application does not attempt to prohibit any current uses but to preserve the character of what already exists. The mixed use character is what this application is attempting to preserve, and the R-2 zoning better fits the existing character. The neighborhood association wants to prevent the current character from changing.

Bagby then reviewed the timeline which started with a neighborhood newsletter a year ago in September. Every edition of the quarterly newsletter has publicized this application, which is hand delivered to every address in the neighborhood association. The owners

would have received their first notice in July, which the neighborhood association sent out inviting all property owners to that meeting, which was a two-week advance notice. The association solicited financial support for the mailings, and although a vast portion came from property owners, they also received financial donations from in-town and out-of-town landlords in support of this effort. Bagby submitted an additional 38 signatures in support, including 22 property owners and 16 tenants. The most current data available (which was developed from the property owners contacted in this effort), represents 2/3 owner-occupied and 1/3 rental.

Bagby believes that approximately 20 people attended the neighborhood meeting in July. There was one attendee who was initially opposed, but Bagby understands that the objections have since been resolved by the efforts of the staff as a result of the downzone committee recommendations.

Esseks inquired as to the arguments in favor expressed by the people in support. Bagby recalled that the arguments in support were preservation of the existing character of the neighborhood. He personally bought in the neighborhood five years ago in the most densely populated portion of the neighborhood. To his immediate south at 47th & L, is single family owner-occupied and rental single-family and duplexes. That is the quiet end of the street. To the north of his property are 14 duplexes and six multi-family apartment buildings – that's the trash end of the street – furniture on the curb, lawns not mowed. From his own personal viewpoint, this is not so much preservation of his corner, but preservation of the rest of the neighborhood.

Esseks inquired where the occupants of the duplexes park. Bagby noted that the duplexes are near his house. They all have plentiful off-street parking and there are still cars constantly parked in the street. He does not know if they are visitors or residents, but a good share of the license plates are out-of-state.

Strand inquired whether most of the garages in this area are single stall. Bagby observed that quite a few of the homes in this neighborhood do not have garages. Strand assumed, then, that most of them have a single stall off the street or off-street parking.

4. Tracy Lines, 1001 S. 37th Street, testified in support on behalf of the **40th and A Neighborhood Association Board**. She believes it is appropriate for the association to preserve and protect. The 40th and A Neighborhood Association offers support to the Witherbee Neighborhood Association because the two associations share a common boundary, Randolph between 33rd and 48th. The 40th and A Neighborhood Association believes that if the Witherbee neighborhood is adversely affected, it will create negative consequences for 40th & A as well. We do not want our neighborhoods to be known for low-end housing. Lines reminded the Commission that with the text amendment recommended for approval today, the only individuals that downzoning negatively affects are those planning to change the use of the land and have not yet done so. Those are primarily individuals from which we want to protect our neighborhood. Her association feels

strongly that homeowners, especially first time home buyers, look to these areas to purchase homes, not income-producing investments.

Ten to twelve people stood in the audience in support. She believes that it is the responsibility of the Planning Commission to be stewards of the Comprehensive Plan. There was no testimony in opposition.

Strand inquired whether the duplex that was shown in the photographs could be built in R-2 zoning as well. Henrichsen believes that the lot is large enough for that to be true. This change does not preclude any of that from continuing to happen.

Strand inquired as to the biggest difference for recommending R-2 versus R-4. What is the biggest gain? Henrichsen suggested it to be "a certain degree of predictability." R-4 does not present a lot of predictability. 96% of the lots under R-4 could be converted to a duplex use. Predictability is one of the main issues in terms of R-2 zoning – in large areas of single family, we try to protect that affordable housing.

Carroll suggested that if a neighborhood is built out (which this one is), there is less likelihood for conversion of single family to duplex or multiple dwellings. Why run away from the R-4 when history has taken care of the situation by itself? Henrichsen believes that there are still conversions. Over the longer term you would add about a duplex or so a year. In some circumstances, the neighbors have found that the duplexes are quite jarring in their appearance even though they meet the design standards. Our neighborhood design standards are the basics – windows and doors facing the street, certain pitch of roof, porches, parking in the back, etc. The fact that you add a very large structure on the back of a very small structure is not prohibited.

Carroll noted that the density is 4.1, which is less than new subdivisions on the edge. Henrichsen suggested that in terms of this particular situation, the density is about typical for what you see in newer single family areas. It is also in the range of the previous downzonings that have been approved. Carroll pondered then at what point do we say the density is okay? How far do you go down the scale? If it is less dense than new subdivisions on the edge, aren't you creating a problem with lowering the density in the inner city? Henrichsen does not believe so. We are looking at the overall area. It is not so much about density in the smaller area, but this is more about predictability and preserving the affordable housing. Overall in terms of the older neighborhoods, you have a much greater density than in other newer areas of the city.

Because there are portions that are not being downzoned, Carlson inquired whether that makes the overall density higher. Henrichsen pointed out that a lot of the greater density is on the other side of O Street.

Esseks suggested making it harder to convert from single family to duplex by requiring a sizable minimum square footage requirement per unit in a duplex. Henrichsen stated that

none of our zoning categories have included a minimum size dwelling unit. He does not believe that has been the case here in terms of the concern that the units are too small, but more a concern for some of the 3-4 bedroom units with 5-6 people in terms of the number of cars. Esseks believes the housing code has some rather liberal requirements regarding the square footage, i.e. 120 in the main room and 50 per person in the bedrooms. His concern is that it is relatively easy to create a duplex in our community without these minimum square footage requirements. Henrichsen suggested that the square footage requirement opens up a whole different can of worms in terms of impacting the ability to have a studio apartment, etc. Our building code is a more universal code. Esseks stated that he is just trying to point out that it is relatively easy to create new duplexes. He believes these folks are right to protect themselves by going to the R-2 with 10,000 sq. ft. minimum.

With regard to percentage of owner-occupied versus rental, Henrichsen stated that one of the neighbors pointed out that the owner address matched the address of the unit on 66%. Throwing in the fact that a lot would be one address with one, two, or three units, he would guess that 40% of the entire neighborhood might be rental.

Response by the applicant

Fitzgerald suggested that pulling out the cemetery would make the density 4.5. Density for him is half of the equation – equally important is the character and kind of construction that we have.

Fitzgerald re-emphasized the support for this request. The 400 people who have signed in support would fill this Chamber three times over. Those collecting signatures ran into virtually no opposition. The opposition he encountered was from possibly two people who do not sign petitions for anything. The support is neighborhood-wide and that is worthy of a vote in support.

ACTION BY PLANNING COMMISSION: September 13, 2006

Taylor moved approval, seconded by Esseks.

Taylor believes it is very clear that we have a community of people really interested in maintaining a decent lifestyle. To revitalize this community by being proactive is a very positive step in the right direction. The staff is in agreement in terms of what we want to achieve in the Comprehensive Plan, i.e. to take ownership of neighborhoods. There is a certain amount of density that is needed, but we do not want negative density in the community. Many neighborhoods are protected by covenants. These people have no other means of controlling the incline or decline of the neighborhood, so they are using petitions. Yes, there is a argument about density in the city and the outer edge. He thinks it is a good idea for apartments to be built on the outer fringes. The quality of living, even in the new apartment complexes, is far better in the outer edges as opposed to turning the

homes into duplexes and duplexes into rental units. He believes this is a very positive approach and he salutes the neighborhood for taking responsibility to help our community be a better place to live.

Esseks suggested that the Comprehensive Plan is ambivalent. It tells us to promote single family ownership, but it also tells us to promote a diversity of housing choices. So we have to weigh the two objectives given this particular petition. It looks as though the community really wants the downzoning. There is no one here in opposition. The other objective that the Comprehensive Plan requires us to examine is promoting diversity of housing choices. The only choice here is between single family and duplex. Should the broader community need for more duplexes carry more weight than the neighborhood's desired protection against lots being converted to duplex use? We have not shown evidence that there is a strong need for more duplexes in this community. He is not sure we have a crisis of housing. Given the lack of evidence that we really need this community to provide more duplexes, he thinks we should support this request for protection against duplexes. The quality of life and viability of their neighborhood would be jeopardized by more duplexes.

Carroll expressed appreciation to the neighborhood association because they took the time to follow the recommendations of the downzone committee. The Planning Commission must be advocates for the City and look at the whole picture. It goes back to the Comprehensive Plan saying we must make efficient use of infrastructure in the City. All the neighborhood associations are getting together and downzoning, so at what point do we stop? We can't downzone all of the city. Where are people going to rent duplexes? Neighborhoods are saying we don't want you in our neighborhood if you rent, and he thinks that is wrong. There needs to be diversity in the neighborhoods. We need to make best use of schools and the mass transit in the city. This is a very, very low density at 4.1. He believes that this is the wrong precedent to set. There is just not a threat to the neighborhood as far as multi-family units moving in. History shows it.

Strand agreed. She does not think R-4 to R-2 gets you anything. The same duplex can be built in R-2. It does not stop that in any neighborhood. This is a beautiful neighborhood and we do need to preserve that, but we need to preserve duplexes as well. Affordable housing is going to be an issue all over this country. We have got to keep houses affordable. We need to keep schools like Randolph full of students. She believes that R-4 is good zoning. It needs to stay in place.

Carlson stated that he will support the application. He disagrees with Strand and Carroll. These neighborhoods are the community's supply of affordable housing. We have a duty to protect the existing affordable housing. The type of action they are trying to create here is to protect those affordable houses. If our interest is in protecting affordable housing, we need to be supporting these downzones. This neighborhood is 30-40% rental. There are rental housing opportunities in this neighborhood. We never ask about the density in

newer areas to get the diversity of housing. He believes it is a question of fairness. We would not ask someone to do this out on the edge. In terms of density, 4.1 may be less than some others, but certainly higher than some of the new neighborhoods out on the edge.

Strand disagreed, suggesting that there is a mix of housing on the edge.

Esseks believes that these are houses that are affordable to new buyers. He believes that the neighborhoods we see (Witherbee and 40th and A) represent a special resource of great importance to our community – still viable, still attractive to the younger and middle-class. He thinks they will be lost if the trend goes toward rental housing and duplexes. He does not want to be a part of looking back on what could have been done to save an unusual housing resource. The houses on the periphery cost much more. We owe it to our community and the people in the future to protect these neighborhoods. The vulnerability to duplexes is a significant enough threat. He thinks the R-2 is a good idea.

Larson stated that this is a very tough question and there are good arguments on both sides. However, he does not believe the Planning Commission pays enough attention to how these downzonings force more expansion on the edge at a much lower density. The infrastructure needs out there are tremendous. These people need to recognize that by downzoning, their taxes will have to go up sometime to help pay for the infrastructure on the edge.

Taylor further commented that, “the sky is not falling, the sky is not falling”. At what point would R-2 be acceptable? He just does not see any argument strong enough against it. We cannot ignore this kind of interest in the downzoning.

Larson pointed to Near South, 40th & A, and now Witherbee – it does seem to be a movement in that direction so it could be that it just keeps on going and we will have virtually all R-2 throughout the area. He will support the motion because he respects the work these people have done, even though there is already a great diversity of size of homes and mix of uses. He does not like the trend of continuing downzoning our neighborhoods.

Motion for approval carried 6-3: Cornelius, Sunderman, Taylor, Larson, Esseks and Carlson voting ‘yes’; Strand, Krieser and Carroll voting ‘no’. <u>This is a recommendation to the City Council.</u>

*** Break ***

CHANGE OF ZONE NO. 06052,
A TEXT AMENDMENT TO TITLE 27
OF THE LINCOLN MUNICIPAL CODE
TO ADJUST MINIMUM COVERAGE AREA
AND BONUS FOR AN AGRICULTURAL COMMUNITY UNIT PLAN
UTILIZING A COMMUNITY WASTEWATER SYSTEM IN THE
BUILD-THROUGH AREA.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: September 13, 2006

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

Ex Parte Communications: None.

Staff presentation: Mike DeKalb of Planning staff presented the proposal, being an amendment to the build-through requirements. The concept is that when the build-through standards (BTA) were developed, we were looking at subdivisions that provided interior community sewer systems, with there being no size limit and a lot of flexibility. At that time, we were being told that it just wasn't economically feasible to do a community sewer system on larger lots so that is how it was written.

It has now come to the staff's attention that the cost of a community sewer system has come down and the community sewer system is more reliable and easier to install. A local developer has submitted the idea that the community sewer system would be more environmentally appropriate than septic systems, etc. The staff is in agreement and is proposing this change to provide a second bonus, and amend the coverage provisions to allow 3-acre lots with community systems and bonuses. The text change gives 20% plus 20% for larger lots, and also adjusts the coverage provision so that the larger lots can be done.

DeKalb stated that this text amendment was initiated by the Director of Planning recognizing the request had good merit.

Support

1. Mike Eckert, Civil Design Group, testified in support. He suggested that this was a glitch in the build-through standards which he discovered. This provides opportunity to develop 3-acre lots and a community septic system. He expressed appreciation to the staff for accommodating this request.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION: September 13, 2006

Larson moved approval, seconded by Strand and carried 9-0: Strand, Cornelius, Sunderman, Taylor, Larson, Krieser, Carroll, Esseks and Carlson voting 'yes'. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 06046
DAKOTA SPRINGS COMMUNITY UNIT PLAN,
ON PROPERTY GENERALLY LOCATED
AT S.W. 2ND STREET AND W. SALTILLO ROAD.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: September 13, 2006

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

Ex Parte Communications: None.

Staff presentation: Mike DeKalb of Planning staff explained this proposal for a cluster AG subdivision of 12 lots on 150 acres, creating 3-acre clusters along the ridge looking down on the floodplain. Because of topography and terrain it creates a long backbone road of access. This is being developed at the same time as the previous text amendment and the conditions do require approval of the text change (Change of Zone No. 06052). The applicant can meet the conditions of approval.

Proponents

1. Mike Eckert of Civil Design Group appeared on behalf of the developer/applicant and believes the applicant can meet all conditions of approval, with the exception of #6.1.1.2 and #6.1.1.8.

Eckert requested that Condition #6.1.1.8 be deleted:

> 6.1.1.8 Show the extension of Dakota Springs (Ct) Dr. To the west property line or a redesign that provides for future extension.

This is a requirement made by staff to extend the main drive that comes through the property (Dakota Springs Drive) which is shown as turning into Dakota Springs Court, ending in a cul-de-sac. Staff is asking that to be extended for future connectivity. The applicant wishes to delete this requirement because the corner of the property where this takes place is bounded just to the west by a very small parcel of land. What you end up with is a very small sliver of land into which we are being asked to extend. The applicant has remapped the floodplain on the property as required, and really wonders how much of this little parcel would be in the floodplain. From the applicant's perspective, they would be extending into an area that could be accessed from the south. It is only 100-120 ft.

wide, which would result in a road that would extend up from the south with lots on the side. There is a pond in the area, with two lots configured to the north of Dakota Springs Court. Extending that drive will cut one of those lots in half. This connection is not a positive for the design that the applicant is attempting to deliver and it is not necessary since there is access from the south.

Eckert requested to amend Condition #6.1.1.2 as follows:

> 6.1.1.2 Make the revisions in the Public Works memo of August 16, 2006, and the Watershed Management memo of August 15, 2006, with the exception of requiring Dakota Springs Drive to be extended to the west for connectivity and the requirement that a Letter of Map Change be obtained based on the updated information and change in flood boundaries.

Eckert pointed out that this development does not have any lots, much less any building envelopes, within the newly mapped 100-year floodplain. The lots are a minimum of 6-8 feet above that. All of the lots are out of the 100-year floodplain.

Eckert requested not to be required to obtain a Letter of Map Revision, as requested by Watershed Management. That is not an easy or cheap process and is needed mainly for insurance purposes. The developer would prefer not to be forced to do the Letter of Map Revision since there are no lots or structures in the floodplain.

Eckert pointed out that the proposed development preserves the drainageway and some trees, and creates some ponds on the property.

Esseks inquired whether the parcel across from the remapped 100-year floodplain is an outlot. Eckert indicated that it is an outlot reserved for future urbanization. There is not a perpetual easement but there is a condition which requires the developer to show a permanent conservation easement. Esseks suggested that maybe the developer needs to have the revised floodplain indicated in the case of someone putting lots in the northwest corner at some point in the future. Eckert suggested that lots can be placed on the northwest corner. The new floodplain is shown on the grading and drainage plans.

Esseks wondered why the Letter of Map Revision would be required. Eckert has the same question, especially since they are not showing any lots or building envelopes in the 100-year floodplain. The applicant would be more than happy to supply their data to the city, if the City would like to be the applicant for the Letter of Map Revision. He believes it is an onerous responsibility put on the developer. The problem is that Watershed Management has not gotten to this area yet in their remapping efforts.

Larson confirmed that there is access from the south, and inquired whether there is an east/west road running along the south side. Eckert stated, “not today”. The southern

edge of this property is on the half mile line so theoretically under the urban form, there would be an arterial coming down that general area.

Carroll asked whether the drainage from this development would go to the north. Eckert clarified that the drainage from this development goes to the northeast. It is pretty high up as far as being at the top of the basin.

Carlson does not understand the difficulty of making the extension. Could it be made through either Lot 3 or 4 of the build-through lots or Lot 1 or 2 of the existing acreage lots? Eckert agreed that it could. However, as the lot is positioned today, they would have to almost split it in half. His clients want to be able to market lots that are very close to three acres. If cut in half, they would have to shift some things around and would only end up with one lot on the north side of the drive, with the other two down further to the south and west and one to the south. It is really a design issue in attempting to get the building envelopes and lots adjacent to the ponds. Carlson wondered whey they couldn't move directly west. Eckert showed that from the south there are three shadow lots. The constraining factor is the drainageway. If the goal is to keep the lots as close to 3 acres as possible, it changes the lot configuration. He agreed that they could pull it further to the south. But then they are left with the question of practicality. Marketability will tell you that lots on the end of a cul-de-sac are your premium lots. That is also the prettiest area on this development. It is a preference from a marketing and design perspective.

Esseks pointed out that the Planning Commission is supposed to uphold good planning principles, and one that we have been discussing is connectivity. He knows there is floodplain to the west. But then there is land beyond the floodplain. You could run across the floodplain area with proper adjustments. You've got two cul-de-sacs already, and conceivably to achieve the principle of connectivity we may have to ask you to run something through there. Eckert responded, stating that there is one connection to the south and they would be willing to make another connection to the south, but it is an issue that may need another look from a design perspective.

There was no testimony in opposition.

Staff response

DeKalb noted that the Watershed Management report requires the study and the study data must be submitted to FEMA.

DeKalb also stated that staff does not support the request to waive the connection to the east. It is a matter of convenience relative to principle. If you look to the land to the west, we talking about providing access to a parcel that is somewhat cut off by the floodplain. If you don't provide access to that parcel, there is nothing coming in from the south and it precludes the ability to do anything with that parcel. We are looking for connectivity and the ability to develop that lot and not leave a landlocked parcel. This provides that

connection. We are asking that they provide it or provide a mechanism for it. They could provide a future street and pre-grade it and shift the lots, or if the applicant believes there is a different alignment, staff would be happy to work with them to accommodate it. It makes a bad situation worse by not providing that connection.

Dennis Bartels of Public Works pointed out that there is already one-half mile being created with no connectivity. If you don't provide the connection with this development, you are just moving the expense potentially to the south.

Carroll noted that the lot to the west is a 20 acre lot. Does it get access to the west to SW 14th? DeKalb believes that there is a long narrow lot that tags out onto SW 14th.

With regard to the Letter of Map Revision, Bartels stated that it is the intention of the subdivision ordinance that when development gets into these areas, the approximate floodplain is shown. When these areas are developed, Watershed Management asks for the study and Letter of Map Revision so that the floodplain line becomes permanently established. The intent of the subdivision ordinance is to look out for the future owner's interest. This developer has apparently done the study but has not gotten the Letter of Map Revision. The map revision establishes the floodplain line by ordinance and protects the property owners.

DeKalb added that the reason we are asking for the map revision is that it is an enforceability issue. Legal requirements of elevations are based on the FEMA map so that is the legal document that enforces, unless there has been a comprehensive watershed management plan that establishes a different base. The only way to establish a new flood elevation for enforcement purposes is by the map revision.

Strand asked what it takes to get the Letter of Map Revision. Bartels indicated that it requires submittal of the calculation to FEMA. The city is involved in the process but since we haven't studied it, it is a requirement that the developer provide the information. He does not see a reason for any exception. Watershed Management was responding to this plat based on the ordinance requirements, and the subdivision ordinance requirement is to provide that information. The information was not provided and the applicant did not ask for an exception until today.

DeKalb suggested that our exposure as a community approving this community unit plan increases if the Letter of Map Revision is not required.

Response by the Applicant

Eckert stated that the new floodplain mapped used real live topography. The developer submitted the information and he assumes that Watershed Management agreed with it. They have determined by an actual topography survey what would be the edge of the 100-year floodplain. The lots are about 8' out of the floodplain. Typically, with acreage

developments, they do not spend the client's money to do a full topography survey, but the mapping of the floodplain was done in this situation. Watershed Management has not contested the edge of the 100-year floodplain. All of the proposed lots are clearly out of that floodplain. He does not believe there is a risk to the city or anyone else. If this model that was done to remap this floodplain is accepted, Watershed Management knows where the floodplain is located. These lots are also out of what FEMA currently has on their map. Eckert referred to the subdivision ordinance and believes that it provides that this provision shall not apply where the use of the property is not being changed and where there are no physical changes on-site which have potential to increase flood hazard. This development must comply with all detention requirements. Therefore, this development will not be increasing the runoff. They have mapped the new floodplain. This is a point where Eckert hopes that reason takes over and says, does it make sense to force this requirement onto a developer after the developer has spent the money to remap the floodplain? It was a driving factor in the design of this community unit plan to make sure the lots and ponds were completely out of the floodplain. It seems redundant to do a Letter of Map Revision when there are no lots or buildings shown in the floodplain, especially if Watershed Management accepts that data. If there is any supporting data that the developer needs to provide, they can certainly do that. His client will miss this entire season for grading if the developer is required to do the Letter of Map Revision.

On the connection, Eckert understands the planning principle, but there is access from the south so it is not landlocked.

Carroll inquired whether the applicant would be willing to apply for that Letter of Map Revision if it would not hold up moving forward with this development. Eckert indicated that he would like to consult with his client, but he thinks the answer would be no. This development is in an area where the city has not done the work and they are asking us to do it. He would be more than happy to give Watershed Management the information for which his client has paid. For now, he does not see the need to incur the expense and time for the Letter of Map Revision. He believes that the lots are 6-8 feet out of the floodplain at the closest point.

Eckert also reiterated that this development is not increasing the flood hazard. If the Letter of Map Revision were not required and they used what is currently shown on the existing FEMA floodplain, the lots are clearly out of the floodplain.

Esseks would like to be accommodating but the Commission also has to value the opinion of staff.

Carlson noted that it appears the developer has already done the engineering to create the data. What is the process? Is it the issue of time? Eckert suggested that the data is the bulk of it. There is then the process of filling out the forms, submitting to FEMA, and tracking the process. And then there is a time factor. That adds to the cost. FEMA might ask for revisions, remodeling or additional work. If he had to find a middle ground, he

would agree to get the Letter of Map Revision as long as they can proceed with the development in the meantime. He does not want to hold up the ability to begin grading the project.

Rick Peo of the City Law Department interprets the ordinance to mean that they must meet both conditions, i.e. no change in use and no changes that would affect the flooding. This community unit plan is a change in use. Both conditions need to be met. Therefore, the applicant would need to request a formal waiver to relieve that requirement. He believes this issue could be worked out. As far as requiring it but not holding up the rest of the process, Peo pointed out that no final plat could be approved until this is done. The condition could be moved to being required prior to building permit but he is not sure what effect changing that condition would have. And he does not know the timeline for a FEMA map revision.

Ray Hill of Planning staff suggested that if it does require a formal request for waiver, it might be best to postpone this for four weeks to allow a formal waiver request to be submitted and heard.

Eckert wants to know whether staff would be supportive of such a waiver before agreeing to a four-week delay. Bartels stated that Public Works was not aware of this waiver request until today, and he is hesitant to respond on behalf of Watershed Management.
DeKalb suggested that the community unit plan could be approved today, which gives authority to proceed with improvements. If the applicant gets something worked out with Watershed Management, then that condition will be solved and he can proceed with the final plat. If not, then at that time he can come in and request a modification to the subdivision ordinance separately.

Eckert then asked the Planning Commission to make a decision so that he can move forward and attempt to work things out as the development moves toward final plat.

ACTION BY PLANNING COMMISSION: September 13, 2006

Carroll moved to approve the staff recommendation of conditional approval, seconded by Sunderman and carried 8-0: Strand, Cornelius, Sunderman, Larson, Krieser, Carroll, Esseks and Carlson voting 'yes'; Taylor absent. This is final action unless appealed to the City Council within 14 days.

There being no further business, the meeting was adjourned at 3:35 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on September 27, 2006.